

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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PT. 2

Confirmation Hearings on Federal Ap...

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

CONFIRMATION OF APPOINTEES TO THE FEDERAL JUDICIARY

SEPTEMBER 5, 30; OCTOBER 28, 29; NOVEMBER 12, 1997

Part 2

Serial No. J-105-4

Printed for the use of the Committee on the Judiciary



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U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1998

45-964

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-056254-6

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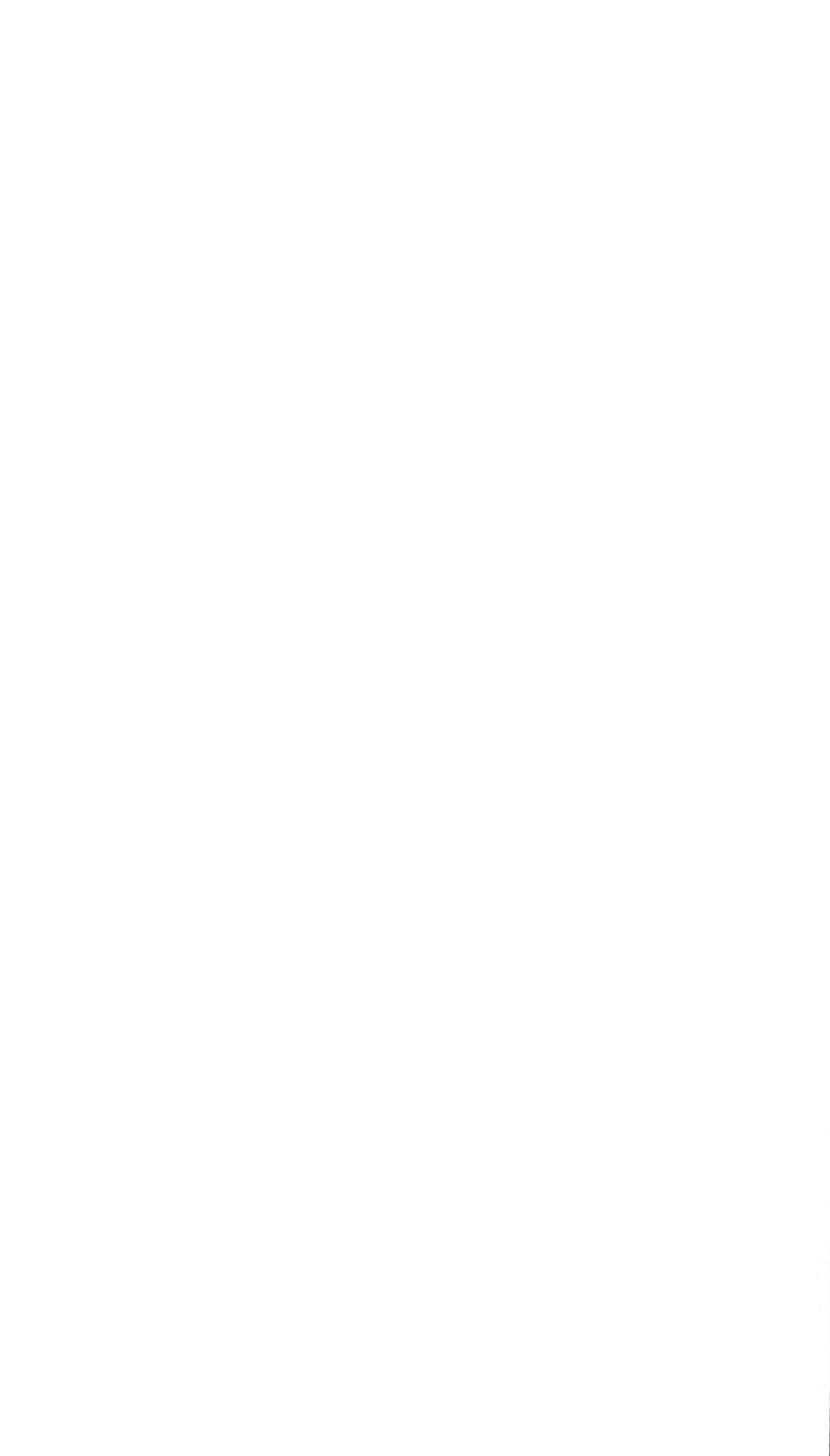
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**NOMINATIONS OF MARJORIE O. RENDELL
(U.S. CIRCUIT JUDGE); BRUCE W.
KAUFFMAN, RICHARD A. LAZZARA, AND A.
RICHARD CAPUTO (U.S. DISTRICT JUDGES)**

FRIDAY, SEPTEMBER 5, 1997

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 9:02 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Arlen Specter presiding.

Also present: Senators Sessions, Biden, and Kohl.

**OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S.
SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Good morning, ladies and gentlemen. We will begin the confirmation hearings this morning. We are pleased to have with us four very distinguished nominees—Judge Marjorie Rendell, now a judge of the U.S. District Court for the Eastern District of Pennsylvania, for confirmation for circuit court of appeals. We have former Justice Bruce Kauffman, justice of the Supreme Court of Pennsylvania, for the U.S. District Court for the Eastern District. We have Mr. A. Richard Caputo for the U.S. District Court for the Middle District, and Judge Richard A. Lazzara for the Middle District of Florida.

We had hoped to have hearings this morning for Judge Frederica Massiah-Jackson, and also for Mr. Binger. I will put in the record an exchange of letters which I had with Senator Hatch yesterday asking about Judge Massiah-Jackson for her hearing today, and Senator Hatch's reply saying that the committee could not process Judge Massiah-Jackson in time for this hearing.

Senator Hatch says:

At your request, the Judiciary Committee has undertaken an effort to promptly review and process all pending Pennsylvania judicial nominees. I appreciate your concern about Judge Massiah-Jackson not being included. As you know, the committee conducts its own review of nominees' writings, judicial opinions, and background materials. This review is, as a matter of course, thorough and time-consuming. Unfortunately, Judge Massiah-Jackson did not provide the committee with her committee questionnaire until August 15, more than a week after the other Pennsylvania district court nominees.

While the committee has endeavored to complete its review of her nomination, we have to date been unable to do so. It is my hope that, assuming all paperwork is complete and fully reviewed, her nomination will be ready for consideration at the next Judiciary Committee judicial nominations hearings presently slated for later this month.

[The letters referred to follow:]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 4, 1997.

Senator ORRIN HATCH,
Chairman, Senate Judiciary Committee,
Russell Senate Office Building, Washington, DC.

DEAR ORRIN: As you know, I had hoped that Judge Frederica A. Massiah-Jackson, a nominee to be a judge on the District Court for the Eastern District of Pennsylvania, would be able to testify at the judicial nominations hearing we are holding tomorrow morning. I think that Judge Massiah-Jackson would make a fine addition to the bench and I would like to see her nomination move forward.

To my disappointment, I have learned that Judge Massiah-Jackson is not on the witness list for tomorrow's hearing.

I would appreciate it if you could let me know the reason why Judge Massiah-Jackson was not invited to testify at tomorrow's hearing.

Sincerely,

ARLEN SPECTER.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 4, 1997.

Hon. ARLEN SPECTER,
Hart Senate Office Building,
Washington, DC.

DEAR ARLEN: Thank you for your letter of September 4, 1997. At your request, the Judiciary has undertaken an effort to promptly review and process all pending Pennsylvania judicial nominees. I appreciate your expression of concern about Judge Frederica Massiah-Jackson's not being included on this week's nominations hearing agenda.

As you know, the Committee conducts its own review of nominees' writings, judicial opinions, and background materials. This review is, as a matter of course, thorough and time-consuming.

Unfortunately, Judge Massiah-Jackson did not provide the Committee with her Committee Questionnaire until August 15, 1997, more than a week after the other Pennsylvania District Court nominees. While the Committee has endeavored to complete its review of her nomination, we have to date been unable to do so.

It is my hope that, assuming all paperwork is complete and fully reviewed, her nomination will be ready for consideration at the next Judiciary Committee judicial nominations hearing, presently slated for later this month.

Thank you for your patience.

Sincerely,

ORRIN G. HATCH, *Chairman.*

Senator SPECTER. I have discussed this matter with Senator Hatch and it is my hope we could have Judge Massiah-Jackson on a week after next, perhaps as early as September 16.

As to Mr. Bingler, whose name has been submitted for the western district, we are continuing to work on that, and we shall continue to do so. It is my hope we will be able to ultimately bring him forward for confirmation.

We have with us this morning two of my distinguished colleagues, Senator Connie Mack of Florida and Senator Bob Graham of Florida. If you gentlemen would step forward, the committee, after deferring to my ranking member, Senator Kohl, would be glad to hear from you.

Senator KOHL. Thank you, Mr. Chairman. I do not have a statement today, but I would like to thank you for chairing this hearing and I would like to put a statement into the record by Senator Leahy. Senator Leahy is concerned about the pace of judicial nominations. We currently have more than 100 judicial vacancies, and

I am concerned, as he is, and so, as I would imagine, are you, Mr. Chairman.

I ask unanimous consent that Senator Leahy's statement be made a part of the record.

Senator SPECTER. Without objection, it will be made a part of the record.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

This year the Senate has confirmed only 11 federal judges, during a period in which we have seen 112 vacancies. We have two nominees from the June 25 hearings who still need to be considered and reported by the Judiciary Committee and nominees pending on the Senate Executive calendar from as long ago as June 12.

This is only the fifth confirmation hearing for judicial nominees that this Committee has held all year. From the first days of this session of Congress, this Committee has never had pending before it fewer than 20 judicial nominees for hearings. This Committee's backlog has now doubled and is more than 40. Many of these nominations, pending for longer than a year, have been re-nominated by the President after having been held up during the stall last year. Some of those pending before the Committee had had hearings or were reported favorably by the Committee last Congress but have been passed over so far this year as the vacancies for which they were nominated more than two years ago persist. The President has sent us 61 judicial nominations so far this year and is sending more each week.

While I commend Senator Specter for chairing this hearing and including nominees to the Third Circuit and District Courts in the Eastern and Middle District of Pennsylvania, I remain concerned for those nominees, vacancies and litigants who are not from a Circuit or District with an active Republican member on the Judiciary Committee. Even Senator Specter was unable to have included the two other nominees for judgeships in the Eastern and Western Districts of Pennsylvania at this hearing. And while I am delighted to see the Committee moving forward promptly on nominations received at the end of July, that does not excuse us for having passed over and not held hearings on dozens of other nominees throughout the year. The Committee has 12 nominations that have been pending for more than a year, including seven nominations that have been pending since 1995. I am always pleased when the Committee moves promptly on nominees, but that does not excuse the Committee's delay in the consideration of nominees like Professor Fletcher, Judge Beaty, Judge Paez, Ms. McKeown, Ms. Aiken, Ms. Mollway and the others.

We continue to fall farther and farther behind the pace established by Senator Hatch in the last Congress. By this time two years ago, Senator Hatch has held eight confirmation hearings involving 36 judicial nominees and the Senate had proceeded to confirm 35 federal judges.

I have spoken often about the crisis being created by the 101 vacancies that are being perpetuated on the federal courts around the country. At the rate that we are currently going this year, more and more vacancies are continuing to mount over longer and longer times to the detriment of greater numbers of Americans and the national cause of prompt justice. We are not even keeping up with attrition.

Chief Justice Rehnquist has repeatedly acknowledged the crisis being inflicted upon the federal judiciary and, I believe, upon all Americans. The Chief Justice has called the rising number of vacancies "the most immediate problem we face in the federal judiciary." The Courts Subcommittee heard testimony just yesterday from judges from the Second and Eighth Circuits about the adverse impact of vacancies on the ability of the Federal courts to do justice. The effect is seen in extended delay in the hearing and determination of cases and the frustration that litigants are forced to endure. The crushing caseload will force federal courts to rely more and more on senior judges, visiting judges and court staff.

The Attorney General spoke recently about the "vacancy crisis that has left so many Americans waiting for justice" and noted that vacancies, filings, caseloads, and backlogs are all increasing and that we are experiencing an "unprecedented slowdown in the confirmation process" that has "very real and very detrimental impacts on all parts of our justice system." She spoke about the hundreds of appellate arguments being canceled and federal judges who endure entire years without hearing a single civil case. She said: "Quite simply without enough judges, our laws will become empty promises and 'swift justice' will become an oxymoron, and without the

independence they need to uphold those laws, our judges will become hostages to politics instead of being the guardians of our principles."

Today we will hear from a few of the highly-qualified nominees pending before the Committee, including one who was first nominated more than 16 months ago. I look forward to prompt and favorable action on each of them.

As we enter the last weeks of this session of Congress, I urge the Republican majority to reconsider its strategy and proceed to consider and confirm the nominees who are before us.

Senator SPECTER. I share Senator Leahy's concern. Of course, there could be no complaints about this processing. These nominations were submitted in late July and for some magical reason they have appeared out of turn today; at least the Pennsylvania ones were. I would have to ask the Senators from Florida about their timing.

Welcome, Senator Graham and Senator Mack. As our custom is on seniority, we turn first to Senator Graham.

STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Thank you, Mr. Chairman and Senator Kohl. I appreciate this hearing this morning for an outstanding Floridian who has been nominated by the President for the Middle Judicial District of Florida.

I have a full statement which I would like to ask to be submitted for the record.

Senator SPECTER. Without objection, it will be made a part of the record.

Senator GRAHAM. In deference to the heavy schedule that you have, I will summarize.

Mr. Chairman, it is a tremendous honor to introduce to this committee Judge Richard Lazzara for your consideration as the nominee for the Middle Judicial District of Florida. Before I begin, I would like to welcome Judge Lazzara and his son, Damon, who joins him today.

Judge and Damon, if you would please stand up?

[The persons stood.]

Senator GRAHAM. I am pleased to be joined today by my good friend and colleague, Senator Mack, whose tireless efforts on behalf of Judge Lazzara have made this hearing today possible, for which I extend my deep appreciation.

Mr. Chairman, you and Senator Kohl are well aware of the critical responsibility that we share as Members of the U.S. Senate in the review of those individuals who have been nominated to serve in lifetime positions in our Federal court system. It is vital that these appointments command our closest attention and scrutiny, which I know has been the tradition of this committee. I am certain that in applying that scrutiny, you will be as impressed as we are with the qualifications of Judge Lazzara for this important position.

Let me just take a moment to talk about the Middle District of Florida. The Middle District of Florida is geographically an extremely large judicial district, stretching some 400 miles, including cities such as Jacksonville, Orlando, Tampa, St. Petersburg, and Senator Mack's hometown of Ft. Myers. This district is projected to grow by more than 1.5 million citizens in the next 10 years. That

growth is larger than the current population of 13 of our States and the District of Columbia.

It is also a district which has had a major caseload. The criminal defendants per judge in the middle district, as an example, are approximately 50 percent higher than the national average. At the end of 1996, there were over 1,500 criminal cases pending in the Middle District of Florida. Therefore, your holding this hearing today and adding Judge Lazzara to the bench, which will bring this bench to a full complement, is extremely important.

Mr. Chairman, just briefly to review the distinguished career of Judge Lazzara, a graduate of the University of Florida Law School, he has served with distinction in a number of professional and community positions, as well as a long and distinguished career on the State judiciary. He was nominated by both Republican and Democratic Governors for increasing positions of responsibility in the State judiciary, now serving as a member of the Third District Court of Appeals, which is the intermediate appellate position in our State system.

His performance at every level of the judiciary has met with overwhelming praise. He received the highest approval rating of any of Hillsborough County judges when he served in that position in 1987, of any 13th Judicial Circuit judge when he was in that position in 1993, and now of those colleagues with whom he serves as a Second District appellate judge in 1995, was selected with the highest approval rating. He has received many awards for his service.

Mr. Chairman, I recommend in the highest form Judge Lazzara for his preparation, his experience, his judicial demeanor, his intelligence, his understanding of what it means to be a jurist. He will bring distinction to the Federal judiciary. I urge your earliest consideration of this nomination.

Senator SPECTER. Thank you very much, Senator Graham. We appreciate your being here.

[The prepared statement of Senator Graham and a newspaper article follows:]

PREPARED STATEMENT OF SENATOR BOB GRAHAM

Chairman Hatch, Senator Leahy, members of the Judiciary Committee, it is a tremendous honor to introduce Richard Lazzara for your consideration as the next judge in the Middle Judicial District of Florida.

Before I begin, I want to welcome Judge Lazzara and his son Damon to Washington. I had the privilege of meeting with both of them in my office before this morning's hearing. Mr. Chairman, Judge Lazzara has primarily earned this nomination through his diligent service and distinguished legal and judicial record. But I think that the real measure of accomplishment in any individual's life is his or her children. And in this case, Judge Lazzara has been very successful.

I also want to thank my good friend and fellow Floridian Connie Mack for his tireless efforts on behalf of this nomination and his presence here today. For nearly a decade, I have been extremely privileged to work closely with Senator Mack. I have also had the good fortune of living across the street from him.

Mr. Chairman, perhaps our most critical responsibility as a legislative body is the review of those individuals who are selected to serve at all levels of our federal court system. It is vital that these appointments command our closest attention and scrutiny, and I want to commend you and Senator Leahy for your faithful dedication to this task. In the last year alone, your leadership has led to the confirmation of three new federal judges in Florida—Robert Hinkle in the Northern District, and Alan Gold and Don Middlebrooks on the Southern District.

I am hopeful that this hearing will be the first step toward the confirmation of Richard Lazzara as the newest judge in Florida's large and rapidly growing Middle District, which stretches 400 miles and includes the major cities of Jacksonville, Orlando, Tampa, St. Petersburg, and Senator Mack's hometown of Fort Myers. It is projected to have more than 1.5 million new residents in the next ten years—a number greater than the population in thirteen states.

While not a permanent solution, Judge Lazzara's addition to the federal bench would be a welcome relief to the overburdened judges in one of the most underserved judicial districts in the nation. Criminal defendants per judge in the Middle District are approximately 50% higher than the national average. In fact, at the end of 1996, right before Judge Lazzara was nominated, over 1500 criminal cases were pending.

Just as the confirmation of judicial appointees deserves our best efforts, the American people served by those jurists have a right to expect judges who bring unquestioned competence, strong integrity, devotion to duty, and diversity of experience with them to the federal bench.

Throughout his career—as a student at the University of Florida Law School, a Hillsborough County attorney and prosecutor, a distinguished member of the Tampa Bay area legal community, and an outstanding jurist at the county, circuit, and appellate levels—Richard Lazzara has met—and exceeded—this standard of excellence time and time again.

Floridians began relying on Richard Lazzara's judgment more than twenty-five years ago. His record of exemplary yet humble service to others at the University of Florida Law School, where he bravely complemented his studies with perhaps the most challenging assignment of his career—the often thankless but always important job of dormitory resident adviser.

Almost without hesitation, Judge Lazzara's graduation from law school was followed by three years of public service. He worked in the Office of the Hillsborough County Solicitor and then as an Assistant State Attorney. This prosecutorial experience turned into nearly fifteen years of respected work in private practice.

In 1987, when he was elected a Hillsborough County Judge, Richard Lazzara entered the phase of his career that would earn him the most distinction.

In ten years as a judge, his intelligence, competence, and fairness has earned him near-universal respect and bipartisan attention. In 1988, then-Governor Bob Martinez, a Republican, appointed Judge Lazzara to a seat on Florida's Thirteenth Judicial Circuit. Five years later, Democratic Governor Lawton Chiles elevated him to the state's Second District Court of Appeal.

His performance at every level of the state judiciary has been met with overwhelming praise. Judge Lazzara received the highest approval rating of any Hillsborough County Judge in 1987; of any Thirteenth Judicial Circuit Judge in 1993; and of any Second District Appellate Judge in 1995. The Young Lawyers Section of the Hillsborough County Bar Association named him their "Outstanding Jurist of 1991-1992." And in 1990, he received the highest rating possible in sentencing habitual offenders.

Throughout his career, Richard Lazzara has been respected by his peers, hailed for his outstanding service to the people of Florida, and praised for his skill and competence in the legal arena. I have no doubt that this pattern of distinction will continue once he is invested as federal judge in the Middle District of Florida.

Mr. Chairman, perhaps the best way for me to conclude is to express my unreserved agreement with an editorial that was published in the Tampa Tribune on January 7, 1997. I hope that the members of this Committee will share in its astute observation: "Richard Lazzara is just the type of federal judge the country needs." I agree, and urge his speedy confirmation.

Thank you, I ask that the full text of the Tampa Tribune editorial entitled "Lazzara Deserves Federal Appointment" be printed in the Record following my remarks.

[From the Tampa Tribune, Jan. 7, 1997]

LAZZARA DESERVES FEDERAL APPOINTMENT

Ask any lawyer in West Central Florida to name the best judges in the area and Judge Richard Lazzara's name is invariably on the list.

The former circuit judge, now on the state's 2nd District Court of Appeal, is known for his keen legal mind, his calm demeanor and his efficiently handling of cases.

Lawyers are often awed by Lazzara's agile intellect and knowledge of the law, yet he is a modest man without a shred of the arrogance that sometimes afflicts those who put on judges' robes. An example of Lazzara's character and his devotion to the law was found last spring when he took time from his lofty appeals court position to fill in for a county judge.

So when Sen. Bob Graham recommended Lazzara for a federal judgeship last year, it was hailed by judges and lawyers as an inspired choice. President Bill Clinton, upon Graham's advice, made the nomination.

Unfortunately, the Senate did not approve the nomination during the presidential election year. Now President Clinton must renominate Lazzara and the Senate must approve the appointment.

We don't blame the Senate for being cautious about judicial nominations. The country doesn't need any more liberal judges who try to set social policy from the bench. But Lazzara, who is known for being apolitical, is not of that stripe. His approach to the law is conservative. He is interested in interpreting the law as it is, not as he might like it to be.

Scholarly, hard-working, not given to theatrics or self-aggrandizement, Lazzara is just the type of federal judge the country needs.

We urge President Clinton to renominate Lazzara to the federal bench and the Senate to approve the appointment of this estimable jurist.

Senator SPECTER. Senator Mack.

STATEMENT OF HON. CONNIE MACK, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator Mack. Senator Specter, Senator Kohl, again I thank you for holding this hearing. I, too, am delighted to be here today to recommend Judge Richard Lazzara for confirmation to the position of U.S. district judge for the Middle District of Florida.

This appointment comes at a crucial time for this district. I am going to take a moment, too, to talk a little bit about the Middle District of Florida because it is unique, with compelling demands. It stretches from Jacksonville to Ft. Myers and contains 7.8 million people, more than half of the State's population. These dynamics and the rate of growth in the State have contributed to a situation of crisis proportions for the district.

The middle district currently has the Nation's eighth heaviest caseload, and the chief U.S. district judge, Elizabeth Kovachevich, has told me on numerous occasions that the current backlog is growing at an alarming proportion, and it is for that reason that Senator Graham and I are committed to addressing these problems.

In the meantime, the middle district is doing what it can to alleviate the situation. The district recently announced an intention to hold an unprecedented accelerated civil trial calendar in June, July, and August 1998, in which judges from the Jacksonville and Orlando divisions will join the U.S. district judges in Tampa to assist the Tampa-Ft. Myers division with their emergency case backlog. It is clear that Judge Lazzara will be a welcome addition to the Federal bench there.

I have heard from many people in the Florida legal community about Judge Lazzara's fitness for the Federal bench. He is highly respected in the Tampa area, where he is currently on the State appellate bench. The Tampa Tribune had these positive comments on Judge Lazzara's nomination, and I quote, "The country doesn't need any more liberal judges who try to set social policy from the bench. But Lazzara, who is known for being apolitical, is not of the stripe. His approach to the law is conservative." He is also viewed by those who know him as a warm and decent man.

I, too, believe that he has shown himself to be a conservative jurist, interpreting statutes and precedents in a strict fashion even in situations where the outcome is not to his liking or the public's liking. With the current and appropriate emphasis we are placing on opposing judicial activism, Judge Lazzara appears to be the kind of jurist we should enthusiastically confirm. I would also like to note that back in 1992, my own judicial advisory commission recommended Judge Lazzara for nomination to the Federal bench.

I want to thank the committee for providing me with the opportunity to introduce Judge Lazzara. I know that Senator Graham and I both appreciate the timely consideration which has been given to other Florida judicial nominees in this Congress, and ask that in light of the compelling demands upon the Middle District of Florida, Judge Lazzara be confirmed swiftly by the committee and the full Senate.

I thank you, Mr. Chairman.

Senator SPECTER. Well, thank you very much, Senator Mack.

[The prepared statement of Senator Mack follows:]

PREPARED STATEMENT OF SENATOR CONNIE MACK

Mr. Chairman, I am delighted to be here today to recommend Judge Richard Lazzara for confirmation to the position of United States District Judge for the Middle District of Florida. This appointment comes at a critical time for this district.

The Middle District of Florida is a unique one with compelling demands. It stretches from Jacksonville to Ft. Myers and contains 7.8 million people—more than half of the state's population. These dynamics and the rate of growth in the state have contributed to a situation of crisis proportions for this district. The Middle District currently has the nation's eighth heaviest caseload, and Chief U.S. District Judge Elizabeth Kovachevich has told me on numerous occasions that the current backlog is growing at an alarming proportion. It is a problem Senator Graham and I are committed to addressing.

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Senator SPECTER. We will move as expeditiously as possible. I have a very high regard for the work of the Federal judiciary. I have been a practicing lawyer all my life; I consider that up to the moment. I know how important that processing is and we will work to accomplish that.

I want to note the presence of Staff Director Manus Cooney today and I want to thank him personally for expediting the process. When the nominations came in as to the—thank you very much, Senator Mack and Senator Graham. I know Senator Mack is straining at the starting point for the next race and I know how busy you are, so we appreciate your being here.

Senator MACK. Thank you.

Senator SPECTER. I was saying I want to thank Mr. Cooney especially. After the nominations were submitted, he and I talked on a number of occasions in the month of August and it has not been easy to have these set up during the first week back from recess. So we thank you, Mr. Cooney.

Senator Santorum had wanted to be here, but is in Pittsburgh today on family business and he sends his regrets. I know that he is very supportive of the Pennsylvania nominees who are here.

At this time, I would like to ask Judge Rendell to step forward, please.

While you are standing, judge, will you raise your right hand? Do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

Judge RENDELL. I do.

Senator Specter. It is a pleasure to welcome you here, Judge Rendell. You have an outstanding record as a district court judge, in the practice of law, and an outstanding academic record, graduating from the Villanova Law School in 1973 and Phi Beta Kappa from the University of Pennsylvania in 1969.

On a personal note, so that my own bias will be known, I have known Judge Rendell since she was a college student and she dated Ed Rendell, who then had the lofty position of assistant district attorney in Philadelphia and now is the mayor of Philadelphia, America's mayor as well.

Judge Rendell, we welcome you here.

**TESTIMONY OF MARJORIE O. RENDELL, OF PENNSYLVANIA,
TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT**

Judge RENDELL. Thank you, Senator.

Senator SPECTER. Would you care to make any opening statement?

Judge RENDELL. I would like to have the record reflect those members of my family who are present with me.

Senator SPECTER. If you would introduce them, we would appreciate it.

Judge RENDELL. Yes. My immediate family—my husband, Ed Rendell, is on his way. The vagaries of the Metroliner probably have affected his being here, but I know he was on the 7 a.m. or whatever.

From my immediate family, our son Jesse, who was here the last time I had a hearing, is in his second day of his senior year in high school, so he is tending to his educational duties.

I am pleased to have my chambers family here; my secretary, Beth Cummings, who has been with me for 15 years; my past, former law clerk, Cheryl Solomon, who is now with a law firm here in Washington; and my current law clerks, Adam Levin, who grad-

uated from NYU Law School, as well as Alison Conn, a graduate of Yale Law School. They have just started their tenure with me, so I am very pleased to have them.

Senator SPECTER. If you would all stand, we would appreciate it.
[The persons stood.]

Senator SPECTER. Thank you all very much.

Judge RENDELL. Thank you, Senator, and in addition to that, I would just like to say I am extremely pleased and honored to be here and am thankful to the committee for having this hearing.

Senator SPECTER. I should say, Judge Rendell, that your nomination has been pending for some time, unlike the district court nominees, and we will not burden the record with the reasons why. We are just glad to have you here today and move the process.

Judge RENDELL. Thank you.

QUESTIONING BY SENATOR SPECTER

Senator SPECTER. We are on a tight time schedule, which is customary around here. We have a vote scheduled at 9:50 this morning, and the Governmental Affairs Committee is going to start hearings at 10 and I am on that committee and early up on a round of questioning. But I know we have sufficient time to complete our work, but we will move expeditiously.

Judge Rendell, are you committed to faithfully following the Supreme Court precedent and the rulings of other superior courts in your legal decisions?

Judge RENDELL. Yes, I am, Senator.

Senator SPECTER. If you are presented with a case of first impression, what principles will guide you or what methods will you employ in deciding that case?

Judge RENDELL. If the case involves an issue of statutory interpretation, I would look first to the statute and to its plain meaning. Obviously, statutes are presumed to be constitutional in the first instance. And if the meaning were not plain, if there were ambiguity, I would look then to the legislative history to try to divine the legislative intent, knowing full well, however, that sometimes that can be misleading. So, that would involve some careful scrutiny.

If the matter were a matter of interpreting the Constitution, I would look again to the text of the Constitution and to the historical perspective and background of it. And in all instances, I would look at other precedent, or if not precedent, other cases, analogous cases decided by the Supreme Court or fellow circuit courts for guidance in how to make the determination.

Senator SPECTER. Could you cite any Supreme Court opinion which you think is particularly well reasoned?

Judge RENDELL. I think the *Dalbert* case that has to do with expert evidence is very well reasoned and has been of great help to the trial courts in helping us determine the reliability of expert opinion which I think is becoming increasingly important. And *Dalbert* is well reasoned in that it lays out tests clearly for us to follow, so I would cite that case.

Senator SPECTER. Can you point to any case or specific areas of constitutional law where you think the Supreme Court improperly departed from the principles of the Constitution?

Judge RENDELL. Well, I guess I would make the judgment of that kind of case where the Supreme Court itself has made a judgment that it has erred rather than myself presuming to say they were wrong and, for instance, *Plessy v. Ferguson* would be a case that I would say fits that description.

Senator SPECTER. Judge Rendell, if you believed the Supreme Court had seriously erred in rendering a decision, how would you handle that in applying that law to a case pending before you?

Judge RENDELL. I would apply the Supreme Court precedent. That is the law of the land.

Senator SPECTER. What is your judgment on the constitutionality of the death penalty?

Judge RENDELL. The Supreme Court has held it constitutional and I will follow that in my decisionmaking.

Senator SPECTER. Have you had any death penalty cases come before you as a district court judge?

Judge RENDELL. I have had the trial of a case that was being prosecuted as a death penalty case under the crime bill, and I convened a jury and we were in the midst of a trial when the matter was pled, a guilty plea. So I was embarking upon, in fact, the first death penalty case in our district. That was last fall.

Senator SPECTER. Do you have any conscientious scruples which would inhibit or prevent you from imposing or upholding the death penalty?

Judge RENDELL. No, I do not, Senator.

Senator SPECTER. Do you believe it is appropriate for the American Bar Association to take stands on political issues such as abortion, affirmative action, gun control?

Judge RENDELL. I guess the appropriateness of the activities of any group would depend upon its mission. I am not personally familiar with the mission of the ABA.

Senator SPECTER. Have you been a member of the ABA?

Judge RENDELL. I have in the past. I am not currently. When I was in practice, in commercial practice, I found it helpful to receive their publications, but I have never been active. I think it is difficult, if they are purporting to speak on behalf of all of the bar, for them to be taking positions on one side or the other of an issue.

Senator SPECTER. I am not sure about the appropriateness of that question, but it is part of the boilerplate.

Judge RENDELL. Yes.

Senator SPECTER. Since you are a friend and since I am presiding, I am going to ask you all the boilerplate questions.

Judge RENDELL. I didn't address it from the standpoint of ethics and obviously these are—I don't have any such cases before me. This hasn't come before me.

Senator SPECTER. I have a lot of views on the ABA, but I don't know that they would qualify or disqualify me for anything.

On the subject of judicial activism, we always take up this question, and with all the preparation, I don't know that it is possible for a nominee to give an inappropriate answer. Would you care to comment about the doctrine of judicial activism?

Judge RENDELL. I believe that a judge should decide the case before him or her, the issues before him or her, and not stray from that. And I think my record on the district court shows that that

is what I do do. I believe it is inappropriate for a judge to go beyond that, in light of the separation of powers. Our duty is to enforce and interpret the law and not to legislate. I happen to believe that and try to act accordingly.

Senator SPECTER. In one of my early sessions on the Judiciary Committee, Senator Thurmond, then chairman, asked a nominee a question: if you are confirmed, do you promise to be courteous? And I was amazed at the question because what was a nominee to say except yes. There were two nominees from Pennsylvania, Judge Mansman, who is now on the circuit court, and Judge Caldwell, and they both said yes.

Senator Thurmond said, the more power a person has, the more courteous the person should be. And as I reflected on that, that is as wise a comment as I have heard in this room. The competition hasn't been too heavy for wise comments in this room. But that is really important, and I say it only once to the nominees who are here on the importance of courtesy.

I have seen in my experience in the courtroom, and I have had a fair amount of it, a tremendous amount of conduct which is excessive by judges once they put on the robes—just really, really excessive. Once you are a judge, you are there. Some of us think a constitutional amendment might be in order to have Federal judges run every 6 years and, of course, to have Senators serve for life. [Laughter.]

But I say with great seriousness the import of Senator Thurmond's admonition that you really ought to keep in mind when litigants and parties are before you that you ought to consider yourself as if they are really before the public and almost up for election, to have your comments judged and your demeanor regarded as if that were on the line.

Senator Kohl.

Senator KOHL. Thank you, Mr. Chairman.

Senator SPECTER. We have been joined, obviously, here by our very distinguished colleague, former chairman of this committee, former ranking member of this committee.

Senator BIDEN. Former everything, but go right ahead, Senator.

Senator SPECTER. And current guru of this committee.

Senator Kohl.

QUESTIONING BY SENATOR KOHL

Senator KOHL. I will be brief, Judge Rendell. In your opinion, what are the most important decisions of the Supreme Court in the 20th century—the most important three decisions, and why?

Judge RENDELL. I believe that in terms of changing the law and setting precedent that will guide us—in the criminal area, I would have to say *Miranda* is one which is important in terms of changing the thinking or the balance, if you will, in criminal law in a way unlike it was the first half of this century.

Brown v. Board of Education obviously made a radical change in our thinking at a time when the Supreme Court felt it was called for. And the third area—I am trying to think of different areas of the law—again, I get back to *Dalbert* and the way we conduct our civil cases. So often, civil cases come before us with experts or presumed experts, and I think *Dalbert* will make a big change in the

law in terms of cases that do and do not proceed to trial based upon the reliability of experts.

Senator KOHL. Thank you. Thank you, Mr. Chairman.

Senator SPECTER. Thank you very much, Senator Kohl.

Senator Sessions.

QUESTIONING BY SENATOR SESSIONS

Senator SESSIONS. Mr. Chairman, I think Pennsylvania and the three nominees that we are seeing here from the State appear to have exceptional qualifications and appear to be the kind of nominees that will do an outstanding job as Federal judges.

I congratulate you and Senator Santorum and the President for nominees that appear to be skilled and capable with good experience. You are to be congratulated. I know you have worked hard in trying to have the kind of judges that we need in America.

Good-quality judging is important. I take it very seriously. My staff and I look at nominees and give it some thought. It is a lifetime appointment. Courtesy, fidelity to the law, hard work, and case management are the cornerstones of a good Federal judge. I have practiced full time before Federal judges for 15 years, and a good judge makes it a pleasure to be in court and a bad judge can make it a nightmare, or give you nightmares worrying about what is going to happen the next day.

I think these nominees appear to be the kind of nominees that will serve the Nation well. I do have another committee hearing to attend. I also think the nominee from Florida, Mr. Lazzara—both Senator Graham and Connie Mack are confident in his abilities, and his background appears to be excellent, too.

So I think it is a good group of nominees and I expect to support them.

Senator SPECTER. Thank you very much, Senator Sessions.

We have been joined by Mayor Rendell this morning. I understand he is here. Welcome, Mayor Rendell.

Senator BIDEN. Good thing he is not the nominee. [Laughter.]

Senator SPECTER. Do you think the cross might be a little more extensive?

I am pleased to call on now our distinguished colleague, Senator Biden.

QUESTIONING BY SENATOR BIDEN

Senator BIDEN. Mr. Chairman, I am completely objective in this nomination. The fact that the judge is bright, well educated, honest, balanced, and conscientious, has nothing to do with the fact that I have known her since I have been in high school. She is extremely qualified for this job. She will be a great addition to the third circuit, which has one of the most distinguished reputations of all the circuits in the history of the United States of America. Some truly great jurists have served on that court.

Midge, as a judge, you will be taking a place where others have sat who have literally changed the face of America for the better, and I think you deserve to be there. I should ask you questions and pretend I am interested in your answers. I know you too well. I have too much respect for you, and I am completely confident in

your ability to not only be a sound jurist, but to be a truly great one.

My one regret and I am sure it is yours, too, is that your dad is not here. He would be, and is, extremely, extremely proud of you.

Judge RENDELL. Thank you.

Senator BIDEN. I still can't figure out why you married a guy from New York, but I guess in time we will work that one out. I welcome the mayor as well. I think, quite frankly, judge, you have the better job. Clearly, the job security is better, and I think the decisions, although difficult, may be even easier to make.

I am excited about your nomination.

Judge RENDELL. Thank you, Senator.

Senator BIDEN. And I compliment you, Senator Specter, for pushing the nomination. You know, everybody thinks that bipartisanship is dead in this country. In a lot of places, it is not.

I must say, Mr. Chairman, you have also recommended to the President three other nominees. I am very regretful that one is not here today for the western district. I hope it is not petulance that is keeping that from occurring because he is as qualified as the others that are here today.

With the exception of the circuit judge, I must tell you, Mr. Chairman, and tell the other judges, including Mr. Kauffman, whom I know and think is a great appointment as well, that a lot is going to depend, from this Senator's standpoint, on what happens to the judge from the Western District as to how—at any rate, that is for another time and another fight and it is unrelated to you directly and unrelated to Judge Rendell.

I am excited about it, Midge, and I tell you I think it is wonderful. Congratulations. I look forward to watching from afar your continued distinguished career.

Judge RENDELL. Thank you, Senator. I am honored and humbled by your remarks. Thank you.

Senator SPECTER. Thank you very much, Senator Biden. I had commented about Mr. Bingler earlier, John Bingler, and had said that he had been nominated and hoped that we would have him before this committee soon and that that was in process. I did not give any further explanation, but—

Senator BIDEN. By the way, I want to make it clear for the record that everything in my experience, knowing you for a couple of decades now—everything you have ever said, you have done, and I have absolute, complete confidence that you are trying your best to make sure Mr. Bingler gets before this committee. I appreciate that very much and I will pursue that with you.

Senator SPECTER. Thank you very much, and the reason that Judge Rendell married a New Yorker was because he had a very important position. He was assistant district attorney in Philadelphia.

Judge RENDELL. For one Arlen Specter, who was then the district attorney, I might add.

Senator SPECTER. We have had a lot of fun over the years.

Thank you very much, Judge Rendell. I think that your confirmation is as close to being assured as anything can be. Thank you for coming.

Judge RENDELL. Thank you, Senator, and thank you again for convening this hearing.

Senator SPECTER. Thank you.

We will now call the district court nominees together to speed the process just a little. If you would all step forward, Justice Kauffman, Judge Lazzara, and Mr. Caputo, and raise your right hands, do you solemnly 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. KAUFFMAN. I do.

Judge LAZZARA. I do.

Mr. CAPUTO. I do.

Senator BIDEN. Mr. Chairman, before you begin, may I clarify the record? I referred to a circuit court nominee. I want the record to show that I have known her since high school. We go back all the way to high school; we have been friends for years. Thank you very much, Mr. Chairman.

QUESTIONING BY SENATOR SPECTER

Senator SPECTER. Thank you very much, Senator Biden.

Let us begin with former justice Kauffman, who brings to this position an outstanding record, having served on the Supreme Court of Pennsylvania; an outstanding record as a litigator; an outstanding academic record from the University of Pennsylvania and Yale Law School. He couldn't have made two better selections because they are the same as mine.

Mr. Kauffman, are you committed to faithfully following Supreme Court precedents and the court of appeals for your district?

TESTIMONY OF BRUCE W. KAUFFMAN, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Mr. KAUFFMAN. Yes, Senator, I am.

Senator SPECTER. If you are presented with a case of first impression, what principles will guide you in deciding the case?

Mr. KAUFFMAN. The principles of recognizing that a statute is presumed to be constitutional; that it is the role of the courts not to legislate, but to enforce the law, and therefore we search for precedents that will help us interpret an ambiguous, if a statute were to be ambiguous. And, finally, we look at legislative history, if need be, but I repeat what was said earlier today that legislative history sometimes can be very dangerous because it may be only the opinion of one Member of the Congress, and therefore you have to carefully scrutinize legislative history. Hopefully, the presumption of constitutionality of the statute will—

Senator SPECTER. Can you cite any specific Supreme Court opinion which you think is particularly well reasoned?

Mr. KAUFFMAN. Yes; I think that the *Adarand* decision is a very well reasoned decision.

Senator SPECTER. Can you cite any situation or case where you think the Supreme Court has improperly departed from the principles of the Constitution?

Mr. KAUFFMAN. Yes; I think I agree with what Judge Rendell said that you look at cases that the Supreme Court decided that

were improperly decided, such as *Dred Scott* and *Plessy v. Ferguson*.

Senator SPECTER. What would you do if you believed the Supreme Court or the court of appeals had seriously erred in rendering a decision? What would you do with respect to applying it to the case before you?

Mr. KAUFFMAN. As a Federal district judge, a trial judge, I would be bound by the precedent of the higher courts.

Senator SPECTER. As to the death penalty, had you sat on death penalty cases when you were on the Supreme Court of Pennsylvania?

Mr. KAUFFMAN. Yes; I did, Senator.

Senator SPECTER. Do you have any moral compunction against the imposition of the death penalty?

Mr. KAUFFMAN. I have no moral compunction that would prevent me from enforcing the law.

Senator SPECTER. Had you been a part of the majority of the court upholding the death penalty in cases where you sat on the Supreme Court of Pennsylvania?

Mr. KAUFFMAN. I don't think that the opportunity came while I was there to actually enforce a death penalty, but there were cases where the principle came up and I had no moral compunction against voting to enforce the law.

Senator SPECTER. Well, as you say that, I reflect we didn't have the death penalty in Pennsylvania from 1972 for a long time, but we had had a lot of cases come up where it was imposed but wasn't carried out.

Mr. KAUFFMAN. Correct.

Senator SPECTER. We are going to skip the American Bar Association question in this round.

What is your view on judicial activism?

Mr. KAUFFMAN. Senator, I believe that the tripartite system of government that we have is excellent. It has worked. Checks and balances are important. The job of a Federal court is not to make the law, but to interpret the law. The job of the legislature, the Congress, is to make the law, and I think it is very important that Federal judges understand that and conduct themselves accordingly.

Senator SPECTER. Justice Kauffman, you have had a very distinguished career and done a lot of hard work. You have had a lot of lofty positions educationally, professionally, supreme court. You are a big wheel. Can you make a commitment now to all those lawyers and all those litigants come before you that you are going to keep your temper all the time and you are going to be courteous to them all the time?

Mr. KAUFFMAN. Senator, yes, indeed. This is something I have wanted to—

Senator SPECTER. OK, because I know you pretty well and it is not an easy commitment to keep, and I am going to ask you to think about this when they are before you and some lawyer is rambling, some litigant is not too directed, and all the temptation is there and you have had a bad morning. Think about Senator Thurmond.

I had commented, Senator Biden, earlier about Senator Thurmond's comment to always be courteous.

Mr. KAUFFMAN. I promise you, Senator, I will never forget that.

Senator BIDEN. He is a man who has never lost his temper, I can assure you. [Laughter.]

Senator SPECTER. Senator Kohl.

QUESTIONING BY SENATOR KOHL

Senator Kohl. Thank you, Mr. Chairman. I will ask just one question.

Since their inception, the Federal sentencing guidelines have been the subject of debate. In fact, at least one district court judge resigned because, according to press accounts, he felt that the mandatory guidelines were too harsh and too rigid. Some appellate judges, like Judge Easterbrook of the seventh circuit, have been criticized for their unwillingness to allow district court judges to depart from the sentencing guidelines, even for upward departures.

Is that a concern of yours generally, and is this an issue in the third circuit?

Mr. KAUFFMAN. Senator Kohl, I believe that a Federal district judge, no matter what his personal opinion may be of sentencing guidelines, has no choice but to follow what the law is. The Congress decides that issue, and I promise you that I will very vigorously enforce the laws as passed by Congress and I will not let my personal opinion of whether sentencing guidelines are good or bad interfere with my administration of them.

Senator KOHL. Thank you. Thank you, Mr. Chairman.

Senator SPECTER. Senator Biden.

QUESTIONING BY SENATOR BIDEN

Senator BIDEN. I have one question that is going to sound like I am not being serious at first blush, Justice Kauffman, but I am very serious. Considering your stature and success in the law in one of the Nation's largest cities, in a town renowned for very high-powered lawyers, why do you want to be a district court judge?

Mr. KAUFFMAN. Senator, this is something that I have wanted to do all of my life. I grew up in a family where my dad was a lawyer and a judge. Our family has always been devoted to public service. I view this as the pinnacle of the profession and an unusual opportunity to serve the public for the rest of my life. It is something that I want to do very much, and I have had to answer the same question to my wife and some others, too, and believe me, Senator, I have thought about that.

But I feel that I have been very lucky in life and that every lawyer, and me in particular, has the obligation to give back to this country that has been so good to all of us. And I know this sounds like platitudes, but I sincerely mean that I feel an obligation to devote the rest of my life to public service and that is what I hope, if confirmed, I will be permitted to do.

Senator BIDEN. Well, I believe you do. I can't think of a better reason why one should want to be a Federal judge. Thank you.

Mr. KAUFFMAN. Thank you, Senator.

Senator SPECTER. Thank you, Senator Biden.

Justice Kauffman, would you introduce your family and friends? I did not have a chance earlier to greet all of your friends—I didn't see him there—but I will later.

Mr. KAUFFMAN. Thank you, Senator. I first want to say I am very honored, sincerely honored and grateful to be here this morning, and I do have my family and friends, both in person and by representation.

My 89-year-old father who is in Florida is here in spirit and will be watching this on CNN. This is something very important to him in his life, too, and I am so happy that he is alive to see this.

My best friend and my wife is here, Carol Jackson Kauffman.

Senator SPECTER. Would you stand, Carol, please?

[Mrs. Kauffman stood.]

Senator SPECTER. Thank you.

Mr. KAUFFMAN. My son, one of my sons, Robert Andrew Kauffman, who is a former assistant U.S. attorney in Philadelphia, and now a lawyer, a trial lawyer, in the distinguished firm of Reese, Smith, Shaw, McLean in Pennsylvania—he is here representing himself, of course, but also his brother, Brad, his sister, Margie, and his sister, Laurie, and his sister, Christine, and my brother, Alan, who practices law in Florida, and my grandchildren, Stephanie and Sara. So I am very happy that Robert could be here today, for a variety of reasons. My other children and brother and grandchildren are not here.

Senator BIDEN. Bob, are you billing by the hour for that representation? [Laughter.]

Mr. R. KAUFFMAN. No, Senator.

Mr. KAUFFMAN. I have some very—I am a lucky man. I have some very dear friends.

Senator SPECTER. Justice Kauffman, may I ask you to expedite this because we are going to have to conclude this hearing?

Mr. KAUFFMAN. Yes; here today are some wonderful friends of mine—Leonard Sylk, of Philadelphia; Jerome Richter, Esq., of Philadelphia; Ken Tepper, Esq., of Philadelphia; and my partner representing not only himself, but the firm of Dilworth, Paxson, Kalish & Kauffman, Thomas Groshens.

I also have—and I saved him for last; he should have been first—a marvelous friend of mine here, Congressman Robert Andrews, of New Jersey. Well, he was here just a few moments ago.

In any event, thank you, Senator. I appreciate it very much.

Senator SPECTER. Thank you very much, Justice Kauffman.

One final note about Justice Kauffman's extraordinary service with his law firm, the Dilworth firm, in representing many of us in the navy yard litigation on base closures; I think a really remarkable contribution.

QUESTIONING BY SENATOR SPECTER

Senator SPECTER. Judge Lazzara, welcome. You bring to this hearing a very outstanding record academically, professionally, and as a Florida State judge. Let me begin with a central question which has been inquired into by the committee, and that is with respect to a murder case which you presided over where you did not impose the death penalty after that was recommended by the jury. That has been inquired into in detail by staff, which has

found your explanation satisfactory, but I think it is important for our record here that you state your reasons for departing from the jury's recommendation in that case.

TESTIMONY OF RICHARD A. LAZZARA, OF FLORIDA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA

Judge LAZZARA. Well, as you know, Senator, in connection with those inquiries I have furnished a complete copy of the sentencing transcript which reflects in detail my legal reasons for not doing so.

In Florida, the jury's recommendation as to whether to impose or not to impose a death penalty is not binding on the trial judge. That awesome responsibility falls on the trial judge. After reviewing exhaustively the law of the State of Florida relating to whether the death penalty should or should not be imposed, and after strictly applying that law as it should be applied to the objective facts that I found in the record, it was my determination that the death penalty was not an appropriate sanction in that case. And therefore I exercised what I believed to be and what I still believe to be good judgment in sentencing Mr. Bailey to life imprisonment.

That was not the only case that I have had the occasion to consider whether the death penalty should be imposed. There were two others which I have noted, I believe, in my response. In those cases, I followed the exact same approach that I followed in Mr. Bailey's case. I strictly applied the death penalty law, as I understood it, to the objective facts appearing in the record. Using that same process in those other two cases, it was my determination that the death penalty was the appropriate sanction.

Senator SPECTER. And you imposed that sentence?

Judge LAZZARA. And I imposed that sentence in both cases.

Senator SPECTER. Do you have any conscientious scruple against imposition of the death penalty?

Judge LAZZARA. No, sir.

Senator SPECTER. Judge Lazzara, give us your views on judicial activism. What is the appropriate role of a judge in that respect?

Judge LAZZARA. As I understand it, a judicial activist is one who, for their own personal reasons, consciously ignores the law and the facts in resolving a dispute. I have never been that type of judge, I think, as my record reflects. I don't intend to be that type of judge as a U.S. district court judge, if I am fortunate enough to be confirmed. And in my view, any judge who takes that approach should hang up the robe. If they want to legislate, they should run for the legislature and should not be in the judicial branch of government.

Senator SPECTER. What would you do if you found a case from the Supreme Court or court of appeals particularly disturbing and sharply disagreed with it? How would you handle that in your court?

Judge LAZZARA. If it was the law of the land, binding precedent under the basic principles of stare decisis which brings continuity and finality to our judicial system, I must follow them. I would disagree if I felt appropriate, but I would have to follow them.

Senator SPECTER. Can you point to any case where you think the Supreme Court made an erroneous decision?

Judge LAZZARA. I think Judge Rendell and former Justice Kauffman have pretty well covered the ballpark in that area. *Plessy v. Ferguson*—

Senator SPECTER. They left out a few cases.

Judge LAZZARA. Yes; *Plessy v. Ferguson*, of course, comes to mind.

Senator SPECTER. Do you have members of your family here, Judge Lazzara? If so, we would be pleased to have you introduce them.

Judge LAZZARA. Yes. I am pleased to have here my son, Damon Lazzara, and his good friend and my second son, really, Mr. Daniel Simitovich. And my wife sends her regrets for not being able to be here.

Senator SPECTER. We have been joined now by Representative Andrews. Would you stand?

[Mr. Andrews stood.]

Senator SPECTER. Congressman Andrews met his wife in the course of the navy yard litigation and was a party to that, a very distinguished legislator and public servant.

Senator Kohl.

Senator KOHL. I have no questions, Mr. Chairman.

Senator SPECTER. Senator Biden.

Senator BIDEN. I have no questions.

Senator SPECTER. Thank you.

Anything further you would care to say?

Judge LAZZARA. I just wanted to express my appreciation to Senator Graham and Senator Mack for taking time from their busy schedules to be here and to present me to the committee, and I appreciate the committee having me here, sir.

Senator SPECTER. Thank you very much, judge.

We now turn to A. Richard Caputo, who also brings a very distinguished record to this hearing, a graduate of Brown University and the University of Pennsylvania Law School, 1963; a JAG officer in the Air Force; extensive public service, community activities.

Judge Caputo, welcome. Is there any opening statement you would care to make?

TESTIMONY OF A. RICHARD CAPUTO, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Mr. CAPUTO. No, sir. I would like to introduce members of my family.

Senator SPECTER. Please do that, yes.

Mr. CAPUTO. My wife, Rosemary.

Senator SPECTER. Would you stand, Mrs. Caputo?

[Mrs. Caputo stood.]

Mr. CAPUTO. My daughter, Lisa, and my son, Richard. And my daughter, Christina, lives in Florida and was unable to make it, and, of course, her husband, Jerry, and my son Richard's wife, Laurie, and my grandson, Richard III.

Senator SPECTER. Thank you very much. It is a very beautiful family which you have, so that I can put that on the record to be along with Senator Biden. [Laughter.]

QUESTIONING BY SENATOR SPECTER

Senator SPECTER. Mr. Caputo, I am presuming twice now, but I don't think it is an unreasonable presumption. Are you committed to faithfully following Supreme Court precedents and the rulings of the third circuit?

Mr. CAPUTO. Yes; I am, Senator.

Senator SPECTER. What are your views on judicial activism?

Mr. CAPUTO. Well, my views on judicial activism are that judges are appointed to interpret the law, to decide controversies and cases, and resolve grievances, not make policy and legislate. I also would note that Federal courts are courts of limited jurisdiction and Federal judges certainly should be mindful of that particular facet of their function.

Senator SPECTER. If you had a case where you thought—well, what Supreme Court decision would you point to, if any, that you thought was improperly decided?

Mr. CAPUTO. Well, I know everyone has so far mentioned *Plessy* and *Dred Scott*. I suppose I could add the *Lochner v. New York* case involving—

Senator SPECTER. What were the facts in that case, Justice Kauffman?

Mr. CAPUTO. Well, I don't really—you asked Mr.—

Senator SPECTER. The facts in *Lochner*?

Mr. KAUFFMAN. The facts in *Lochner*? That was where the—

Senator SPECTER. You don't have to answer that. [Laughter.]

Senator BIDEN. You are not required to answer the question.

Senator SPECTER. I just wanted to know if you were listening. Mr. Caputo was starting to answer it for you.

Do you have any compunction against the death penalty, Mr. Caputo?

Mr. CAPUTO. No, sir, I do not.

Senator SPECTER. What kind of cases have you handled generally in the practice of law?

Mr. CAPUTO. I have handled most—all kinds of cases. My practice has been fairly general.

Senator SPECTER. Have you had some criminal cases?

Mr. CAPUTO. I have, not many.

Senator SPECTER. Ever represented a defendant in a capital case?

Mr. CAPUTO. No, I have not.

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

Mr. CAPUTO. I think in many respects, as Judge Kauffman said, it is something I have wanted to do all my life. I feel like I have trained for it my entire career, and I think I have reached the point of experience and temperament that qualifies me at this point in my life to do it. I think it is one of the highest callings we can have in our profession, and I feel as though I am ready and I would like to do some public service at this point in my life.

I enjoy a reputation for competence and integrity. I am willing to work hard and I am a good listener, and I think that is what a judge has to do, listen and decide, and I am prepared to do that.

Senator SPECTER. You heard my question to Justice Kauffman, and you also, Judge Lazzara, about being courteous at all times. Are you ready to make that commitment to this committee?

Mr. CAPUTO. Absolutely, I am, sir.

Senator SPECTER. Senator Kohl.

QUESTIONING BY SENATOR KOHL

Senator KOHL. Just one question. I noticed that no one this morning mentioned among the most important Supreme Court decisions *Roe v. Wade*. Do you have a comment on that?

Mr. CAPUTO. I really can't comment on that in any way except that it is the law and, if called upon, I would follow it.

Senator KOHL. Thank you.

Senator SPECTER. Senator Biden.

Senator BIDEN. I want a commitment, judge, that you will be particularly mindful of litigants from Scranton, PA. That is my hometown. Scranton doesn't get paid attention to enough. I just want you to know that.

Mr. CAPUTO. Yes, sir. You have my commitment.

Senator BIDEN. All right, good. Just so long as they are treated fairly, I have no question.

I suspect the reason why none of you mentioned *Roe*, although all of you probably in your hearts know it is probably one of the most significant decisions, whether you agreed with it or not, is because you have all been attuned to make sure not to mention *Roe* because you know that is a flash point, the one thing that will get everyone's interest. I kind of wish one of you had, but I think that is the reason. You have all had significant legal experience, and so I am sure your good judgment and wisdom prevailed upon you not to suggest *Roe* as one of the decisions. At any rate, a wise decision, I might add.

I thank you very much, Mr. Chairman.

Senator SPECTER. Thank you, Senator Biden.

Thank you all.

At this point we will place into the record a statement submitted by Senator Santorum.

[The prepared statement of Senator Santorum follows:]

PREPARED STATEMENT OF HON. RICK SANTORUM, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, thank you for accepting this testimony in strong support of the nominations of Judge Marjorie Rendell, Justice Bruce Kauffman, and Mr. Richard Caputo, who are appearing before you today.

I regret that I will be unable to appear before the Committee today. A family commitment in Pittsburgh will keep me in Pennsylvania throughout the day. Nonetheless, I wish to provide for the record this statement as a means of expressing my support for these nominees.

Judge Rendell has an impressive record of service on the bench of the U.S. District Court for the Eastern District of Pennsylvania. Having had the opportunity to review many of her rulings, I am confident that the Third Circuit will benefit from her skills and experience. Further, her rulings reflect a well grounded, common sense understanding of the law and the adjudicatory role of judges. For instance, in *United States v. Roberson*, 1995 WL 314714 (E.D. Pa., May 17, 1995), Judge Rendell rightly held that evidence of drug dealing was admissible because the police had probable cause to stop the defendant after receiving a call regarding the defendant selling drugs.

The Committee should also take note of Judge Rendell's active involvement in many charitable and nonprofit organizations throughout southeastern Pennsylvania.

Whether it is the University of Pennsylvania, the Visiting Nurse Association, or Philadelphia's Avenue of the Arts, her volunteer efforts have contributed to the quality of life in our Commonwealth for over twenty years. I believe this work reflects her deep commitment to the people whom her decisions on the bench will affect.

Justice Kauffman has practiced law in Philadelphia for over thirty-five years. He has provided the committee with extensive information on his rich and varied experiences before numerous courts in the Commonwealth of Pennsylvania. In reviewing his background, I noted his determination and effective representation of the City of Philadelphia and others in attempting to keep the Philadelphia Naval Shipyard open. Such pro bono work indicates Justice Kauffman's dedication to the law and interest in the well being of the people of southeastern Pennsylvania.

As you know, Justice Kauffman has also served as a Justice on the Supreme Court of Pennsylvania. I have had the opportunity to review many of his rulings. His work clearly reflects a deep understanding of the many demands faced by one serving on a judicial bench. I am confident that the Committee will agree that the Eastern District of Pennsylvania will greatly benefit from Justice Kauffman's intellect, character, and experience.

As with the other nominees, Mr. Richard Caputo will bring a wealth of experience to the federal bench. For over thirty years, Mr. Caputo has practiced law in a wide range of fields, including Special Courts-martial in the Air Force, state and federal criminal trials, and extensive civil litigation. I believe the Committee should take special note of Mr. Caputo's contributions as a public servant. I include in this description both his service in the United States Air Force and his work as a public defender for Luzerne County, Pennsylvania. His interest in returning to such service as a judge for the U.S. District Court for the Eastern District of Pennsylvania reflects his deep commitment to the people of our Commonwealth.

Mr. Caputo's experiences have shaped a career uniquely suited for future work on the federal bench. For instance, in *Commonwealth of PA v. Chas. S. Grucella*, Criminal No. 1343 of 1967, (Luzerne County Court of Common Pleas), 58 Luz.L.Reg. 137, 59 D&C 2d 610 (1967), Mr. Caputo argued that former Public Defenders who later worked for the District Attorney should be precluded from prosecuting defendants who were former clients. I believe this experience provided Mr. Caputo with a deep appreciation for prosecutorial powers, the balance of powers, the appearance of conflict of interest, and the public interest as a whole. Bringing this appreciation to the federal bench will enhance the already high reputation of the Middle District of Pennsylvania.

Mr. Chairman, thank you again for accepting this statement. I look forward to aiding the Committee as it reviews these nominations, and I expect to ultimately see these nominations pass overwhelmingly before the full Senate.

Senator Specter. These hearings are not as elongated as people might suppose. I know when nominees come, they are concerned, as is obvious. There has been a very thorough investigation. Senator Santorum and I have a judicial nominating commission which has gone over the records in detail, and then there is an American Bar Association review and there is an FBI review. There has been a lot of examination.

Unless it is a Supreme Court nomination or a contested nomination for some reason, these hearings do not draw many of the Senators. And we try not to have them pro forma, but you have already submitted answers to many, many questions which have been reviewed in great detail. So it ought to be said briefly that there has been a very thorough examination of your records and qualifications.

You undertake an enormously important job, and my view is that the third branch of Government—you are article III in the Constitution, but the Federal judiciary changed that in *Marbury v. Madison* and you are now No. 1. You are independent, you are indefatigable, and you render decisions which have really been the pillar of America, in my opinion.

We are constrained here and at the White House by many, many considerations. You take up these cases, and you take them up one

by one and give a kind of hearing and airing. The Federal judiciary is the cornerstone of our society, in my opinion. You have a very, very heavy responsibility, and be courteous.

Thank you. That concludes our hearing.

[Whereupon, at 9:57 a.m., the committee was adjourned.]

[Submissions for the record follow:]

SUBMISSIONS FOR THE RECORD

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Marjorie O. Rendell (nee Marjorie May Osterlund)

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

Chambers: United States District Court
601 Market Street, Room 3114
Philadelphia, PA 19106

3. Date and place of birth.

December 20, 1947
Wilmington, DE

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

Spouse: Hon. Edward G. Rendell
Mayor, City of Philadelphia
215 City Hall
Philadelphia, PA 19107

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

University of Pennsylvania (9/65 - 5/69)
B.A., 1969
Dean's List
Graduated cum laude

Georgetown University Law Center (9/70 - 5/71)
1970-71 (transferred to Villanova upon marriage)
Invited to join Law Journal and Criminal Law
Review; declined due to transfer to Villanova

Villanova School of Law (9/71 - 5/73)
J.D., 1973

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.

Employment

1969-1970 University of Pennsylvania
3451 Walnut Street
Philadelphia, PA 19104
Annual Giving - Development Department
(Fundraising)

1972-1994 Duane, Morris & Heckscher
Summer 1972 - Summer clerk
1972-1973 - Part-time
1973-1981 - Full-time associate
1981-1994 - Partner

1994-present United States District Court
601 Market Street, Room 3114
Philadelphia, PA 19106

Other (Boards)

1973-1978 Philadelphia Bar Association
Board of Directors, Young Lawyers
Section

Late 1970s-
1994 University of Pennsylvania
(various advisory boards)

1978-1994 Visiting Nurse Association
of Greater Philadelphia
Visiting Nurse Society

Late 1980s-
1994 East Falls Advisory Board of
Chestnut Hill National Bank
Pennsylvania's Campaign for Choice

1992-1994 Academy of Vocal Arts
Market Street East Improvement Association
Philadelphia Bar Foundation
Philadelphia Friends of Outward Bound

1992-Present Avenue of the Arts, Inc. (Vice-Chair)

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 active in lobbying: None.

Other organizations:

Board Memberships

Avenue of the Arts, Inc. (Vice-Chair)
 University of Pennsylvania
 Board of Trustees
 Board of Overseers
 of College of Arts and Sciences

Women's Associations

International Women's Forum
 University of Pennsylvania
 Trustees' Council of Penn Women

Other

Vesper New Years Association - Vesper Club (eating club);
 copy of by-laws provided herewith.

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 Pennsylvania (11/15/73)
 U.S. Court of Appeals for the Third Circuit (4/27/78)
 U.S. District Court for the Eastern District
 of Pennsylvania (3/18/75)

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.

Published Writings:

Contributing author of seminar materials published in connection with above-mentioned annual seminar presentations; drafted sections on Secured Creditor

Claims and Adequate Protection in all editions. The most recent editions are:

Developments in Reorganization and Commercial Finance Law -- 1990 and 1991 (Ninth Annual Seminar) (305 pps.)

Duane, Morris & Heckscher
Reorganization and Finance Section
Copyright 1991 Duane, Morris & Heckscher

Developments in Bankruptcy Reorganization and Finance Law: 1989; A 1990 Annual (Eighth Annual Seminar) (249 pps.)

Duane, Morris & Heckscher
Copyright 1990 Aspen Publishers, Inc.

Developments in Reorganization and Commercial Finance Law -- 1988 and 1989 (Seventh Annual Seminar) (181 pps.)

Duane, Morris & Heckscher
Reorganization and Finance Section
Copyright 1989 Duane, Morris & Heckscher

Speeches on issues involving constitutional law or legal policy

11/29/95 - Villanova University School of Law
Nineteenth Annual Donald A. Giannella Memorial
Lecture. Published in *Villanova Law Review*:
Honorable Marjorie O. Rendell, "What is the Role of
the Judge in Our Litigious Society?," 40 *Vill. L.
Rev.* 1115 (1995).

Copies of each of the foregoing published writings have been provided herewith.

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

Excellent; 12/15/95.

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, United States District Court
for the Eastern District of Pennsylvania
Appointed by President Clinton on February 11, 1994

Jurisdiction: Complete original federal civil and criminal 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 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) See attached Exhibit A.

(2) My decision in United States v. Roberson, 1995 WL 314714 (E.D. Pa., May 17, 1995), rev'd 90 F.3d 75 (3d Cir. 1996), was reversed by the United States Court of Appeals for the Third Circuit. I had refused to suppress evidence obtained by the police as a result of a call radioed to the police regarding an individual selling drugs at a certain location. The Third Circuit reversed the conviction, finding that the informant lacked reliability, detracting from the probable cause necessary for a stop of the defendant.

(3) U.S. v. Tidwell (94-CR-353); 12/22/95.
Copy of opinion provided herewith.

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.

Committeewoman for the Republican Party,
30th Ward, 20th Division, from 1972-1976.
Elected position.

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;

I began at the law firm of Duane, Morris & Heckscher as a summer clerk in 1972; upon graduation I became an associate, and in 1981, a partner. I left Duane, Morris & Heckscher to assume my current position as judge of the U.S. District Court. The firm's address is:

Duane, Morris & Heckscher
4200 One Liberty Place
Philadelphia, PA 19103-7396

- 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 spent 20 years litigating and negotiating financial and legal interests in the area of creditors' rights and commercial litigation in and out of state courts, federal district courts, and especially in the various United States bankruptcy courts.

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

My clients included individual debtors and creditors, small to medium-size corporations and partnerships, and banks and insurance companies of local and national stature, with the subject matter ranging from a chapter 13 restructuring of an individual wage earner to complex restructuring of major companies. In the course of representing these clients, I litigated many issues, many of which were adversary proceedings in bankruptcy court or contract claims in state or federal trial courts. While my practice was varied, I specialized in representing secured creditors, primarily banks and insurance companies, whose borrowers found themselves in financial distress. As a result, I specialized in, and litigated, all areas of secured creditors' rights, including but not limited to: perfection of security interests, exercise of remedies in satisfaction of judgments, rights of secured creditors under bankruptcy and chapter 11 provisions, including rights under, and treatment under, plans of reorganization, lender liability, as well as preference and fraudulent conveyance issues. Other significant legal

activities included extensive negotiation of rights of various parties in contract disputes and in formal creditor workouts and chapter 11 proceedings, including negotiation of complex restructurings on behalf of bank groups and subordinated debenture holders.

- 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.

In examining the records of my practice since 1988, I found that the number of court appearances changed radically in 1992 and 1993. My husband became Mayor of the City of Philadelphia in January of 1992, and I delegated many of the court appearances on my cases to others. Also during 1992, my primary focus was on two major cases, both of which involved out-of-court restructurings of amounts in excess of \$100 million in indebtedness; the firm represented, in one case, the bank group, and in the other, the subordinated debenture group. Also, during this time period, my department of the firm (the Reorganization Section) delegated much of the commercial litigation to a special group of attorneys in our Litigation Department who routinely did this work with and for our section's attorneys. During the prior four years, namely, from 1988 through 1991, I appeared regularly in court in any given year on matters in which the firm represented the major secured creditor of a company in chapter 11. There were probably five to ten such cases in any given year. Also during this time period, I represented the trustee in a chapter 11 proceeding and appeared regularly in at least two complex chapter 11 proceedings in which the firm represented different classes of indebtedness. I believe that during 1988 through 1991, I appeared in court anywhere from three to eight days per month.

Court appearances were more frequent during the period from 1980 through 1988. More of the cases which I handled involved individual secured creditor rights, rather than complex cases, and matters such as the right of the secured creditor to take back the collateral pursuant to a hearing for relief from the stay were tried to conclusion frequently. I

appeared in court very regularly, perhaps as many as two to three days per week.

2. What percentage of these appearances was in:
 - (a) Federal courts.
Most appearances were in federal courts. (95-100%)
 - (b) State courts of record.
Seldom (0-5%); appeared only in connection with execution on or enforcement of judgments, or opening of judgment proceedings.
 - (c) Other courts.
0%
3. What percentage of your litigation was:
 - (a) Civil.
100%.
 - (b) Criminal.
0%.
4. State the number of cases you tried to verdict or judgment (rather than settled) in courts of record, indicating whether you were sole counsel, chief counsel, or associate counsel.

My experience prior to assuming the bench was primarily in the bankruptcy courts in which a chapter 11 case was pending. Many contested matters and adversary proceedings are brought before the court by way of complaint or motion, heard by the court without a jury, following the Federal Rules of Civil Procedure (made applicable by the Federal Rules of Bankruptcy Procedure), as well as the Federal Rules of Evidence, usually in hearings lasting from one to three days. It is difficult to state "cases" that were "tried to verdict or judgment" because, in each instance, the matters involved hearings on fraudulent conveyances, relief from stay, preference

actions, motions to dismiss, and the like. Many of these were tried to conclusion, but not all led to the end of the case or total resolution of a matter. I handled my own cases and, except in a few instances in which I was assisted by an associate, I have been the sole and chief counsel in matters I have handled. I have appeared in and litigated more than 35 bankruptcy matters.

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.

See attached Exhibit B.

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 1975 I joined with a then-partner, David Sykes, to form a bankruptcy practice of two attorneys in our firm (then approximately 50 attorneys), and started working for a new bank client. At the time that I left the firm, that client was one of the firm's major clients (perhaps second or third in overall annual billings). I was active in representing that bank, primarily as a secured

creditor in workout and bankruptcy matters, for 18 years in matters involving anywhere from \$300,000 to \$80,000,000 in debt. During that time the firm grew to 205 attorneys, the reorganization section to 22 attorneys, and the client grew from a small bank in a community outside of Philadelphia to a major banking force in Philadelphia. I consulted actively with this client on complex strategic matters involving potential lender liability claims and commercial litigation, and I was one of their primary attorneys of choice on difficult issues which required special legal and perceptive skills in situations involving borrowers, participating banks, or parties with whom they have sophisticated commercial relationships.

At the same time, I represented other single-entity clients, banks, insurance companies, debtors, etc., in bankruptcy matters and commercial litigation.

From about 1985, my practice expanded to include representation of debtors, large creditors or classes of creditors in major national restructurings or chapter proceedings in, for example, Indianapolis, Denver, Pittsburgh, Boston, and St. Louis. Many of these matters involved intense negotiations over claims and issues relating thereto, including fraudulent conveyances, issues of absolute priority, rights to payments under a plan, and plan confirmation. Many of these matters have been in, or in the context of, a chapter 11 case but resulted in amicable resolution of the claims or the matter generally. Such matters include:

- Sudbury, Inc. (subordinated debt holders)
- Allegheny International (subordinated debt holder)
- Early & Daniel, Inc. (railcar lessors)
- The Carlson Group, Inc. (debtor)
- Apex Oil, Inc. (single creditor)
- Frontier Airlines (aircraft lessor)

I worked on such matters either as lead partner or, in the larger matters, alternating with another partner on the case.

In all of the above instances, my representation involved analysis of the client's legal position and its relationship to the positions of others, identification of issues which enhanced or detracted from each position, plotting a course -- whether litigation or negotiation or a combination of both -- to accomplish the client's goals, and pursuing that course, while making any necessary adjustments based on changing circumstances. My approach has been active rather than reactive. The major "activity" outside of litigation has been effectively communicating -- usually orally -- to clients and adversaries the relative positions of the parties, negotiating

to achieve goals, and documenting the result, whether a loan restructure, a stipulation, an agreement or a consensual plan.

From 1973 to 1978 I served on the board of the Young Lawyers' Section of the Philadelphia Bar Association. For about two years prior to my assuming the bench, I was an active member of the board of the Philadelphia Bar Foundation (the charitable arm of the Philadelphia Bar Association which funds several programs providing legal aid to the indigent). In addition, I served as a Mediator for the U.S. District Court for the Eastern District of Pennsylvania, and was a member of the Bar Alternative Dispute Resolution Committee developing a mediation process for the U.S. Bankruptcy Court for the Eastern District of Pennsylvania.

As a district court judge I have served on our court's Bankruptcy Committee and Arbitration Committee, and have been active in the Federal Judges Association Congressional Liaison Committee, serving as coordinator for our Circuit.

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 interests.

None. When I left my former firm to assume the bench, all pension funds were rolled over; I have no assets in the firm's plans or funds. I have ongoing interests in IRAs and pension funds reflected as part of assets listed on the attached Net Worth Statement.

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 continue to recuse myself from any cases involving: Duane, Morris & Heckscher (my former law firm); Meridian Bancorp, Inc. (former client); First Fidelity Bank (former client); the Visiting Nurse Association of Greater Philadelphia (I am a former board member); University of Pennsylvania (I am an alumna and board member); City of Philadelphia (my spouse's employer); and any entity in which I have a "financial interest" pursuant to 28 U.S.C. § 455. I have adopted a

Standing Order and waiver of disqualification procedure regarding parties and counsel who contributed to the 1994 mayoral campaign in which my husband was the successful candidate. I will follow the dictates of 28 U.S.C. § 455 as to disqualification due to a conflict regarding any other matters or 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 (Exhibit C).

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

See attached Exhibit D.

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.

Prior to my nomination in November of 1993 for my current judgeship on the U.S. District Court for the Eastern District of Pennsylvania, I made public appearances with or for my husband during various campaigns in which he was a candidate for public office: for Philadelphia District Attorney in 1977 and 1981; a primary campaign for Governor of Pennsylvania in 1986; a primary campaign for Mayor of Philadelphia; and a primary and general election for Mayor in 1991. I had no title or responsibility. Since my nomination and induction, I have scrupulously avoided all political activities.

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 on behalf of the disadvantaged have been through my service to several charitable organizations, on whose boards I served until my judgeship appointment was confirmed. My primary efforts on behalf of the disadvantaged were through the Visiting Nurse Association of Greater Philadelphia; I served on its board and headed many of its committees for approximately 15 years. The VNA is the only non-profit home care entity which provides services to the indigent in the Philadelphia area, and in working with VNA, I was personally involved in fundraising and other efforts for the poor and indigent of Philadelphia. I dedicated an average of 10-15 hours per month to VNA-related activities. For two years prior to assuming the bench I was also an active member of the board of the Philadelphia Bar Foundation, the charitable arm of the Philadelphia Bar Association. I also dedicated considerable time, generally an additional 15 hours per month, to active service on the boards of civic and cultural organizations such as the Market Street East Improvement Association, and Avenue of the Arts, Inc., and the University of Pennsylvania.

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).

Not applicable; there is no such commission for Court of Appeals positions. I did, however, have several discussions with representatives of the White House Counsel's office, the Department of Justice, the ABA, and the FBI.

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.

I believe that the role of the judiciary is to be the interpreter and enforcer of existing law. In the process of such interpretation and enforcement, the judiciary should call upon judicial precedent, as well as examine the intention of those drafting relevant legislation, in determining the scope and bounds of its decision-making authority. While it is tempting for the judiciary to read expansions into the law, rather than await action of the legislative branch to do so, this temptation should be resisted by the judiciary in fulfilling its proper role.

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

With respect to the "characteristics" noted, I would comment:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

A judge should resolve the matter before him or her, addressing only issues at hand. While it may be the case that the resolution of the issue at hand does, and will, have broader implications for society at large, the judge should not attempt to solve problems or seek solutions broader than necessary to resolve the instant matter.

- 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.

Again, a judge should provide only the relief necessary to address the claims of litigants before him or her. The judiciary should not seek out controversies, nor address controversies not immediately presented.

- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

In certain limited instances, whether pursuant to mandamus or injunctive powers, the judiciary is called upon to impose affirmative duties upon governments and society where the wrong specifically to be remedied (that is, the issue before the court) requires it. However, such power should be exercised with great caution, and the imposition of duties in such instances should be narrowly drawn to address the issue at hand, leaving the actual application and implementation to other branches, to the extent possible. Also, in order to resolve conflicts in such situations, orders entered imposing such duties must be clearly and narrowly stated so as to avoid further litigation with respect to the nature and extent of the power of the judiciary.

- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

Jurisdictional requirements have been set by law and interpreted by courts. To the extent that case precedent adjusts jurisdictional standards and is controlling, it must be adhered to. As a district court judge, I have no authority or ability to loosen such requirements, and I believe that the appellate courts' actions in doing so must be based strictly upon legislation and its intent, informed by the requirements of the Constitution.

- 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 the judiciary is limited in its role as indicated above. The judiciary is not a panacea, an interpreter of society, or an overseer in any sense of the word. I believe it is inappropriate for the judiciary to conduct continuing oversight except in those limited circumstances where such relief is both required to

address the harm suffered and permitted by existing precedent.

INDEX OF EXHIBITS

- Exhibit A - Ten Most Significant Opinions
- Exhibit B - Ten Most Significant Litigated Matters
- Exhibit C - 1995 Financial Disclosure Report
- Exhibit D - Financial Net Worth Statement

updated 12/18/96

EXHIBIT ATEN MOST SIGNIFICANT OPINIONS

<u>Date</u>	<u>U.S.D.C. Case No.</u>	<u>Case</u>
09/15/94	92-CV-3310	Resolution Trust Corp. v. Farmer <u>Cite:</u> 865 F. Supp. 1143 (E.D. Pa. 1994)
11/08/94	93-CV-4547	Britamco Underwriters, Inc. v. George Giouzelis, Inc. <u>Cite:</u> 1994 WL 622109 (E.D. Pa., Nov. 8, 1994), <u>aff'd</u> , 65 F.3d 161 (3d Cir. 1995)
12/29/94	93-CV-7027	Mallenbaum v. Adelphia Comm. Corp. <u>Cite:</u> 1994 WL 724981 (E.D. Pa., Dec. 29, 1994), <u>aff'd</u> , 74 F.3d 465 (3d Cir. 1996)
08/16/95	93-CV-6729	LeJeune v. Bliss-Salem, Inc. <u>Cite:</u> 1995 WL 491253 (E.D. Pa., Aug. 16, 1995), <u>aff'd</u> , 85 F.3d 1069 (3d Cir. 1996)
08/18/95	94-CV-1422	Surace v. Caterpillar, Inc. <u>Cite:</u> 1995 WL 495123 (E.D. Pa., Aug. 18, 1995)
10/05/95	93-CV-3701	Taylor v. Sterling Winthrop <u>Cite:</u> 1995 WL 590160 (E.D. Pa., Oct. 5, 1995)
12/22/95	94-CR-0353	United States v. Tidwell <u>Cite:</u> 1995 WL 764077 (E.D. Pa., Dec. 22, 1995)
3/22/96	94-CV-6906	Simmerman v. Hardee's Food Systems, Inc. <u>Cite:</u> 1996 WL 131948 (E.D. Pa., Mar. 22, 1996)

<u>Date</u>	<u>U.S.D.C. Case No.</u>	<u>Case</u>
4/1/96	94-CV-1818	Stecyk, et al. v. Bell Helicopter Textron, Inc., et al. <u>Cite:</u> 1996 WL 153555 (E.D. Pa., Apr. 1, 1996)
9/9/96	94-CV-3991	Doby, et al. v. Decrescenzo, et al. <u>Cite:</u> 1996 WL 510095 (E.D. Pa., Sept. 9, 1996)

* * * * *

In September 1995, I sat by designation on an appellate panel of the United States Court of Appeals for the Third Circuit. The members of the panel were Chief Judge Dolores K. Sloviter, Circuit Judge Samuel A. Alito, Jr., and District Judge Marjorie O. Rendell (sitting by designation). I authored the Third Circuit opinion in United States v. Brannan, 74 F.3d 448 (3d Cir. 1996).

Index to Exhibit B

TEN MOST SIGNIFICANT LITIGATED MATTERS

1. Bartholomew, et al. v. Northampton National Bank
2. In re Winslow Center Associates
3. In re Reading Tube Corporation
4. In re Dominica V. Civitella
5. In re Ram Manufacturing
6. In re Center for the Blind
7. In re Philadelphia Athletic Club
8. In re Bates Energy Corp.
9. In re Marta Group
10. Schweibert v. Schweibert

EXHIBIT BSIGNIFICANT LITIGATED MATTERS

My trial experience was gained primarily, though not exclusively, in the bankruptcy court system, in which the "case" is a reorganization proceeding, and adversary matters, sometimes involving actual trials, are heard by the court. I litigated matters in the bankruptcy courts locally and throughout the country in at least 35 cases. The following are examples from ten cases in which matters raised by the motion or complaint were litigated by me, as sole trial counsel, except as noted, several of which resulted in reported decisions.

1. Bartholomew, et al. v. Northampton National Bank, et al.
Court and docket: U.S.D.C., E.D. Pa., No. 74-2948
Cite: 584 F.2d 1288 (3d Cir. 1978)

Summary

Suit by purchaser of a vacation lot against banks who financed purchase on basis of Truth-in-Lending, Interstate Land Sales Full Disclosure Act, and usury law violations.

Client

One of the defendants, American Bank and Trust Co. of Pa. (now Meridian Bank).

Issues Litigated

Whether: (i) financing of the purchase of a vacation lot was the loan or use of money for purposes of usury law violations; (ii) banks that finance a purchase of a lot are liable for violations of the Interstate Land Sales Full Disclosure Act; and (iii) Truth in Lending Act violations could be asserted after one year from the date of the land sale contract. I, together with counsel for Merchants National Bank, directed the litigation and strategy on behalf of the banks and was responsible for the pleadings and briefs in the matter, especially on appeal to the Third Circuit.

(continued)

Significance of Issues

The court decided against the plaintiff and in favor of the banks. Issues involved the interpretation of two relatively new statutes and were of great significance to banks and other entities that financed lot sales in vacation home developments.

Judge

Hon. John P. Fullam, Judge, United States District Court for the Eastern District of Pennsylvania. (1975)

Hon. James Hunter, III, Judge, United States Court of Appeals for the Third Circuit. (1978)

Other Counsel

Counsel for plaintiffs:

Edward C. Toole, Jr., Esquire

(215) 241-18184

Michael J. Glasheen, Esquire

(215) 241-1821

Clark, Ladner, Fortenbaugh & Young

2005 Market Street, 21st Floor

Philadelphia, PA 19103

Counsel for defendant Merchants Bank and Trust Co. of Pa.:

John E. Flaherty, Jr., Esquire

Dechert, Price & Rhoads

4000 Bell Atlantic Tower

1717 Arch Street

Philadelphia, PA 19103-2793

(215) 994-2128

Counsel for Northampton National Bank of Easton:

Bernard S. Bergman, Esquire

(current address unknown)

Counsel for William E. Brock, III:

E. Parry Warner, Esquire

Obermayer, Rebmann, Maxwell & Hippel

Packard Building, 14th Floor

15th and Chestnut Streets

Philadelphia, PA 19102-2188

(215) 665-3226

2. In re Winslow Center Associates

Court and Docket: U.S.B.C., E.D. Pa., No. 82-00020G
 Cite: 32 B.R. 685 (Bankr. E.D. Pa. 1983)
 50 B.R. 679 (Bankr. E.D. Pa. 1985)
 57 B.R. 317 (Bankr. E.D. Pa. 1986)

Summary

Chapter 11 proceeding of New Jersey partnership which owned a shopping center.

Client

Provident Mutual Life Insurance Company, the mortgagee.

Issues Litigated

(1) Relief from stay requested based upon erosion of secured creditor's equity cushion. 32 B.R. 685 (Bankr. E.D. Pa. 1983); relief granted.

(2) Rights of secured creditor to post-petition rentals recognized under title theory. 50 B.R. 679 (Bankr. E.D. Pa. 1985).

(3) Objected to debtor's request to pay attorneys' fees from cash collateral assets subject to mortgagee's lien. 57 B.R. 317 (Bankr. E.D. Pa. 1986); payment of fees denied.

Significance of Issues

This case, relating to the extent of the interest of the mortgagee in post-petition rents as cash collateral, resulted in one of the first decisions on this issue. This issue thereafter became the subject of much litigation in our district and elsewhere, commencing with the case of In re T.M. Carlton House Partners, Ltd., 91 B.R. 349 (Bankr. E.D. Pa. 1988), and subsequently addressed by U.S. District Court Judge Bartle in In re SeSide Co., Ltd., 152 B.R. 878 (E.D. Pa. 1993). Also, the decision has often been cited for its holding that debtors may only charge attorneys' fees against a secured creditor's collateral if the fees benefitted the secured creditor.

Judge

Hon. Emil F. Goldhaber, Chief Judge, United States Bankruptcy Court for the Eastern District of Pennsylvania.

(continued)

Other Counsel

Counsel for Committee of Equity Holders:

Leonard Goldberger, Esquire
Wolf, Block, Schorr & Solis-Cohen
Packard Building, 12th Floor
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Philadelphia, PA 19102-2678
(215) 977-2578

Debtor's Counsel:

David Fishbone, Esquire
Formerly with
Ciardi, Fishbone & DiDonato, PC (current address unknown)
1900 Spruce Street
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(215) 546-4370

Counsel for Trustee:

Robert H. Levin, Esquire
Adelman Lavine Gold & Levin, PC
1900 Two Penn Center Plaza
Philadelphia, PA 19102-1799
(215) 568-7515

3. In re Reading Tube Corporation
 Court and Docket: U.S.B.C., E.D. Pa., Nos. 87-0429T, 87-0430T
 Cite: 72 B.R. 329 (Bankr. E.D. Pa. 1987)
 73 B.R. 99 (Bankr. E.D. Pa. 1987)

Summary

Chapter 11 proceeding of copper tube manufacturer.

Client

Meridian Bank, primary secured creditor, as well as the government agencies participating in its loan.

Issues Litigated

(1) Challenged propriety of debtor-in-possession financing where debtor failed to prove that it had searched for available financing elsewhere; financing denied. 72 B.R. 329 (Bankr. E.D. Pa. 1987).

(2) Initiated and litigated Motion for Appointment of a Trustee based upon allegations of fraud, mismanagement and self-dealing of company's shareholders. Discovery ruling reported at 73 B.R. 99 (Bankr. E.D. Pa. 1987).

Significance of Issues

The Motion for Appointment of a Trustee became a trial of issues of alleged fraud and mismanagement conducted on an expedited basis, with discovery encompassing 20 to 25 days over 3 months and the trial itself lasting for several days during a 3-week period in May 1987. Extensive expert testimony as to financial dealings was presented. The matter was settled before conclusion of the trial, paving the way for the plan of reorganization with favorable treatment of our client's claims and release of all claims against our client, including alleged lender liability.

Judge

Hon. Thomas M. Twardowski, Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of Pennsylvania.

Other Counsel

Debtor's Litigation Counsel:
 Louis Lustenberger, Esquire
 Donovan & Leisure
 30 Rockefeller Plaza
 New York, NY 10112
 (212) 632-3290

(continued)

Debtor's Bankruptcy Counsel:

Bruce Frankel, Esquire
Angel & Frankel
460 Park Avenue, 8th Floor
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(212) 752-8000

Counsel for Creditors Committee:

Charles Phillips, Esquire
Baskin Leisawitz Heller Abramowitch, P.C.
2201 Ridgewood Road, Suite 400
Wyomissing, PA 19610
(215) 372-8427

4. In re Dominica V. Civitella
 Court and Docket: U.S.B.C., E.D. Pa., No. 80-01083K
 Cite: 14 B.R. 151 (Bankr. E.D. Pa. 1981)
 15 B.R. 206 (Bankr. E.D. Pa. 1981)

Summary

Chapter 11 proceeding of apartment complex.

Client

The debtor.

Issues Litigated

Rebuffed constant attempts of three secured creditors to cause case to be dismissed, converted, or to file their own plan of reorganization.

Successfully reorganized debtor and distributed one hundred cents on the dollar to unsecured creditors in Plan of Reorganization.

Resulted in frequently-cited reported decision holding that Disclosure Statement must be based on statements of fact, not opinion. 14 B.R. 151 (Bankr. E.D. Pa. 1981); reconsideration denied, 15 B.R. 206 (Bankr. E.D. Pa. 1981).

Significance of Issues

The client was a widow whose son was managing the complex. The personal, business, legal and strategic aspects were very challenging. The secured creditors were extremely aggressive and constantly commencing litigation to try to take over the property. We were able to prevail over them and confirm a 100% plan -- a rare result in a bankruptcy case. I handled all of the litigation and negotiations in order to achieve this result.

Judge

Hon. William King, Judge, United States Bankruptcy Court for the Eastern District of Pennsylvania.

Other Counsel

(Each of the following represented a secured creditor)

Rush T. Haines, Esquire
 Drinker, Biddle & Reath
 1100 PNB Building
 Broad and Chestnut Streets
 Philadelphia, PA 19107
 (215) 988-2944

(continued)

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Dechert, Price & Rhoads
4000 Bell Atlantic Tower
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Matthew Siembieda, Esquire
(215) 569-5609
Samuel Becker, Esquire
(215) 569-5527
Blank, Rome, Comisky & McCauley
Four Penn Center Plaza
Philadelphia, PA 19103

5. In re Ram Manufacturing
 Court and Docket: U.S.B.C., E.D. Pa., No. 83-0101G, 83-0102G
 Cite: 32 B.R. 969 (Bankr. E.D. Pa. 1983)
 36 B.R. 822 (Bankr. E.D. Pa. 1984)

Summary

Chapter 11 proceeding of electronics manufacturer.

Client

Meridian Bank, secured creditor.

Issues Litigated

Whether Meridian was entitled to relief from the automatic stay due to lack of adequate protection. Relief from stay granted at 32 B.R. 969 (Bankr. E.D. Pa. 1983); reconsideration denied 36 B.R. 822 (Bankr. E.D. Pa. 1984).

Significance of Issues

The bankruptcy court found that accounts receivable arising from pending lawsuits were too uncertain to be considered for purposes of adequate protection, and proper valuation standard for company which had ceased operations was distress value.

Judge

Hon. Emil F. Goldhaber, Chief Judge, United States Bankruptcy Court for the Eastern District of Pennsylvania.

Other Counsel

Counsel for Debtor:
 Thomas B. Rutter, Esquire
 Rutter, Solomon & DiPiero
 The Curtis Center, Suite 750
 Philadelphia, PA 19106
 (215) 925-9200

Counsel for Trustee:
 Donald M. Collins, Esquire (retired)
 Formerly with
 Stradley, Ronon, Stevens & Young
 2600 One Commerce Square
 Philadelphia, PA 19103-7098
 (215) 564-8080

6. In re Center for the Blind
 Court and Docket: U.S.B.C., E.D. Pa., No. 79-818-EG
 Cite: (none)

Summary

Chapter 11 proceeding of non-profit corporation serving the blind.

Client

The debtor.

Issues Litigated/Significance of Issues

This case was not adversarial, but it was unique in that the debtor confirmed a plan providing for the transfer and continuation of the Center's endowment intact for the benefit of the intended beneficiaries, i.e., the blind, and payment to unsecured creditors of approximately fifteen cents on the dollar. Given the competing interests of creditors versus the blind community, this case required social and political skills as well as the negotiation and litigation skills normally required in a standard Chapter 11 case. [Chapter 11 was commenced in 1979 and concluded in 1983.]

Judge

Hon. Emil F. Goldhaber, Chief Judge, United States Bankruptcy Court for the Eastern District of Pennsylvania.

Other Counsel

Counsel for Rudolph Residence:
 Christopher H. Gadsden, Esquire
 Drinker, Biddle & Reath
 1100 PNB Building
 Broad and Chestnut Streets
 Philadelphia, PA 19107
 (215) 988-2780

For Attorney General, Commonwealth of Pennsylvania:
 James Sutton, Esquire
 (Current address unknown)

Counsel for Unsecured Creditors:
 Lawrence Lichtenstein, Esquire
 Buchanan Ingersoll
 Professional Corporation
 1200 Two Logan Square
 18th & Arch Streets
 Philadelphia, PA 19103-6933
 (215) 665-3923

7. In re Philadelphia Athletic Club
 Court and docket: U.S.B.C., E.D. Pa., No. 80-02028G
 Cite: 17 B.R. 345 (Bankr. E.D. Pa. 1982)
 20 B.R. 325 (Bankr. E.D. Pa. 1982)

Summary

Chapter 11 proceeding of athletic club facility in Center City Philadelphia.

Client

Trustees of Central States, Southeast and Southwest Areas Pension Funds, Victor Palmieri & Co. as Investment Manager, primary secured creditor.

Issues Litigated

Initiated a motion for relief from the stay and entered into a stipulation providing for automatic relief from stay upon the happening of certain events. Upon defaults by the debtor, relief from stay was to be automatically enforceable. Debtor defaulted, then contested such automatic relief in an injunction proceeding. The bankruptcy court upheld the stipulation providing that relief from the stay was automatically enforceable. 17 B.R. 345 (Bankr. E.D. Pa. 1982). Subsequent stipulation approved at 20 B.R. 325 (Bankr. E.D. Pa. 1982).

Significance of Issues

The court's opinion is often cited as authority for enforcement of court-approved stipulations, especially relating to relief from stay for secured creditors who are otherwise forestalled from executing on property which constitutes their collateral.

Judge

Hon. Emil F. Goldhaber, Chief Judge, United States Bankruptcy Court for the Eastern District of Pennsylvania.

Other Counsel

Debtor's Counsel:
 Pace Reich, Esquire
 Clark, Ladner, Fortenbaugh & Young
 2005 Market Street, 21st Floor
 Philadelphia, PA 19103
 (215) 241-1330

(continued)

Counsel for Partners of Owner of Debtor:

Stuart H. Savett, Esquire
Savett, Frutkin, Pidell & Ryan, PC
320 Walnut Street, Suite 508
Philadelphia, PA 19106
(215) 923-5400

Counsel for Trustee:

Melvin Lashner & Lashner
1604 Locust Street,
Second floor
Philadelphia, PA 19103
(215) 732-9229

8. In re Bates Energy Corp.

Court and Docket: U.S.B.C., N.D. Ohio, No. B-86-476-Y
Cite: (none)

Summary

Objection of creditor, the Bethlehem Corporation, to the proposed sale of assets of Bates Energy Corp. in Chapter 11 proceedings.

Client

Bethlehem Corporation, a major unsecured creditor.

Issues Litigated

Client believed that the proposed sale of assets was for the benefit of insiders of the company. I traveled to Youngstown, Ohio, in June of 1986 on a few days' notice and put on evidence during four days of hearings to demonstrate insider dealings and preferences, sham transactions, undercapitalization, and detriment to creditors. The court approved the sale over objection.

Significance of Issues

Bankruptcy courts are to scrutinize transactions involving insiders. Court approval of a sale of assets of a debtor company presents a difficult predicament for a bankruptcy judge where the company has little prospect for reorganization without such a sale. While the case itself may not appear to be significant, what was significant at the time, and since that time, was the fact that I put on a substantial case of insider dealing on a few days' notice, without the opportunity for any discovery. Notwithstanding the fact that I was not successful, I believe I raised serious doubts about the sale that should have been sufficient to warrant its not being approved.

Judge

Hon. William T. Bodoh, United States Bankruptcy Court for the Northern District of Ohio; Case No. B-86-476-Y. (Court's opinion not reported.)

Other Counsel

Our local counsel:
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Formerly with
Squire, Sanders & Dempsey
4900 Society Center
127 Public Square
Cleveland, OH 44114-1304
(216) 479-8500

(continued)

Debtor's Counsel:
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Thompson, Hine & Flory
3900 Society Center
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Counsel for Mellon Bank (secured creditor):
Eric A. Schaffer, Esquire
Reed, Smith, Shaw & McClay
James H. Reed Building
435 Sixth Avenue
Pittsburgh, PA 15219-1886
(412) 288-3131

9. In re Marta Group
 Court and Docket: U.S.B.C., E.D. Pa., No. 83-01276G
 33 B.R. 634 (Bankr. E.D. Pa. 1983)

Summary

Chapter 11 debtor of appliance wholesale cooperative.

Client

Emerson Quiet Kool Corporation, secured creditor,
 seller/ consignor of appliances to the debtor.

Issues Litigated

The validity of consignment and/or secured creditor
 relationship as between Emerson Quiet Kool and the debtor.

Significance of Issues

The court was called on to determine who should suffer the
 consequences of an improperly filed financing statement: the
 debtor, who contributed to the improper filing by dealing with
 Emerson under a prior name, or Emerson, who should have made
 certain that its interest could be determined from a search of
 relevant records. The court determined that the onus should be
 imposed on the secured creditor, who had the burden of showing that
 the discrepancy in debtor's name was not "seriously misleading."
 Also, the court concluded that consigned goods delivered after
 notice of filed financing statements are not property of the
 estate. 33 B.R. 634 (Bankr. E.D. Pa. 1983).

Judge

Hon. Emil F. Goldhaber, Chief Judge, United States Bankruptcy
 Court for the Eastern District of Pennsylvania.

Other Counsel

Counsel for Debtor:
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 2005 Market Street, 21st Floor
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(continued)

Counsel for Creditors Committee:
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2600 One Commerce Square
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(215) 564-8168

Counsel for other secured creditor:
Howard T. Glassman, Esquire
Blank, Rome, Comisky & McCauley
Four Penn Center Plaza
Philadelphia, PA 19103
(215) 569-5568

10. Schweibert v. Schweibert
Court and Docket: Phila. C.C.P., Sept. Term 1975, No. 4769
Cite: (none)

Summary

Suit in the Court of Common Pleas of Philadelphia County by a wife against her psychiatrist husband for enforcement of the terms of a separation agreement.

Client

Husband.

Issues Litigated

The matter was ultimately settled, but not without substantial discovery and negotiation involving the interplay of equity, domestic relations, and the meaning of legal terms and conditions in accordance with their intent.

Significance of Issues

The legal issues were less significant than the learning experience for me, personally, to be dealing with a dispute of this nature in a commercial context. The matter was ultimately satisfactorily resolved by negotiation of a definitive agreement that had the clarity lacking in the originally negotiated separation agreement. The significance to the client was probably much greater than the significance to the client of any other matter I have worked on.

Judge

Hon. Calvin Wilson, Judge of the Court of Common Pleas for the County of Philadelphia.

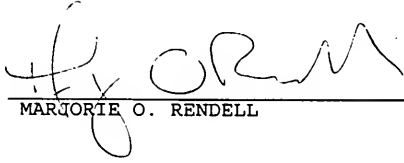
Docket number not obtainable.

Other Counsel

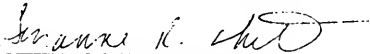
Jerome Charen, Esquire
(current address unknown)

AFFIDAVIT

I, MARJORIE O. RENDELL, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.


MARJORIE O. RENDELL

Sworn to and subscribed
this 7th day of January, 1997


NOTARY PUBLIC

NOTARIAL SEAL
SUZANNE R. WHITE, Notary Public
City of Philadelphia, Phila. County
My Commission Expires Dec. 11, 1998

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics
Reform Act of 1989, Pub. L.
101-194, November 30, 1989
(5 U.S.C. App. 6, 101-112)

FOR CALENDAR YEAR 1995

AO-10
REV. 1/96

1. Person Reporting (Last name, first, middle initial) RENDELL, MARJORIE O.	2. Court or Organization U.S.D.C. (E.D. Pa.)	3. Date of Report 05/13/96 (rev. 8/14/96)
4. Title (Article III Judges indicate active or senior status. Magistrate Judges indicate full- or part-time) DISTRICT COURT JUDGE (ACTIVE)	5. Report Type (check appropriate type) ____ Nomination, Date ____ ____ Initial <input checked="" type="checkbox"/> Annual ____ Final	6. Reporting Period 01/01/95 - 12/31/95
7. Chambers or Office Address UNITED STATES DISTRICT COURT 601 MARKET STREET, ROOM 3114 PHILADELPHIA, PA 19106	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
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. 9-13 of Instructions.)

<input type="checkbox"/> POSITION	<u>NAME OF ORGANIZATION/ENTITY</u>
<input type="checkbox"/> NONE (No reportable positions)	

Director and Vice-Chair Avenue of the Arts, Inc.

Co-Trustee T/U/W of Mary B. Osterlund (Mother)

Continued after Section VIII

II. AGREEMENTS. (Reporting individual only; see pp. 14-17 of Instructions.)

<input type="checkbox"/> DATE	<u>PARTIES AND TERMS</u>
<input type="checkbox"/> NONE (No reportable agreements)	

none

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

<input type="checkbox"/> DATE	<u>SOURCE AND TYPE</u>	<u>GROSS INCOM:</u> (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		

1995 City of Philadelphia (spouse salary - amount n/a) \$ 0.00

\$ _____

\$ _____

\$ _____

\$ _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting RENDELL, MARJORIE O.	Date of Report 05/13/96 <small>(rev. 8/14/96)</small>
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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. 24-29 of Instructions.)

SOURCE DESCRIPTION

<input type="checkbox"/>	NONE (No such reportable reimbursements or gifts)	
1	<u>Philadelphia Orchestra</u>	<u>Academy Ball - Dinner & Concert 1/28/95</u>
2	<u>PNC Bank</u>	<u>Penna.Society reception&dinner 12/8/95</u>
3	<u>Philadelphia Phillies</u>	<u>Trip to All Star Game 7/9-11/95 (Dallas)</u>
4	<u>Philadelphia Phillies</u>	<u>Cooperstown Baseball Hall of Fame 7/29-30/95</u>
5	<u>Penn Club Florida Gold Coast</u>	<u>\$282 toward air fare (spouse speaking tour)</u>
6	<u>Phila. Club of Palm Beach</u>	<u>\$500 toward lodging(spouse speaking tour)</u>
7	<u>See Section VIII</u>	

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. 30-33 of Instructions.)

SOURCE DESCRIPTION VALUE

<input type="checkbox"/>	NONE (No such reportable gifts)		
1	<u>Chelsea House Publishers</u>	<u>Justices of the Supreme Court</u>	<u>\$ 150.0</u>
2	<u>Please see Section VIII</u>		<u>\$ 0.0</u>
3			<u>\$</u>
4			<u>\$</u>

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. 34-36 of Instructions.)

CREDITOR DESCRIPTION VALUE CODE

<input type="checkbox"/>	NONE (No reportable liabilities)		
1	<u>United Savings Bank</u>	<u>1/2 mortgage on vacation duplex</u>	<u>L</u>
2		<u>(one rental prop.; one personal use</u>	
3			
4			
5			
6			

* VALUE CODES: J = 215,000 or less K = 215,001 - 250,000 L = 250,001 - 300,000 M = 300,001 to 250,000
 H = 250,001 - 2000,000 N = 2000,001 - 21,000,000 P = More than 21,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting RENDELL, MARJORIE O.	Date of Report 05/13/96 <small>(Rev. 0/14/96)</small>
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VII. Page 1 INVESTMENTS and TRUSTS -- Income, value, transactions (Includes those of spouses and dependent children See pp 37-54 of instructions)

A Description of Assets (including trust assets) 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. Place "(X)" after each asset exempt from prior disclosure.	B Income during reporting period		C. Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amt. Code (A-M)	(2) Type (e.g., div, int, etc.)	(1) Value Code (J-P)	(2) Value Method Code (J-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
					(2) Date: Month/Day	(3) Value Code (J-P)	(4) Gain/Loss Code (A-N)	(5) Identity of Buyer/Seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 Schwab Money Market Fund (IRA rollover) (includes #12 FDR95)	B	Dividend	K	T					
2 Vanguard Intermediate Treasury (IRA rollover)	D	Dividend			sale	11/06	L	O	
3 Vanguard F/I Short Term Corp. (IRA rollover)	D	Dividend	L	T					
4 Berger 101 (IRA rollover)	A	Dividend			sale	07/10	K	B	
5 Fidelity Balanced Fund (IRA rollover)	B	Dividend			sale	09/26	K	A	
6 Berger 100 (IRA rollover)	A	Dividend			sale	07/10	L	O	
7 Brandywine Fund (IRA rollover)	D	Dividend	L	T					
8 Oakmark Fund (IRA rollover)	B	Dividend	K	T					
9 Kaufman Fund (IRA rollover)	A	Dividend	K	T	sale/pt	07/10	J	C	
10 20th Cent. Ultra Investors (IRA rollover)	A	Dividend			sale	07/10	K	D	
11 Scudder Global Fund (IRA rollover)	A	Dividend	K	T					
12 Scudder Global Small Co (IRA rollover)	A	Dividend			sale	09/26	J	B	
13 20th Century Int'l (IRA Rollover)	A	Dividend	K	T					
14 Schwab Money Market (IRA contrib)	A	Dividend	J	T					
15 Fidelity Balanced Fund (IRA Contrib)	A	Dividend			sale	09/26	J	A	
16 Kaufman Fund (IRA Contrib)	A	None	J	T					
17 Schwab Money Market (IRA rollover) (S)	A	Dividend	J	T					
18 Fidelity Balanced Fund (IRA Rollover) (S)	A	Dividend			sale	09/26	J	A	
1 Income/Gain Codes (See Col. B1 & D1)	A=21,000 or less E=215,001 to 250,000		D=21,001 to 22,500 F=250,001 to 260,000		C=21,501 to 25,000 G=260,001 to 265,000				
2 Value Codes (See Col. C1 & D1)	J=715,000 or less M=2250,001 to 2500,000		K=215,001 to 250,000 Q=2500,001 to 2600,000		L=250,001 to 260,000 R=More than 2600,000				
3 Value Method Codes (See Col. C2)	Q=Appraised U=Other Value		R=Net (real estate only) V=Other		S=Assessment W=Estimated				T=Cost/Market

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting RENDELL, MARJORIE O.	Date of Report 05/13/96 (rev. 8/14/96)
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VII. Page 2 INVESTMENTS and TRUSTS -- (Income, value, transactions (Includes those of spouse and dependent children. See pp 37-54 of Instructions))

A. Description of Assets (including Trust Assets) <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. Place "(X)" after each asset exempt from prior disclosure.</small>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. 1 Code (A-N)	(2) Type (e.g., div., rent or int.)	(1) Value 2 Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value 2 Code (J-P)	(4) Gain/Loss Code (A-R)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
19 Schwab Money Market (IRA Contrib) (S)	A	Dividend	J	T					
20 Berger 100 (IRA Contrib) (S)	A	None			sale	07/10	K	C	
21 Vacation duplex 1 1/2 ac rental property Ocean City, NJ	D	Rent	M	W					
22 Metidian Bank account	A	None	J	T	w/d	5/15	J		
23 Public Service Enterprise Grp (J)	A	Dividend	J	T					
24 Muni Inv. Trust Series 14 (J) (1994 transaction)	A	Dividend	J	T	Pr. Ret.	09/15	J		
25 Muni Inv Trust Series 13 (J) (1994) (line 1 of 2)	A	Dividend	J	T	Pr. Ret.	08/15	J		
26 Muni Inv Trust Series 13 (J) (line 2 of 2)					Pr. Ret.	12/15	J		
27 Prince Geos Cty 04 12/17/97 (J)	A	Interest	J	T					
28 Dreyfus Short/Interm Tax Exempt Bond Fund (J) (line 1 of 3)	B	Dividend	L	T	buy	05/94	L		
29 Dreyfus Short/Interm Tax etc (J) (line 2 of 3)					sale	4/10	L		
30 Dreyfus Short/Interm etc. (J) (line 3 of 3)					buy	11/07	K		
31 Schwab Tax Exempt Money Market (J)	B	Dividend	J	T	buy	05/94	M		
32 Strong Short Term Muni Bond (J) (line 1 of 3)	B	Dividend	J	T	buy	05/94	L		
33 Strong Short Term etc. (line 2 of 3)					sell	4/10	K		
34 Strong Short Term etc. (line 3 of 3)					sell	11/06	K		
35 Vanguard Muni Short Term Bond Fund (J) (line 1 of 2)	C	Dividend	L	T	buy	5/94	M		
36 Vanguard Muni etc (line 2 of 2)					sell	4/10	L	A	

1 Income/Gain Codes: A=\$1,000 or less (line Col. D1 & D4) B=\$1,001 to 250,000 C=\$250,001 to 500,000 D=\$500,001 to 1,000,000 E=\$1,000,001 to 2,500,000 F=\$2,500,001 to 5,000,000 G=\$5,000,001 to 10,000,000 H=\$10,000,001 to 25,000,000 I=\$25,000,001 to 50,000,000 J=\$50,000,001 to 100,000,000 K=\$100,000,001 to 250,000,000 L=\$250,000,001 to 500,000,000 M=\$500,000,001 to 1,000,000,000 N=\$1,000,000,001 to 2,500,000,000 O=\$2,500,000,001 to 5,000,000,000 P=\$5,000,000,001 to 10,000,000,000 Q=\$10,000,000,001 to 25,000,000,000 R=\$25,000,000,001 to 50,000,000,000 S=\$50,000,000,001 to 100,000,000,000 T=\$100,000,000,001 to 250,000,000,000 U=\$250,000,000,001 to 500,000,000,000 V=\$500,000,000,001 to 1,000,000,000,000 W=\$1,000,000,000,001 to 2,500,000,000,000 X=\$2,500,000,000,001 to 5,000,000,000,000 Y=\$5,000,000,000,001 to 10,000,000,000,000 Z=\$10,000,000,000,001 to 25,000,000,000,000

2 Value Codes: J=\$15,000 or less (line Col. C1 & D3) 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 2,500,000 Q=\$2,500,001 to 5,000,000 R=\$5,000,001 to 10,000,000 S=\$10,000,001 to 25,000,000 T=\$25,000,001 to 50,000,000 U=\$50,000,001 to 100,000,000 V=\$100,000,001 to 250,000,000 W=\$250,000,001 to 500,000,000 X=\$500,000,001 to 1,000,000,000 Y=\$1,000,000,001 to 2,500,000,000 Z=\$2,500,000,001 to 5,000,000,000

3 Value Method Codes: 1=Cost Basis (line Col. C2) 2=Appraisal 3=Book Value 4=Other (real estate only) 5=Assessment 6=Estimated 7=Cash/Market

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
RENDELL, MARJORIE O.Date of Report
05/13/96

(rev. 8/14/96)

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children. See pp 37-54 of Instructions.)

A Description of Assets (including trust assets) Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(SI)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amt. Code (A-M)	(2) Type (e.g., div., rent or int.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month/Day	(3) Value Code (J-P)	(4) Gain Code (A-M)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
55 SoGen International (S) (IRA Contrib)	A	Dividend	J	T	buy	09/27	J		
56 SoGen International (S)	A	Dividend	J	T	buy	09/27	J		
57 William Blair Growth (S)	A	Dividend	K	T	buy	07/11	K		
58 AT&T (J)	A	Dividend	J	T	inherit	06/01	J		
59 Abbott Laboratories (J)	A	Dividend	J	T	inherit	06/01	J		
60 Coca Cola (J)	A	Dividend	J	T	inherit	06/01	K		
61 Diebold (J)	A	Dividend	J	T	inherit	06/01	J		
62 Walt Disney Co. (J)	A	Dividend	J	T	inherit	06/01	J		
63 Federal Nat'l Mortgage Assoc (J)	A	Dividend	J	T	inherit	06/01	K		
64 Gannett (J)	A	Dividend	J	T	inherit	06/01	J		
65 General Electric (J)	A	Dividend	J	T	inherit	06/01	K		
66 Gilette Co. (J)	A	Dividend	J	T	inherit	06/01	K		
67 Household International (J)	A	Dividend	J	T	inherit	06/01	J		
68 Loews International (J)	A	Dividend	J	T	inherit	06/01	K		
69 McDonalds Corp (J)	A	Dividend	J	T	inherit	06/01	K		
70 Motorola Inc. (J)	A	Dividend	J	T	inherit	06/01	J		
71 PepsiCo Inc. (J)	A	Dividend	J	T	inherit	06/01	J		
72 Wal-Mart Stores, Inc. (J)	A	Dividend	J	T	inherit	06/01	J		
1 Income/Gain Code (See Col. D1 & D4)	A=\$1,000 or less K=\$15,001 to \$50,000				C=\$2,501 to \$5,000 D=\$50,001 to \$100,000				
2 Value Code (See Col. C1 & C3)	J=\$15,001 or less N=\$250,001 to \$500,000				K=\$15,001 to \$50,000 O=\$50,001 to \$1,000,000				
3 Value Method Code (See Col. C2)	Q=Appraisal W=Book Value				R=Quotations (retail only) V=Other				
					S=Assessment W=Estimated				
					T=Wash/Market				

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
RENDELL, MARJORIE O.Date of Report
05/13/96
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VII. Page 5 INVESTMENTS AND TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A Description of Assets (Including trust assets) 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. Place "(I)" after each asset exempt from prior disclosure.	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (e.g., div., rent or int.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month/Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
73 Wells Fargo & Co. (J)	A	Dividend	J	T	Inherit	06/01	K		
74 Xerox Corp (J)	A	Dividend	J	T	Inherit	06/01	J		
75 Schwab US Treasury MonFct. (J)	A	Interest	J	T	buy	12/27	L		
76 US T-Note 5.825% 8/97 (J) (J)	A	Interest	J	T	buy	08/31	K		
77 US T-Note 4.825% 8/95 (J)	A	Interest	J	T	matured	08/15	J	A	
78 US T-Note 7.5% 12/96 (J)	A	Interest	J	T	buy	06/30	K		
79 SmithKline Beecham Corp.	D	Dividend	M	T	Trust				
80 Atlantic Energy	A	Dividend	J	T	Trust				
81 Dresser Industries	A	Dividend	J	T	Trust				
82 E.I. du Pont de Nemours	A	Dividend	K	T	Trust				
83 Allergan, Inc	A	Dividend	K	T	Trust				
84 Tremont Corp	A	Dividend	J	T	Trust				
85 Beckman Instruments	A	Dividend	J	T	Trust				
86 Mobil Corp.	A	Dividend	K	T	Trust				
87 Atlantic Richfield Co	C	Dividend	L	T	Trust				
88 NL Industries	A	Dividend	J	T	Trust				
89 General Motors	A	Dividend	J	T	Trust				
90									
1 Income/Gain Codes: (See Col. B1 & D4)	A=71,000 or less F=715,001 to 250,000		B=21,001 to 22,500 P=250,001 to 2100,000		C=22,501 to 55,000 G=2100,001 to 21,000,000		D=55,001 to 715,000 H=More than 21,000,000		
2 Value Codes: (See Col. C1 & D3)	J=715,000 or less N=2250,001 to 2500,000		K=715,001 to 250,000 O=250,001 to 21,000,000		L=250,001 to 2100,000 P=More than 21,000,000		M=2100,001 to 2250,000		
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value		R=Unrealized return only V=Other		S=Assessment W=Estimated		T=Cash/Market		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting RENDELL, MARJORIE O.
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Date of Report 05/13/96 (rev. 8/14/96)
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VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

I. All duties as Co-Executor of the Estate of Emma Rendell (my late mother-in-law) listed in the 1994 Report have been discharged. Due to the death of my father in January 1996, duties as Co-Trustee u/w of Mary B. Osterlund have been discharged as well.

IV. REIMBURSEMENTS AND GIFTS: All gifts received by virtue of husband's position as Mayor of the City of Philadelphia. The trip to Dallas (line 3) was due to Philadelphia's being site of 1996 All-Star Game. Hall of Fame (line 4) was due to two Philadelphia Phillies inductees. The trip in February 1995 (lines 5 & 6) was a three-day trip to Florida. As wife of the Mayor, I accompany my spouse to ceremonial and other gala events at which meals may be served and/or which include entertainment. The value of the dinners, event tickets, etc. attributable to my attendance at those events listed in Section IV hereof may exceed \$250. As to spouse, see attached page from his ethics report as Mayor (Exhibit A-2 to Statement of Financial Interest filed with The State Ethics Commission of the Commonwealth of Pennsylvania). I believe all gifts are exempt due to provisions of Regs. of Judicial Conference section 5(b), set forth at Appendix (iv).

1. OTHER GIFTS: (1) As wife of the Mayor, I had the use of tickets for seating in the Mayor's Box for sports events.
 2) It is my practice, and that of my spouse, not to accept honoraria for speaking or for performing wedding ceremonies.
 3) In attending or speaking at functions as wife of the Mayor, I have occasionally received token gifts, such as a plaque or vase; I believe that

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting RENDELL, MARJORIE O.	Date of Report 05/13/96 (rev. 8/14/96)
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VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

the value of any such gifts was well under \$100. As to spouse, see attached page from his ethics report as Mayor.

VII. INVESTMENTS AND TRUSTS: Please note that last year's report reflected entries for Schwab at lines Nos. 1 and 2; these were duplicate entries and are combined on this report as No. 1.

Item 9 reflects a partial sale, items 28-30 a partial return of principal.

Items Nos. 23, 24, 26, 27, 31, 32 and 34 reflect certain 1994 transactions which were inadvertently omitted from my 1994 report.

Items Nos. 85 through 95 are listed pursuant to the instruction on page 40 that if as Co-Trustee I had control over the disposition of the asset, it should be reported: I, together with my father, had such control over these assets that were in the T/U/W of my mother, Mary B. Osterlund.

I. POSITIONS (Cont'd.)

POSITION	NAME OF ORGANIZATION/ENTITY
<u>Co-Exec. (all duties discharged)</u>	<u>Est. of E. Rendell (mother-in-law) (since 3/15/95)</u>
<u>Member, Board of Overseers</u>	<u>Coll. of Arts & Sciences - Univ. Penn (since 4/27/95)</u>
<u>Trustee</u>	<u>Bd. of Trustees, Univ. of Pa. (since 1/1/95)</u>

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

RENDELL, MARJORIE O.

Date of Report

05/13/96

(rev. 8/14/96)

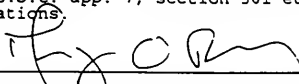
IX. CERTIFICATION.

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. app. 7, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date August 14, 1996

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. APP. 6, SECTION 104).

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

AO-10
Rev. 1/96

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics
Reform Act of 1989, Pub. L.
101-134, November 30, 1989
(5 U.S.C. App. 6, 101-112)

NOMINATION

1. Person Reporting (Last name, first, middle initial) RENDELL, MARJORIE O.	2. Court or Organization U.S.D.C. (E.D. Pa.)	3. Date of Report 01/07/97
4. Title (Article III Judges indicate active or senior status; Magistrate judges indicate full- or part-time) DISTRICT COURT JUDGE (ACTIVE)	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <u>01/07/97</u> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period 01/01/06 - 12/31/96
7. Chambers or Office Address UNITED STATES DISTRICT COURT 601 MARKET STREET, ROOM 3114 PHILADELPHIA, PA 19106	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
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. 9-13 of Instructions.)

<input type="checkbox"/> POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions)	
Director and Vice-Chair	Avenue of the Arts, Inc.
Member, Board of Overseers	College of Arts&Sciences-Univ. of Pennsylvania
Trustee	Board of Trustees, University of Pennsylvania

II. AGREEMENTS. (Reporting individual only; see pp. 14-17 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements)	
none	

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse)
<input type="checkbox"/> NONE (No reportable non-investment income)		
1 1996	City of Philadelphia (spouse salary - amount n/a)	\$ 0.
2		\$
3		\$
4		\$
5		\$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
RENDELL, MARJORIE O.Date of Report
01/07/97

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. 26-29 of Instruction

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. 30-33 of Instructions

SOURCE DESCRIPTION VAL NONE (No such reportable gifts)

1	EXEMPT		\$ 0
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. 34-36 of Instructions.)

CREDITOR DESCRIPTION VALUE CO NONE (No reportable liabilities)

1	United Savings Bank	1/2 mortgage on vacation duplex	L
2		(one rental prop.; one personal use	
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
 N = \$250,001 - \$500,000 O = \$500,001 - \$1,000,000 P = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
RENDELL, MARJORIE O.Date of Report
01/07/97

VII. Page 1 INVESTMENTS and TRUSTS -- Income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets (including trust assets) Indicate where applicable, owner of the asset by using the parenthetical "(A)" 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.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. 1 Code (A-H)	(2) Type (e.g., div., rent or int.)	(1) Value 2 Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merge, redemption)	If not exempt from disclosure			
					(2) Date: Month/Day	(3) Value 2 Code (J-P)	(4) Gain/Loss Code (A-H)	(5) Identity of Buyer/Seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 Schwab Money Market Fund (IRA rollover)	B	Dividend	K	T					
2 Vanguard F/I Short Term Corp. (IRA rollover)	C	Dividend	L	T					
3 Brandywine (IRA rollover)	C	Dividend	L	T					
4 Oakmark Fund (IRA rollover)	C	Dividend	K	T					
5 Kauffman Fund (IRA rollover)	A	Dividend	K	T					
6 Scudder Global Fund (IRA rollover)	A	Dividend	K	T					
7 20th Century Inc'l (IRA Rollover)	A	Dividend	K	T					
8 Federated 2-5 yr. Govt. (IRA R/O)	B	Dividend	K	T					
9 Cowen Opportunity (IRA R/O)	B	Dividend	K	T					
10 Dodge & Cox stock (IRA R/O)	A	Dividend	L	T					
11 Dreyfus S.I. Govt. (IRA R/O)	C	Dividend	L	T					
12 FAM Value (IRA R/O)	A	Dividend	K	T					
13 Janus Fund (IRA R/O)	A	Dividend	K	T					
14 PA. Mutual (IRA R/O)	C	Dividend	K	T					
15 HAS Equity (IRA R/O)	D	Dividend	K	T					
16 SoGen International (IRA R/O)	A	Dividend	K	T					
17 Schwab Money Mkt (IRA contrib)	A	Dividend	J	T					
18 Kaufmann (IRA contrib)	A	Dividend	J	T					
1 Income/Gain Codes: (See Col. B1 & D4)	A=\$1,000 or less 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: (See Col. C1 & D3)	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

Name of Person Reporting RENDELL, MARJORIE O.	Date of Report 01/07/97
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VII. Page 2 INVESTMENTS and TRUSTS -- Income, value, transactions (Includes those of spouse and dependent children. See pp 37-54 of Instructions.)

A. Description of Assets (including trust assets) <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. Place (X) after each asset exempt from prior disclosure.</small>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Amt.1 Code (A-H)	Type (e.g., div., rec. or int.)	Value2 Code (J-F)	Value Method3 Code (Q-W)	Type (e.g., buy., sell., merger, redemption)	(2) Date: Month Day	(3) Value2 Code (J-F)	(4) Gain/L Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
19 SoGen Int'l (IRA contrib)	A	Dividend	J	T					
20 Schwab Money Market (IRA R/O) (S)	A	Dividend	J	T					
21 SoGen Int'l (IRA R/O) (S)	A	Dividend	J	T					
22 Schwab Money Market (IRA contrib) (S)	A	Dividend	J	T					
23 William Blair Growth (IRA contrib) (S)	A	Dividend	K	T					
24 AT&T (J)	A	Dividend	J	T					
25 Abbott Laboratories (J)	A	Dividend	J	T					
26 Allergan (J)	A	Dividend	K	T					
27 Atlantic Energy (J)	A	Dividend	J	T					
28 Atlantic Richfield (J)	B	Dividend	L	T					
29 Beckman Instruments (J)	A	Dividend	J	T					
30 Coca Cola (J)	A	Dividend	L	T					
31 Diebold Inc. (J)	A	Dividend	J	T					
32 Dresser Industries (J)	A	Dividend	J	T					
33 DuPont E I DeMour (J)	A	Dividend	L	T					
34 Walt Disney Co. (J)	A	Dividend	J	T					
35 Equitable Cos Inc. (J)	A	Dividend	J	T					
36 Federal Nat'l Mortgage Assoc. (J)	A	Dividend	K	T					
1 Income/Gain Codes: (See Col. B1 & D4)	A=\$1,000 or less 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: (See Col. C1 & D3)	J=\$15,000 or less N=\$50,001 to \$500,000		K=\$15,001 to \$50,000 O=\$50,001 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

Name of Person Reporting
RENDELL, MARJORIE O.Date of Report
01/07/97

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A Description of Assets (including trust assets) 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. Place "(X)" after each asset exempt from prior disclosure.	B Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amc. 1 Code (A-H)	Type (e.g., div., rent or int.)	Value2 Code (J-P)	Value Method3 Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month/Day	(3) Value2 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)									
37 Gannett (J)	A	Dividend	J	T					
38 General Electric (J)	A	Dividend	K	T					
39 Gillette Co. (J)	A	Dividend	K	T					
40 Household International (J)	A	Dividend	J	T					
41 Loews International (J)	A	Dividend	K	T					
42 Lucent Technologies (J)	A	Dividend	J	T					
43 McDonalds Corp. (J)	A	Dividend	K	T					
44 Mobil (J)	A	Dividend	K	T					
45 Motorola Inc. (J)	A	Dividend	J	T					
46 NL Industries (J)	A	Dividend	J	T					
47 PepsiCo Inc. (J)	A	Dividend	J	T					
48 Public Service Enterprise Grp. (J)	A	Dividend	J	T					
49 SmithKline Beecham ADR (J)	A	Dividend	M	T					
50 Sprint Corporation (J)	A	Dividend	K	T					
51 360 Communications Co. (J)	A	Dividend	J	T					
52 Tremont Corp (J)	A	Dividend	J	T					
53 Vulcan Materials (J)	A	Dividend	J	T					
54 Wal-Mart Stores, Inc (J)	A	Dividend	J	T					
1 Income/Gain Codes: (See Col. B1 & D4)	A=\$1,000 or less E=\$15,001 to \$50,000		B=\$1,001 to \$1,500 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: (See Col. C1 & D3)	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

Name of Person Reporting
RENDELL, MARJORIE O.

Date of Report
01/07/97

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets (including trust assets) 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. Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
	Amt. 1 Code (A-H)	Type (e.g., div., rent or int.)	Value 2 Code (J-P)	Value Method 3 Code (Q-W)		(2) Date; Month-Day	(3) Value 2 Code (J-P)	(4) Gain 1 Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
55 Wells Fargo & Co. (J)	A	Dividend	K	T					
56 Xerox Corp. (J)	A	Dividend	K	T					
57 US T-Note 5.625% 8/97 (J)	A	Interest	J	T					
58 US T-Note 7.54 12/98 (J)	A	Interest	K	T					
59 Muni Inv Trust Series 14 (J)	A	Dividend	J	T					
60 Muni Inv Trust Series 13 (J)	A	Dividend	J	T					
61 Dreyfus Short/Interm Tax Exempt Bond Fund (J)	C	Dividend	L	T					
62 Schwab Tax Exempt MM (J)	C	Dividend	M	T					
63 Vanguard Muni Short Term Bond Fund (J)	B	Dividend	L	T					
64 Allergan, Inc. (DC)	A	Dividend	J	T					
65 Atlantic Energy (DC)	A	Dividend	J	T					
66 Atlantic Richfield (DC)	A	Dividend	J	T					
67 Beckman Instruments (DC)	A	Dividend	J	T					
68 Dresser Industries (DC)	A	Dividend	J	T					
69 DuPont (DC)	A	Dividend	J	T					
70 Huffy Corp. (DC)	A	Dividend	J	T					
71 Mobil (DC)	A	Dividend	J	T					
72 NI Industries (DC)	A	Dividend	J	T					
1 Income/Gain Codes: (See Col. B1 & D4)	A=\$1,000 or less B=\$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: (See Col. C1 & D3)	J=\$15,000 or less N=\$250,001 to \$500,000		K=\$15,001 to \$50,000 Q=\$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=Appraised U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting RENDELL, MARJORIE O.	Date of Report 01/07/97
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VII. Page 5 INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of instructions.)

A. Description of Assets (including trust assets) 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. Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1)	(2)	(1)	(2)	If not exempt from disclosure					
	Amc. 1 Code (A-H)	Type (e.g., div., rent or inc.)	Value2 Code (J-P)	Value Method3 Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	Date: Month- Day	Value2 Code (J-P)	Gain/ Loss Code (A-H)	Identify of buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)										
73 SmithKline Beecham ADR (DC)	A	Dividend	X	T						
74 Toys R Us (DC)	A	Dividend	J	T						
75 Ctf Acclr Tray Srm Ct 11/98 (DC)	A	Interest	J	T						
76 Schwab Money markt FD (DC)	A	Dividend	X	T						
77										
78										
79										
80										
81										
82										
83										
84										
85										
86										
87										
88										
89										
90										
1 Income/Gain Codes: (See Col. B1 & D4)	A-\$1,000 or less B-\$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: (See Col. C1 & D3)	J=\$15,000 or less M=\$250,001 to \$500,000		K=\$15,001 to \$50,000 O=\$50,001 to \$1,000,000		L=\$50,001 to \$100,000 P=More than \$1,000,000		N=\$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

Name of Person Reporting
RENDELL, MARJORIE O.

Date of Report
01/07/97

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

NOTE: INFORMATION PROVIDED IN SECTION VII IS AS OF 12/18/96.

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

RENDELL, MARJORIE O.

Date of Report

01/07/97

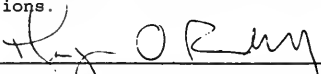
IX. CERTIFICATION.

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. app. 7, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

1/7/97

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. APP. 6, SECTION 104).

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

MARJORIE O. RENDELL

NET WORTH (as of December 18, 1996)

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	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	
Listed securities—add schedule (attached)	1,681,705 **	Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due (misc)	2,000
Due from relatives and friends	10,000	Unpaid income tax	
Due from my father's estate	5,800	Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule attached	278,000
Real estate owned—add schedule Attached	605,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property	50,000		
Cash value—life insurance			
Other assets—itemize:			
Money market - Schwab*	244,542		
		Total liabilities	280,000
		Net Worth	2,320,047
Total Assets	2,600,047	Total liabilities and net worth	2,600,047
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner 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		

* Includes:
 \$187,952 - joint account
 34,617 - IRA pension (M.O. Rendell)
 21,825 - custodian (for J.T. Rendell)
 148 - IRA (E.G. Rendell)
 \$244,542

** Includes all securities in IRAs and pension funds

Securities (IRAs) (2)

1073.822	WILLIAM BLAIR GROWTH SMS	14.3900	\$28,403.24
538.715	EQGEN INTERNATIONAL FUND	27.8800	\$15,008.80

Centennial for Jesse T Rendell

114	ALLERGAN INC	32.1250	\$3,862.25
74	ATLANTIC ENERGY INC	17.8250	\$4,423.00
78	ATLANTIC RICHFIELD CO	130.1250	\$10,578.00
40	BECKMAN INSTRS INC NEW	32.2500	\$1,450.00
6	DRESSER INDUSTRIES NEW	32.2500	\$1,081.00
136	DU PONT E I DE NEMOURS CO	84.2500	\$12,818.00
33	DUFFY CORP	13.7500	\$1,141.00
28	MOBIL CORP	121.7500	\$3,120.25
468	M L INDUSTRIES INC	8.0250	\$154.00
70	SMITHKLINE BEECHAM ADR F	68.8750	\$31,524.75
5000	TADR REP 5 CL A DRD	24.1750	\$2,408.25
	TOYS R US INC HOLDING CO	80.2400	\$4,492.00
	TRF ACCL TR SRW DS11/88		
	SR W TRS 80 DUE 11/15/88		
	INT 11.75214		

Marjorie O. Rendell

SCHEDULE 2 - REAL ESTATE

<u>Property</u>	<u>Value</u>	<u>Mortgage</u>
3425 Warden Drive Philadelphia, PA	\$235,000	\$ 130,000
5032-34 Asbury Avenue Ocean City, NJ	\$370,000	\$ 148,000

Both mortgages held by:

United Savings Bank
P. O. Box 25087
Philadelphia, PA 19147

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**
Bruce William Kauffman
2. **Address: List current place of residence and office address(es).**

Office Address:

Dilworth, Paxson, Kalish
& Kauffman LLP
3200 Mellon Bank Center
1735 Market Street
Philadelphia, Pennsylvania 19103

3. **Date and place of birth.**
December 1, 1934
Atlantic City, New Jersey
4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

I am married to Carol Jackson Kauffman.

Occupation: Marketing

Employer: Lawyers' Travel Service
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, Pennsylvania 19103

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

Yale Law School
Degree Awarded: LL.B (1959)
Dates Attended: Sept., 1956 – May, 1959

Judge Learned Hand Human Relations Award (1988)

Anti-Defamation League Torch of Liberty Award (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.**

Member, American Law Institute

Fellow, American College of Trial Lawyers (1975-) (Chairman of Subcommittee of the Federal Judiciary Committee on Judicial Compensation) (1994-)

Fellow, International Academy of Trial Lawyers

Fellow, American Bar Foundation

Fellow, Pennsylvania Bar Foundation

American Bar Association

Pennsylvania Bar Association

Member - House of Delegates (1987)

Philadelphia Bar Association

Philadelphia Bar Foundation, President (1982 -- 1984)

Committee of Censors -- United States District Court for the Eastern District of Pennsylvania, (1976 -- 1980)

Pennsylvania Judicial Inquiry and Review Board (1984 -- 1988), Chairman (1988)

Pennsylvania Bar Association Judicial Selection Reform Committee (1983 -- 1984)

The Juristic Society

The Federalist Society (1989 -- 1992)

The American Judicature Society

Lawyers' Club

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 belong to the following organizations, none of which, to my knowledge, engage in lobbying before public bodies:

Yale Law School Association, Vice President (1984 -- 1986)
 Yale Law School Association of the
 Philadelphia Area, Past President (1965 -- 1966)
 The Yale Club (1959-)
 Navy League of the United States, Life Member (1986)
 The Pennsylvania Society (1970-)
 Fellow, Phi Beta Kappa Associates (1978-)
 Phi Beta Kappa Association of the Delaware Valley
 Supreme Court Historical Society
 The Union League of Philadelphia (1979-)
 United States Coast Guard Auxiliary (Retired Status)
 Overbrook Italian-American Club (1975-)
 Atlantic City Country Club (1991-)
 Vesper Club (1984-)

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 the United States (1965)

United States Courts of Appeals:

United States Court of Appeals for the District
 of Columbia Circuit (1988)
 United States Court of Appeals for the First Circuit (1973)
 United States Court of Appeals for the Third Circuit (1961)
 United States Court of Appeals for the Fourth Circuit (1977)

United States Court of Appeals for the Fifth Circuit (1983)
 United States Court of Appeals for the Eighth Circuit (1989)
 United States Court of Appeals for the Ninth Circuit (1970)

United States District Courts:

United States District Court for the Eastern
 District of Pennsylvania (1960)
 United States District Court for the District of New Jersey (1960)
 United States District Court for the District
 of the District of Columbia (1988)

State Courts:

Supreme Court of the Commonwealth of Pennsylvania (1961)
 Supreme Court of the State of New Jersey (1960)
 Court of Appeals for the District of Columbia (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.

- *Judicial Selection in Pennsylvania: A Proposal*, 27 Villanova L. Rev. 1163 (1982) (supporting merit selection of judges)
- *Civil RICO Litigation Involving Banks: The Developing Case Law*, 9 Delaware J. of Corp. Law 1 (1984)
- *The Philadelphia Special Investigation Commission: Dissenting Statement of Commissioner Bruce W. Kauffman*, 59 Temple L. Quarterly 411 (1986)
- *The Philadelphia Police Advisory Commission: Dissenting Statement of Commission Member Bruce W. Kauffman: In re Moises Dejesus*
- *The National Law Journal*, April 10, 1995, "A Conservative Plea to Save LSC"

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

My health is excellent. I received my most recent general physical examination in December, 1996.

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.

On February 26, 1980, I was appointed by Governor Dick Thornburg to fill an unexpired term as a Justice of the Supreme Court of Pennsylvania. Upon the expiration of my term in January, 1982, I chose not to run as a partisan political candidate.

The Pennsylvania Supreme Court is the Commonwealth's highest appellate court, with plenary jurisdiction of all appeals from the Pennsylvania Superior and Commonwealth Courts.

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) Significant Opinions on Federal and State Constitutional Issues:

- *Commonwealth v. Hayes*, 489 Pa. 419, 414 A.2d 318 (1980) (concurring opinion)
- *Commonwealth v. Ward*, 493 Pa. 115, 425 A.2d 401 (1981)
- *Commonwealth v. Wadzinski*, 492 Pa. 35, 422 A.2d 124 (1980)

- *Commonwealth v. Virtu*, 495 Pa. 59, 432 A.2d 198 (1981)
- *Commonwealth v. McElligott*, 495 Pa. 75, 432 A.2d 587 (1981)
- *Commonwealth v. Robinson*, 497 Pa. 49, 438 A.2d 964 (1981) (dissenting opinion)
- *Commonwealth v. Scott*, 496 Pa. 78, 436 A.2d 161 (1981)
- *Commonwealth v. Stamps*, 493 Pa. 530, 427 A.2d 141 (1981)

2) **Reversals:**

None of my Pennsylvania Supreme Court opinions were reversed by the United States Supreme Court.

3) **Other Significant Opinions:**

- *In re Albert Compolongo*, 495 Pa. 627, 435 A.2d 581 (1981)
- *Pennsylvania Industries for the Blind & Handicapped v. Larson, Secretary of Transportation, Comm.*, 496 Pa. 1, 436 A.2d 122 (1981)

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.**

In 1967 I was elected as a Delegate to the Pennsylvania Constitutional Convention, and served until the Convention concluded in 1968. In 1973 and 1974 I served as an elected member and Chairman of the Montgomery County Government Study Commission. In 1966 I ran unsuccessfully in the primary election for the Pennsylvania State Legislature. In 1978 I ran unsuccessfully in the primary election for the Pennsylvania Supreme Court.

I have also served on the following public commissions and investigative bodies:

- Member of the Philadelphia Police Advisory Commission (1994-)
(appointed by Mayor Edward Rendell)
- Co-Chairman of the Philadelphia Election Reform Task Force (1994-)
(appointed by Mayor Edward Rendell)

- Chairman (1988), Pennsylvania Judicial Inquiry and Review Board (1984 -- 1988)
(appointed by Governor Dick Thornburg)
- Chairman of the Mayor's Commission on Minority Employment in the Philadelphia Police Department (1982)
(appointed by Mayor William Green)
- Member, Philadelphia Special Investigation Commission ("MOVE Commission") (1985 -- 1986)
(appointed by Mayor Wilson Goode)
- Chairman of Civil Service Commission, Lower Merion Township (1982 -- 1988)
(appointed by Commissioners of Lower Merion Township)

17a. **Legal Career:** 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;

During 1959 and 1960, I clerked for the Honorable Vincent S. Haneman of the Superior Court of New Jersey, Appellate Division.

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

Since concluding my clerkship with Judge Haneman, my exclusive affiliation has been with the Dilworth Firm, excepting only my service between 1980 and 1982 as a Justice of the Pennsylvania Supreme Court.

- 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;

· Dilworth, Paxson, Kalish
& Kauffman LLP
3200 The Mellon Bank Center
1735 Market Street
Philadelphia, Pennsylvania 19103

Chairman (1982-)
Chairman of Litigation Department (1975 -- 1980; 1992-)
Partner (1965--)

Associate (1960 -- 1965)

• UNIVERSITY OF PENNSYLVANIA
SCHOOL OF LAW
3400 Chestnut Street
Philadelphia, Pennsylvania 19104

Adjunct Professor (1995-)

- 17b 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 individual practice has focused on complex commercial litigation. Although my practice has expanded into many areas over my thirty-seven years as a lawyer, its principal focus has always been civil litigation.

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

I have had the opportunity to represent hundreds of corporate and individual clients during my practice, including Litton Industries, Occidental Petroleum Corporation, Dr. Armand Hammer, Excel Communications, Spectro Industries, Inc., Frank Sinatra, the Barnes Foundation, Donald Trump, Montgomery County (Pennsylvania), the School District of the City of Philadelphia, The Philadelphia Electric Company ("PECO"), as well as a coalition of four United States Senators, five members of the House of Representatives and three Governors before the United States Supreme Court challenging the closure of the Philadelphia Naval Shipyard.

My areas of specialty include antitrust law, civil rights law, contract law, statutory interpretation, constitutional law, commercial fraud, environmental law, regulatory law, and the law of defamation and libel.

- 17c. 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.**

Throughout my thirty-seven year legal career, I appeared in both federal and state courts on a frequent basis.

- 2) **What percentage of these appearances was in:**
- (a) federal courts: 75%
 - (b) state courts of record: 25%
 - (c) other courts: 0%
- 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.**
- I would estimate that, as chief counsel, I have tried approximately twenty cases to a verdict or judgment. During my thirty-seven years of practice, I also have served as associate counsel in numerous other cases that were tried to verdict or judgment.
- 5) **What percentage of these trials was:**
- (a) jury: 5%
 - (b) non-jury: 95%

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. Piazza v. Major League Baseball.

Reported Decisions:

Piazza v. Major League Baseball,
836 F. Supp. 269 (E.D. Pa. 1993)

Piazza v. Major League Baseball,
831 F. Supp. 420 (E.D. Pa. 1993)

Summary: For the first time since the Supreme Court's 1922 decision declaring the "business of baseball" to be exempt from antitrust regulation, a federal court held that such antitrust immunity was narrowly limited to conduct involving baseball's reserve clause, which was not at issue in the case.

As lead counsel, I represented the plaintiffs, who had been excluded from a group attempting to purchase the San Francisco Giants Baseball Club (as a result of defamatory statements made by representatives of Major League Baseball concerning the background of one client). In a landmark antitrust decision, the District Court held that Major League Baseball's 70 year old judicially created exemption from federal antitrust laws did not immunize Baseball's conduct in excluding plaintiffs. After extensive discovery and immediately before jury selection, I negotiated a favorable financial settlement on behalf of the plaintiffs, and obtained on their behalf a formal apology from Major League Baseball. As lead counsel for plaintiffs, I presented all oral arguments, deposed the central witnesses, and directed the trial team in all phases of the litigation.

Parties Represented: Vincent M. Piazza and Vincent N. Tirendi

Dates: 1992 -- 1994

Court: United States District Court for the Eastern District of Pennsylvania,
before The Honorable John R. Padova.

Co-Counsel:

Mark J. Levin, Esq.¹
Ballard Spahr Andrews & Ingersoll
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103
(215) 864-8200

Counsel for Defendants:

Arthur Makadon, Esq.
Ballard Spahr Andrews & Ingersoll
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103
(215) 864-8200

Robert J. Kheel, Esq.
Willkie, Farr & Gallagher
One Citicorp Center
153 East 53rd Street
New York, New York 10022-4669
(212) 821-8234

2. Specter v. John H. Dalton, Secretary of the Navy.

Reported Decisions:

Dalton v. Specter, 114 S. Ct. 1719 (1994)
Specter v. Garrett, 971 F.2d 936 (3d Cir. 1992)
Specter v. Garrett, 777 F. Supp. 1226 (E.D. Pa. 1991)

Summary: During the 1993 round of military base closures, the Base Closure Commission recommended that the Philadelphia Naval Shipyard be shut down, which would result in the loss of thousands of jobs and have a devastating impact on regional businesses that served the Shipyard. I served as lead counsel in a bipartisan *pro bono* effort to keep the Shipyard open. After extensive discovery, it became clear that the Commission had failed to comply with the express mandates of Congress. Although my argument was twice successful in the United States Court of Appeals for the Third Circuit, the Supreme Court ultimately

¹. Mr. Levin was a partner at the Dilworth Firm through 1996.

decided that the federal courts lacked jurisdiction to review base closure decisions. As lead counsel for plaintiffs, I supervised all phases of the litigation, deposed the critical witnesses, and presented the oral arguments before the district court and the court of appeals.

Parties Represented: United States Senators Arlen Specter, Harris Wofford, Bill Bradley and Frank R. Lautenberg; United States Representatives Robert E. Andrews, Curt Weldon, Marjorie Margolies-Mezvinsky, James C. Greenwood and Robert A. Borski; the Commonwealth of Pennsylvania and its Governor Robert P. Casey and Attorney General Ernest D. Preate, Jr.; the State of New Jersey and its Governor James J. Florio and Attorney General Fred DeVesa; the State of Delaware and its Governor Thomas R. Carper; the City of Philadelphia; the International Federation of Professional and Technical Engineers, Local 3; the Metal Trades Council, Local 687 Machinists; Planners Estimators Progressmen & Schedulers Union, Local No. 2; and Union representatives William F. Reil, Howard J. Landry and Ronald Warrington.

Dates: 1991 -- 1994

Courts: United States Supreme Court; United States Court of Appeals for the Third Circuit, before The Honorable Walter K. Stapleton, The Honorable Anthony J. Scirica, and The Honorable Samuel A. Alito, Jr.; United States District Court for the Eastern District of Pennsylvania, before The Honorable Ronald L. Buckwalter.

Co-Counsel:

Senator Arlen Specter
Green Federal Bldg., Room 9400
Sixth and Arch Streets
Philadelphia, Pennsylvania 19106
(215) 597-3580

Counsel for Defendants:

Drew S. Days (former U.S. Solicitor General)
Yale Law School
P.O. Box 208215
New Haven, Connecticut 06520-8215
(203) 432-4948

Scott R. McIntosh, Esq.
Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 514-1201

Stuart M. Gerson, Esq.
 Epstein, Becker & Green, P.C.
 1227 25th Street, N.W., Suite 700
 Washington, D.C. 20037
 (202) 861-0900

3. Philadelphia Newspapers, Inc. v Borough of Swarthmore.

Reported decisions:

Philadelphia Newspapers, Inc. v Borough of Swarthmore,
 381 F. Supp. 228 (E.D. Pa. 1974)

Summary: In a case of first impression in the federal courts, the district court held that a borough ordinance totally prohibiting the placement of newspaper honor boxes on public sidewalks violated the First and Fourteenth Amendments to the Federal Constitution. In so holding, Judge Fogel concluded that the First Amendment guaranteed publishers the right to distribute newspapers by means of honor boxes or other vending devices placed on public sidewalks, subject only to reasonable, narrowly tailored regulation as to the place and manner of distribution. The borough's blanket prohibition of newspaper honor boxes, concluded the district court, could not be squared with the Supreme Court's long recognition of "the importance of the right of access to public streets for the free dissemination of information." As lead counsel, I obtained a preliminary injunction restraining the borough's enforcement of the ordinance and, following a two day trial, succeeded in obtaining permanent injunctive and declaratory relief against the borough.

Parties Represented: Philadelphia Newspapers, Inc.

Date: 1974

Court: United States District Court for the Eastern District of Pennsylvania.
 before The Honorable Herbert A. Fogel.

Co-Counsel:

Richard L. Bazelon, Esq.
 Bazelon & Less
 1515 Market Street
 7th Floor
 Philadelphia, Pennsylvania 19102
 (215) 568-1155

Counsel for Defendants:

G. Guy Smith, Esq.
 Harris & Smith
 211 West State Street
 Media, Pennsylvania 19063
 (610) 565-5300

4. In re the Barnes Foundation.**Reported Decisions:**

In re the Barnes Foundation, 453 Pa. Super. 243, 683 A.2d 894 (1996)

In re the Barnes Foundation, 449 Pa. Super. 81, 672 A.2d 1364 (1996)

In re the Barnes Foundation, 14 Fiduc.Rep.2d 92, *appeal dis.*,
 661 A.2d 889 (Pa. Super. 1995)

In re the Barnes Foundation, 12 Fiduc.Rep 2d 349 (1992),
aff'd, 430 Pa Super. 655, 630 A.2d 468, *appeal denied*, 535 Pa. 628,
 631 A.2d 1002 (1993)

Summary: The preservation of a world class, priceless art collection was threatened by provisions of the eccentric, seventy year old Trust Indenture of Dr. Albert C. Barnes, which prohibited even the temporary removal of any part of the collection from the walls of a rapidly deteriorating facility. Before the Montgomery County Court of Common Pleas, Orphans' Court Division, I successfully overcame determined opposition and won approval of the Barnes Foundation's requests to permit a one-time international exhibition tour of approximately eighty works of art from the Foundation's preeminent collection of Impressionist and Post-Impressionist paintings. The international tour raised more than \$16 million and generated good will for the Foundation. The funds raised from the tour enabled this public charity, whose endowment was being depleted, to undertake a critically needed restoration project to modernize the Foundation's deteriorating systems and to install a state-of-the art security system to monitor the entire collection. I served as lead trial counsel and presented all appellate arguments before the Superior Court.

Parties Represented: The Barnes Foundation and its Trustees (Richard H. Glanton, Esq., Shirley A. Jackson, Ph.D., Niara Sudarkasa, Ph.D., Charles A. Frank, III, and Cuyler H. Walker).

Dates: 1992 to present; court proceedings in 1992, 1993 and 1995.

Courts: Pennsylvania Supreme Court; Pennsylvania Superior Court, before The Honorable James R. Cavanaugh, The Honorable John T. J. Kelly, Jr., and The Honorable Peter Paul Olszewski, and before The Honorable Patrick R. Tamilia, The Honorable James E. Rowley, and The Honorable Thomas G. Saylor; Court of Common Pleas of Montgomery County, Pennsylvania, Orphans Court Division, from 1992 to 1994, before The Honorable Louis D. Stefan; from 1992 to the present, before The Honorable Stanley R. Ott.

Co-Counsel:

Mason Avrigian, Esq.
 Wisler, Pearlstine, Talone, Craig,
 Garrity & Potash
 484 Norristown Road
 Blue Bell, Pennsylvania 19422
 (610) 825-8400

Counsel for Other Parties:

S. Gordon Elkins, Esq.
 Jeffrey A. Lutsky, Esq.
 Stradley, Ronon, Stevens & Young
 2600 One Commerce Square
 Philadelphia, Pennsylvania 19103-7098
 (215) 564-8013

Marvin Garfinkel, Esq.
 Mesirov, Gelman, Jaffe, Cramer & Jamieson
 1735 Market Street
 Philadelphia, Pennsylvania 19103
 (215) 994-1450

Lawrence Barth, Esq. -- Assistant Attorney General
 21 S. 12th Street
 3rd Floor
 Philadelphia, Pennsylvania 19107
 (215) 560-2402

J. Brooke Aker, Esq.
 60 East Penn Street
 P.O. Box 150
 Norristown, Pennsylvania 19404
 (610) 275-8200

Arthur L. Jenkins, Jr., Esq
 325 DeKalb Street
 P.O. Box 710
 Norristown, Pennsylvania 19404
 (610) 275-8222

5. American Bearing Co. v. Litton Industries, Inc.

Reported Decision:

American Bearing Co. v. Litton Industries, Inc.,
 729 F.2d 943 (3d Cir. 1984)

Summary: I represented defendant Litton Industries in an action brought by American Bearing alleging that Litton had attempted to monopolize the market for certain bearing components of industrial air pollution control devices. In a successful effort to remedy a miscarriage of justice and unfortunate antitrust precedent, I led the team effort to obtain a new trial and then served as lead trial counsel following remand to the district court. Following an initial two week jury trial resulting in a verdict for plaintiff, the district court granted defendant's motion for a new trial (I did not participate in the original trial). On retrial, the district court granted my motion for a directed verdict. The Third Circuit affirmed. I participated in and supervised the briefing on appeal and presented the successful oral argument.

Parties Represented: Litton Industries, Inc.

Dates: 1982 -- 1984

Courts: United States Court of Appeals for the Third Circuit, before The Honorable Arlin M. Adams, The Honorable Edward R. Becker, and The Honorable Francis L. Van Dusen; United States District Court for the Eastern District of Pennsylvania, before The Honorable Raymond J. Broderick.

Co-Counsel:

David H. Pittinsky, Esq.
 Ballard Spahr Andrews & Ingersoll
 1735 Market Street, 51st Floor
 Philadelphia, Pennsylvania 19103-7599
 (215) 864-8117

Counsel for Plaintiff:

Gary Wynkoop, Esq. (deceased)
 Blank Rome Comisky & McCauley
 Four Penn Center Plaza
 Philadelphia, Pennsylvania 19103
 (215) 569-5500

6. Pennwalt Corp. v. Centaur Partners.**Reported Decision:**

Pennwalt Corp. v. Centaur Partners,
 710 F. Supp. 111 (E.D. Pa. 1989)

Summary: In a case of first impression under Pennsylvania's newly enacted anti-takeover statute, I served as lead counsel in challenging the statute's constitutionality. My client, Centaur Partners, a major Pennwalt shareholder, attempted to call a shareholders meeting to vote on removing obstacles to a possible acquisition of Pennwalt by Centaur or a third party. Pennwalt's board of directors brought an action in federal court seeking to block the shareholders meeting. Centaur opposed the restraining order, arguing that the anti-takeover statute, upon which Pennwalt's board was relying, violated the Commerce Clause of the Federal Constitution. While the district court initially rejected Pennwalt's various abstention arguments, it ultimately concluded that there was no direct conflict between the anti-takeover statute and federal law. While the case was on appeal, a third-party offered to purchase Pennwalt's shares at a price approximately 30% above that which Centaur was offering, and the board accepted the bid.

Parties Represented: Centaur Partners

Date: 1989

Courts: The United States District Court for the Eastern District of Pennsylvania, before The Honorable Robert S. Gawthrop, III.

Co-Counsel:

David H. Pittinsky, Esq.
 Ballard Spahr Andrews & Ingersoll
 1735 Market Street, 51st Floor
 Philadelphia, Pennsylvania 19103-7599
 (215) 864-8117

Counsel for Plaintiff:

Matthew J. Broderick, Esq.
 Dechert Price & Rhoads
 4000 Bell Atlantic Tower
 1717 Arch Street
 Philadelphia, Pennsylvania 19103
 (215) 994-2652

7. Township of Plymouth v. County of Montgomery**Reported Decisions:**

Township of Plymouth v. County of Montgomery,
 121 Pa. Commw. 303, 550 A.2d 1033 (1988)

Township of Plymouth v. Montgomery County,
 109 Pa. Commw. 200, 531 A.2d 49 (1987)

Summary: The Commissioners of Montgomery County, Pennsylvania determined that a trash-to-steam facility was necessary to protect the environment of the entire County and to resolve the County's growing refuse disposal crisis. Although everyone recognized that such a facility was needed, residents of Plymouth Township (in which the facility was to be located) believed that it should be built in someone else's township. Reflecting the "not in my back yard" theme, Plymouth Township brought suit against Montgomery County seeking a declaration that the County's trash-to-steam facility violated recently enacted Township zoning laws. Despite exceptionally bitter opposition, I obtained a judicial declaration that the Township's zoning laws were invalid, and defeated the Township's prolonged legal challenges to block the critically needed facility. As lead counsel for the County, I presented all arguments and supervised all aspects of the litigation team's efforts.

Parties Represented. County of Montgomery

Dates: 1986 -- 1988

Courts: The Commonwealth Court of Pennsylvania, before The Honorable David W. Craig, The Honorable Bernard L. McGinley, The Honorable James Crumlish, Jr., The Honorable John A. MacPhail, The Honorable Joseph T. Doyle and The Honorable Francis A. Barry; Court of Common Pleas of Montgomery County, before The Honorable Wilson Bucher, on Special Assignment from the Court of Common Pleas of Lancaster County.

Co-Counsel:

Sheryl L. Auerbach, Esq.
Dilworth, Paxson, Kalish & Kauffman, LLP
3200 The Mellon Bank Center
1735 Market Street
Philadelphia, Pennsylvania 19103
(215) 575-7124

Counsel for Plaintiff:

Arthur W. Lefkoe, Esq. (retired)
Wisler, Pearlstein, Talone, Craig,
Garrity & Potash
484 Norristown Road
Blue Bell, Pennsylvania 19422
(610) 825-8400

8. Robert Bruce, Inc. v. Sears, Roebuck & Co.,

Reported Decision:

Robert Bruce, Inc. v. Sears, Roebuck & Co.,
343 F. Supp. 1333 (E.D. Pa. 1972)

Summary: In a case pitting a "modern merchandising monolith" against a much smaller clothing manufacturer, I succeeded in defending the enormously valuable trademark rights of my client, Robert Bruce, Inc., which had spent years developing and marketing its highly successful "Grubb" line of clothing. At the time this trademark infringement action was brought, the "Grubb" line represented 50% of Robert Bruce's total clothing sales. In 1971 Sears Roebuck began selling jeans under the "Neets n Grubs" trademark, and refused the demand of Robert Bruce to cease and desist from the infringing conduct. After a two week trial in which I served as lead counsel, the district court held that the "Grubb" mark was "arbitrary and fanciful," rather than descriptive, and was thus entitled to protection without proof of secondary meaning. The district court further held that the "Neets n Grubs" mark created a likelihood of consumer confusion, and thus enjoined Sears from further use of the mark.

Parties represented: Robert Bruce, Inc.

Co-Counsel:

Arthur H. Seidel, Esq.
 Seidel, Gonda, Lavorgna & Monaco, P.C.
 Two Penn Center, Suite 1800
 Philadelphia, Pennsylvania 19102
 (215) 568-8383

Dates: 1971 -- 1972

Court: United States District Court for the Eastern District of Pennsylvania,
 before The Honorable Edward R. Becker.

Counsel for Defendant:

Burton Y. Weitzenfeld, Esq.
 120 South Riverside Plaza
 Chicago, Illinois 60606
 (312) 876-7100

Charles M. Allen, Esq.
 Howsen & Howsen
 P.O. Box 457
 Spring House, Pennsylvania 19477
 (215) 540-9200

9. Molinari v. Commonwealth of Pennsylvania, Department of Transportation.
 Commonwealth Court of Pennsylvania, No. 453 M.D. 199 (1993)

Summary: In this bid contest case, I represented Envirotest Partners, one of the largest African-American owned and managed companies in the nation. Following a comprehensive evaluation of proposals submitted in response to the Commonwealth's Request for Proposals ("RFP"), the Commonwealth awarded Envirotest the contract to implement and operate an enhanced centralized vehicle emission inspection program required to bring Pennsylvania into compliance with the Federal Clean Air Act Amendments of 1990. A disappointed bidder sought to enjoin the contract award, alleging, *inter alia*, that the RFP points awarded to Envirotest as a Socially/Economically Restricted Business ("SERB") had been improperly calculated by the SERB evaluation committee. In effect, the disappointed bidder was challenging the administration of the entire SERB program. Following a six day trial during which I served as lead counsel for Envirotest, the Commonwealth Court held that Envirotest's SERB points had been properly calculated and upheld the Commonwealth's selection of Envirotest to implement the emissions testing program.

Parties Represented: Envirotest Partners

Dates: 1993

Court: Commonwealth Court of Pennsylvania, before The Honorable James R. Kelley.

Co-Counsel:

John L. Heaton, Esq.
 (then Chief Counsel of Pa. Dept. of Transportation)
 Weiss, Weiss & Weiss
 802 Walnut Street
 P.O. Box 838
 Lebanon, Pennsylvania 17042
 (717) 273-1661

Counsel for Plaintiffs:

Michael D. Reed, Esq.
 Mette, Evans & Woodside
 3401 North Front Street
 P.O. Box 5950
 Harrisburg, Pennsylvania 17110
 (717) 232-5000

10. Bethlehem Steel Corp. v. Litton Industries, Inc.

Reported Decision:

Bethlehem Steel Corp. v. Litton Industries, Inc., 321 Pa. Super. 357, 468 A.2d 748 (1983), *aff'd*, 507 Pa. 88, 488 A.2d 581 (1984)

Summary: As lead counsel, I defended Litton and its Lake Erie shipbuilding division in a \$95 million breach of contract claim brought by Bethlehem Steel. In 1968, Bethlehem Steel purchased a 1000 foot, state-of-the-art, self-unloading iron ore carrier from Litton for transporting ore between Michigan mines and Pennsylvania steel mills. At the end of 1968, Bethlehem and Litton executed a two page "option" letter under which Litton offered to construct up to five similar ships for Bethlehem within the next five years. In the ensuing years, however, Bethlehem repeatedly told Litton that it did not intend to order any additional ships, and Litton began dismantling its Lake Erie shipbuilding facilities.

In 1973, Bethlehem reversed course and purported to order three new 1000 foot self-unloading iron ore carriers. After the parties were unable to reach agreement on critical contract terms, particularly with respect to inflation indexing, Bethlehem broke off negotiations and filed a \$95 million breach of contract claim in the Allegheny County

Common Pleas Court. Following a nine month trial, the court held that the two page option letter, executed by two of the nation's largest corporations, could not have been intended by the parties to constitute an enforceable option contract. Following *en banc* review by three judges of the Common Pleas Court, the decision was affirmed by both the Pennsylvania Superior and Supreme Courts. I served as Litton's lead counsel for both the trial and the appeals in this case.

Party Represented: Litton Industries, Inc.

Court: Pennsylvania Supreme Court, before The Honorable John P. Flaherty, The Honorable William D. Hutchinson, The Honorable Rolf Larsen, and The Honorable Stephen A. Zappala; Superior Court of Pennsylvania, before The Honorable William F. Cercone, The Honorable John P. Hester, The Honorable James R. Cavanaugh, The Honorable Richard B. Wickersham, The Honorable James E. Rowley, The Honorable Donald E. Wieand, and The Honorable J. Sidney Hoffman; Court of Common Pleas of Allegheny County, before The Honorable Maurice Louik.

Co-Counsel:

Carl H. Hanzelik, Esq.
Dilworth, Paxson, Kalish & Kauffman, LLP
3200 The Mellon Bank Center
1735 Market Street
Philadelphia, Pennsylvania 19103
(215) 575-7150

Counsel for Plaintiff:

William B. Mallin, Esq.
Eckert Seamans Cherin & Mellott
600 Grant Street
Pittsburgh, Pennsylvania 15219
(412) 566-6027

Hon. Robert L. Byer
Kirkpatrick & Lockhart, LLP
1500 Oliver Building
Pittsburgh, Pennsylvania 15222
(412) 355-6500

Curtis H. Barnette, Esq.
 President & CEO
 Bethlehem Steel Corp.
 8th & Eaton Avenues
 Bethlehem, Pennsylvania 19180
 (216) 694-2424

I have had contact with the following judges and attorneys within the last five years:

The Honorable Edward R. Becker
 United States Court of Appeals for the Third Circuit
 601 Market Street, Room 19613
 Philadelphia, Pennsylvania 19106
 (215) 597-9642

The Honorable Raymond J. Broderick
 United States District Court for the
 Eastern District of Pennsylvania
 601 Market Street, Room 10613
 Philadelphia, Pennsylvania 19106
 (215) 597-7500

The Honorable Robert S. Gawthrop, III
 United States District Court for the
 Eastern District of Pennsylvania
 601 Market Street, Room 7613
 Philadelphia, Pennsylvania 19106
 (215) 597-6143

The Honorable John R. Padova
 United States District Court for the
 Eastern District of Pennsylvania
 601 Market Street, Room 7614
 Philadelphia, Pennsylvania 19106
 (215) 597-1178

The Honorable Louis H. Pollack
 United States District Court for the
 Eastern District of Pennsylvania
 601 Market Street, Room 16613
 Philadelphia, Pennsylvania 19106
 (215) 597-9590

The Honorable Arlin M. Adams
Schnader, Harrison, Segal & Lewis
1600 Market Street
Suite 3600
Philadelphia, Pennsylvania 19103-7286
(215) 751-2072

Richard H. Glanton, Esq.
Reed, Smith, Shaw & McClay
2500 One Liberty Place
Philadelphia, Pennsylvania 19103-7301
(215) 851-8120

Arthur G. Raynes, Esq.
Raynes, McCarty, Binder, Ross & Mundy
1845 Walnut Street
Suite 2000
Philadelphia, Pennsylvania 19103
(215) 568-6190

David Berger, Esq.
Berger & Montague, PC
1622 Locust Street
Philadelphia, Pennsylvania 19103-6365
(215) 875-3030

Jerome J. Shestack, Esq.
Wolf, Block, Schorr & Solis-Cohen
12th Floor, Packard Building
15th & Chestnut Streets
Philadelphia, Pennsylvania 19102-2678
(215) 977-2290

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.)

- **Mellon Bank, N.A. v. Richard I. Rubin, Inc.**: In a series of lawsuits in the Court of Common Pleas of Philadelphia County, before the Honorable Sandra M. Moss, Mellon Bank sued my clients, Richard I. Rubin & Co., Inc., Ronald Rubin and related entities, on account of Rubin's refusal to close on the purchase of the Two Mellon Building. Mellon sought injunctive relief to force Rubin to close the transaction. Subsequent to the Court's denial of Mellon's motion for the injunction, a disastrous fire destroyed the adjacent building, One Meridian, reducing the market value of Two Mellon by 90%, and Mellon claimed damages exceeding \$42 million. After extensive discovery and numerous court appearances, the parties entered into a settlement agreement favorable to Rubin.

- **Chair -- Commission to Preserve Legal Funding for All**: I led the fight to restore over \$2 million in state funding for legal services to those in need but unable to afford a lawyer.

- **Pennsylvania Judicial Inquiry and Review Board**: While serving on this Board between 1984 and 1988, the final year as Chairman, I reviewed complaints brought against members of the judiciary and, where appropriate, recommended disciplinary action to the Pennsylvania Supreme Court.

- **Philadelphia Special Investigation Commission**: During its two year investigation, I served on the MOVE Commission, appointed by Mayor Wilson Goode to investigate the causes of a police action resulting in the deaths of a number of children and adults and the destruction of an entire city block. Our Commission focused not only on the causes of this tragedy, but on finding ways to ensure that it would never be repeated.

- **Pardon of Dr. Armand Hammer**: Dr. Armand Hammer pled guilty to making an illegal campaign contribution to President Nixon's 1972 Reelection Campaign. As lead counsel in seeking a Presidential pardon for Dr. Hammer, I reviewed the guilty plea and filed briefs with the Pardon Attorney of the Department of Justice. Dr. Hammer's pardon was granted by President Bush in 1989.

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.**

Under my original agreement with the Dilworth Firm, in accordance with its standard ten year retirement program, I was to receive \$200,000 annually during my first five years of judicial service, and \$100,000 annually for each of the following five years. To minimize any potential for the appearance of conflict, however, the Firm has agreed to pay for the five annual \$100,000 installments through a fully paid up annuity funded by the Firm during the first five years of my judicial service. Payments under this annuity shall be administered by an independent third party. I intend to recuse myself in any case in which the Dilworth Firm is involved during the entire ten year period in which I am to receive payments under my retirement program. A copy of my agreement with the Firm is included as Attachment "A."

In 1995, USABancShares granted me options to purchase up to 30,000 shares of the Company's common 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.**

I will resolve any potential conflict of interest through adherence to the Rules of Judicial Conduct. More specifically, if my appointment to the federal judiciary is confirmed, I intend to recuse myself in any case in which the Dilworth Firm is counsel of record. I will also recuse myself from any case in which a former client or a business entity in which I have an interest is a party, in which USABancShares is party, or in which the University of Pennsylvania is a party.

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.**

If my appointment to the federal judiciary is confirmed, I will resign as Chairman of the Board of Directors of USABancShares, Inc.

During the past two fall semesters, I served as an Adjunct Professor of Law at the University of Pennsylvania's School of Law and would hope to continue doing so if confirmed. If I do continue teaching at Penn, I would, of course, recuse myself in any lawsuit in which the University is a party.

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 Attachment "B" (Form AO-10)

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

See Attachment "C" (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.**

In 1991, I served in Ronald D. Castille's campaign in the Philadelphia mayoral race. The campaign ended in June, 1991, when Mr. Castille, who is now a Justice of the Supreme Court of Pennsylvania, was defeated in the Republican primary election. I also served in Justice Castille's successful campaign for election to the Supreme Court of Pennsylvania.

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility called 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.**
 - **Chair – Commission to Preserve Legal Funding for All:** I led the fight to restore over \$2 million in state funding for legal services to those in need but unable to afford a lawyer. Between meetings in Philadelphia, Harrisburg, and Washington, I spent several hundred hours in this effort.
 - **Philadelphia Navy Yard Litigation:** I represented a bipartisan coalition of elected officials and Shipyard workers in a three year legal effort to prevent the Shipyard's unlawful closure. During the course of litigation that ended in the Supreme Court, the Dilworth Firm expended over \$1 million in legal time on a pro bono basis.
 - **Philadelphia Police Advisory Commission:** Established by Mayor Rendell in 1994, the Police Advisory Commission has been given the vital task of monitoring and improving the relationship between the Philadelphia Police Department and the communities and citizens the Department serves. From the Commission's inception, I have participated in all phases of its work, reviewing not only individual allegations of abuse, but broader issues of police policy and procedures. I spend several hours per month on Commission related activities.
 - **Mayor's Task Force on Minority Employment in the Philadelphia Police Department:** At the request of Mayor William Green, I chaired a commission that studied and issued a unanimous report on measures to remedy the low minority representation in the Philadelphia Police Department. I devoted approximately one hundred hours to Task Force meetings and in preparing the Final Report.
 - **Philadelphia Special Investigation Commission:** During its two year investigation, I served on the MOVE Commission, appointed by Mayor Wilson Goode to investigate the causes of a police action resulting in the deaths of a number of children and adults and the destruction of an entire city block. Our Commission focused not only on the causes of this tragedy, but on finding ways to ensure that it would never be repeated. Televised hearings took place over several weeks, and I estimate that I devoted five hundred hours of time to MOVE Commission work.

Philadelphia Bar Foundation - President: The Foundation raised substantial funds for distribution to many worthy charities. During the year in which I was President of the Foundation, I devoted several hours per week to Foundation related 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?**

To the best of my knowledge, none of the organizations to which I belong (disclosed in response to Question I-10, *supra*) discriminates on the basis of race, sex, or religion. The Union League of Philadelphia, to which I have belonged since 1979, first accepted women as full members in 1983.

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 have appeared twice before the Federal Judicial Nominating Commission of Pennsylvania, most recently on June 12, 1997, and previously, in early 1996. In conjunction with my June 12, 1997 interview, I submitted a revised personal data questionnaire to the Commission. I also interviewed with representatives of the Department of Justice, the FBI, and the American Bar Association. Although I have not received formal notice, I presume that the Commission recommended my Nomination to 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.

Under the Constitution's framework of divided powers, the role assigned to the judiciary is not to construct the law from the policy choices of individual judges, but to interpret and apply that law which the elected members of our legislative branch have enacted. As Hamilton recognized in *Federalist* No. 78, the judiciary was the "least dangerous branch" precisely because it had neither "Force nor Will, but merely judgment." The courts must not be transformed into a laboratory of social engineering, but should limit their role to that of applying the law to the cases and controversies brought before them. In short, it is the obligation of judges not to make the law, but to interpret the law made by those elected to do so.

IV. CONFIDENTIAL

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

Bruce William Kauffman

2. Address: List current place of residence and office address(es). List all office and home telephone numbers where you may be reached.

Current Residence:

1820 Rittenhouse Square
No. 601
Philadelphia, Pennsylvania 19103
(215) 735-2111

Office Address:

Dilworth, Paxson, Kalish
& Kauffman LLP
3200 Mellon Bank Center
1735 Market Street
Philadelphia, Pennsylvania 19103
(215) 575-7001

3. Have you ever been discharged from employment for any reason or have you ever resigned after being informed that your employer intended to discharge you?

No.

4. Have you and your spouse filed and paid all taxes (federal, state and local) as of the date of your nomination? Please indicate if you filed "married filing separately." Did you make any back tax payments prior to your nominations? If so, give full details.

As of the date of my nomination, my wife Carol and I have paid all federal, state, and local taxes owed as of that date. Since our marriage, Carol and I have filed joint returns. For tax year 1996, we filed a timely request for extension, under which we received an extension until August 15, 1997 to file our 1996 federal income tax return. As of July 2, 1997, all presently calculable federal income tax liability for 1996 was paid in full. On July 14, 1997, we made an estimated payment for tax year 1997 of \$15,000.

5. **Has a tax lien or other collection procedure (to include receipt of computer balance due noticed, ever been instituted against you by federal, state, or local authorities? If so, give full details.**

I have always filed my tax returns and/or requests for extensions in a timely fashion. With the exception of tax year 1995, I have obtained the abatement of late payment penalties for each tax year in which, due to the cash flow problems described below, I was unable to pay my full tax liability by April 15th. I did not seek an abatement of the late payment penalty for tax year 1995 because it was approximately \$600.00, and thus it was less expensive to pay the penalty than to go through the abatement process. I have received "balance due" notices from the IRS for tax years 1992 through 1995, and anticipate receiving a balance due notice for 1996. All "balance due" notices have been paid in full.

The following sets forth my total federal income tax liability for tax years 1992 through 1996, as well as the date and the amount of my final payment for each tax year:

<u>Tax Year</u>	<u>Tax Liability</u>	<u>Date Paid in Full</u>	<u>Amount of Final Payment</u>
1996	\$177,410 (est.)	7/2/97	\$11,003
1995	\$118,854	11/26/96	\$54
1994	\$206,956	7/15/96	\$14,517
1993	\$120,298	6/19/95	\$10,000
1992	\$138,312	12/28/93	\$78,926

As explained in my successful requests for abatement of late payment penalties, in early 1992 the Dilworth Firm lost almost 50% of its partners, and following this restructuring, suffered a similar percentage decline in its annual revenues. During the late 1980's the Firm had also incurred a substantial debt which, when combined with this drastic revenue reduction, threatened the Firm's viability.

Through the sacrifices of its partners and a conservative fiscal policy, the Firm has survived and prospered. In that process, however, my own annual salary has been cut almost in half from its levels in the late 1980's. When combined with my divorce settlement, my own cash flow has been insufficient to pay my full income tax liability when due. I have also worked out a payment schedule

with the City of Philadelphia with respect to my real estate tax liabilities, to which I have adhered.

I always filed my returns or requests for filing extensions in a timely fashion. As of the date of my nomination, I have paid all federal, state, and local income taxes that were due.

6. **Have you or your spouse ever been the subject of any audit, investigation, or inquiry for either federal, state, or local taxes? If so, give full details.**

No.

7. **Have you or your spouse ever declared bankruptcy? If so, give particulars.**

No.

8. **Have you to your knowledge ever been under federal, state, or local investigation for a possible violation of either a civil or criminal statute or administrative agency regulation? If so, give full details. Has any organization of which you were an officer, director, or active participant ever been the subject of such an investigation with respect to activities within your responsibility? If so, give full details.**

No.

9. **Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for a breach of ethics, unprofessional conduct or a violation of any rule of practice? If so, give particulars.**

No.

10. **Have you ever been a party (whether plaintiff, defendant or in any other capacity) to any litigation?**

I have been a party in two divorce proceedings. In addition, other than in my official or representative capacity as a Justice of the Supreme Court of Pennsylvania, or of the various commissions and/or governmental bodies disclosed herein, I am aware of three suits filed against the Firm in which I, together with other partners in the Firm, were individually named. In one suit, 123 South Broad Street Corp. v. Cushman & Wakefield, Inc., et al., Court of Common Pleas, Philadelphia County, Civil Action No. 88-12-5304, brought by a previous landlord of the Dilworth Firm, I was originally named a party but

quickly dropped, and the dispute was subsequently resolved. The name, current address, and telephone number of counsel for plaintiff in that lawsuit is:

Richard M. Squire, Esq.
Astor, Weiss, Kaplan & Rosenbaum
The Bellevue
Broad & Walnut Streets
Philadelphia, Pennsylvania 19102
(215) 790-0100

I was also named individually, along with certain other members of the Firm's Executive Committee, in two suits brought by former partners of the Firm seeking, *inter alia*, the return of their capital accounts. Both of those matters have been settled. The following reflects docket numbers, and the current addresses and telephone numbers of opposing counsel in the lawsuits brought by the former partners:

Edwin Goldsmith v. Dilworth, Paxson, Kalish & Kauffman, et al., Court of Common Pleas, Philadelphia County, Civil Action No. 93-04-02165

Counsel for Plaintiff:

Alan S. Fellheimer, Esq.
Fellheimer, Eichen, Braverman & Kasky
One Liberty Place, 21st Floor
1650 Market Street
Philadelphia, Pennsylvania 19103-7334
(215) 575-3900

Neil E. Jokelson, Esq.
Neil E. Jokelson & Associates, P.C.
230 South Broad Street
Philadelphia, Pennsylvania 19102
(215) 755-7556

Daniel Evans v. Dilworth, Paxson, Kalish & Kauffman, et al., Court of Common Pleas, Philadelphia County, Civil Action No. 94-01-02786

Counsel for Plaintiff.

Richard P. Myers, Esq.
Paul, Reich & Myers, PC
1411 Walnut St, Suite 500
Philadelphia, Pennsylvania 19102
(215) 972-7090

11. **Please advise the Committee of any unfavorable information that may affect your nomination.**

I am not aware of any unfavorable information that may affect my nomination.

AFFIDAVIT

I, Bruce W. Kauffman, do swear that the information provided in this statement is,
to the best of my knowledge, true and accurate.


BRUCE W. KAUFFMAN

DATED: August 7, 1997

AO-10
Rev. 1/76FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1995Report Required by the Ethics
Reform Act of 1978, Pub.
Law 95-114, November 30, 1978
15 U.S.C. App. 6, 101-112

1 Person Reporting (Last name, first, middle initial): Kauffman, Bruce W.	2 Court or Organization Dilworth Paxson Kalish & Kauffman	3 Date of Report 8 / 4 / 97
4 Title Article III judges indicate active or senior status. Magistrate judges indicate full or part-time: Chairman	5 Report Type (check appropriate type): <input checked="" type="checkbox"/> Nomination, Date 7 / 31 / 97 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6 Reporting Period 1 / 1 / 97 - 6 / 30 / 97
7 Chambers or Office Address Dilworth Paxson Kalish & Kauffman, LLP 3200 Mellon Bank Center 1735 Market Street Philadelphia, PA 19103	8 On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
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. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions)	
<u>Chairman</u>	<u>Current Employment Dilworth Paxson Kalish & Kauffman, LLP - Exhibit 1</u>
<u>Chairman of the Board</u>	<u>USA BancShares Inc. - Exhibit 2</u>
<u>Trustee (DC)</u>	<u>Lauri Ann Kauffman Trust UA/8/7/95</u>

II. AGREEMENTS. (Reporting individual only; see pp. 14-17 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements)	
<u>1997</u>	<u>Dilworth Paxson Kalish & Kauffman Judicial Retirement Program Exhibit 1</u>
<u>1997</u>	<u>USA BancShares, Inc. (would resign) Exhibit 2</u>
<u>1997</u>	<u>Dilworth Paxson Kalish & Kauffman Retirement Plan and 401 (k) See Part VII</u>

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME Profit Not Reported
<input type="checkbox"/> NONE (No reportable non-investment income)		
<u>1 1997</u>	<u>The Lawyers Travel Service</u>	<u>\$ (s)</u>
<u>2 1997</u>	<u>Sole Proprietor-Advertising Services</u>	<u>\$ (s)</u>
<u>3 1997</u>	<u>Peoples Thrift Savings Bank</u>	<u>\$ 6,000</u>
<u>4 1997</u>	<u>Dilworth Paxson Kalish & Kauffman</u>	<u>\$433,500</u>
<u>5</u>		<u>\$</u>

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Kauffman, Bruce W.

Date of Report

8 / 4 / 97

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. 26-29 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. 30-33 of Instructions.)

SOURCE

DESCRIPTION

VALUE

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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

CREDITOR

DESCRIPTION

VALUE CODE

NONE (No reportable liabilities)

1

Great Lakes Higher Education Corp.

Student Loan Financing

K

2

Jefferson Bank

Includes Residence
Various mortgages and Commercial

P

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
 N = \$250,001 - \$500,000 O = \$500,001 - \$1,000,000 P = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Kauffman, Bruce W.

Date of Report

8 / 4 / 97

VII. Page I INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets (including trust assets) <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. Place "(K)" after each asset exempt from prior disclosures.</small>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amt. Code (A-B)	(2) Type (Div., Int., etc.) (C-E)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	If not exempt from disclosure					
					(1) Buy. Date (S)	(2) Sell. Date (S)	(3) Div. Date (S)	(4) Value Code (J-P)	(5) Gain Code (R-W)	(6) Identity of Buyer/Seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)										
¹ Black Horse Pike Ltd 1984	D	Int.	M	T						
² Prudential U.S. Treas. MM	A	Div.	K	T						
³ Insured Income Prud.	A	Int.	J	T						
⁴ Avenham Assoc. (Lim. Ptr)	B	Rent	J	W						
⁵ Galeria Assos. (Lim. Ptr)	B	Rent	K	W						
⁶ Toftrees Assoc. (Lim. Ptr)	B	Rent	J	W						
⁷ Huntington Assoc. (Lim. Ptr)	A	Rent	K	W						
⁸ IRA Rollover 12-30-85	B	Div.	M	T						(see exhibit 3)
⁹ Dilworth Paxson Retr Plan	E	Div.	M	T						(see exhibit 4)
¹⁰ Dilworth Paxson Retr Plan	E	Div.	N	T						(see exhibit 5)
¹¹ Lauri Ann Kauffman Tr (DC) 8/7/95	B	Int.	K	T						(see exhibit 6)
¹² Dilworth Paxson 401 (k)	D	Div.	L	T						(see exhibit 7)
¹³										
¹⁴										
¹⁵										
¹⁶										
¹⁷										
¹⁸										
¹ Income/Gain Codes: (See Col. B1 & D4)	A=\$1,000 or less E=\$15,001 to \$50,000		S=\$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: (See Col. C1 & D3)	J=\$15,000 or less M=\$250,001 to \$100,000		K=\$15,001 to \$50,000 O=\$100,001 to \$1,000,000		L=\$50,001 to \$100,000 P=More than \$1,000,000		N=\$100,001 to \$250,000			
³ Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value		S=Cost (real estate only) V=Other		W=Assessment X=Estimated		T=Cash/Market			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Date of Report

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

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

8/9/97

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.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
One Columbus Circle, N.E., Suite 2-301
Washington, DC 20544

JUDICIAL RETIREMENT PROGRAM
BRUCE W. KAUFFMAN

In the event that Bruce W. Kauffman is appointed to a federal or state judicial office prior to December 31, 1997, the Executive Committee seeks the authority of the partnership to enter into a retirement program, the essential economic terms of which are as follows:

1. Payment from the firm of \$200,000 a year for the first five (5) years and a fully paid annuity providing for an additional \$100,000 a year for an additional five (5) years (paid \$3,846 per week by the law firm for the first five years, and \$1,923.08 per week (unless the parties otherwise agree) paid by the annuity company during the second five years), commencing the first calendar month following confirmation and appointment to Judicial office. The payments to be made by the firm in years 1 to 5 include his capital account as of December 31, 1994.¹ Assuming no further payment of undistributed 1992, 1993 and 1994 income, 91.7962% of each payment shall represent a retirement payment and 8.2038% shall represent return of capital. The capital portion of such payments shall decrease and the retirement portion increase if additional 1992, 1993 or 1994 payments are made to Bruce W. Kauffman before retirement. For income tax purposes only, any negative tax capital shall be reflected as income at the end of the last year in which the firm makes any payment or, if earlier, the year of dissolution.
2. The retirement income portion of the payments will reflect certain characteristics embodied in a retirement plan to be adopted soon for certain other partners, including:
 - (i) no personal liability for any partner in respect of these payments;
 - (ii) in the event of dissolution, the retirement income portion of the obligation of the firm to Bruce W. Kauffman is subordinated to all

¹ The books and records of the firm reflect the following capital accounts as of December 31, 1994, after consideration of 1995 and September 1996 distributions of 1994 income and the provisions of paragraph 5 below regarding the \$60,000 debt:

Book Capital Account	\$82,037.91
Tax Capital Account	(\$35,995.58)

outside creditors, financial institutions, accrued compensation due any partners, and partners' capital accounts; and

- (iii) for the initial 5-year period, \$110,000 of the retirement income portion of the payments shall be subject to an annual limitation on the amount paid all retired partners (including the above) in the amount of 5% of the Distributable Net Income of the partnership for the prior fiscal year or similar benchmark amount in the event the firm is operating as a professional corporation. To the extent there is a shortfall in payments on account of this provision, the shortfall shall be added to the following year's target number. Any shortfall remaining at the end of 5 years shall be paid at such time to Bruce W. Kauffman.
3. Contemporaneously, with the effectiveness of this Judicial Retirement Program, the law firm will enter into an annuity contract with a nationally recognized insurance company or similar financial institution, that when fully funded after 5 years, will provide an annuity for \$100,000 a year annual payments to Bruce W. Kauffman for years 6 through 10. An independent third party will be appointed to enforce the payment provisions of the annuity which are further described below. Bruce W. Kauffman shall approve the annuity company and the third party or trustee to be appointed. The firm shall pay all costs and expenses associated with the annuity. All payments due pursuant to the terms of the annuity to Bruce W. Kauffman shall be made directly to him, his estate and/or surviving spouse, as the case may be.
 4. In a dissolution or liquidation, any undistributed capital remaining owed to Bruce W. Kauffman shall have the same priority in payment as the capital account of other partners. No partner shall have personal liability for payments of capital accounts of other partners.
 5. All additional undistributed 1995, 1996 or 1997 profits or capital due to Bruce W. Kauffman shall be paid to him at the rate of 2.778% of such total per month with the balance due, if any, at the end of the third year. The current balance of 1995 and 1996 undistributed profits or capital is \$61,883.
 6. The annual payments, annuity and post-1994 capital account payments will constitute the entire obligation to Bruce W. Kauffman for his capital account, severance

payment or otherwise, and the firm agrees to satisfy his indebtedness owed to the firm in an amount not in excess of \$60,000 by way of a reduction to his capital account as of 12-31-94.

7. The firm will assign all life insurance policies to Bruce W. Kauffman who will assume all premium payments thereon.
8. The firm will move expeditiously to obtain all necessary Bank consents to the above transactions, which are a precondition to its implementation.
9. Should Bruce W. Kauffman die during the term of this agreement, or during the term of the annuity, and if he is survived by his spouse, the payments (except for those due under paragraph 5 above, which shall continue to be paid without diminution) shall continue at one-half of the previous sum, with any reduction in payment applied to the retirement income portion of the payment. Any annuity payment not made to Bruce W. Kauffman or his spouse shall be made to the law firm.
10. In the event that at any time during the ten years following his retirement, Bruce W. Kauffman resigns his judicial appointment and resumes the practice of law in competition with the law firm within a radius of 150 miles from the firm's principal office in Philadelphia, then this retirement program shall terminate and no further retirement income payments shall be due or payable hereunder or under the annuity. Any remaining annuity payments shall be made to the law firm.
11. It is the intent of the parties that Bruce W. Kauffman not recognize any taxable income on account of the annuity unless and until he receives payments in years 6 through 10 and that the law firm not currently deduct any payments to fund the annuity. Should Bruce W. Kauffman be taxed currently on said amounts or on the value of the annuity prior to the time it is paid, the firm shall hold him harmless from such tax consequences by loaning him the tax, and paying to him the interest and addition to tax, if any, due from him (appropriately grossed up for tax consequences), with the loan to be recovered (up to the amount of the tax saved as the annuity payments are received) by the firm from the remaining annuity payments on a pro rata basis or from any tax refunds that may be due to Bruce W. Kauffman from taxes paid on receipt of annuity proceeds, or such other appropriate arrangement as the parties agree. Bruce W. Kauffman shall notify the firm if any such tax claim is made and the firm shall have the option to participate in the resolution of the issue at its expense.

ADVISORY AGREEMENT

THIS AGREEMENT is made on 30 Nov 1995, between BRUCE W. KAUFFMAN ("Kauffman"); USABANCSHARES, INC., a corporation organized under the laws of the Commonwealth of Pennsylvania (the "Company"); and PEOPLES THRIFT SAVINGS BANK, a state-chartered savings bank organized under the laws of Pennsylvania ("the Bank"). The Bank and the Company are referred to collectively as the "Companies".

BACKGROUND

A. The Company is a registered bank holding company, and the Bank is a wholly-owned subsidiary of the Company.

B. Upon the completion of first closing of the initial public offering of Common Shares of the Company described in the Prospectus dated July 20, 1995 (the "Closing"), the Bank became the successor by merger to Peoples Thrift Interim Bank.

C. Kauffman is the Chairman of the Board of the Company and the Chairman of the Board of the Bank, and after completion of the Closing will continue to be the Chairman of the Board of the successor to the Bank.

D. Kauffman has substantial experience in the fields in which the Companies expect to operate. The Companies desire to compensate Kauffman for his advice and service as Chairman of the Board and for certain of his expenses in connection with such service, and Kauffman is willing to serve as Chairman of the Board under the terms and conditions set forth below.

NOW THEREFORE, the parties agree as follows, intending to be legally bound:

1. Effective Date. This Agreement shall become effective upon completion of the Closing (the "Effective Date").
2. Services. The Companies and Kauffman agree that Kauffman will serve the Companies as Chairman of the Board during the period from the Effective Date until the day immediately preceding the second anniversary of the Effective Date.
3. Compensation. As compensation for serving as Chairman of the Board as required by this Agreement, Kauffman shall be entitled to the following:
 - (a) Base Fee. The Companies shall pay to Kauffman a fee of One Thousand Dollars (\$1,000.00) each month

during his service as Chairman of the Board, and a prorated amount for each partial month.

(b) Options. At the Closing the Company shall issue to Kauffman options (the "Options") to purchase up to Thirty Thousand (30,000) Common Shares under the USA BancShares, Inc. Stock Option Plan (the "Stock Option Plan"). The Options shall be exercisable at a price of \$10.00 per Common Share, and shall be exercisable for a period of ten (10) years from the date the Options are granted under the Stock Option Plan.

4. Expenses. The Companies shall reimburse Kauffman promptly for reasonable out-of-pocket expenses incurred in connection with his providing consulting services hereunder, upon receipt of appropriate documentation therefor, up to a total of Twelve Thousand Dollars (\$12,000.00) for the first twelve months of the term of this Agreement and Twelve Thousand Dollars (\$12,000.00) for the second twelve months of the term of this Agreement.

5. Taxes. Kauffman is responsible for paying any and all federal, state and local income taxes assessed with respect to all money, benefits and other consideration he receives from the Companies under this Agreement, to the extent not already withheld by the Companies; and the Companies are entitled to withhold any tax payments from amounts otherwise due Kauffman to the extent required by applicable statutes, rulings or regulations.

6. Miscellaneous.

(a) Definitions. As used throughout this Agreement, the term "Companies" includes USA BancShares, Inc., Peoples Thrift Savings Bank and their respective Affiliates and all of their respective successors and assigns.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

(c) Modification. This Agreement may not be modified orally but only by written agreement signed by Kauffman and the Chief Executive Officer or Vice Chairman of both of the Companies.

(d) Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered (personally, by courier service such as Federal Express, or by messenger) or when deposited in the

United States mails, registered or certified mail, postage pre-paid, return receipt requested, addressed as set forth below:

If to the Bank:

Peoples Thrift Savings Bank
603 E. Germantown Pike
Norristown, PA 19401

If to the Company:

USABancShares, Inc.
One Penn Square
30 South 15th Street, Fourth Floor
Philadelphia, PA 19102
Attention: Chairman of the Board

If to Kauffman:

Dilworth, Faxon Kalish & Kauffman
3200 Mellon Building
1735 Market Street
Philadelphia, PA 19103

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provision of this Section for the giving of notice.

(e) Binding Nature of Agreement. This Agreement shall be binding upon, and shall inure to the benefit of the Bank, the Company and their respective successors, representatives, and assigns and shall be binding upon Kauffman, his heirs, executors and legal representatives.

(f) Savings and Separability. If any provision of this Agreement is deemed unlawful or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

(g) Section Headings. The section headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

Date: Nov 30

PEOPLES TRUST SAVINGS BANK

By: [Signature]
Title: President & CEO

USABANCSHARES, INC.

Date: Nov 30

By: [Signature]
Title: President & CEO

Witness: [Signature]

[Signature]
Bruce W. Kauffman

Date: November 30, 1995

Prudential Securities
Prudential Securities Incorporated, a subsidiary of The Prudential Insurance Company of America, Newark, New Jersey

COMMAND ACCOUNT

Client Statement

Page 1 of 5

Your Federal ID Number

Your Financial Advisor
STUART EITTINGOFF
FIRST V.P. INVESTMENTS
940 HANOVER ROAD
Bryn Mawr PA 19010
Phone: 610-328-1000
STUART.EITTINGOFF@prusec.com

Telephone Number
E-mail Address

PRUDENTIAL SECURITIES C/F
BRUCE W KAUFFMAN 12/30/85
173 HANOVER RD PA 19103-7501
PHILADELPHIA

Pr. The Per iod: June 1 - June 30, 1997

	OPENING	CLOSING
Total Account Net Worth		\$140,739.55
PRICED SECURITIES VALUE	\$136,150.47	\$139,962.48
UNPRICED FUNDS	\$167.00	\$777.07
CASH BALANCE	\$26.08	\$0.00

TOTAL NET WORTH \$136,917.72 **\$140,739.55**
AVAILABLE FOR CHECKWRITING AND VISA \$777.07

Gain (Loss) Summary (PLEASE REFER TO DETAILED ACTIONS)

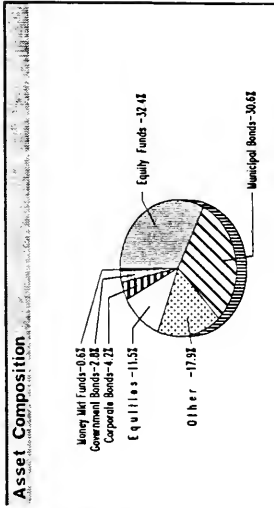
YEAR TO DATE	REALIZED GAIN (LOSS)	UNREALIZED GAIN (LOSS) AS OF JUNE 30
	(\$580.97)	\$1,350.66

Income & Distributions THIS PERIOD YEAR TO DATE

THIS PERIOD	YEAR TO DATE	
MONEY FUND DIVIDENDS	\$3.29	\$23.59
DIVIDENDS	\$112.57	\$385.57
TOTAL INCOME	\$115.86	\$409.13

Cash Activity Highlights THIS PERIOD YEAR TO DATE

THIS PERIOD	YEAR TO DATE	
OPENING CASH AND FUND BALANCE	\$767.25	\$243.93
INCOME/DISTRIBUTIONS PAID IN CASH	\$9.82	(\$1,302.14)
NET SECURITIES BOUGHT/ SOLD	\$ 0.00	(\$300.00)
STOCK PURCHASES	\$ 0.00	
CLOSING CASH AND FUND BALANCE	\$777.07	



Client Statement

Prudential
Securities

Prudential Securities Incorporated, a subsidiary of The Prudential Insurance Company of America, Newark, New Jersey

COMMAND ACCOUNT

For The Period
June 1 - June 30, 1987

BRUCE W KAUFFMAN

Page 2 of 5

Portfolio Detail

Equities-11.5% of Portfolio

	SYMBOL	QUANTITY	CURRENT PRICE	CURRENT VALUE	ESTIMATED ACCRUED INTEREST	ESTIMATED ANNUALIZED INCOME	CURRENT YIELD	COMMENTS
ALB CORP	T	270	35.063**	\$9,467.01		\$356	3.76%	
LUXENT TECHNOLOGIES INC	LU	87	72.093**	\$6,266.48		\$26	.41%	
MCR CORP	MCR	18	29.695**	\$474.00				
Total				\$16,210.49		\$382		

Corporate Bonds-4.2% of Portfolio

ONTARIO PROVINCE STRIP INTEREST STRIPPED OFF THE UNIT PRNG 9:50X 7/13/22 CP 0.000 07/13/2000		9.500	81.557E	\$5,848.00				RATING: NR/NR
Total		9.500		\$5,848.00				

Government Bonds-2.8% of Portfolio

U.S. TREASURY STRIP INTEREST CP 0.00 11/15/2003 DTD 03/15/85		6.000	66.563E	\$3,993.78				RATING: NR/NR
Total		6.000		\$3,993.78				

Municipal Bonds-30.6% of Portfolio

HARRISBURG PA GEN OBLIG SER A RD 0.000 04/01/2009 DTD 12/28/85		100.000	43.078E	\$43,079.00				RATING: AA+/AAA AMUC INSURED
Total		100.000		\$43,079.00				

Equity Mutual Funds-32.4% of Portfolio

RYAN HANCOCK REGIONAL BANK FUND CLASS B		1,083.786	42.080	\$45,605.71		\$392	.86%	
Total				\$45,605.71		\$392		

For The Period: **June 1 - June 30, 1997** Page 3 of 5

BRUCE W KAUFFMAN

Portfolio Detail (Continued)

SYMBOL	QUANTITY	CURRENT PRICE	CURRENT VALUE	ESTIMATED ACCRUED INTEREST	ESTIMATED ANNUALIZED INCOME	CURRENT YIELD	COMMENTS
Other-17.9% of Portfolio							
PRUDENTIAL BACK CAPITAL RETURN FUND LIMITED PARTNERSHIP 3	150	168.170	\$25,225.50				
Total			\$25,225.50		\$774		
TOTAL PRICED SECURITIES VALUE							
			\$139,982.48				
Money Market Funds-.6% of Portfolio							
LOWMONEY FUND	777	1.000	\$777.00		\$40	5.13% 7-Day Yield	
Total			\$777.00		\$40		

Unrealized Gains (Losses)

This section presents estimated unrealized gains or losses for your portfolio on only, and should not be used for tax purposes. We suggest you review it for accuracy and use it only for investment decisions. In instances where a gain (loss) has not been allocated, section and summary totals may not reflect a comprehensive view of your complete portfolio.

ORIGINAL TRADE DATE	QUANTITY	PRICE OR ADJ COST	CURRENT PRICE	COST OR OTHER BASIS	CURRENT VALUE	UNREALIZED GAIN OR (LOSS)
Equities						
AT&T Corp	270	44.397	35.063	\$11,987.21	\$9,467.01	(\$2,520.20)
SCIENT TECHNOLOGIES INC	87	50.238	72.063	\$4,892.81	\$6,269.48	\$1,376.67
OR Corp	16	37.526	20.625	\$600.43	\$474.00	(\$126.43)
Total	373			\$17,480.25	\$16,210.49	(\$1,269.76)



Prudential Securities
Prudential Securities Incorporated, a subsidiary of The Prudential Insurance Company of America, Newark, New Jersey

Client Statement

COMMAND ACCOUNT

of The Period
June 1 - June 30, 1997

BRUCE W KAUFFMAN

Page 4 of 5

Unrealized Gains (Losses)

	ORIGINAL TRADE DATE	QUANTITY	PRICE OR ADJ COST	CURRENT PRICE	COST OR OTHER BASIS	CURRENT VALUE	UNREALIZED GAIN OR (LOSS)	
Corporate Bonds								
MARIO PROVINCE STRIP INTEREST STRIPPED OFF THE ONT PROV 9.50% 7/13/22 P 0.000 07/13/2000	N/A	9,500	N/A	61.557E	Not Calculated	\$5,848.00	Not Calculated	
Total		9,500				\$5,848.00		
Government Bonds								
U.S. TREASURY STRIP INTEREST P 0.00 11/15/2000 DTD 03/15/95	12-14-94	6,000	\$2.025	66.563E	\$3,760.80	\$3,993.78	\$232.98	
Total		6,000			\$3,760.80	\$3,993.78	\$232.98	
Municipal Bonds								
MERRISBERG PA GEN OBLIG TR A 0.000 04/01/2009 DTD 12/28/95	12-28-95	100,000	41.738	43.079E	\$46,072.06	\$43,079.00	(\$2,993.06)	
Total		100,000			\$46,072.06	\$43,079.00	(\$2,993.06)	
Cost basis for municipal securities purchased at a premium has been adjusted for estimated amortization to date.								
Equity Mutual Funds								
WENHAMCOCK REGIONAL BANK FUND FAS3 B Reinvestments	01-30-97	1,079	37.100	42.080	\$40,030.60	\$45,404.32	\$5,373.42	
Total		1,083,786	40.599	42.080	\$194.31	\$201.39	\$7.08	
Total		1,083,786			\$40,225.21	\$45,605.71	\$5,380.50	
Total		1,083,786			\$40,225.21	\$45,605.71	\$5,380.50	
Other								
INDENTICAL BACH CAPITAL RETURN FUTURES IND LIMITED PARTNERSHIP 3	03-23-90	150	100.000	168.170	Not Calculated	\$25,225.50	Not Calculated	
Total		150				\$25,225.50		
TOTAL UNREALIZED GAINS (LOSSES)								
						\$107,538.32	\$139,982.40	\$1,350.66

BASED ON INFORMATION PROVIDED BY YOU OR YOUR FINANCIAL ADVISOR
N/A - INFORMATION WAS NOT AVAILABLE AND IS NOT REFLECTED IN THE GAIN (LOSS) SUMMARY

COMMAND Account **Prudential Securities** **Client Statement**
 Prudential Securities Incorporated, a subsidiary of The Prudential Insurance Company of America, Newark, New Jersey

For the Period: **June 1 - June 30, 1997** **BRUCE W KAUFFMAN** Page 3 of 5

Account Activity

	DATE	TRANSACTION	QUANTITY	PRICE/COMMENTS	AMOUNT DEBITED	AMOUNT CREDITED
Income & Distributions						
DIV ON	06/02	Dividend		Income		\$6.53
OWARD MONEY FND DIV REIM	06/25	Money Fund Dividend		For Reinvestment		\$3.29
J HANCOCK REG BK FDB	06/26	Dividend		Income		\$106.04
				For Reinvestment		
Reinvestment Activity						
J HANCOCK REG BK FDB	06/26	Purchased	2.515	\$42.16	\$106.04	

Money Fund Purchases & Redemptions

	DATE	TRANSACTION	QUANTITY	PRICE/COMMENTS	AMOUNT DEBITED	AMOUNT CREDITED
OWARD MONEY FUND	06/03	Purchased	8	1.00	\$8.00	
OWARD MONEY FND DIV REIM	06/25	Purchased	3	1.00	\$3.00	
OWARD MONEY FUND	06/26	Purchased	1	1.00	\$1.00	

MAIL IS COMING! YOU'LL SOON BE ABLE TO CONVENIENTLY E-MAIL YOUR FINANCIAL ADVISOR TO ASK A QUESTION, REQUEST INFORMATION, OR EVEN SCHEDULE A MEETING. TRADE ORDERS AND INSTRUCTIONS NEEDING YOUR SIGNATURE NOT ACCEPTED. DETAILS ON THE BACK OF YOUR STATEMENT.



Your Federal ID Number:

Office Serving Your Account 15
 940 HANOVER RD PA 19010
 BRYN MAWR
 Telephone Number: 610-527-2300

HR BRUCE W KAUFFMAN TTEE
 BRUCE W KAUFFMAN TTEE
 BRUCE W KAUFFMAN TTEE
 MELLON BANK CNTR 33RD FL
 1735 MARKET ST PA 19103-7501

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 CONTROLLER

	OPENING	CLOSING
Total Account Net Worth		\$136,044.40
PRICED SECURITIES VALUE	\$126,367.42	\$130,047.80
DIRECT INVESTMENTS (SEE DIRECT INVESTMENTS SECTION FOR DETAILS)	\$7,251.00	\$5,996.00
MONEY MARKET FUNDS	\$215.40	\$ 0
CASH BALANCE		\$ 0

	THIS PERIOD	YEAR TO DATE
Income & Distributions		
MONEY FUND DIVIDENDS	\$28.00	\$154.00
DIVIDENDS	\$ 0	\$1,594.00
PARTNERSHIP DISTRIBUTIONS	\$ 0	\$180.00
TOTAL INCOME	\$28.00	\$1,928.00

	QUANTITY	CURRENT PRICE	CURRENT VALUE	ESTIMATED ACCRUED INTEREST	ESTIMATED ANNUALIZED INCOME	CURRENT YIELD	COMMENTS
HISTOL WYERS SOUTHB CO	210	81.0000**	\$17,010.00		\$319	1.88%	
IRESTATES FINANCIAL CORP	1,264	53.7500**	\$67,940.00		\$2,376	3.50%	
LAYO WELLCOME PLC	330	41.8131**	\$13,798.29		\$390	2.75%	
SPONSORED AMERICAN DEPOSITARY RECEIPT							
GA BANCORP INC PENNSYLVANIA	100	9.875	\$987.50				
MARIO PROVINE STRIP INTEREST	9,500	61.537E	\$5,848.00				
SHIPPED OFF THE ONT PROV 9.50% 7/13/22							
P 0.000 07/13/2000							
S TREASURY STRIP INTEREST	6,000	66.363E	\$3,993.78				
P 0.00 11/15/2003 DTD 03/15/85							
S TREASURY STRIP INTEREST	33,000	62.031E	\$20,470.23				
P 0.00 11/15/2004 DTD 03/15/85							

Prudential Securities
 Prudential Securities Incorporated, a subsidiary of the Prudential Insurance Company of America, Newark, New Jersey

Client Statement

MR BRUCE W KAUFFMAN TTEE
 (Continued)

Securities Account

The Period
 June 1 - June 30, 1997

Portfolio Detail

	QUANTITY	CURRENT PRICE	CURRENT VALUE	ESTIMATED ANNUALIZED INTEREST	ESTIMATED ANNUALIZED INCOME	CURRENT YIELD	COMMENTS
PRICED SECURITIES VALUE			\$130,047.80		\$3,075		
PRUDENTIAL MONEYMART ASSETS FUND	5,996	1,000	\$5,996.00		\$300	5.01% 7-Day Yield	
MONEY MARKET FUNDS			\$5,996.00		\$300		

Direct Investments

DESCRIPTION	QUANTITY	ESTIMATED VALUE PER UNIT	ESTIMATED VALUE	COMMENTS
JUNIT INSURED EQUITY LP	400	12,250	\$4,900.00	
TOTAL DIRECT INVESTMENTS			\$4,900.00	

We have provided the above details regarding direct investments for informational purposes only. The estimated values shown have been determined by an independent valuation service and generally do not represent the liquidation value of these investments. These investments are generally illiquid and investors may not be able to sell these investments or if investors are able to sell the investments, the amounts realizable may be substantially less than the estimated value. The total Direct Investments estimated value is not included in the Total Net Worth computation. In determining these values, the independent valuation service used information available as of August 15, 1996. These amounts will not be adjusted until the next annual valuation report is completed on the December 1997 statements unless the independent valuation service becomes aware of a material change in the status of the direct investment which would require revaluation. An "N/A" indicates that an estimated value is not available.

Account Activity

	DATE	TRANSACTION	QUANTITY	PRICE/COMMENTS	AMOUNT DEBITED	AMOUNT CREDITED
MONEYMART ASSETS	06/02	Purchased	215	1.00	\$215.00	
AUTO SUBSCRIPTION	06/27 - 06/23	Dividend	28	Money Fund		\$1,497.80
MONEYMART DIV REINV	06/27	Debit			\$1,497.80	
CHECK 022-086658 PAID ON CIT	06/30	Sold	-1,498	1.00		\$1,498.00
MONEYMART ASSETS	06/30	Sold				
AUTO REDEMPTION	AS OF 06-27-97					

MAIL IS COMING! YOU'LL SOON BE ABLE TO CONVENIENTLY E-MAIL YOUR FINANCIAL ADVISOR TO ASK A QUESTION. REQUEST INFORMATION OR SCHEDULE A MEETING. TRADE ORDERS AND INSTRUCTIONS NEEDING YOUR SIGNATURE NOT ACCEPTED. DETAILS ON THE BACK OF YOUR STATEMENT.

Prudential Securities
Prudential Securities Incorporated, a subsidiary of the Prudential Insurance Company of America, Newark, New Jersey

Client Statement

Custom COMMAND

Period: 1 - June 30, 1997
 Your Federal ID Number: _____
 Page 1 of 7

Office Serving Your Account is:
 HANFORD ROAD
 BRYN MAWR PA 19010
 Telephone Number: 610-527-2300

PRUDENTIAL BANK AND TRUST T/F
 THOMAS PATRICKSON RETR PLAN
 BRUCE W KAUFFMAN
 1735 MARKET ST STE 33
 PHILADELPHIA PA 19103-7501

Copies of this statement are being sent to:
 ATIN PAK PRODS
 ATIN CONTROLLER

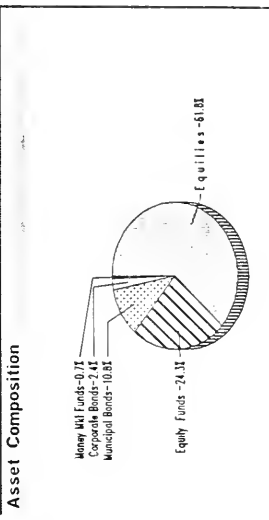
	OPENING	CLOSING
Total Account Net Worth	\$527,224.11	\$543,130.44
SECURITIES VALUE	\$525,283.17	\$539,173.97
INVESTMENTS (SEE DIRECT INVESTMENTS SECTION FOR DETAILS)	\$1,940.00	\$3,956.00
MARKET FUNDS	\$ 94	\$ 47
BALANCE		

PERIOD	REALIZED GAIN (LOSS)	TO DATE REALIZED GAIN (LOSS)
ALYED GAIN (LOSS) AS OF JUNE 30	\$ 0	\$21,639.75
PERIOD REALIZED GAIN (LOSS)	\$4,162.52	\$4,162.52
TO DATE REALIZED GAIN (LOSS)	\$27,148.15	\$27,148.15

	THIS PERIOD	YEAR TO DATE
Income & Distributions		
FUND DIVIDENDS	\$24.09	\$1,144.17
SAVES	\$416.48	\$1,010.01
MEMBERSHIP DISTRIBUTIONS	\$ 00	\$360.00

	THIS PERIOD	YEAR TO DATE
Net Income	\$441.47	\$2,514.18

	THIS PERIOD	YEAR TO DATE
Share Activity Highlights		
CASH AND FUND BALANCE	\$1,940.94	\$2,301.09
DISTRIBUTIONS PAID IN CASH	\$1,633.02	(\$2,546.06)
UNITIES BOUGHT/SOLD	\$ 00.00	(\$2.10)
CASH AND FUND BALANCE	\$3,956.47	





PRUDENTIAL BANK AND TRUST FIF

for the Period
June 1 - June 30, 1997

Portfolio Detail

	SYMBOL	QUANTITY	CURRENT PRICE	CURRENT VALUE	ESTIMATED ACCRUED INTEREST	ESTIMATED ANNUALIZED INCOME	CURRENT YIELD	COMMENTS
Equities-61.8% of Portfolio								
AT&T CORP	T	272	35.063**	\$9,537.14		\$359	3.76%	
CHASE MANHATTAN CORP COM NEW	CMH	200	97.063**	\$19,412.60		\$496	2.56%	
ELVION CORP	CHV	135	73.938**	\$9,981.63		\$313	3.14%	
GENERAL MOTORS CORP	GM	174	55.750**	\$9,700.50		\$348	3.59%	
GOODYEAR TIRE & RUBBER CO	GT	179	63.313**	\$11,333.03		\$200	1.76%	
INTERNATIONAL PAPER CO	IP	236	48.563**	\$11,460.87		\$236	2.06%	
3M RESEARCH CORP	LREX	550	37.083**	\$20,384.65				
3M CORP	MCD	1,000	48.313**	\$48,313.00		\$330	68%	
ALCORN TECHNOLOGY INC	AIJ	500	40.000**	\$20,000.00		\$100	50%	
JAMMT BANKCORP	SKR	1,000	50.125**	\$50,125.00		\$1,440	2.87%	
JOHNS & MAN INC	JMAN	7,000	3.813	\$26,691.00				
ISA BANKSHARES INC PENNSYLVANIA	USAB	10,000	9.875	\$98,750.00				Held in Your Name
Total				\$335,687.42		\$3,822		
Corporate Bonds-2.4% of Portfolio								
ISRAEL STATE U S GOVT GID INTS		23,000	57.812E	\$13,296.88				RATING AAA/AAA
ZERO CPN GID INTS CL 1-2								
ISSUE DATE 04/01/2005 DTD 03/24/93								
BOOK ENTRY ONLY								
Total		23,000		\$13,296.88				
Municipal Bonds-10.8% of Portfolio								
MUNISBURG PA GEN OBLIG		100,000	58.451E	\$58,451.00				RATING AAA/AAA
SER A								AMERIC INSURED
ISSUE DATE 04/01/2005 DTD 12/28/95								
Total		100,000		\$58,451.00				



Prudential Securities
 Prudential Securities Incorporated, a subsidiary of Prudential Insurance Company of America, Newark, New Jersey

Period: 1 - June 30, 1997
 Portfolio Detail
 PRUDENTIAL BANK AND TRUST T/F

SYMBOL	QUANTITY	CURRENT PRICE	CURRENT VALUE	ESTIMATED ANNUIZED INTEREST	ESTIMATED ANNUIZED INCOME	CURRENT YIELD	COMMENTS
Y Mutual Funds--24.3% of Portfolio							
INTERNATIONAL FUND CLASS T	566.720	40.620	\$23,020.17		\$306	1.33%	
HEIMER MAIN STREET FUND INC	715.635	41.130	\$29,434.07		\$36	.12%	
THE GROWTH FUND CLASS B	1,365.576	32.570	\$44,151.11		\$241	.55%	
NEW OPPORTUNITIES FUND CLASS B	182.471	43.090	\$7,862.68				
VAN HENKENSEN GLOBAL SMALLER COS CLASS B	1,757	15.520	\$27,268.64				
			<u>\$131,736.67</u>		<u>\$583</u>		
L PRICED SECURITIES VALUE							
			<u>\$539,173.97</u>		<u>\$4,405</u>		
Y Market Funds--.7% of Portfolio							
VITAL GOVT SEC TRUST MONEY MARKET	2,949	1.000	\$2,949.00		\$151	5.13% 7-Day Yield	
	1,007	1.000	\$1,007.00		\$49	4.84% 7-Day Yield	
			<u>\$3,956.00</u>		<u>\$200</u>		

DESCRIPTION	QUANTITY	ESTIMATED VALUE PER UNIT	ESTIMATED VALUE	COMMENTS
INSURED EQUITY LP	800	12.250	\$9,800.00	
L DIRECT INVESTMENTS			\$9,800.00	

we provided the above details regarding direct investments for informational purposes only. The estimated values shown have been determined independent valuation service and generally do not represent the liquidation value of these investments. These investments are generally not able to sell them or, if investors are able to sell the investments, the amounts realizable may be substantially different from the estimated value. The Total Direct Investments estimated value is not included in the Total Net Worth computation. Prudential Securities used information available as of August 15, 1996. These amounts will not be adjusted for changes in valuation to be reported on the December 1997 statements unless the independent valuation service becomes aware of a change in the status of the direct investment which would require revaluation. An "N/A" indicates that an estimated value is not available.



PRUDENTIAL BANK AND TRUST T/F

Realized Gains (Losses)

This section presents estimated unrealized gains or losses for your information only, and should not be used for tax purposes. We suggest you review it for accuracy and contact your Financial Advisor with any questions before making any investment decisions. In instances where a gain (loss) has not been reported, section and summary totals may not reflect a comprehensive view of your complete portfolio.

ISS	ORIGINAL TRADE DATE	QUANTITY	PRICE OR ADJ COST	CURRENT PRICE	COST OR OTHER BASIS	CURRENT VALUE	UNREALIZED GAIN OR (LOSS)
ORP	03-28-97	272	36,000	35,063	\$9,987.84	\$9,537.14	(\$450.70)
MANHATTAN CORP COM NEW	06-12-97	200	100,750	97,063	\$20,341.40	\$19,412.60	(\$928.80)
N CORP	03-28-97	135	72,625	73,936	\$9,949.91	\$9,981.03	\$31.12
IL MOTORS CORP	03-26-97	174	56,000	55,750	\$9,931.57	\$9,700.50	(\$231.07)
AR TIRE & RUBBER CO	03-26-97	179	54,375	63,313	\$9,926.09	\$11,333.03	\$1,406.94
NATIONAL PAPER CO	03-28-97	236	41,375	48,563	\$9,959.79	\$11,460.87	\$1,501.08
SEARCH CORP	05-24-96	550	37,640	37,063	\$20,702.00	\$20,384.65	(\$317.35)
IOS CORP	03-06-97	1,000	44,750	48,313	\$45,267.14	\$48,313.00	\$3,045.86
I TECHNOLOGY INC	03-06-97	500	41,625	40,000	\$21,157.01	\$20,000.00	(\$1,157.01)
BANKCORP	02-25-97	1,000	49,625	50,125	\$50,133.22	\$50,125.00	(\$8.22)
S MAN INC	05-21-96	1,000	2,000	3,813	\$2,085.00	\$3,813.00	\$1,728.00
	01-28-97	1,000	1,500	3,813	\$1,500.00	\$3,813.00	\$2,313.00
	04-08-97	5,000	3,562	3,813	\$18,162.50	\$19,065.00	\$902.50
		7,000			\$22,137.03	\$26,691.00	\$4,553.97
NCSHARES INC PENNSYLVANIA	12-29-95	10,000	N/A	9,875	N/A	\$98,750.00	N/A
		21,246			\$229,493.00	\$335,689.42	\$7,446.42
State Bonds							
STATE U.S GOVT GTO NTS	09-16-96	23,000	55,762	57,812E	\$13,478.30	\$13,296.88	(\$181.42)
IN GTO NTS CL 1-Z							
0 000 09/15/2005 010 03/24/93							
NTY ONLY							
		23,000			\$13,478.30	\$13,296.88	(\$181.42)

INFORMATION WAS NOT AVAILABLE AND IS NOT REFLECTED IN THE GAIN (LOSS) SUMMARY

Custom COMMAND **Prudential Securities** **Client Statement**

The Prudential Insurance Company of America, Newark, New Jersey

PRUDENTIAL BANK AND TRUST T/F

realized Gains (Losses)

(CONTINUED)

ORIGINAL TRADE DATE	QUANTITY	PRICE OR ADJ COST	CURRENT PRICE	COST OR OTHER BASIS	CURRENT VALUE	UNREALIZED GAIN OR (LOSS)
Municipal Bonds						
Cost basis for municipal securities purchased at a premium has been adjusted for estimated amortization to date						
12-28-95	100,000	56.564	58.451E	\$62,004.80	\$58,451.00	(\$3,553.86)
0 000 04/01/2005 DTD 12/28/95	100,000			\$62,004.86	\$58,451.00	(\$3,553.86)
Mutual Funds						
LTY ADVISOR SER II						
01-15-96	488.712	31.890	40.620	\$15,585.02	\$19,851.48	\$4,266.46
Reinvestments	78.008	35.839	40.620	\$2,795.76	\$3,168.68	\$372.92
INTERNATIONAL FUND CLASS B SHARES	566.720			\$18,380.78	\$23,020.16	\$4,639.38
12-03-96	702	35.620	41.130	\$25,005.24	\$28,873.26	\$3,868.02
Reinvestments	13.635	35.730	41.130	\$487.19	\$560.81	\$73.62
REIMER MAIN STREET FUND INC	715.632			\$25,492.43	\$29,434.07	\$3,941.64
01-30-96	1,257.576	27.050	39.570	\$34,001.85	\$49,940.40	\$6,938.54
Reinvestments	98.576	29.107	32.570	\$2,869.32	\$3,210.62	\$341.30
W. NEW OPPORTUNITIES FUND CLASS B	1,355.576			\$36,871.17	\$44,151.11	\$7,279.94
05-21-96	181	44.200	43.020	\$8,003.82	\$7,799.29	(\$204.53)
Reinvestments	1,471	39.252	43.090	\$58,061.56	\$63.39	\$5.65
JAN HENDERSON GLOBAL SMALLER COS CLASS B	182.471			\$8,061.56	\$7,862.68	(\$198.88)
12-03-96	1,757	14.230	15.520	\$25,002.11	\$27,268.64	\$2,266.53
UNREALIZED GAINS (LOSSES)	4,577.402			\$113,808.05	\$131,736.66	\$17,928.61
				\$418,784.71	\$339,173.96	\$21,639.75



PRUDENTIAL BANK AND TRUST T/F

Period: 1 - June 30, 1997

Realized Gains (Losses)

This section presents estimated realized gains or losses for your information only, and should not be used for tax purposes. To calculate gains or losses, your best position has been liquidated first unless you specified otherwise (a "versus purchase" order). We suggest you review it for accuracy and consult your Financial Advisor with any questions before making any investment decisions. In instances where a gain (loss) has not been calculated, and summary totals may not reflect a comprehensive view of your complete portfolio.

ORIGINAL TRADE DATE	CLOSING PRICE	PRICE OR ADJ.COST	QUANTITY	COST OR OTHER BASIS	PROCEEDS	REALIZED GAIN OR (LOSS)
04-14-97 06-08-97	22.375	17.812	1,000	\$17,812.50	\$21,975.02	\$4,162.52
REALIZED GAINS (LOSSES)						\$4,162.52

Account Activity

DATE	TRANSACTION	QUANTITY	PRICE/COMMENTS	AMOUNT DEBITED	AMOUNT CREDITED
06/11	Sold	-1,000	22.378		\$21,975.02
06/17	Purchased	200	100.314	\$20,341.40	
Amount Debited for Securities Purchased				\$20,341.40	
Amount Credited for Securities Sold					\$21,975.02
Amount for Securities Transactions					\$1,633.62

Dividends & Distributions

135 CHEVRON CORP	06/10	Dividend	Income	\$78.30
174 GENERAL MOTORS CORP	06/10	Dividend	Income	\$87.00
1,000 McDONALD'S CORP	06/13	Dividend	Income	\$82.50
10/5 TIGER B	06/16	Dividend	Income	\$59.56
		For Reinvestment		
179 GOODYEAR TIRE&RUBBER	06/16	Dividend	Income	\$50.12
236 INTL PAPER CO	06/16	Dividend	Income	\$59.00
SEC DIV REINV 05/27 - 06/23	06/24	Money Fund Dividend	For Reinvestment	\$3,100
MONEY FND DIV REINV 05/27-06/25	06/25	Money Fund Dividend	For Reinvestment	\$21,000

Prudential Securities
 Prudential Securities Incorporated, a subsidiary of the Prudential Insurance Company of America, Newark, New Jersey

Client Statement

Custom COMMAND

PRUDENTIAL BANK AND TRUST T/F

Report Period:
 1 - June 30, 1997

Account Activity

(CONTINUED)

ACCOUNT	DATE TRANSACTION	QUANTITY	PRICE/COMMENTS	AMOUNT DEBITED	AMOUNT CREDITED
Investment Activity					
IRR M/S LOGOR B	06/16 Purchased	1.828	\$32.58	\$59.58	

Money Fund Purchases & Redemptions

ACCOUNT	DATE TRANSACTION	QUANTITY	PRICE/COMMENTS	AMOUNT DEBITED	AMOUNT CREDITED
IRR MONEY FUND	06/11 Purchased	22.141	1.00	\$22,141.00	
IRR MONEY FUND	06/18 Purchased	82	1.00	\$82.00	
IRR MONEY FUND	06/17 Sold	-20.232	1.00		\$20,232.00
IRR SEC INV DIV REIN/	05/27 - 06/23	3	1.00	\$3.00	
IRR MONEY FND DIV REIN/	05/27-06/25	21	1.00	\$21.00	
IRR MONEY FUND	06/26 Purchased	1	1.00	\$1.00	

IF YOU ARE NOT SURE OF THE INFORMATION ON THIS STATEMENT, PLEASE CONTACT YOUR FINANCIAL ADVISOR. YOU WILL SOON BE ABLE TO CONVENIENTLY E-MAIL YOUR FINANCIAL ADVISOR TO ASK A QUESTION, REQUEST INFORMATION, OR SCHEDULE A MEETING. TRADE ORDERS AND INSTRUCTIONS NEEDING YOUR SIGNATURE NOT ACCEPTED. DETAILS ON THE BACK OF YOUR STATEMENT.

Prudential
Securities
Prudential Securities Incorporated, a subsidiary of Prudential Insurance Company of America (Member SIPC)

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Securities
Prudential Securities Incorporated, a subsidiary of Prudential Insurance Company of America (Member SIPC)

For The Period:
June 1 - June 30, 1997

BRUCE W KAUFFMAN TTEE

Portfolio Detail

SYMBOL	QUANTITY	CURRENT PRICE	CURRENT VALUE	ESTIMATED ACCRUED INTEREST	ESTIMATED ANNUALIZED INCOME	CURRENT YIELD	COMMENTS
	58,578	1.000	\$58,578.00		\$2,671	4.56%	7-Day Yield
TOTAL MONEY MARKET FUNDS			\$58,578.00		\$2,671		

Money Market Funds-100.0% of Portfolio
PRUDENTIAL GOVERNMENT SECURITIES TRUST
U S TREASURY MONEY MARKET SERIES

Realized Gains (Losses)

This section presents extracted realized gains or losses for your information only, and should not be used for tax purposes. To calculate gains or losses, the exact position has been liquidated first unless you specified otherwise (a "versus purchase" order). We suggest you review it for accuracy and contact your broker with any questions before making any investment decisions. In instances where a gain (loss) has not been calculated, section and summary totals may not reflect a comprehensive view of your complete portfolio.

STOCK	ORIGINAL TRADE DATE	CLOSING TRADE DATE	QUANTITY	PRICE OR ADJ.COST	CLOSING PRICE	COST OR OTHER BASIS	PROCEEDS	REALIZED GAIN OR (LOSS)
AT&T CORP	03-28-97	06-05-97	166	36.000	35.500	\$6,095.52	\$5,755.28	(\$340.24)
CELVION CORP	03-28-97	06-05-97	82	72.500	71.750	\$6,057.30	\$5,784.20	(\$273.10)
GENERAL MOTORS CORP	03-28-97	06-05-97	106	58.000	56.750	\$6,050.26	\$5,910.51	(\$139.75)
GOODYEAR TIRE & RUBBER CO	03-28-97	06-05-97	110	54.375	58.375	\$6,099.83	\$6,312.47	\$212.64
INTERNATIONAL PAPER CO	03-28-97	06-05-97	145	41.375	49.000	\$6,119.36	\$6,963.09	\$843.73
LUCENT TECHNOLOGIES INC	08-14-96	06-05-97	40	48.375	63.375	\$1,935.00	\$2,459.04	\$524.04
SUMMIT BANCORP	02-26-97	06-06-97	200	49.250	49.875	\$10,039.72	\$9,781.21	(\$258.51)
TOTAL REALIZED GAINS (LOSSES)								\$588.81

COMMAND Account **Prudential Securities** **Client Statement**

For The Period June 1 - June 30, 1997

Prudential Securities Incorporated, a subsidiary of The Prudential Insurance Company of America, Newark, New Jersey

BRUCE W KAUFFMAN TTEE

Account Activity

	DATE	TRANSACTION	QUANTITY	PRICE/COMMENTS	AMOUNT DEBITED	AMOUNT CREDITED
Securities Purchases & Sales						
AT&T Corp	06/10	Sold	-166	35 1/2		\$5,755.28
AS OF	06/05/97					
CHEVRON CORP	06/10	Sold	-82	71 3/4		\$5,784.20
UNSOUGHTED						
GENERAL MOTORS CORP	06/10	Sold	106	56 3/4		\$5,910.51
UNSOUGHTED						
GOODYEAR TIRE & RUBBER CO	06/10	Sold	-110	58 2/8		\$6,312.47
UNSOUGHTED						
INTERNATIONAL PAPER CO	06/10	Sold	-145	49.00		\$6,963.09
UNSOUGHTED						
LUCCENT TECHNOLOGIES INC	06/10	Sold	-40	63 3/8		\$2,450.04
UNSOUGHTED						
SUMMIT BANK CORP	06/11	Sold	-200	49 7/8		\$9,781.21
UNSOUGHTED						
Total Amount Debited for Securities Purchased						\$42,965.80
Total Amount Credited for Securities Sold						\$42,965.80
Net Amount for Securities Transactions						

Income & Distributions

DIV ON	06/02	Dividend		Income		\$3.00
40 LUCCENT TECHS INC				Income		\$47.56
DIV ON	06/10	Dividend		Income		\$53.00
82 CHEVRON CORP				Income		\$30.80
DIV ON	06/10	Dividend		Income		\$36.25
106 GENERAL MOTORS CORP				Income		\$124.00
DIV ON	06/16	Dividend		Income		
110 GOODYEAR TIRE&RUBBER				Income		
DIV ON	06/16	Dividend		Income		
145 INIL PAPER CO				Income		
DIV ON	06/24	Money Fund Dividend		For Retirement		
PRU GV1 US TRES DIV REINV 05/27 - 06/23						

COMMAND Account
Prudential Securities
Client Statement
 Prudential Securities Incorporated, a subsidiary of The Prudential Insurance Company of America, Newark, New Jersey

For The Period June 1 - June 30, 1997
BRUCE W KAUFFMAN TTEE
 (CONTINUED)

Account Activity

DATE TRANSACTION	QUANTITY	PRICE/COMMENTS	AMOUNT DEBITED	AMOUNT CREDITED
Funds Added & Withdrawn				
FUNDS RECEIVED	06/05	Credit		\$225.00

Checking & Billpay

DATE WRITTEN	DATE PAID	CHECK #	PAYEE	CITY OF PHIL	EXPENSE CODE	AMOUNT DEBITED	AMOUNT CREDITED	REFERENCE NUMBER
03/26/97	06/13/97	0175	CITY OF PHIL			\$221.00		013100613130029346400000
06/16/97	06/23/97	0178	IRS			\$250.00		0232362313026237700000
06/16/97	06/30/97	0180	PA DEPT OF REV		6	\$50.00		03020063013020679100000
AS OF	June 30	3 CHECKS WERE PROCESSED, TOTALLING				\$521.00		

* Indicates a check appearing out of sequence

Total Grouped by Expense Code

EXPENSE CODE	THIS PERIOD	YEAR TO DATE
8	\$50.00	\$50.00

To update expense code categories, call COMMAND at 1 800 222 4321

Money Fund Purchases & Redemptions

DATE TRANSACTION	QUANTITY	PRICE/COMMENTS	AMOUNT DEBITED	AMOUNT CREDITED
FUND GOVT US TREAS MM COMMAND SUBSCRIPTION	06/03	Purchased		\$3.00
FUND GOVT US TREAS MM COMMAND SUBSCRIPTION	06/06	Purchased		\$225.00
FUND GOVT US TREAS MM COMMAND SUBSCRIPTION	06/10	Purchased		\$33,184.00
FUND GOVT US TREAS MM COMMAND SUBSCRIPTION	06/11	Purchased		\$9,882.00
FUND GOVT US TREAS MM COMMAND REDEMPTION AS OF 06/13/97	06/16	Sold		
FUND GOVT US TREAS MM COMMAND SUBSCRIPTION	06/17	Purchased		\$67.00
FUND GOVT US TREAS DIV REINV 05/27 - 06/23	06/24	Purchased		\$124.00

COMMAND Account

Prudential Securities

Client Statement

Prudential Securities Inc. a member of the Prudential Insurance Company of America, Newark, New Jersey

For The Per 100 June 1 - June 30, 1997

BRUCE W KAUFFMAN TTEE

Money Fund Purchases & Redemptions (continued)

DATE	TRANSACTION	QUANTITY	PRICE/COMMENTS	AMOUNT DEBITED	AMOUNT CREDITED
06/24	SOID	-250	1.00		\$250.00

PRU GOVT US TREAS MM
 COMMAND REDEMPTION AS OF 06/23/97

E-MAIL IS COMING! YOU'LL SOON BE ABLE TO CONVENIENTLY E-MAIL YOUR FINANCIAL ADVISOR TO ASK A QUESTION, REQUEST INFORMATION, OR EVEN SCHEDULE A MEETING. TRADE ORDERS AND INSTRUCTIONS NEEDING YOUR SIGNATURE NOT ACCEPTED. DETAILS ON THE BACK OF YOUR STATEMENT.

FINANCIAL STATEMENT

NET WORTH 6/30/97

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	27	400	Notes payable to banks-secured	1	104 600
U.S. Government securities -- add schedule			Notes payable to banks-unsecured		299 300
Listed securities--add schedule			Notes payable to relatives		
Unlisted securities--add schedule	120	000	Notes payable to others		62 600
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	750	000	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property	116	500	Estimated '97 Income Tax		100 000
Cash value-life insurance	27	000	1997 Phila. Real Est. Tax		4 700
Other assets--itemize:					
Present Value DPK&K Retirement	1	091 900			
Limited Partnership Int.	37	000			
Retirement Accounts	872	400	Total liabilities	2	356 800
USA BancShares Options		—	Net Worth		685 400
Total Assets	3	042 200	Total liabilities and net worth	3	042 200
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule.)	1820 Rittenhouse	
On Leases or contracts			Are you defendant for any suits or legal actions?	No	
Legal Claims Legal P.V.	442	800	Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	342	800			
Other special debt					

Cash in Banks

Jefferson Bank	\$ 11,500
Prudential Securities Money Market	<u>15,900</u>
	\$ 27,400
	=====

Unlisted Securities

Black Horse Pike Ltd. 1984 formerly New Jersey Economic Development Bond	\$ 120,000
	=====

Real Estate Owned

1820 Rittenhouse Square	\$ 750,000
	=====

Auto and Other Personal Property

1990 Jaguar	\$ 16,500
Art, Furnishings and Personal Effects	<u>100,000</u>
	\$ 116,500
	=====

Life Insurance

American United Life Insurance Company	\$ 27,000
	=====

Present Value-Dilworth Paxson Kalish & Kauffman Retirement/Buy Out Agreement1995, 1996, 1997 Capital Account Due

The law firm of Dilworth Paxson Kalish & Kauffman has established a Judicial Retirement Program for Bruce W. Kauffman. The firm has agreed to pay \$200,000 per year for five years and purchase a third party annuity which will pay \$100,000 per year for an additional five years.

In addition to the above payments, the firm is also responsible for paying 1995, 1996 and 1997 undistributed profits or capital presently in the amount of \$61,900. (See paragraph 5 of the Judicial Retirement Program for Bruce W. Kauffman.)

The present value of this income stream, assuming an interest rate of 10%, amounts to approximately \$1,091,900.

Limited Partnership Interests

Avenham Associates	36-3066147	\$	1,000
Galeria Associates	36-3159827		1,000
Toftrees Associates-25%	23-2389106		15,000
Huntington Associates	36-3102841		<u>20,000</u>
		\$	<u>37,000</u>
			=====

The above Partnerships are substantially involved in the business of Real Estate. The equity and value of these Partnerships has been estimated.

Retirement Accounts

IRA Rollover Account dated 12/30/85	\$ 140,700
Dilworth Paxson Retirement Plan	136,000
Dilworth Paxson Retirement Plan	543,100
Dilworth Paxson 401(k) Plan	<u>52,600</u>
	\$ 872,400
	=====

Provision for Income Tax

Retirement Accounts	\$ 342,800
	=====

USA BancShares, Inc.

BWK owns 30,000 Options to purchase shares of stock in the Company. The Options may be exercised at a price of \$10.00 per share for a period of ten years beginning 11/8/95.

Legal ClaimsDivorce Settlement

	<u>Monthly Payment</u>	<u>Payment Total</u>	<u>Present Value</u>
Child Support	\$ 2,083.33	\$ 22,917	\$ 21,800
Alimony	3,664.00	408,536	271,700
Property Settlement	1,833.33	<u>251,165</u>	<u>149,300</u>
Total			\$ 442,800
			=====

The interest rate used was 10% to determine the present value of the payment stream.

Notes Payable to Banks-Secured

Jefferson Bank

\$ 1,104,600
=====Notes Payable to Banks-Unsecured

Jefferson Bank

\$ 262,500

Great Lakes Higher Education Corporation

36,800\$ 299,300
=====Notes Payable-Others

American United Life Insurance Company

\$ 27,000

Dilworth Paxson Kalish & Kauffman

Retirement Plan

35,600\$ 62,600
=====

SENATE QUESTIONNAIRE FOR JUDICIAL NOMINEE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Full Name

Richard Alan Lazzara

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

Office Address

Second District Court of Appeal
800 East Twiggs Street
Suite 600
Tampa, Florida 33602

3. Date and place of birth.

Date of Birth

December 17, 1945

Place of Birth

Tampa, Florida

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

Name of Spouse

Celeste Lindler Lazzara.

Spouse's Occupation

Admissions Counselor

Spouse's Employer and Business Address

Office of Admissions
University of South Florida
4202 East Fowler Avenue
Tampa, Florida 33620

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

College Attended

Loyola University of the South
New Orleans, Louisiana

Dates of Attendance

September, 1963 - May, 1967 (inclusive)

Degree Awarded

Bachelor of Arts in History

Date Degree Granted

May 30, 1967

Law School Attended

University of Florida College of Law
Gainesville, Florida

Dates of Attendance

September, 1967 - June, 1970 (inclusive)

Degree Awarded

Juris Doctor

Date Degree Granted

June 13, 1970

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:

Lazzara Oil Company (family company)
St. Petersburg, Florida
General laborer
June - August

1968:

University of Florida
Division of Housing
Gainesville, Florida
Dormitory Resident Assistant
January - June

Gibbons, Tucker, McEwen, Smith, Cofer, and
Taub, P.A.
Tampa, Florida
Law Clerk
June - August

University of Florida
Division of Housing
Gainesville, Florida
Dormitory Resident Assistant
September - December

1969:

University of Florida
Division of Housing
Gainesville, Florida
Dormitory Resident Assistant
January - June

1970:

Office of the Hillsborough County
Solicitor
Tampa, Florida
Law Clerk
June - November

Office of the Hillsborough County
Solicitor
Tampa, Florida
Assistant County Solicitor
November - December

1971 - 1972:

Office of the Hillsborough County
Solicitor
Tampa, Florida
Assistant County Solicitor

1973:

Office of the Hillsborough County
State Attorney
Tampa, Florida
Assistant State Attorney
January - April

Levine, Freedman, and Hirsch, P.A.
Tampa, Florida
Associate Attorney
April - December

1974:

Levine, Freedman, and Hirsch, P.A.
Tampa, Florida
Associate Attorney

1975:

Levine, Freedman, and Hirsch, P.A.
Tampa, Florida
Associate Attorney
January - April

Law Offices of Richard A. Lazzara
Tampa, Florida
Sole Practitioner
April - December

1976 - 1986:

Law Offices of Richard A. Lazzara
Tampa, Florida
Sole Practitioner

1987:

State of Florida
County Judge - Hillsborough County
Tampa, Florida

1988 - 1992:

State of Florida
Circuit Judge - Thirteenth Judicial Circuit
Tampa, Florida

1993:

State of Florida
Circuit Judge - Thirteenth Judicial Circuit
Tampa, Florida
January - November

State of Florida
Appellate Judge - Second District Court of
Appeal
Tampa, Florida
December

1994 - Present:

State of Florida
Appellate Judge - Second District Court of
Appeal
Tampa, Florida

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.

Loyola University:

- 1) Recipient of a full two-year academic
scholarship for junior and senior years
- 2) President of the College of Arts and
Sciences in senior year
- 3) Alpha Sigma Nu Honor Society
- 4) Delta Epsilon Sigma National Honor Society
- 5) Who's Who in American Colleges and
Universities for 1966-1967
- 6) National Blue Key Honor Fraternity
- 7) Graduated magna cum laude

University of Florida College of Law:

- 1) Recipient of the book, American
Jurisprudence, 2d, Corporations, awarded to
the law student who attains the highest grade
in the course on corporations
- 2) Attorney General and Chancellor of the
Honor Court
- 3) Florida Blue Key Honor Fraternity
- 4) Omicron Delta Kappa National Honor
Fraternity

Judicial Honors:

- 1) Highest approval rating of Hillsborough

- County judicial candidates in a poll conducted by the Hillsborough County Bar Association in 1986 (Source - The Tampa Tribune, August 22, 1986)
- 2) Highest approval rating of Hillsborough County county court judges in a poll conducted by the Hillsborough County Bar Association in 1987 (Source - The Tampa Tribune, June 29, 1987)
- 3) Highest approval rating of Hillsborough County circuit court judges in a poll conducted by the Hillsborough County Bar Association in 1993 (Sources - The Tampa Tribune, October 9, 1993, and The St. Petersburg Times, October 9, 1993)
- 4) Highest approval rating of Second District Court of Appeal judges in a poll conducted by Hillsborough County Bar Association in 1995 (Sources - Warfield's Tampa Bay Review, September 29, 1995, and La Gaceta trilingual newspaper, October 13, 1995)
- 5) Recipient of the Robert S. Patton Award for most outstanding jurist for the year 1991-1992 awarded by the Young Lawyers Section of the Hillsborough County Bar Association
- 6) Recipient of the Ybor City Optimist Club's 1993 "Respect for the Law" award

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) American Bar Association
- 2) The Florida Bar; Member of Thirteenth Judicial Circuit Grievance Committee 13-D (1985-1986)
- 3) Hillsborough County Bar Association
- 4) American Judicature Society
- 5) Ferguson-White Inn of Court; President (1995-1996)
- 6) Conference of County Court Judges
- 7) Conference of Circuit Court Judges
- 8) Conference of Appellate Court Judges; Member of Education Committee (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.

Lobbying Organizations

None

Other Organizations

Order, Sons of Italy

Unita Lodge 2015

Tampa, Florida

By-laws attached

11. Court Admissions: 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.

When admitted to The Florida Bar on November 13, 1970, I was authorized to practice in all of the trial and appellate courts of the State of Florida - County Courts, Circuit Courts, District Courts of Appeal, and the Florida Supreme Court.

United States District Court, Middle District of Florida - admitted January, 1973

United States Court of Appeals for the Fifth Circuit - admitted January, 1974.

United States Court of Appeals for the Eleventh Circuit - admitted March, 1983

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.

Published Writings:

- 1) Preparation and Education: The Cardinal Rules of the Trial Lawyer. This article was published in the August/September, 1990 edition of The Bulletin of the Hillsborough County Bar Association. A copy is attached.

- 2) DUI Manslaughter Trial - A Trial Judge's Perspective. This material was published for use in connection with an advanced continuing legal education seminar presented by the Academy of Florida Trial Lawyers on October 22, 1991, in Orlando, Florida. A copy is attached.

- 3) Legal Writing From a Trial Judge's Perspective. This material was published for use in connection with a continuing legal education seminar presented by the Hillsborough County Bar Association on October 22, 1992, in Tampa, Florida. A copy is attached.

- 4) Motions to Suppress: The Right Way. This material was published for use in connection with a continuing legal education seminar presented by the Pinellas County Criminal Defense Lawyers Association on October 22-23, 1993, in St. Petersburg Beach, Florida. It was later republished for use in connection with a continuing legal education seminar presented by Stetson College of Law on September 29, 1995, in Tampa, Florida. A copy is attached.

Speeches:

Although I have given speeches regarding the legal system before various groups, all of them were of an informal nature and did not relate to issues of constitutional law or legal policy. Furthermore, I did not speak from a written text, and any notes I may have used were discarded. Finally, to my knowledge, none of these speaking events were reported by the news media.

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

State of Health

Excellent

Date of Last Physical Examination

January 30, 1996

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) Current Judicial Office

a) Court

Second District Court of Appeal of State of Florida; Appellate Judge

b) Elected or Appointed

Appointed by Florida Governor Lawton Chiles in November of 1993; retained by the voters residing within the second district court of appeal for a six-year term commencing January 7, 1997 at the general election held on November 5, 1996.

c) Periods of Service

December 1, 1993 to present

d) Jurisdiction

Primary jurisdiction involves resolving civil and criminal cases appealed from the circuit courts of the fourteen counties located within the Second District. The court also possesses an "All Writs" jurisdiction.

2) Prior Judicial Offices

a) Court

Circuit Court of Thirteenth Judicial Circuit of State of Florida; Circuit Judge

b) Elected or Appointed

Appointed by Florida Governor Bob Martinez in November of 1987; stood for election without

opposition for a six-year term in September of 1988.

c) Periods of Service

January 1, 1988 through November 30, 1993

d) Jurisdiction

As a circuit judge, I sat for three and one-half years in a criminal division presiding over felony cases and two and one-half years in a civil division presiding over civil cases involving mortgage foreclosures, medical and legal malpractice claims, personal injury and products liability cases, and contractual and commercial disputes. I also had jurisdiction over general civil cases in which the amount in controversy exceeded \$15,000. My jurisdiction also included resolving civil and criminal appeals from the county court, as well as issuing writs of certiorari and mandamus to governmental boards and agencies.

a) Court

County Court of Hillsborough County, Florida;
County Judge

b) Elected or Appointed

In September of 1986, I was elected in a county-wide, non-partisan election to a four year term.

c) Periods of Service

January 1, 1987 through December 31, 1987

d) Jurisdiction

As a county court judge, I sat for six months in a criminal division where my jurisdiction was limited to presiding over misdemeanor and criminal traffic offenses and six months in a civil division where my jurisdiction was limited to presiding over civil disputes in which the amount in controversy did not exceed \$5,000, landlord-tenant disputes and civil traffic 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 listed were not officially reported, please provide copies of the opinions.

(1) Citations of Significant Opinions:

1. Berry v. State, 636 So. 2d 555 (Fla. 2d DCA), approved in part, disapproved in part, 647 So. 2d 830 (Fla. 1994).
2. Bader v. Bader, 639 So. 2d 122 (Fla. 2d DCA) (en banc), review denied, 649 So. 2d 232 (Fla. 1994).
3. Stephenson v. State, 640 So. 2d 117 (Fla. 2d DCA 1994), approved, 655 So. 2d 86 (Fla. 1995).
4. Kazakoff v. State, 642 So. 2d 596 (Fla. 2d DCA 1994) (en banc).
5. Hamilton v. State, 645 So. 2d 555 (Fla. 2d DCA 1994), aff'd in part, rev'd in part, 660 So. 2d 1038 (Fla. 1995).
6. Snyder v. Douglas, 647 So. 2d 275 (Fla. 2d DCA 1994).
7. Haines City Development v. Diggs, 647 So. 2d 855 (Fla. 2d DCA 1994), approved, 658 So. 2d 523 (Fla. 1995).
8. State Farm Mutual Automobile Insurance Company v. Hassen, 650 So. 2d 128 (Fla. 2d DCA 1995), approved, 674 So. 2d 106 (Fla. 1996).
9. Humana of Florida, Inc. v. McKaughan, 652 So. 2d 852 (Fla. 2d DCA 1995), approved, 668 So. 2d 974 (Fla. 1996).

10. Bentley v. Walker, 660 So. 2d 313 (Fla. 2d DCA 1995), approved, 678 So. 2d 1265 (Fla. 1996).

(2) Citations of Reversals and Affirmances with Criticism:

1. Boffo v. State, 543 So.2d 435 (Fla. 2d DCA 1989).

Although my judgment revoking the defendant's violation of probation was affirmed, the sentence I imposed was reversed and the case was remanded for imposition of a sentence under the youthful offender statute.

2. Parsley v. State, 553 So.2d 730 (Fla. 2d DCA 1989).

My denial of a motion to dismiss the charge of racketeering was reversed and the judgment as to this charge was vacated.

3. Knight v. State, 556 So.2d 801 (Fla. 2d DCA 1990).

My departure order imposing a sentence in excess of the sentencing guidelines was reversed and the case was remanded for resentencing.

4. Phelps v. State, 561 So.2d 32 (Fla. 2d DCA 1990).

My denial of the defendant's motion to correct an illegal sentence based on an award of improper jail credit was reversed and the case was remanded for further consideration.

5. Harris v. State, 565 So.2d 897 (Fla. 2d DCA 1990).

My denial of the defendant's motion for additional jail credit was reversed and the case was remanded for further consideration.

6. Way v. Dugger, 568 So.2d 1263 (Fla. 1990).

My denial of the defendant's motion to vacate his death sentence was reversed and the case was remanded for another penalty phase hearing. In all other respects I was affirmed.

7. Helmick v. State, 569 So.2d 869 (Fla. 2d DCA 1990).

Although the defendant's convictions were affirmed, the court reversed the sentences imposed and remanded for resentencing.

8. Parker v. State, 570 So.2d 1115 (Fla. 2d DCA 1990).

My imposition of a minimum mandatory sentence as to one offense was vacated. In all other respects I was affirmed.

9. Edwards v. State, 570 So.2d 1116 (Fla. 2d DCA 1990).

My departure order imposing a sentence in excess of the sentencing guidelines was stricken.

10. Nichols v. State, 571 So.2d 121 (Fla. 2d DCA 1990).

My denial of the defendant's motion for post conviction relief was reversed and the case was remanded for further proceedings.

11. Walker v. State, 572 So.2d 1028 (Fla. 2d DCA 1991).

My denial of the defendant's motion for post conviction relief was reversed and the case was remanded for further proceedings.

12. Martinez v. State, 575 So.2d 1376 (Fla. 2d DCA 1991).

My denial of the defendant's motion for post conviction relief was reversed and the case was remanded for further proceedings.

Following remand another appeal was taken and my ruling was affirmed. Martinez v. State, 583 So.2d 680 (Fla. 2d DCA 1991).

13. City of Tampa v. Redner, 576 So.2d 339 (Fla.2d DCA 1991).

The court reversed my ruling and directed that I reconsider the case using the correct municipal ordinance of the City of Tampa. Following remand another appeal was taken and the court affirmed my second ruling. City of Tampa v. Redner, 597 So.2d 305 (Fla. 2d DCA 1991).

14. Johnson v. State, 577 So.2d 725 (Fla. 2d DCA 1991).

My denial of the defendant's motion to mitigate his sentence was reversed and the case was remanded for further proceedings.

15. Matthews v. State, 578 So.2d 51 (Fla. 2d DCA 1991).

My written sentences were reversed and remanded to conform to my oral pronouncements at time of sentencing. In all other respects the defendant's convictions were affirmed.

16. Busler v. State, 578 So.2d 872 (Fla. 2d DCA 1991).

The court reversed my order denying the defendant's motion to suppress evidence deciding that there was no founded suspicion to justify the police officer's stop of the defendant.

17. Morgan v. State, 580 So.2d 176 (Fla. 2d DCA 1991).

My imposition of a sentence under the habitual felony offender statute was reversed and the case was remanded for resentencing.

18. Blount v. State, 581 So.2d 604 (Fla. 2d DCA 1991).

My departure order imposing a sentence in excess of the sentencing guidelines was reversed and the case was remanded for resentencing.

19. Gonzalez v. State, 581 So.2d 648 (Fla. 2d DCA 1991).

Although the court affirmed my departure sentencing order which exceeded the sentencing guidelines based on one reason, it found that two of my reasons for departure were invalid.

20. Burkey v. State, 582 So.2d 1252 (Fla. 2d DCA 1991).

My written sentences were reversed and remanded to conform to my oral pronouncements at time of sentencing. In all other respects the defendant's convictions were affirmed.

21. Jancar v. State, 585 So.2d 1200 (Fla. 2d DCA 1991).

Although the judgment and sentence were affirmed, the court remanded for the allocation of the proper amount of jail credit to be awarded to the defendant.

22. State v. Milbro, 586 So.2d 1303 (Fla. 2d DCA 1991).

The court reversed my dismissal of the charge of solicitation to deliver a controlled substance and remanded the case for further proceedings.

23. Jackson v. State, 590 So.2d 1070 (Fla. 2d DCA 1991).

My departure order imposing a sentence in excess of the sentencing guidelines was reversed and the case was remanded for resentencing.

24. State v. Tanskley, 590 So.2d 1111 (Fla. 2d DCA 1991).

Although the court affirmed the defendant's convictions for two offenses, it remanded for the correction of sentence as to one of the offenses.

25. Coleman v. State, 592 So.2d 300 (Fla. 2d DCA 1991).

The defendant was convicted of burglary and delivery of cocaine. The court reversed the burglary conviction, affirmed the drug conviction, and remanded for resentencing on the drug conviction using a corrected guideline sentencing scoresheet that deleted the burglary conviction.

26. Dumas v. State, 592 So.2d 383 (Fla. 2d DCA 1992).

Although the defendant's convictions were affirmed, my departure order imposing a sentence in excess of the sentencing guidelines was reversed and the case was remanded for resentencing.

27. State v. Bamber, 592 So.2d 1129 (Fla. 2d DCA 1991).

Although the court affirmed my granting of the defendant's motion to suppress evidence, it stated that I should have followed the holding of another District Court of Appeal. However, in affirming my ruling, the court certified conflict to the Florida Supreme Court with this other court's ruling. The Florida Supreme Court ultimately affirmed my suppression of the evidence. State v. Bamber, 630 So. 2d 1048 (Fla. 1994).

28. Mathews v. State, 596 So.2d 79 (Fla. 2d DCA 1991).

The court reversed my denial of the defendant's motion to correct illegal sentence and remanded the case for further proceedings.

29. Smith v. State, 599 So.2d 265 (Fla. 2d DCA 1992).

My departure order imposing a sentence in excess of the sentencing guidelines was reversed and the case was remanded for resentencing.

30. Lehman v. State, 602 So.2d 610 (Fla. 2d DCA 1992).

My departure order imposing a sentence in excess of the sentencing guidelines was reversed and the case was remanded with directions to discharge the defendant from any further sentence.

31. Jasperson v. State, 603 So.2d 144 (Fla. 2d DCA 1992).

The court reversed the sentence imposed and remanded for resentencing using a proper guideline sentencing scoresheet.

32. Davis v. State, 605 So.2d 561 (Fla. 2d DCA 1992).

The court reversed my denial of the defendant's motion to suppress evidence on the basis that the stop of the defendant by the police officer was pretextual in nature.

33. Love v. State, 606 So.2d 755 (Fla. 2d DCA 1992).

The court reversed my ruling that the defendant's community control should be revoked and remanded the case for reinstatement of the original sentence of community control.

34. Rodriguez v. State, 610 So.2d 476 (Fla. 2d DCA 1992).

The court reversed my sentence on the basis that it exceeded the sentence called for in a plea agreement. It remanded the case for further proceedings including giving the

defendant an opportunity to withdraw his plea of guilty.

35. Reber v. State, 611 So. 2d 91 (Fla. 2d DCA 1992).

The court remanded the case for the correction of the written judgment. It also struck a cost assessment.

36. Dorsey v. State, 613 So. 2d 1368 (Fla. 2d DCA 1993).

The court reversed the defendant's racketeering conviction. It also reversed the defendant's petit theft conviction finding that I should not have allowed certain photographs into evidence. However, the court did affirm the defendant's convictions for possession of cocaine, possession of marijuana, and grand theft of a firearm.

37. Bryant v. State, 614 So. 2d 688 (Fla. 2d DCA 1993).

Although the court affirmed the convictions, it reversed one special condition of probation because it was not orally pronounced.

38. Holliday v. City of Tampa, 619 So. 2d 244 (Fla. 1993).

In Holliday v. City of Tampa, 586 So. 2d 64 (Fla. 2d DCA 1991), the Second District Court of Appeal upheld my decision to affirm Mr. Holliday's conviction for loitering under a Tampa city ordinance. The Florida Supreme Court, however, disagreed and held the ordinance was facially unconstitutional.

39. Bailey v. Hillsborough County, 619 So. 2d 346 (Fla. 2d DCA 1993).

The court reversed my dismissal of a civil complaint with prejudice and remanded the case for the plaintiff to be able to file an amended complaint.

40. Guerra v. State, 626 So. 2d 706 (Fla. 2d DCA 1993).

My departure order imposing a sentence in excess of the sentencing guidelines was reversed and the case was remanded for resentencing.

41. Charlie Brown's of Tampa, Inc. v. Cook, 630 So. 2d 1158 (Fla. 2d DCA 1994).

The court reversed my order setting aside a final judgment and remanded with instructions to reinstate the judgment.

42. Newsome v. Singletary, 637 So. 2d 9 (Fla. 2d DCA 1994).

The court reversed my order dismissing a complaint for lack of jurisdiction and remanded for further proceedings.

43. State v. Berry, 647 So. 2d 830 (Fla. 1994).

Although the Florida Supreme Court affirmed the result reached in the opinion I authored in Berry v. State, 636 So. 2d 555 (Fla. 2d DCA 1994), it disagreed with the assessment that a juvenile could never waive his or her right to forego certain statutory safeguards before being sentenced as an adult.

44. State v. Jackson, 650 So. 2d 24 (Fla. 1995).

Although the Florida Supreme Court agreed with the result reached in the opinion I authored in State v. Jackson, 636 So. 2d 1372 (Fla. 2d DCA 1994), it disagreed with my substantive reasoning that information transmitted to a digital display pager was an electronic communication. Instead, the court held that such information was a wire communication.

45. State v. Hamilton, 660 So. 2d 1038 (Fla. 1995).

Although the Florida Supreme Court agreed with my substantive analysis of what constitutes the "curtilage" under Florida's burglary statute in the opinion I authored in Hamilton v. State, 645 So. 2d 555 (Fla. 2d DCA 1994), it disagreed with remanding the case for a new trial, determining instead that the evidence was insufficient to prove guilt.

46. Florida Power & Light Company v. Polackwich, 677 So. 2d 880 (2d DCA Fla. 1996).

Although the court reversed and remanded for a new trial because it determined that two of my rulings were erroneous, it pointed out that at the time I made these rulings they were consistent with the law in effect at the time of trial. After the trial, however, the law had changed by virtue of two intervening United States Supreme Court opinions which required the appellate court to reverse and grant a new trial.

47. State v. Montague, 682 So. 2d 1085 (Fla. 1996).

In State v. Montague, 656 So. 2d 508 (Fla. 2d DCA 1995), I certified a question to the Florida Supreme Court regarding whether a recent Florida Supreme Court opinion had overruled prior precedent of the Second District Court of Appeal in the area of preserving a sentencing error for review. Although the Florida Supreme Court acknowledged that its prior opinion did not expressly overrule the precedent of my court upon which I relied in my opinion, it did hold that this opinion tacitly disapproved this precedent. The supreme court, therefore, answered the question in the affirmative and reversed my decision.

(3) Citations of Significant Constitutional Opinions:

1. State Farm Mutual Automobile Insurance Company v. Hassen, 650 So. 2d 128 (Fla. 2d

DCA 1995), approved, 674 So. 2d 106 (Fla. 1996).

2. Walker v. Bentley, 660 So. 2d 313 (Fla. 2d DCA 1995), approved, 678 So. 2d 1265 (Fla. 1996).

3. State v. Barnes, 21 Fla. L. Weekly D2515 (Fla. 2d DCA Nov. 27, 1996).

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 date 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;

From April of 1975 until December of 1986, I was a sole practitioner at the following addresses:

April of 1975 - December of 1977
725 East Kennedy Boulevard
Tampa, Florida 33602

January of 1978 - February of 1980
202 South Governor Street
Tampa, Florida 33602

March of 1980 - June of 1985
610 West DeLeon Street
Tampa, Florida 33606

July of 1985 - December of 1986
606 East Madison Street
Tampa, Florida 33602

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;

June of 1970 - November of 1970
Office of the Hillsborough County
Solicitor
801 East Kennedy Boulevard
Fifth Floor
Tampa, Florida 33602
Law Clerk

November of 1970 - December of 1972
Office of the Hillsborough County
Solicitor
801 East Kennedy Boulevard
Fifth Floor
Tampa, Florida 33602
Assistant County Solicitor

January of 1973 - April of 1973
Office of the State Attorney
801 East Kennedy Boulevard
Fifth Floor
Tampa, Florida 33602
Assistant State Attorney

April of 1973 - April of 1975
Levine, Freedman, and Hirsch, P.A.
725 East Kennedy Boulevard
Tampa, Florida 33602
Associate Attorney

January of 1986 - June of 1987
Hillsborough County Court Judge
Criminal Division
801 East Twiggs Street
Tampa, Florida 33602

July of 1987 - December of 1987

Hillsborough County Court Judge
800 East Kennedy Boulevard
Tampa, Florida 33602

January of 1988 - July of 1991

Hillsborough County Circuit Court
Judge
Criminal Division
800 East Kennedy Boulevard
Tampa, Florida 33602

August of 1991 - November of 1993

Hillsborough County Circuit Court
Judge
Civil Division
419 Pierce Street
Tampa, Florida 33602

December of 1993 - Present

Second District Court of Appeal
Judge
801 East Twiggs Street
Tampa, Florida 33602

- 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 general character of my practice, which remained constant over the years, involved extensive litigation in the areas of criminal law, commercial law, and family law. I also handled appellate matters in these same areas of the law.

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

My former clients came from all walks of life - single parents, educators, business people, law enforcement officers, public officials, and members of the

general work force. Although I considered myself a general litigator, my area of specialty was criminal defense.

- 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.

While a practicing attorney, I appeared in court on a regular basis which did not significantly vary over the years.

2. What percentage of these appearances was in:

- (a) federal courts - 30%
 (b) state courts of record - 70 %
 (c) other courts - 0%

3. What percentage of your litigation was:

- (a) civil - 30%
 (b) criminal - 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.

Sole Counsel
145

Chief Counsel
5

Associate Counsel
10

5. What percentage of these trials were:

- (a) jury - 60%
- (b) non-jury - 40%

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) Citation of Case

Automatic Truck & Trailer Wash Centers, Inc. v. Eastamp, Inc., 320 So. 2d 7 (Fla. 2d DCA 1975).

Capsule Summary of Case

This case involved a lawsuit filed by my client, a secured creditor, seeking to recover a deficiency judgment following a foreclosure sale involving an automatic truck and trailer washer. The trial court granted summary judgment against the client and ruled that its rights were governed exclusively by the provisions of Article 9 of the Uniform Commercial Code relating to secured creditors and that it was not entitled to the benefits of Article 6 of the Code which protected unsecured creditors. The appellate court disagreed, reversed the entry of summary judgment, and remanded for further proceedings. To the best

of my recollection, the case was settled on remand.

Party Represented

Automatic Truck & Trailer Wash Centers, Inc.

Nature of Participation in Case

I was actively involved in litigating the case at the trial court level in terms of drafting pleadings, researching the law, participating in pre-trial depositions, and attending and arguing motions at hearings. I was equally active at the appellate stage in terms of undertaking legal research and preparing and drafting the briefs. I do not recall, however, whether I or my co-counsel argued the case to the appellate court.

Final Disposition of Case

It is my recollection that after the appellate court reversed and remanded the case the parties then settled it.

Dates of Representation

Fall of 1974

Name of Court/Judge

Circuit Court of Thirteenth
Judicial Circuit of State of
Florida
Circuit Judge Laurence I. Goodrich
(retired) (now in private practice)

Name/Address/Phone Numbers of Co-
Counsel and Counsel of Other
Parties

Co-Counsel

Mr. Michael J. Freedman
 300 East Madison Street
 Tampa, Florida 33602
 (813) 229-6925

Counsel of Other Parties

Raymond C. Farfante, Jr.
 (deceased)

Mr. John P. Griffin
 15819 Dawson Ridge Road N.W.
 Tampa, Florida 33647
 (813) 979-9831

Mr. Harold H. Griffin
 (deceased)

Mr. Jan G. Halisky
 507 South Prospect Avenue
 Clearwater, Florida 34616
 (813) 461-4234

2) Citation of Case

United States v. Myers, 550 F. 2d
 1036 (5th Cir. 1977), 42 ALR Fed.
 855, appeal after remand, 572 F. 2d
 506 (5th Cir.), cert. denied, 439
 U.S. 487, 99 S. Ct. 147, 58 L. Ed.
 2d 149 (1978)

Capsule Summary of Case

Mr. Myers was indicted for robbing a federally-insured bank, and I was court-appointed to represent him. He raised an alibi defense. His first trial ended in a mistrial after the jury could not reach a unanimous verdict. His second trial resulted in a jury verdict of guilt. On appeal, the Fifth Circuit reversed and remanded for a new trial. The new trial resulted in another jury verdict of guilt which the Fifth Circuit affirmed.

Party Represented

Mr. Larry Allen Myers

Nature of Participation in Case

I was court-appointed to represent Mr. Myers at trial and on appeal. In that capacity, I prepared and filed various pre-trial motions, undertook discovery, tried his case to a jury on three occasions, prepared and filed appellate briefs on two occasions, and argued his case on appeal on one occasion.

Final Disposition of Case

Following the second conviction, Mr. Myers was sentenced to ten years imprisonment. The conviction and sentence were affirmed by the Fifth Circuit, and the United States Supreme Court later denied certiorari review.

Dates of Representation

1975-1978

Name of Court/Judge

United States District Court,
Middle District of Florida, Tampa
Division
United States District Judge Ben
Krentzman (retired)

Name/Address/Phone Number of Co-Counsel and Counsel of Other PartyCo-Counsel

None

Counsel of Other Party

Mr. John L. Briggs
(I have been advised by a former
law partner of Mr. Briggs that he

is now in a nursing home in the Jacksonville, Florida area suffering from Alzheimer's disease.)

Mr. Terry Smiljanich
300 First Avenue South
Suite 500
St. Petersburg, Florida 33701
(813) 823-3837

3) Citation of Case

Johnson v. Farris, 469 So. 2d 221
(Fla. 2d DCA 1985)

Capsule Summary of Case

I filed a petition to modify the custody provisions of a final judgment of dissolution of marriage on behalf of the former husband in which he sought custody of his minor child. The trial judge dismissed the petition on the basis that he did not have jurisdiction under Florida's Uniform Child Custody Jurisdiction Act. This ruling was reversed on appeal, and the case was remanded for further proceedings. On remand, the case was settled by the parties with the former husband obtaining more extensive visitation rights.

Party Represented

Mr. Cecil E. Johnson

Nature of Participation in Case

I prepared and filed pleadings in the case, undertook research of the law, and argued the case before the trial judge. On appeal, I prepared and filed the briefs and argued before the appellate court. On remand, I represented the client in

successfully resolving the case without the need for any further litigation.

Final Disposition of Case

Following the appellate court's reversal and remand, the parties resolved the case. As I recall, the former husband was given more liberal visitation with his minor child.

Dates of Representation

1984-1985

Name of Court/Judge

Circuit Court of Thirteenth
Judicial Circuit of the State of
Florida
Circuit Judge Phillip L. Knowles
(retired)

Name/Address/Phone Numbers of Co-
Counsel and Counsel of Other Party

Co-Counsel

None

Counsel of Other Party

Mr. Stephen Carl Cheeseman
700 East Twiggs Street
Suite 105
Tampa, Florida 33602
(813) 223-4007

4) Citation of Case

Malone v. State, 390 So. 2d 338
(Fla. 1980), cert. denied, State v.
Malone, 450 U.S. 1034, 101 S. Ct.
1749, 68 L. Ed. 2d 231 (1981)

Capsule Summary of Case

Mr. Malone was indicted for and convicted of two counts of first-degree murder and one count of robbery. At trial, the state introduced into evidence incriminating statements made by Mr. Malone regarding his participation in the murders and robbery. These statements were made to a state informant who had been placed in a jail cell with Mr. Malone for the specific purpose of eliciting incriminating statements from Mr. Malone. A motion to suppress these statements was denied by the trial judge. Mr. Malone was eventually sentenced to death. The Florida Supreme Court held that the statements should have been suppressed. Concluding that the introduction into evidence of these statements was not harmless beyond a reasonable doubt, the Florida Supreme Court reversed Mr. Malone's convictions and sentences of death and remanded for a new trial. On remand, Mr. Malone pleaded guilty in return for concurrent life sentences.

Party Represented

Mr. Charles Willis Malone, Jr.

Nature of Participation

I was court-appointed to represent Mr. Malone at his first trial and after the case was reversed and remanded by the Florida Supreme Court. The Office of the Public Defender represented him on appeal. In connection with my representation of Mr. Malone, I prepared and filed extensive pre-trial motions, including the pivotal motion to suppress, undertook extensive research of the law and

pre-trial discovery, participated in numerous arguments before the trial judge in connection with pre-trial motions I filed, and tried the case to a jury. On remand, I helped negotiate a favorable plea agreement on behalf of Mr. Malone.

Final Disposition of Case

Following the Florida Supreme Court's reversal and remand for a new trial, Mr. Malone pleaded guilty to all charges in return for concurrent life sentences.

Dates of Representation

1978-1981

Name of Court/Judge

Circuit Court of Thirteenth
Judicial Circuit of the State of
Florida
Circuit Judge J. C. Cheatwood
(retired)

Name/Address/Phone Numbers of Co-Counsel and Counsel of Other Party

Co-Counsel

None

Counsel of Other Party

Mr. C. Thomas Davidson
100 North Tampa Street
Suite 2800
Tampa, Florida 33601
(813) 224-0866

5) Citation of Case

United States v. Conover, 772 F. 2d 765 (11th Cir. 1985), affirmed in part and remanded, Tanner v. United States, 483 U.S. 107, 107 S. Ct. 2739, 97 L. Ed. 2d 90 (1987),

opinion on remand, United States v. Conover, 845 F. 2d 266 (11th Cir. 1988)

Capsule Summary of Case

Mr. Conover and Mr. Tanner were indicted for conspiracy to defraud the United States and for multiple counts of mail fraud. The charges arose from the awarding of a road building contract to Mr. Tanner by Mr. Conover as chief of procurement for Seminole Electric Cooperative. This contract was one of many contracts let by Seminole Electric in connection with its construction of a power generating plant with funds loaned and guaranteed by the Rural Electrification Administration. The first trial lasted approximately two months and ended in a mistrial because the jury could not reach a unanimous verdict. The second trial lasted approximately six weeks and ended with jury verdicts of guilt.

On appeal, the United States Court of Appeals for the Eleventh Circuit affirmed the convictions. The United States Supreme Court accepted certiorari jurisdiction in the case. It then affirmed one of the points raised relating to juror misconduct but remanded to the Eleventh Circuit to reconsider the sufficiency of the evidence to sustain the convictions. On remand, the Eleventh Circuit determined that the evidence was insufficient and directed that the convictions be vacated.

Party Represented

Mr. William M. Conover

Nature of Participation in Case

I represented Mr. Conover at both of his trials and on direct appeal to the United States Court of Appeals for the Eleventh Circuit. Because I had become a judge when the case went to the United States Supreme Court, and then on remand to the Eleventh Circuit, Mr. John DeVault, III, assumed representation of Mr. Conover.

My participation in the case involved extensive research of the law, extended discovery, filing, preparing, and arguing numerous pre-trial and post-trial motions, and trying the case to two juries. I also assisted in the preparation of the briefs on the initial appeal to the Eleventh Circuit.

Final Disposition of Case

In United States v. Conover, 845 F. 2d 266 (11th Cir. 1988), the court vacated Mr. Conover's convictions.

Dates of Representation

1983-1986

Name of Court/Judge

United States District Court,
Middle District of Florida, Tampa
Division
United States District Judge Ben
Krentzman (retired)

Name/Address/Phone Numbers of Co-Counsel and Counsel o Other PartiesCo-Counsel

None

Counsel of Other Parties

Mr. David Best
 20 North Orange Avenue
 Orlando, Florida 32801
 (407) 425-2985

Mr. Stephen Millbrath
 255 South Orange Avenue
 Suite 1401
 Orlando, Florida 32802
 (407) 841-2330

Mr. John DeVault, III
 101 East Adams Street
 Jacksonville, Florida 32202
 (904) 353-0211

Mr. Terry Zitek
 Office of the United States
 Attorney
 500 Zack Street
 Tampa, Florida 33602
 (813) 274-6000

Mr. David Runyon
 100 2nd Avenue South
 St. Petersburg, Florida 33701
 (813) 892-6001

6) Citation of Case

United States v. Guillen-Linares,
 636 F. 2d 1054 (5th Cir. 1981),
appeal after remand, 643 F. 2d 1054
 (5th Cir. 1981)

Capsule Summary of Case

The defendants in this case were indicted for and convicted of conspiracy to possess marijuana with intent to distribute and possession of marijuana with intent to distribute. The evidence used to convict them was obtained from a boarding of their vessel in Tampa Bay by the United States Coast Guard at the request of United States Customs officers. The

central issue in the case was whether the boarding was reasonable under the Fourth Amendment to the United States Constitution. The United States Court of Appeals for the Fifth Circuit remanded the case to the trial judge for further findings. After compliance with this fact-finding mandate, the Fifth Circuit then reversed the defendants' conviction because it concluded that the boarding was accomplished without any reasonable suspicion of illicit activity. It concluded, therefore, that the trial judge should have granted the defendants' motion to suppress evidence.

Party Represented

Mr. Felix Valle

Nature of Participation in Case

I represented Mr. Valle both at trial and on appeal. I undertook research of the law and discovery, prepared, filed, and argued the motion to suppress before the trial judge, tried the case to a jury, prepared and filed appellate briefs, and orally argued the case to the Fifth Circuit.

Final Disposition of Case.

In United States v. Guillen-Linares, 643 F. 2d 1054 (5th Cir. 1981), the court reversed Mr. Valle's convictions.

Dates of Trial Periods

1978-1981

Names of Court/Judge

United States District Court,
Middle District of Florida, Tampa
Division
United States District Judge
William Terrell Hodges

Name/Address/Phone Numbers of Co-
Counsel and Counsel of Other
Parties

Co-Counsel

None

Counsel of Other Parties

Mr. Bennie Lazzara, Jr.
606 East Madison Street
Tampa, Florida 33602
(813) 229-2224

Mr. Anthony F. Gonzalez
701 North Franklin Street
Tampa, Florida 33602
(813) 224-0431

Mr. Joseph Ficarrota
600 East Madison Street
Tampa, Florida 33602
(813) 223-9788

Mr. George Cardet
330 S.W. 27th Avenue
Miami, Florida 33125
(305) 649-4400

Mr. Marvin Rudnick
35 South Raymond Avenue
Pasadena, California 91105
(818) 798-2514

7) Citation of Case

United States v. McLarty
(unreported)
(case number unavailable)

Capsule Summary of Case

Mr. McLarty, who is an attorney, was indicted for tampering with evidence in violation of 18 U.S.C. § 1512. The charges arose from his representation of various tax protesters in an ongoing grand jury investigation in Tampa, Florida, directed at violations of the federal income tax laws. He was acquitted by a jury.

Party Represented

Mr. Scott McLarty

Nature of Participation in Case

I was co-counsel with another attorney. My responsibilities included undertaking discovery, researching the law, preparing, filing, and arguing pre-trial motions, and participating in the actual trial of the case.

Final Disposition of Case

Mr. McLarty was acquitted by a jury.

Dates of Representation

1983

Names of Court/Judge

United States District Court,
Middle District of Florida, Tampa
Division
United States District Judge George
Carr (deceased)

Name/Address/Phone Numbers of Co-
Counsel and Counsel of Other Party

Co-Counsel

Mr. Edward Garland
3151 Maple Drive N.E.
Atlanta, Georgia 30305
(404) 262-2225

Counsel of Other Party

Ms. Karla Spaulding
4830 West Kennedy Boulevard
Tampa, Florida 33609
(813) 286-4100

8) Citation of Case

State of Florida v. Robinson, Case
Number 84-13740-A (unreported)

Capsule Summary of Case

Mr. Robinson was charged with aggravated battery in connection with a physical confrontation with another individual in which this individual sustained serious bodily injury. Mr. Robinson claimed he acted in self-defense and so testified to the jury. The jury acquitted him.

Party Represented

Mr. John Robinson

Nature of Participation in Case

My representation of Mr. Robinson required me to undertake extensive pre-trial discovery, including the taking of pre-trial depositions, research of the law, preparing, filing, and arguing relevant motions, interviewing defense witnesses, and trying the case to a jury.

Final Disposition of Case

Mr. Robinson was acquitted by a jury.

Dates of Representation

1984-1985

Names of Court/Judge

Circuit Court of Thirteenth
Judicial Circuit of the State of
Florida
Circuit Judge Harry Lee Coe, III
(retired) (current State Attorney
for Thirteenth Judicial Circuit)

Name/Address/Phone Numbers of Co-
Counsel and Counsel of Other Party

Co-Counsel

None

Counsel of Other Party

Mr. Michael LeBron
235 West 56th Street
Suite 25D
New York, New York 10019
(unpublished phone number)

9) Citation of Case

State v. Moore, 486 So. 2d 79 (Fla.
2d DCA 1986)

Capsule Summary of Case

Mr. Moore and Mr. Moorman were
indicted by a grand jury for
official misconduct. The trial
judge granted a motion to dismiss
the indictment because it
determined that the indictment was
tainted by the defendants'
compelled appearances before the
grand jury that indicted them. The

Second District Court of Appeal upheld the dismissal.

Party Represented

Mr. Joseph Moore

Nature of Participation in Case

I represented Mr. Moore in connection with his appearances before the grand jury. After his indictment, I undertook pre-trial discovery, including the taking of pre-trial depositions, engaged in research of the law, and prepared, filed, and argued pre-trial motions, including the critical motion to dismiss. I also represented Mr. Moore on appeal, which included more research of the law, the preparation and filing of appellate briefs, and oral argument before the Second District Court of Appeal.

Final Disposition of Case

In State v. Moore, 486 So. 2d 79 (Fla. 2d DCA 1986), the court affirmed the trial judge's dismissal of the indictment brought against Mr. Moore. He was never recharged.

Dates of Representation

1984-1986

Names of Court/Judge

Circuit Court of Sixth Judicial Circuit of the State of Florida
Circuit Judge Lawrence Keough
(retired)

Name/Address/Phone Numbers of Co-Counsel and Counsel of Other Parties

Co-Counsel

None

Counsel of Other Parties

Mr. Bennie Lazzara, Jr.
606 East Madison Street
Tampa, Florida 33602
(813) 229-2224

Mr. Richard Mensch
2001 80th Street North
St. Petersburg, Florida 33710
(813) 847-8158

Mr. Michael Halkitis
10036 Casey Drive
New Port Richey, Florida 34654
(813) 869-2401

10) Citation of Case

United States v. Fred Arthur
Anderson et al., Case Number 85-59-
Cr.-T-13 (NOTE: This case is
unreported as to my client because
he was acquitted. It is reported
as to convicted, appealing co-
defendants. See United States v.
Kotvas, 941 F. 2d 1141 (11th Cir.
1991), cert. denied, 506 U.S. 1055,
113 S. Ct. 982, 122 L. Ed. 2d 135
(1993).)

Capsule Summary of Case

My client in this case, Mr. Richard Guagliardo, was indicted for conspiracy to commit racketeering, racketeering, and mail fraud. His co-defendants were indicted for similar offenses, including extortion. All of the charges were based on acts of alleged public corruption before the Hillsborough County Board of County Commissioners. The essence of the charges was that the Board was a

criminal enterprise, and certain of its members, aided by non-members, were engaged in soliciting and accepting bribes in return for favorable votes on matters, particularly zoning matters, which came before the Board. Following a protracted, highly publicized case, Mr. Guagliardo and the majority of his co-defendants were acquitted.

Party Represented

Mr. Richard Guagliardo

Nature of Participation in Case

This case represented the most complex and time-consuming matter I ever undertook as a trial attorney. It required extensive pre-trial discovery, which included securing, compiling, cataloging, and reviewing in detail literally thousands of documents. The case also required extensive research of the law, followed by the preparation, filing, and arguing of numerous pre-trial motions. It also demanded intense preparation in terms of attempting to secure a fair and impartial jury, preparing and delivering an effective opening statement, preparing effective cross-examinations of numerous government witnesses, presenting a concise defense, and delivering a convincing final argument to the jury.

Final Disposition of Case

The jury acquitted Mr. Guagliardo of all charges.

Dates of Representation

1985-1986

Names of Court/Judge

United States District Court,
 Middle District of Florida, Tampa
 Division
 United States District Judge George
 Carr (deceased)

Name/Address/Phone Numbers of Co-
 Counsel and Counsel of Other
 PartiesCo-Counsel

None

Counsel of Other Parties

Mr. Michael Otis
 3841 West Kennedy Boulevard
 Tampa, Florida 33609
 (813) 872-2656

Mr. David Maney
 606 East Madison Street
 Tampa, Florida 33602
 (813) 228-7371

Mr. Robert Polli
 101 East Kennedy Boulevard
 Suite 3130
 Tampa, Florida 33602
 (813) 222-8350

Mr. Patrick Doherty
 619 Turner Street
 Clearwater, Florida 34616
 (813) 443-0405

Mr. Raymond Harris
 (no longer practices law; address
 and phone number unknown)

Mr. Claude Tison
 111 East Madison Street
 Suite 2300
 Tampa, Florida 33601
 (813) 273-4200

Mr. Lee Fugate
13630 58th Street North
Clearwater, Florida 34620
(813) 539-6536

Mr. Joseph Beeler
3050 Biscayne Boulevard
Suite 300
Miami, Florida 33137
(305) 576-3050

Ms. Julianne Holt
801 East Twiggs Street
Fifth Floor
Tampa, Florida 33602
(813) 272-5980

Mr. Thomas Hanlon
210 North Pierce Street
Tampa, Florida 33602
(813) 228-7095

Mr. Manual Lopez
801 East Twiggs Street
Fifth Floor
Tampa, Florida 33602
(813) 272-5980

Mr. Joseph Magri
7650 Courtney Campbell Causeway
Tampa, Florida 33607
(813) 281-9000

Mr. David Runyon
100 2nd Avenue South
St. Petersburg, Florida 33701
(813) 892-6001

Ms. Karla Spaulding
4830 West Kennedy Boulevard
Tampa, Florida 33609
(813) 286-4100

In that all of these cases are older than five years, I provide the following list of members of the legal community who have had recent contact with me in my capacity as a judge:

Mr. Frederick L. Bateman, Jr.
Bateman & Graham, P.A.
300 E. Park Avenue
Tallahassee, Florida 32301
(904) 224-2677

Mr. Thomas Gonzalez
Thompson, Sizemore & Gonzalez, P.A.
109 N. Brush Street-Suite 200
Tampa, Florida 33601-0639
(813) 273-0050

Ms. Arthenia Joyner
Stewart, Joyner, Jordan-Holmes &
Holmes, P.A.
1112 E. Kennedy Blvd.
Tampa, Florida 33602-0297
(813) 229-2300

Mr. Christopher Knopik
Yerrid, Knopik & Valenzuela, P.A.
101 East Kennedy Boulevard
Suite 2160
Tampa, Florida 33602-5150
(813) 222-8222

Mr. Thomas C. MacDonald, Jr.
Shackleford, Fariior, Stallings &
Evans, P.A.
501 East Kennedy Blvd.-Suite 1400
Tampa, Florida 33601-3324
(813) 273-5000

Ms. Kay J. McGucken
Kay J. McGucken, P.A.
1320 East Ninth Avenue
Suite 210
Tampa, Florida 33605-3616
(813) 248-3782

The Hon. Stevan Northcutt
Second District Court of
Appeal
Post Office Box 327
Lakeland, FL 33802-0327
(941) 499-2290

Mr. Hugh Smith
 Smith & Fuller, P.A.
 101 East Kennedy Blvd.-Suite 1800
 Tampa, Florida 33602-5148
 (813) 221-7171

Mr. Thomas Steele
 Fowler, White, Gillen, Boggs,
 Villareal & Banker, P.A.
 501 E. Kennedy Blvd.-Suite 1700
 Tampa, Florida 33602
 (813) 228-7411

Mr. Frank Strelec
 Williams, Parker, Harris, Dietz &
 Getzen, P.A.
 P.O. Box 3258
 Sarasota, Florida 34230-3258
 (941) 366-4800.

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.)

1. I represented Mr. Kenneth Mullins in State of Florida v. Mullins, Case Number 79-5025-D, Circuit Court of the Thirteenth Judicial Circuit of the State of Florida. Mr. Mullins, along with a co-defendant by the name of Mr. Brett Bachelor, was charged with first-degree murder and robbery of an older gentleman in the Hyde Park area of Tampa. The co-defendant was arrested immediately after the murder, went to trial, and was convicted of second-degree murder, after which he was sentenced to ten years in the Florida State Prison. This co-defendant always maintained his innocence.

Following the co-defendant's trial, my client was arrested, and I was immediately retained to represent his interests. After extensive pre-trial discovery, I was able to convince the State Attorney's office of Hillsborough County that both my client and the co-

defendant did not commit this crime. As a result, the charges against my client and the co-defendant were dismissed and the co-defendant was freed after spending approximately one year in prison.

A very interesting event just took place in this case several months ago. Another person allegedly confessed to committing this murder and has been indicted by the Hillsborough County grand jury for first-degree murder. To my knowledge, the case has not been disposed of.

The Assistant State Attorneys who handled these cases for the State of Florida were Mr. Thomas Fox, 401 East Kennedy Boulevard, Tampa, Florida, 33602, (813) 228-9819; now Circuit Judge Robert Sims, Hillsborough County Courthouse Annex, Room 122, Tampa, Florida, 33602, (813) 272-6874; and now County Judge Walter Heinrich, Hillsborough County Courthouse Annex, Room 123 (813) 272-6841. The Assistant State Attorney who is handling the case against the recently-charged individual is Ms. Karen Cox, Hillsborough County Courthouse Annex, 800 East Kennedy Boulevard, Fifth Floor, Tampa, Florida, 33602, (813) 272-5400.

2. I represented the dean of students of a local high school who was charged with committing a sexual offense on a young boy who was his "little brother" in the "Big Brother-Little Brother" program. He was immediately suspended from his position by the Hillsborough County School Board. Quite naturally, the case was the subject of extensive publicity.

My client was adamant that he was innocent of the charge. The child had made a similar accusation against another individual which proved to be unfounded. Accordingly, I immediately undertook an extensive preindictment investigation to establish his innocence including the taking of numerous sworn statements from relevant witnesses. The case was presented to the Hillsborough County grand jury for its determination of

whether there was probable cause to return an indictment against my client. The State Attorney's office of Hillsborough County presented certain evidence that I had uncovered to the grand jury for its consideration. Additionally, my client, without a grant of immunity, testified before the grand jury. The grand jury declined to indict my client and the charge against him was dismissed. He was later reinstated to his position by the school board and awarded all of his back pay.

I later had the court file sealed pursuant to Florida law so I cannot furnish a case number. I do recall, however, that Mr. Lee Atkinson, 2655 McCormick Drive, Clearwater, Florida, 34617, (813) 799-2882, was one of the assistant state attorneys assigned to the case.

3. I represented Mr. Allan Brown in the case of Independent Bank of Tampa v. Brown, Case Number 82-8533-H, Circuit Court of the Thirteenth Judicial Circuit of the State of Florida. Mr. Brown had been taken into custody pursuant to a Writ of Ne Exeat. The facts of the case were unique in that the client was alleged to be in default as to an unsecured bank loan in the principal sum of approximately \$100,000. After I obtained the release of my client from jail, I counterclaimed against the bank for malicious prosecution, false imprisonment, and abuse of process. The basis of these claims was that the bank had misused the Writ of Ne Exeat and their actions in that regard amounted to nothing more than having my client imprisoned for owing a simple debt which is contrary to Article 1, Section 11 of the Florida Constitution. After negotiations with the bank, it dismissed its claim against my client and forgave the \$100,000 debt. In return, my client dismissed his claims against the bank for the sum of \$1.

The attorney for the bank was Mr. Samuel Mandelbaum, 712 South Oregon Avenue, Tampa, Florida 33606, (813) 222-7500.

4. I am frequently called upon to lecture at continuing legal education seminars. Over the past several years I have lectured at educational events sponsored by The Florida Bar, the Hillsborough County Bar Association, the Young Lawyers Section of the Hillsborough County Bar Association, the Hillsborough County Criminal Defense Lawyers Association, the Pinellas County Criminal Defense Lawyers Association, the St. Petersburg Bar Association, the Academy of Florida Trial Lawyers, Stetson University College of Law, The American Judicature Society, the Defense Research and Trial Lawyers Association, the Judicial Assistants Association of Florida, and the Second District Court of Appeal. I have also judged "Moot Court" competitions for Stetson University College of Law. Finally, I have also participated in community relations forums sponsored by the University of South Florida and the City of Tampa and have spoken to elementary, high school, and college students about the role of the judiciary in our society.

5. Finally, I would like to emphasize another aspect of my background which I believe reflects favorably on my candidacy for United States District Judge. Since May of 1992, Senators Connie Mack and Bob Graham have impanelled Federal Judicial Nominating Commissions to consider the qualifications of applicants for vacancies on the United States District Court, Middle District of Florida. I am honored to have been the only applicant recommended by each of the Commissions to Senators Mack and Graham as being qualified to be a United States District Judge.

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.

Only two categories of this question apply to me--deferred income arrangements and retirement benefits.

Deferred Income Arrangement

Beginning in July of 1987, after becoming a state-court judge, I have deferred \$100 per month from my state salary under the State of Florida Deferred Compensation Plan administered by Security First Life Insurance Company. According to the latest account statement issued September 30, 1996, the annuity value is \$14,983.86, the lump sum retirement value is \$14,691.29, the lump sum termination value is \$14,656.33, and the lump sum transfer value is \$14,656.33. Withdrawal from the Plan is limited to the following circumstances: retirement, termination of employment, total and permanent disability lasting at least six months, death, or unforeseeable emergency. Assuming I am confirmed as a United States District Judge, I would have the option of obtaining this money under the category of "termination of employment." I have not yet decided whether I would pursue that option or leave the money in the account until I retire.

Retirement Benefits

Since becoming a state-court judge in January of 1987, I have been a member of the Elected State and County Officers' Class of the Florida Retirement System. Retirement contributions to the system are made solely by the state of Florida on behalf of members of the class based on a certain percentage of

a class member's monthly salary. Vesting for retirement benefits occurs after 8 years of continuous service, a requirement I have fulfilled. Assuming I am confirmed as a United States District Judge, I would have two options--take early retirement and receive reduced benefits or wait until age 62 to start drawing retirement at a higher rate. I have not yet decided which option to pursue.

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.

As a state-court judge, I have adhered to a basic philosophy--always avoid even the appearance of impropriety. I will continue to adhere to this philosophy if I become a United States District Judge. That is, once I become personally aware of a potential conflict of interest, either on my own or through any source, I will immediately bring it to the attention of all parties and, if the conflict is of such a nature that my continued involvement in the case manifests even the appearance of impropriety, I will recuse myself from the case.

I know of no specific category of litigation that may present a conflict of interest. As to financial arrangements, I do have a partnership interest with other attorneys in a law office building. However, since becoming a state judge, I have always recused myself from presiding over cases in which these attorneys were involved. I will continue to follow this practice if I am ultimately confirmed as a United States District Judge.

Additionally, I have several relatives who practice law in Tampa, Florida. Once again, since becoming a state judge, I have always recused myself from presiding over cases in which these attorneys are involved. I will

continue this practice if ultimately confirmed as a United States District Judge.

Finally, I will adhere strictly to the standards imposed by the Codes of Conduct for United States Judges and other rules of the Judicial Conference of the United States, as well as all statutory provisions, governing disqualification or recusal.

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, requested by the Ethics in Government Act of 1978, may be substituted here.)

See attached form AO-10 which immediately follows this part.

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

See attached financial net worth statement which immediately follows this part.

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. 7/96FINANCIAL DISCLOSURE REPORT
NOMINATIONReport Required by the Ethics
Revisions Act of 1989, Pub. Law
101-194, November 30, 1989
(5 U.S.C. App. 6, 101-112)

1. Person Reporting (Last name, first, middle initial) LAZZARA, RICHARD A.	2. Court or Organization U.S.D.C. Florida	3. Date of Report 01/07/97
4. Title (Article III judges indicate active or senior status. Magistrate judges indicate full- or part-time) U.S. District Court Judge	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <u>01/7/97</u> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period 01/01/95 - 01/01/97
7. Chambers or Office Address 801 E. Twiggs Street, #600 Tampa, FL 33602	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
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. 9-13 of Instructions.)

<input type="checkbox"/> POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions)	

Custodian _____ Damon Lazzara-Florida Gift to Minor's Act

Trustee _____ Damon Lazzara Trust

II. AGREEMENTS. (Reporting individual only; see pp. 14-17 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements)	

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		

1	<u>1995</u> <u>State of Florida-Judicial Salary</u>	\$ <u>104382.00</u>
2	<u>1996</u> <u>State of Florida-Judicial Salary</u>	\$ <u>110627.00</u>
3	<u>1995-96</u> <u>University of South Florida (S)</u>	\$ <u>0.00</u>
4	_____	\$ _____
5	_____	\$ _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting LAZZARA, RICHARD A.	Date of Report 01/07/97
---	----------------------------

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. 26-29 of Instructions.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>
<input type="checkbox"/>	NONE (No such reportable reimbursements or gifts)	
1	Exempt	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. 30-33 of Instructions.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<input type="checkbox"/>	NONE (No such reportable gifts)		
1	Exempt	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. 34-36 of Instructions.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE*</u>
<input type="checkbox"/>	NONE (No reportable liabilities)		
1	Barnett Bank of Florida	Mortgage on law office in Tampa, FL	0
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, N = \$250,001 - \$500,000, O = \$500,001 - \$1,000,000, P = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting LAZZARA, RICHARD A.	Date of Report 01/07/97
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VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets (Including trust assets) Indicate where applicable, owner of the asset by using the parenthetical (S), (J), or (DC) ownership of reporting individual and spouse (if separate ownership by spouse, (DC) for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.	B.	C. Income during reporting period		D. Gross value at end of reporting period		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 2 Code (J-P)	Value Method 3 Code (G-U)	(1) Type (e.g., buy, sell, merger, redemption)	(2) Date-Month-Day	(3) Value 2 Code (J-P)	(4) Gain 1 Code (A-U)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)										
1 L.D.C., Inc. stock (closed family corp.) appraisal 9/30/95	D	Interest	L	Q	Exempt					
2 L.B.Q.P., Inc. stock (closed family corp.) appraisal 9/30/95	B	Interest	L	Q	Exempt					
3 Plaza Equipment Co. stock (closed family corp.)		None	L	U	Exempt					
4 Lazzara Family Partnership (closed family partnership)	D	Rent	N	U	Exempt					
5 Law office building (recertified appraisal 7/23/90)		None	P	Q	Exempt					
6 Security First Life (def. comp plan) Tallahassee, FL	A	Interest	J	T	Exempt					
7 Nationsbank (IRA), Tampa, FL	A	Interest	J	T	Exempt					
8 PanAmerican Life (IRA) New Orleans, LA	A	Interest	J	T	Exempt					
9 Nationsbank (IRA) (S) Tampa, FL	A	Interest	J	T	Exempt					
10 PanAmerican Life (IRA) (S), New Orleans, LA	A	Interest	J	T	Exempt					
11 TIAA-CREF (retirement annuity) (S) New York, N.Y.	A	Interest	J	T	Exempt					
12 Suncoast Schools Credit Union (J), Tampa, FL	A	Interest	J	T	Exempt					
13 Univ. of South FL Credit Union (J), Tampa, FL	A	Interest	J	T	Exempt					
14 Southern Company common stock (DC), Atlanta, GA	C	Dividend	L	T	Exempt					
15 Suncoast Schools Credit Union (DC), Tampa, FL	C	Interest	K	T	Exempt					
16										
17										
18										
1 Income/Gain Codes: (See Col. B1 & D4)	A=\$1,000 or Less 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: (See Col. C1 & D3)	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

Name of Person Reporting	Date of Report
LAZZARA, RICHARD A.	01/07/97

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

None

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting LAZZARA, RICHARD A.

Date of Report 01/07/97

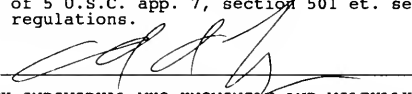
IX. CERTIFICATION.

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. app. 7, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date January 7, 1997

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. APP. 6, SECTION 104).

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

Lazzara Family Partnership	289,	000	00				
TIAA (Annuity)	8,	750	00	Total Liabilities	204,	400	00
Total assets	897,	900	00	Net Worth	693,	500	00
				Total liabilities and net worth	897,	900	
Contingent Liabilities			00	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				

REAL ESTATE OWNED/REAL ESTATE MORTGAGES OWED

1)	<u>RESIDENCE</u>	
	Fair market value	\$198,000
	First Mortgage due Barnett Bank of Tampa	121,100
	Home Equity Loan due Barnett Bank of Jacksonville	10,900
2)	<u>OFFICE BUILDING</u> (1/12 interest)	
	fair market value of interest	\$ 91,200
	liability on mortgage due Barnett Bank of Tampa based on interest	71,800

UNLISTED SECURITIES

1)	L. O. C., Inc. (Closed family corporation)	\$ 58,000
	Lazzara Bulk Oil and Packaging, Inc. (Closed family corporation)	58,000
2)	Plaza Equipment Company (Closed family corporation)	65,550

NOTE

I am currently the Trustee for my son Damon's trust (he is 19 years of age). The trust has \$5,580 in a money market account at the Suncoast Schools Federal Credit Union and \$35,275 in a certificate of deposit at the same institution. I also hold shares of stock in The Southern Company for my son under the Florida Gift to Minors Act. The current fair market value of the stock is \$51,085. I am also the beneficiary of two life insurance policies on my son's life with Metropolitan Life and Nationwide Mutual. The cash value of the Metropolitan policy is \$8,700. The cash value of the Nationwide policy is \$1,600. All of these assets were derived from gifts made to my son over the years by my parents. I am simply managing them for his benefit until such time as he is financially mature enough to manage them himself. Finally, my son has no debts.

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 (average monthly balance)	13,	000	00	Notes payable to banks (secured)			00
U.S. Gov't securities--add schedule			00	Notes payable to banks (unsecured)			00
Listed securities--add schedule	181,	550	00	Notes payable to relatives			00
Accounts and notes receivable			00	Accounts and bills due-credit cards		600	00
Due from friend or relative			00	Unpaid income tax			00
Due from others			00	Other unpaid tax and interest			00
Doubtful			00	Real estate mortgage payable-add schedule	203,	800	00
Real estate owned-add schedule	289,	200	00	Chattel mortgages and other liens payable			00
Real estate mortgages receivable			00	Other debts-itemize			00
Autos and other personal property	45,	000	00				
Cash value life insurance	11,	500	00				
Other assets-itemize-- IRAs	45,	000	00				
Security Life-(Deferred Comp. Plan)	14,	900	00				

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.

Both as a lawyer and judge, I have participated in various activities designed to educate the community about the legal profession and the judicial system. Such activities have included service on Law Day committees, speaking to members of civic clubs and organizations, speaking to students in a classroom setting, and serving on community discussion panels. Furthermore, although I never belonged to any organization which provided pro bono legal work during my years as a practicing attorney, I would from time to time take cases for a minimal fee. Additionally, I was on the court-appointed list of attorneys in both the federal and state systems. When selected from this list, I would provide legal representation to indigent criminal defendants for a reduced fee.

2. The American Bar Associates 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 have never belonged to any organization that discriminates on the basis of race, sex or religion.

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 all circumstances which led to your nomination and interviews in which you participated).

Senator Bob Graham has impanelled a Federal Judicial Nominating Commission to recommend candidates to him for nomination to the United States District Courts located in the State of Florida. This commission recommended me to Senator Graham for nomination to the United States District Court, Middle District of Florida.

In connection with this process, I was required to fill out and submit to each commission member a detailed questionnaire designed to elicit much the same information that is asked for in this questionnaire. After that, I was invited to be personally interviewed by the commission members who reside within the Middle District. During the course of the interview, which lasted approximately thirty minutes and was open to the public, the commission members asked me in-depth and far-ranging questions designed to determine my qualifications to be a United States District Judge. My name, along with the names of two other well-qualified individuals, was then submitted to Senator Graham.

Senator Graham then conducted personal interviews of all three of the finalists, after which he submitted his recommendation to President Clinton that I be nominated for this federal judgeship.

Following Senator Graham's recommendation to the President, I completed and submitted comprehensive background forms to the Department of Justice, the American Bar Association, and the Federal Bureau of Investigation. I was then interviewed by representatives of the Department of Justice, the ABA, and the FBI and was the subject of extensive background checks by all three of these entities.

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 state court judge for the past nine years, I am keenly aware of the criticism levied against not just federal judges but also state judges regarding their tendency to engage in "judicial activism" and to usurp functions which, under the constitutional doctrine of the separation of powers, are the exclusive prerogatives of the executive and legislative branches of government.

In my view, a judge's resolution of a case, whether in the federal or state system, must be accomplished in strict accord with the relevant statutory provision that confers jurisdiction to act in the case. Accordingly, in resolving a case, a judge must first determine whether jurisdiction has been conferred by the legislature and whether it has been properly invoked by the parties. If jurisdiction or standing is lacking, the judge is then obligated to terminate the litigation because it is a fundamental principle of our jurisprudence that without jurisdiction conferred by law, a judge has absolutely no authority to act.

Once a judge has determined that jurisdiction has been legislatively conferred, it is equally important that the judge, during the dispute-resolution process, exercise that jurisdictional authority in strict accord with the legislative will embodied in the statutory provision at issue. I am a firm believer in the fundamental precepts that legislative intent is the polestar by which a judge must be guided in interpreting and applying a statutory provision and that such intent, as gleaned from a statute, is the law which must be followed.

I also adhere to the basic proposition that where the legislature has clearly manifested its intent through plain and unambiguous language, any further judicial construction is not only inappropriate but unwarranted. In my view, a judge who does not strictly adhere to this fundamental principle becomes in effect a "legislator" and risks expanding the reach of a statute far beyond what the legislature intended, to the detriment of the

cornerstone of our system of constitutional government, the doctrine of the separation of powers.

I. BIOGRAPHICAL INFORMATION

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

A. Richard Caputo*

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

Office: 387 Wyoming Avenue, P.O. Box 2059, Kingston,
PA, 18704-2059

3. Date and place of birth.

May 22, 1938, Portchester, 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 the former Rosemary Shea. She is 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.

Brown University, 1956-1960, A.B. Degree 1960
University of Pennsylvania Law School, 1960-1963,
LL.B. Degree 1963

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.

* My first name is Albert. Because my father's name was the same, I have been called Richard since childhood, and have never used my first name, with the exception of military service where personnel forms called for the use of one's first name.

A. Richard Caputo

1960-1963 Summers: Worked as a truck driver/laborer for R. J. Rich Construction Company, a residential developer in the town of Rye, New York. The firm is no longer in business.

August 1963-September 1964: Clerked in the law office of Charles A. Shea, Jr., Esquire, 626 First Eastern Bank Building, Wilkes-Barre, PA, 18701. I did research, drafted pleadings, briefs and memoranda.

September 1964-September 1967: Served in the United States Air Force (JAG), Plattsburgh AFB, New York. I performed as both trial and defense counsel in courts-martial, as counsel in administrative elimination board hearings and as a claims officer.

January-September 1968: Served as a public defender for Luzerne County, Pennsylvania. I represented indigent defendants in criminal cases.

September 1968-Present: Principal in Shea, Shea & Caputo, 626 First Eastern Bank Building, Wilkes-Barre, PA, 18701 (1968-1982); 310 Bicentennial Building, Wilkes-Barre, PA, 18701 (1982-October, 1994); 387 Wyoming Avenue, Kingston, PA, 18704 (November, 1994-Present). I have been engaged in the general practice of law with emphasis on construction and commercial litigation and multiemployer pension plan law.

1973-1992: Secretary and Director of Stegmaier Brewing Company, Wilkes-Barre, Pennsylvania

1980-Present: Assistant Secretary, McCarthy Enterprises, Inc., Kingston, Pennsylvania

1985-Present: Partner in Druid Associates, an investment partnership, which owns an interest in an apartment building in Mamaroneck, New York (Carolyn Court), and an interest in an apartment building in Fleetwood, New York (William Street). I am a twenty-five (25%) percent partner in Druid Associates.

1985-Present: Assistant Secretary of Bronsberg & Hughes Pontiac, Inc., d/b/a Wyoming Valley Motors, Larksville, Pennsylvania

1986-Present: Partner in Alafaya Associates, an investment partnership, which owns an interest in an apartment building in Fleetwood, New York (William Street). I am a sixteen and two-thirds (16 2/3%) percent partner in Alafaya Associates.

A. Richard Caputo

1988-1992: Director of Unifax, Inc. (now US Foodservice, Inc.),
Wilkes-Barre, Pennsylvania

1990-Present: Assistant Secretary of Middle Road Development
Corp., Kingston, Pennsylvania

1990-Present: Assistant Secretary of Magicorp, Inc.,
Kingston, Pennsylvania

1990-Present: Assistant Secretary of Plainco, Inc.,
Kingston, Pennsylvania

1990-Present: Assistant Secretary of Forsuns, Ltd.,
Kingston, Pennsylvania

1990-Present: Assistant Secretary of Robbins Door & Sash
Company, Kingston, Pennsylvania

1991-Present: Director and Vice-President of Maplemoor,
Inc., Lehman, Pennsylvania

1994-Present: Director and Secretary/Treasurer of The
Luzerne Foundation, a community foundation,
Wilkes-Barre, Pennsylvania

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.

September 2, 1964, through September 1, 1967, U.S. Air Force (JAG) - First Lieutenant, promoted to Captain March 2, 1966
Inactive Reserve from September 2, 1967 through September 27, 1973

Serial Number: FV 3106149

Honorably Discharged September 27, 1973

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

Pennsylvania Bar Association

A. Richard Caputo

Federal Bar Association
 Luzerne County Law & Library Association (Luzerne County
 Bar Association)
 Member, Committee on Unauthorized Practice
 Member, Committee on Continuing Legal Education
 Member, Third Circuit Judicial Conference

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:

Except for the American Bar Association, I am not aware that I belong to any organization which is active in lobbying before public bodies.

Other organizations to which I belong:

Huntsville Golf Club - Bylaws attached as Exhibit "1"
 The Luzerne Foundation
 Westmoreland Club - Bylaws attached as Exhibit "2"
 Wyoming Valley Country Club - Bylaws attached as Exhibit "3"

11. Court Admissions: 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 the Commonwealth of Pennsylvania,
 April 27, 1964
 Luzerne County Court, February 27, 1964
 United States District Court for the Middle District of
 Pennsylvania, October 26, 1967
 United States District Court for the Eastern District of
 Pennsylvania, April 4, 1996
 United States Court of Appeals for the Third Circuit,
 March 19, 1970

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.

A. Richard Caputo

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

On October 16, 1993, I suffered a heart attack. On October 25, 1993, I had coronary artery bypass surgery which involved three (3) grafts. I was hospitalized at Wilkes-Barre General Hospital, Wilkes-Barre, Pennsylvania from October 16, 1993, to November 1, 1993. I began to work in January, 1994, on a part-time basis and resumed full-time practice in April, 1994. I have recovered and function as well as before the episode and surgery.

Since October, 1993, examinations are ongoing every three (3) to five (5) months.

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.

1968-1974 - Member of Fairview Township Zoning Commission Appointed by the Board of Supervisors of Fairview Township. This was a non-paying position. I have never run for public office.

17. Legal Career:

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

A. Richard Caputo

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, name 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;

August 1963-September 1964: Charles A. Shea, Jr., Esquire 626 First Eastern Bank Bldg., Wilkes-Barre, Pennsylvania, 18701; research, drafting pleadings, briefs and memoranda.

September 1964-September 1967: U.S. Air Force (JAG), Plattsburgh AFB, New York; trial and defense counsel.

January-September 1968: Public Defender for Luzerne County; represented indigent defendants in criminal cases.

September 1967-present: Shea, Shea & Caputo, 626 First Eastern Bank Building, Wilkes-Barre, PA, 18701 until 1982; 310 Bicentennial Building, Wilkes-Barre, PA, 18701 until October, 1994; and, 387 Wyoming Avenue, Kingston, PA, 18704 from October, 1994 to present, office principal; general practice with emphasis on construction and commercial litigation and multiemployer pension plan 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?

1963-4: Research, drafting of briefs, memoranda and pleadings in civil matters

1964-7: Trial and defense counsel in six (6) General Courts-martial (criminal), ten (10) Special Courts-martial (criminal), and in excess of 20 Administrative Elimination Review Hearings (civil)

1967-9: Criminal trials, extensive work on numerous federal actions for collection of pension contributions, research, memoranda, briefs, pleadings and motions

1970-present: General practice, litigation and arbitration, multiemployer pension plan law, construction law

A. Richard Caputo

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

Clients:

A multiemployer pension plan; several contractors; numerous small businesses; and numerous individuals and families from all walks of life.

Specialization:

General practice with emphasis on commercial litigation; construction contract disputes; federal law relating to multiemployer pension plans.

- 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.

For the past fifteen (15) years, I have appeared in court six (6) to ten (10) times annually. From 1967 to 1980, I appeared in court more frequently, viz twelve (12) to eighteen (18) times annually.

2. What percentage of these appearances was in:

(a) federal courts;	70%
(b) state courts of record;	30%
(c) other courts.	N/A

3. What percentage of your litigation was:

(a) civil;	99%
(b) criminal.	1%

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 thirty-six (36). I approximate because as a public defender I cannot recall the exact number. I know I had at least ten (10) jury trials and ten (10) non-jury trials. Therefore, I am certain of at least sixteen (16) trials to verdict or judgment. In all but two (2), I was sole or chief counsel.

A. Richard Caputo

5. What percentage of these trials was:

- | | |
|---------------|-------|
| (a) jury; | 52.8% |
| (b) non-jury. | 47.2% |

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. Lakeland School District Authority and Lakeland School District v. The Sutter Corporation; Albert A. Miller, t/a Phoenix Roofing and Supply Company and Albert Miller, individually; Celotex Corporation; Bellante Clauss & Partners and Joseph Bianca, Jr., Civil Action No. 190 September Term 1979 (Lackawanna County Court of Common Pleas).

In this case, I represented defendant, The Sutter Corporation, a general contractor who contracted with plaintiffs to build a new high school according to the plans and specifications of the defendant architects, Bellante Clauss & Partners and Joseph Bianca, Jr. Sutter entered into a contract with defendant, Albert A. Miller t/a Phoenix Roofing, to install the roof and defendant, Albert A. Miller t/a Phoenix Roofing, purchased the roofing products from defendant, Celotex Corporation.

The school was constructed by Sutter, the Celotex built-up roof installed by Miller, t/a Phoenix Roofing, and shortly thereafter, and while students were in attendance, the roof began to leak profusely. Ultimately, the roof failed, and it was replaced by the plaintiffs with a rubber roof at a cost some seven (7) times the amount of Sutter's agreement with Miller, t/a Phoenix Roofing.

A. Richard Caputo

Action was instituted against the defendants on the theories of breach of warranty and negligence. Defendant, Bianca, settled immediately and secured a joint tortfeasor release. All other defendants answered and cross claimed against each other.

The case was tried before a jury. The trial lasted three (3) weeks, at the end of which the jury returned a verdict in excess of \$900,000.00 against Sutter (34%) Miller, t/a Phoenix Roofing (33%), Celotex (32%) and Bianca (1%).

After an appeal was filed, the case was settled.

My involvement was as sole counsel for defendant, Sutter. The trial preparation was extensive and involved four (4) experts on built-up roofing. My preparation for their cross examinations involved educating myself about a myriad of technical data concerning built-up roofing and the careful review of the reports of the experts. The other preparation related to the engineering involved in the parapet wall design and the connections of the structural steel at the top of the building.

(a) 1982.

(b) The Honorable John J. Cottone
Judge of the Court of Common Pleas of Lackawanna County

(c) Counsel for defendant, Miller, t/a Phoenix Roofing
Company

James E. O'Brien, Sr., Esquire (deceased)
Kennedy, O'Brien, McCormack & Mulcahey
Suite 700 Scranton Life Building
538 Spruce Street
Scranton, PA 18503-1808
(717) 342-0151

Counsel for defendant, Celotex Corporation

Christopher K. Walters, Esquire
Reed Smith Shaw & McClay
2500 One Liberty Place
Philadelphia, PA 19103-7301
(215) 851-8100

A. Richard Caputo

Counsel for defendant, Joseph Bianca, Jr.

James M. Howley, Esquire
Scanlon, Howley, Scanlon & Doherty
321 Spruce Street
Scranton, PA 18503
(717) 946-7651

Opposing Counsel: James A. Kelly, Esquire
1500 South Webster Avenue
Scranton, PA 18501
(717) 346-1735

John Krisa, Esquire
Krisa, McDonough & Cosgrove
Route 6
Blakely, PA 18447
(717) 383-3205

2. Emmett Thomas, Nicholas J. Haydock and John D. Jillson, Trustees of the Anthracite Health and Welfare Fund v. Blue Coal Corporation, Civil Action No. 71-46 (M.D.Pa.), 355 F.Supp. 510 (M.D.Pa.), *aff'd by judgment order sub nom., Savitsky v. Blue Coal Corp.*, 485 F.2d 681 (3d Cir. 1973).

This was a case in which my client, the plaintiffs, Trustees of the Anthracite Health and Welfare Fund, a multiemployer pension fund, brought suit against the defendant, Blue Coal Corporation, to recover contributions alleged to be due the plaintiffs. Defendant was obligated to make pension contributions to the plaintiffs on the basis of anthracite (coal) it "produced for use or for sale."

Defendant had purchased discolored anthracite from a third party which was not a party to the collective bargaining agreement which required parties such as the defendant to contribute a per ton royalty contribution to plaintiffs on anthracite the party "produced for use or for sale." The discolored coal had been processed through the third party's preparation plant and was saleable as coal, but because of its color, it would not bring the price of non-discolored coal. After defendant purchased the coal, it ran it through its processing plant with its raw coal, and as a result, blended it with a non-discolored product thereby reducing its notoriety. The defendant did not pay plaintiffs a royalty on the quantity of purchased discolored coal although it did pay on the finished coal with which it was blended in the process mentioned above. Plaintiffs brought an action seeking the royalty contributions on the discolored coal on the theory it had been produced for use or sale by the defendant.

A. Richard Caputo

The case was tried before a judge without a jury, and the court determined that plaintiffs were not entitled to recover because the subject coal had already been "produced for use or for sale" before it arrived at defendant's plant. The court said subsequent processing was irrelevant. I was sole counsel for plaintiffs.

The case was appealed, and the decision was affirmed without opinion.

This case is significant in that it set a precedent in the anthracite industry with respect to the point at which "production for use or sale" occurs and hence when more importantly in cases such as this, whether a contribution is due.

(a) 1972.

(b) The Honorable Malcolm Muir
Judge of the United States District Court for the
Middle District of Pennsylvania

(c) Opposing Counsel: James E. O'Brien, Sr., Esquire
(deceased)
Kennedy, O'Brien, McCormack &
Mulcahey
Suite 700 Scranton Life Building
538 Spruce Street
Scranton, PA 18503-1808
(717) 342-0151

3. H. Eugene Wagner v. Corey E. Wagner, et al., Civil No. 27 of 1972 (Luzerne County Court of Common Pleas); No. 611 of 1974 (Supreme Court of Pennsylvania, Eastern District); 466 Pa. 532, 353 A.2d 819 (1976).

This was a suit by a father against his children to establish his claim to ownership of the stock of a corporation. He had, through his attorney, formed a corporation which bought a piece of real estate, its sole asset, and subsequently informed his children that he was making a gift of the corporation to them. He instructed his attorney to issue the stock certificates to the children. This was never done in completed fashion, and a year later, the father brought the suit and the children defended on the basis that the complete gift had been made. I represented the children and the case was tried in the Luzerne County Court of Common Pleas in equity before The Honorable Bernard J. Brominski, P.J. Judge Brominski found for my clients, the Defendants. The Court en Banc overruled the Plaintiff's exceptions. On appeal, the Pennsylvania Supreme Court affirmed. The decision is reported in 466 Pa. 532, 353 A.2d 819 (1976).

A. Richard Caputo

This case is significant because it presented the difficult problems of having to represent children who were being sued by a parent. These children were people who had, throughout their childhood, and most of their adult lives, been extremely close to their father. The series of cases involved in the complete scenario were the domestic breakup of the mother and father; the dissolution of the family construction business; the upsetting of liens of the Small Business Administration wrongfully extended by the father to the assets of the family business as well as the corporation, the subject of the foregoing suit; the accounting by the father of the business of the family partnership (construction business); and proceedings before the United States Tax Court. The emotional problems occasioned by such litigation were, of course, delicate. The handling of legal problems with the undercurrent of family disharmony was significant in my development as a lawyer.

(a) 1972-4.

(b) The Honorable Bernard J. Brominski (Trial Judge)
 The Honorable Richard L. Bigelow (deceased)
 The Honorable Robert J. Hourigan (deceased)
 The Honorable Peter P. Olszewski (now a Judge of the
 Superior Court of Pennsylvania)
 The Honorable Bernard J. Podcasy
 The Honorable Arthur D. Dalessandro
 Luzerne County Court of Common Pleas en Banc
 and Supreme Court of Pennsylvania, Eastern District

(c) Opposing Counsel: William J. Taylor, Esquire
 Taylor & Taylor
 Suite 811
 Ten Penn Center Plaza
 1801 Market Street
 Philadelphia, PA 19103
 (215) 568-2644

Lawrence I. Washor, Esquire
 address unknown

4. Commonwealth of Pennsylvania v. Gregory Reap, No. 675 of 1984, No. 676 of 1984 (Luzerne County Court of Common Pleas).

In this case, I represented a twenty-two (22) year old defendant accused of aggravated assault and battery and simple assault. The facts of the case are typical. Four (4) young men were out drinking at a local singles bar. When they spoke to two (2) young women, who they thought were unescorted, their spouses suddenly appeared. Words ensued and all parties were asked to leave. The controversy continued in the parking lot and onto the highway, where threats and challenges resulted in the vehicles

A. Richard Caputo

stopping and a physical confrontation taking place. The defendant and his three (3) male friends were pitted against the two (2) husbands, each of whom was bigger and stronger than the defendant and his friends. The defendant said that in order to protect one (1) of his friends, he hit one (1) husband on the head with a rock. This resulted in a serious head wound and other injuries. The other husband was beaten about the head and face with fists. The defendant and his friends suffered minor injuries.

The defendant and two (2) of his friends were tried before a jury and convicted after four (4) days of trial. An unsuccessful appeal followed, and the defendant, who had no prior record, was sentenced to ten (10) years probation and ordered to pay restitution.

I acted as chief trial counsel and prepared all defense witnesses. I also prepared the cross examinations of the prosecution witnesses, which involved the review of extensive prior testimony.

- (a) 1985.
- (b) The Honorable Arthur D. Dalessandro
Judge of the Court of Common Pleas of Luzerne County
- (c) Co-Counsel: Cynthia A. Smith, Esquire (now by
marriage Cynthia A. Muroski, Esquire)
Shea, Shea & Caputo
387 Wyoming Avenue
P.O. Box 2059
Kingston, PA 18704
(717) 288-5020

Opposing Counsel: Joseph G. Albert, Esquire
Albert, Dingle, Russin,
Sklarosky, Sieminski & Kamage
1575 Wyoming Avenue
Forty Fort, PA 18704
(717) 283-1200

5. Leo R. Corgan v. Kingston Metal Specialties Co., William Dickson, Jr., Robert Oeller and Jeff Dickson, Civil Action No. 352-C of 1987 (Luzerne County Court of Common Pleas).

I represented the plaintiff who brought suit against the defendants to recover damages for cutting down some ninety (90) mature trees on the plaintiff's property.

A. Richard Caputo

Defendant, Kingston Metal Specialties, owned by the Dicksons, was a land owner which adjoined the plaintiff's property. Defendants' property was higher than plaintiff's and was visible in the winter from an expressway artery serving the largest concentration of population in the county. In the spring and summer, the mature trees on plaintiff's land obscured the view of defendants' business establishment from that road. The defendants, claiming they did not know it was plaintiff's land, entered the land and cut down some ninety (90) mature trees.

Because of the intentional acts of the defendants, the plaintiff also sought punitive damages.

The case was tried before a jury. I acted as chief counsel. The jury returned a verdict for the plaintiff for both damages and punitive damages in the amount of \$15,000.00 and \$780.00, respectively.

There were several damage theories viz diminishment of value of the real estate, loss of the value of the trees, replacement cost as a measure of damages, damages for the trespass and whether exemplary damages were appropriate. There were expert witnesses on land value and tree replacement cost.

I mention this case because it involved a dispute about fundamental real property rights.

- (a) 1990.
- (b) The Honorable Bernard C. Brominski
Judge of the Court of Common Pleas of Luzerne
County
- (c) Co-counsel: J. Thomas Shea, Esquire (deceased)
Shea, Shea & Caputo

Opposing Counsel: Charles A. Shaffer, Esquire
Mahler, Shaffer & Pugliese
541 Pierce Street
Kingston, PA 18704
(717) 283-1800
Counsel for Kingston Metal
Specialties Company and Dicksons

Charles R. Coslett, Esquire
COSLETT & COSLETT
312 Wyoming Avenue
Kingston, PA 18704
(717) 288-4517
Counsel for Oeller

A. Richard Caputo

6. Division Two, Inc. v. Linde Enterprises, Inc., Civil Action No. 86-0942 (M.D.Pa.).

In this case, I represented the plaintiff, Division Two, Inc., a dewatering contractor from Denton, Maryland. Plaintiff brought an action against the defendant, a Pennsylvania utilities contractor, for the balance due on a contract to dewater a site for the defendant. The defendant counterclaimed for defective performance and failure to cure. The counterclaim exceeded the claim (\$75,000.00 to \$126,481.00).

The case was tried before a jury in May, 1987. I acted as sole counsel. My involvement was trial preparation as well as the conduct of trial. Preparation included preparing witnesses, reviewing and learning technical data regarding the dewatering process, the design of the dewatering holes and the preparation of cross examinations of defendant's witnesses including an expert on dewatering. The case also involved a parol evidence issue, since the defendant sought to introduce evidence at variance with the written agreement between the parties. The parol evidence issue was resolved favorably by the court.

After a four (4) day trial, the jury returned a verdict in favor of plaintiff of \$56,250.00 and in favor of the defendant on the counterclaim of \$18,618.00. No appeal was taken.

(a) 1987.

(b) The Honorable William J. Nealon
Judge of the United States District Court for the Middle
District of Pennsylvania

(c) Opposing counsel: Raymond P. Wendolowski, Esquire
Koff, Wendolowski, Ferguson & Mangan
22 East Union Street
Wilkes-Barre, PA 18701
(717) 822-5600

7. Unigraphic-Color Corporation v. Mobil Oil Corporation and Petroleum Service Company, Civil Action No. 1675-C of 1985 (Luzerne County Court of Common Pleas)

This was a jury trial in which I acted as chief trial counsel. The case involved a claim against Mobil Oil and its distributor for breach of warranty, product liability and negligence. The plaintiff was a printing company, and it introduced the Defendant Mobil's oil product into two (2) of its large printing presses. The presses had thousands of moving parts which required constant lubrication. The presses, which were of superior quality in the industry, began to experience mechanical

A. Richard Caputo

failures and breakdowns. In fact, the failures and breakdowns far exceeded what could be considered normal experience. Further complicating the process was the fact that the printed product produced in the presses became inferior and unclear. When a tar-like substance was discovered in the oil in the presses, the plaintiff sought to establish that Mobil oil was contaminated with asphalt, and that the oil had been delivered in that condition.

After a trial of approximately two (2) weeks and the testimony of several witnesses, including two (2) expert witnesses in the field of spectography, an engineer who expressed the opinion that the contaminated oil caused the catastrophic failure of the presses, and an engineer who was an expert on the maintenance of operation of these particular presses, the jury returned a defense verdict.

My preparation in this case involved becoming familiar with a voluminous maintenance manual for the presses, as well as the cross examinations of the experts in spectography and the maintenance and operation of the presses.

(a) 1988.

(b) The Honorable Gifford R. Cappellini
Judge of the Court of Common Pleas of Luzerne County

(c) Co-Counsel: Charles A. Shea, III, Esquire
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Opposing Counsel: Edward F. Mannino, Esquire
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Thomas J. Elliott, Esquire
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North & Egan, P.C.
Union Meeting Corporate Center V
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Blue Bell, PA 19422
(215) 977-1000

A. Richard Caputo

8. Interfacts America, Inc. v. Dr. Jalal B. Fatemi, Civil Action No. 85-0609 (M.D.Pa.).

I was chief counsel for a plaintiff, private investigator, which brought suit against a client for the payment of fees for services performed. The defendant, while not denying the engagement, disputed the extent of services provided and contended nothing was due.

The facts revealed the defendant engaged plaintiff to find his children, whom he advised had been kidnapped by his wife with whom he was having domestic difficulties. The plaintiff's people performed investigative services such as surveillance, record checking, personal inquiries and other related activities. The performance of these services took them from Wilkes-Barre, Pennsylvania, to Baltimore, Maryland, to Savannah, Georgia. Unfortunately, the plaintiff never found the defendant's children. The contract between the parties was oral and provided for the payment of services at hourly rates regardless of whether or not the children were found.

The case was tried before a jury which, after three (3) days of trial, returned a verdict in favor of the plaintiff for approximately fifty percent (50%) of the amount claimed.

My involvement in the case consisted of discovery, the review of my client's billing records and time records, the preparation of plaintiff's witnesses and the preparation of cross examinations of defendant and his witnesses.

(a) 1986.

(b) The Honorable William J. Nealon
Judge of the United States District Court for the
Middle District of Pennsylvania

(c) Opposing Counsel: Arthur L. Piccone, Esquire
Ronald V. Santora, Esquire
Hourigan, Kluger, Spohrer &
Quinn, P.C.
700 Mellon Bank Center
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9. The Sutter Corporation v. Girard Bank, Civil Action No. 82-C of 1980, (Luzerne County Court of Common Pleas).

In this case, I represented the plaintiff, a general contractor, who brought suit against Girard Bank to recover for the balance due plaintiff for the construction of an office

A. Richard Caputo

building in Wilkes-Barre, Pennsylvania. The plaintiff had a construction agreement with the owner, who never paid the balance due on the contract, and ultimately sought bankruptcy protection. Defendant, Girard Bank, had entered into a loan agreement with owner to provide owner the funds to construct the building. The construction agreement was in the amount of \$1,730,000.00 and the loan agreement was for \$1,600,000.00. The plaintiff was not a party to the loan agreement. The defendant, Girard Bank, drafted and caused the owner and the contractor to execute a document providing for the assignment, at Girard's option, of the construction contract to Girard. All payments to plaintiff were made by Girard; Girard failed to require owner to deposit sufficient funds in excess of the loan commitment of \$1,600,000.00 to build the building, despite a requirement in the loan agreement to do so; Girard contracted with plaintiff's subcontractors to do work on the building, bypassing the plaintiff's contractual relationship with those subcontractors; and, Girard failed to pay plaintiff, despite Girard's inspecting architect's commitment to pay for all work and change orders if the plaintiff would complete the project.

Girard contended it had not triggered the assignment because it had not given written notice it was doing so. Plaintiff argued that by its actions, Girard had indeed triggered the assignment and stood in the shoes of the owner. Girard also contended its inspecting architect was not its agent and that it was therefore not bound by what he said.

The case was tried before a jury in November, 1994. At the conclusion of five (5) days of trial, the jury returned a verdict for the plaintiff on all theories of liability, namely: (a) Girard exercised its rights of assignment, took over the construction contract, and breached it by its failure to pay; (b) the architect was the agent of Girard, promised payment, and Girard was bound to pay; (c) Girard made material misrepresentations to plaintiff and was liable therefor; and, (d) Girard intentionally interfered with the contractual relations between the plaintiff and its subcontractors.

I acted as chief trial counsel. I prepared all witnesses for the plaintiff and the cross examination for each defense witness. Preparation involved becoming completely familiar with the operative contracts, the job conference minutes, the payment requisitions and correspondence.

The Superior Court of Pennsylvania reversed on the basis of the lower court's denial of defendant's pretrial motion for non pros. A petition for allowance of appeal to the Supreme Court of Pennsylvania was denied.

(a) 1994.

(b) The Honorable Hugh F. Mundy
Judge of the Court of Common Pleas of Luzerne County

A. Richard Caputo

(c) Co-counsel: Joseph A. Dente, Esquire
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 Michael K. Sullivan, Esquire
 Drinker, Biddle & Reath
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 Philadelphia National Bank Bldg.
 Philadelphia, PA 19107
 (215) 988-2700

10. Frank J. Valvano and Pamela B. Valvano, his wife v. Joseph E. Galardi and Kaye L. Galardi, his wife, Civil No. 48 of 1984 (Lackawanna County Court of Common Pleas), *aff'd*, Frank J. Valvano and Pamela B. Valvano, his wife v. Joseph E. Galardi and Kaye L. Galardi, his wife, 363 Pa.Super. 584, 526 A.2d 1216 (1987).

In this case I was sole counsel representing a husband and wife who were defendants in an action for specific performance of an agreement to provide a right-of-way.

The defendants entered into an agreement to buy ten (10) acres of thirty (30) which were owned by the plaintiffs. An agreement of sale was prepared by a broker, signed by the defendants and submitted to plaintiffs who rejected the agreement and offered an amendment to the agreement which was signed by the plaintiffs and the male defendant only. The amendment provided an option to the defendants to buy the remaining twenty (20) acres within two (2) years, and it provided for a right-of-way to plaintiffs in the event the option was not exercised. The transaction of purchase closed, the two (2) years expired, and the defendants did not exercise the option. Thereafter, the defendants refused access to the plaintiffs, and the plaintiffs brought an action for specific performance of the agreement and the amendment to agreement. The female defendant testified she was not aware of the amendment until two (2) years after closing.

The plaintiffs contended that the defendants performed the amendment by closing the transaction and thereby acknowledging de facto the terms of the agreement. They contended that part performance took the matter outside of the Statute of Frauds. Defendant contended that the Statute of Frauds prevented the action for specific performance of the right-of-way because the female defendant never executed the agreement or the amendment to the agreement.

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The trial judge, sitting without a jury, in equity, agreed with the plaintiffs and entered a decree of specific performance. The defendants appealed, and the lower court was affirmed.

The trial of this case presented issues of credibility as well as issues of law. The court simply did not believe the female defendant on the issue of her awareness of the amendment. It was my contention that the failure of execution by a wife in these circumstances violated the Statute of Frauds and did not permit the forced performance of the amendment against her. Neither court agreed with me.

- (a) 1987.
- (b) The Honorable James Munley
Judge of the Court of Common Pleas of Lackawanna
County
- (c) Opposing Counsel: William J. Oliver, Esquire
(deceased)
Oliver, Price and Rhodes
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Scranton, PA 18501
(717) 343-6581

For further reference, I include the following list of judges and counsel with whom I have been involved in various matters in the past two (2) years:

- 1. Michael Beltrami, Esquire
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(717) 459-1491
- 2. Martin J. Cerullo, Esquire
CERULLO, DATTE & WALLBILLICH, P.C.
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- 3. Ruth S. Borland, Esquire
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A. Richard Caputo

4. Morton F. Daller, Esquire
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5. Michael B. Sacks, Esquire
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(215) 912-9679
6. George A. Spohrer, Esquire
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7. The Honorable William J. Nealon
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(717) 344-9619
8. The Honorable Edwin M. Kosik
United States District Court for
the Middle District of Pennsylvania
235 North Washington Street
P.O. Box 1148
Scranton, PA 18501
(717) 344-2124
9. The Honorable Thomas I. Vanaskie
United States District Court for
the Middle District of Pennsylvania
235 North Washington Street
P.O. Box 1148
Scranton, PA 18501
(717) 344-0125
10. The Honorable Correale F. Stevens
Luzerne County Court of Common Pleas
200 North River Street
Wilkes-Barre, PA 18711
(717) 825-1723

A. Richard Caputo

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.)

1. International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO, et al. v. Stegmaier Brewing Company, et al., Civil No. 70-556 (M.D.Pa.).

This case involved a suit by a decertified bargaining agent of a bargaining unit comprised of two (2) local breweries to compel arbitration toward the termination of the employee benefit plan theretofore established and maintained by the employers and the decertified bargaining agent. I represented one (1) of the breweries, the Stegmaier Brewing Company, which was also one (1) of the defendants.

In addition to the facts revealed by the foregoing paragraph, a new bargaining agent had been certified by the N.L.R.B. and on the defendants' Motion for Summary Judgment the question was whether the new bargaining agent should be substituted, as a matter of law, on the panel of fund trustees in the place of the decertified bargaining agent as the representative of the employees thereon within the meaning of §302 of the National Labor Relations Act, as amended, 29 U.S.C. §186.

I argued on behalf of the defendant company and contended that the newly certified union should be substituted in place of the old union for purposes of representing the employee interests on the governing body of the jointly administered pension trust and that, consequently, the plaintiffs had no standing to compel arbitration. This position was sustained and a summary judgment was granted by Judge Muir. An appeal to the Third Circuit followed, but subsequent to the submission of briefs and appendices, the appeal was abandoned.

I view this case as significant because it concerned a point of federal labor law not theretofore directly decided, viz: by what authority could it be said that a newly certified bargaining agent represented retired personnel as a trustee of a jointly administered trust when the authority conferred on it as a bargaining agent under the Act did not extend to retired personnel. The resolution of the issue involved the determination of the extent of that authority in the newly certified bargaining agent under the federal common law of collective bargaining agreements, not under federal statutory law.

(a) 1970-1.

A. Richard Caputo

- (b) The Honorable Malcolm Muir
Judge of the United States District Court for the Middle
District of Pennsylvania
- (c) Co-counsel: S. Keene Mitchell, Esquire (deceased)
Edward Darling, Esquire (deceased)
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- Allan M. Kluger, Esquire
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Opposing Counsel: Bernard N. Katz, Esquire
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2. Commonwealth of PA v. Chas. S. Grucella, Criminal No. 1343 of 1967, (Luzerne County Court of Common Pleas).

Upon the election of a new District Attorney in Luzerne County, the successful candidate hired seven (7) assistants, three (3) of whom were immediate past members of the staff of the Public Defender of Luzerne County. Since in excess of twenty-five (25) cases wherein the defendants were represented by the Public Defender's Office were to be tried in the first term of Criminal Court handled by the new District Attorney, the question was presented as to whether or not the foregoing facts did not present such an appearance of a conflict of interest, if not an actual conflict in some cases, sufficient to cause the disqualification of the entire District Attorney's staff from prosecuting the cases where the defendants were represented by the Public Defender.

A. Richard Caputo

In advance of the commencement of the new term of Criminal Court, we of the Public Defender's Office filed a motion to disqualify the District Attorney and his staff from prosecuting any cases against defendants represented by the Public Defender's Office.

I argued the case for the Public Defender's Office before the Court of Common Pleas of Luzerne County en Banc. The Court en Banc ultimately decided the matter adversely to the position I advanced on behalf of the Public Defender, two (2) members dissenting (3 to 2). An unsuccessful appeal later followed.

I view this case as significant because it presented a question of the public confidence in a public official on the one hand and the integrity of the prosecutorial system as it related to Public Defender clients, present and future, on the other.

(a) 1968.

(b) The Honorable Bernard C. Brominski
 The Honorable Richard L. Bigelow (deceased)
 The Honorable Jacob Schiffman (deceased)
 The Honorable Robert J. Hourigan (deceased)
 The Honorable Peter P. Olszewski (now a Judge of the
 Superior Court of Pennsylvania)
 Luzerne County Court of Common Pleas en Banc

(c) Co-counsel: William R. Keller, Esquire
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Joseph C. Giebus, Esquire
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 Laflin, PA 18702

Opposing Counsel: The Honorable Patrick J. Toole
 President Judge
 Luzerne County Court of Common Pleas
 Luzerne County Courthouse
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A. Richard Caputo

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S. Keene Mitchell, Esquire (deceased)
 Darling, Mitchell & Schooley
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3. Frank J. Galgay and Francis P. Bonner, Trustees of the Anthracite Health and Welfare Fund and the Anthracite Health and Welfare Fund v. Gil-Pre Corporation, Civil No. 86-1363 (M.D.Pa. 1986); Frank J. Galgay and Francis P. Bonner, Trustees of the Anthracite Health and Welfare Fund and the Anthracite Health and Welfare Fund v. Gilberton Energy Corporation, Civil No. 86-1364 (M.D.Pa. 1986); *aff'd on other grounds*, Frank J. Galgay, et al. v. Gil-Pre Corporation, No. 88-5200 (3d Cir. 1988); *aff'd on other grounds*, Frank J. Galgay, et al. v. Gilberton Energy Corporation, No. 88-5201 (3d Cir. 1988); *aff'd on other grounds*, Galgay v. Gil-Pre Corp., 864 F.2d 1018 (3d Cir. 1988).

This began as a suit by the Anthracite Health and Welfare Fund (the "Fund"), the multiemployer pension plan which involves retired anthracite miners and the anthracite industry employers, against one (1) of the employers, Gil-Pre Corporation, to recover pension fund contributions in the form of tonnage royalties. The operative collective bargaining agreement provided that a royalty was due the Fund on all anthracite "produced for use or for sale" by an anthracite operator or employer. The quoted language had been in all industry collective bargaining agreements dating back to 1946 and as of the time of the suit, the number was fourteen (14). The entire industry was organized until the late 1960's, and this language was taken to mean that the royalty was due when the anthracite was prepared in a coal breaker. It could have been when the coal was mined, but since there was verified measurement (weighmasters) and sale to consumers after it was finished in the coal breaker, the parties interpreted the key phrase to mean the royalty was due after the raw mined coal was prepared in the coal breaker.

Two (2) things changed in the industry. First, the industry was no longer completely organized after the late 1960's. Indeed, more and more operators were nonunion to the point where today over one-half of the total production of anthracite is produced by nonunion operators. Second, technological advances in the utilization of anthracite permitted what had been waste to be used as a fuel without the necessity of coal breaker preparation. The employers sought to exclude production from royalty on the basis that it did not go through the breaker process. Gil-Pre was such a case.

A. Richard Caputo

Factually, Gil-Pre involved a substandard product that had been screened and then sent on for further processing. The United States District Court for the Middle District of Pennsylvania determined that the material was not subject to royalty because it did not go through a coal breaker. Indeed, the District Court held that the words "produced for use or for sale" exclusively meant run through a coal breaker. This would have excluded material being sold and used as anthracite coal. We appealed.

On appeal to the United States Court of Appeals for the Third Circuit, the Court rejected the District Court's view of the operative contract language and recognized that technology, as well as the realities of a non-organized industry, compelled a construction of the key language which required a royalty on material made marketable for use as fuel, whether it went through a breaker or not.

The significance of the case is manifest. The anthracite pension plan now receives contributions on material which does not pass through a coal breaker or other involved process. The use of key language of the contract as language of exclusion has lessened since this decision.

(a) 1986-8.

(b) The Honorable Richard P. Conaboy
Judge of the United States District Court for
the Middle District of Pennsylvania

The Honorable Walter K. Stapleton
The Honorable Carol Los Mansmann
Judges of the United States Court of Appeals
for the Third Circuit
The Honorable Clarkson S. Fisher
Judge of the United States District Court for
the District of New Jersey, sitting by designation

(c) Co-counsel: Cynthia A. Smith, Esquire, now by marriage
Cynthia A. Muroski, Esquire
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(717) 288-5020

Opposing Counsel: Howard A. Rosenthal, Esquire
Pelino & Lentz
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One Liberty Place
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(215) 665-1540

A. Richard Caputo

4. Frank J. Galgay and Francis P. Bonner, Trustees of the Anthracite Health and Welfare Fund (Pension Trust) and the Anthracite Health and Welfare Fund (Pension Trust) v. Pagnotti Enterprises, Inc., No. 3:CV-91-0999 (M.D.Pa.).

In this case, my client, the Trustees of the Anthracite Health and Welfare Fund, instituted suit against Pagnotti Enterprises, Inc. ("PEI") to recover the withdrawal liability of Beltrami Enterprises, Inc. ("BEI") on the theory that PEI and BEI were part of a controlled group of companies within the meaning of 29 U.S.C. §1301(b)(1).

The issue in the case was whether PEI ever became a member of a controlled group with BEI.

While there never was a transfer of the stock of BEI to PEI, the parties began negotiations in 1980 and arrived at an "agreement in principle" in March, 1982. Thereafter, we alleged and believe we established through discovery, that PEI exercised such a degree of control of BEI for the next eight (8) years that, for purposes of the statute, it controlled BEI. The indicia of control upon which we relied included the control of funds, accounts payable, field operations, labor relations, sales, pricing, and environmental matters. Admitted funds in excess of \$34 Million passed from PEI to BEI between 1982 and 1988 in the form of "advances for coal" for which no coal was delivered. Moreover, there were no notes or other evidence of indebtedness regarding the funds advanced.

Cross motions for summary judgment were denied. The case was called for trial in 1997, and after four (4) days of trial, the case was settled.

The case is significant because we sought to establish that substance should govern over form with regard to the enforcement of the controlled group provisions of 29 U.S.C. §1301(b)(1). BEI declared bankruptcy while owing the Fund \$2,400,000 in withdrawal liability. Although there was no executed agreement of purchase between BEI and PEI, we attempted to show that the requisite degree of control was extent by virtue of the conduct of the parties.

- (a) 1991-February, 1997.
- (b) The Honorable Thomas I. Vanaskie
Judge of the United States District Court for the
Middle District of Pennsylvania
- (c) Opposing Counsel: Robert D. Schaub, Esquire
Robert N. Gawlas, Jr., Esquire
Rosenn, Jenkins & Greenwald
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A. Richard Caputo

5. Emmett Thomas, et al. and Charles Nedd, et al. v. Honeybrook Mines, Inc., Civil Action No. 8499 (M.D.Pa.).

This was a suit by the trustees of an employee benefit fund which had been established as a result of collective bargaining between the United Mine Workers of America and the anthracite coal operators against an operator which was delinquent in its contributions to the fund. Jurisdiction was founded in §301 of the Labor Management Relations Act, as amended, 29 U.S.C. §185. The issue in the case was whether the trustees of a jointly administered multiemployer pension fund could maintain an action to recover delinquent contributions in a federal district court pursuant to §301 supra absent diversity of citizenship between the parties.

The matter was heard on the delinquent operator's motion to dismiss before The Honorable William J. Nealon, United States District Judge, and Judge Nealon sustained jurisdiction. This was later affirmed by the United States Court of Appeals for the Third Circuit.

This case is significant because it was, at the time, a case of first impression in the United States.* Moreover, the trustees of this fund were, at the time of the institution of this suit, confronted with an industry which was virtually, to an operator, delinquent in its contributions to the fund. In addition, the fund was in terrible financial condition and was attempting to pay benefits to some 14,000 pensioned miners. The prospect of suits in local courts was undesirable because of the rumored and known coal interests of various county common pleas judges. It was imperative that a more objective forum be selected to resolve the issues of delinquencies. The federal courts proved, with the passage of time and some thirty-seven (37) additional cases, to have been that forum.

- (a) 1964-71.
- (b) The Honorable William J. Nealon
Judge of the United States District Court for the Middle
District of Pennsylvania

* The passage of the Employee Income Retirement and Security Act (ERISA) provided a statutory enforcement mechanism for such actions after 1974; 29 U.S.C. §1132, 1145.

A. Richard Caputo

(c) Co-counsel: Charles A. Shea, Jr., Esquire (deceased)
Shea, Shea & Caputo
626 First Eastern Bank Building
Wilkes-Barre, PA 18701
(717) 823-2151

The Honorable Thomas N. O'Neill, Jr.
Judge of the United States District Court
for the Eastern District of Pennsylvania
14613 U.S. Courthouse
Independence Mall West
601 Market Street
Philadelphia, PA 19106
(215) 597-2750

Opposing Counsel: Theodore R. Laputka, Esquire (Deceased)
Laputka, Bayless, Ecker & Cohn
Citizens Bank Building
Hazleton, PA 18201
(717) 455-4731

6. I serve on the Unauthorized Practice Committee of the Luzerne County Bar Association. The Committee is currently considering three (3) matters of alleged unauthorized practice. I have attended one (1) meeting with regard to these matters, and I will be involved in the final decision as to how to proceed with respect to each case.

A. Richard Caputo

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 business interest.

I expect to collect the outstanding fees on matters on which I have performed services up to the date I discontinue practice. I do not expect to negotiate a buyout or deferred income arrangement. I do anticipate that my interest in the building in which I practice and which Charles A. Shea, III and I own will be purchased on a market basis.

With respect to Druid Associates and Alafaya Associates, I expect to continue to hold my interests, which I understand do not have an optimistic future.

I currently hold options to purchase 664 shares of Rykoff-Sexton stock at a price of \$10.54 per share.

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.

Obviously, I would recuse myself from cases involving former clients, entities in which I served as an officer and/or director, and for the prescribed period, from any matters handled by members of my firm. I do have one (1) client, the Anthracite Health and Welfare Fund (Pension Plan), which has been active in federal litigation, and as I stated, I would recuse myself from any matter in which it, or any other client, was involved. I would, of course, follow the Code of Judicial Conduct.

In the event any matter involved an entity in which the Grace K. Shea Trust (my wife, children and I are beneficiaries) my wife's IRA or my IRA had an interest, I would recuse myself.

I would use the same due diligence I use in my practice to identify problem areas, and I would avoid any appearance of impropriety by recusing myself.

A. Richard Caputo

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 Exhibit "4".

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

See attached 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.

In 1991, I was active in raising campaign funds for The Honorable Hugh F. Mundy, Judge of the Court of Common Pleas of Luzerne County, in his bid for election to a ten (10) year term. I had no official title, but I was active in seeking contributions from people who supported him.

A. Richard Caputo

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 essentially a practitioner in a moderately sized community, I have and continue to perform legal services for a number of people who cannot afford to pay, on a no fee for service basis. I estimate that in the performance of this type of service, I devote approximately twenty (20) hours per year. In addition, I have volunteered and am an active Pro Bono Project Volunteer Attorney which project is sponsored by the local bar association and Legal Services of Northeastern Pennsylvania, Inc.

I also serve as Secretary, Treasurer and Director of The Luzerne Foundation, a community foundation organized in 1994 to serve the communities of Luzerne County. This is the first community foundation established in this geographical area, and it involves approximately thirty (30) hours per year.

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 been a member of the Wyoming Valley Country Club since 1967. It is a golf club. Until April, 1995, it did not offer voting membership to women. It did offer a "Ladies" membership which involved dues which were less than those of a full member, and which also involved limited access to the course. In 1995, as a new member of the by-laws committee, I, along with others, proposed the elimination of this inequity. The new by-laws provided for full membership to women by way of a conversion from "Ladies" membership to "Senior" member. No initiation fee was required; only the payment of Senior member dues. I drafted the set of changes to the by-laws which accomplished this task and offered full membership to women. These changes were adopted by the membership on April 22, 1995.

A. Richard Caputo

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 Federal Judicial Nominating Commission of Pennsylvania. I do not know if it recommended my nomination.

In the late spring of 1995, I was contacted by Congressman Paul Kanjorski, who said he was seeking qualified people for the position of Judge of the United States District Court for the Middle District of Pennsylvania. I indicated my interest to him. I asked the Luzerne County Democratic Party leader to write a letter to the President recommending me for the position, and I also made the same request of the State Democratic Party leader. In addition, I sought the support of those who were aware of my abilities and whom I thought could appropriately recommend me to the President for consideration as a nominee. In April of 1995, I was contacted by White House counsel and asked to complete and return various forms. I did so, and shortly thereafter, vetting began. I was interviewed extensively by a deputy assistant attorney general. Others such as clients, lawyers, judges and business associates reported to me that they had been interviewed as well. In August of 1995, I was interviewed at the Justice Department in Washington by representatives of the Office of Policy Development. In October of 1995, I was interviewed by the FBI, and in December, 1995, by the American Bar Association.

On February 25, 1997, I was asked by the Office of Policy Development at the Justice Department, to complete and update various forms necessary to be further considered for nomination. I did so. I was again interviewed by an FBI agent in March, 1997. I was interviewed by the Federal Judicial Nominating Commission of Pennsylvania on June 17, 1997.

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.

A. Richard Caputo

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 courts are courts of limited jurisdiction. The judiciary determines matters in the context of a case or controversy, considering standing and ripeness. It should not, as the legislature is charged to do, make broad pronouncements of policy. The federal judiciary is not a popularly elected body, and it does not have the constitutional or statutory mandate to generally engage in solving society's problems. That is left to the Congress, and to a lesser extent, the President. The judiciary's function is to decide cases or controversies, viz resolve grievances between and among parties, and in the process, follow precedent, interpret statutes and, when called upon, review legislation to determine constitutionality. With respect to the latter, we should be mindful that state and federal legislators and state court judges also take the oath to uphold the Constitution of the United States.

A. Richard Caputo

Moreover, with respect to following precedent, stare decisis is a fundamental principle of the judicial process. It provides predictability, and therefore stability to the judicial system. A lower court judge has the responsibility and obligation to follow the precedent of the relevant higher courts, even if he or she disagrees with that higher court decision.

The ability of any one branch of our government to check or contain the usurpation of the function of any other is manifest in our system. Indeed, this separation of powers and checks and balances has been acknowledged as part of the genius of our system. I believe the ability of the other branches of our government to keep the judiciary in check provides the ultimate remedy for the type of concerns proposed in the criticisms I have attempted to address here.

hgcrdds1
 hgc.c11
 as of 2/23/95

EXHIBIT "1"

Bylaws of the Huntsville Golf Club.

—————
 CONSTITUTION
 OF THE
HUNTSVILLE GOLF CLUB

ARTICLE I

NAME AND PURPOSE

1.1 The organization shall be known as the HUNTSVILLE GOLF CLUB (hereinafter "HGC" or the "Club"). The Club is a private golf club wholly owned by Maplemoor, Inc. which exists for the purpose of fostering an interest in the game of golf and its traditions.

ARTICLE II

MEMBERSHIP

2.1 Classes. The Membership shall consist of the classes and number of Members permissible per class as follows:

(a) Regular	300
(b) Junior	100
(c) Associate	See Paragraph 2.4
(d) Non-Resident	50
(e) Honorary	10

2.2 Regular Members. Only persons at least thirty-five (35) years of age shall be eligible for Regular Membership. Regular Members may enjoy all the privileges of the Club. Regular Memberships are voting (as permitted by this Constitution), nonproprietary, assessable, nontransferable and terminate upon death.

2.3 Junior Members. Only persons at least twenty-one (21) years of age who have not reached their thirty-fifth (35th) birthday shall be eligible for Junior Membership. Junior Members may enjoy all the privileges of the Club. All Junior Memberships

are nonproprietary, nonvoting, nonassessable, nontransferable and terminate upon death. Sons and daughters of Regular Members in good standing may have priority over other applicants for Junior Memberships.

A Junior Member accepted to Membership on or before December 31, 1994 shall purchase a Membership Bond according to the schedule in Paragraph 5.2. However, a Junior Member shall be permitted to make equal annual payments toward the cost of that Membership Bond. The amount of the payments shall be determined by dividing the total cost of the Membership Bond by the number of years difference between the Junior Member's age at acceptance to Membership and when that Junior Member will reach his thirty-fifth (35) birthday. A Junior Member purchasing on installments shall be paid interest on the amount of the installment paid in at the rate of interest provided in the Membership Bond. In the event there is a default in a payment of an installment which persists for thirty (30) days beyond the due date, the Junior Member shall be deemed to have withdrawn from the Club, lose his privileges of Membership, and be repaid the amount of the installments already paid. The applicable initiation fee will be payable as hereinafter set forth in Article V.

A Junior Member accepted to Membership after December 31, 1994 shall pay a Membership Fee according to the schedule in Paragraph 5.2. However, a Junior Member shall be permitted to make equal annual payments toward the cost of that Membership Fee. The amount of the payments shall be determined by dividing the total cost of the Membership Fee by the number of years difference between the Junior Member's age at acceptance to Membership and when that Junior Member will reach his thirty-fifth (35th) birthday. In the event there is a default in a payment of an installment which persists for thirty (30) days beyond the due date, the Junior Member shall be deemed to have withdrawn from the Club, lose his privileges of Membership, and be repaid the amount of the installments already paid. The applicable initiation fee will be payable as hereinafter set forth in Article V.

A Junior Member's annual dues shall vary according to his age as determined by the Board of Governors. Upon reaching his thirty-fifth (35) birthday, a fully paid Junior Member shall become a Regular Member and shall pay the same dues required to be paid by Regular Members.

2.4 Associate Members. Only persons who are surviving spouses of Regular, Junior or Non-Resident Members are eligible for Associate Membership. Associate Members may enjoy all the privileges of the Club, except as modified herein. Associate Memberships are nonproprietary, nonvoting, nonassessable, non-transferable and terminate upon death, marriage or remarriage. Those Associate Members who are the surviving spouses of Non-Resident Members shall continue limited golfing privileges as stated in Section 2.5.

2.5 Non-Resident Members. Only persons at least twenty-one (21) years of age who, for at least nine (9) months a year do not reside within forty (40) miles from Public Square in Wilkes-Barre (hereinafter the "Club Area"), are eligible for Non-Resident Membership. Non-Resident Members may enjoy all the privileges of the Club, provided, however that they shall be restricted to twenty (20) rounds of golf per year, including those played by the Member and those played by other eligible family members. Non-Resident Memberships are non-proprietary, nonvoting, nonassessable, nontransferable, and terminate upon death. Upon establishing legal residence in the Club Area, a Non-Resident may, within ninety (90) days, make application to the Club for Regular Membership.

If the Non-Resident Member becomes an Accepted Applicant for Regular Membership on or before December 31, 1994, and there are no Regular Memberships available to him, the name shall be placed upon the waiting list for Accepted Applicants to Regular Membership. Such Non-Resident Member may retain his status as a Non-Resident Member until such time as he is accepted as a Regular Member, provided, however that such a Non-Resident Member may continue his status only after depositing with the Club an amount equal to one-fourth ($\frac{1}{4}$) of the Membership Bond and initiation fee required for the last Regular Membership accepted. Such deposit shall be applied toward the Membership Bond and initiation fee required to be purchased at the time of the acceptance. A Non-Resident Member in making payment in order to be accepted as a Regular Member, shall receive credit toward the Regular Membership for the amount of such payments made for such Non-Resident Membership, provided, however, said amount does not exceed the amount of the Regular Membership transfer fee then established. During the period of time said Non-Resident Member is on the waiting list of Accepted Applicants for Regular Membership, he shall pay Regular Member dues and receive all privileges accorded a Regular Member (except the right to vote) but he shall be counted as a Non-Resident Member for the purpose of determining the number of Non-Resident Members then outstanding. In the event such Non-Resident Member fails to make such deposit or fails

to perform such acts as are required by this Constitution for acceptance to Regular Membership after Regular Membership is made available to him, his Non-Resident Membership together with all Club privileges, shall thereupon terminate.

If the Non-Resident Member becomes an Accepted Applicant for Regular Membership after December 31, 1994, and there are no Regular Memberships available to him, the name shall be placed upon the waiting list for Accepted Applicants to Regular Membership. Such Non-Resident Member may retain his status as a Non-Resident Member until such time as he is accepted as a Regular Member, provided, however that such a Non-Resident Member may continue his status only after depositing with the Club an amount equal to one-fourth ($\frac{1}{4}$) of the Membership Fee and initiation fee required for the last Regular Membership accepted. Such deposit shall be applied toward the Membership Fee and initiation fee required to be paid at the time of the acceptance. A Non-Resident Member in making payment in order to be accepted as a Regular Member, shall receive credit toward the Regular Membership for the amount of such payments made for such Non-Resident Membership, provided, however, said amount does not exceed the amount of the Regular Membership transfer fee then established. During the period of time said Non-Resident Member is on the waiting list of Accepted Applicants for Regular Membership, he shall pay Regular Member dues and receive all privileges accorded a Regular Member (except the right to vote) but he shall be counted as a Non-Resident Member for the purpose of determining the number of Non-Resident Members then outstanding. In the event such Non-Resident Member fails to make such deposit or fails to perform such acts as are required by this Constitution for acceptance to Regular Membership after Regular Membership is made available to him, his Non-Resident Membership together with all Club privileges, shall thereupon terminate.

2.6 Honorary Members. Honorary Memberships may be issued to worthy individuals upon the majority vote of the Board of Governors. Honorary Members may enjoy all the privileges of the Club. Honorary Memberships shall be nonproprietary, non-voting, nonassessable, nontransferable and terminate upon death. The term of an Honorary Membership shall be for one (1) year. Upon the expiration of such term, the Board of Governors shall review such Membership and in its sole discretion either renew the Membership for an additional one (1) year term or determine not to renew the Membership, whereupon the Membership shall terminate.

2.7 Residence Requirement. All Members, regardless of Membership classification, shall reside within the Commonwealth of Pennsylvania.

2.8 Extension of Privileges. The Board may extend the privileges of the Club to such other persons and upon such terms as the Board may from time to time prescribe.

2.9 Privileges of the Club. As used in this Constitution, "privileges of the Club" means the right to use the facilities of the Club and to sponsor guests to use those facilities subject to any rules and regulations which may from time to time be established by the Board.

2.10 Family Privileges - Persons Entitled. A Member's spouse is entitled to the same privileges as the Member enjoys. Members' unmarried children up to the age of twenty-one (21) years or up to the age of twenty-four (24) years who are attending college on a full time basis and living either in the family home or at or about the college campus during the college term are entitled to the same privileges as their member parent. Where a Member has living with him and dependent upon him for financial support, an immediate member of his family other than his spouse or children, the Board may grant such person such privileges of the Club for such period and under such restrictions as the Board may, in its discretion, choose and provide that any such privileges granted may be changed or withdrawn by the Board at any time. The enjoyment of family privileges by any person entitled thereto pursuant to this Section is subject to such rules as may be adopted by the Board.

2.11 Admission Application. Subject to the general provisions hereinafter set forth, the Board shall prescribe when and the manner in which all applicants for Membership shall be made. Each Applicant must initially be invited to join by a Regular Member, and his formal application for Membership must be endorsed and sponsored by at least two (2) Regular Members of the Club. Only Regular Members, with at least two (2) years tenure as Regular Members, may sponsor new Applicants for Membership and such sponsorship is limited to two (2) Applicants in any one (1) calendar year.

Until such time as there are Regular Members of the Club with at least two (2) years tenure as Regular Members, Applicants may only be invited to join by the Board.

2.12 No Discrimination. Applicants shall be accepted and consideration given for Membership in the Club without regard to sex, race, creed or color.

2.13 Membership Committee. The Membership Committee shall consist of the Board of Governors. The Membership Committee shall investigate each Applicant for Membership. The records and proceedings of the Membership Committee shall be confidential and shall be subject to the inspection only by the Board. The Membership Committee shall fix the time for the holding of its regular and special meetings and shall be subject to rules and regulations as the Board may from time to time adopt with respect to the Committee.

2.14 Election to Membership. Applicants shall be elected to Membership only after they shall have received a majority vote of acceptance from Members of the Membership Committee in attendance at a regular meeting with a quorum. An Applicant receiving such vote shall be known as an "Accepted Applicant." The name of each Accepted Applicant shall be placed upon a list of Accepted Applicants and the Membership Committee shall thereafter promptly notify such Accepted Applicant.

2.15 (A) Acceptance to Membership on or before December 31, 1994. At the time of his election, an Accepted Applicant shall:

(i) If a Membership vacancy exists, be accepted to Membership upon payment in full to the Club for the applicable Membership Bond and initiation fee.

(ii) If no Membership vacancy exists, be accepted to Membership, subject to any waiting list established pursuant to Section 2.18, when (a) a Membership vacancy occurs by reason of the death, resignation or surrender of a Membership, and (b) full payment for the applicable Membership Bond and initiation fee has been received by the Club.

An Accepted Applicant who within seven (7) days after receipt of notification of the availability of a Membership has not made the above payment, shall have his name removed from the waiting list which is established for Accepted Applicants, unless the Board, for cause extends the time for payment.

(B) Acceptance to Membership after December 31, 1994. At the time of his election, an Accepted Applicant shall:

(i) If a Membership vacancy exists, be accepted to Membership upon payment in full to the Club for the applicable Membership Fee and initiation fee.

(ii) If no Membership vacancy exists, be accepted to Membership, subject to any waiting list established pursuant to Section 2.18, when (a) a Membership vacancy occurs by reason of the death, resignation or surrender of a Membership, and (b) full payment for the applicable Membership Fee and initiation fee has been received by the Club.

An Accepted Applicant who within seven (7) days after receipt of notification of the availability of a Membership has not made the above payment, shall have his name removed from the waiting list which is established for Accepted Applicants, unless the Board, for cause extends the time for payment.

2.16 (A) Membership Bond. The Board shall require the purchase of a Membership Bond upon acceptance as a Regular, Junior or Non-Resident Member on or before December 31, 1994 as hereinafter set forth in Article V.

(B) Membership Fee. The Board shall require the payment of a Membership Fee upon acceptance as a Regular, Junior or Non-Resident Member after December 31, 1994 as hereinafter set forth in Article V.

2.17 Initiation Fee. The Board shall require a nonrefundable initiation fee to be paid by Regular, Junior and Non-Resident Members as hereinafter set forth in Article V.

2.18 Waiting List. The Board may establish a waiting list for Accepted Applicants to whom no Membership is then available for issuance. The Board shall regulate all aspects of any waiting list established, including, without limitation, priority on the list and the obligations and privileges of and payments, if any, to be made by persons on the list.

2.19 Resignations. Any Member may resign his Membership; provided, however, such resignation may be refused by the Board unless and until any indebtedness owing to the Club by such Member has first been paid in full. Such resignation shall be submitted in writing to the Board.

2.20 Leave of Absence. A leave of absence may be granted in the discretion of the Board upon the showing of special circumstances.

2.21 Changes in Classes. The Board of Governors may make such changes in the number of classes of Membership or the number of Members permissible per class as it may deem appropriate.

ARTICLE III

GOVERNMENT

3.1 Governing Body. The management of the Club shall be under the control of a governing body of nine (9) persons to be known as the Board of Governors. Five (5) persons shall be appointed to the Board by Maplemoor, Inc. (hereinafter "Appointed Governors"). The remaining four (4) persons shall be elected by the Members of the HGC as hereinafter set forth (hereinafter "Elected Governors"). The Chairman of the Board of Governors shall be appointed by Maplemoor, Inc.

3.2 Eligibility. Only Regular Members shall be eligible for election to the Board of Governors. Candidates shall be nominated by the Nominating Committee appointed by the Board of Governors. The Nominating Committee shall submit the names to the Board of Governors at least thirty (30) days prior to an annual meeting in which an election is to be held. The Board shall post the list of names at the premises of the Club on a bulletin board and mail a copy of same to each Regular Member at least three (3) weeks prior to the annual meeting.

Any Regular Member in good standing may make additional nominations of a Member or Members who are eligible for election to the Board of Governors by submitting the name or names of the candidates in writing at least fifteen (15) days prior to the annual meeting to the Board of Governors which shall promptly

post such names on the bulletin board at the Club upon which names of others for such office have been posted and shall mail a list of such names to each Member at least ten (10) days prior to the annual meeting.

3.3 Term. Elected Governors, shall be elected for a term of three (3) years. An Elected Governor may be elected to succeed himself once but may not serve more than two (2) consecutive terms unless his first service on the Board is to fill the unexpired term of another Member who has for any reason left the Board. All Members of the Board shall assume their duties immediately upon election.

3.4 Elections. Elected Governors shall be elected by the Regular Members at the annual meeting at which time the Chairman of the Board shall appoint two (2) tellers who shall act as inspectors and shall tabulate the vote.

Voting shall be by ballot and the four (4) candidates receiving the highest number of votes shall be declared elected. In the event of a tie vote between two (2) candidates, the Board of Governors shall, at its next regular meeting, or at a special meeting called for such purpose, decide which such candidates shall be elected.

Elections shall be held every three (3) years at which time all four (4) Elected Governors shall be chosen.

3.5 Vacancies. Vacancies in the Board of Governors among the Elected Governors shall be filled by the Chairman of the Board by appointment, subject to the confirmation of the Board, and Members so appointed shall hold office until the next regular election.

3.6 Quorum. Seven (7) Members, no less than four (4) of whom shall be Appointed Governors shall constitute a quorum of the Board of Governors.

3.7 Rules and Regulations. The Board of Governors shall, from time to time, make such rules and regulations as it may deem necessary.

3.8 Appointment to Committees. The Chairman with the approval of the Board of Governors shall appoint the Members of all Committees provided for in this Constitution and shall likewise have power to establish and fill such other standing or special committees as may be deemed necessary to assist in the management of the Club.

3.9 Power to Censure, Suspend or Expel. The Board of Governors shall have power to censure, suspend or expel any Member or Members, for nonpayment of money owing to the Club or for conduct prejudicial in their judgment to the good name or welfare of the Club. Ten (10) days' notice in writing shall be given to the Member against whom charges have been made, at which time the Member may appear and be heard.

3.10 Interpretation of Constitution. The Board of Governors shall be the final authority for the interpretation of this Constitution and such rules and regulations as may be enacted.

3.11 Meetings. The Board of Governors shall meet at the Clubhouse or a designated location with such frequency as they may determine. Special meetings of the Board may be called by the Chairman upon his own motion and must be called by him upon the written request of four (4) Members thereof.

3.12 Resignations. An Elected Governor who shall absent himself without leave from three (3) consecutive regular meetings of the Board may be deemed by the Board of Governors to have resigned therefrom.

3.13 Removal from Office. An Elected Governor may be removed from office by the affirmative secret ballot of a majority of the Members of the Board of Governors present at a special meeting of the Club called for such purpose, at which time such Governor may appear and be heard.

3.14 Control and Management. The Board of Governors shall have control and management of the affairs, funds and property of the Club, and shall authorize and control all expenditures; they shall have full power, and it shall be their duty to carry out the purposes of the Club according to law, and as provided in the Constitution, and to make and enforce all

rules and regulations which they may deem desirable for the welfare of the Club. The Board of Governors shall have full power to make and levy assessments.

3.15 Proxy. No Member of the Board may cast any ballot by proxy on any issue.

3.16 Legal Action. No legal action based upon any claim shall be brought against the Club by any Member unless the claim is first presented in writing to the Board of Governors thirty (30) days prior thereto. The Member shall receive ten (10) days' written notice of a hearing on such claim.

3.17 Membership Meetings. There shall be an annual meeting of the Regular Membership on the first Saturday in April. Special Meetings of the Regular Membership may be called by the Board of Governors upon reasonable notice. Action by the Regular Membership shall be upon majority vote of those Regular Members in attendance at the Annual and/or Special Meeting. There shall be no quorum required.

ARTICLE IV

COMMITTEES

4.1 The Standing Committees of the Club shall be:

Executive Committee	Membership Committee
Green and Grounds Committee	Nominating Committee
Entertainment Committee	Golf Committee
Planning Committee	

4.2 Executive Committee. The Executive Committee shall consist of the five (5) Appointed Governors, and the Chairman of the Board of Governors shall be Chairman thereof. It shall convene at the call of the Chairman and may act on behalf of the Board of Governors during the interim between Board meetings. In so acting, it shall have the same authority and effect as the

Board itself; provided such actions shall be fully reported to the Board of Governors and ratified by the body at its next succeeding meeting.

4.3 Green and Grounds Committee. The Committee shall define and be solely responsible for all policy relative to care and maintenance of the golf course and the purchase of supplies and equipment relating thereto. The Committee shall review and monitor the professional manner in which the Golf Course Superintendent implements Committee and Club policy.

4.4 Entertainment Committee. The Committee shall initiate, arrange, promote and supervise the execution of a program of social activities and entertainment, in cooperation with the management and the scheduled affairs of other Committees. Expenditures for music, performance, decorations and publicity shall emanate from funds allocated to the account of this Committee. The Entertainment Committee shall work with such other Committees as necessary to implement its programs.

4.5 Planning Committee. The Committee shall study all trends and Club usage and shall develop and continually update a long-range program of facilities and activities for the Club. They shall advise the Board of Governors concerning all proposals for alterations and improvements of the Club buildings, its facilities and grounds and other properties. In general, the Committee shall concern itself primarily with matters to be accomplished two (2) or more years in the future.

4.6 Membership Committee. The Committee shall have charge of all matters pertaining to Membership applications, resignations, cancellations, suspensions and transfers in status; and shall make recommendations in connection therewith to the Board of Governors, who shall have full and final authority to act with respect to such matters.

4.7 Nominating Committee. The Committee shall be appointed by the Chairman of the Board of Governors and consist of at least five (5) Members of the Club. It shall nominate candidates for the Board of Governors to succeed those whose term is about to expire.

4.8 Golf Committee. The Committee shall have administrative charge of all play, including intra-Club and inter-Club matches. It shall have the power to establish local rules concerning play which are not inconsistent with those of the United States Golf Association. It shall recommend the selection and use of an improved system of handicaps and shall exercise control over the condition and awards of all golf trophies and other prizes. It shall review and monitor the professional manner in which the Golf Professional implements Committee and Club policy. It shall regulate Greens, Caddy Fees and Cart Fees subject to the approval of the Board of Governors.

4.9 Special Committees. In addition to the Standing Committees, the Chairman of the Board of Governors may from time to time also create such other Committees as he may deem necessary.

4.10 Advisory Committees. All Committees are advisory in nature, and have no authority to act without express approval of the Board of Governors. All Committees shall make written reports to the Board of Governors as often as required.

ARTICLE V

FEES, DUES AND ASSESSMENTS

5.1 Business Year. The business year of the Club shall be the calendar year.

5.2 Membership Bonds, Membership Fees and Initiation Fees. Upon acceptance to Membership on or before December 31, 1994, each Member shall be required to purchase a Membership bond. Upon acceptance to Membership after December 31, 1994, each member shall be required to pay a Membership Fee. One-half ($\frac{1}{2}$) of the Membership Fee shall be due upon acceptance to Membership and one-half ($\frac{1}{2}$) of the Membership shall be due six (6) months after acceptance to Membership. The schedule of the cost of the Membership Bonds and Membership Fees, as the case may be, for each classification of Membership is as follows:

(a) Regular	\$15,000.00
(b) Junior	\$15,000.00
	(See Paragraph 2.3)

(c) Associate	\$	-0-
(d) Non-Resident	\$	5,000.00
(e) Honorary	\$	-0-

In addition to the purchase of the Membership Bond, all Regular, Junior and Non-Resident Members shall pay a nonrefundable initiation fee in such amounts as determined by the Board of Governors.

No play on the course will be permitted until the initiation fee is paid, and in the event the initiation fee is not paid within twenty (20) days of acceptance to Membership, the Member shall be deemed to have withdrawn as a Member of the Club.

Except as otherwise noted herein, a new Applicant accepted to Membership or a Member transferring to another classification for which the purchase of a Membership Bond or payment of a Membership Fee and/or payment of an initiation fee is required shall thereupon become obligated for payment of the Membership Bond or Membership Fee and/or initiation fee amount in full. Except however, one-half ($\frac{1}{2}$) of any Membership Fee shall be due upon acceptance to Membership or transfer to another classification of Membership and one-half ($\frac{1}{2}$) shall be due six (6) months after acceptance to Membership or transfer to another classification of Membership. In the event that such payment is not made within twenty (20) days of the date it becomes due, the Member shall be deemed to have withdrawn as a Member of the Club.

Interest shall be paid on the Membership Bonds semi-annually at the rate of interest provided in the Membership Bond. Redemption shall occur within ninety (90) days of the date of the Member's death or disability, regardless of the availability of a new Member to take his place. A Member shall also be entitled to receive full repayment of the face amount of the Membership Bond within ninety (90) days of the termination of his Membership, provided there is an available new Member to take the place of the withdrawing Member. If such replacement is not immediately available, then redemptions shall be made on a first withdrawn/first redeemed basis. Interest will be paid on the Membership Bonds so long as they remain outstanding. The Membership Bonds also have a call provision granting Maplemoor the right, at any time, to redeem all or a portion of the Membership Bonds on a ratable basis. In any and all events, the Membership Bonds shall have a fixed maturity date of twenty (20)

years from the date of issue. The Membership Bonds will not be amortized and there will be no return of principal to a Membership Bondholder except under the terms for redemption which are described above. The interest income on the Membership Bond will be paid semi-annually. A form 1099 will be provided to the Member in the amount of the Member's Membership Bond interest.

Repayment of the Membership Fee shall occur within ninety (90) days of the date of the Member's death or disability, regardless of the availability of a new Member to take his place. A Member shall also be entitled to receive full repayment of the Membership Fee within ninety (90) days of the termination of his Membership, provided there is an available new Member to take the place of the withdrawing Member. If such replacement is not immediately available, then repayments shall be made on a first withdrawn/first repaid basis.

5.3 Annual Dues. All Members of the Club shall pay regular dues in such amounts and in such manner as determined by the Board of Governors. Dues are payable in advance as follows: one-half ($\frac{1}{2}$) is due the first day of January of each year and one-half ($\frac{1}{2}$) is due the first day of May of each year. Dues shall be prorated for the portion of the half year within which acceptance to Membership occurs.

5.4 Assessments. The Board of Governors may levy assessments against Regular Members as it deems proper for funds required for Club purposes, provided that any assessment or assessments which in the aggregate in any given year exceed fifty percent (50%) of the annual dues for Regular Members shall not be effective unless approved by a majority of the Regular Members in attendance at a Membership meeting preceded by written notice to all Regular Members mailed thirty (30) days prior to the Membership meeting stating the intent to make such assessment, the amount and purpose thereof, and the effective date and manner of payment.

5.5 Nonpayment. Except as otherwise noted herein, the Board of Governors shall cause to be posted by the 15th of each month, the names of and the amounts due by Members who have failed to pay within one (1) month after due any dues, fees, assessments, penalties, fines or debts owed the Club. If such sum and all debts accruing thereafter are not paid with fifteen (15) days after such posting, the Board of Governors shall cause to be sent to such delinquent Member a notice that if the debts are not paid within ten (10) days after the mailing of the

notice, the Member will be suspended. If the debts are not paid within such ten (10) day period, the Member is automatically suspended from all privileges of Membership unless the Board of Governors accepts the Member's explanation as justifying the delinquency in which case the Board may extend for not more than thirty (30) days the time for payment of the debts and the effective date of suspension. Prior to expulsion, the Board of Governors shall reinstate any Member so suspended upon payment of all debts owed the Club, including any sums for dues or the debts which would have accrued during the period of suspension. Any Member who fails to pay for any Membership Bond, Membership Fees, fees, dues, penalties, fines or other debts owed the Club for a period of three (3) months, whether or not the Member has been suspended shall be expelled at the next regular or special meeting of the Board of Governors. A Member whose Membership is suspended due to non-payment for the second time in one (1) fiscal year, shall be expelled by the Board of Governors at its next regular or special meeting.

ARTICLE VI

GUESTS

6.1 Guests Permitted. The use of the privileges of the Club by guests of Members shall be as determined by the Board of Governors.

6.2 Violation of Rules. Any guest or visitor violating the Constitution, rules or regulations of the Club may, in the discretion of the Board of Governors, be notified that he is no longer able to enjoy the privileges of the Club.

ARTICLE VII

DISCIPLINE AND COMPLAINTS

7.1 Suspension and Expulsion. Any Member may be suspended or expelled for cause by the Board of Governors on the complaint of a Member, or on its own initiative. Except as otherwise expressly provided in this Constitution, no such action shall be taken before the Member shall have been furnished with a written statement of the charges preferred against him, and shall

have been given at least ten (10) days' notice of the time when, and the place where, the same will be considered by the Board. Every such Member shall have the right to appear before the Board and be heard in answer to the charges before final actions shall be taken.

7.2 Complaints. All complaints by Members against other Members for conduct in violation of Club rules or other misconduct bearing on a Member's suitability for continued Membership in the Club, and complaints against employees of the Club for whatever reason, shall be in writing, signed and dated by the complainant, and delivered to the Board of Governors. The Board may refer such complaints to appropriate Committees of the Club for recommendations, and upon receipt of such recommendations take appropriate action.

ARTICLE VIII

MISCELLANEOUS

8.1 Amendments. This Constitution and any rules and regulations promulgated thereunder may be amended by a majority vote of the Board of Governors.

8.2 Notice. Any notice required to be given to the Board of Governors of the Club shall be sent by United States mail, postage prepaid addressed as follows:

Board of Governors
Huntsville Golf Club
147 Hayfield Road
Shavertown, PA 18708

8.3 Prohibition Against Solicitation Mailings. Members shall not use or disclose to others for use the Membership roster for the purpose of making mass or general mailings for business or commercial purposes.

8.4 Gender. Any references in this Constitution to the masculine gender shall be deemed to include the feminine and any references to the feminine gender shall be deemed to include the masculine.

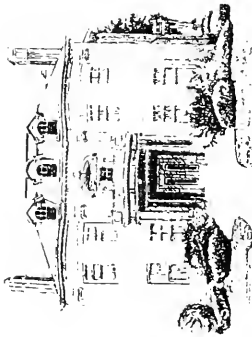
8.5 Club Colors. The colors of the Huntsville Golf Club shall be Hunter Green and Gold.

A. Richard Caputo

EXHIBIT "2"

Bylaws of the Westmoreland Club.





RESTAURANT

The usual hours of operation are as follows:

Monday: 11:30 A.M. to 2:00 P.M.

Tuesday through Friday:
11:30 A.M. to 2:00 P.M.
5:30 P.M. to 9:00 P.M.

Saturday:
11:30 A.M. to 2:00 P.M.
5:30 P.M. to 10:00 P.M.

Sunday: Closed — with exception to certain Holiday Dinners and Special Member Receptions upon application to the manager.

Telephone:

(717) 822-6141 FAX: (717) 822-6176

Clubhouse:

The usual hours of operation are as follows:

Monday:

8:00 a.m. to 3:00 p.m.

Tuesday thru Saturday:

8:00 a.m. to 1:00 a.m.

Sunday: Closed — with exception to certain Holidays & Special Member Receptions upon application to the manager.

THE MALT CLUB

A Cocktail, Gaming and Dining Lounge

Featuring

A relaxing atmosphere for members to spend an hour or an evening among friends.

Billiards on a Genuine turn-of-the century Antique Table.

Cocktails or Lager Beer on Draft at the Antique Mahogany Bar.

Traditional prompt and courteous Club Service.

English Dart Board, Card Tables and other convivial Games of Chance.

ESPN Sporting Events.

Enjoy Lunch, Dinner or a Snack while you play

Luncheon Served daily Monday thru Friday
12:00 P.M. until 2:00 P.M.

Dinner service Tuesday thru Friday
5:30 P.M. to 9:00 P.M.

Saturday
5:30 P.M. to 10:00 P.M.

Usual Hours of Operation

Monday to 3:00 P.M.
Tuesday thru Saturday to Midnight

Reservations are not required.

Persons under 21 years of age not admitted.

The Club can also provide off-premise custom catering for both social and corporate functions of any size at breakfast, luncheon or dinner.

Our Staff is particularly adept at assisting members with plans for any private social event that they may be contemplating.

Weddings.

Card Parties.

Wedding Receptions.

Theme Parties

Cocktail Parties.

Birthday Parties.

Buffet Dinners.

Afternoon Tea

Sit-Down Dinners.

Young Children & Youth Parties.

All of these and more occur regularly at the Club. Whatever special arrangements may be required, an able staff is available to assist you. Our chefs enjoy the challenge of special menus and table planning that will enhance the theme of your particular party. Arrangements can be made by contacting the office. Impeccable service, a Westminster Club tradition, is expected and provided by our skilled staff.

A member may sponsor a non-membership group to hold a function in the clubhouse, providing this group is not engaged in commercial activities. Such functions shall of no time interfere with the regular membership activities, and shall be contracted for in every detail by the manager, subject to the rules of the House Committee as approved by the Board of Governors.

The sponsor or sponsors of such functions shall be held responsible for the billing and payment of any accounts connected with the function.

CLUB STAFF

ROBERT L. WILLIAMS, C.E.C.
General Manager

ELIZABETH A. BARNA
Assistant Manager

TIMOTHY KOHL
Executive Chef

PATRICK J. KRAWCHAK
Dinner Chef

ROBERT BODNAR
Pastry Chef

ANDREW J. CORBETT
Bar Manager

ROBERT ADAMS
Banquet Manager

WILBUR J. WORLINSKY
BYRON BENJAMIN
Dining Room Captains

EDWARD W. COONS
Catering Manager

CEIL DEMORAT
Dining Room Hostess

**OFFICERS
1997**

President
J. LEE TURNER

First Vice-President
MICHAEL H. COOK

Second Vice-President
DAVID L. DAVIS

Secretary-Treasurer
A. JOHN DIMOND

BOARD OF GOVERNORS

DR. ROBERT D. CLEMENTS, JR.

MARK G. CONTRERAS

FRANK E.P. CONYNGHAM

BRUCE E. COVER

JAMES P. HARRIS, JR.

JOSEPH L. PERSICO

PAUL J. SIEGEL

**WESTMORELAND CLUB
1997 COMMITTEES**

Admissions
HAROLD E. FLACK, II, *Chairman*
TERRENCE W. CASEY, *Vice-Chairman*

Affiliate Clubs
RICHARD A. ROSE, JR., *Chairman*
THOMAS J. McGRATH, JR., *Vice-Chairman*

Architect
ROBERT K. MERICLE, *Chairman*
PAUL A. O'HOP, *Vice-Chairman*

Building & Planning
JOSEPH M. NELSON, *Chairman*
JAMES T. BIRD, *Vice-Chairman*

Entertainment
CHARLES D. FLACK, JR., *Chairman*
EDWARD ROMANOWSKI, *Vice-Chairman*

Finance & Budget
JOSEPH R. ROGOWICZ, *Chairman*
GEORGE G. CONYNGHAM, JR., *Vice-Chairman*

OFFICERS & BOARD OF GOVERNORS — 1997



Seated left to right: A. John Dimand, secretary-treasurer; David L. Davis, second vice president; J. Lee Turner, president; Michael N. Cook, first vice president; Bruce E. Gover, governor.
Standing left to right: Paul J. Siegel, Joseph L. Persico, Frank E.P. Conyngham, Dr. Robert D. Clements, Jr., Mark G. Contreras, Board of Governors. Absent from photo: James P. Harris, Jr., governor.

CLUB PRESIDENTS

1888	Han E. L. Dana	1940	Robert C. Miner
1889	I. A. Stearns	1841-46	H. C. Wiener, Sr.
1890-91	T. F. Ryan	1947	E. L. Dana
1892	A. H. Dickson	1948-49	Bruce Payne
1893-95	Hon. Stanley Woodward	1950	William Powell
1896-98	Dr. G. W. Guthrie	1951	Allfred Darie
1899-00	A. H. McClintock	1952-53	Arthur L. Strayer
1901-02	G. R. Bedford	1954-55	Frank W. Ernest, Jr.
1903	Charles W. Lee	1956	John T. Howell, Jr.
1904	Jahjha C. C. C. C.	1957	J. Archibald Brooks
1905-06	Hon. F. W. Wheaton	1958-59	Mitchell Jenkins, Brig. Gen.
1907-08	Thomas Daring	1960-61	Herman A. Wagner
1909-10	W. S. McLean	1962	Donald D. Trethewey
1911-12	S. D. Wainwright	1963-64	George T. Bell
1913	G. R. Bedford	1965	Harry B. Schooley, Jr.
1914-15	L. B. Hilliard	1966	Harold E. Kramer
1916-17	Dr. Waller S. Stewart	1967-68	John R. Vivian
1918-19	William H. Conyngham	1969-70	George Guthrie Conyngham
1920-21	Theodore S. Barber	1971	Robert E. Post
1922-23	F. M. Kirby	1972-73	Charles B. Kagar
1924	Frank G. Darie	1974-75	Charles M. Epstein, Jr.
1925-26	Douglas Bunting	1976-77	H. Melvin Vivian, Jr.
1927-28	Hon. E. Foster Heller	1978-79	Harold C. Snowden, Jr.
1929-30	E. B. Mulligan	1980-81	Frederic H. Scovell
1931	Hon. William S. McLean	1982-83	Joseph M. Nelson
1932	Charles B. Waller	1984-85	Thomas J. Graham, Jr.
1933	John C. Haddock	1986-87	Ronald W. Simms
1934	Dr. George W. Carr	1988-89	William L. Davis
1935-36	H. B. Schooley	1990-91	Richard L. Peartall
1937	Neil Christman	1992-93	Charles D. Fleck, Jr.
1938	S. C. Chase	1994-95	James P. Harris, Jr.
1939	E. H. Kent	1996-97	J. Lee Turner

Personnel

SAMUEL M. WOLFE, III., *Chairman*
DR. JAMES S. BUTCOFSKI, *Vice-Chairman*

Food & Beverage

HAROLD C. SNOWDON, JR., *Chairman*
DR. FREDERICK B. MYERS, *Vice-Chairman*

Historical & Library

FRED LOMBARDO, *Chairman*
LOUIS E. RUCKNO, *Vice-Chairman*

House

ROBERT G. EDGERTON, JR., *Chairman*
STEVEN M. ROTHSTEIN, *Vice-Chairman*

Insurance

H. MELVIN VIVIAN, JR., *Chairman*
RAY W. TURNER, JR., *Vice-Chairman*

Legal & By-Laws

DANIEL G. FLANNERY, *Chairman*
STEPHEN B. KILLIAN, *Vice-Chairman*

Nominating

WILLIAM L. DAVIS, *Chairman*
RONALD W. SIMMS, *Vice-Chairman*

AFFILIATE CLUBS

- THE COMMERCE CLUB**
34 Broad Street, New Haven, CT 06502
(860) 325-1681
- THE COUNTRY CLUB OF SCRANTON**
Morgan Highway, Clarks Summit, PA 18411
(717) 586-2311
- THE DETROIT CLUB**
712 Cass Avenue, Detroit, MI 48226
(313) 963-8800
- THE DOWNTOWN CLUB OF RICHMOND**
20th Floor, Riverfront Plaza, Richmond, VA 23219
(804) 344-4051
- ELMIRA CITY CLUB**
320 Church Street, Elmira, NY 14901
(607) 733-6506
- ETHAN ALLEN CLUB**
298 College Street, Burlington, VT 05401
(802) 863-3401
- THE FAY CLUB**
658 Main Street, Fitchburg, MA 01420
(508) 345-4537
- THE GRADUATE CLUB**
155 Elm Street, New Haven, CT 06508
(203) 624-3197
- THE GREENSBORO CITY CLUB**
Suite 1900, Jefferson Pilot Tower
100 North Greene Street, Greensboro, NC 27401
(919) 775-6485
- HAMILTON CLUB**
106 Orange Street, Lancaster, PA 17604
(717) 397-2576
- ALBUQUERQUE PETROLEUM CLUB**
500 Marquette Street, Albuquerque, NM 87102
(505) 247-0525
- ALCONQUIN CLUB OF BOSTON**
217 Commonwealth Avenue, Boston, MA 02116
(617) 266-2400
- ARIZONA CLUB**
201 N. Central Avenue, Phoenix, AZ 85004
(602) 253-1171
- ARIZONA CLUB**
7150 E. Camelback Road, Scottsdale, AZ 85251
(602) 950-7444
- BETHLEHEM CLUB**
350 North New Street, Bethlehem, PA 18018
(610) 867-4673
- BINGHAMTON CLUB**
83 Front Street, Binghamton, NY 13902
(607) 722-2329
- THE CATASAUQUA CLUB**
226 Pine Street, Catsaquoque, PA 18032
(215) 264-1771
- CITY CLUB OF FORTH WORTH**
301 Commerce Street, Forth Worth, TX 76102
(817) 878-4000
- CITY CLUB OF MACON**
355 First Street, Macon, GA 31202
(912) 738-9000
- CITY CLUB OF THE PALM BEACHES**
GOLDEN BEAR PLAZA - NORTH TOWER
11786 U.S. Highway One, Suite 600
North Palm Beach, FL 33408
(561) 773-3300

THE STANDARD CLUB
320 South Plymouth Court, Chicago, IL 60664
(312) 427-9100

THE SUMMIT CLUB
211 West Washington Street, South Bend, IN 46601
(219) 232-3081

THE TOWER CLUB
20 N. Wacker Drive, Chicago, IL 60606
(312) 726-7410

TUESDAY CLUB
30 North Third Street, Harrisburg, PA 17101
(717) 238-9528

TWIN CITY CLUB
219 Marshall Street, Winston-Salem, NC 27120
(919) 724-7471

THE UNION LEAGUE OF PHILADELPHIA
140 South Broad Street, Philadelphia, PA 19102
(215) 563-6500

THE UNIVERSITY CLUB OF THE CITY OF WASHINGTON, DC
1135 16th St., NW, Washington, DC 20036
(202) 862-3800

THE UNIVERSITY CLUB
219 Benefit Street, Providence, RI 02903
(401) 331-3230

UNIVERSITY CLUB
123 University Place, Pittsburgh, PA 15213
(412) 621-1890

UNIVERSITY CLUB OF SANTA BARBARA
1322 Santa Barbara St., Santa Barbara, CA 93101
(805) 966-0853

VALLEY COUNTRY CLUB
Walnut Avenue, Conringham, PA 18219
(717) 788-1112

Please note that we exchange Club House Privileges subject to the
House Rules of the respective clubs. Please contact club office for
additional information.

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TO WALON CLUB
26 Main Street, Pawtucket, RI 02860
(401) 722-1310

LIVINGSTON CLUB
22 South Seventh Street, Allentown, PA 18101
(610) 435-1529

THE NASSAU CLUB
6 Mercer Street, Princeton, NJ 08540
(609) 924-0580

NEW YORK ATHLETIC CLUB
180 Central Park, South, New York, NY 10019
(212) 247-5100

PLUMSOIL CLUB
2 Canal Street, 30th Floor, New Orleans, LA 70130
(504) 529-1601

POMFRET CLUB
33 South Fourth Street, Easton, PA 18042
(215) 238-7641

POTTISVILLE CLUB
201 South 26th Street, Pottsville, PA 17901
(717) 672-3850

RACQUET CLUB
215 South 16th Street, Philadelphia, PA 19102
(215) 735-1225

THE RIVER CLUB
1 Independence Place, 34th Floor
Jacksonville, FL 32202
(904) 354-1111

ROSS CLUB
201 West 4th Street, Williamsport, PA 17701
(717) 326-2896

THE ST. JAMES CLUB
7-8 Park Place, London, SW1A 1LP
(1-800) 877-0477

SCRANTON CLUB
404 North Washington Avenue, Scranton, PA 18503
(717) 344-8671

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A HISTORY OF THE WESTMORELAND CLUB

(By *Herron H. Smith*)

THE PREDECESSOR ORGANIZATION

Perhaps one of the most distinctive organizations the early 1870's in this community was the "Malt Club," forerunner of the present Westmoreland Club. This was a group of representative men of Wilkes-Barre, desirous of meeting together under convivial circumstances, to discuss community projects and problems, and interchanging matters of interest at home and abroad - a novel idea in those times, when social clubs of this nature existed only in large cities.

The name, "Malt Club," was chosen with special fitness inasmuch as the only beverage indulged in by its members was lager beer on draft.

The first meeting of the club was November 13, 1873, in rooms rented in a small brick building on East Northampton Street. This stood in the rear of a public market place adjacent to the restaurant of Peter Schneider, who acted as steward. The membership was at first limited to 20 - later, nearly 70 were to subscribe resolutions.

In January, 1879, a little more than five years after its founding, the Malt Club moved into more commodious quarters on the second floor of Peter Schappert's Hotel, 33 South Main Street. Here, for a decade, the club was maintained in flourishing condition. The clubrooms were frequented all day long, except Sunday, and games, mostly cards, were indulged in. Saturday night was observed as "Club Night," when nearly all the members would be in attendance.

Throughout the formative years of the Westmoreland's predecessor organization, the moving spirit in the activities of the club was Abraham Wright, who had just returned from Germany, where he had been a student at Heidelberg University. It was Mr. Wright who incorporated the theory of the "Dutch Treat" in the rules of the club.

Little change occurred in the Malt Club or its personnel until March of 1888, when thirty new members, most of them

representative of the younger generation, were elected. This proved to be a most important move, well nigh revolutionary on the part of the club as bearing on its future. Within a few months, there began an agitation on the part of the new group, joined by a few older members, in favor of a change of name and location, with a view to enlarging the club's activities, the securing of more spacious quarters, the employment of a steward, the serving of meals, and thus take on the feature of a real club.

THE PRESENT CLUB

A committee was formed and the name "Westmoreland Club" was adopted by the majority in order to perpetuate the old Connecticut name of the district over which that state once claimed jurisdiction. Judge Edmund L. Dana, member of the Common Pleas Bench, was elected the first president. During these proceedings, some members who had dissented from the proposed change, withdrew.

Incorporated under the name "Westmoreland" was officially brought about on February 9, 1889, when the charter was approved by President Judge Charles E. Rice. Incorporators were Irving A. Stearns, who became the club's second president, Dr. Olin F. Harvey, Hon. Henry W. Palmer, Allan H. Dickson, and Thomas Darling.

The Hunt House, immediately north of St. Stephen's Episcopal Church on South Franklin Street, a frame structure once occupied by Warren J. Woodward, Supreme Court Justice, and originally owned by Charles Parrish, was rented and fitted for club purposes. An informal opening took place on March 23, 1889.

Meantime, it is interesting to note that the dissident faction had decided to remain apart, re-adapting the name "Malt Club" and taking headquarters in the Poland Hotel. There they congregated weekly in their rooms, 11-M-12, until 1922, when their organization was finally disbanded.

On Christmas Eve, 1896, a fire broke out in St. Stephen's Episcopal Church, causing its complete destruction, and at the same time leveling the Westmoreland clubhouse nearby.

Following this disaster, immediate steps were undertaken by the membership to plan for a new clubhouse. In the

administration for particular mention during this era of development. Officers, directors and club committees have worked hard on major improvement projects which included the conversion of the former billiard room on the ground floor to an elaborately decorated cosy bar, the enclosing of the south porch of the clubhouse, now called the Terrace Room; the several stages in which repairs were made to the kitchen, pantry and service areas; the redecorating of the ladies' lounge area and, last but not least, the complete redecoration of the clubhouse begun in 1968 at a cost of \$150,000.

It has been estimated that since the end of World War II up until the disastrous flood caused by Tropical Storm Agnes which poured into Wilkes-Barre on June 23, 1972, a total aggregate of nearly a quarter of a million dollars had been authorized by the various boards of governors for these various stages of improvements.

Needless to say, your club suffered enormous damages as a result of the June 23rd flood. Kitchen and refrigeration areas in the basement area especially, equipment of all kinds including air conditioning and other utility components were ruinously damaged by the flood waters.

Fortunately, in many instances materials of the club house were of such durable quality that much of the affected floor areas and wall paneling could be restored. Also, in many cases furnishings were placed into service after thorough re-cleaning and repairs were made.

With the limited service that could be provided following the flood, unprecedented loss of revenue resulted. The club Board of Governors met and promptly prompted your Board of Governors to call upon the membership for varying assessments to be paid over a three year period.

Nineteen seventy-three, the Centennial year of the Westmoreland Club is probably regarded as the most critical in its history.

The newly constructed kitchen facility encompassing the most modern equipment available, made it possible for the club to again resume a full program of food service for the general membership as well as to restore the capacity for staging the largest dances, entertainments and catering

interim, the club first maintained headquarters through the courtesy of the United Churches Mission Society, in the building known as the "Washington Hotel" on Northampton Street across from the Y.M.C.A. A short while later, the membership convened at the Emley House on North River Street, whose spacious lawns provided an informal, if not convivial setting for occasional outdoor get-togethers during warm summer evenings.

In January, 1897, the club purchased the vacant Hunt lot for \$16,000 and authorized rebuilding of a new clubhouse on the same site, which was completed and formally opened at an elaborate party given on December 22, 1897.

The three-story brick structure was erected by E.T. Long, contractor, for \$30,000 and furnishings in the amount of \$10,000 were purchased for the new headquarters. A. H. Kipp was the architect.

This fine building, one of the few in the state built exclusively as an urban clubhouse, served the needs of the members for a quarter of a century. After World War I, however, membership had been so broadened to keep pace with rapid expansion of the Wyoming Valley area that the need for larger quarters became evident. Finally in November, 1924, under the leadership of the then club president, Fred Morgan Kirby, the Dr. Levi P. Shoemaker home on South Franklin Street, considered one of the finest examples of Georgian Colonial style in this section of the state, was acquired for \$75,000 while the old clubhouse became the property of St. Stephen's Church. Re-arranging spacious and commodious mansion were converted for club purposes and an addition was made to the rear. Formal opening was staged December 2, 1922.

In the seven decades which have passed since the acquisition of the present home of the Westmoreland Club, expansion of the area for dining and entertainment, purchase of careful furnishings, the improvement of the interior decor, and modernization of the kitchen and service equipment has kept pace not only with the much expanded roster of membership, but also with the more widespread use of the club facilities by members' families.

It would be difficult to single out any individual club

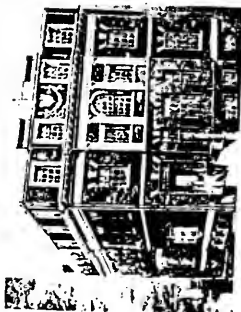
private parties as before.

There was no doubt that with the continued progressive spirit of leadership, our organization would emerge again, not only as an outstanding asset in the life and rhythm of Valley, but also one of the finest, best equipped and well managed social clubs to be found in a comparable community anywhere in the United States.

As the 100th anniversary year progressed, and with it the necessary flood restoration program providing a new flood service facility, the Westmoreland Club succeeded in meeting the greatest challenge of the many which have occurred in its past.

There presently exists, as the Westmoreland Club enters in to its 124th year, not only a restored physical facility and revitalized membership spirit, but also an important desire for the Westmoreland Club to continue to grow and prosper.

Your club has every reason to be justifiably proud of its colorful history. You, as members of our organization, share in its unusual heritage, as we look forward to our second century of progress.



This attractive water-color sketch was made shortly after it was constructed in 1897.
Not many of the present membership may know that the

old parish house of St. Stephens Episcopal Church once served, for nearly a quarter of a century, as the Westmoreland Club House. The three-story brick structure served as headquarters until 1922 when the present clubhouse, formerly the home of Dr. Levi P. Shemmaker, was acquired by the membership.



Above are pictured some of the early members of the club including several of the founding fathers, shown at a fall outing of the club held September 21, 1900, at Lakeside Cottage, Harveys Lake; host, George R. Wright.

Seated left to right: (Front row) Alexander Farnham, Charles D. Foy, Joseph D. Coon, William S. McLean, Sr., George R. Bay, John B. Reynolds, Theodore F. Ryan, Henry F. Ryan, A. A. Sterling, Eugene B. Beaumont, Abram Hoyt, George S. Woodard, Stanley Woodward, Henry W. Palmer, S. J. Str., (Third row) Reynolds, H. Harrison Harvey; (Fourth row) Bay, G. M. Reynolds, Charles E. Rice, John M. Crase, William L. Cunningham; (Fifth row) Thomas Graeme, R. Bruce Ricketts, George R. Wright.

Other prominent members of the club at the time who were not included in the above group were P. Butler Reynolds, Judge Cyrus Gordon, Andrew P. Derr, J. Ford Dorrance, Edward E. Hoyt, W. A. Lathrop.

CHARTER

In Re
Incorporation
of the
Westmoreland
Club

To the Honorable C.E. Rice,
President Judge
of the
Court of Common Pleas
of Luzerne County

In compliance with the requirements of an Act of the General Assembly of the Commonwealth, entitled "An Act to provide for the incorporation and regulation of certain Corporations", approved April 29th, A.D. 1874, and the supplements thereto, the undersigned, all citizens of this Commonwealth, for themselves and such other persons as are now associated together as the Westmoreland Club, or may hereafter become members of the same, desirous that they may be incorporated according to law, do hereby certify:

First. The name of the proposed Corporation is the Westmoreland Club.

Second. Said Corporation is formed for the purpose of maintaining a club for social enjoyment.

Third. The business of said Corporation is to be transacted in the City of Wilkes-Barre, Luzerne County, Pennsylvania.

Fourth. Said Corporation is to exist perpetually.

Fifth. The names and residences of the incorporators are as follows:

Name	Residence
Irving A. Stearns	Wilkes-Barre, Pa.
Olin F. Harvey	Wilkes-Barre, Pa.
Henry W. Palmer	Wilkes-Barre, Pa.
Allan H. Dickson	Wilkes-Barre, Pa.
Thomas Darling	Wilkes-Barre, Pa.

Sixth. The business and affairs of the corporation shall be managed by a Board of Governors of not less than three nor more than ten, the number, qualifications, terms of office and manner of election to be fixed and prescribed by the By-Laws.

Name	Residence
Irving A. Stearns, Pres.	Wilkes-Barre, Pa.
R. Bruce Ricketts, V. Pres.	Wilkes-Barre, Pa.
Thomas Darling, Secy.	Wilkes-Barre, Pa.

Elected for one year and Directors ex-officio.
Andrew H. McClintock Wilkes-Barre, Pa.
J. Ridgway Wright Wilkes-Barre, Pa.
Olin F. Harvey Wilkes-Barre, Pa.
John Reichard Wilkes-Barre, Pa.

Of whom two are elected for one year and two for two years.

Witness our hands and seals this seventeenth day of January, A.D. 1889.

ALLAN H. DICKSON (Seal)
HOMER DARLING (Seal)
OLIN F. HARVEY (Seal)
HENRY W. PALMER (Seal)
IRVING A. STEARNS (Seal)

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LUZERNE

Before me, the Recorder of Deeds of said county, personally appeared Irving A. Stearns, Allan H. Dickson, Homer Darling, three of the subscribers to the above and foregoing certificate of incorporation of the Westmoreland Club, and in due form of law acknowledged the same to be their act and deed.

Witness my hand and official Seal this 8th Feb. A. D. 1889.

JOS. J. MCGINTY
(Seal) Recorder

LUZERNE COUNTY, ss:

Filled in the office of the Prothonotary of the Court of Common Pleas in and for said county, this 17th day of January, A.D. 1889.

JAMES M. MORRIS
Prothonotary.

In the Court of Common Pleas of Luzerne County.

And now, to-wit, this 9th day of February, A. D. 1889, the within certificate of incorporation having been on file in the office of the Prothonotary of said Court since the 17th day of January, A. D. 1889, the day on which publication of notice of intended application was first made, as appears from entry thereon, and due proof of said publication having been therewith presented to me, I do hereby certify that I have perused and examined said instrument and find the same to be in proper form and within the purpose named in the first of said Corporations, specified in section two of the Act of April 24th, 1874, and that said purposes are lawful and that they do not injure the community. It is therefore ordered and decreed that the said charter be approved, and it is hereby approved, and upon the recording of the charter and its endorsements, and this order of the office of the Recorder of Deeds in and for said county, in which order hereby ordered, the subscribers thereto and their associates shall henceforth be a corporation for the purposes, and upon the terms and under the name therein stated.

CHARLES E. RICE President Judge.
Recorded February 9th, 1889.

ARTICLE I. BY-LAWS

MEETINGS OF THE MEMBERS

- Section 1. All meetings of the members of the Club shall be held at the principal office of the Club or such other place in Luzerne County as the Board of Governors may designate.
- Section 2. Regular meetings of the members of the Club may be held monthly on such dates as shall be fixed by the Board of Governors; provided, however, that an annual meeting shall be held during the month of December on such day as shall be fixed by the Board of Governors.
- Section 3. Special meetings of the members of the Club may be called at any time by the President, or shall be called by the President upon written request of ten resident

members of the Club, provided the request specifies the issues to be raised at the special meeting. Written printed notices of special meetings specifying the purpose thereof shall be given by the Secretary and mailed seven days in advance of the meetings to the last known post office address of the members. At such meetings no business shall be transacted other than that mentioned in the call.

Section 4. Thirty resident members shall constitute a quorum of the Club.

ARTICLE II.

ELECTION OF OFFICERS AND MEMBERS OF BOARD OF GOVERNORS

Section 1. At least thirty days prior to the annual December meeting the Nominating Committee shall meet and nominate a full ticket for the Officers of the Club and for such members of the Board of Governors as must be elected in accordance with the provisions of Section 1 of Article IV of the By-Laws. At least twenty days prior to the date of the annual December meeting, a list of such nominees shall be mailed to each member of the Club and the list shall be posted on the Club's bulletin board. Any twenty members of the club in good standing may nominate other candidates for the same office by written nominations signed by said nominating members, and the names of all such candidates and of the nominating members shall be posted on the Club's bulletin board at least ten days before the annual December meeting, and no member shall be eligible to be elected to any office unless nominated and posted as aforesaid.

Section 2. The Club officers and the members of the Board of Governors shall be elected at the annual December meeting by a majority of the whole number of votes cast.

ARTICLE III.

OFFICERS AND GOVERNORS

Section 1. The officers of the Club shall be a President, a First Vice-President, a Second Vice-President and a Secretary/Treasurer, all of whom shall be elected at the annual December meeting of the members of the Club.

they from time to time deem appropriate and in the best interest of the Club, with or without cause; provided, however, that in the case of offices such removal or suspension from office shall be approved by the resident members of the Club, and the Board of Governors shall have the power to fix, and from time to time change the salaries or emoluments of the officers and employees of the Club, and to require security in such instances and in such amounts as they shall determine from time to time.

(E) To confer by resolution upon any appointed officers of the Club, the power to choose, remove or suspend assistant officers and employees.

(F) From time to time to make and change rules and regulations not inconsistent with these By-Laws, for the management of the business and affairs of the Club.

(G) To purchase or otherwise acquire for the Club any property, rights or privileges, including real estate, which the Club is authorized to acquire, and to make improvements and additions and to purchase equipment at such price and on such terms and conditions and for such consideration as they shall from time to time deem appropriate; provided, however, no expenditure involving an amount in excess of \$50,000 may be made or contracted for except by prior approval of the members granted at a meeting held in accordance with Article I herein.

(H) To borrow money for the Club and to create, make and issue mortgages, bonds, deeds of trust, trust agreements and negotiate or transferable instruments and securities, secured by mortgage or otherwise, in aggregate amount not to exceed the maximum sum of Fifty Thousand (\$50,000) Dollars without prior approval of the members granted at a meeting held in accordance with Article I herein; and to do every other act and thing necessary to effectuate the aforesaid purposes.

(I) To determine who shall be authorized on the Club's behalf to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents in cases not covered by these By-Laws.

(J) From time to time to provide for the management of

Section 2. The officers shall hold office for a term of one year and until their respective successors are duly elected and qualified.

Section 3. The Board of Governors may appoint such other officers as they deem necessary, who shall have such authority and perform such duties as, from time to time, may be prescribed by the Board of Governors.

ARTICLE IV.

BOARD OF GOVERNORS

Section 1. The Board of Governors shall consist of the President, First Vice-President, Second Vice-President, Secretary/Treasurer, the immediate past President and six governors elected as provided in Article II of these By-Laws. Three of the six governors shall be elected each year at the annual December meeting for a term of two years and until their successors shall be chosen, duly elected and qualified. At least two of the aforesaid governors elected as aforesaid shall not have served during the preceding year.

Section 2. General Powers. The Board of Governors shall have all the power and authority granted by law to the Club, except as such may be specifically excepted by law or by these By-Laws. It is hereby expressly declared that the Board of Governors shall have the following powers.

(A) To classify the various members of the Club according to residence or such other categories as they may deem fair and equitable to all the members of the Club.

(B) To approve or reject applications for membership in the Club upon receiving a majority report from the Admissions Committee in the manner set forth in ARTICLE VIII:

(C) To fix, adjust and change the initiation and/or annual dues of the members of the Club and the method of payment thereof.

(D) To remove or suspend from office, at any time, by the affirmative vote of the majority of the whole Board of Governors, any officers including the President, First Vice-President, Second Vice-President and/or Secretary/Treasurer, or employee, permanently or temporarily, as

Report of Special Committees.
Unfinished business.
New business.

ARTICLE VI.

DUTIES OF THE OFFICERS

President

Section 1. It shall be the duty of the President:

(A) To preside at all meetings of the Board of Governors and take care that the By-Laws of the Club and the directions of the Board of Governors are observed and made effective by the proper subordinate officers.

(B) To present annually and at such other times as may be deemed necessary a full report of the conditions of the Club, accompanied with such accounts of its business and suggesting such alterations or changes in the arrangement for the conduct of the same as may be considered proper.

(C) To appoint such committees as may be necessary from time to time properly to conduct and expedite the affairs of the Club.

(D) The President shall be a member ex-officio of all committees.

(E) The President shall have the same privileges of voting as other members of the Board of Governors and shall decide on questions of order, which decision shall be final, unless an appeal herefrom is made to the Board of Governors by two members of the Board and duly sustained.

The First Vice-President

Section 2. In the case of the absence of the President, the First Vice-President is to preside at the meetings of the Club and Board of Governors and in the event of the absence, resignation, disability or death of the President, the First Vice-President shall perform all the duties of the President, until the return of the President or the disability shall have been removed or a new President shall have been elected. The First Vice-President shall act in an administrative capacity on behalf of the President and/or the

the affairs of the Club in such manner as they deem appropriate, and in particular, from time to time, to delegate any of the powers of the Board of Governors in the course of current business of the Club to any standing or special committee, or to any officer

(K) To fill the vacancy of any officer or a member of the Board of Governors for the unexpired term of any officer and/or member thereof by a majority vote of the remaining members. In the event the membership of the Board of Governors falls below the number necessary for a quorum, a special meeting of the members of the Club shall be called and elections held to fill the unexpired term of such officers and/or members of the Board of Governors.

(L) To appoint annually a competent auditor to audit the books and finances of the Club and to fix the compensation of such auditor.

ARTICLE V.

BOARD OF GOVERNORS' MEETING

Section 1. The Board of Governors shall hold regular meetings at the principal office of the Club in the City of Wilkes-Barre, Pennsylvania, or elsewhere by order of the said Board on the days and at the hour fixed by the Board

Section 2. Special meetings of the Board of Governors may be called at any time by the President or shall be called by the President upon request of two members of the Board of Governors on three day's written notice to each Governor stating the time and purpose of the special meeting.

Section 3. A majority of the members of the whole Board of Governors shall be necessary for a quorum to transact business at any meeting.

Section 4. The order of business of the Board of Governors shall be substantially as follows:

- Minutes of the last meeting.
- Report of the President.
- Report of the Treasurer.
- Report of Standing Committees

Secretary/Treasurer and shall periodically report to the President and the Board of Governors as to the status of the following standing committees of which the First Vice-President is to be an ex-officio member:

- (A) Architect Committee
- (B) Building and Planning Committee
- (C) House Committee
- (D) Legal and By-Laws Committee
- (E) Personnel Committee

The Second Vice-President

Section 3. In the event of the absence, resignation, disability or death of the First Vice-President, the Second Vice-President shall assume all the responsibilities of the First Vice-President as provided in Section 2 hereof. Otherwise, the Second Vice-President shall assist the First Vice-President and shall periodically report to the President and the Board of Governors as to the status of the following standing committees of which the Second Vice-President shall be ex-officio member:

- (A) Admissions Committee
- (B) Affiliate Clubs Committee
- (C) Entertainment Committee
- (D) Food and Beverage Committee
- (E) Historical and Library Committee
- (F) Nominating Committee

Secretary/Treasurer

Section 4. It shall be the duty of the Secretary/Treasurer:

- (A) To attend all meetings of the Club and Board of Governors and be ex-officio member of the following standing committees:
 - (1) Building and Planning Committee
 - (2) Finance and Budget Committee
 - (3) Personnel Committee
- (B) To keep the customary Club books and records, and to sign with the President all contracts, deeds and other

instruments of the Club. The Secretary/Treasurer shall perform such other duties as may from time to time be fixed and requested by the Board of Governors.

(C) The Secretary/Treasurer shall have custody of all funds and securities of the Club; when necessary or proper the Secretary/Treasurer shall endorse on behalf of the Club, for collection, checks, notes and other obligations, and shall deposit the same to the credit of the Club in such bank or banks as may be approved by the Board of Governors; may designate, shall sign all checks and vouchers for payments made to the Club; with such other officers as may be designated by the Board of Governors, the Secretary/Treasurer may sign all checks made by the Club, and shall pay out and dispose of the same under the direction of the Board of Governors; the Secretary/Treasurer may sign with such other person or persons as may be designated for the purpose by the Board of Governors, all bills of exchange and promissory notes of the Club; whenever required by the Board of Governors, the Secretary/Treasurer shall render a statement of the Club's cash accounts, the Secretary/Treasurer shall enter regularly, in the books of the Club, to be kept for that purpose, full and accurate accounts of all moneys received and paid on account of the Club; the Secretary/Treasurer shall, at all reasonable times, exhibit the books and accounts to any member of the Board of Governors upon application at the office of the Club during business hours, and shall perform all acts incident to the position of the Treasurer, subject to the control of the Board of Governors.

(D) The Secretary/Treasurer shall give a fidelity bond, with corporate surety, in such form as the Board of Governors may require for the faithful performance of the duties of said office, and the costs thereof shall be paid by the Club.

(E) The Secretary/Treasurer shall have the right to delegate with the prior consent and approval of the Board of Governors all or any of the powers heretofore granted pursuant to the terms of this Section 4 to the Manager of the Club.

attend membership meetings nor have any proprietary interest in the assets of the Club.

(F) At the next annual meeting of the Club or any special meeting called for the purpose, all applications of probationary members will be voted upon by the members. Applicants shall be elected to membership by the affirmative vote of a majority of those members of the Club present at said meeting. If a probationary member is not elected to said membership, then probationary membership status shall immediately terminate and the initiation fee shall be refunded.

Section 2. Applicants for all classifications of resident membership and for non-resident membership shall have maintained their residence, or place of business, for a continuous period of at least six months immediately preceding the date an application for membership is requested from the Admissions Committee.

Section 3. Members desiring to propose, recommend, or endorse an application shall themselves have maintained a membership in good standing for no less than one year.

Section 4. No person whose application for membership shall have been rejected, shall again be proposed for membership within one year after the date of rejection.

Section 5. Resident Membership of the Club shall consist of Resident Class A, Resident Class B and Resident Class C. Commencing May 18, 1984, membership in the classification of Non-Resident membership is provided, however, that Non-Resident membership existing on May 18, 1984, may maintain their membership classification as Non-Resident Class A or Non-Resident Class B, as heretofore.

Section 6. Resident Class A Membership shall consist of all members who are 40 years of age or over and who reside within 30 miles of the Public Square in Wilkes-Barre or whose principal place of business is within the said area.

Section 7. Resident Class B Membership shall consist of all members who are 30 to 39 years of age and who reside within 50 miles of the Public Square in Wilkes-Barre or whose principal place of business is within the aforesaid area.

ARTICLE VII.

APPLICATION AND CLASSIFICATION FOR MEMBERSHIP

Section 1. All prospective new members shall be sponsored by a resident member in good standing (the "Sponsor"), who shall guarantee payment of the initiation fee, if any, in case of election of the applicant.

(A) The Sponsor shall request, in writing from the Admissions Committee, an application for membership

(B) The request shall be accompanied by letters of recommendation from the Sponsor and at least two other members in good standing, which letters shall include, at a minimum, the following information:

(1) The name, address, age, marital status, and business affiliation of the proposed new member;

(2) The length of time the proposed new member has been known to the member writing the letter, and whether the acquaintance is on a social or business level;

(3) Information concerning the proposed member's spouse and family; and

(4) The names of any other Club members who know the proposed member.

(C) Upon receipt of the foregoing, the Admissions Committee shall take action on the request for an application for membership and, if tentatively approved, the name will be posted on the Club's bulletin board for ten (10) days to give members the opportunity to voice objections.

(D) The Admissions Committee shall again review the request for application and, if approved, will forward an application to the Sponsor for completion by the proposed new member.

(E) The completed application will be considered by the Board of Governors and, if approved, the applicant will be granted probationary membership status in the Club entitled to all rights and privileges of membership except the probationary member shall not have the right to vote or

shall be designated and appointed by the President.

(B). The Admissions Committee shall receive, consider and process confidentially all membership applications and shall make appropriate recommendations to the Board of Governors. The Admissions Committee shall further have the following mandatory responsibilities:

(1) To personally and immediately notify the Sponsors of an unsuccessful applicant.

(2) To insure that numerical membership limits as may be established from time to time by the Board of Governors in total or in any membership class, are not exceeded unless required by resolution of the Board of Governors, in accordance with the By-Laws.

(3) To maintain a current roster of all members and their membership category

(4) To expedite and process all records pertaining to resignations, deaths, cancellations, changes in membership status or in membership class.

(5) To arrange for the indoctrination of new members and to acquaint each new member with the history of the Westmoreland Club.

Affiliate Clubs Committee

Section 2(A). The President shall annually at the first meeting following the annual December meeting, appoint an Affiliate Clubs Committee to serve for a term of one year and until their successors are appointed. The Affiliate Clubs Committee shall consist of at least three (3) members, including the Chairman and Vice Chairman of the Committee who shall be designated and appointed by the President.

(B). The 'Affiliate Clubs' Committee shall establish affiliations with Clubs which in their discretion are of the type and quality that the Club Membership would enjoy. There shall be presented to such Affiliate Clubs a Westmoreland Club Membership Roster as well as a general classification of membership. The Affiliate Club Committee shall exchange thoughts and information as to Club management practices and possibilities of reciprocal charge arrangements.

Section 8. Resident Class C Membership shall consist of all members who are 21 through 29 years of age, who reside within 50 miles of the Public Square in Wilkes-Barre or whose principal place of business is within the aforesaid area.

Section 9. Non-Resident Membership shall consist of all members who reside and whose principal place of business is more than 50 miles from Public Square in Wilkes-Barre.

Section 10(A). Associate Membership, Class I, shall consist of the spouses of all Resident, Class A, B and C members in good standing and shall consist of the spouse of Non-Resident members in good standing as shall have requested membership.

(B). Associate Membership, Class II, shall consist of surviving spouses of deceased members as shall have requested membership.

(C). Associate Membership shall be granted to any person qualifying therefore under this section or to such persons as may be approved under such rules or procedures as may be determined from time to time by the Board of Governors. The provisions of Section 1 of this Article shall not control in the election of such members.

(D). Associate Members shall not be entitled to attend or vote at any meeting of the membership, nor shall they be entitled to receive notice thereof; associate members shall have no interest in the assets of the Club.

Section 11. No person under 21 years of age shall be eligible for membership in the Club.

ARTICLE VIII.

COMMITTEES

Admissions Committee

Section 1(A). The President shall annually at the first meeting of the Board of Governors following the annual December meeting of members, appoint an Admissions Committee, to serve for a term of one year and until their successors are appointed. The Admissions Committee shall consist of at least ten (10) members of the Club, including the Chairman and Vice Chairman of the Committee who

Architect Committee

Section 3(A). The President shall annually at the first meeting following the annual December meeting, appoint an Architect Committee to serve for a term of one year and until their successors are appointed. The Architect Committee shall consist of at least three (3) members, including the Chairman and Vice Chairman of the Committee. The Chairman shall be designated and appointed by the President, of whom shall have knowledge in design and/or engineering.

(B). The Architect Committee shall have the following mandatory duties and functions:

(1) To work cooperatively and in conjunction with the House Committee and the Building and Planning Committee with regard to any renovation, alteration, construction or demolition of Club property.

(2) To offer invitations for competitive sealed bids on all Board approved building projects to a minimum of three (3) qualified members of the Club. The invitations for bids shall first be offered to the qualified members of the Club.

(3) To report the results of the competitive sealed bidding to the Board of Governors and to offer the Committee recommendations as to the proper award of the Contract.

(4) To regularly inspect and issue progress reports to the Board of Governors as to any contract let by the Club for building, alteration, renovation or demolition work.

(5) To oversee the progress of any subcontractor engaged to work on Club projects and to insure that such subcontractor was engaged as the result of competitive bidding on the subcontract.

Building and Planning Committee

Section 4(A). The President shall annually at the first meeting following the annual December meeting, appoint a Building and Planning Committee to serve for a term of one year and until their successors are appointed. The Building and Planning Committee shall consist of the immediate three (3) Past Presidents and at least one (1) other member. The Chairman and Vice Chairman of the Com-

mittee shall be designated and appointed by the President. (B). The Building and Planning Committee shall have the following mandatory duties:

(1) To formulate economic, membership, capital improvement and club facilities and service goals for the present and future.

(2) To require and insure that the club physical plant is maintained.

(3) To recommend major capital expenditures pertaining to the physical plant to the Board of Governors and, if required, to the general membership.

(4) To review with the House Committee and the Architect Committee as to the proper utilization of Club facilities.

(5) To review any future demolition or construction of Club property with the Budget and Finance Committee.

Entertainment Committee

Section 5(A). The President shall annually at the first meeting following the annual December meeting, appoint an Entertainment Committee to serve for a term of one year and until their successors are appointed. The Entertainment Committee shall consist of at least fifteen (15) members, including the Chairman and Vice Chairman of the Committee who shall be designated and appointed by the President. (B). The Entertainment Committee shall have the following mandatory duties:

(1) To plan, schedule, promote and execute a program of entertainments to encourage maximum member participation, mindful of the interest of all members.

(2) To correlate Club functions with the programs of all Club Committees, traditional Club functions, major public holidays and events of local public interest.

(3) To correlate budget necessities with the House Committee and the Finance and Budget Committee.

Finance and Budget Committee

Section 6(A). The President shall annually at the first

- (1) To supervise and assist the Club Manager in maintaining quality control in all food purchases.
- (2) To assist the Finance and Budget Committee in providing food and beverage costs to the membership consistent with prevailing competitive prices.
- (3) To supervise the inventory of food and beverages.
- (4) To review and revise the menu and wine list.

Historical and Library Committee

Section 8(A). The President shall annually at the first meeting following the annual December meeting, appoint a Historical and Library Committee to serve for a term of one year and until their successors are appointed. The Historical and Library Committee shall consist of at least three (3) members who have exhibited an interest in the history of the Club, including the Chairman and Vice Chairman of the Committee who shall be designated and appointed by the President. At least one of the Committee members shall have served on the Board of Governors.

(B). The Historical and Library Committee shall have the following mandatory duties:

- (1) To maintain the historical records of the Club and to prepare items concerning Club History for publication upon request.
- (2) To review, select and recommend the purchase of books and articles of interest or as requested by the membership and to formulate regulations concerning the use thereof.
- (3) To conduct membership surveys to determine membership interests in types of reading matter.

House Committee

Section 9(A). The President shall annually at the first meeting of the Board of Governors following the annual meeting, appoint a House Committee to serve for a term of one year and until their successors are appointed. The House Committee shall consist of at least five (5) members of the Club, including the Chairman and Vice Chairman of the Committee who shall be designated and

meeting of the Board of Governors following the annual December meeting, appoint a Finance and Budget Committee to serve for a term of one year and until their successors are appointed. The Finance and Budget Committee shall consist of at least five (5) members, including the Chairman and Vice Chairman of the Committee who shall be designated and appointed by the President, one member of the Board of Governors (who may serve as either the Chairman or Vice Chairman), the Chairman of the House Committee, the Chairman of the Entertainment Committee and one Club member (who may serve as either the Chairman or Vice Chairman) who is knowledgeable with budget formulation and control.

(B). The Finance and Budget Committee shall prepare and present the Annual Budget to the Board of Governors and shall further supervise Board Approved Budget Forecasts, report significant deviations therefrom to the Board of Governors and shall review cash flow for capital and operating needs. The Finance and Budget Committee shall also have the following mandatory responsibilities:

- (1) To recommend the appointment of a Club Accountant to the Board of Governors.
- (2) To analyze monthly statements with regard to Budget Forecasts.

(3) To review and to consult with all Committee Chairmen, the Club Manager and the Club Accountant in the preparation of the annual budget and in the supervision of the budget forecasts.

Food and Beverage Committee

Section 7(A). The President shall annually at the first meeting following the annual December meeting, appoint a Food and Beverage Committee to serve for a term of one year and until their successors are appointed. The Food and Beverage Committee shall consist of at least three (3) members, including the Chairman and Vice Chairman of the Committee who shall be designated and appointed by the President.

(B). The Food and Beverage Committee shall have the following mandatory duties:

errors and omissions. The Insurance Committee shall have the following additional duties:

- (1) To arrange for the purchase of all insurance coverage approved for purchase by the Board of Governors and to obtain such insurance on a comparison rate basis so as to secure the rate of premium most beneficial to the Club.
- (2) To maintain a schedule of insurance presently in effect indicating the nature of the insurance and the amounts of coverage involved, which insurance schedule shall be maintained in the Club Business Office.
- (3) To be cognizant of any changes in insurance laws, policies or premiums that affect the Club beneficially or adversely and to promptly make recommendations thereon to the President, the Finance and Budget Committee and to the Board of Governors.
- (4) To assist in the settlement of any claims involving existing insurance policies owned by the Club.

Legal and By-Laws Committee

Section 11(A). The President shall annually at the first meeting following the annual December meeting, appoint a Legal and By-Laws Committee to serve for a term of one year and until the successors are appointed. The Legal and By-Laws Committee shall consist of at least two (2) members who shall be Attorneys, including the Chairman and Vice Chairman of the Committee who shall be designated and appointed by the President.

(B). The Legal and By-Laws Committee shall periodically review the Club By-Laws and shall recommend properly-phrased revisions to clarify ambiguous verbiage, eliminate redundancies and to structure the By-Laws in order that they are reflective of contemporary Club requirements, practices and conditions. The Legal and By-Laws Committee shall also have the following mandatory duties:

- (1) To recommend the appointment of Legal Counsel for the Club to the Board of Governors.
- (2) To receive, consider and mandate appropriate action upon suggestions for amendments to the Club By-Laws as

appointed by the President.

(B). The House Committee shall assume the responsibility for and the supervision of the Club House and its contents and shall oversee the operations of the Club House Facilities and Services. The House Committee shall also have the following mandatory duties:

- (1) To maintain Club House Facilities and service in accordance with the general policy as established by the Board of Governors.
- (2) To coordinate membership desires with the capabilities of Club management and Club facilities.
- (3) To recommend improvements, alterations and renovations to the Club House and to Club House furnishings and equipment in cooperation with the Architect Committee and the Building and Planning Committee.
- (4) To propose regulations concerning the use of Club facilities and to stringently enforce all such regulations.
- (5) To coordinate the use of Club House facilities with the activities of all standing Committees of the Club.
- (6) To conduct a tour of the Club for new members and to supply each new member with a copy of the Club By-Laws, House Rules and a Directory of Club Members.

Insurance Committee

Section 10(A). The President shall annually at the first meeting of the Board of Governors following the annual December meeting, appoint an Insurance Committee to serve for a term of one year and until their successors are appointed. The Insurance Committee shall consist of at least four (4) members of the Club, including the Chairman and Vice Chairman of the Committee, who shall be designated and appointed by the President.

(B). The Insurance Committee shall investigate and recommend to the Board of Governors the types and amounts of insurance coverage required by the Club, including, but not limited to, casualty and liability insurance for Club real estate, personal property, members, employees and guests, liquor license liability and Director and Officers'

submitted by Club Officers, Board of Governors and Members.

(3) To present suggestions for amendments of the By-Laws to the Board of Governors with a recommendation for submission or non-submission to the General Membership.

(4) To review, and negotiate together with the Personnel Committee any labor contract or grievance and shall report thereon in writing to the Board of Governors.

(5) To interpret the Club By-Laws, and House Rules.

Nominating Committee

Section 12(A). The President shall annually at the first meeting, following the annual December meeting, appoint a Nominating Committee to serve for a term of one year and until their successors are appointed. The Nominating Committee shall consist of six (6) members with the Immediate Past President as Chairman, two past Presidents and a member from each classification of the Resident Membership List. The President shall designate and appoint a member of the Nominating Committee as Vice Chairman.

(B). The Nominating Committee shall nominate the Club Officers and Members of the Board of Governors in accordance with the provisions of Article II of the By-Laws.

Personnel Committee

Section 13(A). The President shall annually at the first meeting following the annual December meeting, appoint a Personnel Committee to serve for a term of one year and until their successors are appointed. The Personnel Committee shall consist of at least four (4) members, including the Second Vice-President and the Chairman of the Legal and By-Laws Committee. The President shall designate and appoint from the members of the Personnel Committee a Chairman and Vice-Chairman.

(B). The Personnel Committee shall review and evaluate together with the Legal and By-Laws Committee any labor contract or grievance and shall report thereon in writing to the Board of Governors. The Personnel Committee shall report any personnel grievance or claim to the Board of

Governors and shall include a written report by the Club Manager relative to the history of such grievance or claim.

(C). The Personnel Committee shall review and evaluate together with the Club Manager proposed revisions or changes in current employee benefit programs. The Personnel Committee shall report any proposed changes and recommendations to the Board of Governors.

ARTICLE IX.

RESIGNATION, SUSPENSION AND EXPULSION OF MEMBERS

Section 1. All resignations shall be in writing, addressed to the Board of Governors, and the same shall not be accepted until all of the indebtedness of such member to the Club shall have been paid in full.

Section 2. A member may be suspended or expelled for violation of the By-Laws, or other misconduct meriting such penalty, by a majority vote of the whole Board of Governors. One week's previous notice in writing shall be given to the member by the Secretary/Treasurer setting forth the nature of the offense with which he is charged, and the date of the hearing. The member shall have the right to attend the meeting.

Section 3. A member so suspended or expelled by the Board of Governors may appeal to the membership of the Club in the following manner: The member shall file with the Secretary/Treasurer, within one week after receipt of written notice of the suspension or expulsion by the Board of Governors, a written request for the calling of a special meeting of the members of the Club setting forth in detail the reasons for appeal. Thereupon, the Board of Governors shall call a special meeting of the members of the Club for a date not later than two weeks thereafter, when the member may appear and present a defense. A majority vote of the members of the Club present at said special meeting shall have power to uphold or reverse the action of the Board of Governors. Pending the decision of the special meeting, the member shall continue to pay his dues and to exercise all other rights which he is entitled to until the action of the Board of Governors shall have been reversed, the suspension shall remain in full force and effect.

to the amendment or repeal of this Section 1.

Section 2. Except as expressly prohibited by applicable law, the Club shall indemnify every Governor and officer of the Club who shall or is a party or is threatened to be made a party to any threatened, pending or completed action, appeal or other proceeding of any nature, whether civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the Club, by reason of the fact that such person is or was a Governor, officer, employee or agent of the Club, against expenses (including attorney's fees), judgments, fines, damages, punitive damages, excise taxes assessed with respect to employee benefit plans and amounts paid in settlement in connection with such action, appeal or other proceedings. Persons who are not Governors or officers of the Club may, at the discretion of the Board of Governors and in circumstances in which any such person is a party to a proceeding referred to in this Section 2, be indemnified by the Club to the same extent the Club would be required by this Section 2 to indemnify such persons if they were or had been Governors or officers of the Club.

Section 3. Expenses incurred in defending a proceeding referred to in Section 2 of this Article shall be paid by the Club in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of a Governor or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Club as required in this Article or as authorized by law and may be paid by the Club in advance on behalf of any other person when authorized by the Board of Governors upon receipt of a similar undertaking.

Section 4. The Club may effect, satisfy or secure the indemnification obligations provided in this Article or otherwise by securing and maintaining insurance, or by taking such other action as may be deemed proper under the circumstances.

Section 5. The right of indemnification provided in this Article shall be deemed to create contractual rights in favor of the persons entitled to indemnification under this Article;

Section 4. Whatever right, title or interest any person may, by reason of membership, acquire in the corporate property, shall upon death, resignation or expulsion, vest in the Club.

Section 5. Application for membership by former members, who have resigned while in good standing, shall be made and acted upon in the manner prescribed for new members in Article VII hereof.

ARTICLE X.

INDEBTEDNESS OF MEMBERS

Section 1. The indebtedness of the members of the Club incurred during any month shall be payable on or before the first day of the succeeding month, and should the indebtedness remain unpaid for a period of thirty days after the mailing of notice thereof, the member may be suspended forthwith by action of the Board of Governors until the indebtedness is paid; and the effect and cause of such suspension shall be noted on the bulletin board. In case of continued default for a further period of thirty days, the Board of Governors may cause the name of such member to be deleted from the roll of membership.

ARTICLE XI.

PERSONAL LIABILITY OF MEMBERS OF BOARD OF GOVERNORS; INDEMNIFICATION OF GOVERNORS, OFFICERS AND OTHERS

Section 1. To the fullest extent that the law of the Commonwealth of Pennsylvania as it exists on the date of the adoption of this Article, or as it may hereafter be amended, permits the elimination or limitation of the liability of directors (hereinafter in this Article referred to as "Governors") of nonprofit corporations, no Governor of the Club shall be personally liable for monetary damages as such for any action taken, or any failure to take any action, as a Governor. No amendment or repeal of this Section 1. shall apply to or have any effect on the liability or alleged liability of any Governor of the Club except with respect to acts taken, or not taken, by a Governor subsequent

shall continue as to persons who have ceased to have the status pursuant to which they were emitted or were denominated as entitled to indemnification under this Article and shall inure to the benefit of the heirs and legal representatives of persons entitled to indemnification under this Article; and, shall be applicable to actions, suits or proceedings commenced after the adoption of this Article, whether long time actions or otherwise, provided that after its adoption. The provisions of this Article may not be amended, modified or repealed so as to limit in any way the indemnification provided in this Article with respect to any acts or omissions occurring prior to the effective date of any such amendment, modification or repeal.

Section 6. If any provision or provisions of this Article shall be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions of this Article shall not in any way be affected or impaired thereby; and, to the fullest extent possible, the provisions of this Article shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE XII. AMENDMENTS

Section 1. The By-Laws may be amended by a majority vote of the members present at any meeting, provided the proposed amendment be in writing and offered by the Board of Governors, or by twenty members, and remain posted in the Club for at least one month before the annual December meeting, or a special meeting to be called for that purpose, and that notices of said special meeting shall contain a copy of the proposed amendment.

ARTICLE XIII.

EFFECTIVE DATE OF BY-LAWS

Section 1. These By-Laws will become effective on the date of a regular or special meeting of the members of the Club duly called for the purpose of their adoption.

HOUSE RULES

The privileges of the Club are available to members and associate members and their guests, subject to the following Rules:

1. Guests, including relatives of members, will be accorded privileges of the Club only when accompanied by a member or associate member. No person residing within fifty (50) miles of the Club may be a guest at the Club more than once every 60 days with the same member or associate member. The privileges of the Club may be extended by courtesy card to out-of-town guests. The member or associate member shall be responsible for the conduct of his/her guest or guests and for any charges not paid by such guest or guests in the same manner as if contracted by the member or associate member.
2. The Club will endeavor at all times to help members entertain their guests in the clubhouse, prior arrangements having been made with the manager.

3. Children are not allowed in the Club unless accompanied by parents, except that if they have arranged to dine at the Club, they may be permitted to occupy the second floor. Children are not allowed in the bar.

4. Parking on the Westmoreland Club premises must be confined solely to members or bona fide guests during the time in which these members or those having the privileges of the Club are actually in the Club House. For the convenience of our members and their guests we have free parking at the Mellon Bank Parkade and Wilkes-Barre City Lot (entrance on Northampton Street) as follows:

- a. Your parking ticket secured at the parkade will be stamped on the reverse side, at the front desk at the Club.
- b. The stamped tickets presented by the Parkade will take care of your parking charge entirely at dinner and for one hour at lunch.

5. Members are assessed a gratuity of 16% on Dining Room Charges and 18% on Bar Charges. There shall be no contributions by members to a Christmas Fund for employees.

RESIDENT MEMBERS — 1997

Aben, Jason
 Aben, Robert S.
 Abramowitz, Richard P., M.D.
 Adelman, Barry
 Acher, D. Craig, M.D.
 Albert, Joseph G.
 Alcazi, Frederick W.
 Alcazi, Louis T.
 Alinkoff, Stephen
 Allen, Allan J.
 Allen, John D.
 Allen, Richard J.
 Alley, Richard A., M.D.
 Ambuso, Victor T.
 Ameshury, William H.
 Anthony, Robert
 Anzinger, Mark
 Anzalone, A. Anthony, M.D.
 Anzalone, William F.
 Apanick, Jr., John J.
 Aquilino, Charles J., M.D.
 Arbogast, Karl
 Armstrong, Walter
 Arraud, Bradley J.
 Ashley, Joseph
 Baker, Gary S.
 Baker, Glenn O.
 Baker, Thomas E., M.D.
 Balester, Jonathan
 Baltimore, David M.
 Banks Jr., Bernard C.
 Banks, John F.
 Barnes, Daniel C.
 Baran Jr., John
 Barrett, Edward J.
 Barrouk, Stephen M.
 Baromowitz, Richard P., M.D.
 Bellardi, Patrick
 Bell Jr., George T.
 Bell, Stuart M.
 Benowitz, Burton S., M.D.
 Berger, Louis W.
 Bergman Jr., Justin
 Bernards, Dr. Mark
 Beverino, Frank H.
 Bierly, George W.
 Biernacki, David M.
 Biernacki, Dr. John S.
 Bird, James T.
 Bitner, Alfred J.
 Blacomin, Richard J.
 Blosscock, Dru J.
 Blum, Phillip A.
 Blum, Phillip D.
 Blazewski, Edward, Ph.D.
 Blum, Martin
 Blum, Dr. Richard H.
 Bohlin, Peter O.
 Borhwick, John T.
 Box, Thomas
 Bradley, Joseph R.
 Bresseth, Christopher N.
 Brecht, Edward
 Brobst, Donald H.
 Brown, Charles A.
 Brown Jr., J. Lawrence
 Brown, Jerrod W., O.D.
 Brown, Dr. Robert L.

6. The Club is not responsible for valuables unless they have been deposited in the office with an office employee.

7. A member may cash a check, or checks, for a sum not greater than five hundred dollars on any one day. Such check or checks, must be drawn to the member's own order, endorsed and dated on or prior to the day upon which the money is furnished.

The manager or any member of the House Committee or board member shall have the power to withdraw the privilege from any member who is abusing the privilege.

8. The manager is required to notify the Board of any violations of the rules of the Westmoreland Club, and to report the same to the House Committee, which committee or any member thereof, shall have the power to take immediate action to suppress disorderly or objectionable conduct in the clubhouse even to the extent of ejecting the person or persons responsible therefor.

9. No subscriptions shall be solicited, article exposed for sale, or advertising permitted in the clubhouse.

10. Partial portions of food ordered by members and/or guests of members shall be charged at full portion menu prices.

11. Coats and ties must be worn at all times by men, with the exception of Saturday prior to 4:00 p. m., and appropriate attire must be worn by women.

RESIDENT MEMBERS — 1977

RESIDENT MEMBERS — 1977

- Bruna Jr. Dr. Joseph
 Burke Jack L.
 Burnside Frank
 Burnside Jr. Frank
 Burnside Kathryn
 Burnside Malcolm M.
 Burke James F.
 Buttsch, James S. M.D.
 Butera Peter M.
 Bulkowicz Joseph T.
 Calise Dr. Crescenzo
 Callahan Michael D., D.D.S.
 Caponiga Michael J.
 Caputa A. Richard
 Cardillo Thomas J.
 Casaday Dean T.
 Casey Terrence W.
 Casper Robert L.
 Castellano Thomas J., M.D.
 Caverly N. Brian
 Cecere Louis J.
 Chamberlain Mark W.
 Chapin Jr. Edward
 Churnaski John A.
 Ciaramata Libra J.
 Ciarrullo Jr. Robert J.
 Ciocca Mark M.
 Cimachowski George E. M.D.
 Classen Peter K.
 Clemente Elmo M.
 Clements Jr. Robert D. D.D.S.
 Collins Francis J. M.D.
 Conlon Clara
 Consalvo John A. M.D.
 Contreras Mark G.
 Conway Dr. Malcolm
 Conyngham George Guthrie
 Conyngham Jr., George G.
 Conyngham Frank E. P.
 Conyngham III John
 Conyngham William L.
 Cook Michael H.
 Cooper Dr. Karen
 Corbett Brian T.
 Corgan Leo R.
 Cornell Andrew
 Cornell Milton Keen
 Crawford Harry
 Crisci Raymond L.
 Custello Frank P.
 Daring Raymond J.
 Davis David W.
 Daube Arthur E.
 Dawdowitz William
 Davies Stanley S.
 Davis Daniel T., M.D.
 Davis David L.
 Davis Dwight M.
 Davis Everett J.
 Davis William L.
 Davis Jr. William L.
 Davison Robert V.
 Dean Walter E.
 DeCasaris Angelo P.
 DeCasaris Mark
 Decker Peter G. M.D.
 Demanski Richard
 Epstein Jr. Charles M.
 Eriley Ronald
 Esposito Joseph
 Evans Arthur W.
 Evans Jr. Thomas A.
 Eyerman Paul J.
 Faber Eberhard
 Fabian Jerome F.
 Fahmy Mahmoud H., Ph.D.
 Fainberg Stanley R.
 Falcone Leonard
 Farrell Joseph B.
 Feldman I. Charles
 Feldman I. Eric
 Fenner Jr., George L.
 Ferra Jeffrey L.
 Felling Mark
 Fields Matt C.
 Fields Matt W.
 Finlay Daniel J.
 Finerman Gerald S.
 Finorelli Jr., Albert
 Finorelli Thomas R.
 Finlay Alan J.
 Finlay Robert G.
 Fisher Ronald L.
 Flack Jr., Charles D.
 Flack II Harold E.
 Flannery Daniel G.
 Foley John J.
 Foley Kevin
 Forbes Doug
 Decker Philip G.
 Dent Geoffrey L.
 DePasquale Sam. M.D.
 DeSalvo Samuel J.
 Diamond Melvin N.
 Dickson Jeffrey S.
 Dillon David L.
 Dillon Jr. David L.
 Dimond A. John
 Dingle Erik N.
 Dingman Mark R.
 DiPietro Raymond A.
 Dolphin J. Murray, M.D.
 Donato Dr. Joseph
 Doran Henry F.
 Doran John H.
 Dorsh John J.
 Dougherty Jr., Joseph J.
 Dougherty Patrick E.
 Drapevski Vincent A., M.D.
 Dressler Norman J.
 Dressler Steven C.
 Dudick Jr. Chester F.
 Dunham Robert E.
 Dunn James J. D.D.S.
 Durkin Jr., James J.
 Eagan Jr., Joseph A.
 Eastwood Deborah A.
 Eckman Charles M.
 Edgerton Jr., Robert G.
 Eglin Peter B.
 Eggleston Mary Anne F.
 Ellis IV John H., M.D.

RESIDENT MEMBERS — 1997

Fornicola, Matthew, D C
 Farinsky, Robert
 Frank, Carl N
 Frederick III, Donald A., D D S
 Frederick IV, D Alexander
 Frederick Jr., Donald A
 Freeman, Clarence
 Freifeld, Martin, M D
 Fried, Margaret Simms
 Friedman, Sidney
 Gager, John F
 Gao, Jun D., M D
 Gallagher, James E
 Gaudio, John C., M D
 Gato, Dennis, M D
 Gatzenski, Richard
 Gibbons, Gerald P., M D
 Giardino, Nicholas, M D
 Gievo, Paul J
 Glidden, Randall L
 Gligowski, Walter
 Goeringer, Louis F
 Golden, Charles J
 Goldback, Harold
 Gonchar, Leonard M
 Goesch, J Glenn
 Goodwin, Robert P
 Garman, James T
 Gower, Bruce E
 Graham, John H
 Greenberg, Howard
 Green, Ms Tamme

RESIDENT MEMBERS — 1997

Greene, Robert B
 Griesmer, Paul D., M D
 Grimes, David M
 Grimes, David S
 Grossbauer, Stephen M
 Grossman, Ira C., M D
 Grossman, Loran, J., D M D
 Grossman, Richard, D D S
 Gubbioni, Richard
 Gunter, Gerald, M D
 Hall, David C
 Hall, Robert W
 Hammer, Eugene L., Ph D
 Harkins, James
 Harris, Bernard A
 Harris, David J
 Harris, End W
 Harris Jr., James P
 Harris III, James P
 Harris, Michael, M D
 Harris, Rees T
 Harris, Gerald
 Harwarth, Donald S
 Harvey, William
 Henry, Frank, M
 Henry, Scott E
 Heydt, Stuart, M D
 Hillard, Ronald L
 Mchay, Michael P
 Mine, Bernard J
 Mirshler, Michael
 Hiscox, Harry R
 Hobbs, William
 Hoegen, Francis J
 Hoggboom, Richard L
 Hollander, Alan S
 Holleran, Bernard L, M D
 Holtzman, Seymour
 Hooser, Robert J., M D
 Hoover, Dr Robert
 Howell, Roger G
 Howland, Ernest E
 Hudacek, Stephen L
 Hughes, Frank H
 Hughes Jr., H Merritt
 Hughes Jr., John J
 Hughes III, Richard M
 Huston, Dr Zahid
 Ida, Robert W
 Imperiale, Kristen
 Imperiale, S M, M D
 Innes, Donn
 Janerich, Dr Albert D
 Janaski, Henry V
 Jenkins II, William D
 Jennings, Donald B
 Jezewski, Michael L
 John, Anthony P
 John, Gerald T
 Johns, Milton E
 Johnson, Darwin R
 Johnson, George R
 Johnson, Glenn H
 Johnson, Michael J
 Johnson, William H
 Johnston, Ralph J
 Johnston Jr., Ralph
 Jones, Maribeth
 Jones, Robert L
 Joseph, Thomas
 Kasser, M Luther
 Kalac, Lawrence
 Kalbdo, Joseph
 Kailic, Mark, R, M D
 Karam, Thomas F
 Karambelas, Clayton J
 Kasenohak, John J
 Keele Jr., Stanley W
 Keeler, Colin R
 Kell Jr., John F
 Kelly, A William
 Kennedy, John H
 Kepner Jr., Franklin
 Kerestes, Joseph D
 Killian, Stephen B
 Kish, John M, M D
 Klein, Ernst G
 Kiern, Albert J., M D
 Kimchuk, Elmer J
 Kluger, Allan M
 Kluger, David
 Krause, Ronald I
 Kuehl, III, Charles W
 Kujalechick Jr., Michael
 Kapac, Robert J
 Kapan, Daniel F, M D
 Kappelman, Stephen
 Korcsak, Eugene A

RESIDENT MEMBERS — 1997

RESIDENT MEMBERS — 1997

Korakowski, John C	Lambardo, Dr. Fred	McLaughlin, Wm M	D O	Mases, John P
Konull, Robert J	Lopata Jr., John S	Mebane, Richard F		Muench, Harry H
Kowalek, David C	Lohick, Edward A., M.D.	Melberger, Clifford		Mugford, Robert A
Kawolicki, Joseph J	Lucchino, David B	Melberger, Clifford K		Mugford, Tara
Kazemchak, James	Luma F. Paul	Melone Sr. Albert B		Mulbauer, Irwin
Kramer, Marice E	Luma S. A., Lt. Col	Mendelsohn, Saul M	D	Mulhern Jr. John J
Krausch, John J		Menk, Joseph C		Muller, Rev. Donald J
Kragulski, Kenneth J		Merrick, Robert K		Muller, James C
Kronick, Donald M	Macarty, Ross	Mermelstein, Sheldon		Munton, J. Donald
Krywicki, William J	MacDonald, Lawrence	Metz, John C.		Muta, Allen A.
Kurlanchak, Renee	MacK, Jr., Thomas J	Metzger, Marvin P		Myers, Frederick B
Kurtzweil, Stephen J., M.D.	Madigan, Robert M	Mhalick, Gerard		M D
	Mahler, Paul R	Mihalas, Emanuel W		
	Malloux, C. Paul	Milecki, James B		Nadley, John G
	Malloux, Peter B	Miner Jr., Charles H		Nahos, George H
	Maier, Edward R	Miscavage, Mark F., D M D		D D S
	Martin, Douglas L	Mitchell, Frederic E		Nause Jr., Robert C
	Martin Jr., R. Spencer	Mitchell, Guibre		Nelson, Joseph M
	Maslow, Richard	Mitchell, Mark		Newell, Russell
	Matley, Robert	Moad, Harry E		Nichols Jr., Edward A
	Mathews, David E	Mallatt, Gerald A		Nicholson, David F
	Matus, William	Mahr, Walter H R		Nicholson Jr., George M
	May, Jay H	Maore Jr., Joseph A		Nocerne, Albert
	Mazzoni, Joseph R	Maatz, Michael J		Nork, Edward P., M.D.
	McCarthy, John D	Maron, Jack D.		Nulton, Daniel R
	McCarthy Jr., Lee J	Marek, John A		O'Brien, James M
	McCarthy III, Lee J	Marenko, Steven		O'Connell, James
	McCormick, Daniel, C P A	Margan, James E		O'Connor, Joseph S
	McFadden, Donald D.	Margan, Michael F		O'Connor, Patrick
	McGee, Richard C.	Margan, Roy E		O'Connor, Thomas A
	McGroth, Sr., Thomas J	Marris Jr., John T		O'Donnell, Connell J
	McGroth Jr., Thomas J.	Marris Jr., Joseph G.	D D S	O'Hap, Sr., Paul A
	McHugh, Michael C	Masca, John		Oleynski, Jan A., D D S
	McLaughlin, Thomas V	Mases, George P., M.D.		
	McLaughlin Jr., Thomas V			
Koskewski, John C				
Konull, Robert J				
Kowalek, David C				
Kawolicki, Joseph J				
Kazemchak, James				
Kramer, Marice E				
Krausch, John J				
Kragulski, Kenneth J				
Kronick, Donald M				
Krywicki, William J				
Kurlanchak, Renee				
Kurtzweil, Stephen J., M.D.				
Lach, Joseph A				
Lackemmer, James C S C				
Lacy, Christopher A				
Lacy, Roger A				
Lawrence, Robert G				
Lawson, Thomas E				
Leandri, William V				
Lee, David				
Lemmond Jr. Sam, Charles D				
Lewis, John M				
Lewis Jr., William V				
Liberatore II, John G				
Linde, Scott F				
Lisman, Carl J				
List, Arthur, M.D.				
Litchman, Joseph F				
Llewellyn Jr., Jay M				
Loch, Frank J				
Lombard, David				
Lombardo, Fred				

RESIDENT MEMBERS — 1997

Olsen, Paul J.
 Olszewski, Hon. Peter Paul
 Olszewski Jr., Peter P.
 Olszewski, Joseph
 Olszewski, Robert J.
 Peckard, H. Jeremy
 Pagnoni, III, Louis
 Panzillo, John
 Panzillo, Joseph
 Parente, Charles E.
 Parente, John
 Parkhurst, Scott
 Pasonick Jr., Michael J.
 Pasquini, Frank
 Pearce, William J.
 Peersoll, Adrian M.
 Peersoll, Richard L.
 Peeler, III, Thomas L.
 Peizer, Dr. Eugene
 Pelesh, Eugene
 Perisco, Joseph L.
 Perugno, Joseph F.
 Phillips, Brock, V.M.D.
 Piccone, Robert
 Picher, Jeffrey E.
 Pietracchini, H. Ronald
 Pigo, Joseph F.
 Plank Jr., J. Lee
 Podcozy, Hon. Bernard J.
 Poggi, III, Edmund H.
 Poggi Jr., Edmund H.
 Pollock, Kenneth L.
 Pollock, Kenneth M.

Pool, IV, Joseph H.
 Post, Richard C., V.M.D.
 Post Jr., Robert E.
 Potarski, Dr. Robert
 Powell, Robert D.
 Powell, Robert J.
 Powers, Brian J.
 Price, William E., Ph. D.
 Priebe Jr., Paul A.
 Purney, John F.
 Pyros, Jeffrey J.
 Pyros, Nicholas J.
 Quercio, John, M.D.
 Quinn Jr., Joseph A.
 Radics, Robert J.
 Randolph Jr., John M.
 Raich, Harry, M.D.
 Reil, Charles B.
 Reilly, Charles M.
 Reishus, John D.
 Repa, Joseph G.
 Repolski, Eugene F.
 Rex, Kenneth
 Riccetti, John
 Rice, Gary R.
 Rich, Michael
 Richards, Robert
 Richardson, Michael G.
 Richardson, Robert D.
 Richardson, Michael D.
 Rilkin, Arnold S.
 Rimple, David F., M.D.

Rinsimer, Robert C.
 Rittenberg, Herbert L.
 Robinson, Dr. Elliott S.
 Robinson, Thomas R.
 Roccagrandi, Gary J.
 Rodeghiero, David
 Rogers, Kenneth N.
 Rogownicz, Joseph
 Romanowski, Edward
 Romanowski, Thomas M.
 Rome, Donald L.
 Rose Jr., Harold J.
 Rose Jr., Richard
 Rosen, Joseph J.
 Rosann, Hon. Max
 Rosenthal, Bruce E.
 Rosenthal, Richard I.
 Ross Jr., Richard M.
 Roth, Jeffrey
 Roth, Lawrence W.
 Roth, Steven P.
 Rothstein, Steve M.
 Rowlands Jr., H.T.
 Rowella, Ralph B.
 Ruckno, John C.
 Ruckno, Louis E.
 Rundle, Robert L.
 Runner Jr., William A.
 Russo, Basil G.
 Russo, Richard A.
 Saba Jr., George E.
 Sammon, Patrick W.
 Sanderson, Donald W.

Santorelli Jr., Carlo, M.
 Santorelli, Marino
 Santorelli, Philip J.
 Santo, Frank
 Saul, Robert A.
 Savitz, Joseph J.
 Schaefer, Mary Louise
 Scholl, George Russell
 Scholl, James E.
 Schaub, Robert
 Schechter, Edward
 Schell, Francis J., M.D.
 Schellenberg, Robert P.
 Schlowitz, Albert, M.D.
 Schlowitz, Martin
 Schmidt Jr., Carl J.
 Schmidt, R. Denny
 Schuler, Robert
 Schultz, Henry W.
 Scott, Duralle, M.D.
 Scott, George A.
 Scovell, Fred H.
 Scovell, Scott
 Sebio, Lewis A.
 Sperlan, Frank
 Shaffer, Charles A.
 Shaughnessy, Joseph E.
 Shaw, Thomas R.
 Shaw, Joseph A.
 Shea, III, Charles A.
 Shields, James L.
 Shoemaker, James
 Shoemaker, John N.
 Shoval, Susan Weiss

RESIDENT MEMBERS — 1997

RESIDENT MEMBERS — 1997

Sick, Eugene W
 Siegel, Paul J
 Silberman, Richard, D D S
 Silverblatt, Arthur F
 Simms, A L
 Simms, Ronald William
 Simpston, David L
 Sirota, Jeffrey A
 Skanderson, Ronald M
 Slaff, Richard
 Sloman, Jr, Joseph B
 Slacum, Christopher B
 Slusser, Eugene E
 Smedley, William P, M D
 Smith, Henry F, M D
 Smith, Jr, Henry F, M D
 Smith, Dr, Joseph H
 Smith, Terry L, D D S
 Smith, Ruth K
 Snowden, Harold C
 Snowden, Jr, Harold C
 Snowden, Richard W
 Snyder, Leonard J
 Sommer, Thomas
 Sandhjem, Norman, J
 Sordani, III, Andrew J
 Sordani, William B
 Sorino, Vincent G
 Speace, George F, M D
 Spahrer, Jonathan
 Spahrer, George A
 Sprinkle, Lorry
 Stack, Gary J
 Stager, Jr, Joseph R

RESIDENT MEMBERS — 1997

Starr, Sarah
 Steck, Keith W
 Stern, Ron
 Sternlieb, Sanford B, M D
 Steiner, Wallace P
 Shrewaff, Larry
 Straub, Frederick W
 Strzelciz, Julie McCarthy
 Sutter, Eugene F
 Tambur, Robert L
 Tarulli, Neal J
 Teller, Stephen A
 Tenenbaum, Barry
 Thalenfeld, David R
 Thiede, Maurice
 Thomas, Cromwell E
 Thomas, John C
 Tinsley, Thomas V
 Toppert, Robert S
 Tabin, Jr, Thomas
 Tabin, Timothy J
 Tackko, Barbara
 Tough, Gilbert D
 Townsend, Frank
 Treslar, Theodore A
 Tripi, Charles
 Turner, J Lee
 Turner, Jr, Roy W
 Turrell, G Henry
 Ulberg, Murray
 Umphred, William J
 Ushinski, Stanley C, M D

Valentis, Louis E
 Valentine, Frederick S
 Valentine, James P
 Van Arsdale, Thomas H
 Van Jura, Joseph
 Van Loan, Mark A
 Vargas, Edward L
 Vivian, Jr., H Melvin
 Voltek, Sr., David J
 Vanderheid, Terry
 Vanderheid, Todd A
 Vazmak, John J
 Wallace, Kenneth C
 Walter, Allison
 Ward, Thomas
 Warfield, Jack M
 Wasseroft, Jr, Paul D
 Waters, Charles
 Weaver, Jr., H R
 Weaver, Michael
 Weinberger, David M, M D
 Ziegler, III, Dr, William
 Zinn, Keith A

NON-RESIDENT MEMBERS — 1997

Abramson, F. J., M.D.
 Adams, Gerald
 Albertson, Richard P., M.D.
 Aldridge Jr., Fred C.
 Balas, Philip C.
 Baltimore, Charles B.
 Bannan, Samuel J.
 Bartley III, Paul E.
 Baum, Louis C., M.D.
 Boyer, Barry C.
 Brown, Neil S.
 Butler Jr., William C.
 Carlson, John L.
 Cary, Matthew Robert
 Chang, Clarence
 Cleveland, Jay W.
 Connor, Richard L.
 Corns, Evan R.
 Davis, Dr. James H.
 Davis, Louis
 Davis, Thomas E.
 Drake, William E.
 Duncan, Dale
 Eagan Jr., James W.
 Edgerston Sr., Robert G.
 Fields, Mark W.
 Frontz Sr., John E.
 Geary, Donald J.

NON-RESIDENT MEMBERS — 1997

Griffin, Bernard P.
 Gronka, Edward
 Hallander, Lawrence
 Holmes III, Robert C.
 Johns, John
 Johns, Thomas
 Jones, Thomas D.
 Kaiser, Ronald H.
 Kent, William H.
 Kinsman, Charles S.
 Kirby, F. M.
 Klein, Harvey S.
 Koehl Jr., C. Warren, M.D.
 Kosik, Michael
 Lacey, Ronald P.
 Loux, Richard
 Lee, Martin L., M.D.
 Mackall, Samuel J., M.D.
 Mahoney, Michael J.
 Manley, James J.
 Mayock, Dr. Robert L.
 McCole, Cornelius, M.D.
 McDonald Jr., John L.
 Moore, John N.
 Moore, Thomas G.
 Morgan, Harry
 Morris, Herbert J.
 Maylan, Robert J.

Nelson, L. Mark
 Nubaum, Howard
 Olshanski, Joseph
 Orr III, William P.
 Rivers, Richard D.
 Robinson, Jr., John M.
 Roer, Harvey
 Roux, Michel
 Sore, William H.
 Shephard, Richard W.
 Shortz, Frederick M.
 Smith, Harrison H.
 Smith, Ralph
 Salaman, Joseph S.
 Sardon, Stephen
 Stevens, Michael S.
 Strame Jr., Charles
 Straud, Robert S.
 Teller, Jonathan C.
 Uram, Stuart Z.
 Wheat, Sally McCole
 Woodbridge, Timothy
 Vivian, John R.

ASSOCIATE MEMBERS — 1997

McCole, Mrs. John A.
 McDonald, Mrs. John L.
 Mebane Jr., Mrs. Robert
 Mills, Mrs. Donald
 Morris Jr., Mrs. J. E.
 Mosco, Mrs. Victor
 Nelson, Mrs. Charles M.
 Ouellette, Christina
 Pack, Mrs. William J.
 Parker, Mrs. Oscar S.
 Parkhurst, Mrs. Frank
 Peters, Mrs. Frank S.
 Quinn, Miss Mary M.
 Weaver, Mrs. H. Robert
 Welles, Mrs. Edward
 Wideman Jr., Mrs. E. C.
 Wiener, Mrs. E. B.
 Wolfe, Mrs. Lewis
 Wolfe Sr., Mrs. Samuel M.

ASSOCIATE MEMBERS — 1997

Gayeshki, Mrs. Edward
 Glaser, Mrs. Irwin A.
 Graham, Mrs. Thomas
 Gregson, Miss Agnes
 Gregson, Miss Betty
 Hogan, Mrs. Joseph P.
 Hanton, Mrs. Paul
 Harkin, Mrs. John D.
 Harris, Mrs. Howard Y.
 Hedden, Mrs. Roman R.
 Heffernan, Mrs. George
 Henry, Mrs. Frank N.
 Hertel Jr., Mrs. Charles
 Mulmacker, Mrs. William
 Imperiale, Mrs. Mary
 Jenkins, Mrs. Mitchell
 Jones, Mrs. Hubert N.
 Konorr, Mrs. Charles B.
 Kean, Mrs. Benjamin H.
 Kennedy, Mrs. Howard
 Kiley, Mrs. Thomas H.
 Krajcsak, Mrs. D. S.
 London, Mrs. Herbert
 Lane, Mrs. Samuel L.
 Lewis, Mrs. Donald B.
 Luchig, Mrs. Edwin
 Moggagno, Mrs. A. W.
 Malley, Mrs. Hugo V.

Adonizio, Mrs. James
 Agoli, Mrs. Guy A.
 Armstrong, Mrs. F. Thaburn
 Backer, Mrs. George B.
 Barbero, Mrs. Joseph
 Bellisy, Mrs. Irving
 Bennett, Mrs. John L.
 Berryman, Mrs. William D.
 Boris, Mrs. Frank
 Bigelow, Mrs. Clifford W.
 Brady, Mrs. John C.
 Brennan, Miss Libby
 Bullock, Leslie
 Coverly, Mrs. Noel B.
 Chapuisat, Mrs. Michael
 Connell, Mrs. John G.
 Connell Jr., Mrs. John G.
 Coughlin, Mrs. Hale
 Cummings, Mrs. Claire Hart
 Cullen, Mrs. William F.
 Daley, Mrs. Daniel F.
 Davenport, Miss Elizabeth W.
 Davis, Mrs. George B.
 Davis, Mrs. William S.
 D'Anco, Tuulo
 E-vans, Mrs. Tam A.
 Eyerman, Mrs. Robert A.
 Foley, Mrs. T. Raymond
 Francani, Mrs. Aldo

A. Richard Caputo

EXHIBIT "3"uvcc dsk
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Bylaws of the Wyoming Valley Country Club.

CONSTITUTION AND BY-LAWS

ARTICLE I

NAME

The name of the organization shall be THE WYOMING VALLEY COUNTRY CLUB.

ARTICLE II

OBJECT

This Club is organized to promote social recreation among its Members through encouraging and stimulating an interest in golf. It is a corporation which does not contemplate monetary gain, incidental or otherwise, to its Members.

ARTICLE III

MEMBERSHIP CLASSIFICATIONS

SECTION I.

The membership of the Club shall consist of the following classifications:

- A. SENIOR - All Members over the age of twenty-five (25). Seniors shall be the only voting Members, and the only ones entitled to hold office in the Corporation. Senior Members in good standing shall be the only Members considered to have equity in the Club.
- B. SPOUSE - The spouse of any Senior Member in good standing, and the spouse of an Associate who married prior to his or her twenty-sixth (26th) birthday. If the Senior Member or Associate, and his or her spouse shall be divorced, then the spouse shall no longer be a Member of the Club.
- C. ASSOCIATE - Sons or daughters of a Senior Member between the ages of twenty-one (21) and twenty-five (25) years of age. Upon marriage, prior to their twenty-fifth (25th) birthday, he/she may apply for Senior Membership.

Associate Members who have paid one (1) year's associate dues must apply for Senior Membership before reaching their twenty-sixth (26th) birthday. If accepted, they automatically become Members regardless of a waiting list and no initiation fee will be charged.

- D. JUNIOR - Children of Senior Members or children of their spouse. They may have automatic golfing privileges until their twenty-first (21st) birthday.
- E. CLERGY - Open to ordained clergy of all faiths.
- F. SOCIAL - Those Members entitled to the full facilities of the Club but do not have golfing privileges, except for one (1) round of eighteen (18) holes per month, upon payment of the required Green Fee.
- G. NON-RESIDENT - Any Senior Member, in good standing, moving his or her permanent residence beyond a seventy-five (75) air-mile radius from the Clubhouse may apply to the Board for transfer to this category. Permanent residence to mean in this instance year round living at the new address.
- H. HONORARY - May be granted under extraordinary circumstances for service to the Club, but is limited to one (1) in any given year. Subject to majority Board approval.
- I. WIDOW/WIDOWER - The surviving spouse of a Senior Member.
- J. SPECIAL - All those previously Members under the category heretofore known as LADIES who shall not elect to become Senior Members, and who maintain membership without interruption shall remain Members in this classification.

SECTION II.

The Board of Governors, under the powers granted by these By-laws, may limit the number of memberships available in any of the classifications when they feel that it is in the best interest of the Club to do so.

ARTICLE IV

APPLICATION AND ELECTION

SECTION I.

- A. A Candidate for membership must first be proposed by a Senior Member, in good standing, acting as the Candidates' Sponsor. The Sponsor, by letter to the Secretary of the Board, shall not only recommend the Candidate, but also state his or her willingness to orient his or her Candidate regarding course and Club rules. Upon the acceptance of the Candidate, in his or her letter, the Sponsor shall list three (3) other references on behalf of his or her Candidate; one (1) of whom shall be another Senior Member in good standing.
- B. The Secretary, upon receipt of the proposal, shall immediately notify the Membership Chairman. The Membership Committee shall then contact the four (4) references as to the Candidates' financial responsibility, character, integrity and any other information the Committee may deem necessary. If the Membership Committee finds that a Candidate is not worthy of membership, the Chairman shall so inform the Board.
- C. Once a Candidate is screened, and recommended for acceptance by the Membership Committee, he/she must appear before the Board of Governors prior to approval. Seven (7) Members shall constitute a quorum for purpose of acceptance or rejection. Two (2) negative votes by any Member of the Board will reject the acceptance of any Candidate. If a Candidate is rejected by the Board, he/she may not reapply for membership for a period of two (2) years. Upon approval by the Board, an accepted Candidate's name shall be posted on the bulletin board for a period of two (2) weeks for scrutiny by the general membership.
- D. Any Senior Member, in good standing, may write a letter to the Secretary objecting to the admission of any Candidate for membership. If two (2) or more such letters are received, it will be necessary to so inform the Sponsor of the Candidate; who, in turn, shall have the right to appear before the

Board to support his or her Candidate. The Board, sitting as a Committee on Admissions, shall then re-evaluate the Candidate and either accept or reject the plea of the Sponsor. Two (2) negative votes will reject the Candidate.

- E. Once a Candidate has been screened, approved and accepted for membership, his/her admission is automatic, providing there is not a waiting list for admission. In the event there is such a list, the Candidate's name shall be placed on said list in order of his/her date of application, until such time as an opening in the classification is available. However, this does not obligate the Committee on Admissions to necessarily accept those heading the waiting list in preference to applicants who may have been placed on the waiting list at a later date.
- F. Upon admission, all fees such as initiation and the pro-rated amount of the yearly dues must be paid prior to the use of Club facilities.
- G. All Candidates must be informed of their status as to rejection, acceptance on a waiting list, or admission within ninety (90) days of their date of application.

SECTION II.

- A. The Board of Governors may transfer a Member from one (1) membership classification to another classification in the event of an age or residence change by a said Member. Existing dues and initiation fees shall be changed as of the date the Board makes this determination either on its own authority, or at the request of the individual Member.
- B. The Board of Governors may declare any category of membership of the Club to be closed at any time, when, in its discretion, it is in the best interest of the Club to do so.
- C. At any time the membership is declared to be closed, Candidates may be encouraged to apply for membership and be placed on the waiting list until such time as the membership shall be declared open.

ARTICLE V

RESIGNATION AND LEAVE OF ABSENCE

SECTION I.

- A. Any Member, in good standing, and, with no indebtedness to the Club, may resign. The resignation shall be in writing, addressed to the Board of Governors, and must be filed with the Treasurer to release the Member from liability for dues. Any indebtedness incurred for any phase of the Club operation prior to the date of receiving said resignation at the Club office will be considered a liability. All Senior Members resigning or otherwise losing their membership shall forfeit their equity in the Club.
- B. Members who resign and who, at the time of resignation, were in good standing may be re-elected to membership by the Board with payment of one-half ($\frac{1}{2}$) of the then current initiation fee by the following procedures outlined in Article IV.

SECTION II.

- A. Any Member, in good standing, with no indebtedness to the Club, may request a leave of absence due to illness of prolonged duration. The conditions for granting a leave of absence will be the same as those outlined above in Article V, Section I A on resignation except the Member requesting leave shall be carried on the roll as "on leave" and his/her dues shall be suspended until the termination of his/her illness or the Member requests, in writing, reinstatement to active status.
- B. The Board of Governors, at its discretion, may consider a leave of absence for a reason other than illness if there are extenuating and unusual circumstances surrounding such a request by a Member.
- C. In no case will leave be granted for more than one (1) year. If more time is needed, a new request must be submitted by the Member or someone designated to act on his/her behalf.

ARTICLE VI

SUSPENSION AND EXPULSION

SECTION I.

Any Member violating any rules of the Club or guilty of any misconduct, and especially any Member whose conduct shall be injurious to the character or interest of the Club, may receive a Letter of Reprimand with a warning or be suspended or expelled by the Board of Governors. No Member shall be suspended or expelled without an opportunity to be heard. In the event the Board agrees that suspension and/or expulsion is being considered, the Member must be notified by certified mail that a hearing will take place within ten (10) days of notice to him/her. The notice will list the time, place, date and charges.

SECTION II.

If, after the hearing, the Board agrees to a suspension, said suspension shall automatically be for a minimum of two (2) weeks. Suspension will be valid when a majority of the Board present so votes.

If the Board agrees to expulsion, it shall be valid when a two-thirds (2/3) majority of the total Board so votes.

SECTION III.

All suspended or expelled Members shall be denied all Club privileges and denied access to Club property.

Expelled Members shall be dropped from the rolls, and may never again apply for membership to The Wyoming Valley Country Club and it shall be so recorded in the minutes of the Club.

ARTICLE VII

FEEES AND DUES

SECTION I.

The Board of Governors shall have the power to determine the annual dues and golf fees; to establish initiation fees; to set assessment rates; and, to levy any charges it may deem necessary to maintain the financial stability of the Club.

SECTION II.

The fiscal year will be considered as the first of October of the calendar year until the 30th of September of the following calendar year.

- A. The annual dues are payable on the first of October, however, the amount due may be pro-rated on a schedule approved by the Board of Governors, except for new Members who shall pay all fees as directed under Article IV, Section I F of these By-laws.
- B. Senior Member applicants accepted after July 1 pay half-year dues, plus full initiation fees for that fiscal year.

SECTION III.

When the dues, or any other indebtedness to the Club, remains unpaid, by a Member, for a period of twenty (20) days following the month in which said indebtedness occurred, the Member shall be considered in arrears. The Treasurer shall then send a second statement to the Member advising him or her that the Member's name shall be posted unless the account is paid within ten (10) days from the date of such notice. At the end of this ten (10) day period, the Member will then be in arrears for thirty (30) days, and, if his/her debt is still unpaid, he or she shall be posted by the Treasurer. ONCE THE MEMBER'S NAME IS POSTED, HE OR SHE WILL BE CONSIDERED DELINQUENT AND SHALL BE DENIED ALL PRIVILEGES OF CLUB MEMBERSHIP, INCLUDING ADMISSION TO THE CLUB PROPERTY.

The Treasurer shall notify the Board of Governors when Members are posted. When the indebtedness of a Member remains unpaid for ten (10) more days after being posted, or a total of forty (40) days following the month in which said indebtedness is incurred, the Board of Governors shall then declare such membership to be forfeited, and the delinquent shall thereupon cease to be a Member of the Club. Any member thus forfeiting a membership may be considered for reinstatement upon payment of all arrears, and requesting, in writing, that the Board of Governors reinstate him or her. The individual concerned shall not become an active Member until he or she is so advised that the request is granted. A favorable vote by the Board of Governors present at any meeting of the Board will be necessary for reinstatement.

When circumstances seem to justify such action, the Board of Governors may authorize for non-payment of indebtedness when said Member is known to be ill or absent from home.

ARTICLE VIII

OFFICERS

SECTION I.

- A. The officers shall be a President, First and Second Vice-Presidents, Secretary, Treasurer (who will also be the Finance Chairman), four (4) Governors, and the respective chairmen of the Golf, Green, House and Membership Committees provided for in Article X of these By-laws, and these officers shall constitute the Board of Governors.
- B. Quorum - At all meetings of the Board, the majority of the Officers in office shall be necessary to constitute a quorum for the transaction of business, and, the acts of a majority of the officers present at a meeting at which there is a quorum shall be the acts of the total Board of Governors.

SECTION II.

In case of any office becoming vacant for any cause, the Board of Governors shall fill the office by appointment for the remainder of the term.

SECTION III.

Effective in fiscal year 1987/88 and thereafter, officers' terms of office shall be as follows:

The President, First Vice-President and two (2) of four (4) Governors shall be chosen at an annual meeting and shall hold office for two (2) years. The Second Vice-President, Secretary and Treasurer shall be chosen at the annual meeting and shall hold office for one (1) year.

SECTION IV.

Above officers shall be chosen at the annual meeting by a majority of votes cast by the Senior Membership present and by way of absentee ballots cast. Election need not be by ballot except in cases where an opposing slate has been posted.

SECTION V.

The President, or in his/her absence, the First or Second Vice-President shall, at least thirty (30) days prior to the annual meeting, appoint a committee of five (5) Members, not more than two (2) of whom shall be officers of the Club, and the committee shall nominate a slate of candidates for all vacancies about to occur. The proposed candidates will be posted on the bulletin board at least twenty (20) days before the date of the annual meeting. Any five (5) Senior Members may nominate other candidates for the same offices, but the names of such candidates must be posted on the bulletin board at least ten (10) days prior to the annual meeting.

The names of the Senior Members placing the candidate's name or names in nomination must be signed on the posting. No Member shall be eligible to any office unless nominated and posted as aforesaid.

The Secretary of the Club shall have ballots prepared containing all the names so posted, and furnish the same to the Members at the opening of the meeting when the election is to take place. If there is no slate or candidates for office in opposition to those candidates recommended by the nominating committee, voting need not be by ballot.

The Secretary shall also have available a current list of Senior Members, in good standing, all of whom shall be entitled to one (1) vote.

If there is more than one (1) candidate for any office, voting shall be by ballot. If voting by ballot, the President shall appoint three (3) Judges of Election from the Senior Membership. They, in turn, will name one (1) of their Members as Chairman. None of the judges shall be candidates for office. The judges shall take all action necessary to ensure fairness to all concerned, to tally the votes and announce the results of the election to the membership.

- A. When voting is by ballot, an Absentee Ballot will be available in the office for any Senior Member who cannot be present to vote on election day.
- B. Senior Members must sign for an official Absentee Ballot, seal and return the ballot prior to election day in order for it to be placed in the ballot box by the Chairman of the Election Committee.
- C. The number of Absentee Ballots placed in the election box will be duly recorded in the Minutes of the Club.
- D. Only Senior Members, in good standing, with no indebtedness to the Club, who have been Members for two (2) years, are eligible to vote.

ARTICLE IX

DUTIES OF OFFICERS

SECTION I.

PRESIDENT - The President shall be the chief executive officer of the Club. The President shall preside at all meetings of the Board of Governors and at all meetings of the general membership. The President shall, with the Secretary, sign all written contracts and obligations of the Club and perform such other duties as may be required by these By-laws or the Board of Governors. The President shall appoint all committees and shall be an ex-officio member of all such committees. The President shall arrange for an annual audit of the accounts of the Treasurer, and present an annual report on the business of the Club to the membership. Such report to be given either in writing and mailed to each Member, presented orally at a business meeting, or a copy of the report placed in the files at the office, after notifying each Member of his/her right to study said report.

SECTION II.

VICE-PRESIDENTS - The first Vice-President shall, in the absence or disability of the President, perform the duties

and exercise the powers of the President and shall perform such other duties as may be assigned to him/her by the Board of Governors. The Second Vice-President assumes responsibility if both the President and First Vice-President are disabled or absent from any meetings.

SECTION III.

SECRETARY - The Secretary shall attend all meetings of the Board and of the membership and act as clerk thereof, and record all the votes and minutes thereof in books to be kept for that purpose. The Secretary shall notify all Members of their election to office, arrange to have the proper people informed of all meetings as to the time, place and purpose. The Secretary shall be co-signer, with the President, of all written contracts and obligations of the Club. The Secretary shall conduct or cause to be conducted, all official correspondence of the Club and shall see that such correspondence is properly preserved and filed until otherwise disposed of by the Board. In the event that he/she shall be absent at any meeting duly called, he/she shall arrange to have the minutes of all previous meetings made available to the Board for their edification when necessary. In such absence, the President shall appoint any Board Member in attendance as Temporary Secretary for the recording of the minutes.

SECTION IV.

TREASURER - The Treasurer shall be the chief financial and accounting officer and shall cause full and accurate accounts of receipts and disbursements to be kept in books belonging to the Club. The Treasurer shall render to the President, and to the Directors, at regular meetings of the Board, or whenever the President or the Board may require, an account of all his/her transactions as Treasurer and the financial state of the Club. The Treasurer shall cause to be deposited all funds of the Club in one (1) or more of the banks in the Wyoming Valley area, in the name and to the credit of the Wyoming Valley Country Club. The Treasurer shall send out bills for dues and all other indebtedness to the Club, as specifically set forth in Article VIII Sections II and III of these By-laws or as may be ordered by the Board. The Treasurer shall sign and countersign all such instruments as may be required by his/her signature as an officer of the Club. The Treasurer shall perform all such other duties as may be properly assigned to him/her by the Board, one (1) of which will be Chairman of the Finance Committee.

SECTION V.

THE BOARD OF GOVERNORS - This body shall exercise general supervision of the affairs, funds and property of the Club and to this end is invested with all the powers of the Club. It shall make such house and ground rules as may be deemed necessary. It shall make and enforce all regulations as it may, from time to time, feel are essential for the proper maintenance, care and use of the golf course; including, but not restricted to, regulations providing for the registration of golfers, and the use of the course by registered golfers only. It shall set regulations providing for the establishment, imposition and collection of golf dues or charges and green fees. It shall set any regulations necessary to prevent damage or congestion of the golf course. The Board shall meet on call of the President or on written request of any three (3) Board Members. Due notice shall be given by the Secretary of such meeting. A majority of the Members of the Board in office shall be necessary to constitute a quorum as specified in ARTICLE VIII, SECTION I B.

ARTICLE X

COMMITTEES

SECTION I.

Immediately after the annual election, the President shall appoint, with the approval of the Board, any committees that are deemed necessary or desirable for the successful operation of the Club for the ensuing year. It shall be mandatory that the standing committees be Finance, House, Greens and Grounds, Membership and Golf Committees. Committees shall not consist of more than five (5) Senior Members. The President shall designate the chairman of each committee. The committees shall be delegated authority to fulfill their mission, subject to the approval of the Board, and, for purposes not inconsistent with these By-laws. Each committee chairman must submit his annual anticipated budget for the coming year for scrutiny by the Finance Committee. Final budgets must be presented for Board approval at the regular meeting of the Board in the month of March following the January election of officers. Once approved by the Board, the committee is free to expend funds as needed. Any unexpected expenditures beyond the funds already budgeted must be submitted for Board approval. All monies received or expended by all committees must be handled by the office under the supervision of the Club Treasurer. All members of any special committee shall serve until their successors have been

appointed or until the Board decides that a particular committee is no longer necessary.

- A. FINANCE COMMITTEE - This Committee, subject to the Board, shall have general supervision of the finances of the Club; help other committees determine their financial needs for the year; help determine the Club's total yearly budget; and, act in an advisory capacity in reference to all financial matters affecting the Club. The elected Treasurer will be the Chairman of this Committee.
- B. HOUSE COMMITTEE - The House Committee, subject to Board approval, shall have full charge of the clubhouse, and any buildings where refreshments, articles or supplies are sold. Keeping within its established budgetary allowance, it shall have authority to make all purchases necessary for the proper maintenance and operation of each building and facility under its supervision. It shall determine the prices to be charged for all articles and supplies served in any facility under its jurisdiction and shall prescribe any special terms and conditions under which Members or outside agencies may use the facilities under its charge for private occasions. This Committee shall supervise the employment and discharge of all personnel needed to properly fulfill its obligations to the membership. It shall be the duty of this Committee to make the necessary house rules and regulations that all Members are to abide by and to have said rules printed and posted in a conspicuous place in the golf clubhouse.
- C. GOLF COMMITTEE - The Golf Committee, subject to Board approval, shall arrange and conduct all tournaments, exhibition matches and other special golf events. This Committee shall consult with other Committees that may be involved, such as the House Committee, as to the dates of such events and will notify Members of said dates and conditions pertaining to such events. It shall have the authority to employ, supervise or discharge extra tournament personnel, and to purchase such articles or supplies as may be necessary for the efficient conduct of such special events. It shall have charge of all publicity for special events and shall select, purchase, and award any prizes which are won

by the contestants. During special golf events only, it shall have charge of carts, the caddie area, caddie master and caddies fixing the latter's tournament fees.

The Golf Committee will conduct and supervise any inter-club matches held during the season. This Committee shall organize and select Members to represent the Club at any such matches. Along with the House Committee, they shall provide for the reception and entertainment of the visiting teams. The Golf Committee shall be responsible for determining the handicaps of all Club golfers and for posting such handicaps.

- D. GREENS AND GROUNDS COMMITTEE - This Committee, known simply as the Greens Committee, subject to Board approval, shall have full charge of the golf course and grounds of the Club property. This includes all trees, shrubs, vines, road, walk, cart paths and automobile parking spaces on said property and such buildings as not specifically covered by the House Committee in Article X B. This Committee shall employ such personnel and procure such articles, tools, equipment and supplies as may be necessary for the proper upkeep and maintenance of such facilities that come under its jurisdiction. Any major changes or alterations on the course or grounds beyond what would be considered as routine, every day procedure must first be presented to the Board for discussion and approval. Since this Committee is directly concerned with the golf course, and since said course is the basis of the entire Club operation, it shall be empowered, after consultation with the greenskeeper, to decide when and if the course is being damaged for any reason, such as weather conditions, use of golf carts, or negligence, and to take whatever steps to remedy such situations as may be deemed necessary. In the best interest of the Club, this could mean limiting the use of carts, closing certain area to play, or complete closing of play at the course until the problem is resolved. This Committee shall be responsible for proper training and supervision of all caddies.

It shall be the duty of this Committee to make the necessary rules and regulations concerning the

course and carts that all Members are to abide by and to have said rules printed and posted in a conspicuous place in the Clubhouse.

- E. MEMBERSHIP - This Committee shall be responsible for screening candidates in all membership classifications before presentation to the Board of Governors for approval.
- F. Standing Committee Chairmen are voting members of the Board.
 - a. Immediate Past President is Honorary Member of Board for one (1) year, but has no voting privileges.
- G. Long Range Planning Committee is a special committee of the Club.

It shall consist of nine (9) Members whose individual term will be five (5) years. These Members will be elected at the annual meeting

The Committee will elect their chairman annually after the general election and he/she shall be a voting Member of the Board.

The Long Range Planning Committee is a Special Committee of the Club, and as such, will be charged with the responsibility of planning the future growth and development; refurbishing the present facility; and, replacing the equipment, buildings, grounds, etc., in a sound and orderly manner consistent with logical development of The Wyoming Valley Country Club. Said Committee will formulate its plans and report to the Board, which will then be responsible for the appropriate action within the confines which that Board sees proper.

The recommendations of the Long Range Planning Committee are not to be considered binding on the Board, but since they are the recommendations of a Committee of the Club, their plans must be given very serious consideration by the Board.

SECTION II.

CAPITAL IMPROVEMENTS

- A. Capital Improvement Budgets shall not exceed ten percent (10%) of the audited, preceding year's dues income, without a special membership meeting on the proposed budget.
- B. In the event capital expenditure actual figures may exceed budgeted figures by ten percent (10%), a Special Membership Meeting must be called by the Board to inform the membership.
- C. When and if it becomes necessary to borrow from any lending institution to finance capital improvements, a Special Meeting of the Membership must be held to inform the Members of the project(s) involved prior to any commitment by the Club.

ARTICLE XI

MEETINGS

SECTION I.

There shall be an Annual Meeting of the Club for the election of officers which shall be the second Saturday of January in the clubhouse at a time to be determined by the Board.

- A. Notice of such meeting shall be posted in the clubhouse not less than two (2) weeks before the meeting date.
- B. Fifteen (15) Members shall constitute a quorum for the Annual Meeting.
- C. The audited Financial Report for the preceding year must be mailed to all Senior Members by December 1.
- D. In the event of a tie vote for any office, a Special Election for the office/officer in question will be held not later than the first Saturday in February.

SECTION II.

The order of business shall be as follows:

1. Reading the minutes of the last stated meeting, and of any special meetings held thereafter.
2. Report by the President for the Board.
3. Report of the Treasurer.
4. Appointment of Auditor.
5. Report of standing Committees.
6. Election of officers.
7. New Business
8. Adjournment.

SECTION III.

Special Membership Meetings may be called at the discretion of the President and must be called upon written request of ten (10) Senior Members who shall state the specific purpose of the meeting.

- A. Special meetings must be held within twenty (20) days of such a request by either the President or Members.
- B. Each Member of the Club shall receive ten (10) day's notice, stating the place, time and purpose of the meeting.
- C. No business shall be transacted other than the stated purpose of the meeting.

SECTION IV.

QUORUM - Twenty-five percent (25%) of the Senior Membership shall constitute a quorum of the Club for special meetings. The acts of the majority of the quorum present shall be the acts of the total Senior Membership. Any decisions voted upon by the membership shall be considered to be binding upon the Board of Directors in any future meeting of the Board relating to the decision made at the special meeting.

ARTICLE XII

VISITORS

SECTION I.

Upon written request, by a Senior Member in good standing, the Secretary may issue an invitation to any person not a resident of Wyoming Valley to use the facilities of The Wyoming Valley Country Club for a two (2) week period. The same guest shall not be introduced more than twice in one (1) season and then only after an interval of at least one (1) month. The guest shall pay the required greens fee for each round of golf. No Member shall have three (3) introductions in force at any one (1) time.

SECTION II.

Should a non-resident guest of a Senior Member desire to use the Club beyond two (2) weeks, he/she may, if the Board approves, be granted a two (2) month guest card upon payment of one-fourth ($\frac{1}{4}$) of the then current annual dues.

SECTION III.

The names and places of residence of such visitors, as outlined in the last two (2) sections, shall be recorded in the Pro Shop in a book kept for that purpose. Any Member who uses the privileges of these rules shall be held responsible for any debts or liabilities to the Club that may be incurred by any person he/she introduces or sponsors.

ARTICLE XIII

COLORS AND EMBLEM

The colors of the Club shall be Blue and Red and the Club emblem shall be a Tomahawk.

ARTICLE XIV

EQUITY AND DISSOLUTION

SECTION I.

In the event that it is considered necessary or proper to dissolve the corporation, the Board of Directors shall notify

all Members in good standing of a meeting to be held for the purpose upon not less than ten (10) day's written notice to each paid Member at his last known address.

At the meeting so called, an election to dissolve the Corporation shall be made by a majority vote of all of the Members.

Following the vote concerning dissolution, the Board of Directors may take whatever action they deem proper and necessary to wind up the Corporation by the sale of all of its assets providing for the payment of all secured or unsecured obligations. After all debts and obligations of the Corporation are approved and paid, any assets remaining shall be distributed to Senior Members of the Club who are fully paid and in good standing on the date of dissolution, provided however, that only Senior Members who have been Members of the Club in good standing for five (5) consecutive years immediately prior to the date of dissolution shall be entitled to any equity distribution.

ARTICLE XV

AMENDMENTS

These By-laws may be amended by a two-thirds (2/3) vote of the Members present at any regular or special meeting, provided the proposed amendments shall be in writing, and shall be proposed by the Board of Governors, or by ten (10) Senior Resident Members two (2) weeks prior to the annual meeting, or a special meeting called for that purpose, and that the notice of said meeting shall contain a copy of the proposed additions or amendments.

ARTICLE XVI

EFFECTIVE DATE OF BY-LAWS

These By-laws shall become effective on the date of a regular or special meeting of the Senior Members of the Club duly called for the purpose of their adoption.

A. Richard Caputo

EXHIBIT #4"

**FINANCIAL DISCLOSURE REPORT
Nomination Report**

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App 4, Sec. 101-112)

AO-10 (w)
Rev. 8/96

1. Person Reporting (Last name, first, middle initial) CAPUTO, A. RICHARD		2. Court or Organization US DIST CT MID DIST OF PA	3. Date of Report 08/01/1997
4. Title (Article III judges indicate active or senior status, magistrate judges indicate full- or part-time) U.S. DISTRICT JUDGE NOMINEE		5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date 07/31/1997 Initial ___ Annual ___ Final ___	6. Reporting Period 01/01/1996 to 07/30/1997
7. Chambers or Office Address 387 WYOMING AVENUE P.O. BOX 2059 KINGSTON, PA 18704-2059		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
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 the last page.			

I. POSITIONS (Reporting individual only, see pp 9-13 of Instructions)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions)	
1 VICE PRESIDENT AND DIRECTOR	MAPLEMOOR, INC.
2 SECTY, TREASURER & DIRECTOR	THE LUZERNE FOUNDATION
3 V.P., ASST. SECY & DIRECTOR	BACK MOUNTAIN HOLDINGS, INC.

II. AGREEMENTS (Reporting individual only, see pp 14-17 of Instructions)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements)	
1	Fees which have been billed, and those representing my work in progress not yet billed will be ascertained upon my departure from my office, and those sums will be remitted to me when received over the next twenty-four (24) months.
2	
3	

III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp 18-25 of Instructions)

DATE	PARTIES AND TERMS	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		
1 1995	INCOME FROM LEGAL SERVICES	\$ 326,091.00
2 1996	INCOME FROM LEGAL SERVICES	\$ 294,877.00
3 TO 7/97	INCOME FROM LEGAL SERVICES	\$ 140,270.67
4		
5		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

CAPUTO, A. RICHARD .

Date of Report

08/01/1997

SECTION HEADING. (Indicate part of report)

SECTION 1. POSITIONS (cont'd.)

Li. Position	Name of Organization/Entity
4 CO-TRUSTEE	GRACE K. SHEA TRUST
5 ASSISTANT SECRETARY	McCARTHY ENTERPRISES, INC.
6 ASSISTANT SECRETARY	PLAINCO, INC.
7 ASSISTANT SECRETARY	BRONSBURG & HUGHES PONTIAC, INC.
8 ASSISTANT SECRETARY	MIDDLE ROAD DEVELOPMENT CORP.
9 ASSISTANT SECRETARY	MAGICORP, INC.
10 ASSISTANT SECRETARY	FORSUNS, LTD.
11 ASSISTANT SECRETARY	ROBBINS DOOR & SASH CO.
12 PARTNER	DRUID ASSOCIATES
13 PARTNER	ALAFAYA ASSOCIATES
14 PARTNER	387 WYOMING AVENUE ASSOCIATES

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	CAPUTO, A. RICHARD	08/01/1997

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. 26-29 of Instructions.)

	SOURCE	DESCRIPTION
<input type="checkbox"/>	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. 30-33 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
<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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities)		
1	FIRST UNION NATIONAL BANK	LINE OF CREDIT	J
2	MELLON BANK	CREDIT CARD	J
3	MBNA	CREDIT CARD	J
4	FIRST NATIONAL COMM. BANK	MTG. ON PROP. (387 WYO. AVE ASSOC.)	N
5	FIRST NATIONAL MORTGAGE CORP.	MORTGAGE ON PROPERTY (RESIDENCE)	J
6			
7			

* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000
 0=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting CAPUTO, A. RICHARD .	Date of Report 08/01/1997
	-- income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions)	

VII. Page 1 INVESTMENTS and TRUSTS

A Description of Assets <i>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.</i> <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B Income during reporting		C. Gross value at end of reporting		D Transactions during reporting period					
	(1) Amt. Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemp-)	If not exempt from disclosure				
						(2) Date Month Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private)	
<input type="checkbox"/> NONE (no reportable income, assets, or transactions)										
1 RENTAL PROPERTY #1 - RYE, NY	D	Rent	M	W						
2 RENTAL PROPERTY #2 - RYE, NY	D	Rent	M	W						
3 FIRST UNION NAT'L BANK - INTEREST CHECKING	A	Interest	K	T						
4 DEAN WITTER REYNOLDS - IRA - GTE COMMON STOCK	A	Dividend	J	T						
5 DEAN WITTER REYNOLDS - IRA - GE - COMMON STOCK	A	Dividend	J	T						
6 DEAN WITTER REYNOLDS - IRA - CHRYSLER CORP. - COMMON STOCK	A	Dividend	J	T						
7 DEAN WITTER REYNOLDS - IRA - TCH/DW EMERGING MARKETS	A	Dividend	J	T						
8 DEAN WITTER REYNOLDS - IRA - LIQ. ASSETS FUND	A	Interest	J	T						
9 DEAN WITTER REYNOLDS - IRA - COMPAQ COMPUTER - COMMON STOCK	A	Dividend	J	T						
10 DEAN WITTER REYNOLDS - IRA - TRAVELERS-AETNA - COMMON STOCK	A	Dividend	J	T						
11 DEAN WITTER REYNOLDS - IRA - MOBIL CORP - COMMON STOCK	A	Dividend	J	T						
12 DEAN WITTER REYNOLDS - IRA - AMER. SAFETY RAZOR - COM. STOCK	A	Dividend	J	T						
13 DEAN WITTER REYNOLDS - IRA - CARNIVAL CORP. - COM. STOCK	A	Dividend	J	T						
14 DEAN WITTER REYNOLDS - IRA - GENERAL MOT. CORP. - COM. STOCK	A	Dividend	J	T						
15 DEAN WITTER REYNOLDS - IRA - INGERSOLL RAND - COM. STOCK	A	Dividend	J	T						
16 DEAN WITTER REYNOLDS - IRA - COMPUTER ASSOC. INT'L - CH. STK	A	Dividend	J	T						
17 DEAN WITTER REYNOLDS - IRA - HARLEY DAVIDSON - COM. STOCK	A	Dividend	J	T						
1 Int/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more										
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more										
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated										

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting CAPUTO, A. RICHARD	Date of Report 08/01/1997
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VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions)

A. Description of Assets <i>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.</i> <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting		C. Gross value at end of reporting		D. Transactions during reporting period					
	(1) Amt. Code (A-H)	(2) Type (e.g. dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g. buy, sell, merger, redemp-)	If not exempt from disclosure				
						(2) Date Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private)	
<input type="checkbox"/> NONE (no reportable income, assets, or transactions)										
18 GRACE K. SHEA TRUST - AIR PRODUCTS - COMMON STOCK	A	Dividend	J	T						
19 GRACE K. SHEA TRUST - AMERICAN HOME PRODUCTS - COM. STOCK	B	Dividend	K	T						
20 GRACE K. SHEA TRUST - AT&T - COMMON STOCK	A	Dividend	K	T						
21 GRACE K. SHEA TRUST - CHEVRON - COMMON STOCK	B	Dividend	K	T						
22 GRACE K. SHEA TRUST - CHRYSLER - COMMON STOCK	A	Dividend	J	T						
23 GRACE K. SHEA TRUST - COCA COLA - COMMON STOCK	A	Dividend	L	T						
24 GRACE K. SHEA TRUST - COMPAQ COMPUTER - COMMON STOCK	A	Dividend	K	T						
25 GRACE K. SHEA TRUST - DUPONT - COMMON STOCK	A	Dividend	K	T						
26 GRACE K. SHEA TRUST - GE - COMMON STOCK	A	Dividend	K	T						
27 GRACE K. SHEA TRUST - GTE - COMMON STOCK	A	Dividend	J	T						
28 GRACE K. SHEA TRUST - JOHNSON & JOHNSON - COMMON STOCK	B	Dividend	L	T						
29 GRACE K. SHEA TRUST - LUCENT TECH. - COMMON STOCK	A	Dividend	J	T						
30 GRACE K. SHEA TRUST - MICROSOFT - COMMON STOCK	A	Dividend	K	T						
31 GRACE K. SHEA TRUST - SARA LEE - COMMON STOCK	B	Dividend	L	T						
32 GRACE K. SHEA TRUST - SMITH-KLINE - COMMON STOCK	B	Dividend	L	T						
33 GRACE K. SHEA TRUST - HARLEY DAVIDSON - COM. STOCK	A	Dividend	J	T						
34 GRACE K. SHEA TRUST - CARNIVAL CORP. - COM. STOCK	A	Dividend	K	T						
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000					
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal (Col. C2)	U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market						

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	CAPUTO, A. RICHARD	08/01/1997

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children See pp 37-54 of Instructions)

A. Description of Assets <i>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</i> <i>Place "(0)" after each asset exempt from prior disclosure</i>	B Income during reporting		C Gross value at end of reporting		D Transactions during reporting period				
	(1) Amt Code (A-H)	(2) Type (e.g. dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g. buy, sell, merger, redemp-)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private)
<input type="checkbox"/> NONE (no reportable income, assets, or transactions)									
35 GRACE K. SHEA TRUST - ACTIVE ASSETS - MONEY MARKET	B	Dividend	J	T					
36 FARMER BROTHERS - COMMON STOCK (S)	A	Dividend	K	T					
37 FIRST UNION NATIONAL BANK - COMMON STOCK (S)	C	Dividend	M	T					
38 RYKOFF-SEXTON - OPTIONS - COMMON STOCK		None	J	T					
39 DEAN WITTER REYNOLDS - IRA (S) -TWC/ DW CR, EQ. TR., MUT FD	A	Dividend	J	T					
40 DEAN WITTER REYNOLDS - IRA (S) - DW AM VALUE/MNY MARKET	A	Interest	J	T					
41 DEAN WITTER REYNOLDS - IRA -CARLISLE CO., INC. - COM. STOCK	A	Dividend	J	T					
42 DEAN WITTER REYNOLDS - IRA - FEDERAL EXPRESS CORP. - COMMON	A	Dividend	J	T					
43 DEAN WITTER REYNOLDS - IRA - DUPONT EI DENEMOURS - COMMON	A	Dividend	J	T					
44 GRACE K. SHEA TRUST - FEDERAL EXPRESS CORP. - COMMON	A	Dividend	K	T					
45 AMERICAN SAFETY RAZOR (S) - COMMON STOCK	A	Dividend	J	T					
46 80 ACS VACANT LAND - ORANGE CTY. (NEAR ORLANDO) FLORIDA (S)			O	W					
1 Inc/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	CAPUTO, A. RICHARD .	08/01/1997

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of report.)

NONE (No additional information or explanations.)

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

CAPUTO, A. RICHARD .

Date of Report

08/01/1997

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. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

8/1/97

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. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

A. Richard Caputo

SCHEDULE "A" - UNLISTED SECURITIES

\$15,000.00 (Bond) Huntsville Golf Club - 20 years - 8%
Bond - Cost \$15,000.00

SCHEDULE "B" - REAL ESTATE OWNEDPersonal Use

Residence

Shavertown, Pennsylvania, 18708 - owned by A. Richard Caputo
and Rosemary S. Caputo
Purchased 1974
Market Value - \$210,000.00

Investments in Real Estate

11 New Street

Rye, New York 10580 - owned by A. Richard Caputo
purchased 1975
Market Value - \$200,000.00

17 New Street

Rye, New York 10580 - owned by A. Richard Caputo
purchased 1975
Market Value - \$200,000.00

387 Wyoming Avenue

Kingston, Pennsylvania 18704 - owned by A. Richard Caputo and
Charles A. Shea, III as
co-partners
Purchased 1994
Market Value - \$500,000.00

A. Richard Caputo

SCHEDULE "C" - PARTNERSHIP INTERESTS

Druid Associates - 25% interest - owns an interest in an apartment building in Mamaroneck, New York, and an interest in an apartment building in Fleetwood, New York, with other investors. Current value of my interest is estimated at \$5,000.00.

Alafaya Associates - 16 2/3% interest - owns an interest in the same apartment building in Fleetwood, New York, in which Druid Associates owns an interest. Current value of my interest is estimated at \$3,000.00. My wife also owns 16 2/3% interest.

SCHEDULE "D" - REAL ESTATE MORTGAGES

First Union Mortgage Corp.

Balance: \$8,173.40

Security: Residence - Shavertown, Pennsylvania

First Union Mortgage Corp.

Balance: \$132,897.69

Security: Residence - Shavertown, Pennsylvania

First National Community Bank

Balance: \$375,893.34

Security: 387 Wyoming Avenue, Kingston, Pennsylvania

Mortgagors: A. Richard Caputo and Charles A. Shea, III

**NOMINATIONS OF RONALD LEE GILMAN AND
SONIA SOTOMAYOR (U.S. CIRCUIT JUDGES);
CHARLES J. SIRAGUSA, ALGENON L.
MARBLEY, DALE A. KIMBALL, JAMES S.
GWIN, AND RICHARD CONWAY CASEY (U.S.
DISTRICT JUDGES)**

TUESDAY, SEPTEMBER 30, 1997

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

The committee met, pursuant to notice, at 3:02 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Mike DeWine presiding.

Also present: Senators Hatch, Thurmond, Thompson, Torricelli, Sessions, and Ashcroft.

**OPENING STATEMENT OF HON. MIKE DeWINE, A U.S. SENATOR
FROM THE STATE OF OHIO**

Senator DeWINE. I would invite my colleagues, I see Senator Glenn and Senator Bennett, to come immediately to the table. We are now proceeding to hearings for two circuit court judges and five district court judges. We need to be out of here by 4:30 p.m., which I assume we can be.

I would say to all of the prospective judges who are here that it is certainly possible that we may submit some written questions for the record, either because we run out of time or because some members are not here. Some members may have to leave, so you should be prepared to receive written followup questions from them, as well.

Let me start, if I could, with the chairman of the committee, Senator Hatch. Mr. Chairman.

**STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM
THE STATE OF UTAH**

Senator HATCH. Thank you, Mr. Chairman. I appreciate this opportunity to appear before the committee for and on behalf of Dale A. Kimball, who has been nominated for district court judge for the District of Utah. I am also happy to be here with my friend and colleague, Senator Bennett, as well.

Mr. Kimball obtained his B.S. from Brigham Young University in August 1964, his juris doctorate from the University of Utah in 1967, became an associate with the largest law firm in Utah and

one of the most prestigious, was a partner and then helped form one of the major firms in Salt Lake City, Kimball, Parr, Waddoups, Brown & Gee. He has been the senior partner in that law firm from 1975 to the present. He was an associate professor of law at the Brigham Young University School of Law from 1974 to 1976, and adjunct professor from 1976 to 1979.

Mr. Kimball has extensive experience in the practice of law and has been engaged in general practice, title work, oil and gas and mineral matters, contract negotiations, and litigation, including securities law, shipping disputes, administrative agency matters, and criminal defense. Since 1975, he has been engaged primarily in business litigation, including securities fraud, insurance, antitrust, contract, and energy cases, along with some arbitrations and municipal litigation.

He has had extensive experience in the practice of law, in the practice of teaching law, and as a fine lawyer in the Utah area. He has authored several articles. He is a member, of course, of the appropriate bar associations and is one of the finest people I know.

Dale Kimball is not only an excellent lawyer, he is a person of the highest integrity, the highest ability, a person we can rely upon, a person who understands the role of judging, and a person who, literally, I think, will elevate the Federal bench in this country.

There is so much more we could say. He is here with his wonderful wife. I have known him for a long time. I have total respect for him, as I think do all people in Utah and especially all members of the bar association.

As you know, in any of these situations, it is very difficult to make a decision as to who should replace another Federal district judge. There are so many people who can be qualified for that position, and there are a number in Utah who certainly do qualify, but I know of none better, none greater, or none with more ability than Dale Kimball. I think he will become one of the great judges in America and I would expect no less from him.

I recommend to the committee that they approve this nomination as quickly as possible and help us to resolve the problem of an open seat on that bench, which has been open since June of this year.

Senator DEWINE. Senator, thank you very much.

Let me turn now to the junior Senator from Utah, Senator Bennett.

STATEMENT OF HON. ROBERT F. BENNETT, A U.S. SENATOR FROM THE STATE OF UTAH

Senator BENNETT. Thank you, Mr. Chairman. Being the junior Senator and not being a member of the Judiciary Committee where the senior Senator is the chairman of the Judiciary Committee usually means that my activity with respect to the appointing of Federal judges is a fairly minimal one.

I will say that Senator Hatch has been more than solicitous, however, of my opinion and he came down to see me early in this process to tell me of the various people that were being considered for this particular vacancy and to tell me that his recommendation

would be Dale Kimball. This made it very easy for me to say yes without any kind of demur or objection.

I will not go over the specifics in Dale Kimball's background. Senator Hatch has already done that and they are available to the committee generally. I will share with you this personal experience.

I was the CEO of a company that grew very rapidly and finally got to the point where, if its investors were to get any of their money out, it had to go public. The decision was made that it would go public and go directly to the New York Stock Exchange. That meant underwriting by two of the Nation's largest investment bankers, Merrill Lynch and Smith Barney, and I said to the people who were then handling it, I assume this means we are going to hire a very expensive law firm in either New York or San Francisco or possibly both.

The folks at Merrill Lynch said, actually, you have one of the finest law firms in the country dealing with this particular issue in Kimball, Parr and we would recommend, as a New York investment banker, that the law firm that handles the public offering for Franklin be Kimball, Parr. That was the first time I had heard Mr. Kimball's name, and as I associated with the people at Kimball, Parr, both in that official manner and in the unofficial question of how I handle my own shareholdings, I have come to realize how wise they were in making that recommendation.

Mr. Kimball is the founder of that firm and his name is the first in the list of named partners. He would be qualified to serve on any bench in any jurisdiction and I am happy to add my endorsement to that of Senator Hatch's, based on that personal experience with him and his legal background.

Senator DEWINE. Senator Bennett, thank you very much.

Let me now turn to the senior Senator from the State of Ohio, my colleague, John Glenn.

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

Senator GLENN. Thank you very much, Mr. Chairman and members of the committee. It is a pleasure to be here today to introduce to the committee two Ohioans who have been nominated by the President to serve as Federal district court judges. They are products of our judicial review commission that advises me on these selections, as the chairman knows.

These individuals, Judge James Gwin and Mr. Algenon Marbley, are certainly worthy of appointment and I would ask them to come up and sit with me up here while I introduce them, if I could. Mr. Marbley and Judge Gwin, would you come up, please? Thank you.

They both have had very distinguished careers, and before I go on to scribe some of the qualities in these gentlemen that I believe make them well suited to serve on the Federal bench, I want to take just a moment to recognize their families who have traveled with them here today to share in this proud moment. As I read your names, if you would just stand back there, I would appreciate it so you could be recognized.

We have Mr. Marbley's wife, Janet Green Marbley, as well as their two sons, Algenon, Jr. and Aaron Marbley. They are both

here. They are joined by Mr. Marbley's mother, Ann Johnson. We thank you for coming in today.

We also have Judge Gwin's wife, Bonnie Gwin, their two sons, John and Michael Gwin, and Judge Gwin's mother, Carol Gwin. Thank you all for coming here today. I am not sure who is minding the store back home, Mr. Chairman, but they have quite a contingent in here.

This committee has a large amount of information on these nominees. I will not try and go through it all. I will just sort of summarize or highlight some of the things I believe make them outstanding nominees.

Jim Gwin currently sits as a Stark County Court of Common Pleas judge, where he has presided for the last 7 years. Judge Gwin has earned a reputation for hard work. Since 1989, he has presided over more jury trials than any other general division judge in the State of Ohio. Judge Gwin has presided over 440 jury trials, including 225 felony trials, 19 of which were murder trials. Where the average is 15 jury trials per year, Jim Gwin has averaged more than 50 jury trials per year, so we would definitely be getting a hard worker, Mr. Chairman, when we get Jim Gwin.

When not hearing cases, Judge Gwin has been active with the Ohio Judicial Conference, chairing the court technology subcommittee and serving as a member of the court reform committee. He has also worked in the community on behalf of the Central Stark County United Way, the Central Stark County Mental Health Center, the East Central Ohio Juvenile Diabetes Foundation, and the Canton Group Home. Judge Gwin has also been a lecturer at the Ohio Judicial College.

In my opinion, Judge Gwin has demonstrated the talent, the intellectual capacity and commitment to public service to make an exceptional addition to the Federal bench in the Northern District of Ohio.

I would also like to introduce to the committee Mr. Algenon Marbley, or Monte Marbley, as he is better known. Mr. Marbley is a partner in the law firm of Vorys, Sater, Seymour & Pease. He, too, is exceptionally well qualified to serve on the Federal bench. He has had 18 years of excellent experience as a trial lawyer, both in the public sector, for the U.S. Department of Health and Human Services, and in the private sector, with Vorys, Sater. Mr. Marbley has had substantial trial experience at the Federal and State levels in civil and criminal matters, both in jury and nonjury trials.

Monte Marbley has significant academic experience as an adjunct professor at both the law school and undergraduate levels and he has taught trial advocacy to lawyers at the National Institute for Trial Advocacy for the past 10 years.

Like Judge Gwin, Mr. Marbley has also taken the time to play an active role in his community. He has worked as a leader in organizations assisting disadvantaged youth in the Columbus area. He has served as secretary and counsel to the board of directors of the Big Brothers and Big Sisters Association of Franklin County. He has served for 7 years on the board of directors and 2 years as president of the Salesian Boys and Girls Club, which serves economically disadvantaged inner-city youth. He also has served in leadership positions for the Franklin County United Way Cam-

paign and the United Negro College Fund. In 1995, he was honored as 1 of the top 10 outstanding young citizens of Columbus, OH.

Mr. Chairman, I recommend Jim Gwin and Monte Marbley without any reservation whatsoever and I believe both of them will make very, very fine Federal judges. They have the demonstrated ability and they have the temperament to be able to dispense justice fairly and impartially and I am confident the committee will agree with this assessment and I hope to see their very swift confirmation.

Thank you very much, Mr. Chairman.

Senator DEWINE. Senator Glenn, thank you for that fine statement.

Let me turn now to our colleague from the State of New York, Senator D'Amato.

**STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator D'AMATO. Thank you very much, Mr. Chairman. Might I ask that as I introduce the nominees, they have an opportunity to come forward.

First, it is my pleasure on behalf of both myself and Senator Moynihan, who has submitted an extensive statement, and let me just read a little part of it. He said today is a great day for New York, and he talks to the honor and privilege it is for him to put forth and join with me in support of three of the wonderful nominees that will be before this committee.

I am going to ask Mr. Richard Casey, who is the President's nominee for the southern district. This nomination follows the nomination of Mr. Casey by President Bush. Not very often do we get one nominee nominated by two Presidents for the same job, two Presidents of different parties. I think that is a testimony to our Presidents, their administrations, the Justice Department, and to the caliber of the nominee.

Second, Judge Sotomayor, who comes before the committee for the second time. It was less than 5 years ago when the judge was nominated for the southern district, a position that she has held now for almost 5 years and she is now nominated to one of the most important courts in the land, the Courts of Appeals, Second Circuit.

Then Judge Charles Siragusa from Rochester, whose wife went to law school, coincidentally, with my son, Christopher. I think she helped him get through. [Laughter.]

By the way, I want you to know that this is not a payback, that, indeed, I have been privileged to support this nomination.

Judge Siragusa was brought to the attention of the President by Senator Moynihan. Were it not for Senator Moynihan feeling somewhat under the weather, as he has a heavy, heavy cold, he would be here. I ask that his statement be inserted in the record as if read.

Senator DEWINE. His statement will be made a part of the permanent record.

Senator Torricelli.

Senator TORRICELLI. Mr. Chairman, I had three statements from him. Senator D'Amato, do you have all three statements from Senator Moynihan?

Senator D'AMATO. Yes; all three of them, and that is why I wanted to characterize his statement as this being a great day for the judicial system of this country, but particularly as it relates to these three magnificent individuals.

[The prepared statements of Senator Moynihan follow:]

PREPARED STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN ON THE CONFIRMATION OF SONIA SOTOMAYOR FOR THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

It is my great honor today to support Sonia Sotomayor, a most exemplary candidate for the United States Court of Appeals for the Second Circuit.

In March of 1991, I had the pleasure of recommending Sonia Sotomayor to be a U.S. District Court Judge for the Southern District of New York, a position which she currently holds. Her career as a District Court Judge has been a distinguished one. She has presided over a number of high profile cases, including one which, to the delight of baseball fans everywhere, put an end to a bitter strike in 1995. During the five year tenure, her decisions have been reversed only six times—an outstanding record.

Judge Sotomayor is a former Assistant District Attorney with the New York County District Attorney's office and was a partner at the law firm of Pavia & Harcourt. She has considerable experience in criminal law from her work as a prosecutor, as well as commercial litigation from her days in private practice.

Her academic achievements are truly outstanding. She was graduated *summa cum laude* from Princeton University in 1976, where she was elected Phi Beta Kappa and was a co-winner of the M. Taylor Pyne Honor Prize, awarded to the graduating senior who has most clearly manifested excellent scholarship and effective support of the best interests of the University. She received her law degree from Yale University, where she was an Editor for the Yale Law Journal.

I believe that Judge Sotomayor's considerable accomplishments merit appointment to the United States Court of Appeals for the Second Circuit and I am confident that, upon confirmation, she will serve with high distinction.

PREPARED STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN ON THE CONFIRMATION OF CHARLES J. SIRAGUSA TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK

I am pleased to present to the committee New York State Supreme Court Justice Charles Joseph Siragusa, nominated to be United States District Judge for the Western District of New York.

Might I note that my judicial screening panel interviewed more than twenty applicants to fill the vacancy that resulted when Judge Michael A. Telesca took senior status. There were, as one might have expected, many splendid candidates. However, Judge Charles J. Siragusa stood out.

Judge Siragusa has served with great distinction in the Seventh Judicial District. He was elected to the State Supreme Court in 1992, following fifteen years as a prosecutor with the Monroe County District Attorney's office. In that capacity he tried over 100 felonies and was involved in a number of significant criminal cases including the prosecution of Arthur J. Shawcross, a serial killer responsible for the deaths of eleven women. He received widespread recognition and praise for his work on that case.

A native of Rochester, Judge Siragusa was graduated from LeMoyne College in DeWitt, New York in 1969. He received his law degree from Albany Law School 1969 and has been a member of the New York State Bar since 1977.

Judge Charles J. Siragusa is a man of great intelligence and unwavering principle. I am confident that, upon confirmation, he will serve with honor and distinction.

PREPARED STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN ON THE CONFIRMATION OF RICHARD C. CASEY AS A U.S. DISTRICT COURT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

It is my great privilege to support the confirmation of Richard Conway Casey, a nominee for United States District Judge for the Southern District of New York.

Mr. Casey has been associated with the New York firm of Brown & Wood for over thirty years, serving as a partner for fourteen years before becoming Of Counsel to the firm in 1984. During his time in private practice, he has specialized in securities, corporate and criminal litigation.

Earlier in his career, he served as Assistant United States Attorney for the Southern District of New York and investigated public corruption as counsel to a Special Commission of the State of New York, commonly known as the Moreland Act Commission.

Might I add that Mr. Casey has benefited from the rigors of a Jesuit education. He was graduated from the College of the Holy Cross in 1955 and went on to receive his law degree at Georgetown University Law center in 1958. At Georgetown he was the recipient of the Beaudry Cup for best Moot Court argument in his class. He later went on to be a finalist in the National Moot Court Competition.

It is an honor to introduce Mr. Casey to the Committee today. I am quite confident that upon his confirmation he will serve New York with distinction.

Senator D'AMATO. Let me say, I am going to ask that my full statement be included in the record as if read in its entirety, because I have these loquacious speech writers who have gone into every detail of all of the candidates and their lives. Some, they might want to hear. Others would be—well, no.

Senator DEWINE. It will be made a part of the record.

Senator D'AMATO. Let me say that it is a great privilege and honor to nominate Dick Casey. Dick Casey's impressive legal career is quite extraordinary. But I think more extraordinary is the fact that over the past several years, Mr. Casey's legal work has shifted slightly as a result of his blindness. He is blind. He would be the first district court judge who would be nominated for this position and take the bench as a person who has no sight—who is legally blind.

There is no doubt as to his legal acumen. There is no doubt as to the brilliance of his academic record and his distinguished career before the bar. Even after he lost his sight, he remained vigorous in actively practicing law, probably more than most. His tenaciousness toward justice and fairness will never be impeded by his loss of sight.

We had a distinguished panel of jurists before our committee who came forward with this nominee and who explored the question as to whether or not he would be able to discharge the duties as a trial justice. This was headed by the former chief justice of the southern district. Their recommendation was unanimous in terms of indicating that Dick Casey could do the job.

I believe that not only is he eminently qualified by way of his background and his experience, but his success in the face of the disability that he has had to deal with will give further testimony, living proof, to his great personal strength and it will be an inspiration to Americans and many others that we are winning the battle against the prejudice toward the disabled. As always, he will be a trail blazer, opening new doors for others.

Let me just add, for the record, just some of his credentials. I might mention that those who know him best have come forward and are here today, not only his family but one of the great U.S. attorneys from the Southern District of New York, a great prosecu-

tor in his own right is here today to lend his support to his friend and colleague, former U.S. attorney Otto Obermeyer.

Mr. Casey's impressive legal career began as an assistant U.S. attorney in the Southern District in the Criminal Division. He joined the special commission for the State of New York investigating public corruption, and for over three decades, he has been practicing with Brown and Wood in New York City. So it is my distinct pleasure to put forward this nominee.

As it relates to Justice Sotomayor, what can one say? But only in this country, the daughter of a humble working family has risen by way of her legal scholastic stewardship to the highest trial court in the Federal district, the premiere district, I might add with some prejudice, the Southern District of New York, where she has distinguished herself.

I predicted to this committee almost 5 years ago that Judge Sotomayor would be an exemplary, outstanding justice. She has demonstrated that repeatedly. She has shown compassion, wisdom, one of the great intellects on the court. Her experience both as a prosecutor, civil litigator, and Federal trial judge makes her an exceptionally qualified candidate for the second circuit. She is here with her beautiful mama, and I am wondering if we could have your mother stand. Mrs. Sotomayor, congratulations to you.

Last but not least is Judge Siragusa, and I want you to know that the judge comes with one of the most highly rated records as a great trial judge, sitting in the Supreme Court in Monroe County, having served as first assistant district attorney and thereafter being recognized by more groups than one could possibly mention in terms of his service to community and in terms of his legal stewardship.

Of all of his great accomplishments, I might add, is the fact that the judge graduated from a wonderful school, and you know that my chief and top administrative assistant put this in. He said, after graduating from a wonderful college, LeMoyne College in Syracuse. So I want you to know, judge, that Mike Kinsella has never forgotten that kinship and we share that with this committee today.

I recommend him to this committee, along with Senator Moynihan, recognizing that the President has chosen well and also that this district is one of the busiest districts, most overworked districts, in the country and they certainly could use the judge as quickly as possible.

Mr. Chairman, it is a great honor to recommend these three nominees and join with our senior Senator in presenting them to the committee today.

Senator DEWINE. Senator D'Amato, thank you very much for joining us.

[The prepared statements of Senator D'Amato follows:]

PREPARED STATEMENT OF SENATOR ALFONSE D'AMATO INTRODUCING SONIA SOTOMAYOR

I am pleased to join my colleague, Senator Moynihan in the introduction of Judge Sonia Sotomayor to the Senate Judiciary Committee.

Several years ago I introduced Judge Sotomayor to the Judiciary Committee when she was nominated to the federal bench in the Southern District of New York. I was

confident then that she would be a fine addition to the federal bench and, nearly 5 years later, I remain confident of her abilities and fairness as a federal judge.

After graduating from Princeton University, Summa Cum Laude, and then earning a law degree from Yale, where she served as editor of the Yale Law School Journal, Judge Sotomayor worked in the New York County District Attorney's Office. She joined the law firm of Pavia & Harcourt and made Partner in 1988. In private practice, Judge Sotomayor has had significant experience in general civil litigation including real estate, employment, contract, intellectual property law and export commodity trading.

Judge Sotomayor has exercised her civic duties as a Board Member of a number of organizations, including the Puerto Rican Legal Defense & Education Fund, the New York State Mortgage Agency and the New York City Campaign Finance Board.

During her term in the Southern District of New York, she received numerous honors including the "Distinguished Woman in the Field of Jurisprudence" by the Secretary of State of Puerto Rico, "Recognition of Outstanding Achievement and Dedication to the Latino Community" by the Latino American Law Student Association of Hofstra University School of Law and an Award for "Outstanding and Dedicated Service to the People of New York County" by the District Attorney's Office. Her "Lifetime Achievement Award" was presented to her by both the National Puerto Rican Coalition and the Hispanic National Bar Association.

Judge Sotomayor's experience as prosecutor, civil litigator, and federal district court judge makes her an exceptionally qualified candidate for the Second Circuit. Her extensive knowledge of the law and her experience deciding federal cases prepares her for the complex legal decisions that must be made by Circuit Court judges.

I thank the Committee for this opportunity to present Judge Sotomayor and urge the Committee's swift consideration of her nomination to the Second Circuit.

PREPARED STATEMENT OF SENATOR ALFONSE D'AMATO INTRODUCING CHARLES
JOSEPH SIRAGUSA

I am pleased to introduce Mr. Charles Siragusa to the Senate Judiciary Committee. As the Committee is aware, the President has nominated Judge Siragusa to the position of District Court Judge for the Western District of New York.

I would like to take a moment to recognize his family members who are present—his bride (as of August 30, 1997) Lisa Serio Siragusa and his new parents-in-law, Mr. and Mrs. James Serio. (In fact, Judge Siragusa would have been before the Committee weeks ago had he been able to get a plane back from his honeymoon.)

Judge Siragusa is from Rochester, New York and has been a life-long New Yorker. After graduating from a wonderful school, LeMoyne College in Syracuse, and working for several years as a teacher in a Rochester school, Judge Siragusa entered law school, and graduated from Albany Law School.

Judge Siragusa's impressive legal career began as an Assistant District Attorney with the Monroe County District Attorney's Office. He was promoted to First Assistant District Attorney and was employed in that position for eight of his fifteen years of service. Judge Siragusa's work at the prosecutor's office has been recognized by many groups, awarding him distinguishing honors including, among others, the Gannet Rochester Times Union's Person of the Year (1991), Honorary Deputy Chief of the Rochester Police Department (1991), Exemplary Service Award from the Monroe County Sheriff's Department (1991) and a Distinguished Service Award for his contribution to the Italian American Community-Counsel General of Italy (1996).

Since 1993, Judge Siragusa has served New York State as a State Supreme Court Judge in Rochester, deciding cases in a fair and equitable manner.

This nominee has also served in several community positions, volunteering his leadership and knowledge for people in need. He has sat on the Advisory Board for Rape Crisis and the Families and Friends of Murdered Children and Victims of Violence.

I thank the Committee for allowing me this opportunity to introduce Judge Siragusa and I look forward to swift action on his nomination.

PREPARED STATEMENT OF SENATOR ALFONSE D'AMATO INTRODUCING RICHARD
CONWAY CASEY

It is an honor for me to introduce Richard Casey to the members of the Senate Judiciary Committee—a highly regarded and respected lawyer, and a close personal friend, who President Bill Clinton has nominated to the Southern District of New York, echoing a prior endorsement by former President George Bush.

After graduating from the College of Holy Cross, Mr. Casey attended Georgetown University Law Center. A sign of his future abilities, he became a finalist in a national competition for his moot court team. He served his country in the United States Army and served overseas before he was honorably discharged.

Mr. Casey's impressive legal career began as an Assistant U.S. Attorney with the U.S. Attorney's Office, Criminal Division, in the Southern District of New York. He joined the Special Commission for the State of New York investigating public corruption.

For over three decades, Mr. Casey has been practicing with Brown & Wood in New York City, elected to partner in 1970 and Counsel in 1984, practicing complex securities, corporate and criminal litigation.

Over the past five years, Mr. Casey's legal work has shifted slightly as a result of his blindness but there is no doubt he remains vigorously active in the practice of law, probably more than most. His tenaciousness toward justice and fairness will never be impeded by his loss of sight.

What some may view as a disability has only strengthened his resolve for equity and justice. He served as Director of Guiding Eyes for the Blind, a non-profit school for training of guide dogs and the blind and Director of Catholic Guild for the Blind, a nonprofit organization dealing in rehabilitation of the blind.

In addition to his work with these groups, Mr. Casey has shared his incredible knowledge of the law, civil and criminal, as the Chairman of the American Bar Association Committee on Securities Litigation from 1975 to 1977 and as a member of the Southern District of New York Trial and Appellate Panel representing indigent defendants in criminal trials and appeals for twenty years.

Mr. Casey was appointed by the Honorable Jack Weinstein to serve on the Special Commission on Discovery Abuse, amending local rules, and previously served, at the request of Chief Justice Warren Burger, on the Special Committee for Discovery Abuse, which issued a report recommending amendments to the Federal Rules of Civil Procedure.

Whether a criminal case or a civil, with a disability or without, Mr. Casey has earned the tremendous reputation that has followed him throughout his career. His extensive knowledge of the law, thoughtful consideration and his demonstrated leadership make him an exceptionally well qualified candidate for this position.

Besides being eminently qualified to serve in this position, his success in the face of his disability is further testament of his great personal strength. His appointment shows that in America we are winning the battle against prejudice towards the disabled. As always, he will be a trailblazer, opening new doors for others.

I strongly support his nomination and urge the Committee's swift consideration.

Senator DEWINE. Let me turn now to my colleague from the State of Tennessee, Senator Thompson.

STATEMENT OF HON. FRED THOMPSON, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator THOMPSON. Thank you, Mr. Chairman.

Mr. Gilman, would you come forward, please.

Senator DEWINE. I see our colleague from Tennessee, also, Senator Frist, is here.

Senator THOMPSON. Mr. Chairman and fellow members of the committee, I am pleased to come here today before you to introduce Ronald L. Gilman, the President's nominee to fill a vacancy in the U.S. Court of Appeals for the Sixth Circuit. I want to start by acknowledging my gratitude and the gratitude of all lawyers who practice before the sixth circuit to our chairman for scheduling a hearing on Mr. Gilman's nomination so promptly.

Before I summarize Mr. Gilman's accomplishments to the committee and explain why I believe he merits the committee's approval, I want to say a brief word to recognize Judge Ted Milburn, whose seat Mr. Gilman will be filling if he is confirmed.

Judge Milburn has served the people of Tennessee and the United States as a judge for almost a quarter of a century, first as a State trial judge and, since 1983, a Federal judge. Judge Milburn

is widely regarded throughout the sixth circuit as a leader on the court. On behalf of all Tennesseans, I want to thank him for his service and wish him well in his retirement. Mr. Gilman has big shoes to fill.

Let me turn now to the nominee before you today. Mr. Gilman is a native of Memphis and attended high school at Christian Brothers Academy in Memphis, from which he graduated as valedictorian. He left Tennessee for college and law school in Massachusetts, attending the Massachusetts Institute of Technology and Harvard Law School. After graduating cum laude from Harvard in 1967, Mr. Gilman returned to Memphis, where he has practiced ever since in one of Tennessee's leading law firms, Ferris, Mathews, Gilman, Branam & Hellen. I might point out that the Mathews in that firm name is former Senator Harlan Mathews. I might also point out that my son is a member of that firm.

Mr. Gilman rapidly became established as a leader of the Memphis bar, serving as the president of the young lawyers division of the Memphis Bar Association and president of the young lawyers conference of the Tennessee Bar Association. He subsequently served a term as president of both the Memphis Bar Association and the Tennessee Bar Association. In recognition of Mr. Gilman's leadership at the bar, he was appointed to serve on the Tennessee Court of the Judiciary, which hears disciplinary cases against State judges. He has also served occasionally as a special judge in the State courts in Memphis.

Mr. Gilman has been a leader not just in the Memphis bar but in the Memphis community, as well. He has served on the board of directors of the Chickasaw Council for the Boy Scouts of America, the Memphis Jewish Home, and the Memphis Senior Citizens Services, among other groups. In 1981, Mr. Gilman was awarded the Sam A. Myar, Jr. Memorial Award for outstanding service to the legal profession and the Memphis community.

Perhaps most interesting of all is Mr. Gilman's membership in the Society of Memphis Magicians, which he served as president in 1986. While this gives me a little concern, I assume he will restrict himself to pulling rabbits out of his hat and not judicial decisions.

Mr. Gilman is an extremely well-qualified and unusually well-rounded nominee. While his practice is concentrated on litigation, particularly commercial litigation, he also has engaged in estate planning and general business law. Not only is he experienced in civil law, but in criminal law, as well, as he has represented a number of indigent criminal defendants in Federal court.

More recently, Mr. Gilman's practice has focused on the practice of alternative means of dispute resolution, such as arbitration and mediation. Mr. Gilman has often served as an arbitrator and mediator for groups like the American Arbitration Association and the National Association of Securities Dealers. With the backlog in civil litigation throughout the Nation, I think it is important to recognize the importance of the nominee's experience in this area. Not only is this experience similar to the experience of being a judge, but it will no doubt help him bring a special insight to a variety of procedural issues to help the civil litigation system work better.

I know his wife, Betsy, is here today. I know he will want to introduce her. I want to thank again Chairman Hatch for scheduling

this hearing and you, Mr. Chairman, for presiding today. I am confident that after hearing from Mr. Gilman, the committee will favorably report his nomination and that the full Senate will confirm him promptly. Thank you very much.

Senator DEWINE. Let me turn to the other Senator from the State of Tennessee, Senator Frist. I also saw Congressman Ford back there. Congressman, can you come on up and join us?

STATEMENT OF HON. BILL FRIST, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator FRIST. Thank you, Mr. Chairman. I will join my colleague from Tennessee in welcoming the opportunity to introduce Mr. Ron Gilman, who has been nominated to fill the vacancy in the Sixth Circuit Court of Appeals. The President has chosen wisely in his selection of Ron Gilman of Memphis, TN, to fill this vacancy and it is an honor for me to be here to speak on his behalf.

I have heard from many Tennesseans since the nomination from across the State, and uniformly and unanimously, they have called to express their support, their full support, for this nomination. Mr. Gilman will make an outstanding judge and do a tremendous job in serving Tennessee, as well as the entire sixth circuit.

His experience, which has been outlined to you, is diverse and impressive. His reputation throughout Tennessee is fair and deliberative, all of which speaks volumes toward his integrity. I am proud to support this outstanding nominee, was glad to have the opportunity to meet his family earlier today, and look forward to completion of this nomination process.

Senator DEWINE. Senator Frist, thank you very much.
Congressman Ford, welcome.

STATEMENT OF HON. HAROLD E. FORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. FORD. Thank you, and I certainly thank my Senators, Mr. Thompson and Mr. Frist, for their leadership on this. I welcome my friend and certainly the future sixth circuit jurist, Mr. Gilman, and his family. I know his wife Betsy, if she would not mind standing, and certainly his daughter, Sherry, who is there in the back. I know Laura was not able to be with the soon-to-be jurist today, but I am sure she would be proud of her father.

I thank Chairman Hatch, and certainly, again, my Senators for moving this process forward in the way that they were able to and did. I would certainly say that Mr. Gilman's nomination, the way that this Senate has conducted itself, I believe, is a clear illustration of how this process can and should work when partisan politics takes a back seat to the pressing needs of our judiciary.

I thank you again, Mr. Chairman, for scheduling this hearing and I congratulate my friend, Mr. Gilman, again.

Senator DEWINE. Congressman, thank you very much.

I have a statement that Senator Leahy has asked me to place in the record. It will be made, without objection, a part of the record today.

[The prepared statement of Senator Leahy and President Clinton's radio address on judicial nominations follow:]

PREPARED STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

I commend the Chairman for holding this confirmation hearing for judicial nominees this afternoon and, in particular, for including Judge Sonia Sotomayor among those being considered. Judge Sotomayor has been an outstanding Federal District Court Judge. She was nominated to fill a vacancy on the Second Circuit Court of Appeals last June. There are currently four vacancies among the 13 judgeships that constitute that distinguished court. The Chief Judge of Second Circuit recently testified that in light of these vacancies 80 percent of Second Circuit 3-judge panels over the next 12 months will have to be filed by visiting judges, since there are simply not enough Second Circuit judges to complete them and to hear all the cases that need attention. I hope that we will proceed without delay to consider the nomination of Judge Sonia Sotomayor to the Second Circuit and move promptly to fill the vacancies plaguing the Second Circuit.

I note that we are also considering the nomination of Ronald Gilman to the Sixth Circuit, which nomination was received in July 16; the District Court nominations of Charles Siragusa and Richard Casey to the Western and Southern Districts in New York, which nominations were both received in mid-July; the District Court nominations of James Gwin and Algenon Marbley to the Northern and Southern Districts in Ohio, which nominations were received in late July and the District Court nomination of Dale Kimball to the District of Utah, which nomination was received on September 5, less than one month ago. I expect that Senator Thompson and Senator DeWine are likewise appreciative of the Chairman's willingness to include these nominees in this hearing. The confirmation process for the vacancy in Utah is likely to set the standard for how promptly this Committee can proceed to review and report federal judgeship nominations. We all look forward to Mr. Kimball's speedy confirmation.

Unfortunately, this is only the sixth confirmation hearing for judicial nominees that the Committee has convened all year. By this time two years ago, the committee had held nine confirmation hearings involving 36 judicial nominees.

While I am encouraged that the Committee is today proceeding with a hearing on these six nominees, there remains no excuse for the Committee's delay in considering the nominations of such outstanding individuals as Professor William A. Fletcher, Judge James A. Beaty, Jr., Judge Richard A. Paez, Ms. M. Margaret McKeown, Ms. Ann L. Aiken, and Ms. Susan Oki Mollway, to name just a few of the outstanding nominees who have all been pending all year without so much as a hearing. Professor Fletcher and Ms. Mollway had both been favorably reported last year. Judge Paez and Ms. Aiken had hearings last year but have been passed over so far this year.

After this hearing, which is the first time this year the Committee has been willing to hold two hearings in any one calendar month, the Committee will still have pending before it more than 40 nominees in need of a hearing from among the 69 nominations sent to the Senate by the President during this Congress. From the first day of this session of Congress, this Committee has never had pending before it fewer than 20 judicial nominees for hearings. The Committee's backlog has now doubled and is more than 40. Many of these nominations were before us last Congress, during the election year slowdown, and have had to be re-nominated by the President. The vacancies for which they are nominated have not been filled but persist for periods now reaching years. For example, the Committee has 10 nominees who have been pending for more than a year, including five who have been pending since 1995. Thus, while I am delighted that we are moving more promptly with respect to the nominees being considered today, I remain concerned about the other vacancies and other nominees.

Some of those pending before the Committee had hearings or were reported favorably by the Committee last Congress but have been passed over so far this year as the vacancies for which they were nominated more than two years ago persist. The President has sent us 69 judicial nominations so far this year and is sending more each week. Over the last three weeks, apparently in anticipation of the President's radio address on the judicial vacancy crisis, the Senate doubled its confirmations from 9 to 18 in the course of 23 days. I expect even those who have spent so much time this year holding up the confirmations of federal judges were uncomfortable defending this Senate's record of having proceeded on only 9 of the 61 nominees received through August of this year. With the two confirmations last Friday, the Senate achieved the snail-like pace of confirming two judges a month over the course of this year, while still faced with almost 100 vacancies.

The Senate continues to lag well behind the pace established by Majority Leader Dole and Chairman Hatch in the 104th Congress. By this time two years ago, the

Senate had confirmed 36 federal judges, double the number achieved this year. For purposes of perspective, let us also recall that by the end of September 1992, during the last year of the President Bush's term, a Democratic majority in the Senate had confirmed 59 of the 72 nominees sent to us by a Republican President. This Senate is on pace to confirm less than one-third of a comparable number of nominations.

Those who delay or prevent the filling of these vacancies must understand that they are delaying or preventing the administration of justice. We can pass all the crime bills we want, but you cannot try the cases and incarcerate the guilty if you do not have judges. The mounting backlogs of civil and criminal cases in the dozens of emergency districts, in particular, are growing taller by the day. National Public Radio broadcast a series of reports all last week on the judicial crises and quoted the Chief Judge and U.S. Attorney from San Diego earlier this week to the effect that criminal matters are being affected.

I have spoken about the crisis being created by the vacancies that are being perpetuated on the Federal courts around the country. At the rate that we are going, we are not keeping up with attrition. When we adjourned last Congress there were 64 vacancies on the federal bench. After the confirmation of 18 judges in nine months, there has been a *net increase* of 30 vacancies, an *increase* of almost 50 percent in the number of federal judicial vacancies.

The Chief Justice of the Supreme Court has called the rising number of vacancies "the most immediate problem we face in the federal judiciary." Chairman Hatch has said that we can do better. I agree with them and add that we must do better. I have urged those who have been stalling the consideration of these fine women and men to reconsider their action and work with us to have the Committee and the Senate fulfill its constitutional responsibility.

This weekend the President of the United States devoted his national radio address to the threat being posed to our judicial system by those who are intent on partisan and ideological intimidation of federal judges. I ask that a copy of the President's Radio Address on Judicial Nominations from September 26, 1997, be included in the record.

RADIO ADDRESS OF THE PRESIDENT TO THE NATION

The PRESIDENT: Good morning. I want to talk this morning about a very real threat to our judicial system. For more than 220 years our nation has remained young and strong by meeting new challenges in ways that renew our oldest values. Throughout our history our judiciary has given life and meaning to those values by upholding the laws and defending the rights they reflect, without regard for politics or political party.

That is the legacy of the judicial system our founders established, a legacy we recalled this Thursday on the 40th anniversary of the court-ordered desegregation of Little Rock Central High School.

But in the past 18 months this vital partnership has broken down as the Senate has refused to act on nomination after nomination. And in federal courthouses across America, almost 100 judges' benches are empty. In 1996, the Senate confirmed just 17 judges—that's the lowest election-year total in over 40 years.

This year I've already sent 70 nominations to Congress, but so far they've acted on less than 20. The result is a vacancy crisis in our courts that Supreme Court Chief Justice William Rehnquist warned could undermine our court's ability to fairly administer justice.

Meanwhile, our courts are clogged with a rising number of cases. An unprecedented number of civil cases are stalled, affecting the lives of tens of thousands of Americans—from the family seeking life insurance proceeds, to the senior citizen trying to collect Social Security benefits, to the small business protecting its right to compete. In our criminal courts nearly 16,000 cases are caught in limbo, while criminals on bail await punishment and victims await justice. Our sitting judges are overloaded and overworked, and our justice system is strained to the breaking point.

The Senate's failure to act on my nominations, or even to give many of my nominees a hearing, represents the worst of partisan politics. Under the pretense of preventing so-called judicial activism, they've taken aim at the very independence our founders sought to protect. The congressional leadership has actually threatened sitting judges with impeachment, merely because it disagrees with their judicial opinions. Under this politically motivated scrutiny, under ever-mounting caseloads, our judges must struggle to enforce the laws Congress passes and to do justice for us all.

We can't let partisan politics shut down our courts and gut our judicial system. I've worked hard to avoid that. And the people I've nominated for judgeships and

had confirmed have had the highest rating of well qualified from the American Bar Association of any President since these ratings have been kept.

So today I call upon the Senate to fulfill its constitutional duty to fill these vacancies. The intimidation, the delay, the shrill voices must stop so the unbroken legacy of our strong, independent judiciary can continue for generations to come. This age demands that we work together in bipartisan fashion—and the American people deserve no less, especially when it comes to enforcing their rights, enforcing the law, and protecting the Constitution.

Thanks for listening.

Senator DEWINE. We will now proceed with our circuit court nominees. I would ask our two nominees to come forward. We apologize for moving everyone around, but I think that we will proceed with two panels, starting with the circuit court nominees.

As you come up, I will just ask you to remain standing and take the oath. Do you swear the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. GILMAN. I do.

Judge SOTOMAYOR. I do.

Senator DEWINE. Thank you both for joining us today. We will start with Mr. Gilman. Mr. Gilman, is there anyone in the audience who is with you that has not been introduced that you would like to introduce? This is sort of a family day here today, which is just fine with me.

TESTIMONY OF RONALD LEE GILMAN, OF TENNESSEE, TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

Mr. GILMAN. Well, I appreciate it, Mr. Chairman. My wife, I believe, has been introduced, and my daughter, Sherry. Also, I have my cousins from Chevy Chase, Marian and Leon Blum.

Senator DEWINE. Let us have them all stand up, or maybe they are standing up already.

Mr. GILMAN. And I have three friends of my daughter Sherry, Rhonda Rivens, Allison Issacman, and Stuart Frisch are all here, living in the Washington, DC area. Thank you very much.

QUESTIONING BY SENATOR DE WINE

Senator DEWINE. Mr. Gilman, all of us have interest in all of the nominees. I obviously have a special interest in your nomination, because you will be serving in the sixth circuit. The State of Ohio, of course, also happens to be part of the sixth circuit.

I notice in your resume that you have worked as an arbitrator-mediator for the American Arbitration Association. I think you also worked as a referee in the Dalkon shield litigation.

Mr. GILMAN. Yes, Mr. Chairman.

Senator DEWINE. You have written on this topic. I wonder if you could just comment for us as to whether you think our system uses mediation enough, both at the Federal level and at the State level.

Mr. GILMAN. My own experience, of course, is in the Tennessee courts and it is just coming of age. It was just this year, as a matter of fact, that the Tennessee Supreme Court adopted an official rule for mediation. The Western District of Tennessee just set up its program this year. I believe it is something that has been quite helpful. I know the sixth circuit several years ago set up a special

counsel's office to try to resolve disputes, even when they reached the court of appeals.

It seems to me a way of shortening the process of resolving civil cases and the statistics show that about 80 percent of cases that are mediated end up being resolved. So I think the parties are better off and the courts are better off because it unclogs the system a good bit.

Senator DEWINE. What is your opinion? Are we using this to its fullest potential in the Federal system?

Mr. GILMAN. It is not yet, in my own experience in the Western District of Tennessee, not being fully—but it is just in the process of being utilized. I expect, though, as I have talked to colleagues in the States of, for example, Texas and Florida, where it has been in existence for approximately 10 years, I understand it has gotten to the point in those States where you cannot go to trial until you first try mediation, and that is probably the direction that we are going in, which, in fact, I think is healthy, as particularly mediation is not binding and the parties are not obligated to settle, so if they have to go to court, they certainly have the opportunity and the legal right to do so. But on the other hand, many of these civil cases get resolved far earlier and at far less expense to the parties than if they had to go through traditional litigation.

Senator DEWINE. Mr. Gilman, during your tenure as president of the Tennessee Bar Association, the Association drafted a professional creed for Tennessee lawyers. Is there anything particularly unique about that professional creed that we should take note of?

Mr. GILMAN. Only that probably the thing that seems most important is the need for attorneys to disagree without being disagreeable. Unfortunately, it seems to be more and more as the profession grows where the lawyers do not have regular contact with each other on a repeated basis that you find less civility in the process and that then reflects on the cost to the litigants and the prolonging of the litigation and the need for lawyers to be able to cooperate, particularly on procedural matters that do not affect the substance of the case, but rather than just schedule a deposition date and then have problems, oh, I am going to be out of town, to talk to each other first and do things informally, where it does not affect the merits but yet it greatly aids in the case being processed through the system, and that is sort of the heart of the professionalism and the creed standards.

Senator DEWINE. Thank you.

Senator Thurmond.

QUESTIONING BY SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman. Judge Sotomayor, a former Supreme Court Justice has expressed his view of consitutional interpretation as follows, and I quote, "We look to the history of the time of framing of the Constitution and the intervening history of interpretation, but the ultimate question must be, what do the words and the text mean in our time?" Do you agree with that statement?

TESTIMONY OF SONIA SOTOMAYOR, OF NEW YORK, TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Judge SOTOMAYOR. No, sir, not fully. I agree with the first two parts of it, that you look at the Constitution and what it meant at the time. The last suggests that I would be trying to change its meaning today, and no. I think the first two would inform what the last result should be, which is what did it mean then and how to apply new facts to that if the issue is new facts.

Senator THURMOND. Mr. Gilman.

Mr. GILMAN. Senator, I think that—

Senator THURMOND. Do you want me to repeat that, or do you remember it?

Mr. GILMAN. If you would, that would be fine.

Senator THURMOND. "We look to the history of the time of framing of the Constitution and the intervening history of interpretation, but the ultimate question must be, what do the words and the text mean in our time?"

Mr. GILMAN. I think that we need to look more at the text of the Constitution as it was written. The words are important and I think that if the Constitution is to have enduring meaning, those concepts obviously have to be applied to current circumstances. New events arise all the time, but I think the Constitution has got to be interpreted within the meaning of its text.

Senator THURMOND. Now, this question is for both of you. You have both had some involvement with the American Bar Association. Do you believe that the ABA should take positions on social and public policy issues such as abortion and aid to the homeless?

Mr. GILMAN. I would be glad to answer first. I was actually in the House of Delegates for the last 8 years. I am no longer in the House. My term ended in August of this year. I believe the ABA does a tremendous amount of good in areas like continuing legal education and professionalism and providing legal services. My own opinion is it should not, though, Senator, be involved in these issues that are primarily social and moral on which lawyers have no particular expertise, and I, in fact, have voted against those kind of resolutions when they have come up before the House.

Judge SOTOMAYOR. I have only been an inactive member of the bar. I joined it largely because of its educational importance. The American Bar Association regularly issues studies on the current state of the law and analysis of where the law is and what is happening in that area and I receive their publications and receive them for that purpose.

I am aware, obviously, as any reader of newspapers, that they have taken larger positions on social issues. I believe, like Mr. Gilman, that that perhaps would not be terribly helpful to them generally because it undermines their effectiveness on the central issues of their mission, which is the education of lawyers.

Senator THURMOND. This question is for you. It is a sad fact that many young people get involved in selling drugs. Based on your experience as a judge, why do you believe many young, poor youths become drug dealers?

Judge SOTOMAYOR. Senator, I wish I had the answer. If we had the answer, we would have a solution to one of the worst ravages on our society, drugs, and I do not. The reason why kids become

in drugs, as I have learned as a judge, vary enormously. Some, because of the lure of easy money, something that perhaps they should not be tempted by, but they are. Others, through their own self-ignorance about the damage they are doing to society and to themselves. I simply do not have one reason I can give you. The reasons are myriad and complex.

Senator THURMOND. Now another question. Do you oppose mandatory minimum sentences for drug offenses?

Judge SOTOMAYOR. No, sir.

Senator THURMOND. Another question. Some argue that the Federal sentencing guidelines do not provide enough flexibility for the sentencing judge and some even say they should be abolished. What is your view of the Federal sentencing guidelines, based on your experience with them?

Judge SOTOMAYOR. Thus far, sir, in the vast majority of cases, I have found the guidelines to be very helpful in giving some comfort to me as a judge that I am not arbitrarily imposing sentences based on my personal feelings. I believe that congressional sentiment, as reflected in the guidelines, is important because it permits me not to impose my personal views but to let the democracy impose the society's views.

With respect to your second point, Senator, the guidelines already provide mechanisms for departures in appropriate circumstances. In my experience, when there are principled and reasoned grounds to depart, the guidelines already permit it.

Now, there is obviously discussion going on, I am very well aware of it, of issues that the Senate is taking up on changes within the guidelines with respect to some kinds or others or with respect to some issues or other. I expect, as has happened during the last 10 years, that the Sentencing Guideline Commission will continue to take up those issues and revisit them when they are appropriate.

Senator THURMOND. Thank you both for your presence and your testimony.

Senator DEWINE. Senator Sessions.

QUESTIONING BY SENATOR SESSIONS

Senator SESSIONS. Mr. Gilman, I think you are correct. We do need to look for ways to develop alternatives to litigation and I think we can do a better job of settling controversies many times without the expense and the trauma of a full-fledged litigation. I am impressed that you have tried 37 cases going directly to judgment. I think that helps you bring something to the circuit that would be a kind of experience and understanding of what it is like to be in the pit, if I might, so I congratulate you for that.

I notice that you are an Eagle Scout. I will ask you a legal opinion. Do you feel that the Washington Zoo appropriately denied the Boy Scouts the right to have a court of honor there because the Scouts affirmed a belief in a superior being? Do you think that would be an appropriate decision for them to make under the Constitution?

Mr. GILMAN. I do not have any immediate opinion on that. I was not familiar with the issue, Senator.

Senator SESSIONS. Apparently, that has been somewhat of a controversy and I think they have backed down now, but originally, that was the explanation that I understand they gave. I think sometimes we do need to respect differences. We need to respect people's religious views and, under the Constitution, the right to exercise those views. I do not think they should be discriminated against because of that.

With regard to the Constitution, I think you were pretty clear about that. Do you take the view, and would you not agree that the Constitution was fundamentally a contract between the people and its government. The first three words, "We the People," shows that it was a contract with the people and we should be very careful before we alter the meaning of a contract which the people ratified.

Mr. GILMAN. I fully agree with that, Senator.

Senator SESSIONS. Judge Sotomayor, would you agree that if we respect that Constitution, we have to enforce it, the good and bad parts?

Judge SOTOMAYOR. Absolutely, sir.

Senator SESSIONS. Even if we do not agree with a part of it?

Judge SOTOMAYOR. Absolutely.

Senator SESSIONS. And we really undermine and weaken that Constitution when we try to bend it to make it fit our contemporary feelings of the moment?

Judge SOTOMAYOR. Sir, I do not believe we should bend the Constitution under any circumstance. It says what it says. We should do honor to it.

Senator SESSIONS. And when we honor it as it is written, I think we strengthen it and make it available to protect us when any great threat to our liberty arises. I agree with you on that.

You mentioned the sentencing guidelines that Senator Thurmond asked you about. I did notice that you had, on occasion, stated that you disagree with the mandatory minimums. Is that correct? I have heard that.

Judge SOTOMAYOR. Sir, I do not ever remember saying that. There may have been situations in which in a particular set of facts I was unhappy with the results, but I do not believe that I have ever stated that I was unhappy with mandatory minimums as a policy question, no, sir.

Senator SESSIONS. I think you made a good point about the fact that, as a judge, it would be easier to sleep at night when you basically have a guideline to help you decide what that sentence should be rather than having it totally your burden from 0 to 20 years. I think, in some ways, it provides more uniformity and would be easier on a judge.

Judge SOTOMAYOR. Unquestionably, sir.

Senator SESSIONS. Do you find it that way?

Judge SOTOMAYOR. I have no idea how the judges before me ever set a consistent standard by which to sentence individuals. The guidelines do provide that framework in a very helpful way.

Senator SESSIONS. I have been in court when I thought a person might get probation and they got 15 years and vice versa. I think something is not healthy when you have that much flexibility.

So I do believe in the guidelines and I think in the long run they are helpful, but I do notice in one case that you issued a sentence

and you were very critical of the guidelines and said, "I hope that yours," referring to, I believe, Louis Gomez's case, "will be among the many that will convince our new President and Congress to change these minimums. The only statement I can make is this is one more example of an abomination being committed before our sight. You do not deserve this, sir. I am deeply sorry for you and your family, but the laws require me to sentence you to the 5-year minimum. I have no choice." Would you like to comment on that?

Judge SOTOMAYOR. Sir, that is a case where the facts and my personal feelings would have imposed a different result, but I did not. I imposed what the law required. If that is—I am sorry, the name of the case is?

Senator SESSIONS. I think it was Louis Gomez.

Judge SOTOMAYOR. Can you tell me how far back that case was, sir?

Senator DEWINE. Ninety-three.

Judge SOTOMAYOR. If I am not mistaken, sir, that was before the safety valve provisions that were passed by Congress and I believe, and I could be completely mistaken, because it has been a very long time and I have had many sentences since, that I may have been talking about the mandatory minimums more than the guidelines in a first offense—exactly what Congress later did, which was to say, in a first offense situation with someone who is willing to cooperate, as that gentleman was but had nothing to give and he has no history of violence and none was used, that you could depart from the guideline minimums in that regard, or lower them.

So I may be mistaken, sir, but I do believe that that was the situation and that Congress did do what I had earlier stated, which was to look at the factual situations and the impact and make changes when they are appropriate.

Senator SESSIONS. I think the Congress should do that and I do not disagree with the judge calling on Congress and suggesting that they should consider making any changes in the law. However, I do think that a judge, would you not agree, has to be careful in conducting themselves in a way that reflects respect for the law and the system?

Judge SOTOMAYOR. Absolutely, but—

Senator SESSIONS. A second guess about—

Judge SOTOMAYOR. Maybe I would not have called it an abomination, but I was thinking more of the factual outcome in that case. But no question that all I meant in the context of that case was the facts of that particular case, which Congress did come very shortly thereafter to change. So, obviously, my strong feelings were reflected sufficiently that Congress—not because of me, obviously, I doubt they knew who I was at the time and may not all know who I am now—but it was because of the hardships that were created in many situations that caused the safety valve provision to be passed.

I do agree, however, that great respect both for the law and for the process is terribly important, and as I underscored there, I do what the law requires and I think that is the greatest respect I could show for it.

Senator SESSIONS. It is important to follow the law, though, in cases like this, had you not, it would have been reversed. But I

think that perhaps had you expressed your criticism with the skill you have done today, it might be a little better conduct for a judge. I just think that, as you know, when you set a standard of guidelines, everybody is not going to fit perfectly within it and maybe you have a responsibility to help that defendant to understand that, though it may be unfortunate and you personally would not have given as much, that there is a rationale to this law.

Judge SOTOMAYOR. I have done that on numerous occasions, Senator, and there, it was very shortly at the time that I took the bench and I believe that since then, I have always been very careful, and I say it repeatedly at sentencing. When I am faced with emotionally difficult situations for defendants and their families, often, I get a lot of letters from heartbroken family members and at sentencing, I explain to them that as much as I understand their pain, that I have a greater obligation to society to follow the law in the way that it is set forth.

Senator SESSIONS. One more thing. I noticed a New York Times article that indicated that you had not applauded or not stood and applauded when Justice Thomas appeared at the second circuit conference. Are you aware of that?

Judge SOTOMAYOR. Well, I never did say that, sir. I took the fifth amendment when the New York Times asked me that because of the raging controversy at the time. I thought it made no sense for a prospective nominee to enter that kind of political fray by any statement, but I do not think I ever did, sir.

Senator SESSIONS. Well, that might explain it. The question in the article was, when Justice Clarence Thomas was introduced at the second circuit conference, the question of the reporter was, were you among those who sat on her hands rather than giving him a standing ovation, and you said, "I will take the Fifth."

Judge SOTOMAYOR. I explained to her clearly, as I do to you now, I did that because I thought as a—at that point, I was a confirmed nominee, and as a judge, that I should never be making political statements to the press or anyone else and I thought that was a politically charged question.

Senator SESSIONS. Let me just ask you, did you see fit to stand and applaud when he—

Judge SOTOMAYOR. He was my Supreme Court Justice of my circuit. I stood up.

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

Senator DEWINE. Senator Ashcroft.

QUESTIONING BY SENATOR ASHCROFT

Senator ASHCROFT. Thank you, Mr. Chairman. I appreciate the opportunity.

Mr. GILMAN, I was interested in Senator Sessions' question about the Boy Scouts, who for a time were deprived of an opportunity to conduct a ceremony at the zoo because their organization espoused a belief in a supreme being. I was more interested in your response. You seemed to express some uncertainty about whether or not that should be a disabling characteristic of an organization. Do you think that organizations or groups of people that express a belief in a supreme being should be subject to differential access to public facilities or should have fewer rights than others?

Mr. GILMAN. Oh, absolutely not. No. I think I just expressed that I was not familiar with that situation, Senator. No. I certainly would be—frankly, sounded shock that that would be a basis for denying the Boy Scouts of America access to a public facility.

Senator ASHCROFT. I would hope that that would be the way you would approach the first amendment. Thank you for clarifying that. It was not something I knew anything about, but I have come to trust my colleague from Alabama.

Senator SESSIONS. I am relying on Eagle Scout Mike Enzi, who examined that recently.

Senator ASHCROFT. Judge Sotomayor, at one time, you were asked to rule on a case of a prisoner who was removed from his food service job in prison because he was an open homosexual. The plaintiff sued under the 1983 provisions, arguing that prison officials violated his constitutional rights by transferring him from the food service job. Prison officials argue that he was reassigned from his food service job to prevent disciplinary problems that could arise from having open homosexuals prepare food.

You denied the motion for summary judgment on procedural grounds, but you wrote that a person's sexual orientation, standing alone, does not reasonably, rationally, or self-evidently implicate mess hall security concerns. You ruled that prison officials did not present evidence that having homosexuals prepare food was a real threat.

I wonder, as a Federal judge, how much difference—

Judge SOTOMAYOR. Sir, may I just interrupt one moment, and I apologize greatly. It was not a motion for summary judgment, it was a motion to dismiss, which has a different standard. So I am somewhat surprised when you say that I criticized them for not producing evidence, because on a motion to dismiss, they do not produce evidence. I have to take the prisoner's allegations on their face. And I am sorry. I did not know if that affected the premise of your question.

Senator ASHCROFT. I am going to find out here in a minute. I guess what I really want to know is, what level of deference does a Federal judge owe to prison officials when trying to figure out what security risks there are in a prison?

Judge SOTOMAYOR. Enormous. It is a rational basis, which means any government interest, as long as there is a reasoned, rational basis for it and it is not arbitrary and capricious, the prison officials can do what they like.

In that particular case, sir, as I said, it was a motion under 12(b)(6)—I believe it is 12(b)(6). It could have been 12(b)(6) or (5). But under either, you take the plaintiff, in this case, the prisoner's facts as stated. You do not in any way pay attention to what the defendants are saying. You take just the pleadings, and the pleadings in that case alleged that there was—the plaintiff claimed that there were no security threats against overt homosexuals whatsoever, that he was not aware of any threats, none had been directed in prison.

The reason I know this case so well, Senator, is I just tried it last week and it turned out the jury found in favor of the prison guards because there was one fact there that was slightly different. The prison claimed that it never removed him from the food line.

That was a factual dispute between them. They say that they asked him to leave and that he consented to leave because of the threats that had been made. And, in fact, the jury credited the prison guards on that claim and held for the defendants.

Senator ASHCROFT. You say you just tried this case last week?

Judge SOTOMAYOR. Yes.

Senator ASHCROFT. Is this on a second appearance before you, then? Is this the *Holmes v. Artuse*?

Judge SOTOMAYOR. *Holmes v. Artuse*.

Senator ASHCROFT. I had that as a 1995 case. Am I mistaken?

Judge SOTOMAYOR. It was. What happened, sir, in that case, is if you notice my—because it was a motion to dismiss, I had invited pro bono counsel to take on the case. They came on it later, I do not remember exactly when, and we just got it to trial last week.

Senator ASHCROFT. What was the outcome of the case?

Judge SOTOMAYOR. As I said, the jury found for the defendants on the initial question, which is that the prison had not removed him without his consent, that he had, in fact, consented to the removal. But those are issues of fact that a judge cannot decide on paper, sir. Those are factual questions always for a jury. Did X or Y happen?

Senator ASHCROFT. I think those are evidentiary questions.

Judge SOTOMAYOR. Exactly. Exactly.

Senator ASHCROFT. I guess it is possible that a judge can decide evidentiary questions in the absence of a jury, though.

Judge SOTOMAYOR. Well, in some circumstances.

Senator ASHCROFT. Do you believe that there is a constitutional right to homosexual conduct by prisoners?

Judge SOTOMAYOR. No, sir; there is not. The case law is very clear about that. The only constitutional right that homosexuals have is the same constitutional right every citizen of the United States has, which is not to have government action taken against them arbitrarily and capriciously. The Supreme Court said that last term in *Evans v. Romer*. But outside of that, that is a basic constitutional right, not to them in particular, but to the world that constitutes the United States.

Senator ASHCROFT. Do you think there should be one, a special constitutional right?

Judge SOTOMAYOR. I do not think that we should be making constitutional rights any greater than they exist right now. The Constitution should be amended sparingly, sir, as it has been throughout our history. It is something that should be done only after much history and much thought.

Senator ASHCROFT. Do you agree with the amendments that have been made to date?

Judge SOTOMAYOR. Yes, sir. It is a document that I live by.

Senator ASHCROFT. I agree with them and I think it was good that they were amended, so I accept the process. So in your judgment, you would not read additional rights into the Constitution, like a right for homosexual conduct on the part of a prisoner?

Judge SOTOMAYOR. I cannot do it, sir. I cannot do it because it is so contrary to what I am as a lawyer and as a judge. The Constitution is what it is. We cannot read rights into them. They have been created for us.

Senator ASHCROFT. Are there any rights that are not protected by the Constitution that, as a matter of policy, you would like to see protected?

Judge SOTOMAYOR. I have not thought about that in a while, sir. No.

Senator ASHCROFT. My time is not up.

Judge SOTOMAYOR. I think I answered.

Senator ASHCROFT. In your opinion, do you think Congress has the right constitutionally to restrict the jurisdiction of lower Federal courts?

Judge SOTOMAYOR. You know, I have not examined that question in the longest time, but I cannot—I am not thinking—we were created by legislation of Congress, so I would think that if Congress created it, Congress can take it away. What you cannot do is take away that which the Constitution would give the courts. I think that was established in *Marbury v. Madison*. But absent that, not looking at the question or studying it in depth, I cannot give a better answer than that.

Senator ASHCROFT. I thank you, Chairman DeWine. Thank you.

Senator DEWINE. Judge, one of the great burdens of being a Federal district court judge must be to deal with prisons. I have a little familiarity with that. When I was Lieutenant Governor in Ohio, one of my jobs was to oversee our prison system—so I have a great deal of sympathy with judges who have to deal with the litigation, and there is a tremendous amount of litigation.

I say that and preface it by way of an apology because I am going to turn to one more prison question, if I could. I do not have a name for this case, but I suspect you will recall it. The date I have is 1994 and the issue was multicolored necklaces under the clothing of prisoners. Do you remember the—

Judge SOTOMAYOR. Yes, I do.

Senator DEWINE. So you remember the name of the case?

Judge SOTOMAYOR. It is my *Campos* case. It is better known as the Santorea beads case, or at least colloquially known that way, I should say.

Senator DEWINE. My understanding is that there was a dispute involving the wearing of these beads. Again, I am going to summarize and you can correct me and then tell me a little bit about the case. What I am trying to get at is how you reason as a judge.

My understanding is that prison officials argued that the beads were gang symbols that provoked fights. Contrary to that, I assume the argument is the religious freedom question. Do you want to walk through for me how you balance that, and ultimately, do we get back to what we were just talking about a minute ago, a factual question?

Judge SOTOMAYOR. In that case, sir, yes, prison officials had taken the position that the wearing of beads of colors were a symbol of gang membership. The prisoners, in turn, had asked the prison officials to permit them to wear the beads under their shirts as opposed to visibly. So the question for me was, was it rational for the Government not to permit that alternative when I was balancing a religious right against a security concern.

The Supreme Court in these cases has held that you must give heightened deference to prison security concerns and other con-

cerns but that prisoners do not lose fundamental rights, like religion, in prison, and so that unlike the standard rational basis review that is given—this is before the Religious Restoration Act, Senator, it is not a part of the jurisprudence tied to that—

Senator DEWINE. I understand.

Judge SOTOMAYOR. The Court has said that it is a slightly different review in that context, that the context there is that you must balance as a judge the security concerns with readily accessible alternatives. There is no bright line rule, but there, unlike the traditional rational basis test where you take as a presumption that the Government is doing what it thinks is right, that is a jury or a factfinder, you must weigh whether there are reasonable alternatives that could be just as effective.

My reasoning in that particular case, as the opinion stated, was that, in essence, hiding the beads was a reasonable alternative because it could not show. I do not know if in the opinion, but I know when I spoke to the prison officers later, I said to them, if it turns out that they are finding ways to evade that, then, obviously, you can take steps that are different. But until that was tried first, because it was a reasonable, inexpensive alternative and not terribly costly, that I felt that that was consistent with Supreme Court precedent on this area.

Senator DEWINE. I appreciate your explanation. Let me move to one final case, the 1993 *Gonzalez* case. Let me quote you in that case. "We understand that you," referring to the defendant, "were in part a victim of the economic necessities of our society, but unfortunately, there are laws that I must impose." Do you recall that case at all?

Judge SOTOMAYOR. Not much, sir.

Senator DEWINE. I understand that, because we sit up here and we can look at all your cases and you have to try on the spot to remember a case that may have occurred, in this case, 4 or 5 years ago, so—

Judge SOTOMAYOR. I have had two or three *Gonzalez* cases, and I cannot, meaning not the same defendant, but different ones—

Senator DEWINE. Let me give you the additional facts, and if it refreshes your memory, fine, and you can tell me about it. If it does not, we will just move on.

My understanding is that *Gonzalez* had been convicted of constructively possessing at least 600 grams of cocaine. He exercised dominion and control of an apartment in which the cocaine was found. He also stated he knew someone else was supposed to pick up the cocaine to sell it and distribute it to others. Do you recall anything about that?

Judge SOTOMAYOR. No.

Senator DEWINE. OK. That is fine.

Judge SOTOMAYOR. I am terribly embarrassed to say that that fact situation is also extraordinarily common—

Senator DEWINE. And I can understand that. I appreciate it. Thank you.

Any other questions from any members of the committee? Senator Sessions?

Senator SESSIONS. I would like to ask—

Judge SOTOMAYOR. If you would like to—I am sorry, Senator.

Senator DEWINE. No, go right ahead, Judge.

Judge SOTOMAYOR. If you have a question generally about something I might have said, perhaps I—

Senator DEWINE. I think it is difficult, frankly, if you do not recall. I think it would be unfair to you to ask you anything further about that, if you do not recall it.

Judge SOTOMAYOR. Thank you, sir.

Senator DEWINE. Senator Sessions.

Senator SESSIONS. You mentioned that you appointed pro bono counsel in this prison case?

Judge SOTOMAYOR. We do not appoint them, sir. There are no funds to appoint counsel in civil cases, as you may know. What we do is put the case on a pro bono list, which is made up of volunteer lawyers, and the volunteer lawyers decide whether they want to take the case or not. So if I used the word "appoint" the lawyer there, what it means, in essence, is putting them on the list so that they are eligible to get a lawyer from that volunteer list if a lawyer chooses to take the case.

Senator SESSIONS. Those turn out to be often very expensive processes. Sometimes it is easy for a judge to call in a lawyer and then charge him to take a case—I am not saying you did, but I have seen that before—but the State has the expense of going through this whole process, which went on from 1995 until, I guess, just last week. A lot of expense goes into that. I think we have got to learn to do a better job.

Judge SOTOMAYOR. Senator, if I may add, I put people on a pro bono list very, very rarely. I am on the pro se committee of our court. I do it only when, generally, after some discovery has happened so I can take a look at what is there and determine whether there is some substance to the claim, and not initially in all cases, and where there may be a complex legal question.

For example, in that case and a few others, in that *Holmes v. Artuse*, where I did that, the Supreme Court was just considering an equal protection claim that I mentioned might elucidate this area. In a case like that, where there is an unsettled legal question, and you can define that by something where the circuits are split or the Supreme Court is hearing an issue, then I will usually ask for a lawyer because then the questions are so complex that one needs some help in terms of making sure that you have thought of all the arguments. You want the lawyers and not a pro se prisoner to brief them.

Senator SESSIONS. Thank you.

Senator DEWINE. I want to thank both of you very much and thank you for your patience. I would just again state that there may be questions from members of the committee who were not here today. They will be submitted to you in writing. On the other hand, there may not be any written followup questions.

Also, I would invite you, if you want to elaborate on any answer and want to submit anything in writing to us, the committee would be more than happy to receive that.

Judge SOTOMAYOR. Senator, may I take just half a second just to introduce my mother again and my fiance?

Senator DEWINE. I think that is very appropriate.

Judge SOTOMAYOR. My mother, Celina Sotomayor, is here, and my fiance, Peter White, and respecting your time, I will not introduce individually all of the wonderful supportive friends I have here, other than my godson, who is a Boy Scout.

Senator DEWINE. Let us have the godson stand up, then.

Judge SOTOMAYOR. Tommy John Butler. He is the back standing up.

Senator DEWINE. He is standing up anyway. Thank you very much.

Mr. GILMAN. Thank you, Senator.

Judge SOTOMAYOR. Thank you.

Senator DEWINE. Thank you very much.

Let me just make kind of a personal comment. As the father of eight kids, I have rarely seen children so quiet. We have a room full of children here and I congratulate all of you for staying with us.

I would ask our next panel to come up. We are going to take about a 4- or 5-minute break, then ask you to come forward. We are going to start this at 15 after, so we will give you a couple-minutes break. After the break, we are going to plow right on through. Thank you very much.

[Recess.]

Senator DEWINE. Let me thank all of you for coming today and thank you also for your patience.

Let me just start from my left with you, Judge Siragusa. Judge, is there anyone in the room you want to introduce? We are going to go right down and do that to begin with because I do not want you leaving here and getting home and realizing there is someone who has not been introduced.

Judge SIRAGUSA. Mr. Chairman, at the risk of correcting a U.S. Senator, it was my wife, Lisa, who attended law school with Senator D'Amato's son, although I am sure of two things, that she is very flattered by his comment and she will never let me forget it. [Laughter.]

Judge SIRAGUSA. My wife, Lisa, is here, and my in-laws, James and Lucille Serio, and I thank them for coming. Thank you.

Senator DEWINE. Thank you very much.

Mr. Marbley.

Mr. MARBLEY. Yes, Senator. I have been fortunate. I have had some very good support throughout this process and I have some law school classmates who were with me back in the old days at Northwestern who came and I would like to have them acknowledged for the record, if I may. One is Thomas Preston, who is with the IRS, and then another friend of mine, Antoinette Cook Bush was here. I do not know whether she left. She was a former staffer and now partner at Skadin Arps. Then I have Ronald Sullivan, who was like an understudy but he is a Harvard lawyer now, so I cannot call him that anymore, and he is a Washington attorney now, so thank you very much.

Senator DEWINE. Very good.

Mr. Kimball.

Mr. KIMBALL. Thank you, Senator. I am grateful to have my wife, Rachel, here. She is a nurse and I hope I do not need her medical services during the hearing. Our six children and 16 grandchildren

are scattered across the country taking care of each other and working.

Senator DEWINE. Judge Gwin.

Judge GWIN. I am pleased to have my wife, Bonnie, and my sons, Michael and John here. I would also introduce my sister, Mary Jo Weis, and her husband, Ted Weis, and their sons, Robert and Edward, and also my mother, Carol. I have also some special friends who have been helpful to me and these include John Lewis of the Squires, Sanders firm and John Heider, who is the executive vice president of B.F. Goodrich, and John Manos had been here, Judge John Manos, but he may have stepped out. I thank them for their help during this process.

Senator DEWINE. Thank you.

Mr. Casey.

Mr. CASEY. Mr. Chairman, I would like to introduce, I have my sister here, Mrs. Carol Brunell. Unfortunately, my son, Richard Jr., was unable to be here today, but I do have with me my nephew, Christopher Brunell, and his daughter, Kelly, and my nephews, Frank Casey, and Tom Casey.

Senator DEWINE. Great.

Mr. CASEY. I also have with me, Senator, some of my very dearest friends who have been so supportive to me from years back and since I lost my eyesight. With me here today is Mr. Richard McCarthy, Mr. Otto Obermeyer, who the Senator identified as a former U.S. attorney. Another friend was supposed to be here, Suzanne Brown, and she, unfortunately, could not make it. But I also have with us today several members of the National Federation of the Blind and some other blind organizations. I am not sure all have arrived, but I am very grateful for their support. Thank you, Senator.

QUESTIONING BY SENATOR DEWINE

Senator DEWINE. Very good. Thank you all very much.

One of the privileges of having this gavel is you get to ask whatever questions you want—

Mr. CASEY. Excuse me, Senator. I am sorry. It would be remiss and I could not go home. I have two of my partners here, Mr. Thomas Suther and Mr. Robert Petersak and life would not be too good when I got home if I did not mention them.

Senator DEWINE. I appreciate that. I have had law partners myself.

Mr. CASEY. Thanks so very much.

Senator DEWINE. I appreciate that very much.

Let me just say to the nominees that the questions that we ask are, frankly, difficult to frame because most of us who sit here and who have the obligation to confirm or not confirm Presidential appointments have some very definite ideas about what we think a judge should be. Those of us who have appeared before judges, especially have our ideas. But it is difficult sometimes to phrase questions that can get at what we are really looking for.

Let me just be very candid with you and then I am going to start, Judge, with you, if I could, and we will just go from my left all the way down. We often talk about judicial temperament. I do

not particularly like the term because I do not even know what it means, but I think we generally know what we are talking about.

One of the things that I am always concerned about and, frankly, it is difficult asking somebody this question and getting an answer that is going to tell you a whole lot—maybe I am just stating it so that 2 years from now or 10 years from now, at some point, maybe you will remember what some U.S. Senator said during the confirmation hearing.

One of the things that troubles me is that occasionally when someone is either elected to the bench—but, frankly, maybe more often when they are appointed to the bench and they have life tenure—they become what I would call arrogant. They become out of touch with the community. They fall out of touch with the people whom they have dealt with before. I would just like for you to talk a little bit in turn about any kind of judicial temperament.

Before I get into the substantive questions, let me ask you now to stand and we will actually swear you in, which is the normal procedure of the committee. Do you swear the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge SIRAGUSA. I do.

Mr. MARBLEY. I do.

Mr. KIMBALL. I do.

Judge GWIN. I do.

Mr. CASEY. I do.

Senator DEWINE. Thank you. Judge.

**TESTIMONY OF CHARLES J. SIRAGUSA, OF NEW YORK, TO BE
U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW
YORK**

Judge SIRAGUSA. Mr. Chairman, I think there are three basic qualities that go into a good judicial temperament. The first is commitment. I think that you have to be committed to be the very best judge you can be. That involves a commitment to work hard, a commitment to demand no more of the attorneys who appear in front of you than you demand of yourself. It involves a commitment to—a judgeship is not just a profession but really a way of life to excel as best you can.

I think the next broad trait would be dedication. You have to be dedicated to the oath that you take. I have been a trial judge and you have to understand that the responsibility of a trial judge is to resolve the cases and controversies that come in front of you and not to think of yourself as a talisman to solve the social ills that plague society.

The third, I think, is humility. I think you have to have an appreciation that it is the position that is important and not the individual. I have tried a lot of cases as a litigant. I have had interaction with a lot of judges following my election and I think there is a danger that sometimes people get what I refer to as robe-itis, that because you put on the robes, it does not make you a better person and it is well to remember, and perhaps it is most important that it is the position that is important and not the individual. Thank you.

Senator DEWINE. Certainly none of us have ever known anybody in that position.

Mr. Marbley.

TESTIMONY OF ALGENON L. MARBLEY, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO

Mr. MARBLEY. Certainly, one of the advantages of going second, Mr. Chairman, is that you can adopt—

Senator DEWINE. Mr. Casey is given the last shot at this thing. Now, he does not know we are going to start with him first next time. [Laughter.]

Mr. MARBLEY [continuing]. The testimony of Judge Siragusa, but I think that one of the key traits that a judge has to have is a commitment to fairness. I think that a judge has to be fair to the litigants who appear before him or her. I think that another key consideration is the quality of being courteous. You have to be courteous to the litigants, and I think that that will permeate your courtroom. Once you establish that you are going to be courteous and that civility will carry the day, the litigants who appear before you will understand that they are to conform their behavior accordingly, so we will not have the problem of noncivility in an otherwise charged adversarial relationship.

I think that humility is perhaps one of the most single important qualities because you have to realize that you have within your hands often the ability to affect the course of events or alter people's lives, and so you have to be humble with that type of responsibility.

Finally, I think you have to be thoughtful. When someone has posed the faith in you to allow you to sit in that position and to be a neutral arbiter of cases and controversies, the least that you could do is to be thoughtful in your deliberations.

I think all of those qualities, in addition to the qualities that Judge Siragusa pointed out, make for a sound judicial temperament.

Senator DEWINE. Mr. Kimball.

TESTIMONY OF DALE A. KIMBALL, OF UTAH, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH

Mr. KIMBALL. Thank you, Senator. I certainly agree with what these two gentlemen have said. A judge must be fair, a judge must be impartial, a judge must be patient, a judge must be well-prepared and informed and render timely and thoughtful and well-explained decisions.

I believe the best example of judicial temperament I know is the judge I hope to replace, Judge David Winter. One of the reasons he is such a great judge is because he has always remembered, as he says, what it is like on the other side of the bench, on the lawyers' and the participants', the parties' side of the bench, and I would hope to be as he is. Thank you.

Senator DEWINE. Judge.

TESTIMONY OF JAMES S. GWIN, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

Judge GWIN. Thank you. I think I would adopt just by reference the comments made earlier, but I have also been impressed—it is so important for judges and people in the judicial system to understand that for most litigants, they come before a court one time in their life, perhaps two or three times, and if those people have gone away from the court believing that their concerns, their claims, their defenses have been given just short shrift, I think that they walk away with a diminished respect for our legal system.

So I think it is extremely important in every case that all the participants, but especially the judge, give a concern for that and treat people with respect and treat people with an open mind. So those would be the qualities I would hope to bring to the bench for the Northern District of Ohio.

Senator DEWINE. Mr. Casey.

TESTIMONY OF RICHARD CONWAY CASEY, OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Mr. CASEY. Senator, I love the profession of the law and I have the greatest admiration for and affection for the Southern District of New York. It is where I started and I am going to be fortunate enough, if I am confirmed, to be with several colleagues that I started out with.

But I think what has made me love being a trial lawyer is the wonderful experiences before some great judges in that district. There is nothing quite as pleasurable for a trial lawyer to try a case before an intelligent judge who has compassion and understanding, at the same time understands his function and moves the administration of justice along, but just as important, one who has a sense of humor that we all need in life and I would hope to emulate some of those that I have had the pleasure of appearing before over the years.

Senator DEWINE. Thank you very much.

Let me turn to my second question. Mr. Casey, I will start with you, if that is all right. If each one of you is confirmed, you will be taking over a specific court with a docket and I would ask you to maybe reflect—you have to have given it some thought—about some of the things you want to do. What I am looking for is not substance in the sense of how you decide cases, but I am looking at more procedure—how you would run the court, what you have observed in Federal courts or in other courts that work, what does not work, what you like, what you do not like, how you would really run your court, because one of the things that litigants want is a disposition of their case. They want the case resolved. So the speed at which cases can be brought to trial, or can be resolved in some way, is important.

So if you could just maybe comment on that, maybe reflect on the use of support staff, reflect on the use of law clerks, reflect on the use of arbitration or whatever the local rule might allow. That is the type of response that I am looking for. What have you thought about that? What is important to you, or what is not important?

Mr. CASEY. Well, Senator, I think one thing, at least in the course of my experience, I have spent a substantial amount of time in private practice, at least, involved in major securities litigation and I would think that a major step to handle the administration of the court, if I were to be confirmed, is to get involved early, especially in large cases, to get a handle on what the issues of the case are before things can get out of hand in order that you can move them along.

I have served on committees involving discovery abuse and I think much of that can be prevented if a judge is to get in early, get his or her hands on the case, assist the lawyers in setting the discovery schedule, and move the case along and always, of course, with a mind that an early trial date frequently helps things to move along, as well.

As far as the staff, certainly, it is a team effort with the law clerks and everyone involved. I would certainly keep a keen eye to things that various judges I know in the Southern District have experimented with as to how they move their dockets along and I would certainly try to inquire of them and utilize all their experience, as well.

Senator DEWINE. Judge Gwin.

Judge GWIN. I think it is so terribly important that cases move along to an expeditious conclusion. After conversations with innumerable people who have been involved in litigation, I find that one of their biggest concerns is how destructive and debilitating it is to have litigation pending. That is true for individuals. It is perhaps equally or more true for businesses. It is just to have the uncertainty of a litigation pending is very damaging.

So I think it is extremely important for litigation to move along quickly. I think the ways we do that are well known. It requires an early intervention by the judge in terms of setting reasonable but firm dates for preparation of motions and trials. It requires a judge to stick to those dates, it requires a judge to quickly supervise discovery disputes, and it requires a judge to quickly rule and supervise dispositive motions.

The things that it takes to move a case along, I think, are well known, but it does require the hands-on effort of a judge, and those are things I would like to have an opportunity to give to the Northern District.

Finally, I would comment, I am a big believer in alternative dispute resolution and I find that in many cases, it can help narrow the differences between the parties, even if it is not able to bring about a conclusion to the matter. So that would be another area where I would give emphasis.

Mr. KIMBALL. I agree with Judge Gwin, that the litigation process can be very disruptive in people's lives and it is very important that it move along. I would also say it can be very, very expensive and if some of that expense can be saved by good management by judges, then that ought to be done.

I have been an arbitrator. I have been a mediator. I have represented clients in front of arbitrators and in front of mediators and I would encourage the voluntary, but not mandatory, use of those ADR processes.

I believe in the early intervention and management that has been discussed. Perhaps there is no more important case management technique than timely and well-explained decisions, and I would hope to be able to render those. I believe it is important to utilize the magistrate judges and I consider myself a good manager and would utilize the various management techniques for moving things along and keeping them orderly that I have utilized in my law practice.

Senator DEWINE. Mr. Marbley.

Mr. MARBLEY. Thank you, Mr. Chairman.

Perhaps the single most important feature is the early entry of the judge into the fray. That is important because the judge can counsel the litigants on the expense of litigation, perhaps reach an early resolution of the matter through settlement or otherwise. Judges tend to be able to help the parties close the gap and resolve their differences.

Also, the judge, I think, should counsel the litigants about the advantages of alternative dispute resolution, and I know that in our district, there are options in that respect, and so that would be another method to move the cases along.

Third, I think that it will be important to resolve motions that are pending, particularly discovery motions or dispositive motions. Certainly, magistrate judges can be used for that and those magistrate judges who perhaps have their own backlog and cannot do it, you certainly can rely on your law clerks to get much of that research done to resolve pending motions.

Finally, and perhaps most important, is to establish a reputation for setting realistic discovery deadlines and trial dates and sticking to them. A judge who has a reputation for having firm trial dates is a judge who moves his docket along with a great deal of dispatch, and I think that once the litigants in your district realize that you are going to adhere to those trial dates and that they are firm, then you will see a lot more motion in terms of getting matters resolved.

Senator DEWINE. Judge.

Judge Siragusa. As I listen to my colleagues, the old maxim of justice delayed is justice denied comes to mind, and I think it is true, and I think the ultimate responsibility is with the presiding judge to manage his caseload. Certainly, the techniques that have been suggested are good ones. I think it starts with a judge who actively is involved in his case, who utilizes scheduling orders, and I agree to set realistic demands and not grant adjournments unless there is a legitimate reason. Certainly in Federal court, the use of magistrate judges to deal with both nondispositive and dispositive motions.

I agree that it is important for a judge to establish a reputation that the judge is prepared and willing to do the work, and I think you do that by rendering prompt decisions. I found that attorneys can live with a decision that goes against them because then they can proceed to the next step. What they cannot live with is decisions that pend for months upon end.

Certainly, the use of mediation or alternative methods of dispute resolution is something that I think can be utilized to deal with our backlog. Thank you.

Senator DEWINE. Judge, let me continue with you, if I could.

Judge SIRAGUSA. Yes.

Senator DEWINE. You, in April of this year, had a writing that had to do with cameras in the courtroom. Do you want to tell us about that?

Judge SIRAGUSA. Sure.

Senator DEWINE. Any conclusions you reached, or—

Judge SIRAGUSA. I was careful not to give any conclusion to the presentation, but basically, I was asked as part of the continuing education program to present both the pros and the cons on cameras in the courtroom and I made that presentation. I would be glad to comment on it.

I should preface it by saying, in June of this year, the New York experiment on cameras in the courtroom ceased. There is no legislation now. So since I am a sitting judge, I will speak to what my experience has been on cameras in the courtroom.

In New York, the purpose of promulgating rules on cameras in the courtroom was a recognition by the legislature that it was important to enhance the citizens' understanding of our criminal justice system and thereby promote both confidence in the judiciary and also to promote the fair administration of justice, and that is why these rules for cameras in the courtroom were initially enacted back in 1987.

In my experience in New York, both in trying cases that were some televised live and in presiding on cases, the goals of the experiment have been approached, but I think it primarily depends—

Senator DEWINE. The goals have been—

Judge SIRAGUSA. Approached. I am not going to—quote, approached. I am not going to say—

Senator DEWINE. What does that mean?

Judge SIRAGUSA. I think it would be naive to say that we have achieved exactly what the legislature intended, but I think in New York they have been approached, but it largely falls because of three reasons, the responsibility of the media, the responsibility of the attorneys, and the responsibility, of course, of the judge.

In my experience in Monroe County, the media has been responsible about not being intrusive in the positioning of cameras and following the dictates of the judge. The litigants have not engaged in histrionics. There has not been theatrics. They have not been playing to the cameras. And I hope myself, as a judge, and certainly the judges who have presided on cases that I have tried that have been publicized, have kept control of their courtroom and were consistent in the demeanor that was established in the courtroom, whether the presentation was televised or not.

Senator DEWINE. Any unintended consequences, based on either your personal experience or what you found out?

Judge SIRAGUSA. No. I think, to share an aside, I mean, and why I said the goal was approached, when I was in the D.A.'s office, I tried a case that was televised live for 12 weeks and after the case was over, more than one citizen came up and said they were impressed by the professionalism both of the prosecutor, the defense attorneys, and the judges, and I think that speaks toward the purpose of approaching the goal.

Senator DEWINE. Mr. Kimball, let me refer to something that you wrote a few years ago, I believe it is entitled "The Constitutional Convention, Its Nature and Powers, and the Amending Procedure," Utah Law Review. It has been a few years ago, I guess.

Mr. KIMBALL. A lot of years ago.

Senator DEWINE. I guess maybe the lesson that people take away from these hearings is do not ever write anything so you will not be asked questions—but I hope that is not the lesson.

Considering the job that you have been nominated for, I wonder what you learned from performing research for that law review article that might be of any relevance to your service on the Federal bench.

Mr. KIMBALL. As I recall that law review article, it was basically about State constitutions and the amending process and problems that arose and how conventions were called and what powers they had and so on.

I think I gained a greater respect for both what constitutions say and what the people say through their whatever it be, whether it is the writing of the Constitution or the writing of legislation. That has to be given great deference by a judge. That is one thing I would have learned through writing that article.

Senator DEWINE. Let me ask each one of you, and we will start with Mr. Casey—you had the opportunity—I think you were all in the room when the circuit court nominees were here—to hear a series of questions in regard to a problem that Federal court judges have to deal with—and that is State prison systems. I wonder if, based on what you heard today, you have any additional comments about that, about your philosophy, and how you approach that type of a case.

Please understand, I am not asking you to comment about any particular case. I am not asking you, obviously, to comment about anything we already have discussed. But I would just like to know your approach in general. You all had the opportunity to hear the two judges talk earlier and I wonder if you have anything to add to that. Mr. Casey.

Mr. CASEY. Well, Senator, I was very interested by the comments of the two candidates. It is a problem which, I think, many members of the court in the Southern District are concerned about. However, it is a responsibility of the judge, regardless of who the litigants are, to give them a fair and reasonable hearing, just as they would to anyone else.

Senator DEWINE. Judge Gwin.

Judge GWIN. I would generally think that in all cases, there ought to be differentiated management, and so I think it is important for the judge on a case to take an early perspective on the case, the claims made, and put it on a track that leads to a final disposition commensurate with the claims made and the defense as a surrogate.

I use that as background to say that I think it is important for judges to separate the wheat from the chaff in terms of this type of litigation and others and to set these type of cases on a path where they come to final disposition fairly, but not running a case that should be resolved quickly through a long history of litigation before a final resolution is reached.

So I would comment just generally, I think that is important in all civil litigation and I think it applies equally to the prison litigation. It applies similarly to habeas corpus litigation.

Senator DEWINE. The prison cases are, to some extent, unique in the sense that we have had experience with special masters with whom these cases go on and on for years. I know that is not totally unique to prisons. It happens in other areas, as well. It might happen in a school district. But some of these cases go on and on and on. That is something that I think I have some sensitivity to because of the previous position I held and some of the problems that I saw. I know it is very difficult to comment in general about that.

Mr. Kimball.

Mr. KIMBALL. I agree with what these two gentlemen on my left have said, but I would also say that it seems to me that it would be a very unusual and unique set of circumstances that would require or even allow a judge to really get into the management business, which I think is partly what you are talking about. I do not really see that as part of the job description.

Senator DEWINE. Mr. Marbley.

Mr. MARBLEY. I think that I can answer your question in two respects. First, these matters have to be dealt with expeditiously because they are administrative matters and an early resolution is important to everyone involved, the inmates as well as the prison officials.

Second, and perhaps more importantly, you have to subject them to the same type of analysis that you would most other cases. You start with whatever existing precedent is and then as far as the issues that were discussed here today, it appears that as long as there are no suspect classifications involved, you use a rational relationship test, and in doing so, you give substantial deference to officials who are enacting a particular program or whatever the issue may be before the court.

So as long as you take that sort of analytical approach that we, as lawyers, are trained to do and abide by the doctrine of stare decisis, as we as article III judges are obligated to do, I think that you can pretty much dispose of that litigation expeditiously and fairly.

Senator DEWINE. Judge.

Judge SIRAGUSA. Again, I do not know that I will add anything new, but I do believe that deference should be given to administrative decisions. Obviously, if there is a rational basis for an administrative decision affecting an inmate, it should be upheld. If cases get to the court system, then I think it is the responsibility of the judge, where possible, to separate the frivolous lawsuits out and to deal with them expeditiously.

Senator DEWINE. Let me thank each one of you for your presence and for your patience today. I will again state that the record will remain open and you may get additional questions. If any of you want to supplement any of your answers, you are more than welcome to do that by contacting the committee staff and you can do that in writing.

Again, I appreciate your participation and appreciate the patience of the members of your families, particularly the young members of your families.

Mr. CASEY. Senator.

Judge SIRAGUSA. Thank you very much.

Mr. MARBLEY. Thank you very much.

Mr. KIMBALL. Thank you very much.

Judge GWIN. Thank you very much.

Mr. CASEY. Senator.

Senator DEWINE. Yes.

Mr. CASEY. Could I just, because I have to ride home with them on the plane, ask the chair to recognize Mr. and Mrs. Doyle, who came with me, too, because that would be a long ride home.

Senator DEWINE. It would be. Thank you, Mr. Casey, very much.

Mr. CASEY. Thank you, Senator.

Senator DEWINE. The committee is adjourned.

[Whereupon, at 4:48 p.m., the committee was adjourned.]

[Submissions for the record follow:]

SUBMISSIONS FOR THE RECORD

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Ronald Lee Gilman

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

Office:

Farris, Mathews, Gilman, Branan & Hellen, P.L.C.
One Commerce Square, Suite 2000
Memphis, Tennessee 38103

Home:

Memphis, Tennessee

3. Date and place of birth.

October 16, 1942, in Memphis, Tennessee

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 Betsy Dunn Gilman. Former preschool director. Currently a community volunteer.

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

Massachusetts Institute of Technology
1960-1964
S.B. degree awarded in June of 1964

Harvard Law School
1964-1967
J.D. degree awarded in June of 1967

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.

Paid Employment

- 1967 - present: Farris, Mathews, Gilman, Branam & Hellen, P.L.C.
One Commerce Square, Suite 2000
Memphis, Tennessee 38103

Associate 1967 - 1969;
Partner since 1969
- 1980 - Present: University of Memphis School of Law
Memphis, Tennessee 38152

Adjunct professor of Trial Advocacy
- 1988 - Present: American Arbitration Association
211 Seventh Avenue North, Suite 300
Nashville, Tennessee 37219

Arbitrator and Mediator
- 1993 - Present: National Association of Securities
Dealers
10 S. LaSalle Street, 20th Floor
Chicago, Illinois 60603

Arbitrator and Mediator
- 1994 - Present: Private Adjudication Center
8000 Weston Parkway, Suite 330
Cary, North Carolina 27513

Dalkon Shield Referee

Unpaid Activities

- 1967 - Present: Memphis Bar Association (see 9 below)
- 1967 - Present: Tennessee Bar Assn. (see 9 below)
- 1967 - Present: American Bar Assn. (see 9 below)
- 1995 - Present: Association of Attorney-Mediators
(see 9 below)
- 1991 - Present: Commercial Law Affiliates
(see 9 below)
- 1993 - Present: Boy Scouts of America, Chickasaw
Council (Executive Board)
- 1979 - Present: Society of Memphis Magicians
(President 1986)
- 1988 - 1995: Capital Case Resource Center
of Tennessee (Board member)
- 1984 - 1987: Memphis Jewish Home (Board member)
- 1979 - 1987: Tennessee Court of the Judiciary
(Member of the Court, serving
without compensation. See
14 below for an explanation
of the Court's function.)
- 1968 - 1973: Senior Citizens Services
(Board member & Treasurer)
- 1968 - 1973: Memphis Junior Chamber of Commerce
(Parliamentarian - Legal
Counsel 1971)

I have also sat at various times throughout the years as a special judge in the Shelby County Circuit Court and the Shelby County Probate Court at the request of several regular judges during their absences from the bench. Such service was without compensation.

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.

Eagle Scout Award (1958)

William L. Stewart, Jr. Award for "Outstanding Contributions to Extracurricular Life at M.I.T." (1964)

Cum Laude graduate of Harvard Law School (1967)

Sam A. Myar, Jr. Memorial Award for "Outstanding Service to the Legal Profession and the Community" (1981)

Best Lawyers in America (Woodward/White)
(Listed in categories of business litigation, corporate law, and estate planning)

Who's Who in American Law (Marquis)

Who's Who in America (Marquis)

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.

Memphis Bar Association
President (1987)
President, Young Lawyers Division (1974)

Tennessee Bar Association
President (1990-1991)
Speaker, House of Delegates (1985-1987)
President, Young Lawyers Conference (1978-1979)

American Bar Association
Member, House of Delegates (1990-Present)

American Law Institute

American Bar Foundation

American Judicature Society

American Arbitration Association

Tennessee Bar Foundation

Memphis Bar Foundation

Association of Attorney Mediators (West Tennessee Chapter
Vice President, 1996-Present)

American College of Trust and Estate Counsel

Life member, Sixth Circuit Judicial Conference

Chair, Bankruptcy Merit Selection Panel for the
Western District of Tennessee (1992-1993)

Member, University of Memphis Law Dean Search Committee
(1991-1993)

Member, Federal Court Local Rules Revision Committee
(1989-1992)

Commercial Law Affiliates
Board of Directors (1991 - 1993)

Lawyers Journal Club of Memphis (This unincorporated
educational organization has no bylaws.)

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 Mensa, Ltd.

B'nai B'rith

Boys Scouts of America, Chickasaw Council

Economic Club of Memphis (A copy of the Bylaws of this organization is attached to this Questionnaire as Exhibit 1.)

Estate Planning Council of Memphis (A copy of the Bylaws of this organization is attached to this Questionnaire as Exhibit 2.)

Kiwanis Club of Memphis (A copy of the Constitution and Bylaws of this organization is attached to this Questionnaire as Exhibit 3.)

International Brotherhood of Magicians

Society of Memphis Magicians

I am not aware that any of the above organizations are active in lobbying before public bodies, although the Boy Scouts and B'nai B'rith may occasionally do so.

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.

Shelby County Chancery Court	1967
Shelby County Circuit Court	1967
Shelby County General Sessions Court	1967
Shelby County Probate Court	1967
Shelby County Criminal Court	1967
Tennessee Court of Appeals	1967
Tennessee Supreme Court	1967
Unites States District Court for the Western District of Tennessee	1967
United States Tax Court	1980
United States Cou.t of Appeals for the Sixth Circuit	1973
United States Supreme Court	1971

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.

BOOK

Tennessee Corporations, Lawyers Cooperative Pub. Co.
(1980; supplemented annually through 1994)

ARTICLES IN LEGAL PERIODICALS

- "The Extension of the Privilege to Libel Without Actual Malice," 3 Harvard Legal Commentary 169 (1966)
- "Medical Expert Testimony in Tennessee," 34 Tennessee Law Review 572 (1967)
- "Non-Tax Aspects of Estate Planning," 2 Memphis State University Law Review 41 (1971)
- "Annotated By-Laws for a Tennessee Corporation," Tennessee Bar Journal (May, 1975)
- "Agreements for Buying and Selling a Business," The Practical Lawyer (Jan., 1977)
- "Saving for College with a Clifford Trust," The Practical Lawyer (June, 1979)
- "The Holographic Codicil," Tennessee Bar Journal (August, 1982)
- "Dishonesty Alone Does Not Deck a Fidelity Insurer," Insurance Counsel Journal (October, 1984)
- "Tangible Evidence in Tennessee," Tennessee Bar Journal (May/June, 1986)
- "Planning for Disability," The Practical Lawyer (March, 1989)
- "The Shifting Focus of Estate Planning from Death to Disability," Tennessee Bar Journal (May/June, 1989)
- "Pro Bono & You," Tennessee Bar Journal (March/April, 1993)
- "Mediation: Prime ADR Tool of the '90s," Tennessee Bar Journal (March/April, 1994)
- "Resolving Commercial Cases through Alternative Dispute Resolution," 26 University of Memphis Law Review 1121 (Spring, 1996)

OTHER ARTICLES

President's Column in Memphis and Shelby County Bar Forum during my year as Memphis Bar Association President in 1987 (Issued quarterly)

President's Column in The Bar Flyer (name changed in 1987 to The Bar Essentials) during my year as President of the Memphis Bar Association

Letter to the Editor written as President of the Memphis Bar Association, replying to an editorial titled "Only Lawyers Lose." (Published in the Memphis Commercial Appeal on December 27, 1987)

President's Column in the Tennessee Bar Journal and Across the Bar during my year as President of the Tennessee Bar Association in 1990-1991.

Travel report to Singapore, published in the Memphis Business Journal on October 9, 1989.

SPEECHES

I have made no speeches on issues involving constitutional law or legal policy.

CONTINUING LEGAL EDUCATION PROGRAMS

I have made numerous talks over the last 28 years at various Bar Association continuing legal education programs in the areas of estate planning, business organizations, trial practice, and mediation. Many of these programs required the preparation of handout materials. I have not made a practice of saving these materials. Copies of such handouts, to the extent available in the files of the Memphis Bar Association and the Tennessee Bar Association (the two organizations that have sponsored almost all of the talks I have given), have been supplied.

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

Excellent. Last general physical exam was on May 5, 1997.

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.

Tennessee Court of the Judiciary, 1979-1987. I was appointed as a member of the Court by the Tennessee Bar Association. The Court has jurisdiction over disciplinary complaints against state court judges. During my time on the Court, it met semi-annually to handle various disciplinary complaints, as well as adjudicated several cases against judges where no voluntary settlement could be reached.

I have also sat on various occasions as a special judge in the Shelby County Circuit Court and the Shelby County Probate Court at the request of several regular judges during their absences from the bench.

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 wrote no opinions as a member of the Court of the Judiciary. My only written opinion during my service as a special judge was in the Circuit Court case of Rita Hahn, et al. v. John Freeman, et al., Case No. 82401 (Opinion dated November 30, 1981). The Tennessee Court of Appeals unanimously affirmed my Opinion on November 22, 1982. Copies of both my Opinion and the Opinion of the Tennessee Court of Appeals are attached as Exhibit 4 to the full sets of this Questionnaire.

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;

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.

1967 - present: Farris, Mathews, Gilman, Branan & Hellen, P.L.C.
One Commerce Square, Suite 2000
Memphis, Tennessee 38103

Associate 1967-1969;
Partner since 1969

1979 - 1987: Tennessee Court of the Judiciary
100 Supreme Court Building
Nashville, Tennessee 37219

Judge appointed by the Tennessee Bar Association

1980 - Present: University of Memphis School of Law
Memphis, Tennessee 38152

Adjunct professor of Trial Advocacy

1988 - Present: American Arbitration Association
211 Seventh Avenue North, Suite 300
Nashville, Tennessee 37219

Arbitrator and Mediator

1993 - Present: National Association of Securities
Dealers
10 S. LaSalle Street, 20th Floor
Chicago, Illinois 60603

Arbitrator and Mediator

1994 - Present: Private Adjudication Center
8000 Weston Parkway, Suite 330
Cary, North Carolina 27513

Dalkon Shield Referee

- 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?

Early in my legal career (1967-1973), I represented indigent defendants in the United States District Court for the Western District of Tennessee and engaged in a very general practice. Later (1974-1984) I began to concentrate in the areas of estate planning, business formation, and commercial litigation. Since 1985, my primary emphasis has been in the areas of commercial litigation, arbitration, and mediation.

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

My typical clients are business corporations, an insurance company, a bank, other lawyers, and individuals with moderate to large estates.

My areas of concentration are the following:

Business Litigation. Much of my practice has been in the U.S. District Court and the Shelby County Chancery Court representing litigants as both plaintiffs and defendants in cases dealing with contractual, statutory, or constitutional disputes. Such cases have included issues dealing with fidelity bonds, commodity contracts, securities laws, bank regulations, statutory ambiguities, and alleged constitutional violations. Many of these cases have required extensive document production and numerous depositions. My longest jury trial,

for example, lasted six and one-half weeks in the U.S. District Court and involved over 40 pretrial depositions, many witnesses, massive exhibit books, and thousands of pages of documents. The case arose from the failure of the Butcher banking system, and was settled near the end of the trial with a recovery to my client of over one million dollars.

Representation of Other Lawyers. I am currently defending various local attorneys in four separate cases, with the issues ranging from legal malpractice to statutory violations to contract disputes.

Estate Planning. I have drafted hundreds of wills, trusts, durable powers of attorney, and living wills over the past 29 years for clients with moderate to large estates. These instruments often incorporate the use of the unlimited marital deduction and credit shelter trusts to minimize the impact of the federal estate tax on the individuals and their families.

Mediation and Arbitration. I am currently certified as a trained mediator by both the United States District Court for the Western District of Tennessee and the Tennessee Supreme Court. I am also a member of the arbitration panels for the American Arbitration Association, the National Association of Securities Dealers, and the Private Adjudication Center associated with Duke University. I have served as a mediator in 38 cases and as an arbitrator in 15 cases within the last few years. The cases have included claims of personal injury, wrongful death, statutory violations, property damage and distributions, medical and legal malpractice, contract disputes, and business dissolutions.

- 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 the dates.

I appear in court occasionally as needed for the various cases I am handling. My appearances in court were more frequent during my first 20 years of practice. In the last 10 years, I have made fewer appearances in court, but the cases I have handled have tended to be larger and more complex.

I have also become increasingly involved in arbitration and mediation, having served as an arbitrator in 15 cases and as a mediator in 38 cases within the last few years.

2. What percentage of these appearances was in:

(a) federal courts;

50%

(b) State courts of record;

35%

(c) other courts.

15%

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.

I have tried to judgment or verdict in courts of record 37 cases. I have also handled 24 appeals in the federal and state courts. I served as either sole or chief counsel in all of these cases.

5. What percentage of these trials was:

(a) jury;

25%

(b) non-jury.

75%

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 the principal counsel for each of the other parties.

FEDERAL CASES

1. Gau Shan Company, Ltd. v. Bankers Trust Company & The Julien Company, United States District Court for the Western District of Tennessee, Civil Action No. 90-2122; 956 F.2d 1349 (6th Cir. 1992)

This case involved a \$20 million dispute between Gau Shan (a Hong Kong cotton merchant), The Julien Company (a bankrupt Memphis cotton merchant), and Bankers Trust Company (a major New York bank). I represented Gau Shan as lead counsel, both presenting all the proof in the trial court and arguing the case on appeal.

Gau Shan filed suit in the United States District Court for the Western District of Tennessee in February of 1990 to enjoin Bankers Trust Company (BTC) from suing in Hong Kong for the collection of a \$20 million promissory note signed by Gau Shan for cotton that was never delivered due to the bankruptcy of The Julien Company (TJC). After a three day injunction hearing before U.S. District Judge Robert M. McRae Jr. in May of 1990, the District Court enjoined BTC from filing suit in Hong Kong on a finding of fraudulent misrepresentation by the bank relating to the signing of the note. The whole issue of "foreign anti-suit injunctions" and "international comity" was decided by the Sixth Circuit Court of Appeals on February 24, 1992.

The Sixth Circuit reversed Judge McRae and remanded the case back to the District Court for trial. The case was then mediated by U.S. District Judge Julia S. Gibbons, resulting in a partial settlement with BTC. The remainder of the claims between Gau Shan and TJC was then arbitrated for three days in February of 1993 before a panel of distinguished neutrals drawn from a list prepared by the Center for Public Resources.

BTC was represented by:

Lee L. Piovarcy
22 North Front Street
Memphis, Tennessee 38103
(901) 522-9000

TJC was represented by:

David J. Harris
130 Court Avenue
Memphis, Tennessee 38103
(901) 524-5120

Assisting me within my own firm was:

Rebecca P. Tuttle
One Commerce Square, Suite 2000
Memphis, Tennessee 38103
(901) 575-0100

2. **Charles D. Winston v. Federal Express Corp., United States District Court for the Western District of Tennessee; 853 F.2d 455 (6th Cir. 1988)**

I was the sole attorney for the plaintiff Winston in both the trial court and on appeal, handling all aspects of the case. The Complaint for a Declaratory Judgment was filed on May 28, 1986, seeking to recover \$176,570 in profits from the plaintiff's sale of his Federal Express stock that Federal Express impounded following his sale of the same on March 26, 1986. The issue in the case was whether the District Court erred in holding that the plaintiff was an officer of Federal Express within the meaning of Section 16(b) of the Securities Exchange Act of 1934 when he purchased 8,298 shares of its stock on September 30, 1985. U.S. District Judge Julia S. Gibbons granted summary judgment in favor of Federal Express on April 28, 1987, although she acknowledged that "the

question is an extremely close one ..." The Sixth Circuit Court of Appeals affirmed the ruling of the District Court.

The case was significant in that it involved the proper interpretation of the "short swing profit" prohibition of Section 16(b) of the Securities Exchange Act in light of the facts presented.

Federal Express was represented by:

Veronica F. Coleman
 (currently the United States Attorney for the
 Western District of Tennessee)
 800 Federal Building
 Memphis, Tennessee 38103
 (901) 544-4231

3. **Interstate Brands Corp. v. Hartford Accident & Indemnity Co.**, United States District Court for the Western District of Tennessee; Sixth Circuit Court of Appeals, No. 82-5660 (1984) (noted at 729 F.2d 1461 as an unpublished opinion)

I was the sole attorney for the defendant Hartford in both the trial court and on appeal, handling all aspects of the case. The Complaint sought recovery on a fidelity bond claim for \$223,716 plus a bad faith penalty against Hartford. The case was filed on March 27, 1981. A jury verdict for Hartford was rendered on September 13, 1982, and the verdict was affirmed by the Sixth Circuit Court of Appeals on February 3, 1984. U.S. District Judge Odell Horton presided over the trial. The case was significant in recognizing the subtle difference between fidelity insurance and surety bonds where the plaintiff had previously obtained state court judgments against the dishonest employees.

The plaintiff was represented by:

Patrick M. Ardis
 6055 Primacy Parkway, Suite 360
 Memphis, Tennessee 38119
 (901) 763-3336

and

Glen G. Reid, Jr.
 6075 Poplar Avenue, Suite 650
 Memphis, Tennessee 38119
 (901) 537-1000

4. **Gilman v. FDIC**, United States District Court for the Western District of Tennessee; 660 F.2d 688 (6th Cir. 1981)

This lawsuit, filed in 1976, alleged the violation of Regulation U margin requirements under the Securities Exchange Act of 1934. Seymour Gilman and Rosalind Gilman brought suit in the United States District Court to void a \$139,500 promissory note signed by them and held by the FDIC as liquidator of the Hamilton National Bank of Chattanooga. I represented the plaintiffs (my parents) as their sole counsel, handling all aspects of the case both in the trial court and on appeal.

On October 15, 1979, U.S. District Judge Robert M. McRae, Jr. rendered judgment for the plaintiffs. He voided the promissory note in question based on a violation of Regulation U by the bank. On December 1, 1981, the Sixth Circuit Court of Appeals reversed Judge McRae's ruling and found for the FDIC. The case was settled prior to perfecting a petition for certiorari to the United States Supreme Court.

This case involved complex and novel issues as to the interpretation of Regulation U, the measure of damages, whether a private right of action exists, and the status of the FDIC as liquidator.

The FDIC was represented by:

James W. McDonnell, Jr.
 6075 Poplar Avenue, Suite 650
 Memphis, Tennessee 38119
 (901) 537-1000

and

Mimi Phillips
 22 North Front Street, Suite 800
 Memphis, Tennessee 38103
 (901) 529-0606

5. **H. Molsen & Co., Inc. v. Flowers, et al., United States District Court for the Western District of Tennessee No. C-72-139 (Judgment on Jury Verdict rendered on September 11, 1973; 62 F.R.D. 14 (1973))**

I was the plaintiff Molsen's sole attorney in this case, handling all aspects of the litigation. H. Molsen & Co., Inc. was a Texas cotton merchant who brought suit against a number of West Tennessee farmers and their agent for failure to deliver on their cotton contracts. Because the market value at the time of harvest was substantially higher than the contract price, the farmers failed to deliver all the contracted cotton.

After a four-day trial and two more days of jury deliberation between August 27 and September 4, 1973, the jury returned a verdict for Molsen in the sum of \$21,750, and U.S. District Judge Harry W. Wellford added a \$2,000 attorney's fee in the nature of punitive damages. The case was reported in the September 15, 1973 issue of Cotton Digest International with the headline "Molsen Wins Landmark Decision Against Farmers When Farmers Renege On Acreage Contract," and stated that it was the nation's first cotton contract case tried to a jury verdict in federal court. A copy of the article is attached to this Questionnaire as Exhibit 5.

The defendants' attorneys were:

John S. Wilder
(currently Lieutenant Governor of Tennessee)
108 E. Court Square
Somerville, Tennessee 38068
(901) 465-3616

and

Thomas F. Johnston
80 Monroe Avenue, Suite 700
Memphis, Tennessee
(901) 523-8211

STATE CASES

6. **United Physicians Ins. Risk Retention Group, et al. v. United American Bank of Memphis, Chancery Court for Davidson County, No. 94-1889; Tennessee Court of Appeals No. 01-A-01-9503-CH-00096 (1996)**

I was the lead counsel for the defendant United American Bank of Memphis (UAB), both presenting all the proof in the trial court and arguing the case on appeal. The Complaint was filed in June of 1994 by the Tennessee Commissioner of Commerce and Insurance, as the plaintiff's liquidator, to recover the sum of \$800,000 that the Commissioner alleged had been received by UAB as a preferential payment. The case involved the proper interpretation of the Tennessee statutes dealing with preferences that may be avoided by a liquidator.

This was a case of first impression in Tennessee as well as in the 29 other jurisdictions which have enacted the Insurers Rehabilitation and Liquidation Model Act. Nashville Chancellor Robert S. Brandt granted UAB's Motion to Dismiss the Commissioner's Complaint on January 20, 1995, and the Tennessee Court of Appeals affirmed the dismissal on February 7, 1996. The case was reported in the February 22, 1996 issue of Mealey's Litigation Report: Insurance Insolvency, a copy of which is attached to this Questionnaire as Exhibit 6.

The Commissioner was represented by:

William B. Hubbard
424 Church Street, Suite 2900
Nashville, Tennessee 37219
(615) 251-5444

My local co-counsel was:

John Knox Walkup
(currently Attorney General
for the State of Tennessee)
500 Charlotte Avenue
Nashville, Tennessee 37243
(615) 741-3491

Assisting me within my own firm was:

Rebecca P. Tuttle
One Commerce Square, Suite 2000
Memphis, Tennessee 38103
(901) 575-0100

7. **Mall of Memphis Associates v. Tennessee State Board of Equalization, et al.**, Chancery Court of Shelby County, No. 106118-3; Tennessee Court of Appeals,

No. 02A01-9609-CH-00214 (appeal pending, 1997)

This case was filed in the Chancery Court of Shelby County by the Mall of Memphis in July of 1995, challenging the right of the Shelby County Assessor of Property to revalue the Mall's real estate for the tax year 1990 without simultaneously examining the values of all the hundreds of strip centers in Shelby County. I was retained to represent the Assessor and have been lead counsel for the defense in both presenting all the proof in the trial court and arguing the case on appeal.

In March of 1996, Chancellor D. J. Alissandratos entered a Final Decree voiding the Mall of Memphis's increased property tax assessment for the year 1990 on the basis that the Assessor's action violated the Mall's 14th Amendment rights under the United States Constitution. The Assessor and the State Board of Equalization appealed this decision to the Tennessee Court of Appeals, arguing that the Chancellor applied the wrong legal test in his determination of a constitutional violation. I argued the case before the Tennessee Court of Appeals on April 15, 1997. The case is currently under advisement.

The Mall of Memphis was represented by:

Clare Shields and Harry J. Skefos
22 North Front Street, Suite 1100
Memphis, Tennessee 38103
(901) 522-9000

The State Board of Equalization was represented by:

Christine Lapps
Assistant Attorney General
404 James Robertson Parkway, Suite 2121
Nashville, Tennessee 37243
(615) 741-6424

Assisting me within my own firm was:

Steven C. Brammer
One Commerce Square, Suite 2000
Memphis, Tennessee 38103
(901) 575-0100

8. Gaile K. Owens v. State of Tennessee, Shelby County Criminal Court No. P-8806; Tennessee Court of

Criminal Appeals No. 02C01-9111-CR-00259; Tennessee Supreme Court, 908 S.W.2d 923 (Tenn. 1995)

I was originally appointed by United States District Court Judge Jerome Turner in October of 1989 to represent Gaile K. Owens on her petition for a writ of habeas corpus. Ms. Owens is and was an indigent defendant incarcerated at the Tennessee Prison for Women in Nashville. Prior to my appointment, she was convicted (on January 15, 1986) of being an accessory before the fact to the first-degree murder of her husband, and was sentenced to death by the jury. The petition for writ of habeas corpus was dismissed without prejudice in September of 1991 in order to allow Ms. Owens to pursue her state petition for post-conviction relief which had been filed in February of 1991. I was thereafter appointed to continue representing Ms. Owens by state Criminal Court Judge Arthur T. Bennett, along with co-counsel Stephen B. Shankman.

I petitioned Judge Bennett for an *ex parte* hearing to request authorization for investigative and support services necessary to protect Ms. Owens's constitutional rights in a capital case post-conviction proceeding. Judge Bennett denied Ms. Owens's petition, but allowed her an interlocutory appeal to the Tennessee Court of Criminal Appeals.

The Tennessee Court of Criminal Appeals held that support services should be provided to an indigent prisoner in an appropriate case, but denied her right to an *ex parte* hearing to show her need for such services. On the State's appeal to the Tennessee Supreme Court, the Supreme Court held that a proper interpretation of the Tennessee statutes and its own Rules entitled Ms. Owens to an *ex parte* hearing to request support services at the state's expense. The Opinion of the Tennessee Supreme Court was rendered on October 23, 1995.

I was lead counsel for Ms. Owens in both the trial court and on appeal, both presenting the proof in the trial court and arguing the case on appeal. At the joint request of Stephen B. Shankman and myself, Judge Bennett discharged us from further responsibilities as Ms. Owens' counsel on November 28, 1995, shortly after the successful interlocutory appeal.

The State was represented by:

Amy L. Tarkington
 Assistant Attorney General
 450 James Robertson Parkway
 Nashville, Tennessee 37243
 (615) 741-2216

Co-counsel in a related case consolidated for the appeal was:

J. Brooke Lathram
 130 Court Avenue
 Memphis, Tennessee 38103
 (901) 524-5130

Assisting me within my own firm was:

Steven C. Brammer and Rebecca P. Tuttle
 One Commerce Square, Suite 2000
 Memphis, Tennessee 38103
 (901) 575-0100

My outside co-counsel was:

Stephen B. Shankman
 (currently the Federal Public Defender)
 100 N. Mid-America Mall
 Memphis, Tennessee 38103
 (901) 544-3895

9. **State of Tennessee, et al. v. County of Shelby, et al.**, Circuit Court of Shelby County, No. 55237-4; Tennessee Supreme Court, No. 02S01-9312-CV-00083 (1994)

This case began in 1992 when the four African-American members of the Shelby County Board of Commissions brought suit in the United States District Court for the Western District of Tennessee to challenge the then-existing reapportionment plan for the Shelby County Commission. I was retained to represent the County, the Mayor, the Board of Commissioners, and the individual white Commissioners. As lead counsel, I both presented all the proof in the trial court and was principally responsible for the briefs on appeal. United States District Judge Jerome Turner stayed the action on July 9, 1993 in order to allow the state courts an opportunity to settle the underlying state law question of whether

the required number of votes needed to adopt a reapportionment plan was a majority (pursuant to the applicable state statute) or two-thirds (pursuant to the Shelby County Charter).

State Circuit Court Judge James E. Swarengen entered an order on November 16, 1993 voiding the reapportionment plan approved by a majority vote. The defendants then appealed the trial court's order to the Tennessee Supreme Court, arguing that the trial judge erred in ruling that the Shelby County Charter controlled over a conflicting state statute. While the appeal was pending, the Shelby County Board of Commissioners reached a political compromise on December 7, 1993 by adopting a new redistricting plan by more than a two-thirds vote. The Tennessee Supreme Court subsequently dismissed the appeal as moot.

The plaintiffs were represented by:

P. A. Hollingsworth
415 Main Street
Little Rock, Arkansas 72202
(501) 374-3420

and

Keith C. Kyles
200 Jefferson Avenue, Suite 850
Memphis, Tennessee 38103
(901) 522-1200

Assisting me within my own firm was:

Rebecca P. Tuttle
One Commerce Square, Suite 2000
Memphis, Tennessee 38103
(901) 575-0100

10. **Phil M. Canale, et al. v. Ruby Stevenson**, 458 S.W.2d 797 (Tenn. 1970)

I was lead counsel for the plaintiff Stevenson in both the trial court and on appeal, handling all aspects of the case. Ms. Stevenson brought suit to declare unconstitutional a Tennessee statute prohibiting the practice of fortune-telling in counties whose population exceeded 400,000 persons.

Chancellor Charles Nearn ruled in favor of Ms. Stevenson after a trial in December of 1969, and his decision was affirmed by the Tennessee Supreme Court on October 5, 1970. The case was significant in that both the trial and appellate courts held that the statute was unconstitutional as arbitrary and capricious class legislation, because there was no discernable reason for the classification based on county population.

The State was represented by:

Eugene C. Gaerig
 (then an Assistant District Attorney General)
 100 North Main Building, Suite 3118
 Memphis, Tennessee 38103
 (901) 526-6000

Supervising me within my own firm was:

Henry H. Hancock
 One Commerce Square, Suite 2000
 Memphis, Tennessee 38103
 (901) 575-0100

ARBITRATION AND MEDIATION CASES

Other representative members of the Memphis legal community who have had recent contact with me in my capacity as an arbitrator or mediator are as follows:

1. David M. Cook
 80 Monroe Avenue, Suite 650
 Memphis, Tennessee 38103
 (901) 525-8776
2. Richard Glassman
 26 North Second Street
 Memphis, Tennessee 38103
 (901) 527-4673
3. J. Kimbrough Johnson
 One Commerce Square, Suite 2900
 Memphis, Tennessee 38103
 (901) 525-8721

4. Hayden Lait
99 North Third Street
Memphis, Tennessee 38103
(901) 523-0301
5. Earle J. Schwarz
50 North Front Street, Suite 1300
Memphis, Tennessee 38103
(901) 543-8000
6. Kenneth R. Shuttleworth
200 Jefferson Avenue, Suite 1500
Memphis, Tennessee 38103
(901) 526-7399

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 consider my service as President of the Memphis Bar Association (1987), President of the Tennessee Bar Association (1990-1991), and my membership in the House of Delegates of the American Bar Association (1990-Present) among my most significant legal activities.

The programs and innovations that occurred during my term as President of the Memphis Bar Association included the establishment of a Lawyers Helping Lawyers Committee, a Corporate Counsel Section, a staff policy manual, the addition of a CLE Director/Section Administrator, a committee to plan for a new bar headquarters, new bylaws, a judicial evaluation program, and changing the election for bar leadership positions from in-person voting to a mail ballot system.

The programs and innovations that occurred during my term as President of the Tennessee Bar Association included the formation of two new sections, one on criminal law and the other on environmental law, the drafting of a professional creed for Tennessee lawyers, the formation of special committees to study alternative dispute resolution, lawyer advertising, merit selection of judges, outreach to the public, and the pros and cons of a unified bar, and the formation of a Long Range Planning Committee to formulate a list of both goals and strategies to guide the Tennessee Bar Association's future activities.

I also consider my service as a member of the Federal Local Rules Revision Committee (1989-1992), as Chair of the Bankruptcy Merit Selection Panel for the Western District of Tennessee (1992-1993), as a board member of the Capital Case Resource Center of Tennessee (1988-1995), and as a member of the University of Memphis Law Dean Search Committee (1991-1993) to be significant activities that have advanced the interests of our legal 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.

Pursuant to the Farris, Mathews, Gilman, Branam & Hellen, P.L.C. Operating Agreement, I would be paid a lump sum within 90 days of my withdrawal from the firm for my interest in its tangible assets. I would receive no payment for accounts receivable or for work in process, and would thus have no continuing financial interest in the firm. I would also promptly transfer my account with the firm's 401(k) Plan to an Individual Retirement Account.

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 conflicts-of-interest. If any potential conflict were to arise, I would recuse myself from hearing any case in which even the appearance of a conflict might exist. Any potential conflicts would be resolved by fully complying with the applicable provisions 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.

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 the Financial Disclosure Report is attached to this Questionnaire as Exhibit 7.

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

My financial net worth statement is attached to this Questionnaire as Exhibit 8.

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.

Early in my legal career (1968-1973), I served as a board member and then as treasurer of Senior Citizens Services, a United Way Agency. Later I served for 3 years (1984-1987) on the board of the Memphis Jewish Home. For the past 5 years, I have served on the Executive Board of the Chickasaw Council of the Boy Scouts of America. For the past 2 of those years (1995 and 1996), I was chair of the Special Scouting District. This is the District for physically and mentally handicapped youth with special needs. Our activities included a Learning for Life program in the schools and a Special Scouting Jamboree each fall.

In the legal arena, I volunteered to represent indigent defendants in the federal court system prior to the establishment of the public defender's office. More recently, I volunteered to represent an indigent death row inmate at the request of the Honorable Odell Horton, then Chief Judge of the United States District Court for the Western District of Tennessee. He explained that as President of the Tennessee Bar Association, my participation in a post-conviction proceeding would encourage other civil law practitioners to do the same. Because of the very modest rates of compensation for time spent in representing such indigents, I consider this as largely pro bono work.

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 that invidiously

discriminates on the basis of race, sex, or religion. The Kiwanis Club of Memphis, prior to 1987, did not admit women to membership. I have been a member of the Kiwanis Club since 1981, though I have never been an officer or director of the organization. I voted to admit women as members every time it came to a vote.

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 to recommend candidates for nomination to the federal courts. I was recommended for this judicial position by my law partner Harlan Mathews, a former United States Senator from Tennessee. His recommendation was supported by numerous written endorsements from legal, political, and community leaders in Tennessee. I was not interviewed prior to Vice President Gore's decision to recommend me to the President for this judicial vacancy. I met briefly with Michael O'Connor in the White House Counsel's Office after my selection to discuss the process of background checks and to review the various forms to be completed. I have subsequently been interviewed by representatives of both the American Bar Association and the Federal Bureau of Investigation as part of their respective background investigations.

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?

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.

A federal judge needs to be mindful of the proper role of the judiciary in the basic constitutional scheme concerning the separation of powers. The federal courts must carefully balance their responsibilities as interpreters of the constitution with the limited nature of their jurisdiction, their duty to resolve actual controversies on the narrowest possible grounds, and with due respect for the doctrine of judicial restraint. In particular, the judiciary should refrain from unwarranted intrusion into the legislative and executive processes that the constitution delegates to Congress and the Executive Branch. By the same token, the federal courts must maintain their judicial independence, remedy constitutional violations, and interpret statutory language in their basic role as the resolver of disputes properly brought before them.

BY-LAWS
OF
ECONOMIC CLUB OF MEMPHIS

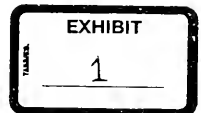
ARTICLE I

The name of this corporation shall be Economic Club of Memphis.

ARTICLE II

The purpose and objectives of the Economic Club of Memphis shall be those set forth in its charter of Incorporation, as such Charter now exists and as it may hereafter be amended from time to time, and no others. The aims and purposes of the corporation are to be carried out through any and all lawful activities, both direct and through contributions to any other corporation, trust fund or foundation whose purposes are charitable, scientific, literary or educational, provided:

1. That any such activity or contributions shall conform to any applicable restrictions or limitations set forth in the corporate charter.
2. That any such activity or contribution shall conform to any restrictions which are imposed by the Internal Revenue Code on corporations described in Section 501(c)(3) of the Internal Revenue Code and its regulations.



The Economic Club of Memphis shall exercise only such powers as are in furtherance of its exempt purpose under the Internal Revenue Code.

ARTICLE III

Section 1. The principal office of the corporation shall be located at _____ City of Memphis, County of Shelby, State of Tennessee. The corporation may have such other offices as the Board of Directors may determine from time to time.

Section 2. The fiscal year of the corporation shall be June 1 - May 31.

ARTICLE IV

Section 1. The elected officers of the corporation shall be a President, a Vice-President, a Secretary-Treasurer, and such other officers as may be elected in accordance with the provisions of this Article.

Section 2. The Vice-President and Secretary-Treasurer shall be elected by the membership annually by written ballot to take office on June 1 for a term of one year or until their successor is elected and qualified, except as hereafter provided.

Section 3. The President shall be the Chief Executive Officer. He, or in his absence, the Vice President, or other executive officer, shall preside at all meetings of the Board and of the membership. The President shall preside at, or may choose a presiding officer for, each public discussion.

Section 4. The Vice-President shall perform all of the functions of the President in his absence. Upon completion of his term as Vice-President he shall succeed to the office of President, which office he shall hold for an additional term. He shall also be President of the program Committee, which shall consist of himself and two other members selected by him with the approval of the Board of Directors. This Committee shall be responsible for recommending programs to the Board of Directors.

Section 5. The Secretary-Treasurer shall perform such duties as ordinarily attached to that office, including keeping minutes of all meetings of the Board and Executive Committee. He shall have custody of the funds of the corporation. He shall be Chairman of the Finance Committee, which shall in addition to himself consist of not more than four or less than two other members selected by him with the approval of the Board.

Section 6. There shall also be an Executive Director, who shall be appointed by the President, subject to the approval of the Board.

Section 7. Any officer elected or appointed may be removed at any time by a vote of a majority of the members of the Board of Directors whenever in its judgment the best interest of the corporation would be served thereby.

Section 8. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 9. The several officers shall have such powers and shall perform such duties as may from time to time be specified in resolutions or other directives of the Board of Directors. In the absence of such specifications, each officer shall have the powers and authority and shall perform and discharge the duties of officers of the same title serving in non-profit corporations having the same or similar general purposes and objectives as this corporation. The powers of the Executive Director however shall be limited to those delegated to him by the Board of Directors.

ARTICLE V

Section 1. The corporate powers of the Corporation shall be exercised and directed by a Board of Directors consisting of

12 members elected as provided in Article VII hereof and in addition such officers as qualify under Section 2 of Article V hereof. The Executive Director may unless the Board determines otherwise meet with the Board but shall have no vote. The President may with the consent of the Board designate others to attend its meeting but without vote.

The Board of Directors shall determine the policies programs of the corporation and the projects for which funds will be expended, provided, however, such policy determinations are within the exempt purposes as provided by Section 501 of the I.R.C. of the United States and the applicable Sections of the Tennessee Code Annotated under which this corporation is organized.

The Board of Directors may, from time to time, appoint, as advisers, persons whose advice, assistance and support may be deemed helpful in determining policies and formulating programs for carrying out the corporate purposes.

The Board of Directors is authorized to employ such persons, including an Executive Director, officer, attorneys, agents, and assistants, as in its opinion are needed for the administration of the corporation and to pay reasonable compensation for services and expenses thereof.

Each member of the Board of Directors shall serve in a fiduciary capacity and shall refrain from exercising any powers in such manner as to disqualify the corporation from federal income tax exemption as to qualified charitable organization or any gift from deduction as a charitable contribution, gift or bequest in computing federal income, gift or estate tax of the donor or his estate.

Neither the Board of Directors, nor any of its members individually, shall be liable for acts, neglects or defaults or any employee, agent or representative selected with reasonable care nor for anything it may do or refrain from doing in good faith, including the following if done in good faith: errors in judgment, acts done or committed on advice of counsel, or any mistakes of fact or law.

The Board of Directors may provide for such standing or special committees as it deems desirable, in addition to the committees herein provided for, and discontinue the same at its pleasure. Each such committee shall have such powers and perform such duties, not inconsistent with law, the Charter of the corporation, or these By-Laws, as may be delegated to it by the Board of Directors. Vacancies in such committees shall be filled by the President or as the Board of Directors may provide.

Section 2. The President, the immediate past President, the vice-President, and the Secretary-Treasurer shall (if not otherwise members of the Board of Directors) be Directors ex officio while holding those offices.

Section 3. Officers (except the President) and Directors shall be elected from and by the membership, by written ballot as herein provided. The directors shall be divided into three classes, each class consisting of four (4) directors. Each year the successors to the class of directors whose terms expire that year shall be elected to hold office for the term of three years, except as herein provided.

Section 5. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. The acts of a majority of the directors present at the meeting at which a quorum is present shall be the act of the Board of Directors.

Section 6. Any vacancy occurring in the Board of Directors, including those resulting from an increase in the number of directors, shall be filled by the Board of Directors. A Director appointed to fill a vacancy shall serve for the unexpired term of his predecessor in office.

Section 7. Directors as such shall not receive any compensation for their services, but shall be reimbursed for expenses incurred on behalf of the corporation. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Section 8. A regular meeting of the Board of Directors shall be held annually in June. Special meetings of the Board of Directors may be called by or at the request of the President or any three members of the Board of Directors, and shall be held at the principal office of the corporation or at such other place as the President may determine.

Section 9. Notice of Annual and Special Meetings of the Board of Directors shall be given at least ten (10) days previous thereto by written notice delivered personally or sent by mail to each director at his address as shown by the records of the corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon paid. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be specified

in the notice or waiver of notice of such meeting, unless specifically required by law or by these By-Laws.

ARTICLE VI

Section 1. There shall be an Executive Committee composed of the elected officers and the immediate past President. The Executive Director shall be a member ex officio without vote. The Chairman shall preside at all of meetings of the Executive Committee, except that in the event of his absence from any meeting, the members of the committee may designate one of their members to preside over such meeting.

Section 2. Between meetings of the Board of Directors, the Executive Committee shall have all of the powers and duties of the Board, including the management of the corporation's business; the making of necessary arrangements for meetings; and the procuring of speakers and the providing of payment for services, rents or other expenses incurred in carrying on the work of the corporation; but the Executive Committee shall have no power to increase the size of the membership of the Board of Directors or to fill vacancies, nor to amend these By-Laws.

ARTICLE VII

Section 1. Any member may nominate any other member for any office or for the Board of Directors by so advising the

Executive Director in writing before April 1. On or before that date each year, the President shall appoint a nominating committee consisting of five (5) former Presidents (Chairmen) who are active members, subject to approval by the Board of Directors.

No more than twenty (20) days after its appointment the nominating committee shall make its report in writing to the President, consisting of the nomination of one member for each of the offices of Vice-President and Secretary-Treasurer and four (4) for the Board of Directors. These may but need not have been already nominated by another member. This report, together with the names of all members otherwise nominated, shall no later than May 1 be mailed to the membership together with a ballot prepared in such a way as to allow each member to vote for any such nominee individually or for a write-in candidate of his choice. All such ballots shall state that in order to be counted they must be received by the Executive Director by June 1.

Section 2. On June 1 the candidate for each office receiving a plurality of the votes then received, and the four candidates for Director receiving the most votes shall be declared elected and take office.

ARTICLE VIII

Section 1. The Board of Directors on the recommendation of the President shall appoint a membership committee of three (3) members which shall act on all applications for membership by making recommendations to the Board of Directors. At such date

as the membership reaches the total as set by the Board, new applications for membership shall be acted upon only at the regular meeting of the Board of Directors in June.

Section 2. New members shall be elected upon nomination by a member. Each such nominee shall then be considered by the membership committee, and recommendation of approval or disapproval shall be made to the Board of Directors pursuant to Section 1 of Article VIII. Applicants approved by the Board of Directors shall become members of the corporation upon payment of initiation fee and dues fixed as provided herein, provided all other requirements for membership are met.

Section 3. Any member wishing to resign may do so by filing with the Secretary, written notice of resignation, but such resignation shall not relieve the member so resigning of the obligation to pay any dues, assessments, or other charges theretofore accrued and unpaid and no return of dues previously paid will be made.

ARTICLE IX

Section 1. Regular meetings of the members shall be held at places and times designated by the Board of Directors.

Section 2. Special meetings of the members may be called by the President or the Board of Directors. or not less than ten

(10) members having voting rights, at a place in Memphis, Tennessee, to be designated by the President. The Executive Director upon receipt of notice of a request for a special meeting shall be charged with the duty of notifying the President who shall then be required to call such meeting not more than thirty (30) days thereafter.

Section 3. Each member in good standing shall be entitled to one vote on each matter submitted to a vote of the members.

Section 4. Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than ten (10) nor more than twenty (20) days before the date of such meeting, by or at the direction of the President or the Secretary. In case of a special meeting or when required by statute or by these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice.

Section 5. Any notice or other communication required by these by-laws shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

Section 6. Any action required by laws to be taken or permitted to be taken at a meeting of the members may be taken without a meeting if a consent in writing setting forth the action so taken is signed by a majority of all the members entitled to vote with respect to the subject matter thereof.

Section 7. Twenty (20) members present at any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 8. At any meeting of members, a member entitled to vote may vote by proxy executed in writing by a member or by his duly authorized attorney in fact. No proxy shall be valid if dated three (3) months or more prior to the date of the meeting at which it is presented, except if such is an adjourned meeting and the original meeting was one at which the proxy would have been valid.

ARTICLE X

Section 1. The Board of Directors may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name

of and on behalf of the corporation, and such authority may be general or may be confined to specific instances.

Section 2. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation, shall be signed by the Executive Director or by such officer or officers, agent or agents of the corporation, and in such manner as shall from time to time be determined by resolution of the Board of Directors. All persons so authorized shall be bonded.

Section 3. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

Section 4. The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest, or devise for any purpose of the corporation.

ARTICLE XI

The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, Board of Directors, committees having and exercising any of the authority of the Board of Directors, and the membership committee, and shall keep at the principal

office a record giving the names and addresses of the members entitled to vote. All books and records of the corporation may be inspected by any member, or his agent or attorney for any proper purpose at any reasonable time, and shall be audited annually.

ARTICLE XII

Section 1. The Board of Directors shall determine from time to time the amount of initiation fee, if any, and annual dues payable to the corporation by its members, and shall give appropriate notice thereof.

Section 2. Annual dues shall be payable in advance by June 1 of each year. The Board of Directors shall determine initiation fees, if any, and the pro rata share of annual dues to be paid by new members upon election.

Section 3. When any member is in default in the payment of dues for a period of four (4) months from the beginning of the period from which such dues became payable, his membership may thereupon be terminated by the Board of Directors as provided hereinabove. However, such default may be waived in advance thereof by the Executive Committee.

ARTICLE XIII

Whenever any notice is required to be given under the provisions of T.C.A. 48-703, or the By-Laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XIV

These By-Laws may be altered, amended, or repealed, and new By-Laws may be adopted by a majority of the directors present at any regular meeting or at any special meeting of the Board of Directors, if at least ten (10) days written notice as given of intention to alter, amend, or repeal or to adopt new By-Laws at such meeting.

4/92

The purpose of the Charter Amendments which you are asked to approve today effective May 31, 1992, when Kurt Flexner retires, is to change the name of the registered agent of the Club to its new Executive Director, Robert L. Berl.; the address of the registered and principal office of the Club to Fogelman College of Business and Economics; to preserve the Club's tax exempt status by bringing the Charter into accord with present requirements of the Internal Revenue Code; and to take advantage of certain provisions of the Tennessee Corporation law dealing with the limitation of liability and indemnification of Directors. Copies of the proposed amendments are available to anyone desiring further details.

Purpose for Board of Directors

One of the purposes of the meeting of the Board of Directors is to adopt certain amendments to the By-Laws. The first amendment proposed for adoption merely implements the Board's earlier decision to modify the procedures relative to the appointment of members to sit upon the Nominating Committee. The text of the proposed amendment, which will be effective immediately upon approval by the Board, is inserted and underlined on page 7 of the By-Laws which is enclosed herewith. If adopted by the Board, said amendment is effective immediately.

The remaining amendments proposed for adoption implement the Board's earlier decision to change the By-Laws with respect to the administration of

the Club. The proposed amendments are in accordance with the Report of the Transition Committee which was presented to the Board at its meeting on May 21, 1991. The text of these proposed amendments has been inserted in the enclosed set of By-Laws, and is underlined. If adopted by the Board, said amendments shall be effective as of July 1, 1992.

In addition to the foregoing, proposed Articles of Amendment to the Charter of the Club shall be presented to the Board for its review. Said Articles of Amendment reflect that, as of July 1, 1992, the address of the principal office and registered office of the Club as well as the name of the registered agent of the Club will change. The Articles of Amendment also contain amendments which implement changes made to the Tennessee Nonprofit Corporation Act in 1987 by the Tennessee General Assembly.

Some of the amendments contained in the Articles of Amendment can be adopted only by the members of the Club. Therefore, the Articles are being presented to the Board in order that the Board may consider recommending the Articles to the members for adoption at a meeting of the members.

Presented to Members on 5/92

RESTATED BYLAWS OF
THE ESTATE PLANNING COUNCIL
OF MEMPHIS, TENNESSEE, INC.

ARTICLE I

The Estate Planning Council of Memphis, Inc. shall be a Tennessee not for profit corporation pursuant to T.C.A. § 48-1-601 et seq.

ARTICLE II

Membership

The membership of this Council shall be comprised of:

1. Trust Officers of trust companies and banks maintaining trust departments.
2. Chartered Life Underwriters.
3. Practicing Attorneys at Law.
4. Certified Public Accountants in public service.

Membership shall be limited to one hundred (100) (120 AMEN 020) members; the total membership for the years ended May 31, 1981, 1982, 1983, 1984 and thereafter shall not exceed eighty-five (85), ninety (90), ninety-five (95), and one hundred (100) members respectively. Of the aforementioned professional classifications, no single participant group shall consist of more than forty (40%) per cent of such total. ~~Probate Judges of Shelby County, Federal Estate Tax Examiners, and Tennessee Inheritance Tax Examiners,~~ who meet



any of the above qualifications shall not restrict the classifications of which they are a member, or the total number of members. To be qualified for membership, an applicant, after the adoption of these Bylaws, must have four (4) years experience in his category and such applicant must be interested in and actively engaged in cooperative estate planning or compliance activities in the Memphis, Tennessee area.

A member who is in a category which does not restrict the total number of such member's category and the total number of members of the Council, and who ceases for any reason not involving a question of moral turpitude, to be a member of such category, shall, upon written notice of such member's desire so to do, continue as a member of the Council in the proper category. By attrition the total number of members of the Council, and the affected category, shall be brought within the limitations otherwise established by these Bylaws prior to the admittance of new members to the Council.

Members shall be elected by a majority vote of the Executive Committee upon recommendation of the Membership Committee. Applications for membership shall be submitted to the Secretary and shall be endorsed by five (5) members

of the Council, three of whom shall be in different membership classifications and only one of whom may be associated in business with the applicant.

ARTICLE III

Executive Committee

All powers necessary for the governing of the Council shall be vested in an Executive Committee composed of the officers, the immediate past President of the Council, and four (4) members-at-large with no more than one (1) from any participating group.

At each annual meeting and at all other meetings for the election of members of the Executive Committee, two (2) members-at-large shall be elected for a term of two (2) years as members of the Executive Committee, with the remaining members to continue in office until the expiration of their term or until their successors are elected.

ARTICLE IV

Officers

The officers of the Council shall consist of a President, a Vice President, a Secretary and a Treasurer. The Vice President shall serve as Chairman of the Program Committee and the Secretary shall be Chairman of the

Membership Committee. The officers shall hold office for one (1) year or until their successor shall have been chosen.

ARTICLE V

Quorums

Any five (5) members of the Executive Committee shall constitute a quorum for the transaction of business. The Executive Committee shall have the power to fill, for the unexpired term, any vacancy which may occur in any office or in their own body, by a concurrence of at least five (5) members.

The presence of twenty-five (25) members shall constitute a quorum for the transaction of business at any regular meeting of the Council, provided there shall be at least ten (10) days written notice of the time and place of the meeting.

ARTICLE VI

Nominations and Elections

The President shall, sixty (60) days prior to the date of each annual meeting, appoint a nominating committee to submit a list of nominees for officers of the Council, and for members-at-large of the Executive Committee, to be voted

upon at the annual meeting. Such Committee shall file the names of their nominees with the Secretary at least fifteen (15) days before the date of the meeting. In addition, any nine (9) members, by notice in writing filed with the Secretary at least five (5) days before the date of the meeting, may nominate candidates for officers of the Council and for members-at-large of the Executive Committee. The members shall be entitled to vote for any candidate named by either one of the above methods at such meeting. The candidate receiving a simple majority of votes cast for his office shall be declared elected.

ARTICLE VII

Annual Meeting

The annual meeting of the Council shall be held on the fourth Tuesday in May of each year or at such other time as may be selected by the Executive Committee. The Secretary shall mail each member a notice of the meeting at least ten (10) days prior to the date hereof.

ARTICLE VIII

Executive Committee Meetings

Meetings of the Executive Committee may be called by the President at his discretion, or when requested so to do by three (3) members of the Committee. The Executive Committee

shall establish rules of procedure and practice for its meetings, subject to approval of, or amendment by, the Council.

ARTICLE IX

Committees

The President of the Council, with the advice and consent of the Executive Committee, shall have the power to appoint committees on programs, membership, ethics, cooperation, education, legislation and such other committees as he shall deem advisable to further the interests of the Council and its members; and to delegate to such committees such power and authority as the Executive Committee shall deem advisable.

ARTICLE X

Program Meetings

Meetings for the furtherance of the purposes of this association may be called by the Executive Committee at stated times, or from time to time in its discretion. The program of such meetings shall be arranged by the Executive Committee and the Program Committee.

ARTICLE XIDuties of Officers

The President shall preside at all meetings of the Council and the Executive Committee, and perform the duties herein set out.

The Vice President shall perform the duties of the President in the absence of the President.

The Secretary shall keep a record of the proceedings of all meetings of the Council and the Executive Committee, and he shall be responsible for maintaining a current membership roll and for the mailing of notice of meetings and other communications to such members.

The Treasurer shall have custody of all funds and property of the Council and shall deposit all funds of the Council in the name of the Council in a bank or trust company located in Memphis, Tennessee. All withdrawals of such funds shall be on checks or orders signed by him or by the President. He shall prepare and submit a statement of the financial condition of the Council at the annual meeting and at such times and in such manner as the Executive Committee may require.

ARTICLE XIIExpenses and Dues

The expenses of the Council shall be provided for by annual dues of Ninety (\$90.00) Dollars for each member, payable in advance on or before the September meeting in each year. Annual dues may be increased by the majority of the members at a meeting duly called with at least ten (10) days prior written notice of the proposed increase.

ARTICLE XIIIAdvertisement

No members of this association shall use his membership herein in any form of advertisement of solicitation of business.

ARTICLE XIVRevocation of Membership

Any member who shall have been absent from two (2) consecutive called meetings of the Council, or shall have failed to pay his dues at the time and in the amount prescribed by these Bylaws, as from time to time amended, shall have his name referred to the Executive Committee by the Secretary. The Executive Committee, in its sole discretion, may direct that such member be dropped from the roll

of this Council, in which event he shall be so notified in writing by the Secretary. Any such member who has been dropped from the roll of the Council by action of the Executive Committee shall not be eligible for membership in this Council for a period of at least three (3) years thereafter.

ARTICLE XV

Amendments

Upon at least ten (10) days written notice setting out the proposed amendment, these Bylaws may be amended at any annual or called meeting of the Council by a vote of two-thirds (2/3) of the membership present.

ARTICLE XVI

Guests

Provided the inviting member pays the meal cost as established by the Executive Committee for each guest, any member of the Council will be permitted to invite guests of his or her choosing, provided he or she does not bring the same guest to more than two (2) meetings in any one (1) fiscal year.

ARTICLE XVII

The corporate fiscal year shall be June 1 through May 31.

Revised: June, 1986

Section 2. Active Membership.

A. The active membership of this club shall consist of persons of good character and community standing residing or having other community interests within the area of this club.

B. The active membership of this club shall be composed of a cross section of those who are engaged in recognized lines of business, vocation, agriculture, institutional or professional life; or who, having been so engaged, shall have retired. The number of members in any one given classification shall not exceed twenty percent (20%) of the total active membership.

C. No person shall be eligible to membership in this club who holds membership (other than honorary) in any other Kiwanis club or service club or like character.

D. An active member shall pay a membership fee and annual membership dues, and shall be entitled to all the privileges of this club.

Section 3. Privileged Membership.

A. A privileged member is a member of this club, who has been an active member in good standing of one or more Kiwanis clubs for a number of years, not less than ten (10) and who has met such other conditions as were prescribed in these bylaws, and who was elected a privileged member prior to July 31, 1963.

B. No member may be elected a privileged member after July 31, 1963.

C. A privileged member shall pay annual membership dues and shall be entitled to all privileges of this club. He or she shall be excused from conformity to the attendance rule for active, senior, and reserve members.

D. The Board of Directors shall review annually the list of privileged members and shall have authority, for such reasons as seem adequate, to terminate any member's privileged membership.

Section 4. Senior Membership.

A. Any active member of this club who shall have been an active member in good standing of one or more Kiwanis clubs for such number of years, not less than ten (10) and who is unable to meet attendance requirements because of health, business, or other extenuating circumstances and who shall have met such other conditions as may be prescribed by these bylaws, may be elected a senior member upon making written application.

CONSTITUTION AND BYLAWS KIWANIS CLUB OF MEMPHIS

ARTICLE I

NAME AND TERRITORIAL LIMITS

Section 1. This organization shall be known as the Kiwanis Club of Memphis, Tennessee.

Section 2. (Clubs are no longer assigned limits.)

ARTICLE II OBJECTS

Section 1. The objects of this club shall be:
To give primacy to the human and spiritual, rather than to the material, values of life.

To encourage the daily living of the Golden Rule in all human relationships.

To promote the adoption and the application of higher social, business, and professional standards.

To develop, by precept and example, a more intelligent, aggressive, and serviceable citizenship.

To provide, through this club, a practical means to form enduring friendships, to render altruistic service, and to build a better community.

To cooperate in creating and maintaining that sound public opinion and high idealism which make possible the increase of righteousness, justice, patriotism, and good will.

ARTICLE III

MEMBERSHIP AND CLASSIFICATION

Section 1. Classes of Membership.

Membership in this club shall be primarily of the active class as herein defined. There may be four (4) other classes of membership, viz., Privileged, Senior, Life, and Honorary.

TAMM

EXHIBIT

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II

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B. The proposals for membership shall be referred to the Board of Directors.

C. At a meeting of the Board of Directors at which a quorum is present, members shall be elected by a two-thirds (2/3) vote of those present.

D. Upon favorable action by the Board of Directors the new member shall be personally notified concerning the action of the Board and the membership fee shall then be secured.

Section 2. Senior and honorary members shall be elected by a majority vote of the entire Board of Directors (quorum required).

Section 3. Any member may resign from this club provided that all his or her indebtedness to the club has been paid. The resignation shall be submitted in writing to the Board of Directors, and shall become effective when accepted by the Board.

B. A senior member shall be required to attend at least twelve (12) regular club meetings during any administrative year. A senior member shall pay annual membership dues and shall be entitled to all privileges of this club.

C. The Board of Directors shall review annually the list of senior members and shall have authority, for such reasons as seem adequate, to terminate any member's senior membership, or to reinstate, any such member as an active member.

Section 5. Life Membership.

After a member has paid his or her regular dues for a period of thirty-five (35) consecutive years in the Kiwanis Club of Memphis, he or she shall become a Life member at his or her election and shall pay only per capita dues to Kiwanis International and to the District and shall pay for his or her meals on days he or she attends meetings.

Section 6. Honorary Membership.

A. Any person who has performed some distinguished public service and who is not an active, privileged, senior or life member of this club, may be elected as an honorary member of this club for the period of one (1) year and thereafter may be re-elected from year to year.

B. An honorary member shall pay neither membership fee nor annual membership dues, and shall be entitled to all privileges of the club except those of voting and holding office. He or she shall be a paid subscriber to The Kiwanis Magazine.

ARTICLE IV

ADMISSION TO MEMBERSHIP AND RESIGNATION

Section 1. Prospective active members shall be considered for membership under the following procedure:

A. A Proposal for Membership shall be submitted to the Secretary or the Committee on Membership on which shall appear the endorsement of at least two (2) members in good standing.

ARTICLE V DISCIPLINE

Section 1. Any active, privileged or senior member being two (2) months in arrears in the payment of dues and/or financial obligations shall, at the direction of the majority vote of the Board of Directors, (quorum required) stand suspended and shall be so notified in writing by the Secretary. Such member upon payment of arrears and upon making application for reinstatement to the Board of Directors, may by majority vote by the Board of Directors (quorum required) be reinstated within thirty (30) days of the date of aforesaid written notice from the Secretary. In case such member be not so reinstated within thirty (30) days of aforesaid written notice from the Secretary, he shall be dropped from the membership.

ARTICLE VI OFFICERS*

Section 2. The Board of Directors shall review semi-annually the individual active membership of this club based on the following criteria: Regular attendance at club meetings, which is vital to the successful functioning of the club, and individual membership participation in club activities.

A. The Board of Directors will then measure the personal involvement and attendance at regular club meetings of each active member. At the discretion of the Board of Directors any active member who, without excuse, shall fail to regularly attend club meetings or actively participate in the activities of this club, shall, at the direction of a majority vote of the Board of Directors (quorum required) stand suspended and shall be so notified in writing by the club Secretary.

B. Any senior member who, without excuse, shall fail to meet the standards of attendance and participation set forth by the Board of Directors shall, at the direction of a majority vote of the Board of Directors (quorum required) stand suspended and shall be so notified in writing by the Secretary.

C. Such member upon making application for reinstatement to the Board of Directors, may by a majority vote of the Board of Directors (quorum required) be reinstated within thirty (30) days. In case such member shall not be reinstated within thirty (30) days, he or she shall be automatically dropped from membership.

Section 3. Any member charged with conduct unbecoming a Kiwanian, and against whom such charges are sustained, after due and proper hearing before the Board of Directors, may be expelled from membership by a two-thirds (2/3) vote of the Board of Directors present at the meeting. All complaints shall be referred to the Committee on Laws and Regulations, or other appropriate committee, for investigation, report and recommendation before any action is taken on such charges by the Board of Directors.

Section 4. Any person whose membership in this club has been terminated in any manner shall forfeit all interest in any funds or other property belonging to the club and all right to the use of the Kiwanis name, emblem or other insignia.

Section 1. The officers of this club shall be the Immediate Past President, a President, a President-Elect, a Vice President, a Secretary and a Treasurer. If, in any year, the Immediate Past President ceases to be an active, privileged, or senior member of this club, the active, privileged, or senior member who served as President of this club most recently prior to the Immediate Past President shall automatically become Immediate Past President.

Section 2. Each officer shall be an active, privileged, or senior member in good standing. No officers, other than Secretary and Treasurer, shall be combined in one person, and no person shall simultaneously serve as an elected director and an officer.

Section 3. All officers shall enter upon their official duties on the first day of October of each year and shall serve for a term of one (1) year, or until their successors shall be duly elected and qualified.

Section 4. The duties of the officers shall be as follows:

A. The President shall be the chief executive officer of this club and shall preside over all meetings of the club and of the Board of Directors. He or she shall be an ex officio member of all standing and special committees. He or she shall present the views of the club to the district and perform a like function for the district in relation to the club. He or she shall promote the growth of Kiwanis in adjacent territory and shall cooperate with any sponsoring committee of his or her club. He or she shall act as one of the delegates of the club to the district convention. He or she shall perform such other duties as usually pertain to the office of President.

*Note—After their election and before their assumption of office, all officers shall be known and designated by the titles of the offices to which they have respectively been elected, followed by the term "designate".

**ARTICLE VII
BOARD OF DIRECTORS**

B. The President-Elect shall automatically succeed to the Office of President at the next annual meeting following his or her election as President-Elect, and shall attend the divisional training school for club Presidents-Elect. In the absence of the President, he or she shall preside at all meetings of the club and of the Board of Directors, and shall also perform such other duties as usually pertain to that office or as may be assigned him or her by the President or the Board of Directors.

C. The Vice President shall serve in like capacity in the absence of both the President and the President-Elect.

D. The Secretary, when he or she is Secretary-designate, shall attend the divisional training school for club secretaries-elect. He or she shall keep the records of membership, attendance, and membership fees and dues and minutes of the meetings of the club, Board of Directors, and committees. He or she shall present all bills to the Board of Directors for approval. He or she shall collect all funds due the club and shall promptly turn same over to the Treasurer, taking the Treasurer's receipt therefor. He or she shall submit a report to the annual meeting of the club and at such other times as the President or the Board of Directors may require. He or she shall submit to the proper officials and committees, or to the club, all communications received from Kiwanis International and the district. He or she shall submit all official reports required by the International and district organizations.

E. The Treasurer shall receive from the Secretary all funds paid to this club and shall deposit the same in the official depositories and shall disburse same on order of the Board of Directors. All checks shall bear the signatures of any two officers. His or her accounts and books shall at all times be open to the inspection of the President, the Board of Directors, and any authorized auditors. He or she shall make a report at the annual meeting of the club and at such other times as the President or the Board of Directors may require. He or she shall be bonded for \$5,000.00, the premium to be paid out of the club treasury.

Section 1. The Board of Directors shall consist of the officers and twelve (12) directors. The twelve (12) directors shall be comprised of the following: seven (7) duly elected directors plus two (2) carry-over directors from the previous year, plus the unsuccessful candidates for the offices of President-Elect, Vice President, and Secretary. In the event that either or both of the two (2) carry-over directors should be nominated for an office, then the total number of directors to be elected shall be increased accordingly.

Section 2. Each director shall be an active, privileged or senior member in good standing.

Section 3. All directors shall enter upon their official duties on the first day of October of each year, and shall serve for a term of one (1) year, or until their successors shall be duly elected and qualified, except in the case of the two directors receiving the highest number of votes, who shall serve for a term of two (2) years, or until their successors shall be duly elected and qualified.

Section 4. The Board of Directors shall determine the policies and activities of the club, elect and discipline members, approve the budget, approve all bills, take counsel with committees, and have general management of the club.

Section 5. The Board of Directors shall meet at least once each month and at the call of the President. At the discretion of the Board the committee chairmen shall meet with the Board of Directors in joint session.

Section 6. Any past president shall be ineligible to serve on the Board of Directors of the Kiwanis Club of Memphis for five (5) years immediately following his or her term on the Board as Immediate Past President.

VIII

IX

ARTICLE VIII COMMITTEES

Section 1. There shall be the following standing committees:

A. YOUTH SERVICES

Boys Club Liaison
 Girl Scouts
 Little Kiwanis
 Man-For-Boy
 Special Olympics
 Vocational Guidance

B. CITIZENSHIP SERVICES

Agriculture
 Greater Years
 International Relations
 Public and Business Affairs
 Support of Spiritual Aims

C. KIWANIS ADMINISTRATION

Achievement
 Advisory/Past Presidents
 Bulletin—Roster
 Entertainment
 Finance
 Goodwill
 Inter-Club
 Kiwanis Charities, Inc.
 Kiwanis Education
 Laws & Regulations
 Membership
 Personnel
 Program
 Public & Business Affairs
 Public Relations
 Reception—Attendance
 Resolutions
 Sports

D. SPONSORED YOUTH ORGANIZATIONS

Key Clubs

Section 2. Each standing committee shall be composed of three (3) or more members and shall serve for a term of one (1) year, unless otherwise specified by the President, commencing on the first day of October. All committeemen shall be appointed by the President, and be subject to removal by him. Each committee shall be responsible to the President and shall make such reports as he or she may direct.

Section 3. Special committees may be appointed by the President, and they shall perform such duties as may be defined in their creation.

ARTICLE IX DUTIES OF STANDING COMMITTEES

Section 1. The committees on Youth Services shall study, devise, and suggest methods and means to assist boys and girls to adjust themselves to their environment and become adapted to the social, economic, educational, and moral demands which they may encounter. The committees shall recommend the best methods by which this club may assist them, and when these methods have been approved by the Board of Directors, shall seek to carry out such means and methods.

Section 2. The Committee on Circle K Clubs shall devise ways and means to establish Circle K Clubs in the colleges and universities and shall encourage and promote the activities of all Circle K Clubs sponsored by this club.

Section 3. The Committee on Key Clubs shall devise ways and means to establish Key Clubs in the schools and shall encourage and promote the activities of all Key Clubs sponsored by this club.

Section 4. The Committee on Vocational Guidance shall develop ways and means of assisting in the guidance of youth and adults in the selection of proper and suitable vocations.

Section 5. The Committee on Agriculture shall study ways and means to foster closer rural-urban relationships; shall develop knowledge and public support of conservation of our natural resources, such as lands, forests, minerals, and wild life; and shall promote sound agricultural and conservation practices.

Section 6. The Committee on International Relations shall recommend methods of implementing objectives relating to the development of friendship between nations, and the increase in understanding by residents of one country of the way of life, problems, and aspirations of the people of other nations. It shall recommend the methods by which such purposes may be accomplished and, when these methods have been approved by the Board of Directors, shall seek to carry out such methods and programs.

Section 7. The committee on Public and Business Affairs shall have submitted to it all proposals for club activity outside of the Kiwanis organization and shall make recommendations to the Board of Directors on such matters as are referred to it. The Committee shall develop definite working plans for the club's participation in public activities, shall promote its cooperation therein and shall further the objectives of Kiwanis International and the district, the promotion of which is not otherwise provided for.

Section 8. The Committee on Support of Spiritual Aims shall cooperate on broad non-denominational lines with local religious leaders and groups in creating a greater public consciousness of the importance of religious and spiritual values and shall urge each member of this club to support by precept and example the work of his or her own church in his or her own community.

Section 9. The Committee on Achievement in its year of service shall prepare and file with the District Secretary, consistent with rules formulated by the Board of Trustees of Kiwanis International, a report of the club's achievements during the year.

Section 10. The Advisory Committee shall be composed of all active past presidents of the club. They shall counsel with the president and the other officers of the club and shall also render assistance in an advisory manner to the various standing committees of the club. The Chairman of this committee shall be elected by the committee at its first meeting of the year.

Section 11. The Committee on Attendance shall promote a full attendance at all club meetings and shall personally communicate with members whose attendance is unsatisfactory.

Section 12. The Committee on Bulletins shall prepare and publish weekly bulletins of club activities and shall cooperate with all other committees and the Board of Directors by disseminating information in regard to their activities.

Section 13. The Committee on Entertainment shall plan and have charge of the social activities of the club.

Section 14. The Committee on Finance shall prepare a budget of estimated income and expenditures for submission to the Board of Directors and shall submit such other recommendations on finances as may be requested by the Board of Directors.

Section 15. The Committee on Goodwill shall seek to create goodwill among the members of the local club and shall promote more fellowship and friendliness.

Section 16. The Committee on House shall make all arrangements for the place of holding club meetings, checking facilities, seating, menus, decorations, etc.

Section 17. The Committee on Inter-Club Relations and Fellowship shall devise ways and means of developing the spirit of fellowship between this and other Kiwanis clubs and the members thereof.

Section 18. The Committee on Kiwanis Education shall disseminate the true concepts of the Objects, objectives, policies, and ideals of Kiwanis International and shall educate the members as to their opportunities and responsibilities in Kiwanis.

Section 19. The Committee on Laws and Regulations shall have referred to it all proposed amendments to the club bylaws and shall submit its recommendations on these to the Board of Directors before action is taken by this club. The Committee shall also cooperate with the Board of Directors in interpreting the spirit of the club bylaws and in securing the proper observance of all obligations, standards, and practices arising thereunder, including the adjustment of any grievances.

Section 20. The Committee on Membership shall devise ways and means of maintaining an adequate membership of such standards as are provided in these bylaws. The Committee shall consider all proposals for membership and shall submit its recommendations to the Board of Directors. They shall interpret the classification plan of Kiwanis International and shall seek to secure and maintain the proper classification of members in accordance with these bylaws.

Section 21. The Committee on New Club Building shall study the opportunities for introducing Kiwanis into new communities located in the vicinity of this club and shall seek to enlarge the field of Kiwanis service by sponsoring of new clubs in these communities.

Section 22. The Committee on Programs shall arrange a program for every meeting of the club as far in advance as possible, cooperating with the Board of Directors and other committees of the club to the end of diversifying the programs and coordinating them with the club activities.

Section 23. The Committee on Public Relations shall concern itself with the material and the media by which the public shall receive a true knowledge of Kiwanis Objects and ideals, and the programs and achievements of Kiwanis International, the District, and this club.

Section 24. The Committee on Reception shall greet all members as they arrive at meetings and make arrangements for the proper reception and introduction of visiting Kiwanians and other guests.

Section 25. The Committee on Resolutions shall prepare and submit resolutions appropriate for club action to the membership of the club.

Section 26. The Committee on Sports shall promote the club members' participation in sports activities, both within the club and with other organizations.

Section 27. The Christmas Parade Committee shall be co-chaired by the Vice-President and the Vice-President Elect of the Memphis Kiwanis Club and shall operate on an administrative year basis. The Committee shall be responsible for carrying out the club's financial and operational commitment to the annual Kiwanis Memphis Christmas Parade to the extent authorized from time to time by the Board of Directors.

ARTICLE X CLUB MEETINGS

Section 1. This club shall hold a weekly luncheon or dinner meeting on such day and at such time and place as shall be determined by the Board of Directors. It may hold such other meetings as the Board of Directors or membership may desire. The regular weekly meetings shall not be more than one (1) hour and thirty (30) minutes in duration, except on special occasions as approved by the Board of Directors.

Section 2. The annual meeting of this club shall not be held earlier than the first meeting in April and not later than the second meeting in May. The membership of the club shall be given at least two (2) weeks notice of the date and place of the annual meeting. One-third (1/3) of the active, privileged and senior members of the club shall constitute a quorum.

ARTICLE XI
NOMINATIONS AND ELECTION OF OFFICERS

Section 1. The officers and directors, except Treasurer, of the club shall be elected at a regular luncheon meeting to be held no earlier than the first meeting in April and no later than the second meeting in May.

Section 2. All candidates for director of the Kiwanis Club of Memphis shall be nominated by a primary election. At least ten days prior to the annual election a complete list of all members eligible to hold office as director, shall be mailed to each member of the club eligible to vote, together with a blank ballot, which ballot properly filled out shall be returned not later than five days before the annual election, to a committee on elections, consisting of three members of the club elected by the Board of Directors. Each qualified member shall vote for eleven directors in said primary election; and no ballot shall be counted unless the full number of directors to be elected shall be voted thereon.

The Committee on Elections shall collect, receive, and count the said primary ballots and shall certify to the correctness thereof. The names of the twenty-two men and women who receive the highest number of votes in the primary balloting shall be the candidates, and their names shall be placed on the election ballot without consultation with them; and no man or woman so nominated may refuse a place on a ticket, except a past president of the club and any other member who shall have been a candidate in four previous elections, who in case of his or her nomination shall be consulted, and may not be placed on the ballot except by his or her consent.

The twenty-two members receiving the highest number of votes shall then be divided into tickets by placing the names alternately on said tickets in the order of the total votes received by them in said primary election, the person receiving the highest number of votes being placed on one ticket, the person receiving the next highest number on the other ticket, and the person receiving the next highest number on the first mentioned ticket, and so on; but on the ballot in the final election, the names of the nominees shall be placed in alphabetical order and not in relation to the number of votes received in the primary; and in the case any two persons nominated shall receive the same number of votes, their places on the tickets shall be determined alphabetically.

Section 3. The committee on Elections shall assemble at least two days before the day of the election and shall open, tabulate, and count the ballots and divide the nominees into two tickets, herein provided for, whereupon they shall, during the morning of that day, notify the 22 members who are nominated of their nomination and a meeting of the two tickets to be held at least one day before the day of election for the organization of said tickets as herein elsewhere provided.

No announcement of the tickets shall be made to the newspapers or otherwise, and no information shall be divulged with reference to the several candidates before the day of election.

Section 4. The said two tickets so nominated and determined shall then separately organize and nominate the persons from their number who shall be candidates for the President-Elect, the Vice President and the Secretary, and the rest of whom shall run as directors only on their respective tickets, except for the election in the year 1972 when there shall be a candidate for President as well as the above officers.

Section 5. The two tickets so nominated then shall be voted on at the annual meeting, and the voting shall not be cumulative, and only active, privileged, senior, and life members in good standing may vote in either the primary or annual election; and no ballot shall be counted in said annual election unless the full number of officers and directors to be elected shall be voted thereon, and no member shall be required to vote a straight ticket for his or her vote to be counted. Only members in good standing and present at the annual meeting may vote in the general election.

Section 6. The candidates for said offices receiving the highest number of votes shall be declared the officers for the ensuing year. In the event the Treasurer is elected from the club, he or she shall also be a member of the Board.

Section 7. One carry-over director shall participate in the organization of each ticket, the designation of each of said carry-over directors to his or her respective ticket to be determined by the toss of a coin by the president in an open directors' meeting; and the two directors receiving the highest number of votes of the incoming directors, shall hold office for two years.

Section 3. The Board of Directors shall provide for the prompt payment of all dues and other obligations to Kiwanis International and to the district.

Section 4. Delegates to all conventions of Kiwanis International and of the district at which this club is obligated to be represented, shall be nominated by the Board of Directors and elected by the club, at dates sufficiently in advance of such meetings to comply with the bylaws of Kiwanis International and the district bylaws. Each delegate shall have a specific alternate and in the case of a delegate and his alternate both being unable to attend a convention, the alternate for the other delegate automatically becomes the delegate. Provision for the expense of such representation shall be made by the Board of Directors in making the financial budget of the club. The Board of Directors shall also provide for the proper representation at any other International and district meetings of Kiwanis in which this club has the privilege of participation.

ARTICLE XIII OFFICIAL PUBLICATION

Section 1. In conformity with Article XIII of the Constitution of Kiwanis International, the club hereby makes it a condition of membership that each of the active, privileged, senior, life, and honorary members shall become a bona fide paid subscriber to the official publication of Kiwanis International and shall continue as such as long as he or she remains a member. Such subscriptions shall be collected by the club from each member as a part of his or her regular dues, and the same shall be forwarded to the Secretary of Kiwanis International.

Section 2. This club shall act as the agent of its member subscribers to the official publication, and shall enter such subscriptions in its books in a special subscription account, and shall forward the subscription price of the official publication to the Secretary of Kiwanis International.

Section 8. The newly elected officers and directors, within two weeks after the annual election, shall elect a Treasurer for the club, either from members of the new Board of Directors or from the members of the club.

Section 9. In case of a vacancy in the office of President, the President-Elect shall succeed to the office and a successor to the President-Elect shall be elected. In case of a vacancy in the office of President-Elect, a successor shall be elected. In case of a vacancy in the office of the Vice President, the Secretary or a Director, the vacancy shall be filled by the club at a regular meeting upon one (1) week's notice of nomination or nominations by the Board of Directors. In the case of vacancy in the office of Treasurer, the vacancy shall be filled by the Board of Directors.

Section 10. In the event, after his or her election and prior to October first, of disability or inability of an officer-designate or of a director-designate to serve for the term for which he or she was elected, the vacancy shall be filled by the club at a regular meeting, upon one (1) week's notice of nomination or nominations by the Board of Directors-designate.

Section 11. Nothing contained in this article shall be construed as limiting the right to make further nominations from the floor of the meeting.

ARTICLE XII INTERNATIONAL AND DISTRICT OBLIGATION

Section 1. In full recognition of the values of international and district fellowship and cooperation available to this club and its members through its privileges and rights of participation in the government and activities of Kiwanis International and the district with which it is affiliated, it is hereby declared a major policy of this club to exercise fully those privileges and rights and to discharge promptly and fully all obligations imposed upon it by the Constitution and Bylaws of Kiwanis International and by the district bylaws.

Section 2. The Board of Directors shall provide for the prompt review, approval, and forwarding of all reports required or requested by Kiwanis International and by the district.

**ARTICLE XIV
PUBLIC ACTIVITIES**

Section 1. This club shall seek by fair discussions at its meetings and in other ways to keep its members informed on all questions of public importance and any proposed legislation affecting the community, state, or nation, in which the club is located.

Section 2. The club shall have the right and it shall be its duty from time to time, to give expression by proper means to its attitude on such public questions and such proposed legislation, provided no other Kiwanis club is affected by the same.

Section 3. When any other Kiwanis club is affected by any such public questions or such proposed legislation, this club may refer this with favorable or unfavorable recommendation to the Kiwanis district, if only a club or clubs within the district are affected, or to Kiwanis International, if clubs outside the district are affected. After action in such matter by the district and Kiwanis International, respectively, this club may give expression to its attitude, provided that such action is consistent with that of the district or Kiwanis International.

Section 4. No action on any public question or proposed legislation shall be taken by the club until the same first have been submitted to the committee on Public and Business Affairs and the recommendations of that committee have been received and considered by the Board of Directors.

Section 5. This club shall not be used in any way for political purposes, nor shall it, as a club, actively participate in the political candidacy of any person.

XX

**ARTICLE XV
REVENUE**

Section 1. The membership fee shall be \$60.00 except as noted, payable with application, and shall include the dues of the month in which the member is elected.

Section 2. The annual dues of the club shall be \$600.00, payable quarterly in advance, and shall include the cost of the regular weekly luncheons.

Section 3. Revenue from sources other than those defined in this article may be raised as determined by the Board of Directors and approved by a two-thirds (2/3) vote of the active, privileged, senior, and life members present at any regular meeting of this club, provided written notice shall have been given the members at least two (2) weeks prior to the meeting.

Section 4. Monies received from fund raising projects in which the public participates or from members or others for the activities sponsored by this club shall be segregated from the administrative funds of this club and shall be used only for the charitable, educational, religious, and eleemosynary activities of the club.

**ARTICLE XVI
FINANCE**

Section 1. The fiscal year of the club shall begin on October 1st of each year.

Section 2. Not later than the 15th day of October a budget of estimated income and expenditures for the year shall be adopted by the Board of Directors.

Section 3. The club's books of account shall be audited at least once each year. The auditors shall be named by the Board of Directors.

XXI

**ARTICLE XX
RESOLUTIONS REFERRED TO BOARD**

Section 1. Any motion for the expenditure of club funds, or any resolution presented at regular meetings, will automatically be referred to the Board of Directors and lie over until the next regular meeting, to be reported at such meeting with the recommendation of the Board of Directors, provided this rule may be suspended by three-fourths (3/4) vote of the members present at any meeting and the resolution be then acted upon without referring same to the Board of Directors.

UPDATED JULY, 1995

Section 4. The Board of Directors shall determine the official depository or depositories.

Section 5. In case of the inability of persons designated to sign checks to perform their functions, the Board of Directors shall designate those who shall act as substitutes.

**ARTICLE XVII
RULES OF ORDER**

Section 1. Roberts' Rules of Order shall be the parliamentary authority for all matters of procedure not specifically covered by these bylaws.

**ARTICLE XVIII
AMENDMENTS**

Section 1. Any amendment to these bylaws, if in conformity with the Constitution and Bylaws of Kiwanis International, may be adopted by two-thirds (2/3) vote of the active, privileged, senior, and life members present at any meeting of the club, provided written notice of the proposed amendment shall have been given the members at least two (2) weeks prior to the meeting.

**ARTICLE XIX
APPROVAL OF KIWANIS INTERNATIONAL**

Section 1. These bylaws and all amendments or additions shall not be effective unless approved by Kiwanis International.

XXII

XXIII

IN THE CIRCUIT COURT OF TENNESSEE
FOR THE FIFTEENTH JUDICIAL CIRCUIT AT MEMPHIS

RITA HAUN and KENNETH HAUN,
Individually and as wife
and Husband,

Plaintiffs,

VS.

NO. 82401 T.D.

JOHN FREEMAN, Superintendent
of the City of Memphis Board
of Education, and THE CITY OF
MEMPHIS BOARD OF EDUCATION,

Defendants.

OPINION

This case involves the tragic situation of a kindergarten teacher at the A. B. Hill Elementary School being raped in her classroom by an unknown adult assailant shortly after she had dismissed her class on March 31, 1977. The teacher and her husband (hereinafter collectively referred to as "plaintiff") have sued the Board of Education,* essentially claiming that the Board was negligent in failing to provide her with a safe place to work. More specifically, she claims that she was assigned by the school's principal to a relatively isolated classroom on the first floor of the original school building, rather than to another available classroom that was also in the original building but closer to the other three kindergarten classrooms in the adjacent newer building on the school campus. Plaintiff believes that the assault in question would not have occurred if she had been assigned to the other classroom, and contends that this alleged misassignment was the proximate legal cause of her injuries.

Plaintiff's action is subject to and controlled by the Tennessee Governmental Tort Liability Act, T.C.A. 29-20-101 et seq. This Act allows actions against governmental entities for injuries proximately caused by a negligent act or omission of any employee within the scope of his employment, with certain enumerated

*The Complaint as to co-defendant dismissed by Order dated May 13, 1980

Remainder of this Exhibit is
included in the full sets of this
Questionnaire

SUPPLEMENT TO
ANSWER 15 ON
PAGE 9 OF
QUESTIONNAIRE)



Cotton Digest

INTERNATIONAL

Volume XLVI, Number 3

September 15, 1973

(Reg. U. S. Pat. Office)

I wholly disapprove of what you say but will defend to the death your right to say it.—Voltaire.

It Is Very Important That Farmers Deliver Every Bale On Contract

RECENT PRESS RELEASES from the department of agriculture indicate that 122,000 bales of cotton had been sold for export during the 1972-73 marketing year but were undelivered as of August 10, 1973. It was also reported that another 6,100,000 bales have been sold for export during the 1973-74 marketing year (August 1 to July 31) and that 1,600,000 bales have been booked for export during the 1974-75 marketing year.

Exports last year were about 8,500,000 bales and in the preceding season, 1971-72, were 9,220,000 bales.

Thus, we face final export sales this season of around 7,000,000 bales, the trade believes. Can this much cotton be handled through American ports? This is the big question.

If we do ship 7,000,000 and our own mills consume 7,500,000, this offtake of 14,500,000 bales will be about 1,500,000 bales above the latest crop estimate of 12,938,500, which report was issued this week by the USDA in Washington.

It is now estimated that we will have a carryover of 3,500,000 bales next August 1, but if exports do run as high as we have noted, it would appear to us that these carryover predictions will be half a million bales too much. It is a good thing that we do have the carryover or U. S. mills would be in worse despair than they are now. And they are crying daily for export controls to be placed on further sales.

Many in the trade now consider controls inevitable due to the continuing heavy, unprecedented sales. They may come so late that controls will be academic, for foreign buyers will have filled their needs, except for fill-in orders here and there as the season progresses.

As for U. S. mill consumption, it has been steadily downward, and the trend seems to continue downward whether the crop is large or small. Last year, we had a big crop, yet total cotton consumption was only 7,471,000 running bales. This compares with 8,030,000 running bales during the 1971-72 season and 8,000,000 running bales in the 1970-71 season.

While U. S. mills use is declining, world use is expanding. The trade believes this indicates that the day may

farmer may be producing for foreign consumption mainly, instead of for U. S. consumption.

IT IS VERY IMPORTANT to the future of the cotton industry that American farmers deliver every bale of cotton they have contracted to deliver from every acre this year. The trade has sold cotton ahead to world and U. S. mills.

True, the farmers might have received better prices if they had waited to sell their cotton, but there is nothing to be done now. The trade too would have received better prices if the farmers had waited to sell. This is water over the dam.

The farmers can recover some of the profits they might have made by selling ahead at higher prices in the 1974-75 season. But, we would recommend that farmers move slowly, sell only part of their intended plantings and hold the remainder of the acreage for later deals. This way, they can have their cake and eat it too.

But for cotton already contracted for this season, the farmer must deliver if he wants to do business with buyers in the future. The farmer must help insure that merchants will get the cotton they have contracted for—for if the trade doesn't receive every bale for every acre they have bought, there won't be many firms remaining to do business with in the future. It is that simple.

The entire cotton industry needs every member it now has, and, in fact, could use some new buyers as well as new producers in 1974—for it appears that we will need at least another million acres.

Thus, H. Molsen & Company's landmark decision against 15 Tennessee farmers who failed to deliver two seasons ago takes on added importance now. It was the first federal case, and it shows that the farmer must deliver under the law, whether he wants to or not. Most farmers are delivering—and most of them want to deliver. They know the merchant must deliver to the mill or the merchant will be used.

There have been only 142,800 bales ginned in the Lower Rio Grande Valley to September 10 but reports from the Valley say that the farmers are delivering. They are living up to their word whether they like to or not. They also seem to be delivering satisfactorily in the Corpus Christi and

EXHIBIT

5

In Memphis, Tennessee:

Molsen Wins Landmark Decision Against Farmers When Farmers Renege On Acreage Contract

IN A LANDMARK DECISION, H. Molsen & Company, Dallas cotton merchants, won a \$21,750 jury verdict this week (September 4) in a Memphis, Tennessee, federal district court against 15 farmers and a cotton ginner-producer.

The jury ruled that the West Tennessee farmers and ginners were in breach of contract.

The farmers were charged with breaking contracts for the sale of their cotton in order to sell on the open market when the prices were higher later in the harvesting period.

The case was filed in April 1972 and covered transactions on the 1971 crop. The farmers were found guilty of diverting bales that were on contract.

The jury awarded the full amount per bale asked by the Dallas cotton shipping firm, which was the difference in contract price and market price at the time the firm learned of the diversion which forced them to cover the loss in the open market.

The amount awarded the Molsen firm was \$50 per bale, which was the difference between the 23 cents per pound average contract price and 33 cents per pound average cover price.

The defendants were George Flowers & Son, Covington Tennessee, and Wm. E. Cowan, Cowan Brothers, producers and ginners from La Grange, Tennessee.

Individual farmers whom the federal judgment were delivered against were Bynum Leatherwood, Leona Powell, R. D. Daniel, Franklin Farms, William B. Cowan, Jr., Clyde Weatherly, J. J. Smith, B. C. Yoger, Sr., Paul Gatlin, O. D. Maclin, Robert Sparkman, William Gaugh, Joe Harvey, Franklin and C. W. Middlecoff.

Molsen's attorney, Ronald Gilman of Memphis, said the case was the first cotton contract default claim presented to a jury in Tennessee. It is believed to be the first cotton contract case in federal court, although several other cases have been heard in state courts in Texas and California. The case was tried before U. S. District Judge Harry W. Willford.

Mr. Gilman said the 15 farmers contracted to sell their cotton at an average price of 23 cents, but testimony showed they actually delivered only 659 bales from the 1,985 acres under contract, selling much of the remainder of the production at prices ranging up to 33 cents a pound.

In the Molsen case, Mr. Gilman said the West Tennessee farmers contracted in 1971 to sell all of their 1971 cotton crops through George Flowers, III, a Covington, Tennessee, cotton merchant.

Mr. Flowers, in turn contracted to sell the cotton to Molsen through the

Texas firm's Memphis agent, Jim Spurlock of the Delta Cotton Company, Mr. Gilman said.

Heinz Molsen, Jr., of Dallas said this week in Memphis that he felt his firm had received a landmark decision in the entire industry as it was carried to a federal jury verdict—which may be the first such case in the nation. It was tried in federal court due to the fact the principles resided in different states.

Mr. Molsen said that "I feel the verdict should have a substantial bearing on all cotton contract to that time, and it has a very special bearing on this year's contracts, with regard to market prices moving upwards after the contracts were executed.

"I feel especially happy about this decision since last year we paid for large volumes of contracted cotton where the price was much lower at harvest time than when the contracts were initially executed. This means that the farmers received \$2,000,000 to \$3,000,000 additional by contracting prior to the season than they would have received if they had sold in the market during harvest period.

The jury found that Mr. Flowers was merely acting as agent for the 16 farmers, and he was therefore not personally liable for the damages. The jury also found that it was proven that 435 bales had been diverted, and they awarded \$50 per bale damage, or a total of \$21,750, in the historic decision.

WASHINGTON NEWS

By AMERICAN COTTON SHIPPERS ASSOCIATION
August 29, 1973

At a meeting in Dallas, Texas on Friday, August 24, 1973, the executive committee of the National Cotton Council and the Producer Steering Committee met at the request of the American Textile Manufacturers Institute to discuss the current cotton supply situation in light of the strong export demand, spiraling prices, and the general problems concerning the present cotton textile situation.

No determinations were made at this meeting; however, a force was appointed to discuss alternatives that the Council directors could consider at the Board Meeting in Memphis next week. The task force will be headed by C. R. Sayre of Greenwood, Mississippi, a cooperative representative.

The other members are: W. D. Lawson, III, of Gastonia, North Carolina, President of Cotton Council International, former president of ACSA and a merchant director of the National Cotton Council; Gordon McCahe of Greenville, South Carolina, Vice President of J. P. Stevens and a spinner director of the National Cotton Council; and L. Don Anderson of Crosbyton, Texas, past president of the Plains Cotton Growers Association and a producer director of the National Cotton Council.

It is understood that the task force will consider the remedies available including the operation of Section 22

of the Agricultural Adjustment Act of 1933 (Saturday authority available for reporting raw upland cotton), licensing of cotton exports, export controls, and some questions concerning the trading of cotton futures on the New York Cotton Exchange.

The merchant directors to the National Cotton Council are W. D. Lawson, III; William Tharp of Las Cruces, New Mexico; A. Starke Taylor, Jr. of Dallas, Texas; Rudi E. Scheidt and W. B. Dunavant, Jr. of Memphis, Tennessee.

Sec. Butz Critiques ATMI

Reacting to intense pressure generated by U. S. textile interests, Secretary Butz was strongly critical of efforts to seek restrictions on U. S. cotton exports. Secretary Butz told the Washington Post the textile people asking for controls are exactly like the wheat millers: they don't know how to operate in a free price economy. They say: "We want you to protect our supply; when they really mean 'we want lower prices for raw product.'"

The story further related that: "In crisp language, Butz said that if American textile manufacturers appeal for export controls on the basis of assuring cheaper prices for consumers, he will suggest they propose removal of 'voluntary' import quotas on competing items from the Far East.

The Department, in a formal statement issued yesterday by Assistant Secretary Curroll G. Hightower, said there would be no export controls on cotton "short of some unforeseen disaster to this year's growing crops."

MEALEY'S LITIGATION REPORTS

INSURANCE INSOLVENCY

TWICE MONTHLY BY MEALEY PUBLICATIONS, INC. • P.O. BOX 446 • WAYNE, PA 19087-0446 • (610) 688-6566

Volume 7, Issue #18

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are represented by Stuart Bompey and Ira Rosenstein of Orrick, Herrington & Sutcliffe in New York and Charles S. Mishkind of Miller, Canfield, Paddock & Stone in Grand Rapids, Mich. Counsel representing MAP are Frances J. Menton Jr. and Mary Gerdes of Willkie, Farr & Gallagher in New York and Thomas F. Korerke of Boyden, Waddell, Timmons & Dilley in Grand Rapids, Mich. ■

Avoidance Period For Preferential Transfers Only For Liquidations, Tennessee Court Holds

NASHVILLE, Tenn. — The phrase "the petition" in the portion of the Tennessee statute providing a four-month avoidance period for preferential transfers refers only to petitions for liquidation, a state appeals court held Feb. 7.

Therefore, an \$800,000 transfer made within four months of a petition for rehabilitation, but more than seven months before a petition for liquidation, is not a voidable preference, according to the court (United Physicians Insurance Risk Retention Group, et al. v. United American Bank of Memphis, No. 01-A-01-9503-CH-00096, Tenn. Ct. of App., Middle Sec.).

(Text of Opinion in Section C. Mealey's Document #10-960222-103.)

The appeals court thus affirmed the dismissal of a petition of the Tennessee Commissioner of Commerce and Insurance as liquidator of United Physicians Insurance Risk Retention Group (UPI) to avoid an \$800,000 transfer made to United American Bank of Memphis to pay off an outstanding bank loan.

UPI was a captive insurance company established in 1989 by United Physicians Association Inc. to provide medical malpractice insurance to its members. Statutory capitalization requirements were satisfied first by \$1 million in letters of

credit. Two years later, United Physicians borrowed \$1 million from United American Bank of Memphis and deposited the funds with the insurance department to replace the letters of credit. Subsequently, the balance of the loan was reduced to \$800,000.

The transfer occurred in December 1991 as part of a reinsurance transaction, according to the court. United Physicians caused \$2.9 million to be paid from the "L.I.O.N. Trust Account for U.P.I." to Anchorage Fire and Casualty Insurance Co. Anchorage used part of the funds to retire certain UPI debts, including the \$800,000 bank loan. The court noted that the parties do not agree that the funds used to pay off the loan were UPI's funds and the court assumed the truth of the allegation for purposes of the motion to dismiss.

According to the court, UPI's 1991 annual statement showed it to be insolvent by \$764,102. UPI was placed under administrative supervision in March 1992, ordered into rehabilitation in April 1992 and ordered into liquidation in July 1992.

In June 1994 the commissioner filed a complaint seeking to avoid Anchorage's payment to the bank as a voidable preference. The bank successfully moved to dismiss the complaint because the payment did not occur within four months of the filing of the petition for liquidation as set out in Tenn. Code Ann. Section 56-9-317(a)(2)(B) which provides that a "preference may be avoided by the liquidator if . . . [t]he transfer was made within four (4) months before the filing of the petition," the court noted.

Therefore, the court held, the question of whether a preferential transfer entered into more than four months before the filing of the petition for liquidation is voidable when made within four months before the filing of a rehabilitation petition centers on what is meant by "petition."

In ruling, the court considered the phrase "the petition" in three contexts.

In the context of the language of the section itself, the court held that the term "preference" is "framed chiefly in the context of a liquidation proceeding" and as stated in Section 56-9-317(a)(2) "can only refer to a petition for liquidation."

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Next, considering the phrase in the context of the Insurers Rehabilitation and Liquidation Act, the court found that the act's provisions allowing both liquidators and rehabilitators to set aside fraudulent conveyances "demonstrate that the legislature understood the difference between rehabilitation and liquidation proceedings and that it intentionally drafted Tenn. Code Ann. § 56-9-317(a)(2)(B) to exclude petitions for rehabilitation."

Finally, considering the term in the context of the purposes of the act, the court noted that the purpose of rehabilitation is to preserve a company as an ongoing business. "Since officer and employees of on-going insurance companies do not have the authority to avoid preferences, rehabilitators likewise do not have this authority," the court held.

Further, the court noted, "A preferential transaction is one that circumvents the statutory priority provisions thereby permitting a creditor to obtain more than its fair share of an insurance company's estate upon dissolution. Since creditors of an on-going insurance company have no claims against the insurance company's 'estate,' rehabilitators need not concern themselves with preferences or with the priority of creditors' claims." Therefore, the court found, "preferential transfers, by their very nature, have no relevance in a rehabilitation proceeding."

Concluding, the court noted that the first mention of the power to avoid preferences appears in the delineation of a liquidator's duties. "It is only in the context of a liquidation proceeding that the avoidance of preferences makes sense," the court held.

Judge William C. Koch wrote the court's opinion, joined by Judges Samuel L. Lewis and Ben H. Cantrell.

The liquidator is represented by William B. Hubbard of Weed, Hubbard, Berry & Doughty in Nashville, Tenn. Counsel for the bank are Ronald Lee Gilman of Farris, Mathews, Gilman, Branan & Hellen of Memphis, Tenn., and John Knox Walkup of Gullett, Sanford, Robinson & Martin in Nashville. ■

Missouri Association Liable For Damages, Attorney Fees

ST. LOUIS, Mo. — The Missouri Insurance Guaranty Association (MIGA) is liable for actual damages up to the statutory coverage limit plus attorney fees incurred by an insured of an insolvent carrier in defending a discrimination claim, a state appeals court here has held, affirming a summary judgment (Missouri Property & Casualty Insurance Guaranty Association v. Petrolite Corp., No. 68061, Mo. Ct. of App., Eastern Dist.).

(Text of Opinion in Section D. Mealey's Document #10-960222-104.)

The court held that the policy of the insolvent insurer provided coverage for an age discrimination claim, that MIGA was obligated to provide a defense and that MIGA's statutory coverage limit did not apply to attorney fees incurred in defending the insured after MIGA withdrew its defense in the employment discrimination case.

Defendant Petrolite Corp. was insured under a commercial catastrophe policy issued by now-insolvent Integrity Insurance Co. providing coverage of \$5 million per occurrence, \$5 million annual aggregate, with a retained limit of \$10,000.

Underlying Litigation

In October 1985, former Petrolite employee William M. Zachary filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC) claiming he was discharged by Petrolite because of his race. The EEOC filed a complaint against Petrolite in September 1988 in the U.S. District Court for the District of California.

MIGA provided Petrolite with a defense in the place of the insolvent insurer and settled by paying Zachary \$11,000. MIGA then asked Petrolite to pay it the \$10,000 retained limit under the Integrity policy, but Petrolite refused.

AO-10 (w)
Rev. 3/96

FINANCIAL DISCLOSURE REPORT

Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting <i>(Last name, first, middle initial)</i> Gilman, Ronald L.	2. Court or Organization U. S. Court of Appeals, 6 Cir.	3. Date of Report 07/17/1997
4. Title <i>(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</i> U. S. Circuit Judge Nominee	5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date <u>07/16/1997</u> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period 01/01/1996 to 06/30/1997
7. Chambers or Office Address One Commerce Square #2000 Memphis, TN. 38103		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____
<i>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 the last page.</i>		

I. POSITIONS *(Reporting individual only; see pp 9-13 of Instructions)*

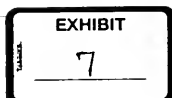
POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
¹ Member	Farris, Mathews, Gilman, Branam, & Hellen, P.L.C
² Vice President	Association of Attorney-Mediators, West Tn. Chap
³ Board Member	Boy Scouts of America, Chickasaw Council

II. AGREEMENTS *(Reporting individual only; see pp. 14-17 of Instructions.)*

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
¹ 1997	Farris, Mathews, et al - buy out of partnership interest within
²	90 days of withdrawal; 401 (k) plan interest will be transferred
³	to an IRA

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp 18-25 of Instructions.)*

DATE	PARTIES AND TERMS	GROSS INCOME <i>(yours, not spouse's)</i>
<input type="checkbox"/> NONE (No reportable non-investment income.)		
¹ 1995	Farris, Mathews, et al - member	\$ 251,597.00
² 1996	Farris, Mathews, et al - member	\$ 231,635.00
³ 1996	University of Memphis School of Law - adjunct prof	\$ 1,950.00
⁴ June 97	Farris, Mathews, et al - member	\$ 86,640.00
⁵ June 97	University of Memphis School of Law - adjunct prof	\$ 1,950.00



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Gilman, Ronald L.	Date of Report 07/17/1997
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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. 26-29 of Instructions.)

	SOURCE	DESCRIPTION
<input type="checkbox"/>	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. 30-33 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
<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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

* VAL CODES J = \$15,000 or less K = \$15,001-\$50,000 L = \$50,001 to \$100,000 M = \$100,001-\$250,000 N = \$250,001-\$500,000
 O = \$500,001-\$1,000,000 P1 = \$1,000,001-\$5,000,000 P2 = \$5,000,001-\$25,000,000 P3 = \$25,000,001-\$50,000,000 P4 = \$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Gilman, Ronald L.	Date of Report 07/17/1997
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VII. Page 1 INVESTMENTS and TRUSTS - income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A Description of Assets <i>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. Place "(X)" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
					If not exempt from disclosure				
	(1) Amt. Code (A-H)	(2) Type (e.g. dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (no reportable income, assets, or transactions)									
1					Exempt				
2 Am. Cent. Int'l Disc. (J)	A	Dividend	K	T					
3 Am. Cent. Int'l Disc. 401(k)	C	Dividend	M	T					
4 Am. Cent. Pr. Capital Res. (J)	C	Dividend							
5 Evergreen Tax Ex (J)	B	Dividend	K	T					
6 Fidelity Divsfd. Int'l (J)	A	Dividend	N	T					
7 Fidelity Divsfd. Int'l IRA	A	Dividend	L	T					
8 Fidelity Divsfd. Int'l IRA (S)	A	Dividend	K	T					
9 Fidelity Real Estate (J)	D	Dividend	N	T					
10 Fidelity Sel. Am. Gold (J)	A	Dividend							
11 Fidelity Sel. Natural Gas IRA	B	Dividend							
12 Fidelity Sel. Natural Gas IRA (S)	B	Dividend							
13 Fidelity Sel. Prec. Metals (J)	A	Dividend							
14 Fidelity Sel. Prec. Metals IRA	A	Dividend							
15 Fidelity Sel. Prec. Metals IRA (S)	A	Dividend							
16 Fidelity SE Asia (J)	A	Dividend							
17 Fidelity Spar. Muni M. (J)	A	Dividend							
1 Inc/Gain Codes A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
2 Val Codes J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Gilman, Ronald L.	Date of Report 07/17/1997
	- income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions.)	

VII. Page 2 INVESTMENTS and TRUSTS

A. Description of Assets <i>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</i> <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (no reportable income, assets, or transactions)									
18 MFS Cash Res. 401(k)	A	Dividend							
19 MFS Gold & Nat. Res. 401(k)	A	Dividend							
20 Janus Overseas (J)	A	Dividend	L	T					
21 Lindner Bulwark (J)	C	Dividend	M	T					
22 R-S Contrarian (J)	D	Dividend	N	T					
23 T. Rowe Price Muni. M. (J)	A	Dividend							
24 Vanguard Energy (J)	B	Dividend							
25 Vanguard Gold & P. M. (J)	B	Dividend							
26 Vanguard Int'l Geo. (J)	A	Dividend	M	T					
27 Farris, Mathews, et al	B	Interest	K	D					
28 Gulf Housing L.P.	A	Dividend	L	W					
29 Locke Rd. Farms in Sh. Co.	A	Interest							
30 Pasture land in Sh. Co.	A	Rent	M	W					
31 NBC (J acct.)	A	Interest	J	T					
32 Mort. note; C. Mednikow	D	Interest	L	T					
1 Inc/Gain Codes: A=\$1,000 or less (Col B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000					
2 Val Codes: J=\$15,000 or less (Col C1, D3) Q=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal (Col C2) U=Book Value	R=Cust (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market						

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gilman, Ronald L.	07/17/1997

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of report.)

NONE (No additional information or explanations.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gilman, Ronald L.	07/17/1997

SECTION HEADING. (Indicate part of report.)

SECTION 1. POSITIONS (cont'd.)

Li. Position Name of Organization/Entity

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4 Board Member	Capital Case Resource Center of Tennessee (1995)
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FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gilman, Ronald L.	07/17/1997

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. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Ronald L. Gilman Date 7/17/97

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. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
 Administrative Office of the United States Courts
 One Columbus Circle, N.E.
 Suite 2-301
 Washington, D.C. 20544

FINANCIAL STATEMENT

Ronald Lee Gilman
Betsy D. Gilman

June 30, 1997

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	18,000	Notes payable to banks—secured	-
U.S. Government securities—add schedule	-	Notes payable to banks—unsecured	-
Listed securities—add schedule	1,788,000	Notes payable to relatives	-
Unlisted securities—add schedule	62,000	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	387,000	Chattel mortgages and other liens payable	-
Real estate mortgages receivable	61,000	Other debts—itemize:	-
Autos and other personal property	75,000		
Cash value—life insurance	39,000		
Other assets—itemize:			
Law firm buy-out value	42,000		
		Total Liabilities	0
		Net Worth	2,472,000
Total Assets	2,472,000	Total liabilities and net worth	2,472,000
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosmaker or guarantor	25,000	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	-		

EXHIBIT

8

Ronald Lee Gilman and Betsy D. Gilman June 30, 1997 NET WORTH SCHEDULE

Listed Securities

American Century Mutual Fund	133,000
Evergreen Mutual Fund	43,000
Fidelity Mutual Funds	688,000
Janus Mutual Fund	60,000
Lindner Mutual Fund	181,000
Robertson-Stephens Mutual Fund	487,000
Vanguard Mutual Fund	<u>196,000</u>
Total	1,788,000

Unlisted Securities

Gulf Housing Limited Partnership	62,000
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Real Estate Owned

Residence in Memphis, TN	222,000
30 Acres in Shelby County, TN (undivided % interest)	<u>165,000</u>
	387,000

UNITED STATES SENATE
 COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Sonia Sotomayor -- October 1983 to the Present.

Sonia Sotomayor de Noonan, Sonia Maria Sotomayor de Noonan, or Sonia Noonan, Married Names -- August 1976 to October 1983. As part of my divorce decree, I resumed my maiden name without my middle name.

Sonia Maria Sotomayor -- Birth to Marriage, August 1976.

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

RESIDENCE:

New York, New York

OFFICE:

**U.S. Courthouse
 500 Pearl Street, Room 1340
 New York, New York 10007**

3. Date and place of birth.

**June 25, 1954
 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).

Divorced since October 1983. Engaged to be married to Peter White, President of Commercial Residential and Industrial Construction Corporation, 656 Central Park Avenue, Yonkers, New York 10704.

Sotomayor Senate Questionnaire

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

<u>SCHOOL</u>	<u>DEGREE</u>	<u>DATES ATTENDED</u>	<u>GRADUATION</u>
Yale Law School	J.D.	1976 - 1979	June 1979
Princeton University	A.B., <i>Summa Cum Laude</i>	1972 - 1976	June 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.

<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>DATES OF ASSOCIATION</u>	<u>POSITION</u>
United States District Court - Southern District of New York	U.S. Courthouse 500 Pearl Street New York, NY 10007	10/92 to present	Judge
Pavia & Harcourt	600 Madison Ave. New York, NY 10022	1/88 to 10/92 4/84 to 12/87	Partner Associate
New York County District Attorney's Office	1 Hogan Place New York, NY 10013	8/79 to 3/84	Assistant District Attorney in Trial Bureau 50
Sotomayor & Associates	10 3rd Street Brooklyn, NY 11231	1983 - 1986	Counseling and consulting work for family and friends
Yale Law School Mimeo Room	127 Wall Street New Haven, CT 06520	9/78 to 5/79	Sales person
Paul, Weiss, Rifkind Wharton & Garrison	1285 Avenue of the Americas New York, NY 10019	6/78 to 8/78	Summer Associate

Sotomayor Senate Questionnaire

The Graduate, Professional Student Center	306 York Street New Haven, CT 06520	9/77 to 5/78	Sales person
Office of the General Counsel, Yale University	Woodbridge Hall New Haven, CT 06520	6/77 to 9/77	Summer Intern
The Equitable Life Assurance Society of the United States	1285 Avenue of the Americas New York, NY 10019	6/76 to 8/76	Summer Clerk
New York City Campaign Finance	40 Rector Street New York, NY 10006	1988 to 10/92	Member, Board of Directors
State of New York Mortgage Agency	260 Madison Avenue New York, NY 10016	1987 to 10/92	Member, Board of Directors
Puerto Rican Legal Defense & Education Fund	99 Hudson Street New York, NY 10013	1980 to 10/92	Member, Board of Directors
Maternity Center Association	48 East 92nd Street New York, NY 10128	1985 - 1986	Member, 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.

I received financial assistance in the form of scholarships during my four years at Princeton University and my three years at Yale Law School. I graduated *summa cum laude*, Phi Beta Kappa, from Princeton. Princeton awarded me, as a graduating student co-winner, the M. Taylor Senior Pyne Prize, for scholastic excellence and service to the University. My senior thesis work received an honorable mention from the University's History Department.

While at law school, I served as an Editor of the Yale Law Journal and Managing Editor of the Yale Studies in World Public Order. I was also a semi-finalist in the Barrister's Union competition, a mock trial presentation.

In reverse chronological order, I have received the following awards:

**Secretary of State of Puerto Rico
July 4, 1996
Award as Distinguished Woman in the Field of Jurisprudence**

**Latino American Law Student Association
of Hofstra University School of Law
March 15, 1996
Award in Recognition of Outstanding Achievement
and Dedication to the Latino Community**

**District Attorney - New York County
January 17, 1995
Award for Outstanding and Dedicated Service
to the People of New York County from 8-13-79 to 3-16-84**

**National Puerto Rican Coalition, Inc.
October 20, 1994
Lifetime Achievement Award**

**National Conference of Puerto Rican Woman
New York City Chapter
March 24, 1994
Certificate of Excellence in Grateful Recognition of
Outstanding Achievements and Contributions to the Community**

**Cardinal Spellman High School
Honors Night 1993
Excellence with a Heart Medal**

**Hispanic National Bar Association
Law Student Division
September 25, 1993
Lifetime Achievement Award**

**Hispanic National Bar Association
September 24, 1993
Award for Commitment to the Preservation of Civil
and Constitutional Rights for all Americans**

**Bronx Community College
of the City University of New York
Paralegal Studies
June 17, 1993
Human Rights Award for Service to Humanity**

**John Jay College of Criminal Justice
May 27, 1993
Claude E. Hawley Medal for Scholarship and Service**

**The Puerto Rican Bar Association, Inc.
1993
Emilio Nunez Award for Judicial Service**

9. **Bar Association:** 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.

**Member, Budget Committee of the Southern District of New York
("S.D.N.Y."), 1996 to present.**

Member, Pro Se Committee of the S.D.N.Y., 1996 to present.

Member, Puerto Rican Bar Association, 1994 to present.

**Honorary Member, Public Service Committee of the Federal Bar Council,
1994 to the present.**

**Member, Second Circuit Task Force on Gender, Racial, & Ethnic Fairness,
1993 to present (Preliminary Draft Report Attached).**

**Member, Committee on Rules of Practice and Procedure of the S.D.N.Y.,
1993 to present.**

Member, Grievance Committee of the S.D.N.Y., 1992 to present.

Sotomayor Senate Questionnaire

Member, Hispanic National Bar Association, 1992 to present.

Member, American Bar Association, 1980 to present.

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.

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 lapsed membership. Give the same information for administrative bodies which require special admission to practice.

United States District Court, Eastern District of New York -- March 30, 1984.

United States District Court, Southern District of New York -- March 27, 1984.

New York -- First Department -- April 7, 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.

Note, Statehood and the Equal Footing Doctrine: The Case for Puerto Rican Seabed Rights, 88 Yale L.J. 825 (1979) (copy attached).

Sonia Sotomayor & Nicole A. Gordon, Returning Majesty To The Law and Politics: A Modern Approach, 30 Suffolk U.L. Rev. 35 (1996) (copy attached).

The speeches I have given, in reverse chronological order, are as follows:

Sotomayor Senate Questionnaire

Sonia Sotomayor, *The Genesis and Need of an Ethnic Identity*, Keynote Speech at Princeton University's Latino Heritage Month Celebration (Nov. 7, 1996).

Sonia Sotomayor, *El Orgullo y La Responsabilidad de Ser Latino y Latina*, Keynote Speech for the National Board of Governor's Reception of the Hispanic National Bar Association held at the Association of the Bar of the City of New York (May 17, 1996).

Sonia Sotomayor, *El Orgullo y La Responsabilidad de Ser Latino y Latina*, Speech at the Third Annual Awards Banquet and Dinner Dance for the Latino and Latina American Law Students Association of Hofstra University School of Law (Mar. 15, 1996).

Sonia Sotomayor, Hogan-Morgenthau Award Address (Jan. 17, 1995).

Sonia Sotomayor, *A Judge's Guide to More Effective Advocacy*, Keynote Speech at the 40th National Law Review Conference (Mar. 19, 1994).

Sonia Sotomayor, *Women in the Judiciary*, Panel Presentation at the 40th National Conference of Law Reviews (Mar. 17, 1994).

Sonia Sotomayor, *Doing What's Right: Ethical Questions for Private Practitioners Who Have Done or Will Do Public Service*, Presiskel/Silverman Speech at the Yale Law School (Nov. 12, 1993).

The drafts of these speeches are attached. I am unaware of any press reports about any of my speeches. I am aware of one press report of a panel presentation of which I was member, Edward A. Adams, *Women Litigators Discuss Battling Bias in Courtroom*, N.Y. Law Journal, April 2, 1993, at 1. This press report is also attached.

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

Good. Please note, I am a juvenile diabetic (insulin dependent since age 7). My condition is permanent and subject to continuing treatment. It does not impair my work or personal life. My last physical examination was January 1997.

Sotomayor Senate Questionnaire

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

Appointed by President George W. Bush as a United States District Court Judge for the Southern District of New York. I commenced service on October 2, 1992. The United States District Court for the Southern District of New York includes the counties of the Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan, and Westchester, and, concurrently with the Eastern District of New York, the waters within the Eastern District. The jurisdiction of United States District Courts is limited to those matters permitted by Article III, Section 2 of the United States Constitution.

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 criticisms 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 following, in reverse chronological order, are ten of my most significant opinions, with citations.

1. United States v. The Spy Factory, Inc., 951 F. Supp. 450 (S.D.N.Y. 1997).
2. Krueger Int'l v. Nightingale, Inc., 915 F. Supp. 595 (S.D.N.Y. 1996).
3. United States v. Lech, 895 F. Supp. 586 (S.D.N.Y. 1995).
4. Refac Int'l, Ltd. v. Lotus Development Corp., 887 F. Supp. 539 (S.D.N.Y. 1995), aff'd, 81 F.3d 1576 (Fed. Cir. 1996).
5. Silverman v. Major League Baseball Player Relations Committee, 880 F. Supp. 246 (S.D.N.Y.), aff'd, 67 F.3d 1054 (2d Cir. 1995).
6. Modeste v. Local 1199, Drug, Hospital & Health Care Employees Union, 850 F. Supp. 1156 (S.D.N.Y.), aff'd, 38 F.3d 626 (1994).
7. United States v. Hendrickson, 26 F.3d 321 (2d Cir. 1994) (sitting by designation).

Sotomayor Senate Questionnaire

8. Campos v. Coughlin, 854 F. Supp. 194 (S.D.N.Y. 1994).
9. Azurite Corp., Ltd. v. Amster & Co., 844 F. Supp. 929 (S.D.N.Y. 1994), aff'd, 52 F.3d 15 (2d. Cir. 1995).
10. Flamer v. City of White Plains, 841 F. Supp. 1365 (S.D.N.Y. 1993).

(2) The following, in reverse chronological order, is a short summary of and citations for all appellate opinions where my decisions were reversed or where my judgments were affirmed with significant criticisms of my substantive or procedural rulings.

1. Hellenic American Neighborhood Action Committee v. City of New York, 933 F. Supp. 286 (S.D.N.Y.), rev'd, 101 F.3d 877 (2d Cir. 1996).

I granted a preliminary injunction on behalf of a contractor which alleged that it was barred from city procurements in violation of its due process rights under the Fourteenth Amendment. The Second Circuit reversed without addressing whether the City's alleged misconduct deprived plaintiff of protected property and liberty interests. The Court reasoned that even if there was such a deprivation, there was no failure of due process because there was an adequate remedy available to the contractor under state law.

2. Aurora Maritime Co., Ltd. v. Abdullah Mohamed Fahem & Co., 890 F. Supp. 322 (S.D.N.Y. 1995), aff'd on other grounds, 85 F.3d 44 (2d Cir. 1996).

The Second Circuit affirmed my decision denying a bank's motion to vacate various Supplemental Admiralty Rule B attachments of plaintiff's bank account. I held that "because plaintiffs obtained Rule B attachments before [the bank] exercised its set-off rights . . . plaintiffs gained a limited property interest under federal law that cannot be defeated by a subsequently executed state law set-off right." Although upholding my ruling, the Second Circuit disagreed with my conclusion "that [the bank's] set-off right and appellees' Rule B attachments d[id] not conflict." Instead, the Second Circuit reached the constitutional issue and found that the dismissal was proper because federal law preempted the bank's right, under Section 151 of state law, to the funds in the disputed account.

3. European American Bank v. Benedict, 1995 WL 422089 (S.D.N.Y. 1995), vacated, 90 F.3d 50 (2d Cir. 1996).

I affirmed a Bankruptcy Court decision rescinding its prior order which had extended the time period for a creditor to file a dischargeability complaint. I reasoned that the Bankruptcy Court did not have the discretion, under the applicable statute of limitations, to extend the time for filing a complaint, and that the Bankruptcy Court was therefore correct when it reversed its initial decision to do so. Recognizing a split of authority on the issue, the Second Circuit determined that the applicable limitations period under the Federal Bankruptcy Rules is not jurisdictional, and that it is therefore subject to waiver, estoppel, and equitable tolling. The Court proceeded to enforce the Bankruptcy Court's initial decision to extend the period for filing, because the debtor had waived its right to object to the extension by failing to raise that objection prior to the expiration of the statutory deadline.

4. Bernard v. Las Americas Communications, Inc., (no written opinion), aff'd in part, vacated in part, 84 F.3d 103 (2d Cir. 1996).

Pursuant to a jury verdict, I entered judgment in favor of plaintiff, an attorney, seeking legal fees in connection with his representation of defendant in proceedings before the Federal Communications Commission. Applying Washington, D.C. law, the Second Circuit approved of my jury instructions on the issues of proximate causation and damages, but found error with respect to my instruction on materiality. Specifically, I had instructed that a material breach "defeats the purpose of [an] entire transaction"; the Second Circuit held that D.C. law requires only that defendant prove that he received "something substantially less or different from that for which he bargained." On remand, a jury again found for plaintiff, and judgment was entered accordingly.

5. **Bolt Electric, Inc. v. City of New York**, 1994 WL 97048 (S.D.N.Y. 1994), **rev'd**, 53 F.3d 465 (2d Cir. 1995).

I granted a motion to dismiss on behalf of the City of New York (the "City") in a breach of contract action brought by plaintiff Bolt Electric, Inc. ("Bolt"). I found that because the City had undertaken to pay Bolt for general contracting services pursuant to a letter which was not filed and endorsed by the City's Comptroller, as required under New York's Administrative Code, the contract was unenforceable. The Second Circuit reversed, reasoning that compliance with the endorsement provision of the Administrative Code was not a mandatory precondition to the formation of a valid contract. In the alternative, the Court reasoned that, even if the contract was executed without proper authority, it was enforceable because the City had funds available for performance.

6. **Runquist v. Delta Capital Management, L.P.**, 1994 WL 62965 (S.D.N.Y.), **rev'd**, 48 F.3d 1212 (2d Cir. 1994).

The Second Circuit reversed a decision in which I adopted a Magistrate Judge's recommendation that plaintiff's claims of securities fraud be dismissed. Before the Magistrate Judge, plaintiff failed to file a timely opposition to defendant's motion for summary judgment, and subsequently filed an affidavit which the Magistrate Judge found insufficient to raise a triable issue of fact as to the element of reliance in plaintiff's fraud claim. The Second Circuit found, however, that the affidavit was sufficient to raise an issue of material fact, and that it was error for me to have dismissed plaintiff's remaining claims on the basis of his attorney's repeated noncompliance with applicable filing procedures and deadlines.

(3) The following, in reverse chronological order, are citations for my significant opinions on federal or state constitutional issues, together with citations to appellate court rulings on such opinions.

1. **Estate of Joseph Re v. Kornstein, Veisz & Wexler**, 958 F. Supp. 907 (S.D.N.Y. 1997).

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2. United States v. The Spy Factory et al., 951 F. Supp. 450 (S.D.N.Y. 1997).
3. National Helicopter Corp. of America v. City of New York, 952 F. Supp. 1011 (S.D.N.Y. 1997).
4. United States v. Ni Fa Yi, 951 F. Supp. 42 (S.D.N.Y. 1997).
5. Gelb v. Board of Elections, 950 F. Supp. 82 (S.D.N.Y. 1996).
6. United States of America, Louis Menchaca, 96 Civ. 5305, decision unpublished, read into the record on August 26, 1996.
7. Hellenic American Neighborhood Action Committee v. City of New York, 933 F. Supp. 286 (S.D.N.Y. 1996), rev'd, 101 F.3d 877 (2d Cir. 1996).
8. In re St. Johnsbury Trucking Co., Inc., 191 B.R. 22 (S.D.N.Y. 1996); 199 B.R. 84 (S.D.N.Y. 1996).
9. United States v. Jimenez, 921 F. Supp. 1054 (S.D.N.Y. 1995).
10. Lee v. Coughlin, 902 F. Supp. 424 (S.D.N.Y. 1995), reconsideration granted, 914 F. Supp. 1004 (S.D.N.Y. 1996).
11. Ortiz v. United States, 1995 WL 130516 (S.D.N.Y. 1995), aff'd, 104 F.3d 349 (2d Cir. 1996).
12. Senape v. Constantino, 1995 WL 29502 (S.D.N.Y. 1995), aff'd, 99 F.3d 401 (2d Cir. 1995).
13. Clapp v. LeBoeuf, Lamb, Leiby & MacRae, 862 F. Supp. 1050 (S.D.N.Y. 1994), aff'd, 54 F.3d 765 (2d Cir.), cert. denied, 116 S. Ct. 380 (1995).
14. Campos v. Coughlin, 854 F. Supp. 194 (S.D.N.Y. 1994) (cited with approval in Jolly v. Coughlin, 76 F.3d 468 (2d Cir. 1996)).

15. Flamer v. City of White Plains, 841 F. Supp. 1365 (S.D.N.Y. 1993).

16. United States v. Castellanos, 820 F. Supp. 80 (S.D.N.Y. 1993).

Copies of opinions not officially published are 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.

1988 to 1992 – Board of Directors, New York City Campaign Finance Board, appointed by the Mayor.

1987 to 1992 – Board of Directors, State of New York Mortgage Agency, appointed by the Governor.

1979 to 1984 – Assistant District Attorney, New York County, appointed by the District Attorney.

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;

Yes, with Sotomayor & Associates, 10 3rd Street, Brooklyn, New York, 11231, from 1983 to 1986, but this work was more in the nature of a consultant to family and friends in their real estate, business, and estate planning decisions. If their circumstances required formal legal representation, I referred the matter to my firm, Pavia & Harcourt, or to others with appropriate expertise.

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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;

<u>Dates of Association</u>	<u>Organization</u>	<u>Address</u>	<u>Position</u>
4/84 to 10/92	Pavia & Harcourt	600 Madison Ave. New York, NY 10022	Partner (1/88 to 10/92) Associate
8/79 to 3/84	New York County District Attorney's Office	1 Hogan Place New York, NY 10013	Assistant District 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?

See I(b)(2) below.

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

From April 1984 as an associate, and from January 1988 until October 1992 as a partner, I was a general civil litigator involved in all facets of commercial work including, but not limited to, real estate, employment, banking, contract, distribution and agency law. Moreover, my practice had significant concentration in intellectual property law involving trademark, copyright and unfair competition issues. I also worked in automobile franchise law, and export commodity trading law under the North American Grain Association Contract. I conducted over fifteen arbitration hearings involving the banking, fashion, grain, and tire distribution industries. My typical clients were significant European companies doing business in the United States.

From August 1979 to March 1984, as a prosecutor in New York County, my cases typically involved "street crimes," i.e., murders, robberies, etc. I also investigated child pornography, child abuse, police misconduct, and fraud matters. I further prepared the responsive papers for five criminal appeals, two of which I argued and all of which resulted in affirmances of the convictions.

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- 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 daily in court as a prosecutor and I appeared regularly in court as a civil commercial litigator in New York with a largely federal practice.

2. What percentage of these appearances was in:

	<u>In private practice</u>	<u>As a prosecutor</u>
1. federal courts	approx. 70%	0%
2. state courts of record	approx. 20%	100%
3. other courts	approx. 10%	0%

3. What percentage of your litigation was:

	<u>In private practice</u>	<u>As a prosecutor</u>
(a) civil	99%	0%
(b) criminal	1%	100%

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 over 23 cases to verdict. In two of the cases, I was chief counsel and in another, co-counsel. In all other cases, I was sole counsel.

5. What percentage of these trials was:

1. Jury -- **90%**
2. 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 list the ten litigated matters in reverse chronological order.

1.

Case Name: **Fratelli Lozza (USA) Inc. v. Lozza (USA) & Lozza SpA**

Court: United States District Court, Southern District of New York

Index No.: 90 Civ. 4170

Judge: Then District Court Judge Fred I. Parker (sitting by designation)
Federal Building
11 Elmwood Avenue
P.O. Box 392
Burlington, Vermont 05402
(802) 951-6401

Date of Trial: March 16, 1992

Sotomayor Senate Questionnaire

Co-Counsel: Allison C. Collard, Esq.
 Attorney for co-defendant Lozza (USA)
 1077 Northern Blvd.
 Roslyn, New York 11576
 (516) 365-9802

Adversaries: Charles E. Temko
 Temko & Temko
 19 West 44th Street
 New York, New York 10036
 (212) 840-2178

Case Description: I represented the defendant Lozza SpA in this trademark infringement, trademark abandonment, unfair competition, breach of contract, and rescission action. The plaintiff, a corporation owned and operated by a former shareholder of the defendant corporation, claimed the defendant had breached an agreement with the plaintiff for the trademark use of "Lozza" in the United States, had abandoned use of its marks in the United States, and had infringed certain of the plaintiff's trademarks. I conducted the trial for the lead defendant, and secured a dismissal of all of the plaintiff's claims. The Court also issued an injunction against the plaintiff's use of the defendants' marks, and of false and misleading terms in its advertising. Findings of Fact, Conclusions of Law and Order reported at 789 F. Supp. 625 (S.D.N.Y. 1992).

2.

Administrative

Case Name: Ferrari of Sacramento, Inc. v. Ferrari North America

Agency: State of California New Motor Vehicle Board
 (Appeared pro hac vice)

Protest No.: PR-973-88

Administrative

Law Judges: Marilyn Wong
 c/o New Motor Vehicle Board
 1507 21st Street, Room 330
 Sacramento, California 95814
 (916) 445-1888

Robert S. Kendell (retired)
 Contact: Michael Sabian
 c/o New Motor Vehicle Board
 1507 21st Street, Room 330
 Sacramento, California 95814
 (916) 445-1888

Dates of Hearing: 10/16/90, 10/17/90, 10/31/90, 11/1/90, and 11/2/90

Co-Counsel: Nicholas Browning, III, Esq.
 Herzfeld & Rubin
 1925 Century Park East, Suite 600
 Los Angeles, California 90067-2783
 (310) 553-0451

Adversaries: Jay-Allen Eisen
 Jay-Allen Eisen Law Corporation
 9A0 9th Street, Suite 1400
 Sacramento, California 95814
 (916) 444-6171

Donald M. Licker, Esq.
 2443 Fair Oaks Boulevard
 Room 340
 Sacramento, California 95825
 (916) 924-6600

Case Description: In or about 1988, Ferrari North America (“Ferrari”) terminated the plaintiff dealer. Thereafter, the dealer filed a timely protest of the termination with the California New Motor Vehicle Board (the “Board”). At a prehearing settlement conference, Ferrari and the dealer entered into a Stipulated Settlement that permitted Ferrari to terminate the dealer, without a hearing, if the dealer failed timely to cure specified obligations under its franchise agreement with Ferrari. When the dealer breached the terms of the Stipulated Settlement, Ferrari terminated the dealer, with the Board’s approval and without a hearing. The dealer then secured a writ of mandate from a California court directing the Board to hold an administrative hearing.

I had primary responsibility for representing Ferrari at the administrative hearing. The Board determined that 1) the dealer had violated the terms of

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the Stipulated Settlement, 2) the violations constituted good cause for Ferrari's termination of the dealer under California's Automobile Franchise Law, and 3) the plaintiff's loss of its franchise was not an illegal forfeiture under California law.

While the hearing before the Board proceeded after issuance of the mandate, Ferrari also appealed the judgment on the writ, which judgment was reversed on appeal in an unpublished opinion. The California Court of Appeals, Third Appellate District, determined that enforcing the Stipulated Settlement and terminating the dealer, without a hearing, did not violate due process.

Although not listed as counsel for appellant's briefs, I contributed significantly to the drafting of the briefs. The appellate case was captioned Ferrari of Sacramento, Inc., Respondent v. New Motor Vehicle Board and Sam Jennings as Secretary, Appellants, and Ferrari North America, Real Party in Interest and Appellant; No. C008840 in the Court of Appeals of the State of California in and for the 3rd Appellate District; Sacramento Superior Court, Case No. 360734.

3.

Case Name: **In re: Van Ness Auto Plaza, Inc., a California Corporation, d/b/a Auto Plaza Lincoln Mercury, Auto Plaza Porsche and Auto Plaza Ferrari, Debtors.**

Court: United States Bankruptcy Court, Northern District of California
(Appeared pro hac vice)

Case No.: 3-89-03450-TC

Judge: Hon. Thomas E. Carlson
U.S. Bankruptcy Court Judge
235 Pine Street
San Francisco, California 94104
(415) 705-3200

Dates of Hearing: 1/22/90 and 3/19/90

Sotomayor Senate Questionnaire

Co-Counsel: Nicholas Browning, III, Esq.
 Herzfeld & Ruben
 1925 Century Park East, Suite 600
 Los Angeles, California 90067-2783
 (213) 553-0451

Adversaries: Henry Cohen, Esq.
 Cohen and Jacobson
 Attorneys for Debtor
 577 Airport Blvd., Suite 230
 Burlington, California 90067-2783
 (415) 342-6601

William Kelly, Esq. (retired)
 Address Unknown
 Home Tel. No. (415) 641-1544

Case Description: I represented Ferrari North America (“Ferrari”), a franchisor of a bankrupt dealer, in hearings related to Ferrari’s opposition to the rejection of customer contracts, assumption of the dealer’s franchise agreement, and confirmation of the proposed sale of the dealer’s franchise. At the time, Ferrari was introducing a limited production and valuable new car model to the marketplace. A rejection by the dealer of contracts for that model would have frustrated the expectations of customers and subjected Ferrari to potential multiple claims. After a number of hearings, the Bankruptcy Court ruled that the dealer could not reject the customer contracts, although financially burdensome, and then assume the franchise agreement with Ferrari. The case also involved alleged claims by the dealer and customers that Ferrari had violated the California automobile franchise, antitrust, and securities laws. The case settled with the sale of the dealership and resolution of claims among the bankrupt dealer, the new franchise buyer, Ferrari, and customers.

4.

Case Name: **Fendi S.a.s. di Paola Fendi e Sorelle v. Burlington Coat Factory Warehouse Corp., et al.**

Case No.: 86 Civ. 0671

Court: United States District Court, Southern District of New York

Sotomayor Senate Questionnaire

Judge: Hon. Leonard B. Sand
 U.S. District Judge
 U.S. Courthouse
 500 Pearl Street
 New York, New York 10007
 (212) 805-0244

Co-Counsel: Frances B. Bernstein, Esq.
 (Deceased)

Adversaries: Stacy J. Haigney, Esq.
 Herbert S. Kasner, Esq.
 Attorneys for Burlington Coat Factory Warehouse and
 Monroe G. Milstein
 Burlington Coat Factory Warehouse, Corp.
 263 West 38th Street
 New York, New York 10018
 (212) 221-0010

Dennis C. Kreiger, Esq.
 Esanu, Katsky, Korins & Sieger
 Attorneys for Firestone Mills, Inc. and Leo Freund
 605 Third Avenue, 16th Floor
 New York, New York 10158
 (212) 953-6000

Dates of Trial: 5/18/87 to 5/19/87

Case Description: Combined Case Description in 5 below.

5.

Case Name: **Fendi S.a.s. di Paola Fendi e Sorelle v. Cosmetic World, Ltd., Loradan Imports, Inc., Linea Prima, Inc. a/k/a Lina Garbo Shoes, Daniel Bensoul, Michael Bensoul a/k/a Nathan Bendel, Paolo Vincelli and Mario Vincelli**

Case No.: 85 Civ. 9666

Court: United States District Court, Southern District of New York

Sotomayor Senate Questionnaire

Judges: Hon. Leonard B. Sand
 U.S. District Judge
 U.S. Courthouse
 500 Pearl Street
 New York, New York 10007
 (212) 805-0244

Hon. Joel J. Tyler
 Magistrate Judge, U.S. District Court
 Home address:
 2 Primrose Avenue
 Yonkers, New York 10710
 Telephone unpublished

Co-Counsel: Frances B. Bernstein
 (Deceased)

Adversary: Stanley Yaker, Esq.
 Attorney for Paolo Vincelli and Mario Vincelli
 Former Address:
 114 East 32nd Street
 Suite 1104
 New York, New York 10016
 (212) 983-7241
 Telephone not in service. I have been unable to locate Mr. Yaker.

No attorneys appeared for the remaining defendants, who settled pro se.

Date of Inquest

Hearing: 1/6/88

Case Descriptions: From 1985, my former firm represented Fendi S.a.s. di Paola Fendi e Sorelle ("Fendi") in Fendi's national anticounterfeiting work. Frances B. Bernstein, a partner at Pavia & Harcourt (now deceased), and I created Fendi's anticounterfeiting program. From 1988 until the time I left the firm for the bench in 1992, I was the partner in charge of that program. I handled almost all discovery work and substantive court appearances in cases involving Fendi. This work implicated a broad range of trademark issues including, but not limited to, trademark and trade dress infringement, false designation of origin, and unfair competition claims.

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Approximately once every two months from 1989 to 1992, I, for Fendi, applied for provisional injunctive relief in district court to seize counterfeit goods from street vendors or retail stores. These applications required extensive submission of evidence documenting Fendi's trademark rights, its protection of its marks, the nature of the investigation against the vendors, and Fendi's right to *ex parte* injunctive relief. Generally, the street vendors defaulted but others appeared and settled pro se. Two of these cases filed in the Southern District of New York were captioned Jane Doe v. John Doe and Various ABC Companies, 89 Civ. 3122, the Hon. Thomas P. Griesa presiding (Tel. No. (212) 805-0210), and Fendi S.a.s. Di Paola Fendi e Sorelle v. Dapper Dan's Boutique, 89 Civ. 0477, the Hon. Miriam G. Cedarbaum presiding (Tel. No. (212) 805-0198).

The preceding two cases (A4 and A5) involved a trial and a damages hearing on Fendi's trademark claims against the defendants. In the first, the Burlington case, Fendi alleged that defendants knowingly trafficked in counterfeit goods and Fendi sought triple profits from the defendants and punitive damages. After extensive discovery, submission of a pre-trial order and memorandum, and Fendi's presentation of its expert at trial, the case settled. I was sole counsel present at trial. In the Cosmetic World case, the Court granted Fendi's summary judgment motion on liability and referred the matter to a magistrate judge for an inquest on damages. See 642 F. Supp. 1143 (S.D.N.Y. 1986). I conducted the contested hearing on damages before the magistrate judge who recommended an award in Fendi's favor.

6.

Case Name: Republic of the Philippines v. New York Land Co., et al. (the "Philippines Case") and Security Pacific Mortgage and Real Estate Service Inc. v. Canadian Land Company, et al. (the "Security Pacific Case").

Case Nos.: 90-7322 and 90-7398

Court: United States Court of Appeals for the Second Circuit

Panel: Hon. Thomas J. Meskill
U.S. Circuit Judge
114 W. Main Street, Suite 204
New Britain, Connecticut 06051
(203) 224-2617

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Hon. Lawrence J. Pierce
U.S. Circuit Judge
c/o U.S. Courthouse
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Hon. George C. Pratt
U.S. Circuit Judge
U.S. Courthouse
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Hempstead Turnpike
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Co-Counsel:

David A. Botwinik, Esq.
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(212) 980-3500

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Levin & Glasser, P.C.
675 Third Avenue
New York, New York 10471
(212) 867-3636

Roy L. Reardon, Esq. (455-2840)
David E. Massengill, Esq. (455-3555)
Simpson Thacher & Bartlett
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New York, New York 10017

Adversaries:

Jeffrey J. Greenbaum, Esq.
James M. Hirschhorn, Esq.
Sills, Cummins, Zuckerman, Radin, Tischman, Epstein & Gross
Attorneys for the Republic of the Philippines
Legal Center
1 Riverfront Plaza
Newark, New Jersey 07102
(201) 643-7000

Sotomayor Senate Questionnaire

Date of Argument: 6/15/90 (Argued by Roy L. Reardon, Esq. of Simpson, Thacher & Bartlett)

AND

District Court

Case Name: **Republic of the Philippines v. New York Land Co., et al.** (the "Philippines Case") and **Security Pacific Mortgage and Real Estate Service Inc. v. Canadian Land Company, et al.** (the "Security Pacific Case").

Case Nos.: The Philippines Case: 86 Civ. 2294
The Security Pacific Case: 87 Civ. 3629

Court: United States District Court, Southern District of New York

Judge: Hon. Pierre N. Leval
U.S. Circuit Judge (Then District Court Judge)
U.S. Circuit Judge
U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 857-2319

Co-Counsel: David A. Botwinik, Esq.
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(212) 980-3500

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675 Third Avenue
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(212) 867-3636

Participating**Adversaries****Opposing Motion:**

Jeffrey J. Greenbaum, Esq.
 James M. Hirschhorn, Esq.
 Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross
 Attorneys for the Republic of the Philippines
 Legal Center
 1 Riverfront Plaza
 Newark, New Jersey 07102
 (201) 643-7000

Michael Stanton, Esq.
 Weil, Gotshal & Manges
 Attorneys for Security Pacific
 767 Fifth Avenue
 New York, New York 10153
 (212) 310-8000

Date of Argument: 2/12/90

Case Description:

My former firm, Pavia and Harcourt, represented Bulgari Corporation of America ("Bulgari"), an international retailer of fine jewelry, who was a tenant in the Crown Building at 730 Fifth Avenue, New York, New York. The Crown Building was the subject of a foreclosure sale in the Security Pacific Action, and its beneficial ownership was in dispute in the Philippines Action. Bulgari was not a party to these actions. The district court denied Bulgari's request, by way of Order to Show Cause, to approve a rental amount it had reached with the manager of the Crown Building. I primarily drafted the papers presented to the district court and argued the motion. Bulgari's motion attempted to demonstrate that no competent evidence existed to dispute Bulgari's proof that the rental amount agreed upon was at or above fair market value and benefited the Crown Building and its claimants. Bulgari appealed the district court's denial of its approval of the rent agreement on the grounds that the denial was effectively an injunction against Bulgari's exercise of its contractual lease rights to have its rent fixed by agreement during the term of the lease, and that the district court improperly granted the injunction without a hearing. I did not argue the appeal but participated extensively in the drafting of appellant's brief and reply. The district court's Order was affirmed on appeal, without a published opinion. 909 F.2d 1473 (2d Cir. 1990).

7.
Case Name: **Misrocchi & C., SpA v. Alfred C. Toepfer International, G.m.b.H.**
Case No.: 85-7734
Court: United States Court of Appeals for the Second Circuit
Panel: Hon. J. Edward Lumbard
Senior Judge
U.S. Circuit Judge
U.S. Courthouse
Foley Square
New York, New York 10007
(212) 857-2300

Hon. James L. Oakes
Then-Chief Judge
U.S. Circuit Judge
U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 857-2400

Hon. George C. Pratt
U.S. Circuit Judge
U.S. Courthouse
Uniondale Avenue
Hempstead Turnpike
Uniondale, New York 11553
(516) 485-6510

Adversary: Stephen P. Sheehan
Wistow & Baryllick
61 Weybosset Street
Providence, Rhode Island 02903
(401) 831-2700

Date of Argument: 9/17/84

AND

District Court**Case Name:** Miserocchi & C., SpA v. Alfred C. Toepfer International, G.m.b.H.**Case No.:** 84 Civ. 6112**Court:** United States District Court, Southern District of New York**Judge:** Hon. Kevin Thomas Duffy
U.S. District Judge
U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 805-6125**Co-Counsel:** David A. Botwinik, Esq.
Pavia & Harcourt
600 Madison Avenue
New York, New York 10022
(212) 980-3500**Adversary:** Stephen P. Sheehan
Wistow & Baryllick
61 Weybosset Street
Providence, Rhode Island 02903
(401) 831-2700**Date of Argument:** 9/5/84 (argued by David Botwinik of Pavia & Harcourt)**Case Description:** This action involved the bankruptcy of an Italian corporation, Miserocchi & C., SpA ("Miserocchi"), with affiliates in London and elsewhere. The London affiliate of Miserocchi breached a grain commodity trading contract with my then client, Alfred C. Toepfer International, G.m.b.H. ("Toepfer"). Toepfer demanded arbitration of the dispute against both Miserocchi and its London affiliate under the terms of the grain commodity trading agreement between the parties and a guarantee signed by Miserocchi. Shortly before the arbitration hearing was to commence, Miserocchi moved to stay the arbitration against it, arguing that it was not a party to the arbitration agreement. Although my partner, David A. Botwinik, argued the motion before the district court, I primarily drafted Toepfer's responsive papers to the motion to stay arbitration and the cross-motion to compel arbitration. Toepfer argued that Miserocchi was

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bound to arbitrate both as an alter ego of its London affiliate and under the terms of its guarantee. After the district court ruled in Toepfer's favor, Miserocchi filed a notice of appeal and sought an expedited stay of the district court's Order denying the stay of arbitration and compelling arbitration. I argued the motion to stay. At the conclusion of the argument on the motion, the Second Circuit not only denied the motion for a stay but also dismissed the appeal. I participated extensively as co-counsel in the arbitration that followed and subsequently appeared in the post-confirmation proceedings resulting from the arbitration award rendered in favor of Toepfer. The matter settled before the hearing on appeal of the confirmation order.

8.

Case Name: The People of the State of New York v. Clemente D'Alessio and Scott Hyman

Indictment No.: 4581/82

Judge: Hon. Thomas B. Galligan (retired)
Then-Acting Justice, Supreme Court,
c/o Administrative Judge's Office
Juanita Newton
111 Centre Street
New York, New York 10013
(212) 374-4972

Associate Counsel: Karen Greve Milton
Director of Education Training Program
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036-6690
(212) 382-6619

Adversaries: Steven Kimelman, P.C.
Attorney for Scott Hyman
757 Third Avenue
New York, New York 10017
(212) 421-5300

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James Bernard, Esq.
 Attorney for Clemente D'Alessio
 150 Broadway
 New York, New York 10038
 (212) 233-0260

Dates of Trial: 2/2/83 to 3/2/83

Case Description: I was lead counsel in this action in which defendants were charged with selling videotapes depicting children engaged in pornographic activities. Defendant Scott Hyman dealt directly with the undercover agent and attempted to raise numerous defenses at trial based upon his alleged drug addiction. The proof against defendant Clemente D'Alessio was circumstantial and he raised a misidentification defense at trial. This action was the first child pornography case prosecuted in New York State after the U.S. Supreme Court upheld the constitutionality of New York's laws in New York v. Ferber, 458 U.S. 747 (1982). The defendants filed a plethora of motions before and during trial. The defendants' request for severance was denied, as were, after a hearing, the defendants' motions for the suppression of statements, evidence, and identification. Other issues addressed at trial included whether the trial court should or could, upon defendants' request, require the government to stipulate to the pornographic nature of the evidence, whether defendant Hyman could present expert testimony on the effects of drug addiction on mens rea, and whether defendant Hyman was entitled to jury charges on diminished capacity or intoxication. The jury convicted defendants after trial. The defendants received sentences, respectively, of 3½ to 7 years and 2 to 6 years. The convictions were affirmed on appeal. See People v. D'Alessio, 62 N.Y.2d 619, 476 N.Y.S.2d 1031 (Ct. App. 1984); People v. Hyman, 62 N.Y.2d 620, 476 N.Y.S.2d 1033 (Ct. App. 1984).

9.
Case Name: The People of the State of New York v. Richard Maddicks

Indictment No.: 886/82

Court: Supreme Court of the State of New York, County of New York

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Judge: Hon. James B. Leff (retired)
Justice, Supreme Court
c/o Administrative Judge's Office
Juanita Newton
100 Centre Street
New York, New York 10013
(212) 374-4972

Lead Counsel: Hugh H. Mo, Esq.
Law Offices of Hugh H. Mo
750 Lexington Avenue
15th Floor
New York, New York 10022
(212) 750-8000

Adversary: Peter A. Furst, Esq.
100 Pine Street
Suite 2750
San Francisco, California 94111
(415) 433-2626

Dates of Trial: Almost all of January 1983

Case Description: The defendant was dubbed the "Tarzan Murderer" by the local Harlem press because he committed burglaries by acrobatically jumping or climbing from roof tops or between buildings and entering otherwise inaccessible apartments. If the defendant found a person in the apartment, he shot them. I was co-counsel on the case, and prepared and argued the motion, before Justice Harold Rothwax, that resulted in the court consolidating the trial of four murders and seven attempted murders relating to eleven of the defendant's burglaries. The consolidation was unusual in that up to that point, most New York courts had limited consolidation to crimes in which an identical modus operandi had been used. We argued successfully that the commonality of elements in the crimes, although with some variations in modus operandi, warranted consolidation. I participated extensively in preparing and presenting expert and civilian witnesses at trial. The defendant was convicted after trial, and sentenced to 67½ years to life. The conviction was affirmed on appeal. See People v. Maddicks, 70 N.Y.2d 752, 520 N.Y.S.2d 1028 (Ct. App. 1987).

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10.

Case Name: The People of the State of New York v. Manny Morales a.k.a. Joey Hernandez, Joseph Pacheco, and Eduardo Pacheco

Indictment No: 4399/82

Judge: Hon. Alfred H. Kleiman (retired)
Then-Acting Justice, Supreme Court
c/o Administrative Judge's Office
Juanita Newton
100 Centre Street
New York, New York 10013
(212) 374-4972

Adversaries: Ira I. Van Leer (deceased)
(Associates present at portions of the trial: Valerie Van Leer-Greenberg and Howard Greenberg)
Van Leer and Greenberg
Attorneys for defendant Manny Morales a.k.a. Joey Hernandez
132 Nassau Street, Suite 523
New York, New York 10038
(212) 962-1596

Lawrence Rampulla, Esq.
Attorney for defendant Edwardo Pacheco
2040 Victory Blvd.
Staten Island, New York 10314
(718) 761-3333

Stephen Goldenberg, Esq.
Attorney for defendant Joseph Pacheco
277 Broadway, Suite 1400
New York, New York 10007
(212) 346-0600

Dates of Trial: March 25, 1983 to May 12, 1983

Case Description: This multiple-defendant case involved a Manhattan housing project shooting between rival family groups. I was sole counsel in this action on behalf of the government. Prior to trial, I conducted various hearings opposing defense motions to suppress statements and identifications. This

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lengthy trial involved witnesses with significant credibility issues. The jury convicted one of the three defendants who was sentenced to 3 to 6 years for Criminal Possession of a Weapon in the Third Degree. The conviction was affirmed on appeal. See People v. Pacheco, 70 N.Y.2d 802, 522 N.Y.S.2d 120 (Ct. App. 1987).

Additional Question under Item 18: In addition, if the majority of cases you list in response to this question are older than five years, provide the name, address and phone number for 10-12 members of the legal community who have had recent contact with you, even if the contact was only an appearance before you as a judge.

I have interpreted this question to be seeking a list of individuals who are familiar with my judicial work because they are knowledgeable about some of my cases or opinions, or because they have appeared before me. If you seek only individuals who have tried cases or made other substantive appearances before me, please advise me. I list these individuals in alphabetical order.

1. Martin J. Auerbach, Esq.
Dormand, Mensch, Mandelstan, Schaeffer
747 Third Avenue
New York, New York 10017
(212) 759-3300
2. The Hon. Miriam G. Cedarbaum
United States District Court Judge
Southern District of New York
500 Pearl Street, Room 1330
New York, New York 10007
(212) 805-0198
3. Justin N. Feldman, Esq.
Kromish, Lieb, Weiner & Hellman
1114 Avenue of the Americas, 47th Floor
New York, New York 10036-7798
(212) 479-6210

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4. Leonard F. Joy, Esq.
Attorney-in-Charge
Legal Aid Society, Federal Defender Division
52 Duane Street
New York, New York 10007
(212) 285-2830
5. John Kidd, Esq.
Rogers & Wells
200 Park Avenue
New York, New York 10166-0153
(212) 878-8000
6. The Hon. John G. Koeltl
United States District Court Judge
Southern District of New York
500 Pearl Street, Room 1030
New York, New York 10007
(212) 805-0222
7. Sara Moss, Esq.
Vice-President and General Counsel
Pitney Bowes
1 Elmcroft Road
Stamford, Connecticut 06926
(203) 351-7924
8. John S. Siffert, Esq.
Lankler, Siffert & Wohl
500 Fifth Avenue, 33rd Floor
New York, New York 10110
(212) 921-8399
9. Gerard Walperin, Esq.
Rosenman & Colin
575 Madison Avenue
New York, New York 10022
(212) 940-7100

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10. Mary Jo White, Esq.
 United States Attorney for the Southern District of New York
 U.S. Courthouse Annex
 One St. Andrew's Plaza
 New York, New York 10007
 (212) 791-0056

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 last five years as a judge, my legal activities have spanned the gamut of federal jurisdiction. As part of my daily work, I have addressed many of the complex legal questions of our time in fields as diverse as the First and Fourteenth Amendments to the United States Constitution, antitrust, securities, habeas corpus, immigration, tax, intellectual property, ERISA, employment discrimination, and many other areas of law. The numerous opinions I have cited in Question Number 15 describe in detail many of these significant cases.

A great part of my litigation work while in private practice involved pre-trial and discovery proceedings for cases which were typically settled before trial. I conducted a number of preliminary injunction hearings in trademark and copyright cases, and post-motion hearings before magistrate judges on a variety of issues. My work also involved rendering advice to clients on a wide variety of legal issues, including, but not limited to, product liability, warranty, antitrust, securities, environmental, banking, real estate, patents, employment, partnership, joint venture and shareholder laws; customs, automobile and joint tire regulations; and franchising and licensing matters. I, moreover, conducted over fifteen arbitration hearings involving, predominantly, export grain commodity trading on behalf of foreign buyers but also hearings involving banking, partnership, tire, and fashion industry disputes.

Finally, in addition to my work in establishing a national anti-counterfeiting program for Fendi S.a.s. Paola Fendi e Sorelle, I participated, on behalf of Fendi, in establishing a Task Force of prominent trademark owners to change New York State's anti-counterfeiting criminal statutes. I also supervised and participated in the national dealers and customer warranty relations programs for Ferrari North America, a division of Fiat Auto USA, Inc.

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.

Because my former firm, Pavia & Harcourt, advises me on personal matters, I will continue to recuse myself from any matter in which my form firm or its clients, or a former client with whom I worked are involved. Similarly, I will continue to recuse myself from hearing any matter involving an issue in which I participated while a member of the Board of Directors of the non-profit organizations described in Part III, Question 1. I will further recuse myself from any matter involving a client or associate of my husband-to-be. In all matters, I will follow the dictates of 28 U.S.C. § 455 and 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.

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.)

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	1996	1997
Salary - U.S.D.J.	\$133,600	\$66,800 to 5/31/97
Interest - Citibank Savings Acct.	\$ 912	\$ 373 to 6/1/97
Rent from Kings Co. Coop [\$1100 a month]	\$ 13,200	\$ 6600 to 6/1/97

My Financial Disclosure Report, A10, is attached.

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

My Net Worth Statement and Schedule 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.

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.

Before my appointment as a judge, all of the non-profit organizations with which I had been affiliated served the disadvantaged either directly or through projects I had participated in developing. The Puerto Rican Legal Defense and Education Fund, for example, promotes, through legal and educational activities, the civil and human rights of disadvantaged Hispanics. I had served, at various times, as the First Vice President of the Board of Directors of the Fund and as Chairperson of its Litigation and Education Committees.

The State of New York Mortgage Agency ("SONYMA") structures affordable housing programs for residents of the State of New York. During my service on its Board of Directors, SONYMA, among many other projects, implemented special mortgage programs for low-income families to purchase homes.

I was also a member, in 1988, of the Selection Committee for the Stanley D. Heckman Educational Trust which granted college scholarships to minorities and first generation immigrants. I had, moreover, served, in 1990-1991, as a member of New York State's Panel on Inter-Group Relations. The Report of that Panel is attached.

Finally, I had been a member of the New York City Campaign Finance Board from its inception in 1988 until 1992. This Board distributes public funds to candidates for certain elective positions in New York City when such candidates agree to limit the amount of the contributions they will accept, and expenditures they will make, during campaigns.

The time I devoted to my service to these assorted organizations varied through the years but it was never less than two hours a week and had been over eight hours a week during certain periods. I devoted an average of approximately six hours a week cumulatively to the various non-profit organizations of which I was a member.

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The Code of Judicial Conduct limits my ability to provide legal service to the disadvantaged. While a judge, I nevertheless contribute my time as permitted by law to bar and law school activities. I have served as an honorary member of the Public Service Committee of the Federal Bar Council. I also serve on the selection committees for the Root-Tilden-Snow Scholarship granted to selected New York University Law School students interested in public service and the Kirkland and Ellis New York Public Service Fellowship granted to a Columbia Law School graduate to support a year's employment in public service. I serve on moot court panels and in trial advocacy courses at local law schools and for the office of the District Attorney of New York County; I also speak regularly at bar association functions on issues such as judicial clerkships for minority students and women in the law. Finally, I have lectured about trial advocacy skills at the Office of the Attorney General for the State of New York. It is difficult to quantify the time I spend on these activities because I participate in functions as my schedule permits. I estimate that I attend at least one community service function a month, and often twice a month.

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 interview in which you participated).

I am not aware of any selection commission which recommended me for this Circuit Court nomination. I was interviewed by the Office of the Counsel to the President in or about March of 1996 and again in March of 1997. Thereafter, the American Bar Association and the Federal Bureau of Investigations interviewed me. The President's nomination followed.

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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.

At the time I was nominated as a district court judge, I answered this question as follows:

"Our Constitution vests the right to make and administer laws in the legislative and executive branches of our government. Judges impermissibly encroach upon that right by rendering decisions that loosen jurisdictional requirements outside of the scope of established precedents and by fashioning remedies aimed at including parties not before the court to resolve broad societal problems.

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Judges must provide fair and meaningful remedies for violations of constitutional and statutory rights to the parties before a court. Doing so can, at times, affect broad classes of individuals, may place affirmative burdens on governments and society and may require some administrative oversight functions by a court.

A judge's decision should not, however, start from or look to these effects as an end result. Instead, because judicial power is limited by Article III of the Constitution, judges should seek only to resolve the specific grievance, ripe for resolution, of the parties before the court and within the law as written and interpreted in precedents. Intrusion by a judge upon the functions of the other branches of government should only be done as a last resort and limitedly."

My service as a judge has only reinforced the importance of these principles. Finding and maintaining a proper balance in protecting the constitutional and statutory rights of individuals versus protecting the interest of government, financial and otherwise, is very difficult. Judges must be extraordinarily sensitive to the impact of their decisions and function within, and respectful of, the constraints of the Constitution.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Charles Joseph Siragusa

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

Home address: Webster, New York 14580
Business Address: Rochester, New York 14614

3. Date and place of birth.

August 10, 1947
Rochester, 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).

Divorced. However, I am engaged to be married on August 30, 1997. My fiancée's name is Lisa Serio. She is a lawyer currently employed as an assistant district attorney in the Monroe County District Attorney's Office, Rochester, New York 14614.

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

Colleges:

State University of New York at Buffalo
August 1965 - May 1966
Transferred to LeMoyne College

LeMoyne College
September 1966 - May 1969
B.A. Sociology - Cum Laude
Date Granted: June 7, 1969

Law Schools:

Franklin Pierce Law School
August 1973 - May 1974
Transferred to Albany Law School

Albany Law School
September 1974 - May 1976
J.D.
Date Granted: June 5, 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.

1969 - 1973	St. James School Rochester, New York 14609 I was employed as a sixth grade and then junior high teacher.
1974 (summer)	Diocese of Rochester Catholic Youth Organization Day Camp Counselor
1977 - 1992	Monroe County District Attorney's Office Rochester, New York 14614 I was employed as an Assistant District Attorney From 1984 through 1992, I served as First Assistant District Attorney
1984 - 1992	Rape Crisis Advisory Board Member (non paid, volunteer position)
1993 - present	New York State, Seventh Judicial District Rochester, New York 14614 I am currently employed as a New York State Supreme Court Justice
1995 - Present	Families and Friends of Murdered Children and Victims of Violence Advisory Board Member (non paid, volunteer position)

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.

- 1969 Pi Gamma Mu National Honor Society**
- 1983 Certificate of Appreciation - Brighton Police Department**
- 1985 Certificate of Merit for Representing Monroe County with Integrity and Conviction - Town of Irondequoit**
- 1985 Certificate of Recognition for Successful Prosecution of Robert P. Reilly - Gates Police Department**
- 1985 Distinguished Service Award - Kiwanis Club; Lakeshore-Rochester Chapter**
- 1987 Distinguished Service Award - Rosewood Club**
- 1987 Recognition for Successful Prosecution of Northeast Rapist - Rochester Police Department**
- 1988 Distinguished Service Award - Crime Stoppers**
- 1988 Special Recognition for Successful Prosecution of \$500,000 Armored Car Theft - New York State Police**
- 1990 Citizen of the Year - Rochester Police Locust Club**
- 1990 Person of the Year - Gannett Rochester Times Union**
- 1991 Honorary Deputy Chief of the Rochester Police Department**
- 1991 Exemplary Service Award - Monroe County Sheriff's Department**
- 1991 Recognition and Service Award for Outstanding Service - American Association of Retired Persons**
- 1991 Commendation on Behalf of Citizens of Monroe County for Successful Prosecution of Arthur J. Shawcross - Monroe County Legislature**

- 1991 Certificate of Honor for Outstanding Service and Contribution to Law Enforcement - Association of Rochester Police and Area Law Enforcement Retirees
- 1991 Letter of Recognition for Successful Prosecution of Arthur J. Shawcross - Frank Horton, House of Representatives
- 1991 Certificate of Honor for Extraordinary Diligence in Preparation and Successful Prosecution of Arthur J. Shawcross - American Society for Industrial Security, Rochester Chapter
- 1991 Letter of Recognition for Dedication and Commitment to Public Service - Louise M. Slaughter, Member of Congress
- 1991 Letter of Recognition for Successful Prosecution of Arthur J. Shawcross - Alphonse M. D'Amato, United States Senate
- 1991 Certificate of Appreciation - National Association of Women in Construction
- 1992 Government Award - Greater Rochester Metro Chamber of Commerce
- 1996 Recognition Award - Monroe County Magistrates Association
- 1996 Distinguished Service Award - For Contribution to the Italian American Community - Counsel General of Italy
- 1997 Certificate of Excellence - For support of the Rochester City School District's Weapons Diversion Program

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.

New York State District Attorney's Association

Monroe County Bar Association

Ethics Committee - 1986

Courts Committee - 1990

Academy of Law Board of Governors - 1995

Chairperson, Evidence Institute - 1996

**Association of Supreme Court Justices, Seventh Judicial District .
1993 to present.**

**Association of Justices of the Supreme Court of the State of New York.
1993 to present.**

Rochester Inns of Court. 1995 to present.

Jury Advisory Committee. 1996 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.

I am not a member of any organization which is active in lobbying before public bodies. As to other organizations, I am a member of the Health Club of the Jewish Community Center.

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.

Admitted to practice in State of New York, Appellate Division, Fourth Department - February 22, 1977

Admitted to practice in United States District Court for the Western District of New York - May 9, 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.

"Prosecution of a Serial Killer", St. Vincent's Hospital, Melbourne, Australia, February, 1992, at Tab A

Rochesterian Magazine "View from the Bench" series, January, 1994, at Tab B

As to speeches, I have included the following:

Speech given at the 66th Dante Ball of the Italian Women's Civic Club, September 28, 1971, at Tab C.

Speech given at the Monroe County Columbus Day Celebration, October 4, 1991, at Tab D.

Speech given at the Safety Council Luncheon, May 14, 1993, at Tab E.

Speech given at the Families and Friends of Murdered Children and Victims of Violence Dinner, May 27, 1994, at Tab F.

Speech given at the 30th Firefighter of the Year Luncheon, October 13, 1995, at Tab G.

Presentation on Cameras in the Courtroom as part of the American Justice Seminar at Fairport High School, April 26, 1997, at Tab H.

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

Excellent
April 9, 1997

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.

1993 to present New York State Supreme Court Justice Seventh Judicial District

I currently serve as a New York State Supreme Court Justice in the Seventh Judicial District. This is the only judicial position which I have held. I was elected to a 14-year term in November 1992 and took office in January 1993. The Supreme Court is the highest trial court in New York with general jurisdiction relating to both criminal and civil matters. Since taking office, I have been assigned to an IAS civil part, although I have presided over some criminal cases as well. As of May 26, 1997, I began a full time assignment to a criminal part.

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.

15(1)

- (1) **Citizens for a Safer Community; The Genesee Conservation League, Inc., The Monroe County Conservation Council; The New York State Rifle & Pistol Association, Inc.; The Shooters Committee on Political Education, Inc. (Monroe County Chapter); Leadloader Arms, Inc. d/b/a American Sportsman; Frederick Calcagno; Steven C. DeMallie; and Kurt Thomann - versus - The City of Rochester, New York; The Council of the City of Rochester, New York; Thomas Ryan, as Mayor of the City of Rochester, New York; Louis Kash, as Corporation Counsel for the City of Rochester, New York; Roy Irving, as Chief of Police of Rochester, New York; John Curran; Maxine Childress Brown; Wade Norwood; Tim Mains; Benjamin Douglas; Lois Giess; Nancy Padilla and Robert Stevenson, as Members of the Council of the City of Rochester, New York.**
Reported: 164 Misc 2d 822
- (2) **In the Matter of the Investigation into the Rape of Jane Doe, John Horace, Respondent.**
Reported: 168 Misc 2d 981
- (3) **Gregory J. Mott, as Guardian Ad Litem for Sayer M. Rivazfar, a Minor Over the Age of Fourteen Years, and Arash P. Rivazfar, a Minor Under the Age of Fourteen Years - versus - Patricia An Rivazfar n/k/a Patricia Ann Pafford and Ahmad Rivazfar**
Unreported: Opinion at Tab I.
Modified __ AD2d __, 653 NYS2d 760, leave application to the New York Court of Appeals Granted ___ NY2d ___ 06/27/97
- (4) **Keigh Beth Kenyon - versus - Security Insurance Company of Hartford (DPIC Companies) and William C. Larsen and William C. Larsen, P.E., P.C. d/b/a Larsen Engineers/Architects**
Reported: 163 Misc 2d 991, aff'd 206 AD2d 980, lv den 84 NY2d 813

- (5) Maiden Lane Neighborhood Association; Frank Andolino; Emily Andolino; Paul Andree; Gay Andree; Burnett Barrett; Beverly Barrett; Richard Bauer; Julie Bauer; James Borden; Patricia Borden; Albert Buettner; Joyce Buettner; Gloria Carpenter; Robert Cross; Helene Cross; Edward Croteau; Joanne Croteau; Elaine Cummings; Christopher Curatalo; Catherine Curatalo; Charles Dennett; Mark Erbelding; Madeline Erbelding; Gerard Federation; Carole Federation; Harry Flaherty; Gail Flaherty; Stephen French; Louise S. French; Sidney Gear; Laura Gear; John Hamer; Sharon Hamer; Richard Hare; Marilyn Hare; Thomas Kenny; Betty Kenny; Richard Kurz; Catherine Kurz; Roy LaForce; Mary Ann LaForce; Lawrence Little; Beverly Little; John Meagher; Jean Meagher; Marjorie Monte; Albert Rehn; Mary Beth Rehn; Miles VanBuren; Cindy VanBuren; Elizabeth VonBacho; Alice Webber Till; Howard Weltzer; Beverly Weltzer; Edward White; Ellen White; Frank Yanno; Carol Yanno; individually and Wegman's Food Markets, Inc. - versus - The Town of Greece; Roger Boily; Vincent B. Campbell; Raymond S. DiRaddo; Joan T. Korsch; and Charles J. Zicari, as and constituting the Greece Town Board; Maiden Associates; and Mark IV Construction Co., Inc.
Unreported: Opinion at Tab J.
- (6) In the Matter of the Application of Anthony L. Jordan Health Center, Inc. - versus - Barbara Ann DeBuono, M.D., as Commissioner of Health of the State of New York, Brian Wing, as Acting Commissioner of Social Services of the State of New York, and Patricia Woodworth, as Director of the Budget for the State of New York.
Unreported: Opinion at Tab K.
- (7) In the Matter of the Penfield Tax Protest Group; Phyllis Dann, Jim and Carolyn Welton and Peter Sciortino, for Themselves and on Behalf of All Others Similarly Situated - versus - Linda Yancey, the Assessor of the Town of , The Town Board of the Town of Penfield and the Town of Penfield.
Unreported: Opinion at Tab L, aff'd 210 AD2d 901, app. dism. 85 NY2d 903, lv. den'd 86 NY2d 760
- (8) Lawrence J. Demarse; John Sussek, Jr. and Marie Sussek d/b/a Sussek Enterprises; Donald A. Robins; K.G. VanDine, M.D., P.C.; Troser Group, Ltd.; Slocum Dickson Medical Group, P.C., Pension Fund; and Joseph Komler, III, Individually and as Limited Parents of Simulnet East Associates, a New York Limited Partnership, on behalf of themselves

and all other Limited Partners of Simulnet East Associates, similarly situated, and for the benefit and in the right of Simulnet East Associates - versus - Simulnet East Associates, a New York Limited Partnership; Simulnet, L.P.; Cable/Mac Services, Inc., A. Ross MacGregor; Vincent Laurendi; Donald E. Dillon; John B. Fisher; Waldon S. Hayes, Jr.; Parijat Capital, Ltd.; David P. Ott; J. Anthony DiGuilio; Ashvin J. Zaveri; Bytex Corporation; Simulnet Corporation; Jerry Nelson; and Jonathan S. Edwards.
Unreported: Opinion at Tab M.

- (9) Iqbal Singh - versus - John Karle; Richard Passero; Ram Shrivastava; William Larsen, P.E., d/b/a Larsen Engineers.
Unreported: Opinion at Tab Mc, aff'd ___ AD2d ___ 07/03/97, 1997 WL 378479
- (10) Richard D. Castle; William Gowgill; James C. Duffus; J. Allen Gray; John W. Handy; James T. Henderson; William F. Holly; Jean Fox Lee; Frank E. Luellen, Jr.; Douglas Martin; Newtin Y. Robinson; Robert F. Sykes; Herbert W. Vandenbrul; Nora Ward as Executor of the Estate of Hawley Ward; Jessica W. Warren; Eugene S. Wetmore - versus- Alexander and Alexander Services, Inc.
Unreported: Opinion at Tab N.

15(2)

- (1) Funk v. Barry

The oral decision in Funk v. Barry, which granted plaintiff's motion requesting that the Court sign a judgment in this case and denied defendant's cross-motion to dismiss the action as abandoned, was reversed by the Appellate Division, Fourth Department in an Opinion reported at 222 AD2d 1017.

The Appellate Division then denied plaintiff's motion for leave to appeal by order reported at 1996 WL 192891. However, the Court of Appeals granted plaintiff's subsequent motion for leave by order reported at 88 NY2d 809.

That Court reversed the decision of the Appellate Division and reinstated the judgment in favor of the plaintiff in an opinion reported at 89 NY2d 364. A transcript of my oral opinion is included at Tab O.

(2) Harker v. Rochester City School District, et al

The decision in Harker v. Rochester City School District, et al, denying defendants' summary judgment motion, was reversed by the Appellate Division, Fourth Department, in an opinion dated July 3, 1997, reported at ___ AD2d ___, 1997 WL 373747. A copy of my decision is included at Tab P.

(3) Rennoldson v. Volpe Realty Corp., et al.

The decision in Rennoldson v. Volpe, et al. granting plaintiff's motion for summary judgment on a Labor Law section 240(1) cause of action and denying defendants' motion for summary dismissing that cause was reversed by the Appellate Division, Fourth Department in an opinion reported as Rennoldson v. James J. Volpe Realty, et al., 216 AD2d 912.

The parties settled the case while plaintiff's motion for leave to appeal was pending. The application for leave was dismissed. That dismissal was reported at 86 NY2d 837. A copy of my written decision is included at Tab Q.

(4) Schiffman v Spring, et al.

The order denying defendants' summary judgment motion was reversed by the Appellate Division, Fourth Department in an opinion reported at 202 AD2d 1007. A copy of my order is included at Tab R.

15(3)

- (1) Citizens for a Safer Community; The Genesee Conservation League, Inc., The Monroe County Conservation Council; The New York State Rifle & Pistol Association, Inc.; The Shooters Committee on Political Education, Inc. (Monroe County Chapter); Loadloader Arms, Inc. d/b/a American Sportsman; Frederick Calcagno; Steven C. DeMallie; and Kurt Thomann - versus - The City of Rochester, New York; The Council of the City of Rochester, New York; Thomas Ryan, as Mayor of the City of Rochester, New York; Louis Kash, as Corporation Counsel for the City of Rochester, New York; Roy Irving, as Chief of Police of Rochester, New York; John Curran; Maxine Childress Brown; Wade Norwood; Tim Mains; Benjamin Douglas; Lois Giess; Nancy Padilla and Robert Stevenson, as Members of the Council of the City of Rochester,**

New York.

Reported: 164 Misc 2d 822

- (2) In the Matter of the Investigation into the Rape of Jane Doe, John Horace, Respondent.
Reported: 168 Misc 2d 981
- (3) Gregory J. Mott, as Guardian Ad Litem for Sayer M. Rivazfar, a Minor Over the Age of Fourteen Years, and Arash P. Rivazfar, a Minor Under the Age of Fourteen Years - versus - Patricia An Rivazfar n/k/a Patricia Ann Pafford and Ahmad Rivazfar
Unreported: Opinion at Tab I.
Modified __ AD2d __, 653 NYS2d 760, leave application to the New York Court of Appeals Granted __ NY2d __ 06/27/97
- (4) Maiden Lane Neighborhood Association; Frank Andolino; Emily Andolino; Paul Andree; Gay Andree; Burnett Barrett; Beverly Barrett; Richard Bauer; Julie Bauer; James Borden; Patricia Borden; Albert Buettner; Joyce Buettner; Gloria Carpenter; Robert Cross; Helene Cross; Edward Croteau; Joanne Croteau; Elaine Cummings; Christopher Curatalo; Catherine Curatalo; Charles Dennett; Mark Erbelding; Madeline Erbelding; Gerard Federation; Carole Federation; Harry Flaherty; Gail Flaherty; Stephen French; Louise S. French; Sidney Gear; Laura Gear; John Hamer; Sharon Hamer; Richard Hare; Marilyn Hare; Thomas Kenny; Betty Kenny; Richard Kurz; Catherine Kurz; Roy LaForce; Mary Ann LaForce; Lawrence Little; Beverly Little; John Meagher; Jean Meagher; Marjorie Monte; Albert Rehn; Mary Beth Rehn; Miles VanBuren; Cindy VanBuren; Elizabeth VonBacho; Alice Webber Till; Howard Weltzer; Beverly Weltzer; Edward White; Ellen White; Frank Yanno; Carol Yanno; individually and Wegman's Food Markets, Inc. - versus - The Town of Greece; Roger Boily; Vincent B. Campbell; Raymond S. DiRaddo; Joan T. Korsch; and Charles J. Zicari, as and constituting the Greece Town Board; Maiden Associates; and Mark IV Construction Co., Inc.
Unreported: Opinion at Tab J.
- (5) In the Matter of the Application of Anthony L. Jordan Health Center, Inc. - versus - Barbara Ann DeBuono, M.D., as Commissioner of Health of the State of New York, Brian Wing, as Acting Commissioner of Social Services of the State of New York, and Patricia Woodworth, as Director of the Budget for the State of New York.
Unreported: Opinion at Tab K.

- (6) **In the Matter of the Penfield Tax Protest Group, Phyllis Dann, Jim and Carolyn Welton and Peter Sciortino, for Themselves and on Behalf of All Others Similarly Situated - versus - Linda Yancey, the Assessor of the Town of Penfield, The Town Board of the Town of Penfield and the Town of Penfield.**
Unreported: Opinion at Tab L, aff'd 210 AD2d 901
- (7) **In the Matter of the Application of Karen Noble Hanson, Petitioner, v. Marguerite L. Relin and Ronald Starkweather, Commissioners of the Monroe County Board of Elections and Kevin Murray, Respondents. For a Judgment invalidating the designating petitions filed with the Board of Elections, nomination Kevin B. Murray, Respondent, as a Democratic candidate for Mayor of the City of Rochester, State of New York, in a primary election to be held on September 14, 1993.**
Unreported: Opinion at Tab S.
- (8) **Sabrina Johnson, Plaintiff, v. City of Rochester, Defendant.**
Unreported: Opinion at Tab T.
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.
- 1977 - 1992** **I held the appointed position of Assistant District Attorney in the Monroe County District Attorney's Office in Rochester, New York.**
- November 1991** **I ran unsuccessfully for the position of New York State Supreme Court Justice, 7th Judicial District.**

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;

I did not serve as a Clerk to a Judge.
 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;

1977 - 1992

**Monroe County District Attorney's Office
201 Hall of Justice
Rochester, New York 14614**

I served as an Assistant District Attorney.

From 1984 through 1992, I served as First Assistant District Attorney

1993 - Present

**New York State Supreme Court Justice
400 Hall of Justice
Rochester, New York 14614**

In November, 1992, I was elected to serve as a New York State Supreme Court Justice in the Seventh Judicial District for a 14 year term and took office in January 1993.

- 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 entire career as a practicing attorney from 1977 through 1992 was spent in the Monroe County District Attorney's Office.

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

As a Monroe County Assistant District Attorney, I prosecuted cases on behalf of the People of the State of New York. My area of specialization was criminal law, and I routinely interacted with both victims of crimes and witnesses to crime.

- 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 an Assistant District Attorney, I frequently appeared in court.

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;	0%
(b) criminal.	100%

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 to verdict approximately 100 felony cases where I was sole trial counsel. I was also sole trial counsel on numerous misdemeanor and violation cases.

5. What percentage of these trials was:

(a) jury;	95%
(b) non-jury.	5%

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 to each case:

- (a) the date of representation;
 (b) the name of the court and the name of the judge or judges before

- (c) 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.

In each case, I was sole trial counsel for the People.

1. **People v Arthur Shawcross**
September 17, 1990 - December 13, 1990
Indictment #058
Filed 01/23/90
Murder in the Second Degree (10 counts)

Court: Monroe County Court
Presiding Judge: Honorable Donald J. Wisner

Defense Attorneys: David A. Murante, Esq.
700 Wilder Building
Rochester, NY 14614
(716) 232-6830

Thomas J. Cocuzzi, Esq.
700 Wilder Building
Rochester, NY 14614
(716) 232-6830

Reported: 192 AD2d 1128; lv den 82 NY2d 726

SUMMARY:

Shawcross, a serial killer, was responsible for the deaths of 11 women. He was on parole to the Rochester area having been convicted 18 years earlier for the sexual assault and slaying of an 8-year-old girl. At that time, Shawcross also admitted to the death of a 10-year-old boy.

The victims in Rochester included prostitutes and street people, ranging in age from 22 to 59 years old. At trial, Shawcross claimed an insanity defense and offered an expert witness, Dr. Dorothy Otnow Lewis. Dr. Lewis claimed that Shawcross, due to physical and sexual abuse that he suffered as a child, as well as a brain injury that resulted in complex partial seizures, was not responsible

for his conduct in killing the women. Dr. Lewis submitted tapes of interviews with Shawcross which she maintained were conducted under hypnosis. It was also maintained that Shawcross cannibalized two of his victims in Rochester, and previously cannibalized Viet Cong women while serving in the U.S. military in Viet Nam. The cornerstone of Dr. Lewis' defense of Shawcross was her premise that he suffered from dissociative states akin to multiple personalities. The prosecution countered with Dr. Park Dietz, an expert in forensic psychiatry, who challenged Dr. Lewis' findings and offered the opinion that Shawcross was, at best, an anti-social personality. In December 1991, Shawcross was found guilty charged.

2. **People v Robert Ahalt and Carl "Butch" Campbell**
January 19, 1988 - March 9, 1988
Indictment #834
Filed 11/13/86
Murder in the Second Degree (11 counts); Arson in the
Second Degree; Arson in the Third Degree (2 counts)

Court: New York State Supreme Court
Presiding Judge: Honorable Donald J. Mark

Defense Attorneys: Culver K. Barr, Esq.
 1025 Reynolds Arcade Building
 Rochester, NY 14614
 716-454-7672

Felix V. Lapine, Esq.
 One East Main Street
 Suite 711
 Rochester, NY 14614
 716-454-6690

Reported:

People v Ahalt, 139 Misc 2d 863; 170 AD2d 982, lv
den 78 NY2d 953
People v Campbell, 139 Misc 2d 863; 170 AD2d 982,
lv den 78 NY2d 963

SUMMARY:

Ahalt and Campbell were convicted of murdering five people during a 48-hour period. Among their victims were

three people, one male aged 56 and two females, aged 74 and 75, all who were bludgeoned to death. The following day they killed a 28 year old female. Prior to killing her, the defendants forced her to ingest glass, broke bottles in her face, and stabbed her seventh-month-old fetus with a coat hanger. Her body was mutilated after her murder. That same day at a different location, another female, acquainted with the defendants, was beaten to death by Ahalt. Following all the homicides, Ahalt and Campbell attempted to cover their crimes by setting the murder sites on fire. In the second double-jury trial ever to be held in New York State, both men were convicted of multiple counts of murder. Ahalt was found guilty on March 9, 1988 and Campbell was found guilty on March 10, 1988.

3. **People v Richard Mainprize, Jr.**
March 15, 1984 - March 27, 1984
Indictment #907
Filed 12/30/82
Murder in the Second Degree (3 counts)

Court: Monroe County Court
Presiding Judge: Honorable Charles T. Maloy

Defense Attorney: Vincent Rizzo, Esq.
 200 Hall of Justice
 Rochester, NY
 716-418-5616

Reported: 134 AD2d 943, lv den 71 NY2d 899

SUMMARY:

Mainprize was convicted of murder in the death of Diane Marlowe, a 22-year-old female. Mainprize beat and strangled Ms. Marlowe. After killing her, Mainprize placed Ms. Marlowe's naked body in an abandoned refrigerator. At trial, Mainprize claimed insanity, saying he watched a "black form" perform the homicide acts. The insanity defense was rejected. Mainprize was found guilty of murder in the second degree on March 27, 1984.

4. **People v. Nathaniel Lee Jones**
September 2, 1987 - September 21, 1987
Indictment #918
Filed 12/23/86
Burglary in the First Degree (10 counts); Rape in the First Degree (12 counts); Sexual Abuse in the First Degree (5 counts); Attempted Rape in the First Degree (4 counts); Robbery in the First Degree; Sodomy in the First Degree (4 counts); Petit Larceny

Court: Monroe County Court
Presiding Judge: Honorable Donald J. Wisner

Defense Attorney: Norman A. Palmiere, Esq.
 205 St. Paul St.
 Suite 300
 Rochester, NY 14604
 716-232-6144

Reported: 152 AD2d 984, lv den 74 NY2d 812

SUMMARY:

Jones, who became known the "Northeast Rapist", was involved in 10 separate incidents of burglary, rape, sodomy and sexual abuse that occurred over a 9-month period from April 1986 through December 1986. His victims ranged in age from 9 to 26. On September 21, 1987, he was convicted of 37 counts of sexual assault and burglary.

5. **People v Anthony J. Salem, Jr.**
July 11, 1988 - July 18, 1988
Indictment #734
Filed 10/08/87
Burglary in the First Degree (5 counts); Burglary in the Second Degree; Rape in the First Degree (4 counts); Sodomy in the First Degree (11 counts); Sexual Abuse in the First Degree (12 counts); Petit Larceny (4 counts)

Court: New York State Supreme Court
Presiding Judge: Honorable Eugene W. Begin

Defense Attorney: Thomas J. Kidera, Esq.
 10 North Fitzhugh St.
 Rochester, NY 14614
 716-428-5642

Reported: 167 AD2d 840, lv den 77 NY2d 911

SUMMARY:

Salem was a serial rapist who was convicted of burglary, rape, sodomy and sexual abuse. Over a six-month period, he sexually assaulted six different victims who ranged in age from 24 to 46. On July 18, 1988, Salem was found guilty of a 37-count indictment.

6. **People v Bruce W. Walden**
 August 25, 1986 - September 4, 1986
 Indictment #877
 Filed 11/27/85
 Murder in the Second Degree (3 counts)

Court: New York State Supreme Court
Presiding Judge: Honorable Donald J. Mark

Defense Attorney: Edward F. Scanlan, Esq.
 10 North Fitzhugh St.
 Rochester, NY 14614
 716-428-5210

Reported: 148 AD2d 971, lv den 75 NY2d 819

SUMMARY:

Walden was convicted of murder in the death of 11-year-old Sunshine McKendree. The child's body was found on an abandoned railroad track, nude from the waist down, with a red scarf wrapped tightly around her neck, dead from strangulation. On September 4, 1986, Walden was convicted of murder in the second degree for intentionally killing the child during a rape attempt.

7. **People v David R. Larson**
September 26, 1985 - October 10, 1985
Indictment #191
Filed 03/29/84
Murder in the Second Degree

Court: New York State Supreme Court
Presiding Judge: Honorable David O. Boehm

Defense Attorney: Michael Couture, Esq.
 Unknown - Moved out of State

Reported: 145 AD2d 976, lv den 73 NY2d 1017

SUMMARY:

Larson was convicted of murder in the death of Tracy Kotlik, a 14-year-old female. Larson killed the girl by slashing and stabbing her 18 times with a knife. Larson submitted an intoxication defense at trial, but it was rejected by the jury. On October 10, 1985, Larson was found guilty of murder in the second degree.

8. **People v Thomas Taylor and Thomas Torpey**
Indictment #433
Filed 06/10/82
Murder in the Second Degree

Court: New York State Supreme Court
Presiding Judge: Honorable Robert P. Kennedy

Defense Attorneys: Robert H. Murphy, Esq.
 6461 Main St.
 Williamsville, NY 14221
 716-634-6750

David A. Murante, Esq.
 700 Wilder Building
 Rochester, NY 14614
 716-232-6830

Reported:

Taylor: 155 AD2d 980, lv den 75 NY2d 818, cert den'd Taylor v. New York, 496 US 926
Torpey: 168 AD2d 916, lv den 77 NY2d 967

SUMMARY:

Taylor and Torpey, members of an organized crime faction, were convicted of murder in the second degree in connection with the shotgun slaying of John Fiorino. Taylor and Torpey contracted a hitman to kill Fiorino, who was a member of a rival mob. Both defendants were found guilty on March 12, 1986

9. **People v Robert Reilly**
October 21, 1985 - November 11, 1985
Indictment #004
Filed 01/11/85
Murder in the Second Degree (4 counts)

Court: Monroe County Court
Presiding Judge: Honorable Andrew G. Celli

Defense Attorney: Thomas J. Kidera, Esq.
10 North Fitzhugh St.
Rochester, NY 14614
716-428-5642

Reported: 155 AD2d 961, lv den 75 NY2d 923

SUMMARY:

Reilly, 43, was convicted of four counts of murder in connection with the death of his wife, 31, and his three children, ages 3, 6 and 8. Reilly killed his wife by cutting her neck and striking her with a hammer. Then he drowned his three children in the upstairs bathtub. At trial, Reilly claimed insanity, saying he was not responsible for his conduct due to major depression. The insanity defense was rejected and on November 8, 1985, Reilly was found guilty of four counts of murder in the second degree.

10. **People v Kurtis Brown, Thaxton Hamlin and Billy Joe Green**
Indictment #088
August 20, 1984 - September 4, 1984
January 3, 1989 - January 10, 1989 (retrial of Kurtis Brown only)
Indictment #088
Filed 02/08/83
Murder in the Second Degree (2 counts)

Court: New York State Supreme Court
Presiding Judge: Honorable Eugene W. Begin

Defense Attorneys: Lawrence J. Andolina, Esq.
 130 East Main St.
 Rochester, NY 14614
 716-232-4440

Sidney T. Farber, Esq.
 2140 Penfield Rd.
 Penfield, NY 14526
 716-377-6990

Michael T. DiPrima, Esq.
 2024 West Henrietta Rd.
 Unit 3-G
 Rochester, NY 14623
 716-292-0170

Reported:

Brown: 124 AD2d 973, rev 71 NY2d 750, 170 AD2d 955, lv den 78 NY2d 962

Hamlin: 131 AD2d 200, aff'd 71 NY2d 750

Green: 147 AD2d 955

SUMMARY:

Brown, Hamlin and Green were convicted of murdering Brown's 21-year-old wife, Susan. Brown plotted to have Hamlin and Green kill Mrs. Brown to obtain the proceeds from her \$100,000 insurance policy. Brown arranged an alibi for himself while Hamlin and Green carried out the killing by stabbing the victim more than 30 times and

hitting her with a cane. On September 4, 1984, all three were convicted of murder in the second degree. Brown's conviction was reversed because of a Bruton issue. Specifically, subsequent to the trial, retroactive effect was given to an appellate decision limiting interlocking confessions. However, Brown was retried and again convicted of murder in the second degree on January 10, 1989.

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 my tenure as First Assistant District Attorney, I was on-call 24 hours a day, 7 days a week for all homicides that occurred within Monroe County. It was my responsibility, if called, to report to the scene and act as a legal advisor to the investigating police agency. I would estimate that I responded to 250 to 300 homicide scenes, and at various times I assisted the police in drafting search warrants, conducting lineups, and in making decisions relating to arrest and probable cause.

Further, as First Assistant, I had supervisory and administrative responsibilities in the office and acted as the District Attorney in his absence from the County. I also handled a number of cases that resulted in pleas prior to trial and was assigned several Grand Jury investigations.

Finally, I have provided legal instruction on various occasions. I was a volunteer instructor at a trial advocacy seminar, presented by the Monroe County Bar Association and sponsored by the National Institute for Trial Advocacy. Also, in conjunction with my responsibilities as First Assistant District Attorney, I provided recruit instruction and in-service training for police officers at the Monroe Community College Criminal Justice and Public Safety Training Center. Additionally, I have provided training for volunteer counselors at Rape Crisis. Most recently, I chaired the Evidence Institute, sponsored by the Monroe County Bar Association.

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.

Based on my 20 years of public service, I will be eligible at age 62 to receive retirement benefits from the New York State Retirement System. The yearly amount would be approximately 40% of my current salary. As an Assistant District Attorney, I participated in a deferred compensation plan through the County of Monroe, and as a Supreme Court Justice, I participated in a deferred compensation plan through the State of New York. As of June 30, 1997, the fund value of my County deferred compensation plan was \$124,365.83. As of that same date, the value of my State deferred compensation plan was \$44,832.42. I was eligible to receive the monies on deposit in the County plan when I left County employment. However, I decided to maintain the account. With respect to the monies on deposit in the State deferred compensation plan, I would be eligible to receive those when I leave State employment. Prior to the institution of a deferred compensation plan in Monroe County, I contributed to an IRA. As of June 30, 1997, the value of that IRA was \$16,214.00.

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 I have served as a New York State Supreme Court Justice for the last four and a half years, I don't believe that there are any such potential conflicts of interest. However, I will, of course, 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 do not.

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 attached copy of my Financial Disclosure Report.

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

Please 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.

Other than my own campaigns for New York State Supreme Court in 1991 and 1992, I have not.

AO-10 (M)
Rev. 8/96FINANCIAL DISCLOSURE REPORT
Nomination ReportReport Required by the Ethics
Reform Act of 1989, Pub L. No.
101-194, November 30, 1989
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Siragusa, Charles J.		2. Court or Organization US District Court/Western NY	3. Date of Report 07/16/1997
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Court Judge		6. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date 07/15/1997 ___ Initial ___ Annual ___ Final	5. Reporting Period 01/01/1997 to 06/30/1997
7. Chambers or Office Address 400 Hall of Justice Rochester, New York 14614		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
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 the last page.			

I. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 <u>Advisory Board Member</u>	<u>Families & Friends of Murdered Children</u>
2 _____	<u>and Victims of Violence</u>
3 _____	_____

II. AGREEMENTS (Reporting individual only; see pp. 14-17 of Instructions)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 <u>Pension</u>	<u>NYS Retirement System</u>
2 _____	<u>(eligible to receive benefits at age 62)</u>
3 _____	_____

III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 18-25 of Instructions)

DATE	PARTIES AND TERMS	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1996	<u>State of New York-Salary/NYS Supreme Court Justice</u>	<u>\$ 112,430.00</u>
2 1995	<u>State of New York-Salary/NYS Supreme Court Justice</u>	<u>\$ 112,287.00</u>
3 _____	_____	_____
4 _____	_____	_____
5 _____	_____	_____

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Siragusa, Charles J.	07/16/199

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. 26-29 of Instructions.)

<input type="checkbox"/>	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. 30-33 of Instructions.)

<input type="checkbox"/>	SOURCE	DESCRIPTION	VALUE
	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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

<input checked="" type="checkbox"/>	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Siragusa, Charles J.	Date of Report 07/16/1997
	- Income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of instructions.)	

VII, Page 1 INVESTMENTS and TRUSTS

A. Description of Assets <i>Indicate where applicable, owner of the asset by using the parenthetical "(D)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(D)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-E)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-T)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-F)	(4) Gain Code (A-E)	(5) Identity of buyer/seller (if private transaction)
NONE (no reportable income, assets, or transactions)									
1 M&T Bank	B	Interest	J	T	EXEMPT				
2 M&T Bank	A	Interest	J	T	EXEMPT				
3 Merrill Lynch (IRA)					EXEMPT				
4 --Alliance Income Builder	B	Dividend	J	T	EXEMPT				
5 --ML Global Allocation - B	B	Dividend	J	T	EXEMPT				
6 Merrill Lynch					EXEMPT				
7 Ready Asset Trust	A	Dividend	J	T	EXEMPT				
8 --Putnam Utilities Growth & Income Fund Class A	A	Dividend	J	T	EXEMPT				
9 --Putnam Global Growth Fund Class A	A	Dividend	J	T	EXEMPT				
10 --MFS Municipal Income FD Class B	A	Dividend	J	T	EXEMPT				
11 Work Recovery New Common Stock		None	J	T	EXEMPT				
12 Deferred Compensation FEBSOO					EXEMPT				
13 --Putnam Investors Fund Class A	B	Dividend	K	T	EXEMPT				
14 --American Century 20th Century Ultra		None	K	T	EXEMPT				
15 --Fidelity Equity Income	C	Dividend	K	T	EXEMPT				
16 --Templeton Foreign Fund Class I	A	Dividend	K	T	EXEMPT				
17 Deferred Compensation Copeland Companies					EXEMPT				
1 Invt Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT Name of Person Reporting
Siragusa, Charles J. Date of Report
07/16/1997

VII. Page 2 INVESTMENTS and TRUSTS

- Income, value, transactions (includes those of spouse and dependent children. See pp. 57-54 of instructions.)

A. Description of Assets <i>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.</i> <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-E)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-F)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: 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)									
18 --Stable Income Fund	A	Dividend	K	T	EXEMPT				
19 --Janus Fund	A	Dividend	J	T	EXEMPT				
20 --TRP Equity Income Fund	B	Dividend	J	T	EXEMPT				
21 --TRP International Stock	A	Dividend	J	T	EXEMPT				
22 --Vanguard GMM	A	Dividend	J	T	EXEMPT				
1 Inv/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	O=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000					
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 F4=\$50,000,001 or more					
3 Val Meth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market						

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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of report.)

NONE (No additional information or explanations.)

NONE

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Siragusa, Charles J.	07/16/1997

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. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Charles J. Siragusa Date 7/16/97

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. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
 Administrative Office of the United States Courts
 One Columbus Circle, N.E.
 Suite 2-301
 Washington, D.C. 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	21	323	61	Notes payable to banks—secured	0		
U.S. Government securities—add schedule	217	571	25	Notes payable to banks—unsecured	0		
Listed securities—add schedule SEE "A"				Notes payable to relatives	0		
Unlisted securities—add schedule	0			Notes payable to others	0		
Accounts and notes receivable:	0			Accounts and bills due	0		
Due from relatives and friends				Unpaid income tax	0		
Due from others				Other unpaid tax and interest	0		
Doubtful				Real estate mortgages payable—add schedule SEE "B"	155	000	00
Real estate owned—add schedule	210	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable	0			Other debts—itemize:			
Autos and other personal property	40	000	00				
Cash value—life insurance	2	200	00				
Other assets—itemize:	0						
				Total Liabilities	155	000	00
				Net Worth	336	094	86
Total Assets	491	094	86	Total liabilities and net worth	491	094	86
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner 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 A

I.	Merrill Lynch		
	A.	Ready Asset Trust	7,215.00
	B.	Mutual Funds	
		1. Putnam Utilities Growth and Income Fund Class A	71.00
		2. Putnam Global Growth Fund Class A	10,363.00
		3. MFS Municipal Income FD Class B	<u>13,426.00</u>
		Total	31,075.00
II.	Merrill Lynch		
	A.	Alliance Income Builder Class C	7,389.00
	B.	ML Global Allocation B	<u>8,825.00</u>
		Total	16,214.00
III.	Common Stock		
		Work Recovery New	1,084.00
IV.	Deferred Compensation - County of Monroe - PEBSCO		
	A.	Putnam Investors Fund Class A	34,917.71
	B.	Fidelity Equity - Income	33,485.78
	C.	American Century, 20th Century WLTRA	28,912.59
	D.	Templeton Foreign Fund, Class I	<u>27,049.75</u>
		Total	124,365.83
V.	Deferred Compensation - State of New York - The Copeland Companies		
	A.	Stable Income Fund	16,310.29
	B.	Janus Fund	727.11
	C.	TRP Equity Income Fund	9,935.49
	D.	TRP International Stock	8,520.16
	E.	Vanguard GNMA	<u>9,339.37</u>
		Total	44,832.42

SCHEDULE B - REAL ESTATE

Residence:	Webster, New York 14580
Fair Market Value:	\$210,000
Mortgage Loan:	\$155,000
Mortgage:	Standard Federal Bank Savings/Finacial Services

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.

From 1984 through 1992, while a member of the Monroe County District Attorney's Office, I served on the Rape Crisis Advisory Board, and also provided legal instruction for volunteer counselors with that organization. From 1988 through the present, I have participated in the Mentor Program sponsored by the Board of Cooperative Educational Services by providing guidance for students interested in careers in law and criminal justice. Beginning in 1991, I became involved in the Community Reading Program sponsored by the Rochester City School District. In conjunction with this program, I had the opportunity to read to inner-City school children at the primary level to encourage their interest in learning through reading. Since 1992, I have participated in police civilian academies, sponsored by various law enforcement agencies within Monroe County. The purpose of these academies is to foster better relationships between the police and the communities they serve. In 1992, I began assisting Families and Friends of Murdered Children and Victims of Violence, an organization started by a mother whose son had been murdered in the City of Rochester. On behalf of this group, I have spoken to teenagers on the impact of violence, based on my experience as an assistant district attorney and as a judge. Presently, I serve on the Advisory Board for this organization. Since 1993, I have been active in the Weapons Diversion Program of the Rochester City School District. In connection with this program, I have spoken to inner-City students, suspended from school because of weapons possession, and their parents, about the potential consequences of such conduct, as well as the mutual responsibility to foster a safe environment for learning in our schools. Since 1994, I have been involved in the Park Ridge Chemical Dependency Outreach Program. I have met with high school students in the program, as well as their parents, and discussed the legal ramifications and reasons behind drug and alcohol abuse. Finally, I am currently a member of the Monroe County Criminal Justice Council, a group comprised of professionals from various disciplines, which monitors criminal justice issues.

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 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, nor have I ever belonged to any such organization.

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 and (including the circumstances which led to your nomination and interviews in which you participated).

Yes, there is. The process started with the Committee on the Judiciary for Senator Daniel Patrick Moynihan. The Committee required the submission of a detailed "Candidate's Questionnaire" followed by an interview. At my interview, which occurred in New York City, the Committee members thoroughly questioned me about my qualifications, experience and background. After completing interviews with all candidates, the Committee recommended certain individuals to Senator Moynihan. I was one of the individuals recommended, and was subsequently interviewed by Senator Moynihan himself in Washington. Approximately two weeks later, Senator Moynihan informed me that he would be recommending me to President Clinton for appointment as a Federal District Court Judge. Shortly thereafter, I received various forms from the Office of Counsel to the President, including the American Bar Association Questionnaire and the F.B.I. Standard Form 86. After completion of these forms, I was interviewed extensively in Washington, D.C. by members of the Department of Justice, and next, in Rochester, New York, first by a representative of the F.B.I., and then by a representative of the American Bar Association. With respect to the A.B.A. investigation, I was informed that I was rated well qualified for the appointment. Finally, on July 15, 1997, I was notified by the White House Counsel's Office that President Clinton was nominating me for the position of United States District Judge for the Western District of New York.

4. Has anyone involved in the process of selecting you 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 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 our tripartite system of government. The strong presumption of constitutionality of legislative acts compels trial courts, in the absence of a clear showing of conflict with the Constitution, to determine and give full force and effect to legislative intent. Adherence to this rule is necessary to ensure that our representative government works and works well. Trial courts need to appreciate their jurisdictional limitations. While the constitutionality of legislative enactments may properly be the subject of litigation, a review of the "wisdom" of such legislation, state or federal, is not.

Cases in trial courts, in my experience, involve the assertion of the individual interests of the parties themselves. These litigants are not the representatives of society at large. While sometimes their interests are broad and affect a number of people, as in class actions, more typically these interests are very narrow and specific, as in negligence and contract actions. Therefore, an individual case, at the trial court level, should not occasion the creation of new rights or the implementation of far-reaching social policy.

My sixteen years as a trial attorney and my four-and-a-half years as a trial judge have left me with a strong sense that what litigants expect, and what they are entitled to from the courts, is an impartial application of existing law and precedent, as well as the established rules for determining legislative intent. I do not see the role of federal district courts differently.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Algenon Lamont Marbley
 Nickname: Monte Marbley

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

Residence: Blacklick, Ohio 43004

Office: Vorys, Sater, Seymour and Pease
 52 East Gay Street
 P. O. Box 1008
 Columbus, Ohio 43216-1008

3. Date and Place of Birth.

Date of Birth: September 19, 1954
 Place of Birth: Morehead City, North Carolina

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

Married: Yes

Spouse: Janet Lynn Green Marbley
 Occupation: Administrator and Counsel, Supreme Court of Ohio Client's Security Fund
 175 South Third Street, Columbus, Ohio

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

University of North Carolina
 at Chapel Hill
 Matriculated August, 1972
 Graduated May, 1976
 Bachelor of Arts Degree, 1976

Northwestern University School of Law
 Matriculated August, 1976
 Graduated May, 1979
 Juris Doctor Degree, 1979

6. Employment Record: List (by year starting with the most recent) 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. | Associate (1986-1991)
Partner (1991 - Present) | Vorys, Sater, Seymour and Pease
52 East Gay Street
Columbus, Ohio 43215 |
| b. | Board Member (1991 - Present)
Board President (1995 - 1997) | Salesian Boys and Girls Club
80 South Sixth Street
Columbus, Ohio 43215-4784 |
| c. | Board Member (1991 - Present)
Secretary and Counsel to the Board
(1992 - 1996) | Big Brothers/Big Sisters Association
of Columbus |
| d. | Adjunct Professor of
Trial Advocacy
Fall 1995 | Capital University Law School
665 South High Street
Columbus, Ohio |
| e. | Instructor, 1987 - Present | National Institute of Trial
Advocacy |
| f. | Assistant Regional Attorney
(1981-1986) | United States Department of Health and
Human Services
Office of the Regional Attorney
105 W. Adams Street
Chicago, Illinois |
| g. | Adjunct Professor of Criminal
Law and Procedure (1985 - 1986) | Northeastern Illinois University
5500 N. St. Louis Avenue
Chicago, Illinois |
| h. | Associate (1979 - 1981)
Law Clerk (1977 - 1979) | James D. Montgomery and Associates
(formerly Montgomery and Holland)
39 South LaSalle Street
Chicago, Illinois |
| i. | Legal Assistance Clinic
Law Clerk (Summer 1977) | Northwestern University
357 E. Chicago Avenue
Chicago, Illinois 60611 |
| j. | Laborer (Summer 1976) | Bethlehem Steel Corporation
U. S. Highway 12, Portage, Indiana |

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

None.

8. **Honors and Awards:** List (by month and year starting with the most recent) any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Conference.

Ten Outstanding Young Citizens of Columbus (1995);
Outstanding Service Award, Minority Legal Education Resources, Inc. (1986) (Nonprofit organization which assisted minorities and others in taking the Illinois Bar Examination);

Order of the Golden Fleece (1975), Highest Co-educational Honorary Society at the University of North Carolina, Chapel Hill;

Order of the Grail (1974), Highest Male Honorary Society at the University of North Carolina, Chapel Hill;

North Carolina Fellow (1973), Based on Academic Performance and Leadership Ability, awarded to approximately 20 students each year.

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.

Bar Associations:

American Bar Association
National Bar Association
Columbus Bar Association
Ohio State Bar Association

Committees:

Columbus Bar Association:
Chairman, Trial Advocacy Committee - (1996 - 1997)

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:**

National Institute for Trial Advocacy (I have not been involved in lobbying activities)

b. Other Organizations:

- President of the Board of Directors, The Salesian Boys and Girls Club; (Term Expires 7/97)
- Secretary and Counsel to the Board, Big Brothers/Big Sisters Association of Franklin County; (Term Expires 7/97)
- Omega Psi Phi Fraternity, Inc.
- Jefferson Golf and Country Club
- The Capital 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.

<u>Court</u>	<u>Date of Admission</u>
Supreme Court of Illinois	1980
United States District Court for the Northern District of Illinois	1980
United States Court of Appeals for the Seventh Circuit	1982
Supreme Court of Ohio	1987
United States District Court for the Southern District of Ohio	1987
United States Court of Appeals for the Sixth Circuit	1996
United States District Court for the Southern District of Illinois	1996

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.

Present state of health: Excellent
 Date of last physical examination: 1997

14. Judicial Office: State (chronologically, most recent first) 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 decision 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.

None

16. Public Office: State (chronologically, most recent first) 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, most recent first) 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;

<u>Title</u>	<u>Employer</u>	<u>Date</u>
Law Clerk, Certified 711 Student (As a third year law student, I was allowed to represent clients in court under supervision of an attorney, 1975-1976)	Northwestern University Legal Assistance Clinic 375 E. Chicago Avenue Chicago, Illinois	September 1976- May 1979

Associate Attorney	Montgomery and Holland 39 South LaSalle Street Chicago, Illinois (n/k/a James D. Montgomery and Associates)	May 1979 - October 1981
Assistant Regional Attorney	United States Department of Health and Human Services 105 W. Adams Street Chicago, Illinois 60603	October 1981 - November 1986
Adjunct Professor of Criminal Law and Procedure	Northeastern Illinois University Chicago, Illinois	1985 - 1986
Associate (1986 - 1991) Partner (1991 - Present)	Vorys, Sater, Seymour and Pease 52 East Gay Street Columbus, Ohio 43215	1986 - Present
Instructor	National Institute of Trial Advocacy	1987 - Present
Adjunct Professor Trial Advocacy	Capital University Law School 665 South High Street Columbus, Ohio	Winter 1995 - Present

- 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?

May 1979 - October 1981 (Montgomery and Holland)

I was employed by Montgomery and Holland at the beginning of my second year in law school (fall 1977). I worked there continuously through law school, until October 1981.

Montgomery and Holland was a litigation boutique with approximately seven attorneys. I worked primarily with the senior partner, James D. Montgomery, doing federal and state criminal defense. My primary responsibility was assisting Mr. Montgomery in the preparation and trial of cases. Typically, I prepared witnesses for testimony, took witness statements and engaged in general investigation. I was responsible for drafting pleadings, writing briefs and arguing motions.

While at Montgomery and Holland, I tried six cases to a jury. I served as lead counsel on four of those trials, and as second chair on the remaining two. I was involved in one civil jury trial, a paternity case, which I also second chaired with Mr. Montgomery. The remaining four jury trials involved three felony criminal matters and one misdemeanor matter, all of which I first chaired.

October 1980 - November 1986

In October 1980, I left the Montgomery and Holland firm and began employment with the Office of the Regional Attorney, U. S. Department of Health and Human Services ("HHS") in Chicago. I was recruited to the Department of Health and Human Services primarily to practice in the administrative litigation area. My primary responsibilities were prosecuting physician exclusion and physician suspension cases pursuant to Section 1160 of the Social Security Act.

At issue in physician suspension cases was the length of time that a physician should be suspended from the Medicare Program due to a conviction relating to Medicaid fraud. The physician exclusion cases were akin to medical malpractice cases. At issue in those cases was whether the physician's practice fell below the standard of care for physicians in that particular geographical area. If it was determined by the administrative law judge that the practitioner fell below the standard of care, then that practitioner would be excluded from the Medicare program for a period of time. While at Health and Human Services, I tried two physician exclusion cases and won both. I tried *In The Matter of Dr. H. R.*^{1]}, which was one of the first such proceeding to go to hearing in the country. I also tried as first chair *In The Matter of M. F.* Again, the Agency prevailed throughout the administrative process. My remaining duties included representing the various HHS umbrella agencies--e.g. the Social Security Administration and the Health Care Financing Administration in various administrative matters. During that time, I represented the Agency before the Seventh Circuit Court of Appeals in the case of *St. Elizabeth Hospital v. Bowen*, 797 F.2d 449 (7th Cir. 1986), a case relating to hospital reimbursement regulations, in which the Agency prevailed.

^{1]} Pursuant to the pertinent regulations, the name of the respondent cannot be disclosed.

November 1986 - December 1995

I joined Vorys, Sater, Seymour and Pease as an Associate in November 1986. I was recruited directly into the litigation group to handle medically-related matters, such as medical malpractice defense, product liability litigation and workers compensation litigation. My first major case, however, was in the United States District Court for the Southern District of Ohio in the case of *Ropak v. Buckhorn*, 656 F. Supp. 209 (S.D. Ohio 1987), a securities litigation matter in which the primary issue was the validity of a "poison pill" plan. This was a case of first impression in this district and I was a part of the litigation team. *Ropak* was the first litigation in which a poison pill plan under Delaware law was found invalid. I also participated in the preparation of the brief filed with the Sixth Circuit Court of Appeals. The Sixth Circuit affirmed the favorable ruling below. Having participated in that case, I also was involved in the trial of *General Acquisitions, Inc. et al. v. Gencorp, Inc., et al.*, Case No. C2-87-348 U.S. District Court Southern District of Ohio before the Honorable Joseph Kinneary. There, as in the *Ropak* litigation, I was primarily involved in drafting pleadings, and interviewing and preparing witnesses for trial. The *GenCorp* matter eventually settled.

Subsequent to my involvement in securities litigation, my litigation practice involved primarily product liability defense, general business litigation and workers compensation litigation. I have represented a variety of clients in my product liability defense practice, including General Motors, Coca-Cola, Illinois Tool Works and Ford Motor Company. One significant case, an automobile fire case, *Bales v. General Motors*, Case No. 86 CI 397, I tried to a jury before the Honorable Nicholas Holmes, in the Ross County, Ohio Court of Common Pleas. I also tried two additional product liability matters, as well as three workers' compensation matters during this period.

My commercial litigation experience, in addition to securities litigation, involved matters ranging from breach of contract to commercial paper. I was involved in a protracted breach of contract case with product liability overtones, *Buckeye Custom Products, Inc. v. TRW Technar*, Case No. C2-90-207, before the Honorable James Graham. That case settled on the day of trial following arguments on motions, but before jury selection. I also was involved in a complex set of commercial paper cases on behalf of Signet Bank Maryland which were pending in the District Court with parallel cases pending in the Franklin County, Ohio Court of Common Pleas. Those cases settled.

1995 to Present

In 1995 my practice changed to some degree. I now practice primarily in the area of employment litigation and commercial litigation. In 1995, I undertook all of the Ohio litigation for Illinois Tool Works, a Fortune 100 company. Illinois Tool Works selected me as the attorney for its sixteen factories in the State of Ohio. I am responsible for all of the company's labor work and all of the litigation involving those factories, including all of its divisions. I also am doing a significant amount of employment litigation for The Limited and its various divisions. I serve as lead counsel in several employment litigation matters pending in the United States District Court for the Southern District of Ohio, and I have appeared as trial counsel for such other companies as Symix Systems, Inc., Pitney Bowes and M/I Schottenstein Homes.

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

Most of my clients are large corporations, although I have represented several smaller enterprises and individuals. My civil litigation experience has been in the areas of general business litigation, product liability and employment litigation. My representative clients in litigation include:

Business Litigation

Wendy's International, Inc.
 Worthington Industries
 Illinois Tool Works
 National City Bank
 Signet Bank Maryland

Product Liability

General Motors
 Ford Motor Company
 The Coca-Cola Company
 Illinois Tool Works

Employment Litigation

The Limited
 Symix Systems, Inc.
 Illinois Tool Works
 M/I Schottenstein Homes

Workers' Compensation Litigation

General Motors
 Teledyne
 Illinois Tool Works
 George Lynch Controls

Special Counsel Litigation

The Ohio State University
 Franklin County Children's Services
 Big Brothers/Big Sisters Association
 Project Linden, Inc.

I have also represented The Ohio State University as special counsel in a wrongful death action from which the University was dismissed pursuant to a Motion to Dismiss in State Court and later dismissed in the Court of Claims. I also have appeared as special counsel for Franklin County Children Services in a contested child custody matter in which the Agency had been implicated on negligence counts.

- 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. Virtually 100% of my professional work is litigation. The only exception would be some of the pro bono counseling that I provide and have provided to Big Brothers/Big Sisters Association as well as The Salesian Boys and Girls Club for the past six years.

- (2) What percentage of these appearances was in:

- (a) federal courts:

Approximately 33% of my cases have been in the Federal courts.

- (b) state courts of record:

Approximately 66% of my cases have been in the State courts.

- (c) other courts:

Less than 1% of my cases have been in other courts.

(3) What percentage of your litigation was:

(a) civil

85%

(b) criminal

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.

Twenty (20)

- Sole Counsel: 9
- Chief Counsel: 15
- Associate Counsel: 5

(5) What percentage of these trials was:

(a) jury - 85%

(b) non-jury - 15%

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, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The ten most significant litigated matters are as follows:

- 1) *United States v. Powell*, 654 F.2d 724 (7th Cir. 1981)
 - a. Date of Representation: 1980
 - b. Court: United States District Court for Northern District of Illinois
Honorable Nicholas J. Bua
 - c. Co-Defense Counsel: James D. Montgomery
39 S. LaSalle Street
Chicago, Illinois
(312) 977-0200
 - d. Opposing Counsel: Assistant United States Attorney Daniel Reidy
(Mr. Reidy is now a partner at Jones, Day, Reavis and Pogue, Chicago,
(312) 269-4140)

Defendant James H. Powell was charged with violation of the Hobbs Act, 18 U.S.C. § 1951. The government argued that Mr. Powell, a plumbing inspector for the City of Chicago, had extorted money from an electrical contractor.

The matter was tried to a jury in the United States District Court for the Northern District of Illinois before Judge Nicholas Bua. The government was represented by Assistant United States Attorney, Dan Reidy, now a partner with the law firm of Jones, Day, Reavis & Pogue in Chicago. The jury trial lasted approximately one week and was tried pursuant to a multi-count indictment. The principal issue before the jury was whether defendant, Mr. Powell, extorted money from the electrical contractor who had received goods moved in interstate commerce. In prosecuting its case, the government relied on wire tap evidence derived from a wire worn by their primary witness, the electrical contractor. At trial, we proved that the tape testimony was unreliable and the defendant was convicted of only two counts of the multi-count indictment. The defendant was sentenced to one year in the federal penitentiary.

The *Powell* case was significant to me because it was my first jury trial in Federal court. I was responsible for putting on the entire defense case, which included the direct examination of the defendant and various defense factual witnesses and character witnesses. In addition, I cross examined some of the prosecution witnesses and argued all motions before the Court. The fact that I was able to convince the jury through my examination of the defendant that the wire tap evidence was unreliable and was to be disbelieved certainly resulted in the defendant not being convicted of the more serious charges.

- 2) *Buckeye Custom Products, Inc. v. TRW Technar*, Case No. C2-90-207
- a. Date of Representation: 1990 - 1991
 - b. Court: United States District Court for Southern District of Ohio
Honorable James Graham
 - c. Co-Counsel: Michael G. Long
Vorys, Sater, Seymour and Pease
52 East Gay Street
Columbus, Ohio 43215
(614) 464-6297
 - d. Opposing Counsel: Richard I. Werder, Jr.
Michael Carpenter^{2]}
Jones, Day, Reavis & Pogue
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-7260

This breach of contract action was brought by my client, Buckeye Custom Products, Inc., against TRW Technar in the United States District Court for the Southern District of Ohio before the Honorable James Graham. Buckeye Custom Products, a division of Worthington Industries, sued TRW for its failure to honor a requirements contract between the companies for the production of cylinders that were incorporated in TRW's airbags. TRW counterclaimed against Worthington Industries, Inc., arguing that the part Buckeye produced was defective.

The case involved complex commercial issues, as well as technical issues. TRW's claim was in the nature of a product liability claim because it involved questions of whether the cylinder produced by Buckeye was in full compliance with the specifications of the contract. The primary technical area of contention was whether the cylinders were "burr free," or produced without any extruded metal fragments. This required extensive expert testimony on "burr technology." The case lasted approximately two years, with discovery lasting approximately one year.

^{2]} Mr. Carpenter is now a member of the firm of Zeiger and Carpenter, Suite 1600, 41 South High Street, Columbus, Ohio 43215, (614) 365-4100.

I was primarily responsible for conducting much of the discovery, including taking the depositions of TRW's factual and expert witnesses and defending the depositions of Buckeye's factual and expert witnesses. I also was responsible for the trial brief and arguing motions. The case settled after argument on the motions, but prior to voir dire.

3) *Thomas Bales v. General Motors Corporation*, Case No. 86 CI 397

- a. Date of Representation: 1987
- b. Court: Ross County Court of Common Pleas
Honorable Nicholas Holmes
- c. Co-Counsel: Gerald P. Ferguson
Vorys, Sater, Seymour and Pease
52 East Gay Street
Columbus, Ohio 43215
(614) 464-6484
- d. Opposing Counsel: Charley Hess
1520 Old Henderson Road
Suite 102A
Columbus, OH 43220
(614) 442-5800

This case was a product liability action. I defended on behalf of General Motors Corporation. The plaintiff alleged that a defect in the ignition system of the Camero caused the Camero to ignite after the ignition had been turned off and the car parked in the garage. The fire which ensued consumed the garage and its contents and much of the plaintiff's house. The defense argued that the fire was not caused by any defect in the Camero, but offered as a possibility defective wiring in the garage.

The defense strategy which I developed was significant in two respects. First, the defense not only had to rebut Plaintiff's theory, but had to present a plausible theory of the fire's origins. In effect, the defense had to sustain a burden of persuasion to establish that wiring in the garage was the likely cause of the fire. Secondly, because the fire destroyed much of the family's belongings, I had to convince the jury to be guided by scientific fact instead of emotions. It was, therefore, incumbent upon the defense to focus the jury's attention on the issue of liability instead of damages and on the expert testimony instead of that of the Plaintiffs.

The case was tried to a jury. I was responsible for every aspect of this trial, including jury selection, opening argument, presentation of the defense case, cross examination of witnesses in the plaintiff's case, closing arguments and arguments on motions. My co-counsel only participated in the charging conference. The jury returned a verdict in favor of the defense on all claims.

4) *In re M. F.*, Case No. 000-57-7005

- a. Date of Representation: February 27 - March 1, 1985; August 12 - 14, 1985
- b. Department of Health and Human Services, Social Security Administration
Office of Hearings and Appeals
Chief Administrative Law Judge, Kenneth Stewart
- c. Co-Counsel: Donna Morris Weinstein
Regional Attorney
U. S. Dept. of Health and Human Services
105 W. Adams Street
Chicago, Illinois 60603
(312) 886-1710
- d. Opposing Counsel: Steven O. Murray
Otjen, Van Ert, Stangle, Lieb & Wier
450 Science Drive, Suite 110
Madison, Wisconsin 53711
(608) 238-9500

This case was a physician exclusion case brought by my client, the United States Department of Health and Human Services ("Department" or "DHHS") pursuant to Section 1160 of the Social Security Act. The Department alleged that the respondent, Dr. F. rendered care that fell below the professionally recognized standards of care for the geographical area in which he practiced and that he should, therefore, be excluded from participation in the Medicare Program for a period of five (5) years. The Department had the burden of establishing its case through medical expert testimony.

The case of Dr. F. involved seven medical charts and several days of expert medical testimony. At the conclusion of the testimony, the administrative law judge found for the Department and excluded Dr. F. for five years. The significance of this case was that it was one of the first cases tried nationally under the then newly-enacted Section 1160 of the Act and was the second one tried and won in our region. I had, in fact, tried the first case of this kind in the six-state region served by the Chicago office of HHS. The Dr. F. matter also was

significant because I trained our Regional Attorney, Donna Weinstein, in trying physician exclusion cases.

- 5) *Parks v. Teledyne Ohio Cast*, Case No. 91-CV-0221
- a Date of Representation: April, 1993
 - b. Court: Clark County Court of Common Pleas
Honorable Gerald F Lorig
 - c. Co-Counsel: None.
 - d Opposing Counsel: John Workman
1375 Dublin Road
Columbus, Ohio 43215-1069
(614) 486-8935

This was a workers' compensation death case brought against my client, Teledyne. The claimant's decedent had prevailed throughout the administrative process and Teledyne appealed the matter to Common Pleas Court for a trial de novo. At issue in this case was whether the Plaintiff's decedent's lung disease was contracted as a result of his work in the Teledyne foundry. This two-day jury trial centered primarily on the medical testimony of several experts. I was responsible for the entire case: argument on motions, opening statement, examination of all witnesses and closing argument.

After several hours of deliberation, the jury returned a verdict in favor of Teledyne. This case was significant because it was one of those rare trials in which the claimant had prevailed throughout the administrative process on essentially the same medical evidence as was presented to the jury. It was a very difficult case, both technically and emotionally, inasmuch as the Plaintiff was a very sympathetic figure, and it was tried in a city which had some antipathy toward Teledyne because it had closed its foundry, relocated and taken a significant number of jobs from the Springfield community.

- 6) *Pruitt v. General Motors*, 74 O. App. 3d 520 (1991), Juris Mtn. overruled, 62 O. St. 3d 1447 (1991)
- a. Date of Representation: 1991
 - b. Court: Franklin County Court of Common Pleas
Honorable David Johnson
 - c. Co-Counsel: Gerald P. Ferguson
Vorys, Sater, Seymour and Pease
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-6484
 - d. Opposing Counsel: Lyman Brownfield
Lyman Brownfield Law Offices
341 S. Third Street
Suite 10
Columbus, OH 43215
(614) 221-5834

This is a product liability case in which I represented General Motors ("GM"). At issue in this case was whether a cable located on a semitractor, which broke, causing the Plaintiff significant bodily harm, was defective. The defense contended that the accident resulted from product misuse or abuse, and was not related to any design defect or production defect. The case was tried to a jury over a three-day period. At the end of the Plaintiff's case, the Court granted GM's Motion for a directed verdict based on GM's ability to refute Plaintiffs' expert testimony. The responsibilities for this case were divided evenly with co-counsel. I was responsible for voir dire and cross examination of several of Plaintiff's witnesses, including Plaintiff's expert. We also prevailed in the Tenth District Court of Appeals of Ohio. I shared responsibility for preparation of the appellate brief.

7) *Nutt v. Franklin County Children Services*, Case No. 92 JU-01-84

- a. Date of Representation: March, 1992
- b. Court: Franklin County Court of Common Pleas
The Honorable Ronald Solove
- c. Co-Counsel: None.
- d. Opposing Counsel: Charles K. Milless
175 South Third Street
Columbus, Ohio 43215
(614) 228-6885

Nancy K. Wonnell
Wonnell & Wonnell
330 S. High Street
Columbus, Ohio 43215-4510
(614) 224-7291

Natalie Fletcher
122 E. Main Street
3rd Floor
Columbus, Ohio 43215
(614) 267-3700

This was a child custody case in which there were two primary issues:

(1) whether the two minor children involved should be in the custody of Franklin County Children Services ("FCCS"); and (2) whether FCCS had been negligent in allowing the children to return to their home after they had been in the temporary custody of FCCS. The case was tried over the course of several days before Judge Ronald Solove and was highly publicized by *The Columbus Dispatch*. I was retained as special counsel to represent FCCS in the proceeding before Judge Solove.

This was an important case for several reasons. First, the safety and well-being of the children was of paramount importance. It was in the best interest of the children to be permanently removed from a neglectful home environment. I also had to defend the Agency on charges made by the guardian ad litem, Charles K. Milless, Esq., that the Agency had been negligent in returning the children to the home after the Agency had taken them into temporary custody. I had to persuade the Court that the Agency exercised due caution and sound discretion in returning the children to the home. I had to demonstrate to the Court that, where possible, it was the policy of the Agency to reunite and to maintain the family unit. I was successful in persuading the Court that FCCS acted reasonably under the circumstances.

The Court agreed with our position and removed the children from the home. The Court declined to find that FCCS had been guilty of actionable negligence in returning the children to the home.

- 8) *Chase Enterprises v. Wendy's International*, Case No. 395 CV 00486
- a. Date of Representation: 1996
 - b. Court: United States District Court For The District of Connecticut
Honorable Peter C. Dorsey
 - c. Co-Counsel: Michael G. Long
Vorys, Sater, Seymour and Pease
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-6297
 - d. Opposing Counsel: Kathleen McManus Trafford
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215-3406
(614) 227-1915

This was a breach of contract case brought by Chase Enterprises against Wendy's International, Inc. ("Wendy's") for alleged violations of Wendy's franchise agreement. Plaintiff, a franchisee whose store was located in Krakow, Poland, argued that Wendy's failed to provide adequate support services to assist the fledgling franchise. On behalf of Wendy's, I took the position that Wendy's International Group offered all of the technical support that it was obligated to provide pursuant to the franchise agreement.

This case was of precedential value to Wendy's. If it were found that Wendy's failed to support its international franchisee, then other franchisees stood poised to register similar complaints. The Wendy's support system and network, in effect, were on trial. It was essential that the system be exonerated, and that, irrespective of the resolution of the case, the structure of Wendy's franchise agreement remain intact.

In order to defend Wendy's interests effectively, I had to immerse myself in Wendy's operational procedures, as well as develop an understanding of franchise law. I was responsible for conducting virtually all of the discovery in the matter, developing our litigation strategy and coordinating the efforts of the various

Wendy's divisions. I also was responsible for negotiating with opposing counsel to settle the dispute. This matter eventually was referred to arbitration but, prior to arbitration, was settled by the parties.

- 9) *Howard v. The Limited Inc.*, Case No. BC086556
- a. Date of Representation: 1994-1995
 - b. Court: Superior Court of the Los Angeles Judicial District for the County of Los Angeles
Honorable Edward M. Ross
 - c. Co-Counsel: Jay S. Hill (Local Counsel)
Wiedner and Swanson
10 Universal City Plaza
Universal City, California
(818) 754-3300
 - d. Opposing Counsel: Timothy E. Meyer
2029 Century Park East
Suite 1020
Los Angeles, California 90067-2901
(310) 203-0754

In this case, the Plaintiff, Garry Howard, brought an action against The Limited alleging that The Limited violated the California Public Accommodations Act and other state civil rights statutes. Howard alleged that he was wrongfully detained at the behest of The Limited and that The Limited thus violated the civil rights of Howard and his female companion. In addition to filing suit, the Plaintiff engaged in a campaign against The Limited consisting of picketing and leafleting. On behalf of The Limited, I argued that Plaintiff's civil rights had not been violated, that The Limited was acting well in its power in surveilling Plaintiff while he was in the store, and demonstrated conclusively that The Limited did not order that the Plaintiff be searched or detained. The trial court agreed with our position and granted summary judgment in favor of The Limited.

Although on the surface this case was not technically complex, it was a very sensitive matter for all involved and required me to use not only my legal skills but also my judgment in handling a tense racially charged situation. I had to maintain the focus on the legal issues in the case and persuade the Court that this was a legal issue susceptible of resolution, and not a political issue.

I had total responsibility for every aspect of this case, which was closely monitored by The Limited's corporate office.

- 10) *Symix v. LaRoque*, Case No. 95 CVH 06-4279, 295-CV-632 (U.S. District Court)
- a. Date of Representation: 1995 - 1996
 - b. Court: The Court of Common Pleas, Franklin County
Honorable Nodine Miller
United States District Court for the Southern District of Ohio
Honorable John Holschuh
 - c. Co-Counsel: None
 - d. Opposing Counsel: Rex H. Elliott, Esq.
Cooper, Elliott & Connors
17 South High Street
Columbus, Ohio 43215
(614) 221-1177

This was a breach of contract action brought by my client, Symix Systems, Inc. ("Symix") against two ex-employees who were former members of the Symix management team. Defendants counterclaimed, alleging wrongful discharge. It was a very contentious matter. Discovery covered a significant period of time, lasting approximately one year and involved issues ranging from psychological damages to the First Amendment.

I had primary responsibility for the case and conducted all discovery, drafted pleadings and presented arguments before the court. The case was on parallel tracks in both the Federal Court and state court, and the federal case was held in abeyance pending resolution in the state court. Within approximately one year of commencing discovery, settlement discussions ensued. As we neared trial, I had to withdraw from litigation as one of my law partners, a board member at Symix, was slated to be a witness at the trial. Shortly after my withdrawal--and based on the negotiations that already had begun--this matter settled.

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 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).

- 1) *Winfrey, et al. v. Franklin County Community Based Correctional Facility, et al*
97 CVH01 2225

Our clients in this litigation are the Franklin County Community Based Correctional Facility ("CBCF") and the Franklin County Judicial Corrections Board ("JCB"). The CBCF is comprised of all of the judges on the Franklin County Court of Common Pleas. The plaintiffs are former employees of CBCF who claim that their positions were wrongfully abolished and that their constructive discharge was based on race and sex discrimination. This case is still pending.

The significance of this case is personal. I have been selected as lead counsel to represent the judges of the Franklin County Court of Common Pleas in a significant employment discrimination matter. Having had jury trials before both Judge McGrath, the current JCB President, and Judge David Johnson, the past JCB President, I consider my selection to be a high compliment from the judges, and a recognition from the judges of my skills as a litigator. Moreover, the implications of this case are far reaching inasmuch as precedent may be set for other community-based correctional facilities located throughout the state. I am therefore looking forward to the challenge of litigating what I am certain will be a very compelling case.

- 2) *United States v. Erickson, CR-2-93-66*
United States District Court for Southern District of Ohio
Honorable John Holschuh

Our client, Vern Erickson, was a buyer for BMY Corporation ("BMY"). BMY Corporation was, among other things, a supplier to the army. BMY was under investigation by the U. S. Department of Justice for fraud in connection with certain contracts that BMY had with the Army. Mr. Erickson himself was accused of participating in BMY's fraudulent activity, but was persuaded to cooperate with the government in its investigation. Mr. Erickson did in fact cooperate and was sentenced to a term of probation. Under government contracting regulations, however, the Department of the Army decided to debar Mr. Erickson from participation in any government contracting activity. Because Mr. Erickson spent much of his career in government contracting and had completed plans to open his own consulting firm, debarment would have effectively ended his career.

I appealed the Department of the Army's decision to the Department of the Army Office of The Judge Advocate General. We received a favorable decision from the hearing officer. Because of the nature of the decision, the Army did not appeal. Under the terms of the order, Mr. Erickson was not excluded from participating in government contracts, working on behalf of government contractors, or otherwise being involved in government contracting activities.

3) *Kay Snyder v. The Bank of Marion.*

In this case, the Plaintiff, Kay Snyder, was a secretary/administrative assistant for one of the officers of the Marion Bank. She contacted me to handle her case, although she had some trepidation about our accepting her representation because she was under the impression that our law firm represented companies and not individuals. I took her representation because Ms. Snyder had what I believed to be a legitimate sexual harassment claim and, although she did not have the resources to prosecute the claim, we undertook the representation because of the personal appeal that she made.

At the time that I took the case, I was an associate at Vorys and enlisted the support of another colleague of mine who also was an associate. We negotiated with the Bank's counsel and, after several weeks of negotiations, were able to reach an amicable resolution without having to file suit. Mrs. Snyder was compensated, the Bank took the appropriate action with respect to its officer, and opposing counsel left that encounter with renewed respect for me.

4) *Minority Legal Education Resources Inc. ("MLER")*

MLER is a not-for-profit corporation located in Chicago, Illinois, which began as an organization which assisted minority applicants in preparing for the Illinois Bar exam. I was first a participant in MLER then an instructor for several years. I later became a Board Member, and then President of the Board. The program was a supplement to the Bar Review course that was offered by various companies such as BAR/BRI. We met once a week and taught bar taking techniques with an emphasis on taking multiple choice examinations and writing. I taught in both sections.

This was one of the most rewarding undertakings that I have been involved in as a lawyer. Many of the students we helped were individuals who had never taken the bar exam. We were able to impart not only our technical knowledge, but also insights to give first-time takers the confidence that they needed to pass the bar exam. However, a small percentage of people, from 10 to 20 percent in the summer program, and the majority of individuals who took our program in the winter, were persons who had failed the bar. It was a particular challenge to restore their sense of confidence and self esteem, while at the same time prepare them to prevail on the upcoming bar examination. It was most rewarding to share

with them the success of passing the bar after they had initially failed. As an organization, we had a second time pass rate that was higher than the national average.

5) *Teaching at the Capital University Law School.*

In the fall semester of 1995, I was an adjunct professor of Trial Advocacy at Capital University. (I have enjoyed teaching, as I taught criminal law and procedure on the undergraduate level at Northeastern Illinois University from 1985 through 1986). Very few activities in which I have engaged have been more rewarding than teaching young lawyers to become skilled advocates.

6) *The National Institute for Trial Advocacy.*

My pedagogical bent has led me to accept invitations to teach at the National Institute for Trial Advocacy ("NITA") from 1987 to the present. I have taught both the full trial courses as well as the deposition courses. My teaching has been at the Midwest Course held at Northwestern University, and Nova University Law School in Fort Lauderdale, Florida. I have been invited to teach at Temple University, at the NITA program in Dallas and at Case Western Reserve University. In the NITA sessions, I have performed cross examination demonstrations for the entire student population, as well as direct examination demonstrations. I have been a team leader, the highest teaching rank, as well as section leader. As a team leader, I taught the course for approximately ten days, from beginning to end. As section leader, I was a part of a team and taught for a five day period.

7) In connection with my teaching responsibilities, I also have given demonstrations for the Ohio State Bar Association, as well as the Committee on Regional Training, which was responsible for teaching trial advocacy to lawyers in the Legal Aid Societies for the states of Ohio and Michigan.

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.

I have no deferred income arrangements, stock, options, uncompleted contracts, or future benefits which I expect to derive from previous business relationships, professional services, firm membership, former employers, clients or customers. When I resign as a partner in my law firm, I will receive my capital contribution to the partnership, which includes a buyout of my percentage ownership of the law firm. As of June, 1997, that amount (determined at the end of the quarter ending December 1996) is approximately \$52,000.00 and would be paid to me upon my resignation from the partnership. The disbursement would include no future income of the law firm, and, I am advised, would be made within a month following my last month with the firm.

I also have an account established pursuant to Section 401(k) of the Internal Revenue Code. There is approximately \$36,000.00 in that account, of which I have full ownership. Upon resignation from the partnership, I would in all likelihood put that account into an individual retirement account in an institution unaffiliated with the law firm.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining 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.

Through my law firm, I will identify all matters which are pending in the Southern District of Ohio in which any lawyer in the firm is the counsel of record. I will then identify to the Chief Judge for the Southern District of Ohio any and all matters which may present actual potential conflicts of interests. I will be guided by the rules embodied in the Code of Judicial Conduct and any other governing ethical and/or disciplinary rules.

I do not anticipate any categories of litigation and financial arrangements that are likely to present potential conflicts of interest during my initial service on the Federal District Court Bench. I do, however, have several matters pending before the United States District Court for the Southern District of Ohio and I will identify those specific matters to the Chief Judge. Any other categories of litigation which would present potential conflicts, of course, would involve cases that are pending with the court in which my firm is counsel of record.

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.

As a United States District Court Judge for the Southern District of Ohio, I intend to continue teaching in the National Institute for Trial Advocacy for which I would receive my per diem expenses if I am a group leader and a small stipend if I am a team leader. I also intend to continue to teach in both the trial practice and deposition courses, schedule permitting. That commitment does not exceed two weeks annually.

It is possible that I will teach again at Capital University Law School. That will depend, however, upon my caseload at the Court. I have no other specific plans, commitments or agreements to pursue outside employment while a Judge on the United States District Court for the Southern District of Ohio.

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. (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 AO-10 Form (pages 31a - 31d).

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

See attached financial statement (page 31e).

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. I had a role in the 1993 re-election campaign of The Honorable Janet Jackson, then a Judge on the Municipal Court of Franklin County, Ohio. I worked with my then law partner, The Honorable R. Guy Cole, Jr. and Pat Logsdon, Judge Jackson's campaign manager, in raising money in the African American community. My involvement spanned the period from January 1993 through Judge Jackson's election in November 1993.

III. GENERAL

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.

Big Brothers/Big Sisters Association.

Serving as Secretary and Counsel to the Board of Big Brothers/Big Sisters Association of Franklin County.

In my capacity as counsel to the Board of Big Brothers/Big Sisters Association of Franklin County ("BB/BS"), a mentoring organization which matches adults with children of the same sex from single-parent homes, I had the responsibility of serving as BB/BS's counsel on a variety of legal matters. There was one matter which comes to mind which was of vital importance to the organization and whose resolution was essential to the continued well being of the organization both financially and from a public relations vantage point. That situation involved a threatened suit by the Stonewall Union, a gay and lesbian group, who contended that BB/BS did not allow matches between homosexual mentors and children. As BB/BS' lawyer, I was charged with the responsibility of avoiding this lawsuit and the attendant negative publicity which could have resulted. Through negotiations with counsel for the Stonewall Union, we were able to reach an agreement which avoided litigation and was satisfactory to both sides.

Salesian Boys and Girls Club

I have served on the Board of Directors of The Salesian Boys and Girls Club for the past seven years. During that time, I have provided pro bono legal services to the Board on various legal matters that have arisen. Those matters have included, but have not been limited to, counseling on employment matters, revising the By-Laws, counseling relating to the property issues as well as to insurance issues. The population served by the Boys and Girls Club is almost exclusively minority inner-city youth, who are economically disadvantaged.

State v. Carlton Gary.

For the past three years I have assisted one of my law partners, James A. Wilson, in the habeas corpus proceedings involving Carlton Gary. Mr. Wilson was assigned the Carlton Gary matter by the American Bar Association Death Penalty Project. Though I am not a member of the Death Penalty Project, nor a direct volunteer in it, I have assisted Mr. Wilson in providing services for Mr. Gary. Those services have included conducting a habeas corpus proceeding in the State of Georgia and helping to prepare various pleadings, motions and memoranda related to Mr. Gary's habeas corpus proceeding.

United Negro College Fund, Fund Raiser.

For the past four years, I have been a fund-raiser for the United Negro College Fund ("UNCF"). The UNCF helps economically disadvantaged students by providing financial assistance to historically African American colleges and universities. The funds that I assisted in raising are used primarily to provide scholarship funds for disadvantaged youth to attend college.

Innerbelt Chair for the United Way Campaign.

In 1995, I served as the Innerbelt Chairman for the Franklin County United Way Campaign. My responsibility was primarily raising funds from the downtown Columbus business community for a projected 36.1 million dollar campaign for the United Way. The United Way assists local agencies in providing services to the disadvantaged.

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, except that I am a member of the Omega Psi Phi Fraternity, Inc. which admits only men. This is a college fraternity, which I joined as a graduate. The fraternity was founded in 1911 and is comprised primarily of African American males, although there are no racial restrictions and there are some white male members. Most persons join during their college years and remain lifetime members. The members of Omega Psi Phi include a variety of men of diverse backgrounds.

The Jefferson Golf and Country Club has no restriction on membership based on either gender or race. Nor does it have restrictions on tee times. There is a men's only grill which most of the time is limited to the male members and their guests. That Grill Room, however, is occasionally open for mixed dining when the dining room itself is closed.

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 selection commission is the Ohio Judicial Review Commission. It recommended me for this nomination. The Commission is a five person bipartisan commission composed exclusively of lawyers from the Southern District of Ohio. It was chaired by Anthony J. Celebrezze (Columbus), a partner at Dinsmore & Shohl LLP, and included Ralph K. Frasier (Columbus), General Counsel for The Huntington National Bank; Michael Barrett (Cincinnati), a partner at Barrett & Weber; Beth Schaeffer (Dayton), a partner at Pickrel Schaeffer & Ebeling; and Gary Smith (Woodsfield), a partner at Sherry, Smith & Coury.

The candidates were required to complete an application which is similar in many respects to the Senate Judiciary Committee's application for District Court Judges. The application had to be submitted along with any letters of reference that the candidates chose to include. After all applications were submitted, the Commission chose approximately ten candidates to be interviewed. The Commission conducted thirty-minute interviews of the candidates. Based on the interviews and the applications submitted, the Commission chose me as the candidate to be recommended to Senator Glenn.

Senator Glenn then recommended me to President Clinton. I have since been investigated by the Federal Bureau of Investigation, the American Bar Association, and the Justice Department.

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.

Resolution of specific disputes is the function constitutionally delegated to our adversarial system of justice. The premise of the adversary system is that parties have a strong incentive to develop and present persuasively the facts that bear upon their individual dispute. Traditional doctrines such as standing and ripeness, among other things, help assure that the parties presenting a case have the necessary incentive to develop and present these facts. The responsibility of a judge, particularly a trial court judge, is to focus the trial or other resolution of a case upon the specific facts presented by the parties in that particular dispute. Most of the time, the challenge facing a trial judge is not creating or finding new law -- it is assuring that the law is effectively applied to the case that the parties present.

Generally, the courts are not well-equipped to resolve issues beyond the scope of the particular controversy before them. Parties normally do not have adequate incentive to develop and present facts that do not bear upon their

individual disputes. Moreover, remedies broader than necessary to resolve the particular dispute before a court will inevitably affect the rights of individuals and institutions that had no opportunity to be heard in the litigation. This type of judicial activism is inconsistent with our adversarial system of justice and the limited constitutional delegation of power to the judiciary.

On the other hand, our society and the executive and legislative branches have much broader expectations of the judiciary than has historically been the case. The Courts are now required to review more administrative agency decisions, to interpret statutes containing remedies unknown at common law, and fashion class action relief. Because of all of these circumstances, particularly in light of the favor with which the courts have treated class action relief under the Federal Rules of Civil Procedure, it is inevitable that judicial decisions in this context may often appear to be the result of judicial activism.

A judge must carry out the responsibilities and jurisdiction the Constitution and Congress has legitimately given to him or her. However, these responsibilities must be carried out in recognition of the fact that we still work within an adversarial system of justice. The role of the courts, particularly the trial courts, remains to ensure that parties to a particular dispute before the court have a fair and efficient opportunity to present their controversy, and to order relief that is broad enough to resolve that dispute between the parties, and no broader.

**FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1996**

 Report Required by the Ethics
 Reform Act of 1985 (Pub. L. No.
 101-194, November 18, 1989,
 103 Stat. App. 4, 161-112)

 AO-1
 Rev. 1/79

1 Person Reporting (Last name, first, middle initial) Marbley, Aigene L.	2 Court or Organization United States District Court For Southern District of Ohio	3 Date of Report 8 / 2 / 97
4 Title: Appellate, Trial, Judge, Trial Court, etc.; Special Status: Magistrate, Judge, etc.; Full or part time U. S. District Judge - Nominee	5 Rep. of Type: (check appropriate type) <input checked="" type="checkbox"/> Nominating Date: 7/19/97 ____ Initiative ____ Actual ____ Trial	6 Reporting Period 1/1/96 - 7/1/97
7 Chambers or Office Address Vorys, Sater, Seymour and Pease 52 East Gay Street Columbus, Ohio 43215	8 In the event of the information contained in this Report and any modifications regarding thereof, I, as my officer, am compliant with applicable law and regulations. Responsible Officer: _____ Date: _____	
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 9-13 of Instructions.)

POSITION
NAME OF ORGANIZATION/ENTITY

NONE (No reportable positions)

Director

Salesians Boys and Girls Club

Director

Big Brothers/Big Sisters Association of Franklin County

II. AGREEMENTS. (Reporting individual only; see pp. 14-17 of Instructions.)

DATE
PARTIES AND TERMS

NONE (No reportable agreements)

There is no written partnership agreement between myself and my law firm,

Vorys, Sater, Seymour and Pease. Upon resigning from the partnership,

 I will receive the balance of my capital account in the approximate amount
 of \$52,000.00.

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

DATE
SOURCE AND TYPE
GROSS INCOME
 (yours, not spouse)

NONE (No reportable non-investment income)

1	1996	Vorys, Sater, Seymour and Pease	\$ 134,412
2	1996	State of Ohio (S)	\$
3	1995	Vorys, Sater, Seymour and Pease	\$ 119,358
4	1995	State of Ohio (S)	\$
5			\$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Algenon L. Marbley	Date of Report 8 / 2 / 97
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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. 26-29 of Instructions.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>
<input type="checkbox"/>	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. 30-33 of Instructions.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
<input type="checkbox"/>	NONE (No reportable liabilities)		
1	Fifth Third Bank	Loan	K
2			
3			
4			
5			
6			

*Value Codes J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000
 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Algenon L. Marbley	Date of Report 8 / 2 / 97
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VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp 37-54 of Instructions.)

A Description of Assets --including trust assets 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 Place "IX" after each asset exempt from prior disclosure	B Income during reporting period		C Gross Value at end of reporting period		D Transactions during reporting period				
	1 Am: Code A, N	2 Type (e.g. div, int)	3 Value Code I, F	4 Value Method Code I, W	5 Buy, sell, merger, redemp: (e.g.)	If not exempt from disclosure			
						6 Date Month Day	7 Value Code I, F	8 Gain Code A, N	9 Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 Vorys, Sater, Seymour and Pease 401(K)	D	Div.	K	T	Redemption	4/97	F	A	
2 Public Employees Retirement System (S)	B	Div.	K	T					
3 Fifth Third Bank Money Market Fund	A	Int.	J	T					
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
1 Inc/Gain Cds (Col B1, D4)	A=\$1,000 or less F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000	D=\$5,001-\$10,000	E=\$10,001-\$15,000	F=\$15,001-\$25,000	G=\$25,001-\$50,000	H=\$50,001-\$100,000	I=\$100,001 or more
2 Val Cds (Col C1, D3)	J=\$15,000 or less O=\$500,001-\$1,000,000 P1=\$25,000,001-\$50,000,000	K=\$15,001-\$50,000 Q=\$50,001-\$100,000 R=\$100,001-\$500,000	L=\$50,001-\$100,000	M=\$100,001-\$250,000	N=\$250,001-\$500,000	O=\$500,001-\$1,000,000	P1=\$1,000,001-\$25,000,000	P2=\$25,000,001-\$50,000,000	P3=\$50,000,001 or more
3 Val Mth Cds (Col C2)	Q-Appraisal R-Book Value	S-Cost (real estate only) V-Other					U-Assessment W-Estimates	T-Cash/Market	

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting
Algenon L. MarbleyDate of Report
8/2/97

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

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. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Algenon L. Marbley

Date

August 4, 1997

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. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.,
Washington, D.C. 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	16	500	00	Notes payable to banks—secured	49	675	00
U.S. Government securities—add schedule				Notes payable to banks—unsecured	18	000	00
Listed securities—add schedule				Notes payable to relatives	None		
Unlisted securities—add schedule				Notes payable to others	None		
Accounts and notes receivable:				Accounts and bills due	None		
Due from relatives and friends				Unpaid income tax	None		
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable—add schedule	307	000	00
Real estate owned—add schedule See Below *	(Home) 360	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable	None			Other debts—itemize:			
Autos and other personal property	75	000	00	VISA	3	000	00
Cash value—life insurance	2	000	00	Lazarus		850	00
Other assets—itemize:				Shell Oil Co.		350	00
Retirement Accounts	88	500	00	The Bombay Co.		470	00
Retirement Accounts (S)	18	500	00				
				Total Liabilities	379	345	00
				Net Worth	181	155	00
Total Assets	560	500	00	Total Liabilities and net worth	560	500	00
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosmaker 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						

* Mortgage Holder: Fifth Third Bank
21 E. State Street
Columbus, OH

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used)

Dale Albert Kimball

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

Home: Draper, Utah 84020

Office: 185 S. State Street, Suite 1300
Salt Lake City, Utah 84111

3. Date and place of birth.

November 28, 1939; Provo, Utah

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

Rachel Henriod Ballard Kimball
nurse - Alta View Hospital
9660 South 1300 East
Sandy, Utah 84094

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

Brigham Young University; September 1958 - December 1959;
Brigham Young University; March 1962 - August 1964;
Bachelor's of Science Degree August 21, 1964;

University of Utah Law School; September 1964 - June 1967;
Juris Doctor Degree June 9, 1967.

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.

Summers of 1964 and 1965: Employer: Utah State Highway Department (West Jordan, Utah); position held: laborer;

1966-67: Employer: University of Utah Law School or the American Law Institute, Salt Lake City, Utah; position held: research assistant

1967-74: Van Cott, Bagley, Cornwall & McCarthy; position held: associate (from June 1967-Spring 1972), then partner (from Spring 1972-June 30, 1974).

1974-76: Brigham Young University Law School, Provo, Utah; position held: Associate Professor.

1976-79: Brigham Young University Law School; position held: Adjunct Professor.

1975-present: Kimball, Parr, Waddoups, Brown & Gee, Salt Lake City, Utah; Senior Partner.

Former member Alta View Hospital, Board of Governors 1979-1991;
Member of Board of Directors and Executive Committee, Deseret News Publishing, May 1996-present;

Member, Board of Directors Pioneer Theatre Company, 1980-1990; 1993-present;
Former Member, Jordan Education Foundation Board, 1989-1994; Former Member, Board of J. Reuben Clark Law Society, 1990-1993.

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.

Utah Air National Guard, Fall of 1957-Spring of 1964;

From February 1960 - February 1962; inactive status due to serving an LDS Mission in Northern California;

Serial Number AF 28939504; honorably discharged in 1964.

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

Brigham Young University, 1964, Magna Cum Laude; Phi Kappa Phi
University of Utah Law School, finished second in the class of 1967; Order of the Coif, case note editor, University of Utah Law Review;

Utah State Bar 1996 -- Distinguished Lawyer of the year;
Master of Bench, American Inns of Court;

Former member, Utah Federal District Court, Mediation/Arbitration Panels.

9. Bar Association: 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.

Utah State Bar Association; Member Screening Panel Utah State Bar Ethics and Disciplinary Committee 1986-87; Chairman, Utah State Bar Ethics and Discipline Committee 1988-94; Chairman, Utah State Bar Committee on the Unauthorized Practice of Law, 1984-86;

American Bar Association, 1973-present.

Since 1995, I have been the Chairman of the Utah State Judicial Performance Evaluation Committee.

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 a member of any organization which lobbies of which I am aware.

I have been a registered lobbyist before the Utah State Legislature for three clients: VISA, WECCO, and Geneva Steel. These three corporations are clients for which I have done minor lobbying.

Other: LDS Church

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.

All Utah trial and appellate courts, October 17, 1967;
 United States Court of Appeals for the Tenth Circuit, March 20, 1973;
 United States District Court for the Western District of Missouri, 1984;
 District Court of Clark County, Nevada, 1988;
 United States District Court for the District of Nevada, 1991;
 United States District Court for the Western District of Missouri, March 1996.

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.

Case Note: Appropriation of Name, Likeness and Personality - Relatives and Administratrix Held to Have No Claim Under Privacy or Property Theories, 9 Utah Law Review 999 (1964-65) (my own work)

Note, The constitutional Convention, Its Nature and Powers - And the Amending Procedure, 1966 Utah Law Review 390 (my own work)

Note, "Like Grade and Quality" Under Section 2(a) of the Robinson-Patman Act, 1967 Utah Law Review 251 (my own work)

Kimball, Compulsion Without Protection or Recourse: The Case for No-Fault Accident Insurance for School Children, 1975 Utah Law Review 925 (a student helped me with it)

Parr and Kimball, Acquisition of Non-Mineral Land for Mine Related Purposes, 23rd Annual Rocky Mtn. Min. L. Inst. 595 (this is half my work and half my partner's work)

American Law of Mining, Second Edition, Chapter 204, "Liens" (my own work)

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

Excellent; late summer of 1996

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.

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;

June 1967 - end of June 1974
 Van Cott, Bagley, Cornwall & McCarthy
 50 S. Main Street, #1600
 Salt Lake City, Utah 94144

Associate until Spring 1972, at which time I was made a partner in the firm.

In early July of 1974, I became an Associate Professor of Law at Brigham Young Law School, Provo Campus, 456 JRCB, Provo, Utah 84602; I was a full-time Associate Professor of Law from July 1974 through April 1976. I was an Adjunct Professor of Law at Brigham Young University Law School from 1976 until approximately April 1979.

In April of 1975 (while I was still teaching), I was one of the founding partners and I am now the Senior Partner of the law firm of Kimball, Parr, Waddoups, Brown & Gee, 185 S. State Street, Suite 1300, Salt Lake City, Utah 84111.

- 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 seven years of my practice at Van Cott, Bagley, Cornwall & McCarthy, I engaged in a very general practice. I did title work, contract negotiation, oil, gas and mineral work, administrative work and a variety of litigation including securities fraud, shipping problems,

telephone company matters, criminal defense and appearances before a variety of administrative agencies. From 1975 to the present I have generally engaged in a business litigation practice including securities fraud, insurance matters, antitrust problems, general contract disputes and energy work. I appear in court very frequently. In the last five years of my practice I have also had some major arbitrations and some municipal litigation.

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

Corporations with some emphasis on energy litigation. In recent years, the emphasis has been on general litigation.

- 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 frequently over my career. During the last five years I have probably appeared in court somewhat less frequently than in the ten years immediate preceding because of my desire to get younger partners more court appearances.

2. What percentage of these appearances was in:

- (a) federal courts; 35 %
 (b) state courts of record; 45 %
 (c) other courts; 20 %

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.

40 total, 15 as sole counsel, 10 as co-counsel and 15 as chief counsel

5. What percentage of these trials was:

- (a) jury - 25%;
 (b) non-jury - 75%.

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. Buzas Baseball, Inc., et al., v. Salt Lake Trappers, Inc. et al. Civil No. 940907477CV, In the Third Judicial District Court of Salt Lake County, State of Utah, Judge Homer F. Wilkinson; 925 P.2d 941 Oct. 4, 1996; Salt Lake Trappers, Inc. et al., v. Buzas Baseball, Inc. et al., Supreme Court Case No. 950351, Appeal from the Third Judicial District Court for Salt Lake County, The Honorable Homer F. Wilkinson.

This case was litigated from 1995-97. Our firm was counsel for the Salt Lake Trappers and I was chief counsel on the case. The underlying arbitration involved whether our clients baseball territory and franchise had been improperly taken from it and, if so, the appropriate amount of damages therefor. Plaintiffs alleged that the arbitrator had awarded our client an inappropriate award in a previous arbitration. The trial court in 1996 agreed with the plaintiffs. We appealed to the Utah Supreme Court which reversed and found that the arbitrator had acted appropriately. This was a significant case in Utah setting forth the appropriate and limited scope of review of an arbitrator's decision. Gregory Phillips, then of our Firm, also worked on the case.

Opposing counsel: Robert S. Campbell, Jr.
Campbell, Maack & Sessions
201 S. Main Street, #1300
Salt Lake City, Utah 84111
801-537-5555

2. SALT LAKE CITY CORP., et al., UTAH TRANSIT AUTHORITY BD., et al., vs. SALT LAKE COUNTY, et al., Co-counsel Jeffrey J. Hunt; Civil No. 960907363CV, Judge Homer F. Wilkinson; Stephen J. Rees, v. Utah Transit Authority, et al., Bonnie Fernandez, Dan Berman, et al., v. Utah Transit Authority, et al., Nos. 960519, 96020, Utah Supreme Court, 939 P.2d 680 June 9, 1997.

We represented seven members of the Utah Transit Authority Board. I was chief counsel for these seven clients. Jeffrey J. Hunt of our firm helped me on the case. The litigation involved a question over the proper appointment powers to the UTA Board.

The controlling statute and legislative history created significant ambiguities respecting the powers of appointment to the Utah Transit Authority Board by the various counties, cities and other population members of the Utah Transit Authority District.

Salt Lake City was aligned with the clients and was represented by Roger Cutler, 451 S. State, #505, Salt Lake City, Utah 84111, 801-535-7788. Salt Lake County represented by William Hyde, 2001 S. State Street, #S-3600, Salt Lake City, Utah 84190, 801-468-3420, was opposing us on the case. The other seven members of the Board opposing our clients were represented by Alan Sullivan, Van Cott, Bagley, Cornwall & McCarthy, 50 S. Main, #1600, Salt Lake City, Utah 84144, 801-532-3333. Steven Reese, who wanted to be appointed to the Board, was represented by Dale F. Gardiner, O'Rorke & Gardiner, 6995 Union Park Center, #470, Midvale, Utah 84047, 801-569-31311.

In the fall of 1996 the court granted our motion for a preliminary injunction freezing the then current Board members in place. Salt Lake County and the other seven Board members appealed to the Utah Supreme Court. We argued the case in January of 1997 and the Supreme Court upheld the granting of the preliminary injunction and remanded the case to the trial court for further proceedings. After that the Utah legislature clarified the appointment procedure and mooted the entire case.

3. Young Electric Sign Co.- Vaughan Cannon v. YESCO, Civil No. C892213, Third Judicial District Court for Salt Lake County, State of Utah; Judge J. Dennis Frederick, Third Judicial District Court. We represented Young Electric Sign Company and certain of its officers and directors. They were sued by two minority shareholders seeking the appointment of a receiver, the dismantling of the company and high values for their shares. The case was tried in 1992. After a two-week bench trial, Judge Frederick ruled entirely in our favor. I was chief counsel for our client. My partner Michael M. Later helped me on the case. This case saved a major company.

Opposing counsel: Leland Eugene Backus
 Nancy M. Somers
 Thorndal, Backus, Maupin & Armstrong
 P.O. Drawer 2070
 Las Vegas, Nevada 89125-2070
 702-366-0622

Steven W. Dougherty
 Hansen & Anderson
 50 West Broadway, Sixth Floor
 Salt Lake City, Utah 84101
 801-534-1700

4. State of Utah v. Cecil D. Andrus, 486 F. Supp. 995; (D.C. Utah 1979), 10 ELR 20570 (1979), No. C79-0037; No. C79-0307. We represented Cotter Corporation. As I recall, our client had obtained unpatented mining claims pursuant to the Mining Law of 1872 and was attempting to develop said claims. In order to develop mining claims access is required. Since the claims had been staked the area in question had been set aside as a wilderness study area under the Wilderness Act and the Federal Land Policy Management Act had been enacted. At the time, I recall no law on the question of what was necessary to obtain a right-of-way under FLPMA, particularly with respect to wilderness study areas. The United States was attempting to deny access altogether. The case, as I recall, was tried by me in 1978 and our clients were granted an appropriate right-of-way limited to the least intrusive methods of construction.

Opposing counsel: James Holbrook (formerly AUSA)
 Callister, Nebeker & McCullough
 10 E. South Temple, #900
 Salt Lake City, Utah 84133
 801-530-7300

Dallin W. Jensen
 Parsons, Behle & Latimer
 201 S. Main Street, #1800
 Salt Lake City, Utah 84111
 801-532-1234

5. Great Salt Lake Minerals and Chemicals Corp. v. Marsh, 596 F. Supp. 548 (D.C. Utah 1984), No. C84-0230A. We represented Great Salt Lake Minerals and Chemicals Corp. (I was lead counsel and my partner Patricia W. Christensen was co-counsel) in an effort to keep the Army Corps of Engineers from breaching

the causeway in the Great Salt Lake. The case was tried on a preliminary and final injunction for about a week (as I recall) in 1984 before Judge Aldon J. Anderson. We lost the case. The government was allowed to breach the causeway.

The Utah water year in 1983 was very high. The Great Salt Lake, a navigable and therefore federally owned body of water, was lower in the northwest arm of the lake because of a railroad causeway. Our client had valid leases to extract mineral brine from the northwest arm of the lake. The Army Corps of Engineers set about to breach the causeway and equalize the level of the lake for flood control purposes. We sought to prevent the breach and keep our leases valuable by our ability to extract brine in its more concentrated form.

Opposing counsel: Dallin W. Jensen (for the State of Utah)
Parsons, Behle & Latimer
201 S. Main Street, #1800
Salt Lake City, Utah 84111
801-532-1234

Joseph W. Anderson
US Attorney's Office
185 S. State Street
Salt Lake City, Utah 84111
801-524-5682

6. SCFC ILC, INC. d/b/a MOUNTAINWEST FINANCIAL, vs. VISA U.S.A. Inc., VISA U.S.A., INC. and VISA INTERNATIONAL SERVICE ASSOCIATION, Delaware corporations, v. SEARS CONSUMER FINANCIAL CORPORATION; and SCFC ILC, INC. d/b/a MOUNTAINWEST FINANCIAL, United States Court of Appeals for the Tenth Circuit, 36 F.3d 958 (U.S. App. 1994); Certiorari Denied June 19, 1995; 819 F.Supp. 956 April 1, 1993, Civil No. 2:91-CV-047B, Judge Dee V. Benson (D.C. Utah 1993); SCFC ILC, Inc. v. VISA USA, Inc., No. 93-4105 (1994), 936 F.2d 1096 (U.S. App. 1991); I served as associate counsel along with my partner Clark Waddoups. We represented VISA, USA, INC.

Lead counsel was: M. Laurence Popofsky
 Stephen V. Bomse
 Marie L. Fiala
 Renata M. Sos
 Robert G. Merritt
 Heller, Ehrman, White & McAuliffe
 333 Bush Street, Suite 3100
 San Francisco, CA 94104
 415-772-6000

Opposing counsel: William H. Pratt
 James H. Gale
 Ellen M. Moskowitz
 153 East 53rd Street
 New York, New York 10022
 212-446-4800

Gary F. Bendinger
 Giauque, Crockett, Bendinger & Peterson
 170 South Main Street, Suite 400
 Salt Lake City, Utah 84101
 801-533-8383

The plaintiff in this case alleged that VISA's refusal to allow the Discover card into the VISA system was a violation of Section 1 of the Sherman Act. The Discover Card was a relatively new credit card competing with VISA, Mastercard, American Express, etc. Discover Card attempted to enter the VISA system and create a Discover VISA Card. VISA refused on the grounds that it had no obligation to aid a healthy competitor. Discover Card alleged that the refusal constituted an antitrust violation. After a five-week jury trial, the jury found for the plaintiff. The Tenth Circuit reversed and the Supreme Court denied certiorari.

7. White River Shale Oil Corp. v. Public Service Com'n of Utah, 700 P.2d 1088 (Utah 1985), No. 19848, No. 19849. We represented Deseret Generation & Transmission.

This case involved the question of whether our client, Deseret Generation & Transmission, or White River Shale Oil Corp. Co. had the right to serve a territorial area with electric power. After an administrative trial before the Public Service Commission we prevailed. On appeal to the Utah Supreme Court we also prevailed. I handled the trial and the appeal.

Opposing counsel:

Robert F. Reeder
Parsons, Behle & Latimer
201 S. Mair Street, #1800
Salt Lake City, Utah 84111
801-532-1234

8. Salt Lake City v. Western Area Power Admin., 926 F.2d 974 (C.A. 10 Utah 1991), Federal Court, bench trial, U.S. District Court, Judge Thomas Greene. I was lead counsel and we represented the Colorado River Energy Distributors Association (CREDA).

In this case, Salt Lake City and others attempted to obtain public power produced on the Colorado River System by the Western Area Power Administration. WAPA was represented by lawyers from the Department of Justice in Washington and in Denver. Other municipalities and Utah Power and Light, a stockholder owned power company, attempted to obtain public power produced on the Colorado River System by the Western Area Power Administration (WAPA). This case involved what, in our experience, was a unique attempt by parties not associated with public power production attempting to muscle in on its cheaper rates. The case was tried in 1989 or 1990. The result was that the municipalities and privately owned power company not associated with the public power systems were not allowed to obtain Colorado River Power. Gary Dodge of our firm helped me on this case.

WAPA was represented by:

(Justice Department)
Max C. Vassanelli
Civil Division, Room 3730
United States Department of Justice
10th & Constitution Avenue, NW
Washington, D.C. 20530

(In-house counsel)
Mike HacsKaylo
Susan Earley
Western Area Power Administration
1627 Cole Blvd.
Golden, Colorado 80402

WAPA was aligned with us. I believe the trial was in 1989 or 1990.

Opposing counsel: Donald B. Holbrook
Jones, Waldo, Holbrook & McDonough
170 S. Main, #1500
Salt Lake City, Utah 84101
801-521-3200

9. Atlas Corp. v. Clovis Nat'l. Bank, 737 P.2d 225 (Utah 1987), No. 19239. In the mid 1980's I tried this case before Judge Boyd Brunnell in Monticello, Utah. I represented two banks from Clovis, New Mexico, who were claiming a net profits interest in land owned by Atlas Corp. I was chief and lead counsel for our clients. We lost the trial and won on appeal in the Utah Supreme Court.

Opposing counsel: Stephen D. Alfes
Alfes & Carver, LLC
730 17th Street, Suite 340
Denver, Colorado 80202
303-592-7674

Robert Anderson
P.O. Box 275
Monticello, Utah 84535
801-587-2222

10. Biben v. Card (Midwestern Cases, 1983-1994); Fed. Sec. L. Rep. (CCH) P92,462 January 6, 1986; United States District Court For The Western District of Missouri, Western Division; Honorable Harold Sachs. I was chief counsel for an engineer, John P. Redd, who was a defendant in several consolidated federal securities fraud claims in the United States District Court for the Western District of Missouri. Plaintiffs in these consolidated cases included a class of shareholders at Midwestern, limited partners who had purchased an interest in ethanol plants and certain individuals. The ethanol industry collapsed in the early 1980's as did the Midwestern companies. Other defendants included other directors and officers, accountants, lawyers for Midwestern and other related parties. Hundreds of depositions were taken, scores of motions were argued and decided and the case was finally settled on the eve of a three-month jury trial. We also represented our client in peripheral and related insurance litigation over coverage and payment to us, said claims being against National Union Insurance Company. We also did a Wells Submission to the Securities and Exchange Commission. Robert S. Clark of our office worked with me on the cases. Two of these numerous cases are currently on appeal in the Eighth Circuit. The parties and their counsel are:

Attorneys for National Union Insurance Company:
 Benjamin F. Mann, Esq.
 Blackwell, Sanders, Matheny,
 Weary & Lombardi
 Two Pershing Square
 2300 Main Street
 Suite 1100
 Kansas City, Missouri 64141-6777
 816-274-6817

Attorneys for KPMG Peat Marwick:
 George E. Feldmiller
 Berkowitz & Feldmiller
 Suite 550
 Two Brush Creek Boulevard
 Kansas City, Missouri 64112
 816-561-7007

Attorneys for Defendant Harold E. Card:
 Neil L. Johnson
 Swanson & Midgley
 1500 Commerce Trust Building
 922 Walnut
 Kansas City, Missouri 64106-1848
 816-842-6100

Attorneys for Defendant Ira W. Palmer:
 Donald E. Howell, Jr.
 P.O. Box 6705
 Lee's Summit, Missouri 64064-6705
 816-525-5200

Attorneys for Raymond Jallow:
 C. Edward Simpson
 Jones, Bell, Simpson, Abbott & Fleming
 601 South Figueroa Street
 27th Floor
 Los Angeles, California 90017-5759
 213-485-1555

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 taught law school on a full-time and adjunct basis. I have chaired several important bar committees including the Unauthorized Practice of Law Committee, the Ethics and Discipline Committee and the Judicial Performance Evaluation Committee.

I have represented for many years a finance company with respect to UCC Article 9 financing and, in addition, I have litigated many of those matters.

I litigated a significant tort case in Nevada from 1988-1992 which was settled on the eve of a six-month jury trial.

The following is a description of some of my legal activities in the last while:

1. I am chief counsel for First Health Strategies, Inc. and First Health Services Inc. in the following matter. FIRST HEALTH STRATEGIES, INC., and FIRST HEALTH SERVICES CORPORATION, Claimants, vs. FOUNDATION HEALTH PHARMACEUTICAL SERVICES, INC., AND INTEGRATED PHARMACEUTICAL SERVICES, INC., Respondents; Charles T.C. Compton, arbitrator, of Wilson, Sonsini, Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050. This is a complicated matter involving the construction of formulary agreements and administrative services agreements in the health management area.
2. I am chief counsel for Halotron, Inc. in the matter of Halotron, Inc., et al. v. AB Bejaro-Product, et al., Arbitration No. 81.153.00026.96. This matter involves intellectual property problems and contract disputes. Professor Hans Smit is the Arbitrator.
3. Also, I am lead counsel for two banks in a major case in the Third Judicial District Court, State of Utah involving the appropriate scope of credit union activities.
4. I have been hired by the LDS Church to conduct a major legal audit of one of its large departments.
5. I am also currently involved in giving general legal advice to the Chief Executive Officer of Geneva Steel Company.
6. I am chief counsel in a case in the Utah State District Court regarding appropriate state taxes on airline assets.

7. I am chief counsel in a case in the Federal Court currently regarding Fair Labor Standard Acts problems.
8. I am also Chief counsel for certain developers who have numerous problems with municipalities and several on-going lawsuits concerning the same.
9. Along with my partner Richard G. Brown, I have recently represented a group of investors who have purchased a controlling interest in a bank. We have worked through the regulatory, contract and other problems relating to this purchase. We now represent the bank.

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 own an interest in the pension and profit sharing plans at Kimball, Parr, Waddoups, Brown & Gee. The Firm is agreeable to continue managing my interest in the plan or turning it over to an independent manager.

I own minor interest in a couple of limited partnerships which pay modest dividends from time to time.

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.

As long as my current law firm is involved in the management of my retirement plan, I assume I could not hear any cases from said law firm. The Firm is agreeable to continue managing my interest in the plan or turning it over to an independent manager. If the management of the fund is transferred to an independent manager then I could not hear cases involving that manager. I would resign from all profit and non-profit organizations from which I am affiliated except for my church.

I obviously could not hear cases involving the limited partnerships in which I retain an interest.

For an appropriate period of time, I would not hear cases from my former firm. Further I would not hear cases involving former clients. I would, in all instances, follow appropriate guidelines including 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.

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 Net Worth Financial 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.

No

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	42,000	Notes payable to banks—secured	none
U.S. Government securities—add schedule	none	Notes payable to banks—unsecured	none
Listed securities—add schedule	--	Notes payable to relatives	none
Unlisted securities—add schedule	--	Notes payable to others	none
Accounts and notes receivable:	--	Accounts and bills due	none
Due from relatives and friends	--	Unpaid income tax	none
Due from others	none	Other unpaid tax and interest	none
Doubtful	none	Real estate mortgages payable—add schedule	161,000
House and land located in Real estate owned—add schedule Draper, Utah	450,000	Chattel mortgages and other liens payable	none
Real estate mortgages receivable	none	Other debts—itemize: (owed to pension and profit sharing trust)	25,000
Autos and other personal property	100,000		
Cash value—life insurance	--		
Other assets—itemize:			
Pension and profit sharing plan	750,000		
Limited partnership interest in Village Apartments	100,000		
122 shares of Mt. Jordan Ltd.	5,000	Total Liabilities	186,000
4 shares of Draper Irrigation Company	6,000	Net Worth	1,272,000
Magellan common stock (14,933 shares)	10,000	Total liabilities and net worth	1,463,000
Total Assets	1,463,000		
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	*see below	Are any assets pledged? (Add schedule, house and land, see above)	
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		

Liabilities secured—First Mortgage payable to Bank One approximately \$145,000; Second Mortgage payable to Bank One \$16,000.

Unpaid income tax: I have withheld more than owed.

I am an accommodation maker for one of my daughters on a residence note to Chase Manhattan Bank. The amount of the note is approximately \$205,000. The value of the security for the note is approximately \$320,000. My daughter is currently refinancing and I will then no longer be on this note. I am also an accommodation maker for one of my sons on a residence note to PMC Mortgage Corporation in Lubbock, Texas. The amount of the note is \$57,000. The value of the security for the note is approximately \$65,000.

AO-10
Rev. 1/97FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1996Report required by the Ethics
Reform Act of 1995, Pub. L. No.
101-194, November 10, 1995
15 U.S.C. App. 4, 101-112

1 Person Reporting (Last name, first, middle initial) Kimball, Dale A.	2 Court or Organization U.S. District Court District of Utah	3 Date of Report 9 / 9 / 97
4 Title (Attorney III judges indicate active or senior status; Magistrate judges indicate full- or part-time) U.S. District Judge	5 Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 9/4/97 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6 Reporting Period within 30 days of nomination 1/1/96 - 9/4/97
7 Chambers or Office Address 185 S. State Street, #1300 Salt Lake City, Utah 84111	8 On the basis of the information contained in this Report and any modifications pertaining thereto set in my opinion, in compliance with applicable laws and regulations Reviewing Officer _____ Date _____	
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. 9-13 of Instructions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
<input type="checkbox"/> NONE (No reportable positions)	
Partner/Shareholder	Kimball, Parr, Waddoups, Brown & Gee
Board of Directors	
Executive Committee	Deseret News Publishing
Limited Partner	Mc Jordan Jrd
Limited Partner	Village Apartments

II. AGREEMENTS. (Reporting individual only; see pp. 14-17 of Instructions.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
<input type="checkbox"/> NONE (No reportable agreements)	
	Some agreement will have to be reached regarding payments to me from my share of the Kimball, Parr, Waddoups, Brown & Gee pension and profit sharing trust. The firm is prepared to either continue to manage my share or to turn it over to an independent manager.

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>GROSS INCOME</u> (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		
1 Dale Kimball 1995	Kimball, Parr, Waddoups, Brown & Gee	\$ 182,210.84
2 1996	Kimball, Parr, Waddoups, Brown & Gee	\$ 207,386.18
3 1997	Kimball, Parr, Waddoups, Brown & Gee	\$ 222,383.08
4 Rachel Kimball 1995	Jordan Valley Hospital	\$ _____
5 1996	Columbia/HCA Healthcare Corp. Jordan Valley Hospital	\$ _____
6 1997	Alfa View Hospital City of Draper	\$ _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Dale A. Kimball

Date of Report
9 / 9 / 97

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. 26-29 of Instructions.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>
<input type="checkbox"/>	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. 30-33 of Instructions.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE*</u>
<input type="checkbox"/>	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			

*Value Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000
 O=\$500,001-\$1,000,000 P=\$1,000,001-\$5,000,000 Q=\$5,000,001-\$25,000,000
 R=\$25,000,001-\$50,000,000 R4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Dale A. Kimball

Date of Report

9 / 9 /97

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A Description of Assets (including trust assets) 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. Place "(X)" after each asset exempt from prior disclosure.	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Am't Code (A-1)	Type of Div. (B-2) or Inc. (B-3)	Value Code (C-3)	Value Method Code (C-4)	(1) Type (D-1)	(2) Date (D-2)	(3) Net Change (D-3)	(4) Gain/Loss Code (D-4)	(5) Identity of Buyer/Seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)					Exempt				
1 Village Apts,	\$100,000								
2 122 units Mt. Jordan	5,000								
3 4 shares Draper Irrigation	6,000								
4 Magellan common stock (14,915 shares)	10,000								
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
1 Inc./Gain Cds: A=\$1,000 or less (Col. B1,D1) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$1,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 H=\$50,001-\$100,000 2 Val Cds: J=\$15,000 or less (Col. C1,D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Meth Cds: Q=Appraisal U=Book Value R=Cost (real estate only) V=Other S=Assesment W=Estimated T=Cash/Mark'et									

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting
Dale A. Kimball

Date of Report

9 / 9 / 97

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

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. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Dale A. Kimball

Date

9-9-97

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. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.,
Washington, D.C. 20544

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.

From 1980-1989 I managed the law firm's pro bono legal activities and did some of the work myself. I do not know how much time I spent. I have also done considerable work for penniless friends and relatives over the years. I would guess it involved 500 hours worth of work. I also recently supervised pro bono litigation in our office for a convicted murderer in an effort to require the State of Utah to reimburse lawyers in capital cases.

I have engaged in the following civic service:

Master of Bench, American Inns of Court 1994-present; Former member, Utah Federal District Court Mediation/Arbitration Panels 1993-96; Former Member Alta View Hospital Board of Governors 1978-90; Former Member, Jordan Education Foundation Board 1989-95; Former Member Board of J. Reuben Clark Law Society 1991-93; Pioneer Theater Company Board 1980-90; 1992-present; University of Utah Law Alumni Board 1988-90.

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 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).

No. I spoke with Senator Orrin Hatch, Senior Senator from the State of Utah about my interest in becoming a United States District Judge. I believe we had two conversations.

I have had several conversations with personnel at the Department of Justice. In addition, I was interviewed by an FBI agent. Further, I was 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 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 are required to honor the philosophy embraced in our system of government: namely, there are three branches of government with a separation of powers. The judiciary should not improperly intrude into the functions of the executive or legislative branches of government. Further, courts are bound to follow the principle of stare decisis. The developed doctrines of standing and ripeness also control and shape which appropriate issues and parties come before the judicial branch of government.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1 Full name (include any former names used.)

Judge James S. Gwin

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

Office:

Stark County Court of Common Pleas
Stark County Courthouse
115 Central Plaza South
Canton, Ohio 44702

Residence:

Canton, Ohio 44718

3 Date and place birth.

August 10, 1954
Canton, Ohio

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

I am married to Bonnie Wetterer Gwin, married November 16, 1985.
She is Senior Location Manager and Business Unit Executive, Travel and Transport Industry, I.B.M. Corporation.
Suite 400, Main Place,
121 South Main Street
Akron, OH 44308

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

Kenyon College
Gambier, Ohio
1972-76
A.B., cum laude, granted May 22, 1976

The University of Akron School of Law
Akron, Ohio
1976-1979 (Completed in 2½ years)

J.D., earned December 1978, conferred May 1979

- 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.

Judge, Court of Common Pleas
Stark County, Ohio
1989- present

Gutierrez, Mackey & Gwin, L.P.A.
1985-1989
Partner, shareholder

Wise & Gutierrez
1979-1985
Associate

Urbanistics, Inc.
Canton, Ohio
January 1979- May 1979
Research Associate

Blakemore, Rosen & Norris, L.P.A.
Akron, Ohio
1976-1979
Law Clerk

Doctors Hospital of Stark County
Massillon, Ohio
1993-94
Former Board of Trustees Member, unpaid

North Central Ohio Juvenile Diabetes Foundation
Canton, Ohio
1991-94
Former Board of Trustees Member, unpaid

Central Stark County Mental Health Center
Canton, Ohio
1990-1994
Former Board of Trustees Member, unpaid

Canton Group Home, Inc.
Canton, Ohio
Approximately 1980-1985
Former Board of Trustees Member, unpaid

- 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.

Kenyon College
cum laude

The University of Akron, School of Law
Akron Law Review

- 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.

Ohio Bar Association

Stark County Bar Association

Ohio Judicial Conference
Chair, Court Technology Subcommittee
Approximately 1995 to present

Ohio Judicial Conference
Member, Court Reform Committee

Ohio Judicial Conference
Member, Legislation Committee

Office of Criminal Justice Services
Member, Regional Working Group

Ohio Judicial Conference
Former member, Jury Instructions Committee

Ohio Judicial College
Lecturer

State Justice Institute
Member, "State Courts and Toxic Torts" Advisory Board

Stark County Bar Committee
Grievance Committee, Technology Committee, Citizenship Committee

- 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 lobbies before public bodies

United Way of Central Stark County, committee member

Brookside 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.

Ohio Supreme Court, May 7, 1979

U.S. District Court for the Northern District of Ohio, September 4, 1980

U.S. Court of Appeals, Sixth Circuit, August 27, 1986

U.S. Supreme Court, August 12, 1988

My membership has not lapsed in any of these.

- 12 **Published Writings** List the titles, publishers, and dates of publication of papers, 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 spoken on legal issues and legal procedures often. These were given to various judicial education groups and attorney groups. I have spoken on Ohio's criminal sentencing provisions, on evidence, on the use of technology, on effective writing, and on opening statements, among others. I did not keep the notes used for these speeches or talks.

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

Good, last physical examination June 9, 1997

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

Stark County Court of Common Pleas, appointed April 1, 1989, elected November 4, 1990. In 1996, I was reelected without opposition. General jurisdiction (Felony and civil)

My peers elected me Administrative Judge in 1990, 1993 and 1997. In 1995, my peers elected me Presiding Judge.

- 15 **Citations: If you are or have been a judge, provide:**

(1) **citations for the ten most significant opinions you have written; (If any of the opinions listed were not officially reported, please provide copies of the opinions.**

Roseman v. Firemen's and Policemen's Death Benefit Fund, 579 N.E.2d 560 (1991.)
This decision was affirmed by the Ohio Supreme Court in *Roseman v. Firemen & Policemen's Death Benefit Fund*, 66 Ohio St.3d 443 (1993)

Carrols Corporation v. Jacobs Visconsi, 1990 Ohio Misc. LEXIS four (Enclosed)

Moore v. Consolidated Rail Corp., Stark County Case No. 1995 CV 01185, (Enclosed)

State v. Tewell, Stark County Case No. 1996CV01944, (Enclosed)

Bradley v. Time Warner, Stark County Case No. 1996CV1103, (Enclosed)

State v. Fry, Stark County Case No. 1994CR0176, (Enclosed)

Mohr v. Banc One, Akron Stark County Case No. 1992CV304, (Enclosed)

Barr v. Ohio Edison, Summit County Case No. 91-12-4661, (Enclosed)

In Re Annexation of 369.781 Acres, 1990 Ohio Misc. LEXIS 8, (Enclosed)

State v. Williams, Stark County Case No. CV93-02113 (Enclosed)

None of these decisions have been reversed.

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 If any of the opinions listed were not officially reported, please provide copies of the opinions.**

I have been reversed twenty eight times. I enclose copies of these reversals. To give perspective, I have presided over more than 426 jury trials in the last eight years,

including more than 230 felony cases. I have presided over more than 6,730 total case terminations.

State v. Allen Wendling (August 7, 1995), Stark App. No. 95 CA 0044, unreported. In this case the Court of Appeals of Ohio, Fifth District, Stark County ruled that I erred in sentencing the defendant. The state charged the defendant with felonious assault. he was found not guilty of the charged offense of felonious assault, but guilty of the lesser included offense of aggravated assault with a physical harm specification. The Court of Appeals ruled that the defendant could not be sentenced to an indeterminate period of incarceration of two to five years because the indictment had not included a physical harm specification. The defendant was returned and resentenced.

State v. Bowersock (October 21, 1996), Stark App. No. 1995CA00418, 1996 WL 608464, unreported. The State charged the Defendant with gross sexual imposition. The State alleged that Bowersock fondled a seven year old girl in the vaginal area and performed cunnilingus on the child. During trial, the child witness had testified that she had drawn a picture of the area involved in pretrial interviews. I ruled that the drawings would be hearsay and not admissible. The Court of Appeals ruled that the drawings were discoverable under Criminal Rule 16 as a statement of a witness.

State v. Stanley, (Jan. 17, 1995), Stark App. No. 1994CA00025, unreported. In a criminal case the defendant had pled not guilty by reason of insanity. At trial the State had sought to introduce evidence that the Defendant remained silent after being given Miranda warnings. The State argued that this silence suggested that the defendant was not delusional. I allowed the evidence. The Court of Appeals ruled that the use of post-Miranda silence to prove sanity was not permitted. The Defendant was returned and pled guilty.

In *Estate of Baxter v. Grange Mut. Cas. Co.*, 73 Ohio App.3d 512 (5th Dist. 1992) the plaintiff brought a declaratory judgment action against insurer for bad faith in investigation and denial of insurance coverage. The Court of Appeals affirmed all the major decisions I made in the case. The Court, however, ruled that I erred in awarding prejudgment interest before the amount of damage had been arbitrated and confirmed.

Cole v. Motorist Mutual Insurance Company (October 16, 1995), Stark App. 1995CA00066, 1995 WL 617610, unreported. In *Cole*, the Plaintiff sued their uninsured motorist provider for bad faith when the insurer refused to pay a wrongful death claim. After trial, I granted a motion for a new trial on the issue of damages. The Court of Appeals ruled that I had erred in refusing to grant a new trial on the issue of punitive damages as well.

In *Sherlin v. Palace Theater*, (April 20, 1992), Stark App. No. CA-8476, the plaintiff was a welfare worker assigned to do clean up at a not-for-profit theater. The plaintiff was injured in a fall. The Court of Appeals found that I erred in not giving judgment to the Defendant. The Court of Appeals found that the theater employed the injured party under a borrowed employee theory. The Court of Appeals found the theater enjoyed immunity under Ohio's Workers Compensation Law, R.C. 4123.74.

Lewis v. Pizza Rack, Inc., (5th Dist. 1992) 1992 WL 71512 In this case, the Court of

Appeals reversed my grant of a new trial. After a ten-day trial on a contract case and verdict for a franchisor, the franchisees moved for a new trial. They alleged that the foreman of the jury was heard saying: "It doesn't matter. They signed the contract and they should have to honor it." I found this was the central issue in the case and the foreman had disregarded my instruction. The Court of Appeals found that the franchisees failed to show the jury's verdict was adversely affected or prejudiced by the foreman's remarks.

In *Klapchar v. Dunbarton Properties, Ltd.*, (5th Dist. 1991) 1991 WL 249432, I gave summary judgment on a fraud claim involving real estate. I granted summary judgment after the plaintiff testified that no one purposely deceived him and that the transaction was done "in good faith by everyone." The Court of Appeals reversed and found sufficient evidence remained to require a jury trial on the fraud claim.

Wayne Mutual Insurance Company v. Burdge, (July 10, 1995), Stark App. No. 95CA0011, 1995 WL 617655, unreported. In this declaratory judgment involving uninsured benefits, I ruled that the insurance company that had paid uninsured benefits was required to pay medical benefits for the same accident to the father of the injured parties. The Court of Appeals, with a dissent, ruled that the insurance company could set off amounts received under the medical pay provisions of the policy.

In *Spatz Wholesale Floral, Inc. v. Midwestern Indem. Co.*, (5th Dist. 1992) 1992 WL 12804, the Court of Appeals found error in the introduction into evidence of an offer to compromise.

In *Davis v. Lichtenwalter*, (5th Dist. 1994) 1994 WL 75615, I gave summary judgment on Plaintiff's false arrest and malicious prosecution claims. I found that the Plaintiff failed to file his claim within one year of his arrest and within Ohio's statute of limitations. The Court of Appeals found I had erred, saying that a false arrest claim does not accrue at the time of the arrest.

Ross v. Burns (March 10, 1997), Stark App. No. 1996CA00284, 1997 WL 116941, unreported. In *Ross*, the plaintiff attorney sued his former client for legal fees. The jury awarded the plaintiff attorney damages. I ruled the plaintiff was not entitled to pre-judgment interest under Ohio R.C. 1343.03 because the amount due under the contract was not reasonably ascertainable. The Court of Appeals ruled that the plaintiff should have received prejudgment interest.

Capadona v. Scott (January 10, 1994), Stark App. No. CA 9271, 1994 WL 22849, unreported. At trial of a personal injury lawsuit, the defense attorney said: " So I just ask you to use your collective perspective and return a fair verdict for both Mr. Scott who has to pay this out of his pocket * * *" In fact, the defendant had insurance. I sustained an objection and directed the jury to disregard the statement and reminded the jury that the counsel's statements were not evidence. The Court of Appeals held that I should have granted a new trial because of the defense attorney's misconduct.

State v. Patterson (March 14, 1994), Stark App. No. CA 9435, 1994 WL 115952, unreported. The State charged the defendant with aggravated robbery. The State alleged that the defendant took cash from a convenience store while armed with a knife.

The defendant said the knife involved was not a deadly weapon but instead a produce knife. I denied a motion to dismiss the aggravated robbery charge. The Court of Appeals reversed and said insufficient evidence showed that the knife was a deadly weapon.

MDS Development v. Professional Services Industries (June 1997), Stark App. No. 1996CA00353, unreported. The Plaintiff developer sued the defendant soil testing company for negligence in performing soil tests in an area intended for housing development. I ruled that a \$50,000.00 limit on damages contained in the parties contract was valid. As a result, I reduced the jury's verdict of \$137,375.61 to \$50,000.00. The Court of Appeals found that the contractual limitation on damages was not enforceable as to the tests conducted.

State v. Luttrell (August 30, 1993), Stark App. No. CA-9207, 1993 WL 370651, unreported. The State charged the defendant with felonious sexual penetration and gross sexual imposition, alleging the defendant sexually abused an eleven year old child. At trial, the victim objected to a single time of abuse. The defendant objected that the victim's testimony was not consistent in time with the bill of particulars, because the bill of particulars alleged a continuous course of conduct. I denied a motion for a mistrial, finding that there was insufficient showing of prejudice. The Court of Appeals reversed and ruled that I should have granted a mistrial.

State v. Vincent Hill (October 27, 1994), Stark App. No. 94 CA 0142, unreported. Hill was convicted of carrying a concealed weapon. At trial, the verdict form did not state the enhancing factor that the weapon involved was loaded or that ammunition was ready at hand. The Court of Appeals held that Hill should have been sentenced to a first degree misdemeanor rather than a felony of the third degree because the verdict form did not have the enhancing factors.

In *State v. Zerbe*, (5th Dist. 1991), 1991 WL 302418, the State indicted the defendant for sexual battery. After getting more specific information from the victim, the State moved to dismiss the charges. The State then indicted the defendant for sexual imposition. I denied the defendant's motion to dismiss the charges on speedy trial grounds. The Court of Appeals reversed and found that the sexual imposition charge was sufficiently related to the sexual battery charge as to cause the speedy trial requirements to run from the time of the first indictment.

In *American Seaway Foods, Inc. v. Belden South Associates Ltd. Partnership*, (5th Dist. 1994) the parties disputed a complicated commercial lease and security arrangement. In a replevin action, I ruled that the Defendant real estate developer had right to replevin equipment taken by the Plaintiff. The Court of Appeals found the real estate developer was entitled to elect between a return of the equipment or a judgment in the amount of the value of the equipment.

In *Shearson Lehman Hutton, Inc. v. Cook*, (1991) 1991 WL 57131, I allowed a debtor to present evidence tending to show that the amount of judgment did not reflect payments. The Court of Appeals found that the judgment could not be challenged absent a motion to vacate.

In *Morris v. Wilson*, (5 Dist. 1991), 1991 WL 241990, I granted summary judgment in a personal injury claim. The Court of Appeals reversed and found material issues existed that should be submitted to a jury. In this case, parents made claim against a neighbor for injuries to their son. The son had gone to a neighbor's house and been injured when he had tried to pound down a nail with his tennis shoes. The nail entered the boy's foot. I ruled insufficient evidence showed that the neighbor was aware of the dangerous condition or of the son's conduct. The Court of Appeals found sufficient material facts so as to require a trial.

In *Ungar v. Jett*, (1991), 1991 WL 123840, the Court of Appeals found I erred in allowing the jury to give damages to a building owner where the claim had been brought only by his insurer.

In *Shaw v. Matheny*, (Ohio App. 1991) 1991 WL 87136, I presided over a case involving real estate. The Court of Appeals found that I erred in failing to find that the Plaintiff's breached a deed covenant of quiet enjoyment.

In *Wilhelm v. Peoples Federal* (January 22, 1991), Stark App. No. CA-8181, I allowed the plaintiff to present evidence that a savings association wrongly allowed the plaintiff's mentally impaired son to pledge a joint savings account, resulting in loss to his mother. The Court of Appeals found I had erred and the savings association was statutorily immune.

In *Ream v. Civil Service Com'n of City of Canton*, (1990), 1990 WL 187076, the Plaintiff contested a civil service establishment of an eligibility list for the position of police captain. He said the civil service commission violated Ohio's Sunshine Law, R.C. 121.22, by failing to give proper notice of a meeting. I ruled that the Civil Service Commission violated this provision. The Court of Appeals reversed. The Court of Appeals ruled that the Commission was not required to give the Plaintiff notice because he had failed to place his name on the pertinent "subscribers mailing list."

In *Metheny v. Spitzer Chevrolet Co.*, (1990) 1990 WL 93932, I ruled the Ohio Civil Rights Act gave the Ohio Civil Rights Commission exclusive authority to process the plaintiff's pregnancy discrimination claim. The Civil Rights Act gave that Civil Rights Commission power to investigate discrimination and gave plaintiffs the right to appeal the Civil Rights Commission's determination. The Court of Appeals ruled that a private cause of action remained. In a later case, *Elek v. Huntington Natl. Bank*, (1991) 60 Ohio St.3d 135, the Ohio Supreme Court ruled an employee could institute independent civil action to seek redress for discrimination on basis of physical disability.

In *State v. Allen* (March 24, 1997), Stark App. No. 96CA044, the Court of Appeals ruled that I had given the defense insufficient time to prepare for the trial of an aggravated robbery.

In *State v. Nieb* (May 27, 1997), Stark App. No. 96CA256, unreported, the Court of appeals reversed because I had not instructed the jury on what "deadly force" is. In the case, the defendant male punched his girlfriend in the face, breaking her sinuses, shattering her teeth and breaking her nose. During instructions, the defense attorney

never requested an instruction defining "deadly force." Ohio has pattern jury instructions. Ohio's pattern instructions do not suggest that trial courts give an instruction on "deadly force."

(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.

Roseman v. Firemen's and Policemen's Death Benefit Fund, 579 N.E.2d 560 (1991)
This decision was affirmed by the Ohio Supreme Court in *Roseman v. Firemen & Policemen's Death Benefit Fund*, 66 Ohio St.3d 443 (1993)

State v. Fry, Stark County Case No. 1994CR0176, (Enclosed)

State v. Mallett, Stark County Case No. 1993CR3154 (Enclosed)

- 16 **Public Office:** State (chronologically) any public offices you 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 was an unsuccessful candidate for the U.S. Congress in 1984. I served as an appointed board member of the Canton Fair Housing Commission from approximately 1982 to 1986. I was an unsuccessful candidate for the Ohio State Senate in 1986.

- 17 **Legal Career:** 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 a judicial law clerk.

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

I have never practiced law 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.

In December 1978, I completed law school after two and one half years. I took the Ohio Bar Examination in February 1979 and was admitted in May 1979.

In June 1979, I accepted a position as an associate with Wise & Gutierrez, Suite 610,

Bliss Tower, Canton, Ohio 44702. Wise & Gutierrez was a Martindale Hubbell "av" rated firm. In this position I worked with Earle E. Wise until he took a position as Judge of the Ohio Court of Appeals, Fifth Appellate District. He is now retired and lives at 11242 Marlboro Avenue, N.E., Alliance, OH 44601, 330/935-2156. I also worked with Roy Gutierrez. He keeps his office at 610 Bliss Tower, Canton, OH 44702, 330/452-6567.

In 1985, Judge Wise went to the position as Judge. I became a partner with Roy Gutierrez and John Mackey in the firm of Gutierrez, Mackey & Gwin. John Mackey keeps his office at 610 Bliss Tower, Canton, OH 44702, 330/452-6567. I continued in this partnership until I was appointed Stark County Common Pleas Judge on April 1, 1989.

1. **What was the general character of your practice, before you became a judge, dividing it into periods with dates if its character changed over the years.**
2. **Describe your typical former clients, and mention the areas, if any, in which you specialized.**

I engaged in a general practice of law. My practice was generally civil although I represented some defendants in appeals of criminal convictions. My practice was approximately 90 percent related to litigation. The litigation included personal injury, labor law and commercial law.

Over time, I increased my emphasis upon litigation in federal court with special emphasis upon labor law and on equal employment litigation. I became District Counsel to the United Steelworkers of America and took responsibility for litigation in many counties. I also served as counsel to United Food & Commercial Workers, International Brotherhood of Boilermakers, Graphic Arts International Union, Fraternal Order of Police, Oil, Chemical and Atomic Workers. I successfully represented these bodies in complex litigation involving complicated labor, pension, and commercial matters.

I represented the Steelworkers in complex, large dollar cases. These included a bankruptcy litigation case involving more than 500 workers and more than \$15 million in claims. Alone, I successfully represented the Steelworkers before the NLRB including many trials with more than five days of testimony. Alone, I also successfully represented the Boilermakers in major federal litigation involving more than \$500,000 in benefits owing in a plant shutdown.

I represented Stark Technical College as an Assistant Ohio Attorney General acting as General Counsel. In that position I represented the College in a significant amount of EEO litigation in federal courts.

I have personally appeared before the Ohio Supreme Court and before the U.S. Court of Appeals for the Sixth Circuit.

As an attorney, I appeared in court on civil litigation. While the wide majority of my work was litigation, the amount of time I appeared in Court varied. In the final year of my practice I acted as sole counsel in a trial that lasted eleven trial days and created a record of more than 2915 pages. In the same year, I acted as sole counsel in a trial that took eight trial days and created a record of more than 2415 pages.

Since becoming a common pleas judge, I have presided over more than 420 jury trials including more than 220 felony jury trials.

2. **What percentage of these appearances was in:**
- Federal courts.**
 - State courts of record.**
 - Other courts.**

In the early years of my practice, I appeared in State Courts approximately 80% of my litigation. In these years, I appeared before Federal Courts, including bankruptcy courts, approximately 20% of my litigation. In later years, I appeared in Federal Courts approximately 40% of my litigation and before Federal agencies and bankruptcy courts approximately 40%.

- 3 **What percentage of your litigation was:**
- civil**
 - Criminal.**

My litigation was approximately 95% civil and 5% criminal appeals.

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

I believe I tried approximately three cases to verdict in jury trials as chief counsel.

5. **What percentage of these trials was:**
- Jury**
 - Non-jury.**

I believe I participated as associate counsel in approximately three additional cases tried to verdict in jury trials. I tried at least three cases to verdict in nonjury trials as sole counsel.

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.

I have handled a large amount of litigation as an attorney and more as a judge. These cases have included:

International Brotherhood of Boilermakers v. Transue & Williams, 879 F. 2d 1388 (6th Cir. 1989). As sole counsel, I represented the Boilermakers. After negotiations, the employer and union believed they had reached accord on a new collective bargaining agreement. The parties then became unable to agree on language for their agreement. During the pendency of the effort to journalize their agreement, the Company shut down the plant employing more than two hundred bargaining unit members. The Company refused to pay severance, insurance and other benefits and refused to arbitrate the dispute. I sued for the Union in the United States District Court for the Northern District of Ohio. The case was assigned to Judge David Dowd. Upon motion for summary judgment, the District Court ordered the Company to arbitrate. The Company appealed. The Sixth Circuit Court of Appeals completely adopted my argument. I represented the Union in the arbitration. I tried and prepared the case without co-counsel. Mr. Timothy Wood of Schwartz, Einhart, Wood & Szuter represented the opposing side. Mr. Wood is currently at 1400 Bank One Center, Cleveland, Ohio 44114, 216/363-1400

M. K. Morse Co. and United Steelworkers, 302 NLRB No. 147; 138 L.R.R.M. 1245 (1991). As sole counsel, I represented the United Steelworkers in support of charges made to the NLRB. The case involved claimed violations of the National Labor Relations Act. The trial of the case took eleven trial days between January 11, 1988, to February 11, 1988, and created a record of more than 2915 pages. I was successful in having Administrative Law Judge Harold Bernard find that the Company had violated all except one of more than fifty claimed violations. I was successful in having the Administrative Law Judge issue a bargaining order though the Steelworkers had lost the representation election. These decisions were subsequently upheld by the Board after I had taken the bench. I tried the case and prepared the brief to the Board without co-counsel. Opposing counsel was Terence Ryan. Mr. Ryan is currently at The Arcade, Suite 332, 401 Euclid Avenue, Cleveland, Ohio 44114, 216/241-7220.

Summitville Tiles, Inc. and United Steelworkers of America, 300 NLRB No. 9, 136 L.R.R.M. 1180 (1990). As sole counsel, I represented the United Steelworkers in support of charges made to the NLRB. The case involved claimed violations of the National Labor Relations Act. The trial of the case took eight trial days November 3, 1987, and December 3, 1987, before Administrative Law Judge Honorable Karl H. Buschmann, and created a record of more than 2415 pages. I was successful in having the Administrative Law Judge Karl Buschmann find that the Company had violated all except one of seven claimed violations. I tried the case without assistance. Opposing counsel was Theodore Mann, Jr. Mr. Mann is currently at 644 Huntington Building, 925 Euclid Avenue, Cleveland, Ohio 44115-1493, 216/621-6147

In Re. Enduro Stainless, Inc. United State Bankruptcy Court for the Northern District of Ohio at Canton. I represented the United Steelworkers when a Company employing more than 500 employees petitioned for bankruptcy and shut down the plant. After major negotiations and litigation I was successful in having a trustee appointed. At trial before U.S. Bankruptcy Judge James Williams, I established that the former owners had siphoned assets of the company at a time when they owed obligations to Steelworkers and others. The information I developed later led to criminal charges and convictions against the Company owners. The Trustee sold the Company to a Company that reopened the plant and again employed more than 500. Mr. Richard Seltzer of Cohen, Weiss & Simon, 330 West 42nd Street New York, New York 10036-6976, 212/563-4100 was co-counsel. Other attorneys involved included Alan Kopit, 3300 BP America Building, 200 Public Square, Cleveland, Ohio 44114-2301, 216/621-0150 representing the creditors committee and Howard Levy, 2300 BP America Building, 200 Public Square, Cleveland, Ohio 44114-2378, 216/363-4500, representing the debtor.

In Re Union Metal, 842 F.2d 879 (6th Cir. 1988). I represented the United Steelworkers when a Company employing more than 200 went bankrupt. The Debtor-Company sought to stop payments of retiree health and life insurance benefits. First, the Debtor sought to reject the collective bargaining agreement, 11 U.S.C. § 1113. After trial before U.S. Bankruptcy Judge James Williams, the Judge denied the Company's request to reject the collective bargaining agreement. The Company then sought to stop the payments, claiming they were not administrative expenses. The Bankruptcy Judge ruled that payments should not be made. I appealed for the Steelworkers. The District Court affirmed the Bankruptcy Court's order denying payment. The Union appealed to the Sixth Circuit. The Sixth Circuit reversed. The Sixth Circuit held that the Debtor was required to pay retiree benefits until the Debtor succeeded in rejecting the collective bargaining agreement. As a result, the Company remained obligated to honor commitments to provide retiree health and welfare benefits. The Union members subsequently received distributions when the Company submitted a plan of reorganization. I served as co-counsel with Paul Whitehead, United Steelworkers of America, 5 Gateway Center, Pittsburgh, Pennsylvania 15222, 412/562-254. Mr. Alan Kopit, 3300 BP America Building, 200 Public Square, Cleveland, Ohio 44114-2301, 216/621-0150 and Eric Fingerhut, 200 Public Square, Cleveland, Ohio represented the Debtor.

Louise Weber v. Stark Technical College, U.S. District Court for the Northern District of Ohio, Case No. 84-3535A. In this case, I represented Defendant Stark Technical College in an age and sex discrimination case. U.S. District Court Judge David Dowd presided over the case. The Plaintiff alleged that a decision not to renew her faculty contract was motivated by sex and/or age. At the time of her separation, the Plaintiff had been earning in excess of \$40,000.00 per year. As sole counsel, I represented Stark Technical College through a large amount of discovery and trial preparation. The case was settled in December 1984, after the first day of trial. The case was settled for \$6,000.00. This was far less than the Plaintiff's original settlement demand of more than \$200,000.00. The plaintiff was represented by Ralph Cosiano, 11707 Terminal Tower, Cleveland, OH 44113, 216/687-1400. (This is his former address. The Ohio Supreme Court does not have any current registration. I believe he may now be deceased.)

Diana Smith, Guardian of Geoffrey Dean v. Shane Steel, U.S. District Court for the

Northern District of Ohio, Case No. C88-1598. In this case, I represented the Plaintiff who brought claim for violation of constitutional rights by the Carroll County Sheriff's Department and its employees. The Plaintiff received massive brain injuries after being stopped for a traffic violation. We alleged that this resulted from an assault by the deputy sheriff. We alleged a pattern of similar activities by this Sheriff's Department that manifested a policy. The case was assigned to U.S. District Court Judge Alice Batchelder. I represented the Plaintiff through most of the discovery. I assisted in preparing a response to the Defendants' motions for summary judgment. This case went to trial after I had taken a seat on the common pleas bench. After I took the bench, the case was prosecuted by John Mackey, Robert Swan (now deceased) and Kathleen Tatarsky, all at Suite 610 Bliss Tower, Canton, Ohio, 44702, 330/452-6567. The case was settled during trial for approximately \$250,000.00. The Carroll County Sheriff was represented by Chris Nolan, 300 Courtyard Square, 80 South Summit Street Akron, Ohio 44308-1719, 330/253-5454.

Helen L. Jacquez v. Stark Technical College, U.S. District Court for the Northern District of Ohio, Case No. C84-1673. In this case, I represented Defendant Stark Technical College in an age and sex discrimination case. U.S. District Court Judge Sam Bell presided over the case. The Plaintiff alleged that a decision not to renew her faculty contract was motivated by sex and/or age. The Plaintiff also alleged intentional infliction of emotional distress. The Plaintiff was represented by Roy Battista, 4808 Munson Street, N.W., Canton, OH, 499-0900. At the time of her separation, the Plaintiff had been earning in excess of \$35,000.00 per year. I represented Stark Technical College with John Childs, 50 South Main Street, Akron Centre Plaza, P.O. Box 1500, Akron, Ohio 44309-1500, 330/376-5300; I represented Stark Technical College through a large amount of discovery and trial preparation. The case was settled in April 1985. The case was settled for \$15,000.00.

Diane Davis v. Allen Tulgan, Et al., Stark County Common Pleas Case No. 80-1123. I represented the Plaintiff as an associate of the principal counsel, Earle Wise, 11242 Marlboro Avenue, N.E., Alliance, OH 44601, 330/935-2156. The Plaintiff claimed the defendant neurological surgeon had failed to properly stage a brain tumor. The Plaintiff claimed that the Defendant did not surgically remove a benign brain tumor and wrongly used radiation, chemotherapy and high cortisone therapy. As an associate, I prepared discovery and all the pleadings. After the Court denied the Defendants' motion for summary judgment, the case was settled. I believe the case was settled for near \$200,000.00. The principle defendant was Allen Tulgan, M.D. Dr. Tulgan was represented by David Hilkert, 50 South Main Street, Akron Centre Plaza, P.O. Box 1500, Akron, Ohio 44309-1500, 330/376-5300.

Thomas Butchko v. Stark Technical College, Stark Common Pleas Case No. 84-1992. I represented Stark Technical College. The Plaintiff alleged that Stark Technical College had wrongfully failed to renew the Plaintiff's faculty contract. After conducting significant discovery, the case was settled for \$6,000.00. Mr. Butchko was represented by Ronald Macala, 4150 Belden Village St., Canton, Ohio 44718, 330/493-1570.

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 active in a number of judicial and legal organizations. Since about 1995, I have served as Chair of the Ohio Judicial Conference Subcommittee on Court Technology. This committee facilitates the use of technology by Ohio Judges. I serve as a member of the Ohio Judicial Conference Committee on Court Reform and Legislative Committee. This committee does long range review of issues affecting Ohio Courts. I have served on the Stark County Bar Association Grievance Committee. I have lectured a number of judicial education programs including programs on Ohio's new criminal sentencing law, on technology, on evidence, and on effective writing.

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 certain rights under the Ohio Public Employee Retiree System. I believe these entitle me to receive approximately 2% times my years of service of my average best three years salary. I have no other deferred benefit arrangements excepting tax deferred savings that were wholly contributed by 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.

I.B.M. Corporation employs my wife as Senior Location Manager and Business Unit Executive, Travel and Transport Industry. We own I.B.M. common stock. My wife has certain pension rights with I.B.M. I would have a potential conflict of interest in litigation involving I.B.M. Corporation. I anticipate I would recuse myself from any litigation involving I.B.M. I would follow the Code of Judicial Conduct in making that determination and other determinations.

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 plans to pursue any outside employment with or without compensation. I have no agreements to receive any income from anyone.

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 attached. The attached schedule reflects both my and my wife's assets.

- 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, I was a candidate for my current seat on the Stark County Common Pleas Court. John Boggins (now Judge John Boggins) opposed me. I won with 63% of the vote. In 1996, I was unopposed for reelection.

I was a candidate for the 29th Ohio Senate District in 1986. I lost a close election to the incumbent.

I was a candidate for the U.S. House of Representatives, 26th District in 1984. I lost the election by a wide margin against the incumbent. I have helped on other campaigns without holding a formal position.

AO-10 (w)
Rev. 8/96

FINANCIAL DISCLOSURE REPORT

Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting <i>(Last name, first, middle initial)</i> GWIN, JAMES S.	2. Court or Organization U.S. DISTRICT COURT, N.D. OHIO	3. Date of Report 08/01/1997
4. Title <i>(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</i> U.S. DISTRICT JUDGE - ACTIVE	5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date <u> / / </u> Initial Annual Final	6. Reporting Period 01/01/1996 to 07/31/1997
7. Chambers or Office Address STARK COUNTY COURTHOUSE CANTON, OH 44702	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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 the last page.

I. POSITIONS *(Reporting individual only; see pp 9-13 of Instructions)*

	POSITION	NAME OF ORGANIZATION / ENTITY
<input checked="" type="checkbox"/>	NONE (No reportable positions.)	
1	_____	_____
2	_____	_____
3	_____	_____

II. AGREEMENTS *(Reporting individual only; see pp 14-17 of Instructions.)*

	DATE	PARTIES AND TERMS
<input type="checkbox"/>	NONE (No reportable agreements.)	
1	_____	STATE OF OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM
2	_____	_____
3	_____	_____

III. NON-INVESTMENT INCOME *(Reporting individual and spouse, see pp 18-25 of Instructions.)*

	DATE	PARTIES AND TERMS	GROSS INCOME <i>(yours, not spouse's)</i>
<input type="checkbox"/>	NONE (No reportable non-investment income.)		
1	1/1/96	STATE OF OHIO, JUDICIARY	\$ 175,565.50
2	1/1/96	INTERNATIONAL BUSINESS MACHINES, INC. (S)	
3	_____	_____	
4	_____	_____	
5	_____	_____	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting GWIN, JAMES S.	Date of Report 08/01/1997
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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. 26-29 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. 30-33 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
	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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

* VAL CODES J = \$15,000 or less K = \$15,001-\$50,000 L = \$50,001 to \$100,000 M = \$100,001-\$250,000 N = \$250,001-\$500,000
 O = \$500,001-\$1,000,000 P1 = \$1,000,001-\$5,000,000 P2 = \$5,000,001-\$25,000,000 P3 = \$25,000,001-\$50,000,000 P4 = \$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting GWIN, JAMES S.	Date of Report 08/01/1997
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VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children. See pp 37-54 of Instructions)

A. Description of Assets <i>Indicate where applicable, owner of the asset by using the parenthetical "(U)" 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.</i>	B Income during reporting period		C. Gross value at end of reporting period		D Transactions during reporting period				
					If not exempt from disclosure				
	(1) Amt. Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	(2) Date Month-Day	(3) Value (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (no reportable income, assets, or transactions)									
1 AIM INTERNATIONAL GROWTH FUND	A	Dividend	J	T	EXEMPT				
2 AIM CONSTELLATION FUND	D	Dividend	L	T	EXEMPT				
3 IBM COMMON SHARES	A	Dividend	M	T	EXEMPT				
4 GALAXY SMALL COMPANY FUND	C	Dividend	L	T	EXEMPT				
5 GALAXY LARGE COMPANY FUND	A	Dividend	J		EXEMPT				
6 MERRILL LYNCH GROWTH FUND	D	Dividend	K	T	EXEMPT				
7 TROWE PRICE MID CAP FUND	A	Dividend	J	T	EXEMPT				
8 MERRILL LYNCH CASH MANAGEMENT ACCOUNT	A	Dividend	J	T	EXEMPT				
9 PIMCO OPPORTUNITY FUND	C	Dividend							

1 Inc Gain Codes	A=\$1,000 or less (Col B, D4)	F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	H=\$1,000,001-\$5,000,000	C=\$2,501-\$5,000 I=\$5,000,001-\$25,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes (Col C1, D3)	J=\$15,000 or less O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 PI=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more		
3 Val Meth Codes (Col C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash Market			

FINANCIAL DISCLOSURE REPORT	NAME OF PERSON REPORTING GWIN, JAMES S.	Date of Report 08/01/1997
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of report.)

NONE (No additional information or explanations.)

I have rights under the Ohio Public Employees Retirement System to receive pension benefits. I have right to receive 2.14 times the number of years of Ohio public employment times the average of my highest three years salary.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	GWIN, JAMES S.	08/01/1997

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. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

8/1/97

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. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
 Administrative Office of the United States Courts
 One Columbus Circle, N.E.
 Suite 2-301
 Washington, D.C. 20544

**Financial Statement
Net Worth**

Assets		Liabilities	
		Notes payable to bank, secured	\$ 32,161.29
Cash on hand and in banks	\$ 24,007.89	Notes payable to bank, unsecured	\$ -
U.S. Government securities, add schedule	\$ -	Notes payable to relatives	\$ -
Listed securities	\$403,779.07	Accounts and bills due	\$ 377.72
Unlisted securities	\$ -	Unpaid income tax	\$ -
Accounts and notes receivable	\$ -	Other unpaid tax and interest	\$ -
Due from relatives and friends	\$ -	Real estate mortgages payable, add schedule (to Keycorp Mortgage Corp.)	\$ 155,349.08
Due from others	\$ -	Chattel mortgages and other liens payable	\$ -
Doubtful	\$ -	Other debts, itemize	\$ -
Real estate owned, add schedule	\$290,000.00	Total liabilities	\$ 187,888.09
Real estate mortgages receivable	\$ -	Net worth	\$ 601,154.52
Autos and other personal property	\$ 60,000.00	Total liabilities and net worth	\$ 789,042.61
Cash value, life insurance	\$ 11,255.65		
Other assets, itemize	\$ -	General Information	
Total assets	\$789,042.61	Are any assets pledged? (Add schedule)	No
		Are you a defendant in any suits or legal actions?	Yes
Contingent Liabilities		Have you ever taken bankruptcy?	No
As endorser, comaker or guarantor	\$ -		
On leases or contracts	\$ -		
Legal Claims	\$ -		
Provisions for Federal Income Tax	\$ -		
Other special debt	\$ -		

Portfolio Value Report
 (Includes unrealized gains)
 * Estimated Prices

Security	Shares	Curr Price	Cost Basis	Gain/Loss	Balance
AGAAX	588.582	18.740	10,000.00	1,030.03	11,030.03
CSTGX	2,881.577	30.210	70,056.49	16,995.95	87,052.44
IBM	1,337.601	105 3/4	60,285.38	81,165.97	141,451.35
IBM Tax Defer	2,356.314	16 800 *	34,295.46	5,290.62	39,586.08
ILCIX	723.887	29.230	15,446.66	5,712.55	21,159.21
ISCIX	1,775.298	27.360	42,156.86	6,415.31	48,572.17
MDQRX	291.238	30.510	748.92	8,136.75	8,885.67
Merrill Lynch Growth	1,191.000	28.180	29,660.01	3,902.37	33,562.38
T. Rowe Price	452.694	27.320	10,000.00	2,367.60	12,367.60
-Cash-	112.140	1.000	112.14	0.00	112.14
TOTAL Investments			272,761.92	131,017.15	403,779.07

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 given much time to programs benefitting less advantaged persons. I served for more than six years on the Board of Trustees of Canton Group Home, Inc. (Pathway), which operates group homes and referral services for children involved in abuse or criminal situations. This responsibility involved monthly meetings to track the governance of the program together with time spent on activities needed for fund raising.

I served more than five years on the Canton Fair Housing Commission. This commission sought fair housing for all citizens. This responsibility required monthly meetings and special meetings to review Fair Housing Enforcement.

I served for more than five years as a member of Central Mental Health Agency, Stark County's largest provider of mental health services. Central Mental Health provides most of these services to the poor. This responsibility involved monthly meetings and committee meetings to monitor the program.

I was a founding trustee of the Urban Family Life Institute. It gives advice, food, and other services to disadvantaged families. The Urban Family Life Institute tries to change destructive patterns of behavior.

For more than six years, I have served as a member of the United Way Community Planning Committee, which reviews and makes grant of seed monies to community programs for the disadvantaged. This responsibility requires monthly meetings and other reviews of applicants for funding.

- 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 no, list, with dates of membership. What you have done to try to change these policies?**

I do not currently belong nor have I ever belonged to any organization that discriminates on the basis of race, sex, or religion.

- 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**

and (including the circumstances which led to your nomination and interviews in which you participated).

U.S. Senator John Glenn has used a selection commission to screen applicants for appointment to the federal courts and to make recommendations concerning the same. The Committee has two Democrats, two Republicans and is headed by former Ohio Attorney General Anthony Celebrezze, Jr.

This Commission solicited applications from all persons who had expressed an interest in appointment to the district court in recent years. The press reported about this selection process. The Commission then received a large number of its long application form. The Commission also solicited comments concerning applicants. After this, the Commission narrowed the field to between 12 to 15 applicants. The Commission then interviewed these persons. After interviewing these applicants, the Commission me first for this position on the U.S. District Court. I am told that this Commission unanimously selected me for this position.

Near May 15, 1997, Ohio Senator John Glenn adopted this Commissions recommendation and sent a letter supporting me for appointment. Subsequently, I have been interviewed by representatives of the Department of Justice, the F.B.I. 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.**

I have not discussed any pending case, legal issue, or question with anyone involved with the selection process in a way that could reasonably be interpreted as asking how I would rule on such case.

- 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.

Article III, Section 2 of the U.S. Constitution gives judges power over "Cases, in Law and Equity * * *" With this grant, the Constitution says Courts should decide real disputes between parties with real interest. Judges should decide the issues at hand and the case at hand.

Courts function best when judges make narrow decisions on the facts and law of individual cases. Litigants have real interests that should not be subsumed to some agenda of the judge. They need to feel that their case was decided upon the law and facts of their case. Parties should not feel that outside influence or issues decided their case.

Judges should maintain the quality of impartiality. They lose the perception of fairness if litigants or the public believe that they decided the case on matters other than the merits of the parties' case and on the law. Also, Judges lose the perception of fairness if the parties or the public sees judges as deciding cases on a whim.

Stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles. It fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. Stare decisis is specially important in cases involving property and contract rights, where reliance interests are involved.

Judges should use care in the exercise of their authority.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Richard Conway Casey

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

Office: Brown & Wood
One World Trade Center
New York, New York 10048

Residence: New York, New York 10022

3. Date and place of birth:

January 19, 1933; Ithaca, 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).

Divorced.

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

College of The Holy Cross, September 1951 to June 1955.
Received a B.S. Degree on June 8, 1955.
Georgetown University Law Center, September 1955 to
January 1958. Received LL.B. Degree on February 1,
1958.

- 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: During my law school career, I accelerated my academic program and attended school year-round. The only employment that I had during law school was when I worked during two Christmas seasons as a clerk at The Georgetown Men's Shop.

From April 1958 through approximately June 1958, I served as a legal investigator for the District Attorney's Office, New York County.

From June 1958 through December 1958, I served in the United States Army.

From June 1959 to September 1963, I served as Assistant United States Attorney, Southern District of New York.

From September 1963 until June 1964, I served as Counsel to Special Commission of the State of New York.

From July 1964 to the present, I have been associated with, and a partner of, the law firm of Brown & Wood, New York City, New York (the firm had different names during this period). I was hired as an associate in 1964, and was made a partner on January 1, 1970. I became Of Counsel to the firm in 1984.

I am a member of the Board of Directors of Guiding Eyes for the Blind, Catholic Guild for the Blind and Ski for Light.

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: I served in the United States Army from June 1958 to December 1958. I was released from active duty as a PFC, and remained in the reserve affiliated with the National Guard of New York. From October 1, 1961, to August 1962, I returned to active duty during the Berlin Crisis, and held the rank of Specialist 4th Class (E-4) while serving at Fort Knox, Kentucky. I was honorably discharged in the summer of 1963. My serial number was NG 21-992-946.

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

Georgetown University Law Center

1956: Beaudry Cup Winner (best Moot Court argument, Freshman Class).

1957-1958: Finalist, National Moot Court Competition.

College of the Holy Cross:

Freshman Class President, Varsity Football Letter and Purple Key Honor Society.

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.

Member, American Bar Association

Member, Association of the Bar of the City of New York
 Member, The Special Commission for Discovery Abuse in
 the Eastern District of New York, 1979-1980, appointed by
 Chief Judge Jack B. Weinstein.

Member, The Special Committee on Discovery Abuse,
 1975-1979, appointed at the request of Chief Justice Warren
 Burger.

Chairman, Forum on Securities Litigation of the Bar
 Association for the State of Colorado, 1976.

Chairman, American Bar Association Committee on
 Securities Litigation, 1975-1977.

Panelist, American Bar Association Litigation
 Section Panel on Discovery Abuse, 1975.

Member, Southern District of New York Trial and
 Appellate Panel established under Federal Criminal Justice
 Act, 1964-1984.

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 do not belong to any organizations that are active in
 lobbying before public bodies.

The other organizations to which I belong are:

Member, Board of Directors, Guiding Eyes for the Blind.
 Member, Board of Directors, Catholic Guild for the Blind.
 Member, Holy Cross Alumni of New York.
 Member, American Association of the Sovereign Military Order
 of Malta (Knights of Malta).
 Member, Board of Directors, Ski for Light.
 Member, Friendly Sons of St. Patrick.

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.

Admitted to the Bar of the State of New York, Second
 Department, on July 1, 1959

Admitted to the Bar of the United States Court of
 Appeals for the Second Circuit in May, 1960

Admitted to the Bar of the United States District Court
 for the Southern District of New York on June 11,
 1963

Admitted to the Bar of the United States Court of
 Appeals for the Fifth Circuit in March, 1973

Admitted to the Bar of the United States District Court
 for the Eastern District of New York on November 9,
 1989

Admitted before the Supreme Court of the United States of America on May 26, 1992.

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 (but I am blind); December, 1996.

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.

Assistant United States Attorney, appointed by William P. Rogers and subsequently by Robert F. Kennedy (deceased); Counsel to a Special Commission of the State of New York appointed by Chairman Herman Stitchman (deceased).

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 addressees 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;

Answer: From June 1959 to September 1963, I served as Assistant United States Attorney, Southern District of New York (currently located at 1 St. Andrew's Plaza, New York, New York 10007).

From September 1963 until June 1964, I served as Counsel to a Special Commission of the State of New York (Moreland Act Commission) to investigate public corruption.

From July 1964 to the present, I have been associated with and a partner of the law firm of Brown & Wood, New York City, New York (the firm had different names during this period). I was hired as an associate in 1964 and was made a partner on January 1, 1970. I became Of Counsel to the firm in 1984.

- 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: From 1959 to 1963, as Assistant United States Attorney in the Criminal Division, my practice involved prosecuting Federal crimes.

From September 1963 to June 1964, as Counsel to Special Commission of the State of New York, I investigated public corruption.

From July 1964 to the present, my practice has consisted of securities, corporate and criminal litigation.

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

Answer: In private practice, my typical clients have included numerous investment banking firms, corporations and individuals employed in the financial services and other industries. I have specialized in securities, corporate and criminal litigation.

- 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: My practice from 1959 through 1963 was exclusively criminal, and the nature of the practice as Assistant United States Attorney required that I be in court on almost a daily basis. After I entered private practice, my practice was predominantly civil in nature and as a result, the appearances in court were less frequent.

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

Answer: Over my entire professional career, my appearance in courts has been predominantly (approximately 90%) in Federal courts.

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

Answer: Since leaving the United States Attorney's Office, my practice has been approximately 90% civil and 10% criminal litigation.

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: Approximately 40 as chief counsel and/or sole counsel and I was co-counsel or associate counsel on an additional 5 cases.

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

Answer: 95% of the trials were by jury, and 5% 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, addressees, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Criminal Litigation

My tenure at the United States Attorney's Office in New York City included, among various other prosecutions, my prosecution of three Russian spy cases listed below.

1. United States v. Soblen, 60 CR 996 (1961) (U.S.D.C.-S.D.N.Y.) (sentencing opinion written by Judge Herlands appears in United States v. Soblen, 199 F. Supp. 11 (1961)).

a) Dates of Action/Decisions: The trial lasted approximately one month in or about June, 1961. After trial by jury before the Honorable Judge Herlands, the defendant was found guilty of espionage. The conviction was affirmed on appeal and certiorari was denied by the Supreme Court of the United States.

b) Court and Judge: The case was tried before the United States District Court for the Southern District of New York, the Honorable William Herlands, District Judge, presiding.

c) Parties to the Litigation: Dr. Soblen, along with 18 unindicted co-conspirators, was charged with espionage.

d) Summary of Case/Significance: As Assistant United States Attorney and lead counsel, I prosecuted Dr. Soblen for espionage. The case disclosed a network of Soviet spy activity in the United States that was, as Judge Herlands noted in his sentencing opinion, "conceived by the Secret Police of Soviet Russia" and "executed through the active connivance and financial support of at least two high-ranking Soviet diplomats." 199 F. Supp. at 13.

e) Co-Counsel/Opposing Counsel: My co-counsel was David R. Hyde (currently a retired partner with the law firm of Cahill Gordon & Reindel, 80 Pine Street, New York City, New York 10005 (Tel. (212) 701-3000)). The defendant was represented by Mr. Joseph Brill, a sole practitioner formerly residing at 66 Pinebrook Boulevard, New Rochelle, New York, and by Mr. Jacob W. Friedman, a sole practitioner formerly residing at 295 St. John's Place, Brooklyn, New York. Neither Mr. Brill nor Mr. Friedman is currently listed in the Martindale-Hubbell Law Directory. I do not know the current whereabouts of these gentlemen, or whether they are still alive.

2. United States v. Zborowski, CR 156-113 (1962)
(U.S.D.C.-S.D.N.Y.)

a) Dates of Action/Decisions: The trial was conducted during the autumn of 1962. After trial by jury before the Honorable Judge Richard Levet, the defendant was found guilty of perjury.

b) Court and Judge: The case was tried before the United States District Court for the Southern District of New York, the Honorable Richard Levet presiding.

c) Parties to the Litigation: The defendant was Mark Zborowski, a Soviet espionage agent who was charged with perjury.

d) Summary of Case/Significance: As Assistant United States Attorney and lead counsel, I prosecuted retrial of the defendant for perjury. The defendant was a Soviet spy who had perjured himself before a grand jury by

denying that he knew another Soviet spy. The second spy ultimately testified against Mr. Zborowski at trial. The case was retried after his original conviction had been set aside by the Court of Appeals for the Second Circuit.

e) Co-Counsel/Opposing Counsel: Counsel for the defendant was Frederick S. Nathan (currently with the law firm of Kelley, Drye & Warren, 101 Park Avenue, New York City, New York 10178 (tel. (212) 808-7800)).

3. United States v. Drummond, 62 CR 910 (1963) (U.S.D.C.-S.D.N.Y.) (no reported opinion).

a) Dates of Action/Decisions: The trial lasted approximately one month in or about July, 1963.

b) Court and Judge: The case was tried before the United States District Court for the Southern District of New York, the Honorable Thomas Murphy, District Judge, presiding.

c) Parties to the Litigation: The defendant was Mr. Nelson Drummond, a Chief Petty Officer in the United States Navy.

d) Summary of Case/Significance: As Assistant United States Attorney, I, along with my co-counsel, prosecuted the defendant for espionage for attempting to deliver military secrets to agents of the former Soviet Union. The first trial of the defendant occurred in or about May, 1963, and resulted in a mistrial due to the inability of the jury to reach a verdict. The case was re-tried in July 1963 and the defendant was found guilty of conspiracy to commit espionage.

e) Co-Counsel/Opposing Counsel: My co-counsel were Vincent L. Broderick (now deceased), and John S. Martin (currently, a United States District Court Judge in the Southern District of New York, U.S. Courthouse, 500 Pearl Street, New York City, New York 10007 (tel. (212) 805-0228)). Defending Mr. Drummond was Mr. William Chance (deceased).

Civil Litigation

My civil litigation experience has been primarily in the areas of securities and commodities fraud cases brought by customers of brokerage and investment banking firms, including, among others, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"). The seven cases set forth below are a fair representation of my private practice.

4. Sinva, Inc. v. Merrill Lynch, 65 Civ. 1566 (U.S.D.C.-S.D.N.Y.) (a reported decision, with respect to defendant's motion to dismiss the complaint or stay the action pending arbitration, appears at 253 F. Supp. 359 (1966)).

- a) Dates of Action/Decisions: The case, through the initial complaint and subsequent trial, extended from 1965 through 1969.
- b) Court and Judge: The case was tried before the United States District Court, Southern District of New York, the Honorable Dudley Bonsal, District Judge, presiding, and was retried before the Honorable Lloyd McMahon, presiding.
- c) Parties to the Litigation: The plaintiff to the civil suit was Sinva, Inc., a Panamanian corporation with its headquarters in Berne, Switzerland, and Merrill Lynch.
- d) Summary of Case/Significance: I was the lead counsel for the defendant, Merrill Lynch in a commodities fraud action brought by a Merrill Lynch customer in connection with losses suffered by the customer in sugar futures contracts. The first trial ended in a mistrial, due to the inability of the jury to reach a verdict. The second trial resulted in a verdict for the defendant Merrill Lynch. The significance of the case lies in the fact that it was a successful defense of a complex commodities futures contracts case before a jury.
- e) Co-Counsel/Opposing Counsel: My co-counsel was Robert A. Foy, currently located at 90 South Bedford Road, Mt. Kisco, New York 10549 (tel. (914) 666-7393). Counsel for the plaintiff Sinva, Inc. were Lawrence P.

McGauley, (current address unknown) and John G. Lipsett (currently with the law firm of Forsythe, Holbrook, Seward & Bovone, 420 Lexington Avenue, New York, New York 10170 (tel. (212) 867-8280)).

5. Dunn v. Merrill Lynch, 64 Civ. 1285 (The only reported decision in the case, relating to the recovery by Merrill Lynch of the actual expenses for flying in witnesses subpoenaed by the plaintiff, appears at 279 F. Supp. 937 (1968)).

a) Dates of Action/Decisions: The complaint against Merrill Lynch was filed in 1964, and the case ultimately decided in February, 1968.

b) Court and Judge: The case was tried before the United States District Court for the Southern District of New York, the Honorable Milton Pollack, District Judge, presiding.

c) Parties to the Litigation: The plaintiff was Burton D. Dunn, an investor residing in France, who employed Merrill Lynch as his broker during the early 1960s.

d) Summary of Case/Significance: As counsel, I represented Merrill Lynch in an action brought by a customer who sustained losses through his investment in the common stock of Syntex Corporation. Mr. Dunn sued Merrill Lynch under a theory of common law securities fraud and negligence under the Securities Exchange Act of 1934, which was tried before a jury and ultimately resolved in favor of the defendant Merrill Lynch. The case presented an original attack on the reasonableness of investment recommendations provided by a broker and involved the explanation of both "technical" and "fundamental" factors supporting such research to a jury.

e) Co-Counsel/Opposing Counsel: Assisting me from Brown & Wood, One World Trade Center, New York City, New York 10048 was Henry F. Minnerop (tel. (212) 839-5555). Counsel for the plaintiff was John F. McNeill, of the law firm of Stone, Malone, Driver & McNeill, formerly at 120 Broadway, New York City, New York. The firm has disbanded, and there is

currently no listing for Mr. McNeill in the Martindale-Hubbell Law Directory.

6. Simon v. Merrill Lynch, Civ. No. 34094 (Michigan)/ Misc. 675, Civ. Action No. CA 3-4273 (Texas).

a) Dates of Action/Decisions: The suit was initiated on December 16, 1969, and was conducted through August, 1972. The sole reported decision in this case denying class action status and upholding the judgment in favor of defendant, Merrill Lynch, was affirmed by the United States Court of Appeals for the Fifth Circuit reported at 482 F.2d 880 (1973).

b) Court and Judge: The case was first tried before the United States District Court for the Eastern District of Michigan, Southern Division, and was subsequently transferred to the United States District Court for the Northern District of Texas, Dallas Division. The case was tried without a jury to the Honorable Ernest J. Guinn, District Judge, who rendered a judgment in favor of the defendant, Merrill Lynch.

c) Parties to the Litigation: Plaintiffs James Simon and The Bank of the Commonwealth were two representatives of a purported class (of approximately 6,000 individuals) allegedly injured by the advice of defendant Merrill Lynch with respect to the stock of Scientific Control Corporation ("Scientific").

d) Summary of Case/Significance: This case was one of three cases in which I was lead counsel to Merrill Lynch and one of its employees that arose out of allegedly improper and misleading investment advice provided by employees of Merrill Lynch with respect to the stock of Scientific, a Dallas corporation which filed for bankruptcy after having been favorably described in research reports of Merrill Lynch. In the Simon case, the plaintiffs attempted to certify their claims as those of a class of plaintiffs. The Simon case (as well as the other related Scientific cases) was notable both for the allegations of pervasive and substantial

fraud by Merrill Lynch's sales representatives, as well as the novel attacks by both private plaintiffs and the United States Securities and Exchange Commission alleging that Merrill Lynch's "inadequate" securities research was a violation of the Securities Exchange Act of 1934.

e) Co-Counsel/Opposing Counsel: Merrill Lynch's local counsel of record in Michigan were Erwin S. Simon and Douglas G. Graham, of the law firm of Butzel, Levin, Winston & Quint (now Butzel & Long), Suite 900, 150 West Jefferson, Detroit, Michigan 48226 (tel. (313) 225-7000). Merrill Lynch's local counsel of record in Texas was Frank Finn, of the law firm of Thompson, Knight, Simmons & Bullion (now Thompson & Knight), 330 First City Center, 1700 Pacific Avenue, Dallas, Texas 75201 (tel. (214) 969-1700). William H. Merrill (current address unknown) and Robert R. Bradshaw, currently of the law firm of Babb & Bradshaw, P.C., 905 Congress Avenue, Austin, Texas 78767 (tel. (512) 457-0188) were counsel for the plaintiffs.

7. Santilli v. Merrill Lynch, Civ. No. 4469 (U.S.D.C.-D.R.I.) (No reported decisions.)

a) Dates of Action/Decisions: The action was instituted on December 4, 1970. A verdict in favor of the defendant Merrill Lynch was issued on February 29, 1972.

b) Court and Judge: The case was tried before a jury in the United States District Court for the District of Rhode Island, the Honorable Edward W. Day, District Judge, presiding.

c) Parties to the Litigation: Plaintiff Anthony Santilli was an individual investor who employed Merrill Lynch as his broker-dealer.

d) Summary of Case/Significance: As lead counsel in the Santilli case, I defended Merrill Lynch against charges that the sale of Scientific stock to the plaintiff was by fraudulent and negligent representations as to the value and safety of such stock by one of Merrill Lynch's employees.

e) Co-Counsel/Opposing Counsel: Assisting me from Brown & Wood, One World Trade Center, New York, New York 10048 was Henry F. Minnerop (tel. (212) 839-5555). Local counsel of record for Merrill Lynch in Rhode Island was Richard M. Borod, of the law firm of Edwards & Angell, 2700 Hospital Trust Tower, Providence, Rhode Island 02903 (tel. (401) 274-9200). Counsel for the plaintiff was John P. Bourcier (a sole practitioner), with his offices formerly located at 1000 Smith Street, Providence, Rhode Island. There is currently no listing for Mr. Bourcier in the Martindale-Hubbell Law Directory.

8. In the Matter of Merrill Lynch, Pierce, Fenner & Smith, Inc., Administrative Proceeding File No. 3-4329 before the United States Securities and Exchange Commission (the "SEC") (reported in SEC Release No. 34-14149 (1977)).

a) Dates of Action/Decisions: The SEC issued an order on June 10, 1970, directing a private investigation of Merrill Lynch to examine allegations of alleged fraud in trading the stock of Scientific. On June 22, 1973, the SEC issued an order for a public proceeding against Merrill Lynch and 49 individuals (either current or former employees of Merrill Lynch). The proceeding commenced in March 1974 and, after hearings lasting over a two-year period, resulted in a settlement with the SEC effective November 9, 1977.

b) Court and Judge: The proceeding was tried before Sidney Ullman, an Administrative Law Judge of the SEC. The trial was completed on November 2, 1977.

c) Parties to the Litigation: SEC, Merrill Lynch and 49 individuals (either current or former employees of Merrill Lynch).

d) Summary of Case/Significance: The SEC Order charged Merrill Lynch and its employees with fraud in the solicitation and trading of the stock of Scientific, and inadequate research on behalf of its research department in recommending the purchase of Scientific stock. I was lead counsel for Merrill Lynch and several of its employees during the

proceedings. At the time the proceeding was brought, I believe that it was the largest (with several hundred witnesses) and most extensive administrative proceeding ever brought against any broker-dealer by the SEC. It was also the first time that the SEC had charged that inadequate research in recommending the purchase of a security was a violation of the Securities Exchange Act of 1934.

e) Co-Counsel/Opposing Counsel: I was the lead counsel on behalf of Merrill Lynch and most of the individual respondents, with the exception of David Phelps (who was represented by Otto G. Obermaier (currently with Weil, Gotshal & Manges, LLP., 767 Fifth Avenue, New York City, New York 10153 (tel. (212) 310-8843)) and Robert Morvillo, (currently with the law firm of Morvillo, Abramowitz, Grand, Iason & Silberberg, 565 Fifth Avenue, 10th Floor, New York City, New York 10017 (tel. (212) 856-9600))); Richard J. Murphy (who was represented by Arthur F. Mathews of the law firm of Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037 (tel. (202) 663-6000), and Mary A. McReynolds (current address unknown) and John J. Ruzicka (who was represented by Mahlon M. Frankhauser, currently with the law firm of Kirkpatrick & Lockhart, 1800 Massachusetts Avenue, N.W., Suite 200, Washington, D.C. 20036-1800 (tel. (202) 778-9000). The SEC was represented by, among other individuals, John F.X. Peloso (currently with Morgan, Lewis & Bockius, 101 Park Avenue, New York City, New York 10178 (tel. (212) 309-6000)), Michael T. Gregg (currently Senior Vice President, Law Department, Dean Witter Reynolds, Inc., 2 World Trade Center, 4th Floor, New York City, New York 10048 (tel. (212) 392-2222)), Steven J. Glusband (currently with Carter, Ledyard & Milburn, 2 Wall Street, New York City, New York 10005 (tel. (212) 732-3200)) and Thomas F. Egan (currently with the brokerage firm of Langdon P. Cook, 100 Park Avenue, New York City, New York 10017 (tel. (212) 682-7074)).

9. Loeb v. Merrill Lynch, 79 Civ. 0788 (U.S.D.C.-D.N.J.) (no reported decision).

a) Dates of Action/Decisions: The action was commenced on March 20, 1979 and was concluded on December 31, 1980, with a judgment rendered in favor of my client, the defendant Merrill Lynch.

b) Court and Judge: The case was tried before the United States District Court for the District of New Jersey, the Honorable Frederick B. Lacey, District Judge, presiding.

c) Parties to the Litigation: The plaintiff in the action was Mrs. Else Julie Loeb, an investor, against Merrill Lynch.

d) Summary of Case/Significance: I was lead counsel for defendant Merrill Lynch in a suit brought by a private investor alleging misrepresentation, securities fraud and allegations of unauthorized securities trading by defendant. The plaintiff sought compensatory damages in excess of \$5 million. The case was decided in favor of the defendant with costs assessed against the plaintiff. The significance of the case was in the difficulty of trying, before a jury, a complex case involving a knowledgeable, but sympathetic plaintiff.

e) Co-Counsel/Opposing Counsel: Assisting me from Brown & Wood, One World Trade Center, New York City, New York 10048 were A. Robert Pietrzak (tel. (212) 839-5537), Judith Welcom (tel. (212) 839-5362) and Kent E. Daiber (current address unknown). The local counsel of record for defendant Merrill Lynch was John L. Moore (deceased). Counsel to the plaintiff was John J. LaFianza of the law firm of LaFianza & Auriginma (deceased), and Harry L. Garman (current address unknown).

10. Schwarz v. Dean Witter Reynolds, Inc., 82 Civ. 0452 (U.S.D.C.-S.D.N.Y.) (no reported decision).

a) Dates of Action/Decisions: The action commenced on April 13, 1982. No decision was rendered, since the case was settled on the eve of trial during the summer of 1983.

b) Court and Judge: The case was before the United States District Court for the Southern District of New York, the Honorable Robert Carter, District Judge, presiding.

c) Parties to the Litigation: The plaintiff, Mr. Fred Schwarz, was a client of Dean Witter; the defendants were Dean Witter Reynolds, Inc., a brokerage firm ("Dean Witter") and Palomba Weingarten, the individual broker who serviced Mr. Schwarz's account.

d) Summary of Case/Significance: I was lead counsel for the defendant Dean Witter in a case brought by a customer of the defendant under Section 10(b) of the Securities and Exchange Act of 1934, alleging securities fraud and misrepresentation.

The significance of the action is that the case involved extremely complex option trading as well as alleged unauthorized trading and misrepresentations.

e) Co-Counsel/Opposing Counsel: Counsel for the co-defendant Palomba Weingarten was Debra Brown Steinberg, currently with the law firm of Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York City, New York 10038 (tel. (212) 504-6000). Counsel for plaintiff was Richard Kraver (deceased).

See Attachment A for list of Professional References.

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: Some of the most significant litigation that I handled, apart from the cases discussed in question 17 above, include representation of Merrill Lynch in private civil suits (which were settled) and in administrative proceedings before the U.S. Securities and Exchange Commission entitled In re Douglas Aircraft. They were one of the first significant insider trading cases. In addition, I was counsel in the New York City Municipal Securities litigation, representing Merrill Lynch & Co. as defendant. The case involving my client was ultimately

settled. I tried numerous arbitration and administrative proceedings, which include administrative proceedings before the U.S. Securities and Exchange Commission, and arbitrations before securities self-regulatory bodies such as the National Association of Securities Dealers, Inc., the American Stock Exchange, and the New York Stock Exchange.

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 disclosed on the financial forms below, I have vested interests in two Brown & Wood retirement plans (the Brown & Wood Profit Sharing Retirement Plan and the Brown & Wood Defined Benefit Plan), as well as an IRA. I receive a salary from Brown & Wood that will terminate upon my accepting any other position. I currently receive tax-free income from a disability insurance arrangement in an amount equal to \$50,829.24 per annum, which will continue until age 65. Other than these arrangements, I do not anticipate any other benefits from my current professional relationship.

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 believe that there will be any potential conflicts of interest arising out of my professional and charitable obligations. However, if there are, in an exercise of caution, I would follow the Code of Judicial Conduct and recuse myself from any matter that could pose a potential 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.)

See Attachment B.

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

See Attachment C.

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.

Answer: I served on the Federal Criminal Justice Act Indigent Panel for the Southern District of New York and for the Second Circuit for Trial and Appeals from the mid-1960's to late 1970's.

I served again during the early 1980's on the Federal Criminal Justice Act Indigent Panel for the Southern District Court of New York.

During the late 1960's and early 1970's, I served on the Assigned Counsel Panel for Indigent Defendants in criminal cases in Nassau County, New York.

I have handled numerous trials and appeals, on a pro bono basis, (including U.S. v. McBryde, U.S. v. Tucker, U.S. v. Coppin and U.S. v. Stransky), before the federal courts. From 1983 to 1991, I served as Assigned Counsel on a civil case under the Civil Rights Act in the United States District Court for the Eastern District of New York.

I am responsible for Brown Wood representing the U.S. Blind Golfers Association in connection with their application for 501-C3 status as a not-for-profit organization.

I am a member of the Board of Directors of Guiding Eyes for the Blind.

I am a member of the Board of Directors of Ski for Light.

2. The American Bar Association 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: To the best of my knowledge, the only organizations that I have been a member of that could possibly be viewed as discriminatory (if the organizations listed below are, in fact considered to be discriminatory) are the following:

Boy Scouts of America (terminated my association in the 1940s)
 Knights of Columbus (terminated my association in the 1950s)
 The Friendly Sons of St. Patrick (current member)

In addition, I was a member of a private country club (the Creek Club, Locust Valley, New York) from 1974 to 1985. I do not believe that the membership policies of the Creek Club during that time, nor currently, are discriminatory.

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: Senator D'Amato has a Committee to recommend judicial nominees. I submitted an application to that Committee and was interviewed by them on March 26, 1997. This committee recommended my candidacy to Senator D'Amato. Senator D'Amato subsequently designated me for a vacancy on the U.S. District Court for the Southern District of New York. I also appeared before Senator Moynihan's Committee on March 6, 1997. I do not know the recommendation of the Committee, but I do know that Senator Moynihan has endorsed my candidacy.

Between May and July, 1997, I was interviewed by the Department of Justice, the Federal Bureau of Investigation and the American Bar Association. Based on information and belief, I received a favorable recommendation by all three entities.

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.

Answer: Judging is inherently a reactive, not a proactive, process. Federal judges are bound, in the words of Article III of the United States Constitution, to resolve "cases" and "controversies" properly appearing before them, not to foment disputes or mandate policies that individual judges find personally compelling. Federal judges have the duty, while deciding the merits of a case properly before them, to resolve the competing claims of litigants in a manner consistent with precedent and with the terms of the applicable statutes and the Constitution. Judges must render decisions, and provide remedies, that are both lawful and equitable for the individual parties, and do not usurp the allocation of power among the executive, legislative and judicial branches of the federal government. However, a judge may not shirk a controversy that is properly before his or her court, regardless of the identity of the parties. The rights of the citizenry are ill-served if the courts sacrifice their obligation to judge fairly between the claims of competing parties, because one party is unpopular

or because a party may be an agency of federal or state authority. Within the limited breadth of the judiciary's authority, the courts have the obligation to interpret the law, and to resolve the grievances of the parties to the full extent that the law provides a remedy.

Attachment "A"

Thomas McC. Souther, Esq. Brown & Wood LLP One World Trade Center New York, New York 10048	(212) 839-5846
A. Robert Pietrzak, Esq. Brown & Wood LLP One World Trade Center New York, New York 10048	(212) 839-5537
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Vice President and Assistant General Counsel
Merrill Lynch
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Attachment B

FINANCIAL DISCLOSURE REPORT
Nomination Report
*Report Required by the Ethics
 Reform Act of 1989, Pub L No.
 101-194, November 30, 1989
 (5 U.S.C. App. 4, Sec. 101-112)*

 AC-10 (w)
 Rev. 8/96

1. Person Reporting <i>(Last name, first, middle initial)</i> Casey, Richard C.	2. Court or Organization U.S. District Ct. (S.D.N.Y.)	3. Date of Report 07/16/1997
4. Title <i>(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</i> Judicial Nominee	5. Report Type (check type) X Nomination, Date <u>07/16/97</u> ___ Initial ___ Annual ___ Final	6. Reporting Period 01/01/1996 to 12/31/1996
7. Chambers or Office Address Brown & Wood 1 World Trade Center New York, New York 10048	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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 the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions)*
POSITION
NAME OF ORGANIZATION / ENTITY
 NONE (No reportable positions.)

1 Of Counsel	Brown & Wood, 1 World Trade Center, NY NY 10048
2 Member, Board of Directors	Guiding Eyes for the Blind
3 Member, Board of Directors	Catholic Guild for the Blind

II. AGREEMENTS *(Reporting individual only; see pp. 14-17 of Instructions.)*
DATE PARTIES AND TERMS
 NONE (No reportable agreements.)

1	Brown & Wood Profit Sharing Retirement Plan
2	Brown & Wood Defined Benefit Plan
3	

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 18-25 of Instructions.)*
DATE
PARTIES AND TERMS
GROSS INCOME
 (yours, not spouse's)

 NONE (No reportable non-investment income.)

1	1996 Brown & Wood (compensation)	\$ 20,622.0
2	1996 UNUM Long Term Disability Policy No. 0041501	\$ 50,829.2
3		
4		
5		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Casey, Richard C.	07/16/199

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. 26-29 of Instructions.)

	SOURCE	DESCRIPTION
<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. 30-33 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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities)		
1	Dime Savings Bank	Cooperative Loan	K
2			
3			
4			
5			
6			
7			

* VAL CODES: J = \$15,000 or less K = \$15,001-\$50,000 L = \$50,001 to \$100,000 M = \$100,001-\$250,000 N = \$250,001-\$500,000
 O = \$500,001-\$1,000,000 P1 = \$1,000,001-\$5,000,000 P2 = \$5,000,001-\$25,000,000 P3 = \$25,000,001-\$50,000,000 P4 = \$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Casey, Richard C.

Date of Report
07/16/1997

VII. Page 1 INVESTMENTS and TRUSTS

- Income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets <i>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.</i> <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (no reportable income, assets, or transactions)									
1 75 shs Equity Income Fund 1st Exchange Series	A	Dividend	J	T					
2 260 shs Exxon Corp. Com.	A	Dividend	K	T					
3 200 shs Fleet Financial Group Inc. Com	A	Dividend	J	T					
4 264 shs General Electric Corp. Com	A	Dividend	K	T					
5 350 shs Morgan Stanley Group 8.75% pfd. Depository	A	Dividend	J	T	redeem	53097	J		
6 \$50,000 f.a. Bell South Telecom Notes 6.5% due 2/1/00	C	Interest	L	T					
7 \$25,000 AT & T Corp. Notes 7.125% due 1/15/02	B	Interest	K	T					
8 Merrill Lynch, New York, NY 12771 shs CHA Money Mark Account	A	Dividend	J	T					
9 Merrill Lynch IRA Retirement Reserves 382.57 shs	A	Dividend	J	T					
10 Merrill Lynch IRA 20,348 shs Sel. Ten96B Dow Eq. Inc. Fnd	A	Dividend	K	T					
11 Merrill Lynch IRA 9251.7973 shs Eq. Inc. Fnd. Tele-Global	B	Dividend	J	T					
12 Brown & Wood Retire. Plan 1134.518 shs Fidelity Magellan	A	Dividend	M	T					
13 Brown & Wood Retire. Plan 2099.18 shs Fidelity Eq. Income	A	Dividend	M	T					
14 Brown & Wood Retire. Plan 4108.594 shs Fidelity Inv. Bond	B	Interest	K	T					
15 Brown & Wood Retire. Plan 1064.915 shs Fidelity Overseas	A	Dividend	K	T					
16 Brown & Wood Retire. Plan 9301.59 shs Fidelity Mon. Mark	A	Dividend	J	T					
17 Brown & Wood Retire. Plan 1649.494 shs Fidelity Contrafund	A	Dividend	L	T					
1 Ino/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 HI=\$1,000,001-\$5,000,000 HZ=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Casey, Richard C.	07/16/1997

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of report.)

NONE (No additional information or explanations.)

RE: Schedule VII- Investments and Trusts:
RE: Item 18- Brown & Wood Defined Benefit Plan

The Plan is being terminated effective as of March 31, 1997 and once a determination letter has been received from the Internal Revenue Service a distribution will be made to all participants of their accrued benefit.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Casey, Richard C.	07/16/1997

SECTION HEADING. (Indicate part of report.)

SECTION 1. POSITIONS (cont'd.)

Li. Position	Name of Organization/Entity
4 Member, Board of Directors	Ski for Light

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Casey, Richard C.	07/16/1997

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. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Richard Casey Date 07/16/97

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. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
 Administrative Office of the United States Courts
 One Columbus Circle, N.E.
 Suite 2-301
 Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH
Richard Conway Casey

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	406	77	Notes payable to banks—secured **	19	008	89
U.S. Government securities—add schedule	-0-			Notes payable to banks—unsecured			
Listed securities—add schedule	144	704	00	Notes payable to relatives			
Unlisted securities—add schedule	260	000	00	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	20	000	00				
Cash value—life insurance	-0-						
Other assets—itemize:							
Merrill Lynch IRA 84093784	33	991	57				
Brown Wood Profit Sharing Plan	376	429	02				
Brown Wood Defined Benefit Plan	2	915	75	Total Liabilities	19	008	89
				Net Worth	822	438	22
Total Assets	841	447	11	Total liabilities and net worth	841	447	11
CONTINGENT LIABILITIES			GENERAL INFORMATION				
As endorser, cosigner or guarantor	None			Are any assets pledged? (Add schedule.)	**		
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 debts	None						

* See attached Statement

** 851 shares of 415/52 Owners Coop are pledged as collateral for coop loan made by The Dime Savings Bank.

	RICHARD CONWAY CASEY	
<u>I. Cash on hand and in banks:</u>		
1. Chase Bank New York, New York	Checking account No. 001-287923 (balance as of 7/16/97)	\$ 2,515.21
2. Merrill Lynch New York, New York	CMA Account No. 840-99K26 (balance as of 7/16/97)	\$ 891.56
	TOTAL:	\$ 3,406.77
<u>II. Securities:</u>		
1. Equity Income Fund 1st Exchange Series (unit investment trust formed from interests in AT&T and Bell affiliates by Merrill Lynch upon AT&T divestiture)	75 shares (value as of 7/16/97)	\$ 7,040.00
2. Exxon Corp. Common	260 shares (value as of 7/16/97)	\$ 16,315.00
3. Fleet Financial Group Inc. Common	200 shares (value as of 7/16/97)	\$ 13,012.00
4. General Electric Corp. Common	264 shares (value as of 7/16/97)	\$ 19,536.00
5. Bell South Telecom Notes 6.5% due 2/1/00	\$50,000 face amount (value as of 7/16/97)	\$ 50,312.00
6. AT&T Corporation Notes 7.125% due 1/15/02	\$25,000 face amount (value as of 7/16/97)	\$ 25,718.00
7. Merrill Lynch CMA Money Market Account 840-99K26	(value as of 7/16/97)	\$ 12,771.00
	TOTAL LISTED SECURITIES	\$144,704.00

8. 415/52 Owners Corp.	851 shares (cooperative apartment)	\$260,000.00 ¹
	TOTAL UNLISTED SECURITIES	\$260,000.00
<u>III. Other tangible personal property</u>		
Furniture, furnishings and personal effects		\$ 20,000.00 ²
<u>IV. Cash value of life insurance policies</u>		
\$500,000 life insurance policy provided by Brown & Wood to former partners	No cash surrender value	\$ 0.00
<u>V. Other miscellaneous assets</u>		
1. Merrill Lynch IRA, consisting of:	Account No. 84093784 (value as of 7/17/97)	\$ 33,991.57
a. Retirement Reserves/Cash	(value as of 7/17/97)	\$ 382.57
b. Select Ten 96B Dow Equity Income Fund	20,348 shares (value as of 7/17/97)	\$ 20,750.00
c. Equity Income Fund Tele-Global Trust Defined Asset Funds	(value as of 7/17/97)	\$ 12,859.00

¹ Value of the apartment shares as of July 17, 1997 is an informal estimate provided by the managing agent, without the benefit of a formal appraisal. Further documentation will be provided as available. Acquisition cost (1982) \$130,000.

² Estimated value of apartment furnishings and clothes; Mr. Casey does not have an itemized insurance list of his possessions.

2. Interest in Brown & Wood Profit Sharing Retirement Plan: Consisting of the following Fidelity mutual funds)	(value as of 7/17/97)	\$376,429.02
a. Magellan	(value as of 7/17/97)	\$109,344.84
b. Equity Income	(value as of 7/17/97)	\$107,729.92
c. Investment Grade Bond	(value as of 7/17/97)	\$ 29,540.80
d. Overseas	(value as of 7/17/97)	\$ 39,604.18
e. Retirement Money Market	(value as of 7/17/97)	\$ 9,301.59
f. Contrafund	(value as of 7/17/97)	\$ 80,907.69
3. Interest in Brown & Wood Defined Benefit Plan	(value as of 3/31/97)	\$ 2,915.75 ³
	TOTAL MISCELLANEOUS ASSETS	\$413,336.34
	TOTAL ASSETS	\$841,447.11
	LIABILITIES	\$ 19,008.89
<u>I. Loans and Indebtedness</u>		

³ The Plan is being terminated effective as of March 31, 1997, and once a determination letter has been received from the Internal Revenue Service, a distribution will be made to all participants of their accrued benefits.

1. Dime Savings Bank	Mortgage on Cooperative Apartment located at 415 East 52nd Street, New York, New York (value as of 7/16/97)	\$ 19,008.89
2. Credit card, short term debt (more than 31 days duration)		\$ 0.00
3. Other		\$ 0.00
	TOTAL LIABILITIES	\$ 19,008.89

NOMINATIONS OF STANLEY MARCUS (U.S. CIRCUIT JUDGE); RODNEY W. SIPPEL, NORMAN K. MOON, ANN L. AIKEN, AND JEROME B. FRIEDMAN (U.S. DISTRICT JUDGES)

TUESDAY, OCTOBER 28, 1997

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

The committee met, pursuant to notice, at 10:32 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Grassley, Ashcroft, and Durbin.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, COMMITTEE ON THE JUDICIARY

The CHAIRMAN. If we could begin, I would appreciate it. We have a number of very important judgeships to be filled and a number of excellent candidates and nominees here today.

Today, we will move first with Stanley Marcus, of Florida, to be U.S. circuit judge for the eleventh circuit. I am very familiar with Mr. Marcus and I have a very high opinion of him, and I look forward to going through a few questions with him.

Then on the district court level, we will go in alphabetical order. We will start with Ann L. Aiken, of Oregon, to be U.S. district judge for the District of Oregon; then Jerome B. Friedman, of Virginia, to be U.S. district judge for the Eastern District of Virginia; Norman K. Moon, of Virginia, to be U.S. district judge for the Western District of Virginia; Rodney W. Sippel, of Missouri, to be U.S. district judge for the Eastern and Western Districts of Missouri. So we will have a total of five nominees today.

Do we have our Senators here from Florida?

[No response.]

The CHAIRMAN. I think what we will do is, move in the order of these judges, but we will also have the Senators that are here today give their testimony for and on behalf of their nominees, and we will wait until they get here.

Let us move ahead, then, with Ann Aiken, of Oregon. I see both Senators are here. Would you gentlemen care to make some remarks about Ms. Aiken?

Senator Wyden, we will go with you first.

**STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM THE
STATE OF OREGON**

Senator WYDEN. Thank you, Mr. Chairman. Mr. Chairman, let me begin by expressing a special thanks and my gratitude to you for placing Judge Ann Aiken on the committee's schedule today. I know of no committee or no chairman who holds a heftier workload than you do, and I just want you to know that I am very grateful for all of your assistance, and particularly the good counsel that you have given me in the consideration of Oregon's judges.

The CHAIRMAN. Well, thank you, Senator Wyden. I am very pleased with the support of you Oregon Senators for Ann Aiken, and I think it weighs really heavily in her behalf.

Senator WYDEN. Mr. Chairman, before presenting the name of Judge Ann Aiken to the committee, I would also like to publicly thank my colleague, Senator Smith, for his extensive efforts on behalf of this nominee. He has joined me earlier this year in requesting that President Clinton re-nominate Judge Aiken, after her nomination did not reach the Senate floor in October 1996.

He has spoken with many of our Senate colleagues about the judge's qualifications, and I just want the committee to know that Senator Smith has been vociferous in his support of the judge every step of the way and it has been a pleasure to work with him.

Mr. Chairman, I will be brief this morning, but it is a great honor to present to the committee the name of Judge Ann Aiken to be a U.S. district judge for the State of Oregon. Her journey to be before the committee today has been long, and not just in terms of the 3,000 miles she has traveled, but through a nomination process that began in 1993 with the bipartisan support of the entire Oregon congressional delegation.

And it is fair to say, Mr. Chairman, that the judge's support for this position literally spans the entire political spectrum. For example, all living former presidents of our State bar association, eight Democrats and eight Republicans, are on record supporting the judge's candidacy.

Her dedication, intelligence, and integrity has won her broad support from Oregon's law enforcement community, including many district attorneys in our State, the Oregon State Police Officers Association, and our attorney general. And it is my view that these many endorsements that she has received are pouring in because of the hard work and thoroughness that has marked her career to date.

Judge Aiken is an individual who somehow manages to squeeze hours out of minutes. Not only does she maintain a rigorous judicial schedule, but the list of task forces she has chaired and boards she has served on numbers in the dozens. She has been particularly active and innovative in the cause of juvenile justice. And on top of all of this extensive work, she has still found time to raise five sons.

I am particularly pleased to recommend her because of her expertise on family law issues, from how the law and communities can work together to prevent the breakup of families to dealing with the rising caseloads of abused youngsters and requiring accountability from youthful offenders.

Of special note is her leadership in the founding of the Relief Nursery. This program has brought together in Lane County, in our State, the entire community—Republicans, Democrats, business leaders, lawyers, doctors—to provide a service for families that are finding it very difficult to stay together. The successes of the Relief Nursery were profiled by Peter Jennings on “World News Tonight,” and I can tell you I have been to this program and what they are accomplishing with youngsters in crisis is just extraordinary.

In conclusion, Mr. Chairman, I think that Judge Aiken will bring to the Federal bench the same energy, drive, and integrity that she has brought to her work as a State judge and as a specialist in family law. So I want to thank you again, Mr. Chairman, for moving us to this point in the process. Your patience and your aid has been particularly helpful to me, and I very much hope that now the committee will complete the nomination process and move Judge Aiken’s name to the floor before the Congress adjourns this year.

[The prepared statement of Senator Ron Wyden follows:]

PREPARED STATEMENT OF SENATOR RON WYDEN

Mr. CHAIRMAN: Let me begin by expressing a special thanks and my gratitude to you for placing Judge Ann Aiken on the Committee’s schedule today as the session draws to a close. I know of no Committee or Chairman who carries a heavier workload than you, and I’m very grateful for both the immense amount of time and good counsel you have given me in the consideration of Oregon’s needs on the Federal bench.

Before presenting Judge Aiken to the Committee, I would also like to publicly thank my colleague, Senator Gordon Smith for his extensive efforts on behalf of this nominee. He joined me earlier this year in requesting that President Clinton renominate Judge Aiken after her nomination did not reach the Senate floor in October of 1996. He has spoken with our colleagues and vociferously supported Judge Aiken every step of the way, and it is a pleasure to be working with him.

Mr. Chairman, it is a great honor to present to this Committee the name of Judge Ann Aiken to be a United States District Judge for the District of Oregon. Her journey to be before the Committee today has been long—not just in terms of the 3,000 miles she’s traveled from Oregon, but also in terms of a nomination process that began in 1993 with the strong bipartisan support of the Oregon Congressional delegation.

Judge Ann Aiken’s supporters for this position span the political spectrum. All living former presidents of our state Bar Association, eight Democrats and eight Republicans are on record supporting her candidacy. Her dedication, intelligence, and integrity has won her broad support from Oregon’s law enforcement community including many district attorneys throughout our state, the Oregon State Police Officers’ Association and our state Attorney General.

It is my view that the many endorsements are pouring in because of the hard work and thoroughness that has marked her career to date.

It is certain that Ann Aiken is a woman who knows how to squeeze hours out of a minute. Not only does she maintain a rigorous judicial schedule, but the list of task forces she has chaired and Boards she has served on in the past couple years number in the dozens. She has chaired a Subcommittee of the Governor’s Task Force on Juvenile Justice and served on the Steering Committee and the Board of Directors of the Court Appointed Special Advocates (CASA) Program. On top of all this, somehow she still finds time to raise five sons.

When Judge Aiken began her legal career, she made family law her area of expertise. Today, she is known throughout the State as one of the leading figures on family law issues—from how law and communities can work together to prevent the break up of families, to how to deal with the rising case loads of abused children, to requiring accountability from young offenders.

Of particular note is her leadership in the founding the “Relief Nursery.” With this project she brought together the entire community—business leaders, lawyers, doctors, even Republicans and Democrats—to provide a service for families that were about to crack apart. Recently in fact, the successes of the Relief Nursery in keeping families together were profiled by Peter Jennings in “World News Tonight.”

I am certain that Judge Aiken will bring to the federal bench the same intensity, drive and integrity that she has brought to her work as a State Judge and as a specialist in family law. I want to again thank the Chairman for moving us to this point in the process, and I urge the committee to complete the nomination process and move Judge Aiken's name to the floor before Congress adjourns this year.

The CHAIRMAN. Well, thank you, Senator Wyden. Your support means a great deal to this committee and we appreciate the cooperation you have given to the committee.

Senator Smith.

STATEMENT OF HON. GORDON SMITH, A U.S. SENATOR FROM THE STATE OF OREGON

Senator SMITH. Senator Hatch and members of the committee, I ask unanimous consent that my statement be entered in the record.

The CHAIRMAN. Without objection, we will put it in the record.

Senator SMITH. I would like to speak from the heart and from my experience with Ann Aiken. Under your counseling, Senator Hatch, I have visited with every member of the Republican membership of this committee to discuss Ann Aiken, how I know her personally, and why I believe she is qualified to be a U.S. district court judge.

I first met Ann Aiken in 1993. We served together on the Governor's juvenile justice task force. Out of that task force came some of the toughest juvenile crime laws in the United States of America. On that committee, Ann Aiken was a star. I came to respect her opinion and to value her as a person.

While there are some cases that cause concern for some of you, I believe if you review the totality of her record, you will see a tough, fair judge and someone who would do credit to the U.S. district court. I invite and encourage you to ask all the tough questions you can of this woman.

Finally, I would like to present a qualification that some may view as irrelevant, or even politically incorrect. Ann Aiken is the mother of five sons. I want you to know that any woman who can raise five sons, with a busy professional schedule, in my view, will have the requisite amount of fairness and firmness to be an excellent judge. Ann Aiken can be my judge any day.

The CHAIRMAN. Those sons look pretty good to me.

[Laughter.]

Senator SMITH. I don't want that fact to be overlooked in your decision as to how you will vote, and I ask that you be tough in your questions of her, and I ask for your support.

I thank you, Mr. Chairman, and each member of this committee.

The CHAIRMAN. Thank you, Senator.

[The prepared statement of Senator Smith follows:]

PREPARED STATEMENT OF SENATOR GORDON H. SMITH

Mr. Chairman, and Members of the Judiciary Committee, I thank you for this opportunity to introduce Judge Ann L. Aiken of Eugene, Oregon, nominee for the U.S. District Court. I commend Senator Hatch for his leadership in moving Judge Aiken's nomination forward, and for his continued commitment to filling the vacancies on the federal bench.

I would also like to recognize Judge Aiken's family who are here today. Her husband, James Klonoski and five boys—Jake, Nick, Zach, Sam and Chris. It's a pleas-

ure to have you all here today, and to join my colleagues Senator Wyden and Congressman DeFazio in support of this nomination.

Judge Aiken's service as a District Court and Circuit Court Judge for the State of Oregon reflects her strong commitment to her community and to her State. In 1993, I served with Ann on the Governor's Task Force on Juvenile Justice. Together, we worked to redefine the way Oregon addresses juvenile crime by focusing on intervention and prevention programs to deter criminal behavior.

Judge Aiken has been nothing less than forthright throughout this process, and has indicated her willingness to answer any questions the members of the Committee may have with respect to her record. I have found her honest and compelling which is why I stand beside her today.

Mr. Chairman, it has been said that Judge Aiken represents the people and the personality of Oregon. A dedicated wife and mother of five young boys. A role-model in her professional life and in her community. To put it simply, she's forthright, she's faithful, and a fine nominee for the federal court. I am proud to stand in support of her nomination, and encourage my colleagues to report it favorably to the floor of the United States Senate.

Thank you Mr. Chairman, and members of the Committee for your consideration.

The CHAIRMAN. Judge Aiken, this is certainly a tribute to you to have two distinguished Senators both energetically acting on your behalf, and I personally appreciate both of them and we will look forward to asking you some questions.

Thank you both for coming. We really appreciate you coming.

We will now turn to Senator Mack, of Florida. Do you know if Senator Graham is coming?

Senator MACK. Yes, he is.

The CHAIRMAN. We will accommodate him when he gets here.

Senator MACK. The subway is down again, so I hope he is not caught on it.

The CHAIRMAN. OK. Well, we are glad to have you here and we look forward to hearing your testimony on Judge Marcus.

STATEMENT OF HON. CONNIE MACK, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator MACK. Thank you, Mr. Chairman and members of the committee. I want to thank you for this opportunity to introduce Judge Stanley Marcus to the committee and thank you once again for your overall responsiveness to the needs of Florida's judiciary.

Florida's judicial nominees have enjoyed swift passage from nomination to confirmation this year, and the committee is to be commended for its fine work. And, Mr. Chairman, we do appreciate that effort. It has meant a great deal to the State of Florida.

I have to say at the outset that I have never been more enthusiastic in my support for a circuit court nominee than I am for Judge Marcus. This is a nominee which the Senate can be proud to confirm, and I am confident that, if confirmed, Judge Marcus will leave the appellate bench someday with a proud legacy of judicial precedent which maintains the integrity of our legal system and provides justice for those who come before him.

Judge Marcus was first appointed to the Federal bench at the district court level by President Reagan in 1985 after being recommended by Senator Paula Hawkins. He has done an excellent job presiding in the Southern District of Florida since that time.

Back in 1989, when faced with an earlier vacancy on the eleventh circuit Court of Appeals, I recommended Judge Marcus for that position. Although I was disappointed at the time that Judge

Marcus was not nominated, I am truly thrilled that he is being considered for this position today.

Judge Marcus can be described as one of those judges who is genuinely loved and respected by attorneys of all sides of the issues in the south Florida legal community. He possesses a superior intellect and a wonderful disposition, a priceless combination. I know from previous confirmation hearings that courtesy is a characteristic highly valued by this committee. Judge Marcus possesses this in abundance. He is friendly, well-liked, and easily approachable.

Even though there is widespread happiness and support for Judge Marcus because of his nomination, it is mixed with a real sadness by those who will miss his presence on the Southern District bench. The Miami Herald called Judge Marcus an exemplar of the law.

Judge Marcus would also bring to the appellate bench a reputation for being tough on crime, something that is imperative to the future well-being of our State. Prior to his service on the bench, Judge Marcus was the chief of the Detroit strike force in the Organized Crime and Racketeering Section of the Department of Justice. His excellent service in that position further adds to the weight of evidence in support of Judge Marcus' fitness for the appellate bench.

I am so pleased to be here today to have the opportunity to introduce Judge Marcus. It has been a joy to interact with him throughout the years, and I expect to continue to hear great things about the legal career of Judge Stanley Marcus.

I urge the committee's and the Senate's swift confirmation of Judge Marcus, and I thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you, Senator Mack.
Senator Graham.

STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Mr. Chairman and members of the committee, thank you for this opportunity for Senator Mack and I to introduce not only an outstanding jurist, but also a man that we have both come to know as a friend and as a pillar of the civic and legal community of our State.

I would like to join Senator Mack in expressing my appreciation to this committee for the attention and consideration that you have given to the nominees from Florida. We had a long period in which there had been vacancies, particularly at our district court level. Senator Mack and I are pleased to say that today every position in Florida's district courts is filled, with the exception of two judges who have recently announced for senior status. So we will be before you again.

The CHAIRMAN. If I might interrupt you, I think that is largely because of the efforts of you two.

Senator MACK. Thank you.

The CHAIRMAN. Both of you have worked very hard to nominate really qualified, good people and the committee has appreciated that very much.

Senator GRAHAM. Well, Senator Mack and I appreciate your kind remarks, but I also realize that it is the recognition of yourself, Mr.

Chairman, and your committee members of the circumstances in our rapidly growing State, with some of its special Federal judicial concerns, including, unfortunately, the high level of criminal cases generated by drug-related activities which are now being served by the full Federal bench. So today's hearing relatively shortly after the nomination of Judge Marcus is another example of your attention to the needs in this case of the eleventh circuit.

I have a full statement that I would like to file for the record, but just to supplement some of the comments that Senator Mack has already so effectively made, Judge Marcus' career combines a number of elements, from his birthplace in New York City, where he served in such disparate positions as on the city's Bureau of Budget and Housing Maintenance and as a caseworker in the State Department of Social Services and as a legal clerk and assistant U.S. attorney.

He has brought that broad experience, first, to the U.S. attorney's office in Michigan, where he initially served on and later led in the Detroit strike force that was established to fight organized crime in Michigan. His steady rise through the Department of Justice soon led him to Miami where, in 1982, President Reagan appointed Judge Marcus as the U.S. attorney for Florida's Southern District. This commenced 15 years of service which continues today to the people of our State through the Federal judiciary.

Judge Marcus' record of judicial service began in 1985 when he was nominated on the recommendation of Senator Hawkins and confirmed as Federal district judge for Florida's Southern District. As Senator Mack has said, since that time he has consistently been recognized as a fair, dedicated jurist who brings out the best in the lawyers who appear before him and in the other judges with whom he serves in a collegial relationship.

He has continued his interest in academic law, serving as professor of trial advocacy at the Brooklyn Law School this year. He has had a positive influence on the guidance of a number of young attorneys who have worked with him or been influenced by his judicial actions. Judge Marcus has consistently received the highest recognition of members of the bar who have appeared before him. He has received in various forms the appreciation of the citizens of New York State, Michigan, and Florida for his three decades of service to the people.

I join Senator Mack in urging the speedy consideration and confirmation of the next judge to the U.S. Court of Appeals for the Eleventh Circuit, Judge Stanley Marcus.

The CHAIRMAN. Thank you, Senator.

[The prepared statement of Senator Graham follows:]

PREPARED STATEMENT OF SENATOR BOB GRAHAM

Good morning. Chairman Hatch, Senator Leahy, members of the Senate Judiciary Committee, it is an enormous honor to introduce Judge Stanley Marcus for your consideration as the next member of the U.S. Court of Appeals for the Eleventh Circuit.

Before I extol Judge Marcus' outstanding qualifications and virtues, I want to thank the Chairman and the Ranking Member for their prompt and thorough review of nominations affecting my home state of Florida.

In the last ten months, the Senate Judiciary Committee has interviewed—and the full Senate has confirmed—two judges to fill vacancies in Florida's Southern Judicial District, a new United States Attorney for the Southern District, and most re-

cently, a federal judge for Florida's increasingly crowded Middle Judicial District. For the first time in several years, Florida has no pending federal district court nominations, a turn of events that is a testament to your leadership and welcome news for members of the Florida federal judicial community.

All of the Florida nominees that you have examined and approved this year have exhibited certain traits that are critical to quality judicial performance. They have been outstanding legal professionals whose service has earned them the respect and admiration of their peers. Their qualifications have demonstrated a wide range of legal, professional, and academic interests and experiences. They have been dedicated public servants and community leaders. And they have appeared before this committee with the bipartisan support of Senator Mack, myself, and Floridians of every political background.

In Stanley Marcus, President Clinton has nominated someone who may be at the top of this impressive class of highly regarded Florida judicial nominees. For more than three decades, Judge Marcus has done more than just perform quality legal and judicial service. He has virtually redefined the standard for what it means to be a highly skilled federal prosecutor and an outstanding judge.

Stanley Marcus' public service roots lie in his birthplace of New York City. Between 1967 and 1978, he served the people of New York almost continuously—in the city's Bureaus of the Budget and Housing Maintenance, as a Caseworker in the state Department of Social Services, and as a legal clerk and Assistant U.S. Attorney in the Eastern Judicial District. His only hiatus from this service were the years he spent at Harvard University Law School, in the United States Army, and gaining valuable private sector experience at a New York law firm.

At the U.S. Attorney's Office, Stanley Marcus quickly gained a reputation as a highly effective prosecutor. In 1978, he was assigned to the U.S. District Attorney's Office in Detroit as part of the "Detroit Strike Force" that had been established to fight organized crime in Michigan. Two years later, he had been elevated to Chief Prosecutor on that Strike Force.

His steady rise through the ranks of the Justice Department soon led him to Miami. In 1982, President Reagan appointed Judge Marcus as the United States Attorney for Florida's Southern District, launching his more than fifteen years of service to the people of South Florida.

Stanley Marcus' record of judicial service began in 1985, when he was nominated and confirmed as a federal district judge in Florida's Southern Judicial District. Since then, he has been consistently recognized as a fair, dedicated jurist who brings out the best in both the lawyers who appear before him and the other judges who work with him.

And since Judge Marcus was appointed a Professor of Trial Advocacy at Brooklyn Law School in 1997, his positive influence and guidance is now being applied to the next generation of legal professionals.

Mr. Chairman, throughout his career, Stanley Marcus has impressed his peers with his legal and prosecutorial skills, won plaudits from lawyers and fellow judges alike as a fair and highly intelligent jurist, and received the appreciation of citizens from New York to Michigan to Florida for his nearly three decades of service to city, state, and country. I urge his speedy approval as the next judge in the U.S. Court of Appeals for the Eleventh Circuit.

The CHAIRMAN. I think, Judge Marcus, it certainly weighs very heavily in your behalf to have these two excellent Senators here speaking for you, and I have no doubt you will have an easy confirmation, as far as I am concerned.

Thank you both for being here. We appreciate you both being here. It is high praise for Judge Marcus.

We will now turn to our two Virginia Senators. Both of them are here and have two judicial nominees on the agenda, so we will be happy to hear first from the senior Senator, Senator Warner, and then we will turn to you, Senator Robb.

Senator WARNER. Thank you, Mr. Chairman and members of the committee. I think that while protocol says the senior Senator goes first, my distinguished friend and colleague was the moving person in bringing these nominations to the attention of the President and therefore I would like to defer and let you speak first and then I will follow.

The CHAIRMAN. That will be fine with the committee.

**STATEMENT OF HON. CHARLES S. ROBB, A U.S. SENATOR
FROM THE STATE OF VIRGINIA**

Senator ROBB. Thank you, Mr. Chairman, and I thank my distinguished senior colleague. I might add at the outset that he and I have worked together on these nominations, as we have on many other things, and I very much appreciate the relationship that we have had and continue to have between our two offices.

I would also, Mr. Chairman, like to thank you and the members of the committee for scheduling this particular hearing. I know that there are many demands on your schedule, and your expeditious inclusion of particularly Judge Moon, who was nominated more recently, at this time so that we have an opportunity to get these nominees confirmed before we adjourn is very, very much appreciated.

I should suggest at the outset that I was assisted initially, and my senior colleague ultimately, in the selection of both of the nominees for the Eastern and Western Districts of Virginia, respectively, by panels of jurists and lawyers in their respective jurisdictions.

I am going to ask unanimous consent, if I might, to have a longer statement included in the record that more fully describes the distinguished careers of both of these fine judges.

The CHAIRMAN. Without objection, we will put all statements in the record.

Senator ROBB. I might add that in each case they have a long and distinguished career on the bench, and in each case they have been selected at each level by their other circuit court judges or their other panel, in the case of the court of appeals, to be the chief judge at each level in which they have participated, which, it seems to me, is a very important testimony, at least, to the collective judgment of the peers with whom they have served.

Very briefly, the President has nominated Judge Jerry Friedman to be U.S. district judge for the Eastern District of Virginia. He is currently the chief judge of the Virginia Beach Circuit Court. He has served on that court since 1991, as chief judge since 1994. He was previously a judge on the Virginia Beach Juvenile and Domestic Relations Court. He served from 1985 to 1991, and he was chief judge of that particular court for four years.

He received his law degree from Wake Forest in 1969 and his undergraduate degree from ODU in 1965. His wife, Sandra, is with him. I hope that at the appropriate time, Mr. Chairman, you would recognize his wife, as well as the wife of Judge Moon, Barbara, who is also here.

I will also describe, if I may, very briefly Judge Moon's background. He is on the Virginia Court of Appeals, which incidentally was created during the time that I had the privilege to serve as Governor. He has been on there from the beginning. He has been chief judge since 1993. He has a particular record in eliminating case and publication backlog that had troubled the court before he became chief judge.

He is a visiting lecturer in trial advocacy at the University of Virginia Law School since 1975 and was the recipient of the Wil-

liam J. Brennan, Jr. Award for dedication to teaching trial advocacy. Prior to that, he was chief judge of the Lynchburg Circuit Court from 1974 to 1985, and chief judge from 1982 to 1984. He has three degrees from the University of Virginia, a master of laws in 1988, a J.D. in 1962, and a bachelor of arts in 1959. As I say, he is accompanied by his wife, Barbara, and has a son, Norman, Jr.

Mr. Chairman and members of the committee, I am enthusiastic in recommending both of these distinguished jurists for your consideration, and I am very grateful to my friend and senior colleague, Senator Warner, for his assistance in making this recommendation from the Virginia delegation unanimous.

I would now yield to my distinguished senior colleague.

[The prepared statement of Senator Robb follows:]

PREPARED STATEMENT OF SENATOR CHARLES S. ROBB

Mr. Chairman, it gives me a great deal of pleasure to present for confirmation two nominees for the federal bench from Virginia, Judge Jerry Friedman to fill the vacancy in the Eastern District and Judge Norman Moon to fill the vacancy in the Western District.

Before I do so, however, Mr. Chairman, I'd like to thank you for scheduling both of these nominees for today's hearing. It eliminates a substantial uncertainty in their lives, and will help us fill two vacancies in Virginia where the work is piling up.

Jerry Friedman and Norman Moon did not know each other personally prior to each being nominated to the federal bench. However, they have been in close contact since their nominations, and have become fast friends. So when this process is concluded, we will have two new federal judges and one new set of friends. Not a bad outcome.

And it is easy to understand how they've grown close, because they are similar in many respects. Both have dedicated themselves to serving the public, Judge Friedman for 12 years as a trial judge and Judge Moon for more than ten years as a trial judge and 12 years on Virginia's Court of Appeals. Both have earned the admiration of their colleagues who chose them to be Chief Judge of their respective courts, a position demanding increased responsibility and commitment. And both are well respected in the legal community, which views them both as thoughtful, intelligent and fair.

Judge Friedman currently serves as Chief Judge of the Circuit Court of Virginia Beach. His peers on the bench have elected him twice to be Chief Judge, which highlights the faith they have in his abilities. Prior to his work on the Circuit Court, Judge Friedman distinguished himself in one of the toughest assignments in the Virginia judicial system as a judge in the Juvenile and Domestic Relations court, where he was also selected to be Chief Judge. He graduated from Old Dominion University in 1965 and received his law degree from Wake Forest University in 1969. He is here with his wife, Sandra, who also serves the public as a school teacher in Southeastern Virginia. Judge Friedman has earned a reputation as a hard-working, evenhanded and courteous judge whose deliberative approach creates confidence that justice will be served in his court. Judge Friedman was selected from a group of highly-respected candidates who were interviewed by a committee headed by former U.S. Senator Bill Spong, who passed away three weeks ago. In my view, Bill Spong represented the best a public servant has to offer: he was honorable, made the tough decisions, and did what he thought was right despite the consequences. I expect Judge Friedman will stand as a living testament to those fine qualities of public service embodied by Senator Spong.

Judge Moon has similarly had a distinguished career in public service. He has served on the Virginia Court of Appeals since 1985, when it was first created. In 1993 he was selected Chief Judge, and during his tenure the court has eliminated its case backlog despite the increase in filings, and its publications, which had been eight months behind, were brought current. Prior to being elevated to the appellate court, he served more than ten years as a trial judge, where he also served as Chief Judge. During his illustrious career, he has touched many in the judicial system, both as a judge and as a visiting professor teaching trial advocacy at the University of Virginia School of Law, where he has received three degrees. Judge Moon earned a Master of Laws degree in 1988, which he added to the Bachelor of Laws he re-

ceived from the University in 1962 and the undergraduate degree he received in 1959. He has been teaching the course in trial advocacy at the University since 1975, and this year he received the William J. Brennan, Jr. Award for his dedication and contributions to the teaching of trial advocacy. His wife, Barbara, is also here today. The judicious decisions he has rendered, the students he has taught, and the courts he has run are all a testament to his wisdom and his dedication to justice. Judge Moon is one of the most widely respected jurists in the Commonwealth, and I have no doubt that the federal judiciary will benefit by adding him to their ranks.

Thank you, Mr. Chairman, and I look forward to swift confirmation of both of these fine candidates.

The CHAIRMAN. Senator Warner.

**STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR
FROM THE STATE OF VIRGINIA**

Senator WARNER. Mr. Chairman, first, we want to thank you, the ranking member and other members of the committee for listening to the petitions of my colleague and myself to bring up these two outstanding jurists.

We, the two of us, and I am sure other Senators likewise, spend a great deal of time on the question of judicial nominations. I think that function of a U.S. Senator in the constitutional advise and consent process has certainly no higher calling, that duty, and we spend a great deal of time on it.

I could summarize Judge Moon by simply saying a decade ago, Mr. Chairman, I recommended him for the Federal bench. And time didn't permit to get him on at that point, so here he is recycled again 10 years later. So I don't know that I need to add much more about Judge Moon, except the legislature of the month in our general assembly, the senior man, was a college classmate of mine. He has known Judge Moon all his life, and I just wanted to read a very brief quote from Lacey Putney, a delegate in the Virginia General Assembly.

He said, "Judge Moon's excellent judicial temperament and his keen intellect have contributed greatly to the outstanding reputation he has earned for intellectual honesty, fairness, and equity." I don't know of a higher tribute to be paid to a jurist.

Likewise, Judge Friedman—there was a fierce competition for this particular slot, and I know my colleague and I weighed very carefully the viewpoints of a diversity of citizenship and jurists and others in our State. And I think it is to Judge Friedman's credit that he came out in the minds of many as the best qualified person at this time, because he is known for his fairness and his compassion and mastery of the law. As one person said, he is tough, he is analytical.

So we bring before the U.S. Senate and this committee two outstanding Virginia public servants to take on the very important responsibility of the Federal bench.

I thank the committee.

The CHAIRMAN. Thank you, Senator.

Senator ROBB. Mr. Chairman, could I just add one word?

The CHAIRMAN. Sure.

Senator ROBB. I made reference to the fact that we had been assisted by judicial selection panels in considering all of the nominees, or all of those who were interested or had been nominated by various bar associations and others. The first panel that I had

asked to assist us was led by our late colleague, Senator William Spong.

Bill Spong was kind enough to head that group up. As many of our colleagues know, he passed away about 3 weeks ago, but this was his final contribution to the public service that these two judges both exemplify. Many of the superlatives and adjectives that I did not use in describing them are included in the formal statement that I have submitted.

With that, Mr. Chairman, I thank you again for holding this hearing and I wholeheartedly recommend, with my senior colleague, both Judge Friedman and Judge Moon for your consideration and confirmation.

Senator WARNER. I will put my statement in the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT OF SENATOR JOHN WARNER

Mr. Chairman, members of the Committee. It is a distinct privilege for me to be here this morning before you to introduce two of Virginia's most distinguished jurists.

Both Judge Norman K. Moon and Judge Jerome B. Friedman are men of uncommon integrity and talent. Both are held in the highest esteem among their colleagues and citizens of our Commonwealth.

I will be brief this morning, but I do want to say a few words about each.

With respect to Judge Moon, some on the committee may recall my long-standing support for his appointment to the Federal bench. Some 16 years ago, I recommended Judge Moon as one supremely qualified for the vacancy on the U.S. District Court for the Western District of Virginia.

Today, I am just as convinced as I was then, that Judge Moon is one this committee should approve for elevation to the Federal bench without qualification.

I want to share with the committee words written by a long-time friend and college roommate, Lacey Putney, in behalf of Judge Moon. His words go a long way to summing up the way many of us in Virginia feel about Judge Moon.

"Judge Moon's excellent judicial temperament and his keen intellect have contributed greatly to the outstanding reputation he has earned for intellectual honesty, fairness and equity * * *"

Since 1985, Judge Moon has served on the Court of Appeals of Virginia, and since 1993 he has served as that court's chief judge. His court has handled a record level of filings and eliminated a substantial case backlog.

From 1974 to 1985, Judge Moon served on the 24th Judicial Circuit of Virginia, including service as chief judge from 1982 to 1984.

The bottom line is that Judge Moon brings nearly a quarter century of bench experience. He is seasoned and talented. He has built a remarkable career that would make him a tremendous credit to the Federal judiciary.

I won't bore members of the committee with a detailed accounting of Judge Moon's resume, I simply will say that he is accomplished as a jurist, a teacher, a family man, and as a tremendous contributor to his community. Without question, if approved by this committee and the Senate, Judge Moon will serve with uncommon distinction and dedication.

And those words, "uncommon distinction and dedication" bring me to my thoughts about Judge Friedman, who appears today before you as the candidate for the vacancy on the U.S. District Court for the Eastern District of Virginia.

Like Judge Moon, Judge Friedman's record as a jurist is impeccable.

Respect for Judge Friedman runs deep in Virginia's Eastern District because he is a superior legal intellect with a keen, straightforward judicial temperament.

Judge Friedman has over 12 years as a trial judge, and like Judge Moon, he has received tremendous support from his colleagues who know him best, in addition to strong endorsements from the Virginia Bar Association and the Virginia State Bar.

Judge Friedman is known for his fairness, compassion, and mastery of the law. He is tough and analytical.

In 1991 he was elected to the Virginia Beach Circuit Court, and since 1994 he has served as that bench's chief judge. From 1985 to 1991 he served as judge of the Virginia Beach Juvenile and Domestic Relations District Court.

Judge Friedman will make an excellent addition to the Federal judiciary and should be approved by the committee and confirmed by the Senate. His talents and reputation speak for themselves.

Mr. Chairman, I thank you for scheduling today's hearings and for the opportunity to address you and the committee. These gentlemen are deserving of the committee's approval.

The CHAIRMAN. We appreciate both of you being here, and I think it is great praise for both of these judicial nominees and we appreciate it.

We will conclude with the two Senators from Missouri, who are both here. We will turn first to the senior Senator, Senator Bond, and then Senator Ashcroft.

STATEMENT OF HON. CHRISTOPHER S. BOND, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator BOND. Thank you very much, Mr. Chairman. I appreciate very much your scheduling the hearing and giving Mr. Rodney Sippel the opportunity to appear before you today.

I advise that Congressman Gephardt wanted to be here today and join in presenting Mr. Sippel, but other commitments out of Washington prevent him from being with us.

One of the honors, of course, of serving as the senior Senator from Missouri is to present to my colleagues outstanding candidates for service on the Federal bench, and I believe Rodney Sippel is such a candidate. He has an exceptional public record, and many Missourians have told me of his ability and the fact that they think he will serve the Federal judiciary with distinction and honor.

Mr. Sippel is a native Missourian, born in Jefferson City, raised in St. Louis; received high academic honors at the University of Tulsa and at Washington University, where he gained his legal degree. He currently is with the firm of Husch and Eppenberger in St. Louis, and briefly served as an administrative assistant for Congressman Gephardt during the 103d and 104th Congress. He also served on the staff of my predecessor, Senator Eagleton.

Mr. Chairman, I commend you and the committee for the fine job of screening rigorously the candidates for the Federal judiciary to ensure that only exceptional individuals with a healthy view of the role of the Federal judiciary are confirmed. And I believe that you are doing that well and I think that we need to look for candidates who will serve in the courtroom and show a mastery of the issues over which they preside.

Mr. Sippel has the experience necessary. He started as a litigator trying lawsuits on behalf of the Bi-State Development Agency, sometimes having 30 to 40 cases pending at one time. Over the years, as his legal practice evolved, he has litigated extensively in the Federal district court and handled a variety of criminal, civil and antitrust issues. In addition to his private practice, he has worked to improve the Missouri Legal Services Program and assisted the victims of the flood of 1993.

I believe Mr. Sippel is a respected and experienced member of the Missouri legal community, with a healthy respect for the role of the judiciary, and I think he has the broad experience necessary to serve on the Federal court. We very much appreciate your con-

sidering him today and hope that after hearing him that you will be able to move his confirmation promptly.

Thank you very much for your attention.

The CHAIRMAN. Well, thank you, Senator Bond.

[The prepared statement of Senator Bond follows:]

PREPARED STATEMENT OF SENATOR CHRISTOPHER S. BOND

Mr. Chairman, I thank the Committee for scheduling this hearing and giving Mr. Sippel the opportunity to appear before you today. Before I proceed, I advise that Congressman Gephardt wanted to be here today to join me in introducing Rodney Sippel to the Committee but had another commitment out of Washington and will be unable to join us.

One of the honors of serving as senior Senator from Missouri is to introduce my colleagues on the Judiciary Committee to outstanding candidates for service on the Federal Bench in Missouri. In Rodney Sippel, I believe I am introducing such a candidate today. Mr. Sippel has amassed an exceptional record as a public servant and an attorney and I have heard from several Missourians that Mr. Sippel is a very gifted attorney who will serve the federal judiciary with distinction and honor.

As a few words of introduction, Mr. Sippel is a native Missourian. He was born in Jefferson City and raised in the St. Louis area. He earned an undergraduate degree in political science and economics from the University of Tulsa and a legal degree from Washington University in St. Louis, graduating with impressive records from both institutions. After graduating from law school, Rod Sippel joined the St. Louis firm of Husch & Eppenberger, where he is currently a partner. Mr. Sippel briefly left private law practice to serve as Administrative Assistant for Congressman Gephardt during the 103d and 104th Congress. He also served on the staff of my predecessor, the Honorable Thomas Eagleton.

The honor of introducing candidates for the judiciary is proceeded by the responsibility of ensuring that only the fittest of candidates are elevated to this position. I believe the Chairman of this Committee has done a fine job in rigorously screening candidates to ensure that only exceptional individuals with a healthy view of the role of the federal judiciary in our system of government are confirmed to sit on the federal bench. I also believe that when we review qualifications of candidates to serve on the federal district court, we should be looking for candidates who have distinguished themselves in the courtroom and have achieved a mastery of the issues over which they will preside. Such judges are essential to managing the difficult federal dockets in a productive and professional manner.

As I said moments ago, distinguished members of the Missouri legal community have made it known that Mr. Sippel is a smart and talented lawyer, he has earned the respect of his colleagues and there is consensus in the legal community that he will make an exceptional jurist.

As a young attorney, Mr. Sippel cut his teeth as a litigator. He litigated civil suits on behalf of the Bi-State Development Agency, the local transit authority, at times having upwards of thirty to forty cases pending on the docket of the Circuit Court for the City of St. Louis. One must become a master at procedural, jurisdictional and evidentiary issues with tremendous courtroom skills to succeed in this environment. By all accounts Mr. Sippel is a successful litigator.

Over the years, his legal practice has evolved. Mr. Sippel has litigated extensively in federal district court. He has handled a variety of criminal, civil and antitrust issues and represented some of the most respected members of the St. Louis community. In addition to his private practice, Mr. Sippel has given an admirable amount of his time to his community; he has worked to improve the Missouri Legal Services program and he assisted the victims of the great flood of 1993 navigate the various federal programs for flood victim assistance. Mr. Sippel is also a husband and a father.

In summation, I have concluded that Mr. Sippel is a respected and experienced member of the Missouri legal community. Throughout his career, he has displayed a commitment to excellence and professionalism. During this process he has displayed a healthy respect for the role of the judiciary in our system of government. He has broad experience in federal court, accumulating experience that will make him a credit to the bench.

I am appreciative of the Chairman for considering this nomination today.

The CHAIRMAN. Senator Ashcroft.

STATEMENT OF HON. JOHN ASHCROFT, A U.S. SENATOR FROM
THE STATE OF MISSOURI

Senator ASHCROFT. Mr. Chairman, thank you very much for calling upon me to support the nomination of the senior Senator and to echo his remarks about what a pleasure it is to introduce Mr. Rodney Sippel, of Kirkwood, MO, to the committee.

As you can tell from his resume—and, of course, the committee has a great deal of information about him—Mr. Sippel is a distinguished and accomplished attorney with extensive experience litigating in the Federal court system. He is an honors graduate of the University of Tulsa and of the Washington University School of Law in St. Louis. He has put together a distinguished career in private practice, but has been willing to take time out from his private practice to serve the public.

He is uniquely qualified as a result of his awareness both of the private law community and of the need to have an understanding of what happens in the Congress and in the development of law by the representatives of the people. Most recently, he served in the St. Louis office of Congressman Gephardt.

I have been particularly impressed by the high esteem in which Mr. Sippel is held by members of both the plaintiff and defense bars, and by people on both sides of the political aisle. He has a well-deserved reputation for integrity and one for maintaining his composure, for being calm even during intense times of litigation. Judicial temperament, in my judgment, is so important to the successful operation of our court system.

Mr. Sippel is a civic-minded individual dedicated to the ideal of public service. He has served the public both by working with the people's elected representatives, as I have indicated, but also by dedicating himself to pro bono activities. The President has recognized these qualities through this nomination and has given Mr. Sippel another opportunity to serve the public, which I believe is appropriate.

I believe that Mr. Sippel understands the proper role of a Federal judge. He is an excellent lawyer. He also has an appreciation for both the awesome power and the limited jurisdiction of a Federal judge. In an important international business dispute that he litigated in the Federal court in St. Louis involving Lloyd's of London, Mr. Sippel convinced the Federal court to restrain itself from issuing a temporary restraining order against a letter of credit.

That sounds like an esoteric concern, but there are times when the judiciary needs to restrain itself, to be restrained, and to understand the limits of its authority. And I am sure that Mr. Sippel will exercise that same restraint as a judge that he urged upon the court as a litigator. A number of people for whom I have great respect have endorsed Mr. Sippel and they confirmed to me that he has the temperament and the restraint and modesty to be an effective legal representative of the people as a member of the Federal bench.

I support Mr. Sippel's nomination and I look forward to today's hearing which will provide the rest of the committee a better sense of the quality that Mr. Sippel would bring and his dedication to the rule of law for which he has stood.

I thank the chairman for this opportunity.

The CHAIRMAN. Thank you both. This has been an excellent hearing so far because we have unanimity among Senators in these respective States. So, that makes our job a little bit easier. We appreciate both of you and it is great praise for Mr. Sippel to have your support.

Senator Ashcroft, I am going to ask you to chair the rest of this hearing. I have to go to a chairmen's meeting and I will turn over the gavel to Senator Ashcroft. I am counting on him to ask some tough questions and we will move on from there.

Senator ASHCROFT [presiding]. I thank the chairman for his conduct of the hearing up until this point. It will now be our pleasure to hear from nominees and we will first start with the nominee for the Eleventh Circuit Court of Appeals, Stanley Marcus, a judge from the Southern District of Florida.

Judge Marcus, if you would come forward, please? Judge Marcus, would you please raise your right hand?

Do you swear that the testimony you shall give in this hearing shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge MARCUS. I do.

Senator ASHCROFT. Thank you, Judge. You may be seated.

Judge, we would be very pleased to have you make some initial remarks, including an introduction of members of your family who have accompanied you to this hearing today.

**TESTIMONY OF STANLEY MARCUS, OF FLORIDA, TO BE U.S.
CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT**

Judge MARCUS. Mr. Chairman and Senator Durbin, I am deeply honored to be a nominee for this position, for the Court of Appeals for the Eleventh Circuit. I really have no statement, would be happy to answer your questions, but would like to introduce my wife, Judith Marcus, if I could, to you.

Thank you.

QUESTIONING BY SENATOR ASHCROFT

Senator ASHCROFT. Thank you, Ms. Marcus. Thank you very much for coming.

Judge Marcus, a couple of weeks ago in California, in the Ninth Circuit Court of Appeals, the court set aside the law of the State of California relating to term limits for members of the General Assembly of California and other elected officials there based on, according to the opinion of the court, the sense of the court or idea or thought of the court that the voters had inadequate information when they enacted their term limits rules for California.

In your judgment, is the thought that a court would arrive at, thinking that the people of a State were not adequately or appropriately informed or were ignorant about the issues—would that be an appropriate judicial basis for overturning an initiative enacted by the people of the State?

Judge MARCUS. It seems to me, Mr. Chairman, that a Federal judge would step down the road of setting aside an initiative of the people with extreme caution and great care. We put our faith in the people. The people are sovereign. The Federal courts are surely the least representative branch of Government, and so we must act

with great care, caution and discretion when we address issues of that kind.

Senator ASHCROFT. Well, would the ignorance of the people be appropriate grounds upon which to set aside the will of the people which had been expressed through their votes in an initiative process?

Judge MARCUS. I put my faith in the people to understand fully what they do, Senator.

Senator ASHCROFT. Less than 2 weeks, a Federal appellate judge urged President Clinton to admit his mistake of judgment and renounce the military "don't ask, don't tell" policy. He also commented that the policy's constitutionality is highly suspect. These remarks were made at a ceremony.

Do you think it is appropriate for a Federal judge to advise the President in such settings, in off-the-bench remarks?

Judge MARCUS. I think not. My own view is that when we take the oath as a Federal judge, it is extremely important that we are careful to remain within the confines of the judiciary, as embodied in article III of the Constitution, and ought to speak with great care and discretion, particularly about matters of public controversy and debate.

Senator ASHCROFT. For the last quarter century, there has been a series of cases relating to the rights of States and to the residual capacity of States to enact laws and the deliberating or otherwise calling into question the efficacy, power, or the limited scope or nature of the 10th amendment to the Constitution.

Do you believe that there are any areas in which the Constitution reserves exclusive jurisdiction to States, or is it your view that any time the Congress acts it automatically preempts the States' capacity?

Judge MARCUS. It seems to me that the Constitution is a document, a brilliant document of limited government. It provides for limited and explicit powers for the executive, legislative and judicial branches of Government. And beyond that, it leaves to the States and the people the power to decide.

Senator ASHCROFT. Judge, are there any rights that you think exist for Americans protected by the courts which do not appear in the Constitution of the United States that should be protected by the Federal courts?

Judge MARCUS. I think the Constitution is a brilliant document, perhaps the most brilliant document crafted in the name of government. It enumerates rights and powers with deliberation and care, and I think it pretty much got it right.

Senator ASHCROFT. So you don't believe there are rights that you would need to find or create in the Constitution that aren't explicitly meant there?

Judge MARCUS. I do not.

Senator ASHCROFT. Do you believe that the Constitution is a living document that is growing and that there will be rights that will suddenly appear in the Constitution or will arise in the Constitution as a result of enlightened members of the judiciary and the public in the future, or do you believe that the rights that are expressed therein in the words of the Constitution are the limits of the rights that should be expressed?

Judge MARCUS. I think the language and text is clear and it is explicit and we are bound by what it says.

Senator ASHCROFT. In the event there were to be rights which the culture felt should be added to those rights enjoyed by the members of the society, would it be appropriate for the judiciary to add those rights in judicial decisions?

Judge MARCUS. I think not. I think that there is, of course, the power to amend the Constitution if the people and their representative officials believe that that is appropriate. I do not believe that it is the role of the judge or the court, however, to substitute its judgment for the judgment of the legislative body.

Senator ASHCROFT. So it is your view that judges cannot amend the Constitution, except through their elected representatives?

Judge MARCUS. Yes, sir.

Senator ASHCROFT. Thank you.

Senator Durbin.

QUESTIONING BY SENATOR DURBIN

Senator DURBIN. Thank you, Senator Ashcroft.

Judge, thank you for joining us today. I am a relatively new member of this panel. I have been here a year and I have the highest respect for my colleague from Missouri. We disagree on a number of political issues. I am afraid that if I would take his line of questioning and engage in a debate on those issues, it wouldn't be in the best interests of your confirmation or moving this issue along today, and so I won't.

I will ask one question, though. The Constitution never mentions the word "privacy," and yet when it comes to so many areas of interpretation, the courts have said Americans have a right to be left alone, have a right not to be harassed by their government, and have a right to make individual decisions.

So absent that word "privacy," if you are going to take a strict construction of the Constitution, where do you find refuge for the conclusion that we should be left alone?

Judge MARCUS. I think the Supreme Court has spoken, and spoken clearly on the subject, and has repeatedly spoken about the issue of privacy and I think that its pronouncements bind us all. I think they have found a right to privacy in a variety of amendments to the U.S. Constitution and have spoken in a variety of fields, including marriage and procreation, the right to raise your children and educate them as you see fit. And I think that these principles have been clearly enunciated and repeatedly upheld by the Supreme Court of the United States.

Senator DURBIN. At the risk of getting us both in trouble with the majority on the committee, I will move on to another question. Let me ask you about the Federal Sentencing Guidelines.

Judge MARCUS. Yes, sir.

Senator DURBIN. As a district court judge, you have dealt with those quite a bit. What is your opinion of the Sentencing Guidelines?

Judge MARCUS. We have had an experience for the last 8 or 9 years and have sentenced many thousands of defendants under it in the Southern District of Florida. My own experience is that the Sentencing Guidelines have worked well. I think they have accom-

plished three things that they were really designed to do; first, to compress disparity in sentence; second, to build in greater predictability and certainty in the sentencing process; and, third, to require district judges to give the reasons or explicate the rationale for its rulings and to take into account a wide variety of circumstances that the Congress and Sentencing Commission thought ought properly to be taken into account—relevant conduct, role in the offense, prior criminal record, and so on. My own experience is that the Sentencing Guidelines have worked well.

Senator DURBIN. If you are confirmed as an appellate judge, at some point you may be faced with applying a Supreme Court precedent which you do not personally agree with. Would you consider yourself bound by the precedent or your conscience, and how would you make that call?

Judge MARCUS. I believe that when you take the oath as a judge, you are bound to support, uphold, and defend the Constitution and laws, and you are bound to follow the precedent of the Supreme Court of the United States.

Senator DURBIN. Thank you, judge.

Judge MARCUS. Thank you.

Senator DURBIN. Thank you, Mr. Chairman.

Senator ASHCROFT. I want to thank you very much for appearing before the committee and for coming, and we look forward to an opportunity to act on your nomination in the Senate as a whole.

Judge MARCUS. Thank you very much, Mr. Chairman. Thank you, Senator Durbin.

Senator ASHCROFT. The committee will proceed now by asking the other nominees to come forward together, if you would, please, and so would you please all approach the witness table—Ann Louise Aiken, Rodney W. Sippel, Jerome B. Friedman, and Norman K. Moon.

Senator DURBIN. Mr. Chairman, I have a statement from Senator Leahy in support of Ann Aiken which I would ask permission to be entered into the record.

Senator ASHCROFT. Without objection, it is so ordered.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY

I commend the Chairman for holding this confirmation hearing for judicial nominees this morning and for noticing a second session for tomorrow. If we are able to proceed with these 13 nominees the Committee will make some progress toward reducing the backlog of judicial nominees pending before the Committee and awaiting their hearings.

I am particular delighted to see Ann L. Aiken included this morning. She is nominated to fill a judicial emergency vacancy and was first nominated in November 1995, almost two years ago. She had a confirmation hearing in September 1996. I hope that the Committee will now proceed without delay to consider her nomination as well as the nominations of Clarence Sundram and Judge Sonia Sotomayor and the other nominees participating today. We should be moving promptly to fill the vacancies plaguing the federal courts.

While I am encouraged that the Committee is today proceeding with a hearing on these five nominees, there remains no excuse for the Committee's delay in considering the nominations of such outstanding individuals as Professor William A. Fletcher, Judge James A. Beaty, Jr., Judge Richard A. Paez, Ms. M. Margaret McKeown, and Ms. Susan Oki Mollway, to name just a few of the outstanding nominees who have all been pending all year without so much as a hearing. Professor Fletcher and Ms. Mollway had both been favorably reported last year. Judge Paez had a hearing last year but has been passed over so far this year.

After this hearing, the Committee will still have pending before it almost 40 nominees in need of a hearing from among the 73 nominations sent to the Senate by the President during this Congress. From the first day of this session of Congress, this Committee has never had pending before it fewer than 20 judicial nominees for hearings. The Committee's backlog had doubled to more than 40.

Many of these nominations, including that of Ms. Aiken for the District Court in Oregon, were before us last Congress, during the election year slowdown, and have had to be renominated by the President. The vacancies for which they are nominated have not been filled but persist for periods now reaching years. The Committee still has pending before it 10 nominees who were first nominated during the last Congress, including Ms. Aiken and four others, who had been pending since 1995. Thus, while I am delighted that we are moving more promptly with respect to some of the nominees being considered today, I remain concerned about the other vacancies and other nominees.

At the snail's pace that the Committee and the Senate are proceeding with judicial nominations, we are not even keeping up with attrition. When we adjourned last Congress there were 64 vacancies on the federal bench. After the confirmation of 22 judges in 10 months, there has been a net increase of 28 vacancies, an increase of almost 50 percent in the number of federal judicial vacancies. Thus, vacancies have been increasing not decreasing over the course of this year and the vacancy crisis remains. The Chief Justice of the United States Supreme Court has called the rising number of vacancies "the most immediate problem we face in the federal judiciary."

I commend Senator Hatch's effort to hold two days of hearings this week and to accelerate the pace at which nominations are moved through the Committee. Unfortunately, this is only the seventh confirmation hearing for judicial nominees that the Committee has convened all year. By this time two years ago, the Committee had held 10 confirmation hearings involving 46 judicial nominees. And, unfortunately, no regular Executive Business Meeting of the Committee has been noticed for this week. Accordingly, the Committee will not have an opportunity to report any judicial nominees or the nomination of Bill Lee to be Assistant Attorney General for the Civil Rights Division.

I have urged those who have been stalling the consideration of these fine women and men to reconsider their action and work with us to have the Committee and the Senate fulfil its constitutional responsibility. Those who delay or prevent the filling of these vacancies must understand that they are delaying or preventing the administration of justice. Courts cannot try cases, incarcerate the guilty or resolve civil disputes without judges. The mounting backlogs of civil and criminal cases in the dozens of emergency districts, in particular, are growing more critical by the day.

Senator ASHCROFT. Would you nominees please raise your right hands? Do you swear that the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SIPPEL. I do.

Judge MOON. I do.

Judge AIKEN. I do.

Judge FRIEDMAN. I do.

Senator ASHCROFT. Thank you very much. You may be seated.

Senator Durbin, I will turn to you to begin the questioning here.

QUESTIONING BY SENATOR DURBIN

Senator DURBIN. Let me say at the outset, Mr. Chairman, that Mr. Sippel is a personal friend and acquaintance from the St. Louis area, where I was born, and I am happy to see him before this committee today and am happy to support his nomination.

I will start with you, Mr. Sippel, for the record.

TESTIMONY OF RODNEY W. SIPPEL, OF MISSOURI, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN AND WESTERN DISTRICTS OF MISSOURI

Mr. SIPPEL. I am sure everyone else appreciates that. [Laughter.]

Senator DURBIN. You have kind of taken the short straw in terms of alphabetical preference here.

Your biography indicates you have been admitted to practice in the Missouri and Illinois U.S. district courts and U.S. court of appeals. In your personal opinion, what have been the major differences in your practice between the State and Federal courts?

Mr. SIPPEL. The Federal courts—certainly, the Eastern District of Missouri—have been much more aggressive in alternative dispute resolution, early intervention in a case in order to manage the case, often to a more successful and early settlement to the benefit of the parties and saving a lot of expense. And I think that is a very worthy and good result in terms of the difference between the State and the Federal benches in Missouri.

Senator DURBIN. One other thing I note in your background is an extensive civil experience, civil litigation experience, which has been noted by Senators Bond and Ashcroft. As a Federal district judge, though, you will be faced with many criminal cases and I would like to ask you what steps you will be taking to familiarize yourself with the criminal practice.

Mr. SIPPEL. When I was first nominated, I met with the chief judge of the eastern district and several of the other sitting judges and actually raised this issue with them and have hopefully alerted them to that need that, as with any profession, I need to learn and grow. And they were very supportive and felt that in pretty short order that the nature of not being familiar with the criminal side of the practice would be something, if I devoted myself to, I would be able to accomplish.

Senator DURBIN. We are finding in many areas of Illinois, and I don't know if it is the case in Missouri, that because of some—how do I put this—because of vacancies on the bench, we have seen some of our judges who have had to focus more on the criminal side because of these deadlines that they face in considering motions and moving cases along. I don't know if that is the case in Missouri.

Do you happen to know what the backlog is and what the usual time is between filing and taking a case, for example, to civil trial?

Mr. SIPPEL. It is still less than—the eastern district sort of tracks cases. When you first file it, you have to notify the court as to what track you are on—12, 18, or 24 months. It is unusual now for a case to still be pending more than 2 years and it is common for a case to be tried within a year, year-and-a-half. So, that backlog—and I think in large part due to the effective use of magistrate judges—has not been an issue in the Eastern District of Missouri.

Senator DURBIN. You were involved in setting up a pro bono practice at your law firm and I would like to ask you if you could relate to the committee what your experience was in organizing that practice.

Mr. SIPPEL. It was a voluntary pro bono program, but it was well received by the attorneys in the firm. There was a great need locally for pro bono assistance by attorneys, especially for women in abusive marriages who could not afford an attorney and needed help getting through the system. And it has been very worthwhile both for attorneys and those who received the benefit of those services.

Senator DURBIN. Thanks, Mr. Sippel.

Judge Moon, I note that you are a professor, in addition to a number of other things on the professional level that you have done, and teach a trial advocacy course. Is that correct?

TESTIMONY OF NORMAN K. MOON, OF VIRGINIA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF VIRGINIA

Judge MOON. Yes.

Senator DURBIN. How long have you done that?

Judge MOON. Twenty-one years.

Senator DURBIN. Can you give me your impression of law students today and their preparation for practice and your experience with these same students once members of the bar as trial advocates?

Judge MOON. Well, I think it is much better today because the law schools have put greater emphasis on practice courses. When I was in law school, there was only one trial advocacy class for the whole law school student body. Today, there are probably six or more each semester, so that most all students have an opportunity to go through these courses. I think there is much more emphasis in the CLE programs on trial advocacy than there was, say, 20 years ago.

This was spurred on mostly by Chief Justice Burger's comment that 50 percent of the lawyers who practiced were incompetent, and I think that caused a great impetus for trial advocacy being taught in the law schools and the bar getting involved.

Senator DURBIN. Your service has been at the State court level. What do you perceive to be the real difference between the State bench and the Federal bench, to which you are seeking appointment?

Judge MOON. Well, relative to the fact—the major difference, I think, that would take place in Virginia—and Virginia may be unique—the use of summary judgment in the Federal court is much more extensive than in the State court. In Virginia, it is very hard to get summary judgment on any issue, the statutes and rules that prohibit the use of depositions and affidavits for summary judgment. So I anticipate, other than the jurisdiction and some of the substantive issues such as bankruptcy, that type of thing—but I think that the actual practice—the major difference will be the use of summary judgment.

Senator DURBIN. My last question of you in this round, and then I will defer to Senator Ashcroft and ask the other two nominees in the second round, can you describe for the committee the substance of your work on the Commission on Family Violence Prevention?

Judge MOON. Well, I have been on that commission for several years now, and basically we have met very frequently and considered—the committee was more or less started by the chief justice of our court, of our supreme court, who took a special interest in this subject. The legislature subsequently turned it into a legislative commission and reappointed all the members the chief justice—most of those members.

We have met for about 2 years. We have studied legislation. We have tried to get a handle on how much domestic violence there was. A great deal of legislation has come out of that committee. I

can't say that I can take any credit for any particular item that is coming out, but at this point I am Chair of a committee that is trying to come up with a way to allow persons who are being stalked to establish a residence so that they—not like the witness protection program, but at least they will be able to have addresses, be able to vote, have their mail sent to a location so that the stalker hopefully will not be able to locate them.

Senator DURBIN. Judge, in the interest of avoiding family tension, my staff reminds me that I should ask you to introduce your family and friends who are present here today.

Judge MOON. OK. Well, sir, thank you. My wife, Barbara, is with me and I would like to present her.

Senator DURBIN. Glad to have you here. Thank you very much. Mr. Sippel.

Mr. SIPPEL. My wife, Mary, is here, and good friends Spencer and Carol Dickerson. Thank you for the opportunity to introduce them.

Senator DURBIN. Thanks, and I am sure Senator Ashcroft will afford the same opportunity to the other nominees.

Senator ASHCROFT. I certainly will, and it was my neglect—my staff had also prompted me—that I forgot to allow the nominees to do so. So we will not ask you to do it twice, and I would invite Judge Aiken to introduce her family that is here and then Mr. Friedman to do the same, please.

**TESTIMONY OF ANN L. AIKEN, OF OREGON, TO BE U.S.
DISTRICT JUDGE FOR THE DISTRICT OF OREGON**

Judge AIKEN. Thank you. I would like to introduce my husband, James Klonoski; my oldest son, Jake, who is holding my youngest son, Christopher. Samuel Klonoski is seated over there, raising his hand; Nicholas, my No. 2 son; and my No. 3 son, Zachary, behind my husband. And I have a number of friends, and I won't take the committee's time to introduce them, who are also here.

Senator ASHCROFT. Well, thank you very much for coming.

Jerome Friedman, please introduce those who are with you.

**TESTIMONY OF JEROME B. FRIEDMAN, OF VIRGINIA, TO BE
U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA**

Judge FRIEDMAN. Thank you, Mr. Chairman. I would like to introduce my wife, Sandra; almost 29 years and if I made a mistake, I am in big trouble. She is a history—a government teacher teaching 12th grade advanced placement government students, and I know it is a thrill for her to be here personally, but also professionally.

Thank you very much, Mr. Chairman.

QUESTIONING BY SENATOR ASHCROFT

Senator ASHCROFT. Thank you very much.

I would begin by asking a question of Judge Aiken, from Oregon. Judge, how do you feel the role of a Federal judge would differ from that of a State judge, a responsibility which you now hold?

Judge AIKEN. Mr. Chairman, I have appreciated the role as a State court judge. Federal courts have different issues, more complex issues, resources available to it to decide cases early, to make

a difference with alternative dispute resolution. We have had in our Federal court a very active use of magistrates, and Judge Hogan, who is our presiding judge, has been tremendously responsible for keeping the docket moving with enormous use of settlement conferences. So I look forward to using all those tools that are ready and available in Oregon in our district court.

Senator ASHCROFT. In responding to a questionnaire of the committee, you indicated that crime often, quote, "stems from cycles of abuse and neglect, drug and alcohol use, and poor education." How would these conclusions which you reach affect your approach to criminal statutes and sentencing decisions?

Judge AIKEN. Well, Mr. Chair, the sentencing guidelines and the requisites for imposing sentences are set out by statute and I follow those. Oregon has sentencing guidelines within the State and I follow those guidelines and understand that that is a determination made by the legislative body.

In taking a look at what are the roots of crime, those issues are addressed in sentencing guidelines, as well as with treatment programs that are adjunct to the guidelines once individuals are in sentenced positions. I can't help but notice those are the issues that I see as individuals come before me, but guidelines dictate what the sentences will be.

Senator ASHCROFT. Has your experience as the chief clerk of the State legislature given you any insights concerning the value of legislative history in interpreting statutes?

Judge AIKEN. It was a privilege to hold that job. It was a non-partisan position where I had an opportunity to see the inside of the legislature in Oregon. I believe legislative history is an important tool in looking at, as you go through the analysis of a statute or a constitutional issue, to make a determination. It certainly isn't the first thing you look at, but, if necessary, I feel well-equipped to be able to read and understand legislative history and to, to the best of my ability, use that legislative history in guiding me in making a decision within the confines of a case.

Senator ASHCROFT. In interpreting a law, if the legislative history conflicts with the words expressed in the law, which should prevail?

Judge AIKEN. The law.

Senator ASHCROFT. Do you feel that there are any rights that do not exist in the Constitution which ought to be—that exist independent of the Constitution?

Judge AIKEN. No, sir. The Constitution is one of the most elegantly written documents. The words of the Constitution are clear. It expresses the rights that are given. I find no need to look beyond those express words and the document itself.

Senator ASHCROFT. Mr. Friedman, I asked earlier a question of Judge Marcus about initiatives enacted by voters in various areas. I don't know whether Virginia has such a potential. Do you know if that is the case in Virginia, whether the voters exercise the right to bring into existence statutes by initiative?

Judge FRIEDMAN. Not as they do in California, no, Mr. Chairman.

Senator ASHCROFT. The 10th amendment to the Constitution reserves to States certain powers, all powers not enumerated to the

Federal Government. Do you view the 10th amendment as being a viable part of the Constitution, and do you respect the right of States to have exclusive jurisdiction in some areas?

Judge FRIEDMAN. I, certainly, do feel it is a viable part of the Constitution and there are certain areas, obviously, that the States have to get involved with and I have no problem with that concept, in very limited areas.

Senator ASHCROFT. Are there any issues, such as capital punishment, on which you find yourself in substantial disagreement with the laws of the United States so that it would be difficult for you to apply the law in an impartial manner?

Judge FRIEDMAN. Absolutely not. The Supreme Court has decided capital punishment issues and I have absolutely no problem in adhering to those decisions and upholding the death penalty.

Senator ASHCROFT. In the event that you were to have a personal disagreement with the kind of sentence that the guidelines required, be it capital punishment or otherwise, what would your response—how should you conduct yourself?

Judge FRIEDMAN. Well, the guidelines were established by the legislative body. It is my opinion that the judges, and certainly I, if confirmed, would adhere to the guidelines and follow the guidelines. There are some discretionary areas of the guidelines and in those areas the court would exercise its—and I would exercise my discretion.

But as Judge Marcus eloquently put it earlier, the guidelines are there for very good reasons, and certainly I would have no problem in exercising my sentences in accordance with the guidelines.

Senator ASHCROFT. Thank you very much. I see my time is expired.

It is time for your second round, Senator Durbin.

QUESTIONING BY SENATOR DURBIN

Senator DURBIN. Thank you very much.

Well, Judge Aiken, I am impressed that anyone from Oregon might know where Somonauk, IL, is. I note here that you—

Judge AIKEN. I have been there.

Senator DURBIN. You have some family connection there?

Judge AIKEN. Yes, sir.

Senator DURBIN. Yes. Let me ask, if I might, you have served on a juvenile justice commission, have you not?

Judge AIKEN. Yes, sir.

Senator DURBIN. And how long a period of time did you serve on that?

Judge AIKEN. It was approximately 2 years and it concluded with legislation that created new juvenile beds in our State and created a new Oregon Youth Authority that essentially brought juvenile justice into its own, taking it out of child protection services and making its own entity, and that commission now is complete.

Senator DURBIN. Was it a good experience?

Judge AIKEN. It was a tremendous experience.

Senator DURBIN. What did you learn serving on that commission that was new to you that you didn't know going in or might have surprised you?

Judge AIKEN. It was an opportunity to look across the State and see what issues were facing rural and urban parts of the communities. It gave us a chance to come together and try to balance how resources could be better allocated for youth and to come across with consistency on how we would address issues of juvenile crime.

I think what is interesting is, as a commission, there was great unanimity about a need to address this issue, and to address it firmly and to get on with it and make the task force not only just a report, but a reality. And we were very successful in not only creating juvenile beds, but boot camps and regional academies.

Senator DURBIN. Did you have a chance as a member of that commission to meet face to face with young men or women who had been accused of juvenile crime?

Judge AIKEN. Absolutely. We were in the institutions. We traveled across the State in programs that came before the committee. We worked both in urban areas, rural areas. I think we were all incredibly impressed with what the young people who were housed in the training schools had to tell us, what would have been helpful to stop their ending up in that program. It was a tremendous experience.

Senator DURBIN. Did it change your viewpoint as a judge in terms of how to handle cases involving juvenile justice?

Judge AIKEN. It reminded me that we need just as parents to be consistent and we need to be swift in discipline, and in this instance responding when a crime is committed. In my community, we aren't able to file juvenile cases unless a felony has been committed, so we will have offenders who have had multiple misdemeanors and no action taken. And I think that is not the message we need to be giving to the young people.

Senator DURBIN. Thank you.

Mr. Friedman, your background, of course, is serving as a judge on a circuit court in Virginia Beach. You are not embarking on an effort to enter the Federal structure of justice in this country. How do you see that as a different challenge, or is it a different challenge?

Judge FRIEDMAN. It is a different challenge, certainly, because some of the decisions that Federal judges make affect so many people. On the State court level, the decisions we make in many cases, and in most cases, I would say, affect the individuals before you. But in Federal cases, a decision could have wide ramifications for numerous classes of people or people. So I think that is one of the major differences.

Senator DURBIN. Senator, I would like to close this, if I might, by asking each of the nominees a question I always ask nominees in Illinois when they would like to ascend to the Federal bench and it is one that they usually are surprised at, but now that I am asking it for the first time, I think every nominee before us will anticipate it.

But what is the last book that you read, Judge Aiken?

Judge AIKEN. The last book that I read? I am in the middle of about three different books.

Senator DURBIN. You sound like me.

Judge AIKEN. The last book I completed was actually the most recent Grisham book that came out, very frankly.

Senator DURBIN. It figures.

Judge AIKEN. Yes.

Senator DURBIN. Judge Friedman.

Judge FRIEDMAN. "The Tenth Justice."

Senator DURBIN. Very good.

Judge Moon.

Judge MOON. The last one I read was on a plane, "Donnie Brasco," the FBI agent who infiltrated the Mafia.

Senator DURBIN. Great.

Mr. Sippel.

Mr. SIPPEL. Reagan's speechwriter, Peggy Noonan's book, "Life, Liberty and the Pursuit of Happiness."

Senator DURBIN. You can see his political background that he would be preparing himself, Senator, for this.

Thank you very much.

Senator ASHCROFT. Thank you very much.

Judge Moon, are there any rights not enumerated in the Constitution that you believe should be added to the Constitution?

Judge MOON. No, sir. I know of none.

Senator ASHCROFT. Do you believe that the Constitution is a living document which expands and grows to meet new circumstances, or that if it is to be amended, it has to be amended by the terms of the Constitution through one of the amendment techniques?

Judge MOON. I believe it must be amended through the normal procedure set forth in the Constitution.

Senator ASHCROFT. Are there any issues, such as capital punishment, that you might be required to be involved with as a judge which as a matter of conscience you could not be involved with?

Judge MOON. No, sir, there are no issues.

Senator ASHCROFT. Mr. Sippel, are there any issues with which you might be required to deal as a Federal judge on which you have such a substantial disagreement with the law of the United States that it would make it difficult for you to operate as a judge?

Mr. SIPPEL. Mr. Chairman, the answer to that is no.

Senator ASHCROFT. Are there any rights that you think it would be necessary for you to develop in the Constitution which do not exist as part of the Constitution now?

Mr. SIPPEL. No, Mr. Chairman.

Senator ASHCROFT. Mr. Sippel, you will be working in a jurisdiction that has a substantial heritage of initiative efforts and you have worked with them in prior cases. Have you read the Ninth Circuit Court of Appeals decision regarding the term limits in the State of California?

Mr. SIPPEL. I have not read that decision, Mr. Chairman. As you know, in Missouri we did have initiative adoption of term limits for State representatives and State senators which is in force.

Senator ASHCROFT. Do you think it would be appropriate for judicial officers to, from the perspective of the bench, sort of try to figure out whether or not people had made an informed decision and sustain an initiative, or whether they weren't adequately informed and as a result to set aside a decision based on the fact that the voters were ignorant?

Mr. SIPPEL. I am at a loss to be able to defend that analysis. I think in any initiative petition, you start out not with just a presumption that it is valid, but an overwhelming presumption that is enforceable because the people have spoken, and it is not for a Federal judge to substitute their judgment for that of the will of the people.

Senator ASHCROFT. On what grounds could an initiative statute be set aside?

Mr. SIPPEL. I can't think of any. In Missouri State law, there are occasions where the language has been a cause, but that is a State court issue. I can't think of any Federal grounds under which that would happen.

Senator ASHCROFT. I should have said any grounds other than constitutional grounds.

Mr. SIPPEL. Well, absolutely. I can't think of any, Mr. Chairman.

Senator ASHCROFT. If there were an initiative, though, to deprive Missouri citizens of their right to speak freely?

Mr. SIPPEL. Well, certainly, then, contrary to the express language of the Constitution, it would be the court's obligation to uphold the Constitution.

Senator ASHCROFT. Judge Moon, the 10th amendment has been the subject of substantial debate. Do you think the 10th amendment is viable or are you among the scholars who believe that the 10th amendment has sort of suffered so much from attrition that atrophy is about to pronounce its final demise?

Judge MOON. I think it is very viable.

Senator ASHCROFT. So you think there are areas in which the State does have the exclusive right to govern?

Judge MOON. Yes, sir, Mr. Chairman, I do.

Senator ASHCROFT. Let me thank each of you for coming today. I appreciate the fact that you are here and that you have brought members of your families with you and other individuals who express their support for you. You are all to be commended for having members of the U.S. Senate ardent in your behalf.

There are committee members who are absent today whose interest could be expressed by way of written questions for you. I would urge you, in the event that you are the recipient of additional interrogatories in writing, that you would respond to them as quickly as possible. I believe there is going to be an additional effort to move individuals through the process before the end of our deliberations during this calendar year and that could be just in the next several weeks. So I offer that suggestion of your prompt attention to those items because the sooner those kinds of responses could be received, in the event there are written questions, the more likely it is that your situation can be acted on by the Senate as a whole.

Senator Durbin, anything further?

Senator DURBIN. No, Mr. Chairman.

Senator ASHCROFT. Without further proceedings, then, I would thank each of you for your appearance here and look forward for an opportunity to act on your measures before the U.S. Senate.

Thank you.

[Whereupon, at 11:44 a.m., the committee was adjourned.]

[Submissions for the record follow:]

SUBMISSIONS FOR THE RECORD

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Stanley Marcus.

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

Office: United States District Court
Southern District of Florida
301 North Miami Avenue, 5th Floor
Miami, FL 33128

Home: Miami, Florida

3. Date and place of birth.

March 27, 1946
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).

I have been married to Judith Sue Rosenbaum since January 1, 1972.

She currently is employed as an assistant librarian at:

Temple Beth Am
5950 North Kendall Drive
Miami, Florida 33156

She is also employed part-time as a sales representative at:

Williams-Sonoma
8888 S.W. 136 Street
Miami, Florida 33176

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

Queens College of the City University of New York, Flushing, NY, September 1963 - June 1967 (including Summer 1964);
B.A. (June 1967) (Magna Cum Laude).

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Harvard Law School, Cambridge, Massachusetts, September 1967
 - November 1968, September 1969 - June 1971; J.D. (June
 1971) (leave of absence taken to satisfy military
 service obligation - U.S. Army, Nov. 1968-July 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.

<u>Year</u>	<u>Name of Employer</u>	<u>Position</u>
1967	Bureau of the Budget, City of New York	Research Intern
1968 & 1969	Dept. of Rent & Housing Maintenance, City of New York	Law Clerk
1968	Bennett Bros. Inc., N.Y.	Order Filler
1968	Hobart Maintenance Corp., N.Y.	Taxi Driver
1968- 1969	Dept. of Social Svcs., N.Y.	Caseworker
1969	U.S. Army, Ft. Bragg, N.C.	Soldier
1970	Strook, Strook & Lavan, N.Y.	Law Clerk
1971- 1973	U.S. District Court Eastern District of N.Y. Hon. John R. Bartels U.S. District Judge	Law Clerk
1974- 1975	Botein, Hayes, Sklar & Herzberg, New York	Law Firm Associate
1975- 1978	United States Attorney's Office Eastern District of New York	Asst. United States Attorney
1978- 1982	United States Dept. of Justice, <u>Detroit Strike Force</u> , Organized Crime and Racketeering Section	Special Attorney and Deputy Chief, and Chief

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1982-	United States Attorney's Office	United States
1985	Southern District of Florida	Attorney
1985-	United States District Court	United States
Present	Southern District of Fla.	District Judge
1997	Brooklyn Law School, N.Y.	Professor of Trial Advocacy

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

Active Duty: March 8, 1969 - July 12, 1969

Reserve Duty: October 28, 1968 - October 27, 1974

Rank E4

Serial No. ER12779852

Honorably Discharged: July 12, 1969

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

Phi Beta Kappa

Magna Cum Laude, Queens College, City University of New York

A. Joseph Geist Law Scholarship, Queens College,
 City University of New York

Member and President of Pi Sigma Alpha, National Political
 Science Honor Society, Queens College,
 City University of New York

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.

Federal Bar Association - Florida Chapter, 1982-present;
 Member of the Executive Committee of the Federal Bar
 Association's local chapter, 1982-1985.

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Association of the Bar of the City of New York, 1974

The Florida Bar, 1985

Judicial Conference of the United States

Federal-State Jurisdiction Committee Member (1988-1992) and
 Chair (May, 1992 - September, 1995)

Ad Hoc Committee on Violence Against Women (Chair), 1992-
 1994

National Conference on State-Federal Judicial Relationships
 (1991-1992)

Southern District of Florida

Executive Committee (1994-Present)
 Magistrate's Committee (Chair) (1986-1992)
 Security Committee (1995-Present)
 Civil Justice Advisory Committee (1991-1996)
 Budget Committee (1996-present)
 Rules Committee (1989-1995)

Judicial Council of the Eleventh Circuit

Education Committee (1997)
 Committee on Pattern Jury Instructions of the District
 Judges Association of the Eleventh Circuit
 (1996-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.

I belong to no organization active in lobbying before public bodies. I am a member of Temple Zion, Miami, Florida.

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

Date of Admission

Judge Stanley Marcus
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Appellate Division of the Supreme Court of State of New York	May 1972 Term
United States Court of Appeals for the Second Circuit	November 7, 1974
United States District Court for the Southern District of New York	May 14, 1974
United States District Court for the Eastern District of New York	May 14, 1974
United States Court of Appeals for the Eleventh Circuit	February 3, 1983
Supreme Court of Florida	January 8, 1985

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) Speech to Citizens Crime Watch Luncheon, May 10, 1982.
 - 2) A. Messerschmidt, "Dade, U.S. Team Up to Prosecute Aliens," The Miami Herald, June 3, 1982, p. 1-B.
 - 3) Speech to Cuban American Bar Association, June 22, 1982.
 - 4) Speech to Sigma Delta Chi, June 23, 1982.
 - 5) Speech to Tower Forum, June 24, 1982.
 - 6) Speech to Corporate Counsel Association of Dade County, August 20, 1982.
 - 7) Speech to Federal Bar of Broward County, February 18, 1983.
 - 8) P. Slevin, "Murders by Aliens Targeted," The Miami Herald, April 8, 1983, p. 1-B.

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- 9) Speech for Law Day U.S.A., April 29, 1983.
- 10) Statement of Stanley Marcus, United States Attorney, Southern District of Florida, Before the U.S. Senate Drug Enforcement Caucus; Subcommittee on Security and Terrorism Committee on the Judiciary; and the Subcommittee on Western Hemisphere Affairs, Committee on Foreign Relations, United States Senate, April 30, 1983, and transcript of remarks to the Committee.
- 11) J. McGee, "Castro Backs Drug Traffic, U.S. Claims," The Miami Herald, May 1, 1983, p. 1-A.
- 12) Speech to The Miami Citizens Against Crime, June 7, 1983.
- 13) H. Silva, "U.S. Crackdown Costing Smugglers Cash and Assets," The Miami Herald, June 8, 1983, p. 3-B.
- 14) International Society of Barristers, Vol. 18, No. 3, July 1983, "The War Against South Florida Crime," by Stanley Marcus.
- 15) Speech to Tiger Bay Club, August 18, 1983.
- 16) Statement of Stanley Marcus, United States Attorney, Southern District of Florida, Before the Select Committee on Narcotics Abuse and Control, House of Representatives, October 12, 1983.
- 17) Statement of Stanley Marcus, United States Attorney, Southern District of Florida, Before the Subcommittee on Crime, Committee on the Judiciary House of Representatives, October 14, 1983.
- 18) Speech to The Miami Citizens Against Crime, October 26, 1983.
- 19) Speech to Dade County Outstanding Citizens Award Luncheon, October 27, 1983.
- 20) Speech to Financial Institutions Security Association, March 15, 1984.

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- 21) Statement of Stanley Marcus, United States Attorney, Southern District of Florida, Before the Senate Permanent Subcommittee on Investigations, March 21, 1984.
- 22) Statement of Stanley Marcus, United States Attorney, Southern District of Florida, Before the Senate Subcommittee on Alcoholism and Drug Abuse, May 10, 1984.
- 23) S. Marcus, "How Drug Money Can Corrupt Us," The Miami Herald, May 20, 1984, p. 1-E.
- 24) Speech to the FDIC, May 30, 1984.
- 25) Speech at Second Annual Commercial Maritime Seminar, June 8, 1984.
- 26) Speech to International Association of Journalists & Editors, June 9, 1984.
- 27) Testimony Before the Governor's Commission on Drug and Alcohol Concerns, September 12, 1984.
- 28) Speech to Grand Jury Association of Florida, November 1, 1984.
- 29) Speech Before the Coral Gables Bar Association, November 21, 1984.
- 30) Speech to Leadership Florida Conference, January 18, 1985.
- 31) Speech to National Association of Former United States Attorneys, Scottsdale, Arizona, March 30, 1985.
- 32) Speech to Miami Beach Bar Association, June 11, 1985.
- 33) International Society of Barristers, Vol. 21, No. 2, April 1986, "Public Confidence in Criminal Justice," by Stanley Marcus.
- 34) Federal Sentencing Reporter, Vol. 6, No. 1, July/August 1993, "Substantial Assistance Motions: What is Really Happening?", by Judge Stanley Marcus, United States District Court, Southern District of Florida.

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- 35) State-Federal Judicial Observer, No. 4, December 1993, "Obiter Dictum - Erosion of Public Confidence in Criminal Justice System Is Source of Increased Federalization of Crime," by Judge Stanley Marcus, United States District Court, Southern District of Florida.
- 36) Statement of the Honorable Stanley Marcus, Chairman, Judicial Conference Committee on Federal-State Jurisdiction, Before the United States House of Representatives, Subcommittee on Intellectual Property and Judicial Administration, Committee on the Judiciary, May 26, 1994.
- 37) Eleventh Circuit Pattern Jury Instructions (Criminal Cases) 1997; edited, revised and updated by Judges Hodges (Chair), Marcus, Hancock, Butler, Vinson, Edenfield and Carnes (Committee on Pattern Jury Instructions of the District Judges Association of the Eleventh Circuit).
13. Health: What is the present state of your health? List the date of your last physical examination.
- I am in excellent health; August 1997.
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 a United States District Judge for the Southern District of Florida. I was appointed by the President and began serving on August 16, 1985.
- The district courts have jurisdiction of civil and criminal actions arising under the Constitution, laws or treaties of the United States.
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

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rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Citations for ten most significant opinions:

1. Telectron, Inc. v. Overhead Door Corp., 116 F.R.D. 107 (S.D. Fla. 1987).
2. White v. Wainwright, 632 F.Supp. 1140 (S.D. Fla. 1986), aff'd, 809 F.2d 1478 (11th Cir.), cert. denied, 483 U.S. 1044 (1987).
3. Consol. Gas Co. of Fla. v. City Gas Co. of Fla., 665 F. Supp. 1493 (S.D. Fla. 1987), aff'd, 880 F.2d 297 (11th Cir.), reh'g granted and opinion vacated by 889 F.2d 264 (11th Cir. 1989), opinion reinstated on reh'g en banc by 912 F.2d 1262 (11th Cir. 1990), judgment vacated by 499 U.S. 915 (1991).
4. U.S. v. Benefield, 874 F.2d 1503 (11th Cir. 1989)(double jeopardy), Marcus, J., sitting by designation, writing for the panel.
5. Carnival Cruise Lines, Inc. v. Oy Wartsila AB, 159 B.R. 984 (S.D. Fla. 1993).
6. Bennett v. United States, 102 F.3d 486 (11th Cir. 1996), Marcus, J., sitting by designation, writing for the panel.
7. Austin v. Blue Cross and Blue Shield of Alabama, 903 F.2d 1385 (11th Cir. 1990), Marcus, J., sitting by designation, writing for the panel.
8. U.S. v. Camacho, 739 F. Supp. 1504 (S.D. Fla. 1990).
9. Doe v. State of Fla. Judicial Qualifications Commission, 748 F. Supp. 1520 (S.D. Fla. 1990).
10. Costa Crociere, S.p.A. v. Rose, 939 F. Supp. 1538 (S.D. Fla. 1996).

(2): Summary of and citations for all appellate opinions where district court decisions were reversed or affirmed with significant criticism:

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1. Seminole Tribe of Florida v. State of Florida, 801 F. Supp. 655 (S.D. Fla. 1992), rev'd by 11 F.3d 1016 (11th Cir. 1994), aff'd, 116 S.Ct. 1114 (1996).

An Indian tribe sued the State of Florida in federal district court under the Indian Gaming Regulatory Act ("IGRA") seeking to require the state to negotiate in good faith to enter into a Tribal-State Compact governing conduct of gaming activities on tribal lands within the state. The state sought dismissal of the action under the Eleventh Amendment, contending that the provision of IGRA which granted district courts jurisdiction over any cause of action arising from the failure of a state to negotiate in good faith under the terms of the statute was beyond the power of Congress to mandate.

Based upon the Supreme Court's binding decision in Pennsylvania v. Union Gas Co., 490 U.S. 1 (1989), which held that Congress had the power and authority under Article I to regulate commerce and thus could override a state's Eleventh Amendment sovereign immunity, the district court denied the motion to dismiss the action, noting that Congressional power over Indian affairs is plenary and that the Indian Commerce Clause and the Interstate Commerce Clause are both in Article I, § 8, cl. 3. (The district court later ruled on the merits that Florida had fulfilled its obligation to negotiate in good faith. 116 S.Ct. at 1122 n.6.)

On appeal, the Eleventh Circuit reversed and remanded the case to the district court with instructions to dismiss the action. In an opinion in which the court forecast the future invalidity of the Union Gas decision and, finding that the passage of IGRA had not created an entitlement for the tribe, the court ruled that IGRA had been based only on the Indian Commerce Clause, not the Interstate Commerce Clause, and held that to be an insufficient basis on which to abrogate the state's sovereign immunity under the Eleventh Amendment.

On review, the Supreme Court noted that its Union Gas decision allowed no principled distinction in favor of the states to be drawn between the Indian Commerce Clause and the Interstate Commerce Clause and that the decision had created confusion and was essentially out

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of line with its earlier precedents. The Court therefore reconsidered Union Gas, concluded that it had been wrongly decided and overruled its own prior precedent on which the district court had relied. Consequently, the Court affirmed the finding that Congress had not possessed the power to abrogate the state's Eleventh Amendment protection.

2. Linder v. Calero Portocarrero, 747 F. Supp. 1452 (S.D. Fla. 1990), aff'd in part and rev'd in part, 963 F.2d 332 (11th Cir. 1992).

Survivors of an American citizen who was alleged to have been tortured and killed in Nicaragua by anti-government forces in the midst of a civil war in Nicaragua brought civil action in federal court in Miami against anti-government organizations and leaders, charging the defendants with civil conspiracy and wrongful death, battery, intentional infliction of emotional distress, violation of Geneva Conventions, international law and other treaties. The district court granted defendants' motion to dismiss the complaint, finding that the plaintiffs' claims were non-justiciable due to operation of the political question doctrine and that neither customary international law nor the Geneva Conventions provided a private right of action. The court noted the intimate link between the activities of the contras and the political branches' policy toward Nicaragua -- "an inquiry which would surely involve efforts to uncover the nature of the relationship between United States policy and the actions of the contras" -- and found that the "actions of the contras should be called into question, if at all, by the political branches of government to whom the conduct of foreign affairs is trusted."

On appeal, the Eleventh Circuit reversed one narrow portion of the district court's ruling, while affirming other parts of the order of dismissal. The court pointed out that the plaintiffs were raising on appeal a much more focused issue than those raised in the broad-based, 33-page complaint adjudicated by the district court, and concluded that the amended complaint contained within its allegations a narrow issue of Florida tort liability upon which relief might be granted.

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3. Von Stein v. Brescher, 696 F. Supp. 606 (S.D. Fla. 1988), rev'd, 904 F.2d 572 (11th Cir. 1990).

The managing agent of a shopping center brought a civil rights action against a county sheriff and three deputies, alleging that the publicized arrest of the agent for leasing premises with knowledge that they would be used for prostitution was without probable cause and that the press conference by the sheriff had been staged to provide favorable publicity for a re-election campaign and had caused injury to the agent's reputation and business. The district court held that the sheriff and deputies were not entitled to qualified immunity as a matter of law in connection with the agent's arrest and allowed the case to be presented to a jury, which found for the plaintiff.

On appeal the Eleventh Circuit reversed the jury's award for the plaintiff/managing agent. The Court reasoned that, even though the charges against the plaintiff had not been prosecuted by the State Attorney, the arrest based upon those charges, for a violation of a Florida misdemeanor, was grounded on "arguable" probable cause. The Court discounted the facts that the managing agent originally had brought to the attention of the sheriff the suspected prostitution activities, had then cooperated in the investigation and had been seeking legal advice about his right to evict the tenants at the time the sheriff arrested him for honoring a lease after learning that the leased premises were being used for prostitution. Thus, the Court found that the defendants were entitled to qualified immunity with respect to the illegal arrest claim.

4. U.S. v. Bogle, 689 F. Supp. 1121 (S.D. Fla. 1988) (en banc), vacated in light of Mistretta v. United States, 488 U.S. 361 (1989).

After the Sentencing Guidelines ("SG"), promulgated by the United States Sentencing Commission ("Commission") pursuant to the passage of the Sentencing Reform Act ("SRA"), were implemented and became effective November 1, 1987, a number of defendants challenged the SRA and SG as unconstitutional on a variety of grounds. The district judges in the Southern District of Florida decided to

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consolidate those challenges and hear the issue *en banc*. Following extended oral argument and conference, a majority (13 judges) of the court voted to hold the SG unconstitutional and Judge Marcus was selected to write the opinion for the majority. In that opinion, the *en banc* court determined that the method by which the SG had been developed and implemented through a Commission, whose membership by statutory command included Article III judges, violated the separation of powers doctrine, which prohibits judges from making the laws they are then called upon to adjudicate. The court found that the SG were substantive and not procedural laws, and that the SRA reposed legislative and executive functions within the judicial branch, thus conferring rule-making authority upon the judiciary.

The government appealed the decision and although there is no published order or table noting its reversal, the order was reversed by the Eleventh Circuit because the impact of the district court's *en banc* order was overruled by the subsequent decision of the Supreme Court in *Mistretta*, in which the Court found that the Sentencing Guidelines were constitutional and that the SRA did not violate either the prohibition against excessive delegation or the separation of powers doctrine.

5. Jones v. City of Key West, Fla., 679 F. Supp. 1547 (S.D. Fla. 1988), *rev'd*, 888 F.2d 1328 (11th Cir. 1989).

A citizen and resident of Key West filed a civil rights action against the city and its mayor, contending that his First and Fourteenth Amendment rights were violated when he was silenced, arrested and removed from a city commission meeting during his scheduled presentation at a public meeting. Following a bench trial the district court held that the mayor's action in interrupting the citizen's presentation, chastising him for his "outbursts," and having him forcibly removed from the chamber and arrested were not authorized by city ordinance and that the mayor was not entitled to qualified immunity for silencing the speaker based upon the content of his speech.

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Both the city and the mayor appealed, but the city dismissed its appeal before the case was considered by the Eleventh Circuit. The court reversed the judgment against the mayor on the basis that his actions in attempting to confine the speaker to the agenda item at the city commission meeting and having the citizen removed from the chamber when he became disruptive constituted a judgment call by the mayor and was a reasonable time, place and manner regulation of speech which did not violate citizen's First Amendment rights.

6. U.S. Philips Corp. v. Windmere Corp., 680 F. Supp. 361 (S.D. Fla.), rev'd, 861 F.2d 695 (Fed. Cir. 1989).

A razor manufacturer holding a patent for a rotary electric shaver brought a trademark infringement action against a competitor, who filed a counterclaim for unfair competition and monopoly in the rotary razor market in violation of the Sherman Act. The district court granted a directed verdict for the manufacturer on the antitrust claim, finding that the competitor had not presented sufficient evidence of acquisition by the manufacturer of monopoly power via predatory pricing and certified the issue for appeal under Rule 54(b) and 28 U.S.C. § 1292(b).

Because of the existence of the patent issue in the case, the appeal was heard by the Federal Circuit, even though the patent issue was not contested on the appeal. The Federal Circuit reversed and remanded the matter for trial on the antitrust counterclaim, finding that the facts presented a close case which should have been presented to a jury.

(Following re-trial on remand and a second appeal, the parties entered into a settlement, the appeal was remanded and the second verdict vacated. See 971 F.2d 728 (Fed. Cir. 1992), cert. dismissed as improvidently granted, 510 U.S. 27 (1994).)

7. U.S. v. Fuentes, (May 26, 1993), aff'd in part and vacated and remanded in part, 991 F.2d 700 (11th Cir. 1993).

Three defendants were charged with credit card offenses and entered pleas of guilty to various counts. All three appealed their subsequent sentences and

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raised various grounds. The court of appeals affirmed the sentence as to one, vacated a portion of a restitution order and affirmed the sentence as to a second, and vacated the sentence of the third and remanded for resentencing. One issue argued on appeal challenged the interpretation of a Sentencing Guideline ("SG") not previously discussed in the case law of the Circuit, based upon an amendment to the SG. The court held that a defendant who admitted to joining a conspiracy to deal in stolen credit cards could not be held responsible for losses to victims from a co-defendant's use of stolen credit cards (acts committed in furtherance of the conspiracy) which the court found were acts not reasonably foreseeable by the particular defendant. With regard to the second defendant, as to whom a portion of the order requiring forfeiture was vacated by the court, the government admitted that the presentence report contained a miscalculation which had not been flagged for the district court.

8. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cohen, 1993 WL 593998 (S.D. Fla. Sept. 24, 1993), (NO. 93-0915-CIV-MARCUS), rev'd, 62 F.3d 381 (11th Cir. 1995).

Plaintiff stock brokerage firm sued for declaratory and injunctive relief, seeking to enjoin arbitration action which had been filed by investors with the National Association of Securities Dealers pursuant to an arbitration clause in their contract. Defendant investors filed a motion to compel arbitration and to stay the district court action pending arbitration. The motion was assigned to a magistrate judge who recommended that it be granted.

The factual question which had to be resolved centered around whether the statute of limitation under the arbitration agreement had been tolled by the alleged fraudulent concealment of the facts giving rise to the dispute between the parties. Relying upon authority from the Eleventh Circuit, the district court determined that the matter was one which should be resolved by the arbitrator, adopted the recommendation of the magistrate judge, and denied the plaintiff's motion for a temporary injunction and discovery, and dismissed the case.

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On appeal the Eleventh Circuit reversed and remanded the matter for further proceedings, holding that the question of whether the investors' claims were time barred was for the district court to resolve in order to determine whether arbitration was called for. In so ruling the appeals court distinguished its own precedent on which the district court had relied.

9. U.S. v. Huppert, aff'd in part and rev'd in part, 917 F.2d 507 (11th Cir. 1990).

A defendant was charged with and convicted of two counts of obstruction of a grand jury in connection with its investigation into allegations of money laundering by this defendant. Defendant had engaged in cash for check transactions with coin and precious metal dealers. When two of the dealers were subpoenaed to appear before the grand jury, defendant tried to convince them to identify a third man as the person with whom they had dealt in the scheme. The sentencing guideline applicable to the offense level for obstruction of justice contained a cross-reference to a guideline for the offense of accessory after the fact, which cross-reference the district court applied in setting defendant's sentence.

On appeal, the Eleventh Circuit rejected several challenges to the convictions, but reversed the sentence and remanded the case for resentencing. The Court based its reasoning upon the fact that defendant had been attempting to aid himself and not another, and thus the court determined that the accessory after the fact guideline could not be used logically in this situation. (The particular guideline provision subsequently was amended to nullify the effect of this decision.)

10. 3M Health Care Ltd. v. Grant, rev'd, 908 F.2d 918 (11th Cir. 1990).

A transshipper of pharmaceutical products through the foreign trade zone at Port Everglades, Florida, brought suit against the state of Florida and others, seeking declaratory and injunctive relief from compliance with Florida's Drug and Cosmetic Act with regard to plaintiff's warehousing activities in the foreign trade zone. The district court granted summary

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judgment to the defendants, finding that the Florida act was a valid exercise of its police power which was not preempted by federal law.

On appeal, the Eleventh Circuit reversed and remanded the case for the entry of summary judgment in favor of the plaintiff. The Court held that the federal Foreign Trade Zone Act, 19 U.S.C. §§ 81a, et seq., was intended to facilitate the use of U.S. ports for transshipment of foreign goods in foreign commerce. Thus, the Court held that the Federal Act preempted the Florida Drug and Cosmetic Act, Fla. Stat. § 499.001, et seq., and that the State Act required unnecessary regulation of goods in which the state had no interest, as applied to the warehousing of pharmaceuticals being transshipped to Latin America through the Port Everglades Foreign Trade Zone.

11. U.S. v. Ramos, remanded, 45 F.3d 1519 (11th Cir. 1995).

Defendant was tried and convicted of possessing cocaine with intent to distribute. Prior to trial defendant sought an order from a magistrate judge that he be permitted under Federal Rule of Criminal Procedure 15 to take a deposition in Medellin, Colombia, of a potential witness who was alleged to be in a position to provide exculpatory testimony. The magistrate judge granted the motion, but reconsidered and denied it upon the government's motion for reconsideration which pointed out that defendant could only locate the witness through an unknown third party and that the Assistant United States Attorney would be in danger if she had to travel to Colombia under such circumstances. The defendant was then tried and convicted without the testimony of the potential witness who had been deported before the defendant filed his first motion and who refused to return to give testimony at trial.

Noting that the defense had never proffered to the district court the substance of the testimony it deemed material to its defense, the appeals court remanded the matter to the district court to hear the defense proffer, evaluate whether it would be exculpatory and if so to allow the deposition to go forward, after which the district court would be in a position to determine whether to grant a new trial.

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12. Fioretti v. Massachusetts General Life Ins. Co., 892 F. Supp. 1492 (S.D. Fla. Sept. 24, 1993), (NO. 90-6530-CIV-MARCUS), aff'd, 53 F.3d 1228 (11th Cir. 1995), cert. denied, 116 S. Ct. 708 (1996).

A beneficiary of a life insurance policy sued the insurer after his claim for benefits had been denied on the ground that the policy had been procured by fraud. The district court held that the imposter exception applied to defeat the general rule that an incontestability clause in a policy prohibits the defense of fraud in the inducement, in this case fraud by the insured who had arranged for an imposter to submit to a blood test to conceal the insured's chronic illness. In reaching its decision about whether the incontestability clause or relevant state law statutes would bar the insurer's pleading of fraud in the inducement under the "imposter exception," the district court was faced with a conflict of laws question and had to determine which state law to apply. After surveying the possible applicable laws of the states of Florida, New York and New Jersey, the court determined that it did not need to resolve the choice of laws problem because the laws of all three states would not bar proof of the use of an imposter despite the incontestability clause, and thus entered judgment for the insurer.

On appeal the Eleventh Circuit affirmed the judgment, but criticized the district court for failing to decide which law applied, and determined that the applicable law was that of Florida, which would have applied New Jersey law, which in turn would have allowed the insurer to rescind the policy under the facts of the case.

- (3): Significant opinions on federal or state constitutional issues:
1. U.S. v. Benefield, 874 F.2d 1503 (11th Cir. 1989) (double jeopardy), Marcus, J., sitting by designation, writing for the panel.
 2. U.S. v. Falcon, 930 F. Supp. 1510 (S.D. Fla. 1996).
 3. U.S. v. Falcon, 930 F. Supp. 1518 (S.D. Fla. 1996).

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4. U.S. v. Falcon, 957 F. Supp. 1572 (S.D. Fla. 1996).
5. U.S. v. Peralta, 930 F. Supp. 1523 (S.D. Fla. 1996).
6. Reyes-Vasquez v. United States, 865 F. Supp. 1539 (S.D. Fla. 1994).
7. U.S. v. Kowalik, 809 F. Supp. 1571 (S.D. Fla. 1992), aff'd, 12 F.3d 218 (11th Cir. 1993).
8. Seminole Tribe of Florida v. State of Florida, 801 F. Supp. 655 (S.D. Fla. 1992), rev'd, 11 F.3d 1016 (11th Cir. 1994), aff'd, 116 S. Ct. 1114 (1996).
9. In Re Grand Jury Subpoena Dated Nov. 12, 1991, 792 F. Supp. 1423 (S.D. Fla. 1992).
10. In Re Grand Jury Subpoena Dated Nov. 12, 1991, 792 F. Supp. 1431 (S.D. Fla. 1992).
11. U.S. v. Reyes, 782 F. Supp. 609 (S.D. Fla. 1992).
12. Telesat Cablevision, Inc. v. City of Riviera Beach, 773 F. Supp. 383 (S.D. Fla. 1991).
13. Doe v. State of Florida Judicial Qualification Comm., 748 F. Supp. 1520 (S.D. Fla. 1990).
14. Linder v. Calero Portocarrero, 747 F. Supp. 1452 (S.D. Fla. 1990), aff'd in part and rev'd in part, 963 F.2d 332 (11th Cir. 1992).
15. U.S. v. Ortiz, 738 F. Supp. 1394 (S.D. Fla. 1990).
16. U.S. v. Camacho, 739 F. Supp. 1504 (S.D. Fla. 1990).
17. Doe v. Supreme Court of Florida, 734 F. Supp. 981 (S.D. Fla. 1990).
18. Cash Inn of Dade, Inc. v. Metropolitan Dade County, 706 F. Supp. 844 (S.D. Fla. 1989).
19. U.S. v. Sokoloff, 696 F. Supp. 1451 (S.D. Fla. 1988).
20. U.S. v. Bogle, 689 F. Supp. 1121 (S.D. Fla. 1988) (en banc) vacated in light of Mistretta v. United States, 488 U.S. 361 (1989).

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21. CBS Inc. v. Smith, 681 F. Supp. 794 (S.D. Fla. 1988).
 22. Jones v. City of Key West, Fla., 679 F. Supp. 1547 (S.D. Fla. 1988), rev'd, 888 F.2d 1328 (11th Cir. 1989).
 23. Cikora v. Wainwright, 661 F. Supp. 813 (S.D. Fla. 1987), aff'd, 840 F.2d 893 (11th Cir. 1988).
 24. U.S. v. Puliese, 671 F. Supp. 1353 (S.D. Fla. 1987).
 25. Hernandez v. Wainwright, 634 F. Supp. 241 (S.D. Fla. 1986), aff'd, 813 F.2d 409 (11th Cir. 1987).
 26. White v. Wainwright, 632 F. Supp. 1140 (S.D. Fla. 1986), aff'd, 809 F.2d 1478 (11th Cir.), cert. denied, 483 U.S. 1044 (1987).
 27. McLaughlin v. Metropolitan Dade County, Case No. 96-0745-Civ-Marcus (S.D. Fla., Oct. 23, 1996) (Unpublished Order Granting Defendant Summary Judgment) (opinion attached as Exhibit 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.
- None.
 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

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agencies with which you have been connected,
 and the nature of your connection with each;

<u>Inclusive Dates</u>	<u>Names of Employers, Associates, etc.</u>	<u>Name of Practice</u>
9/71 - 10/73	Hon. John R. Bartels (deceased 1997) U.S. District Judge Eastern District of N.Y. U.S. Courthouse 225 Cadman Plaza East Brooklyn, NY 11201	Law Clerk to U.S. District Judge
4/74 - 6/75	Botein, Hayes, Sklar & Herzberg (since disbanded) 200 Park Avenue New York, NY 10166	Law Firm Associate (approx. 75 attys)
6/75 - 1/78	Asst. U.S. Attorney Eastern District of N.Y. 225 Cadman Plaza East Brooklyn, NY 11201 (David G. Trager, then-U.S. Attorney - 1974-1978; now U.S. District Judge Eastern District of N.Y. 225 Cadman Plaza East Brooklyn, NY 11201; 718-260-2510)	Dept. of Justice Trial Prosecutor (Major Crimes Unit, Political Corruption Unit)
2/78 - 3/82	Special Attorney and Deputy Chief (Promoted to Chief in 1980) Detroit Strike Force U.S. Organized Crime & Racketeering Section 231 Lafayette, Room 940 Federal Building Detroit MI 48226 (David Margolis, then-Chief, U.S. Dept. of Justice, Organized Crime & Racketeering Section;	Dept. of Justice (Eastern District of Michigan & Western District of Michigan) Super- vised staff of 10 lawyers & agents from a variety of federal and state law enforcement agencies.

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now Associate Deputy
 Attorney General,
 950 Pennsylvania Ave., NW
 Washington, DC 20530;
 202-514-4945)

(then-U.S. Attorney - James
 K. Robinson - Eastern Dist.
 of Michigan; now Dean at
 Wayne State Law School,
 468 W. Ferry, Detroit, MI 48202;
 (313-577-3933); subsequent
 U.S. Attorney Richard Rossman -
 Eastern District of Michigan,
 now in practice at the firm of
 Pepper, Hamilton & Scheetz,
 100 Renaissance Center,
 Detroit, MI 48243;
 313-259-7110)

3/82 - 8/85

United States Attorney
 Southern District of
 Florida
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 Room 700
 Miami, FL 33130

 299 E. Broward Blvd.
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 Ft. Lauderdale, FL 33301

701 Clematis Street
 West Palm Beach, FL 33401

Dept. of Justice
 Presidential Appt.
 as Chief Law
 Enforcement Officer
 in So. Dist. of Fla.
 including directly
 supervising a staff
 of more than 100
 lawyers (4 major
 divisions --
 Criminal, Civil,
 Appellate and Lands-
 plus Organized Crime
 Strike Force) with
 offices established
 in Miami, Ft.
 Lauderdale and West
 Palm Beach, FL, and
 total staff in
 excess of 200.

8/85 - Present

U.S. District Judge
 Southern District of Florida
 301 N. Miami Avenue
 Miami, FL 33128

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- 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 area, if any, in which you have specialized.

From 1975 until I became a U.S. District Judge in 1985, I represented the people of the United States as a prosecutor for the Department of Justice in New York, Michigan and Florida. The major part of my practice as an attorney was as a federal prosecutor, following a stint in private practice in New York City, where my work as an associate in a large commercial law firm was in general civil practice, more particularly in commercial litigation.

My clients included a variety of federal investigative and regulatory agencies, such as the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Internal Revenue Service, the United States Coast Guard, the United States Army, the United States Department of Treasury, the United States Secret Service, the United States Customs Service, the Federal Deposit Insurance Corporation, and a variety of other agencies and departments of the federal government.

Since August of 1985, I have served as United States District Judge in the Southern District of Florida.

- 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.

In New York and Michigan, I appeared in the various federal courts regularly. In Florida, I appeared in court regularly, but not as frequently as in New York and Michigan.

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

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The overwhelming bulk of my court appearances had been in Federal Court in the district courts in New York, Detroit, Grand Rapids and Southern Florida, as well as in the respective Circuit Courts of Appeal. I also appeared in the State Courts of New York while an associate at the law firm of Botein, Hays, Sklar and Herzberg in 1974-75.

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

A very large percentage of my personal in-court appearances had been in criminal matters and prosecutions, except in that described in question number 17.c.2. above. In addition, I supervised a staff of approximately 20 Assistants in the Civil Division and Lands Division, United States Attorney's Office, who appeared regularly on civil and land condemnation matters on my behalf.

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 many criminal cases in the federal courts in New York, Michigan and Florida as chief counsel and as co-counsel. The trials included a wide variety of matters such as conspiracy, tax fraud, bank fraud, embezzlement, mail fraud, wire fraud, extortion, bribery, narcotics violations, and racketeering.

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

The bulk of these trials were to 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 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:

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- (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) 1982-1983. U.S. v. Great American Bank of Dade County, Case No. 82-720-Cr-EPS (United States District Judge Eugene P. Spellman, U.S. District Court, Southern District of Florida, now deceased), the bank corporation and three of its employees were charged with a conspiracy to defraud the United States, more particularly with numerous felony counts involving the failure to file required Currency Transaction Reports with the Treasury Department concerning cash transactions totaling almost \$100 million. In addition, the bank was charged as an unindicted co-conspirator in three interrelated indictments, U.S. v. Kattan, et al., Case No. 82-721-Cr-JAG; U.S. v. Interfil, Inc., Case No. 82-723-Cr-JCP; and U.S. v. Piedrahita, Case No. 82-722-Cr-JE, which collectively charged twelve other defendants with crimes related to those against the bank and its employees.

I personally supervised the investigation and prosecution of the Bank as corporate defendant, including making the decision to seek an indictment after reviewing all the facts in the case, drafting a large portion of, and signing the charging instrument. I supervised the pre-trial proceedings and helped draft the Government's brief on a major suppression issue. Finally, I personally conducted as lead counsel for the United States the extensive negotiations which resulted in the entry of pleas of guilty by the defendant, Great American Bank of Dade County (through its subsequently-acquired owner, the Barnett Bank) to multiple felony charges of failure to file the required currency reports involving cash deposits of \$673,450, \$837,530, \$685,500 and a series of transactions totaling \$34,413,789.26. The corporate defendant bank was fined by the Honorable Eugene P. Spellman, a total of \$500,000, with the fine suspended as to \$125,000 on one count. I also argued various matters before the District Court relating to the bank, along with my co-counsel, then-Assistant United States Attorney Gregory Baldwin. (Various bank employees also entered pleas of guilty to various counts and a number of defendants in the related cases entered pleas of guilty to certain counts.)

This case was significant in contributing to the prosecution of narcotics smuggling and the ancillary problem of massive money laundering of narcotics dollars through

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institutions of finance and commerce in this region. This prosecution and other money-laundering investigations in the Southern District of Florida served to highlight the importance of compliance with the reporting requirements of the currency laws.

Counsel for the bank were:

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Michael Madigan, P.C.
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Co-counsel for the United States were:

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 (then) Assistant United States Attorney
 (now) Holland and Knight
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(2) 1983-1984. In In re Grand Jury Proceedings, the Bank of Nova Scotia, Case No. 83-1 (WPB) GJ-JCP (United States District Judge James C. Paine, Southern District of Florida), a federal grand jury in the Southern District of Florida was conducting a combined tax-narcotics investigation and had received information sufficient to cause it to inquire into and

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compel the production of off-shore bank records from a foreign bank, the Bank of Nova Scotia, doing business within the Southern District of Florida.

A Federal Grand Jury sitting in the Southern District of Florida issued a subpoena to the Miami agency of the Bank of Nova Scotia, seeking the production of financial records located in its Cayman Islands and Bahamas branches. The bank objected, claiming that the Bank Secrecy Acts in those island nations prohibited it from complying with the subpoena authorized by the United States Court.

The U.S. Attorney's Office sought to have the court compel compliance. After giving the bank opportunity to respond, the United States District Court for the Southern District of Florida, held the bank in contempt and imposed a coercive fine of \$25,000 for each day that the bank failed to produce these documents.

In the United States Court of Appeals for the Eleventh Circuit, various entities, including the governments of Canada, Great Britain and the Cayman Islands, filed amici curiae briefs on the side of the bank. After initial review, the appeals court remanded the matter for further consideration by the district court, including allowing the amici to participate and state their views. In re Grand Jury Proceedings, the Bank of Nova Scotia, 722 F.2d 657 (11th Cir. 1983).

I personally directed and participated in all aspects of the remand, including interviewing witnesses from the Departments of Justice and State, planning strategy, supervising all written responses and drafting substantial portions of the briefs. My involvement also included personally coordinating all of the Government's responses with both the Department of State and the Department of Justice and making all major litigation decisions. After the Honorable James C. Paine granted the Government's motion to impose a cumulative fine of \$1,825,000, additional briefing before the United States Court of Appeals for Eleventh Circuit was required. I wrote and edited substantial portions of the brief filed by the Government in the Eleventh Circuit.

The Government's position was adopted on appeal. In re Grand Jury Proceedings, the Bank of Nova Scotia, 740 F.2d 817 (11th Cir. 1984), and the Supreme Court denied certiorari review on January 8, 1985, 469 U.S. 1106 (1985).

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Opposing counsel were:

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Co-counsel with me were:

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(3) 1982-1983. In U.S. v. Guillot-Lara, et al., Case No. 82-643-Cr-JE (United States District Judge Joe Eaton, Southern District of Florida), the 14 named defendants were charged with various counts of drug importation and conspiracies and attempts to import both methaqualone and marijuana. The gravamen of the charges were that the defendants would smuggle large quantities of narcotics from South America to the United States using Cuba as a source of protection and resupply for the movement of narcotics from South America to the United States. The indictment charged that this illegal activity was made possible because of the direct involvement of several high-ranking Cuban officials who were indicted in Miami as part of the plot. Included as defendants were: Fernando Ravelo-Renedo, the Cuban Plenipotentiary Ambassador to Colombia at the time of the crime; Gonzalo Bassols-Suarez, Minister-Counselor of the Cuban Embassy in Colombia; Aldo Santamaria-Cuadrado, a member of the Central Committee of the Communist Party of Cuba and Vice-Admiral in the Cuban Navy; and Rene Rodriguez-Cruz, a member of the Central Committee of the Communist Party of Cuba and President of the Cuban Institute of Friendship with the People (I.C.A.P.), a Cuban government agency which oversees the activity of foreign visitors in Cuba.

I personally and directly supervised the conduct of this investigation because of its extreme sensitivity to law enforcement and issues of diplomacy and the ramifications which emerged from the case. My involvement included complete review of all facts, assessment of the case, drafting the indictment, making the decision to file American criminal charges against

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foreign government officials, and coordination of federal efforts with the Departments of Justice and State. The Cuban officials were not apprehended; a number of other defendants also charged in the case were prosecuted by my co-counsel:

Richard Gregorie
 Assistant United States Attorney
 99 N.E. 4th Street
 Miami, FL 33132
 (305) 536-5435

before the Honorable Joe Eaton, United States District Court for the Southern District of Florida.

This case was also the subject of extensive testimony which I gave on April 30, 1983, before the U.S. Senate Drug Enforcement Caucus; the Subcommittee on Security and Terrorism of the Senate Judiciary Committee; and the Subcommittee on Western Hemisphere Affairs of the Senate Foreign Relations Committee.

(4) 1982-1983. In U.S. v. Carlos Cruz, Case No. 82-733-Cr-WMH (United States District Judge William M. Hoeveler, Southern District of Florida), the United States Marshal for the Southern District of Florida was charged with conspiracy to defraud the United States and to bribe the Federal Warden of the Metropolitan Correctional Center in Miami and five counts of bribery of a public official, the Federal Warden. In U.S. v. Carlos Cruz, Case No. 83-47-Cr-WMH, the Marshal was also charged with five counts of perjury before the federal grand jury which was investigating the bribery matter. The facts uncovered in this case revealed an extensive pattern of corruption involving the office of the United States Marshal.

I supervised personally and directly as Chief Counsel, the entire investigation and prosecution and conducted the significant pre-trial litigation which resulted in the indictment and conviction of: Carlos Cruz, the United States Marshal for the Southern District of Florida; Seymour Klosky, co-conspirator and state official with the Florida Department of State; and Merle Gottlieb, also a co-conspirator and the father of the incarcerated defendant who was the object of the bribe plot. Klosky and Gottlieb each entered pleas of guilty to one felony count of bribing a federal official. I also personally conducted the trial of Mr. Cruz before the Honorable William M. Hoeveler, and a jury in April 1983, along with my co-counsel, then-Assistant United States Attorney Kevin March. Toward the completion of the Government's case, the defendant entered pleas

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of guilty to the conspiracy to bribe count and to one count of bribery of a federal official. The United States Marshal was sentenced to a term of imprisonment for one year and one day.

Before he was to report to begin serving his sentence, the defendant moved to vacate his plea, alleging that he had not been "of sound mind" and had received ineffective assistance of counsel from his lawyer. Elaborate post-trial hearings were held by the Court and I testified in that connection on September 6, 1983, concerning my observations of and conversations with the defendant on the day of the plea. The court subsequently denied the defendant's motion and he served his sentence. No appeal was taken by Mr. Cruz.

The defendant, Carlos Cruz, was represented at trial by:

Jon W. Burke, Esq.
616 S.W. 12th Avenue
Miami, FL 33134
(305) 858-6000

and subsequently at the post-sentencing hearing by:

Theodore Sakowitz
(then) Federal Public Defender
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(305) 350-6900

My co-counsel were:

Kevin March
Assistant United States Attorney
Middle District of Florida
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Linda Collins Hertz
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The Marshal's co-defendant, Seymour Klosky, was represented by:

Edward Shohat, Esq.
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(305) 358-7000

and Merle Alan Gottlieb was represented by:

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Ft. Lauderdale, FL 33304
(954) 940-7190

(5) and (6) 1979. U.S. v. Quasarano and Vitale, Case No. Cr. 79-80644, involved an extensive organized crime investigation, which I directed and supervised over a period of some two and one-half years, involving tax fraud, racketeering and extortion, arising out of the illegal take-over of a series of interconnected cheese manufacturing companies in the Midwest and Michigan, by among others, defendants Raffaele Quasarano ("Jimmy Q") and Peter Vitale, who were the hidden beneficial owners of the manufacturing facilities. Following a lengthy trial which I conducted as chief counsel for the United States before the Honorable Robert E. DeMascio, United States District Court for the Eastern District of Michigan, the case ended in a mistrial because of a hung jury. Subsequently both defendants entered pleas of guilty to the central racketeering charges before Judge DeMascio and each was sentenced to incarceration for four years and fined a substantial sum of money.

Subsequently, in a related case arising out of the same investigation into the ownership and control of a number of legitimate business enterprises in the Midwest in the area of manufacturing facilities, trash hauling and banking, in U.S. v. Barbara, et al., Case No. Cr. 79-80655, Peter Vitale, Paul Vitale and Joseph Barbara, Jr., were charged with conspiracy to defraud the United States by making false, fictitious and fraudulent statements to the Internal Revenue Service in connection with a plot to conceal the true ownership of a large Detroit-based trash-hauling company subsequently purchased by a publicly-traded national waste treatment company. Following extensive pre-trial pleadings and litigation, Paul Vitale and Barbara each entered pleas of guilty to the second indictment before the Honorable Thomas P. Thornton, United States District Court, Eastern District of Michigan. Peter Vitale and Quasarano each entered

Judge Stanley Marcus
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 Southern District of Florida

pleas of guilty before Judge DeMascio to the aforementioned racketeering charge and to the conspiracy to defraud the Internal Revenue Service charge as set out in the former indictment.

Opposing counsel were:

N.D. Deday LaRene, Esq.
 (for Raffaele Quasarano)
 2000 City National Bank Building
 Detroit, MI 48226
 (313) 962-3500

Albert J. Kreiger, Esq.
 (for Peter Vitale)
 1899 S. Bayshore Drive
 Miami, FL 33133
 (305) 854-0050

Peter J. Bellanca, Esq.
 (for Peter and Paul Vitale)
 20480 Vernier Road
 Harper Woods, MI 48225
 (313) 882-1100

Neal Bush, Esq.
 (for Joseph Barbara, Jr.)
 719 Griswald
 Detroit, MI 48226
 (313) 962-1177

My co-counsel was:

Keith E. Corbett
 (then) Special Attorney
 Detroit Strike Force
 940 Federal Building
 Detroit, MI 48226
 (313) 226-7252

(7) 1979. Also arising out of the same lengthy inquiry was the case of U.S. v. State Bank of Fraser, Case No. 79-80442, where the corporate entity, the bank itself, was charged in three felony counts with wilfully filing false bank entries, reports and transactions with intent to deceive the Federal Deposit Insurance Corporation. In the companion case of U.S. v. Beck, Case No. 79-80463, Edgar Beck, the State Bank of Fraser's President, Chief Executive Officer and principal

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shareholder, was charged with knowingly filing fraudulent and false statements in connection with the bank's corporate income tax return, his own individual tax returns, along with embezzlement and misapplication of bank funds, and with knowingly making false bank entries, reports and transactions with the F.D.I.C. The bank entered pleas of guilty and was convicted of the criminal charges in September 1979 before the Honorable Robert E. DeMascio, United States District Court for the Eastern District of Michigan, and was fined by the Court. Bank President Beck entered guilty pleas to four felony counts before the Honorable Ralph B. Guy, Jr., then-United States District Court, Eastern District of Michigan (now Circuit Judge, U.S. Court of Appeals for the Sixth Circuit), in April 1980, was sentenced to incarceration for two years and was fined a substantial sum of money.

Opposing counsel were:

F. Lee Bailey, Esq.
 (for Edgar Beck)
 1400 CentrePark Blvd., Suite 909
 West Palm Beach, FL 33401
 (561) 687-3700

James A. Smith, Esq.
 (for the State Bank of Fraser)
 Bodman, Longley & Dahling
 34th Floor, 100 Renaissance Center
 Detroit, MI 48243
 (313) 259-7777

I was chief counsel for the Department of Justice on all of these related prosecutions.

(8) 1975. In U.S. v. Cristenfeld, Case No. 75-Cr-896. Marvin Cristenfeld was Chairman of the Nassau County New York Democratic Committee and then-Commissioner of the Nassau County Board of Elections. He was charged with and convicted of Hobbs Act violations of extortion by the wrongful use of fear of economic loss and under color of official right, bribery and Travel Act violations, conspiracies to defraud the United States and the filing of false and fraudulent tax returns in connection with a massive corruption inquiry into the operations of the Chairman of the Nassau County Democratic Party. On June 24, 1976, he was convicted on all counts after jury trial before the Honorable Orin Judd (now deceased), United States District Judge, Eastern District of New York, who sentenced him to concurrent

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terms of incarceration of six months and fined him \$2,000. I tried this case as co-counsel along with:

Kenneth Kaplan
 (then) Assistant United States Attorney
 Eastern District of New York
 (now) Kaplan & Katzberg
 767 Third Avenue, 26th Floor
 New York, NY 10017
 (212) 750-3100

The defendant Marvin Cristenfeld appealed his conviction to the United States Court of Appeals for the Second Circuit (Case No. 76-1312), raising serious issues about the scope of the federal bribery and extortion statutes involving political party officials. I wrote the brief and argued the case for the Government before the Court of Appeals for the Second Circuit. The convictions were affirmed per curiam in an unpublished opinion.

Counsel for the defendant were:

Raymond Bernhard Gruenwald, Esq. and
 Michael Gillen, Esq.
 Gruenwald, Turk, Gillen & Caliendo
 then at 233 Broadway
 New York, NY 10007
 (no current listing for names, address or
 telephone number)

Mr. Gruenwald argued the appeal for the defendant; Mr. Gillen tried the case for the defendant. My co-counsel on the brief filed with the Court of Appeals were:

Edward R. Korman
 (then) Assistant United States Attorney
 (now) United States District Judge
 Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, NY 11201
 (718) 260-2470

Kenneth Kaplan
 (then) Assistant United States Attorney
 Eastern District of New York
 (now) Kaplan & Katzberg
 767 Third Avenue, 26th Floor

Judge Stanley Marcus
 United States District Judge
 Southern District of Florida

New York, NY 10017
 (212) 750-3100

Robert Katzberg
 (then) Assistant United States Attorney
 (now) Kaplan & Katzberg
 767 Third Avenue, 26th Floor
 New York, NY 10017
 (212) 750-3100

David G. Trager
 (then) United States Attorney
 (now) United States District Judge
 Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, NY 11201
 (718) 260-2510

(9) In U.S. v. McGrath, 558 F.2d 1102 (2d Cir. 1977), cert. denied, 434 U.S. 1064 (1978), the case was tried before the Honorable Henry Bramwell, United States District Court for the Eastern District of New York, by other Assistant United States Attorneys in Brooklyn, New York. The defendant, John McGrath, then the Park Maintenance Supervisor of the Long Island State Park Commission of New York, was convicted of extorting illegal payments from two truck operators in return for parkway towing contracts, in violation of the extortion and bribery provisions under the Federal Hobbs Act, tax evasion and filing false tax returns. I wrote and prepared the appellate brief filed with the United States Court of Appeals for the Second Circuit on behalf of the Government; co-counsel on the brief was:

Stanley A. Teitler
 (then) Assistant United States Attorney
 (now) 299 Broadway
 New York, NY
 (212) 233-8031

Opposing counsel were:

Leonard Meiselman, Esq.
 John J. Reilley, Esq.
 Meiselman, Boland, Reilley & Pittoni
 54 Willis Avenue
 Mineola, NY 11501
 (516) 248-2400

Judge Stanley Marcus
United States District Judge
Southern District of Florida

(10) Joint Federal/State Homicide Task Force, 1982.

In order to address the serious problem of violent crime in the Southern District of Florida, I, along with Janet Reno, then-State Attorney for the Eleventh Judicial Circuit of Florida, created, organized, implemented and supervised a Joint Federal/State Homicide Task Force here in Dade County in 1982. By the creation of this Joint Task Force, some 100 defendants charged with homicide in state court were prosecuted by federal prosecutors and Assistant State Attorneys in Dade County Circuit Court. In each phase of the Homicide Task Force, certain homicide cases and defendants residing in Dade County who were illegal or otherwise undocumented aliens were designated to be tried in State Court by a team of State prosecutors and Assistant United States Attorneys. The federal prosecutors were "cross designated" as State Assistants to permit them to appear in State Court.

In Phases I and II of this Task Force, a total of 73 defendants were targeted, of which 61 were found guilty, five were found not guilty, two were adjudged insane, one was dismissed, and two were nolle prossed. In Phase III of the Joint Task Force, the Task Force prosecuted some 40 additional defendants in homicide cases.

The creation and implementation of this Joint Federal/State Homicide Task Force by Ms. Reno and the United States Attorney represented a joint effort to combine federal and state law enforcement resources in a novel way.

Ms. Reno is now Attorney General.

In addition, the following members of the legal community have had recent contact with me:

- 1) Roberto Martinez
Colson Hicks Eidson, et al.
200 South Biscayne Boulevard, Suite 4700
Miami, FL 33131
(305) 373-5400
- 2) Martin Steinberg
Holland & Knight
701 Brickell Avenue, Suite 3000
Miami, FL 33131
(305) 374-8500

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- 3) Daniel Pearson
Holland & Knight
701 Brickell Avenue, Suite 3000
Miami, FL 33131
(305) 374-8500
- 4) Thomas E. Scott
United States Attorney
Southern District of Florida
99 N.E. 4th Street, 8th Floor
Miami, FL 33132
(305) 536-5401
- 5) Karen Amlong
Amlong & Amlong
500 N.E. 4th Street, 2nd Floor
Ft. Lauderdale, FL 33301
(954) 462-1983
- 6) Elizabeth Du Fresne
Steel, Hector & Davis
200 South Biscayne Boulevard, #4000
Miami, FL 33131
(305) 577-2855
- 7) Charles E. Senatore
Securities & Exchange Commission
1401 Brickell Avenue, Suite 200
Miami, FL 33131
(305) 982-6332
- 8) Leon B. Kellner
3053 "Q" Street, NW
Washington, DC 20006
(202) 785-9700
- 9) James Joseph Kenny
Kenny Nachwalter, et al.
1100 Miami Center
201 South Biscayne Boulevard
Miami, FL 33131
(305) 373-1000
- 10) Rudolph F. Aragon
Aragon Martin, et al.
2699 South Bayshore Drive, Penthouse
Miami, FL 33133
(305) 858-2900

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- 11) Chesterfield Smith
 Holland & Knight
 701 Brickell Avenue, Suite 3000
 Miami, FL 33131
 (305) 374-8500
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 1988, I was chosen by Chief Justice Rehnquist to serve as a member of the Federal-State Jurisdiction Committee of the Judicial Conference of the United States. In May 1992, the Chief Justice appointed me to serve as Chair of the Committee, a position I filled until my tenure expired in September 1995. In that capacity, I had the opportunity to represent the Judicial Conference in connection with pending legislation that affected the federal judiciary and involved the intersection between federal and state jurisdiction. During this time the Committee was composed of federal judges and the Chief Justices of the Supreme Courts of Texas, California, Virginia and Ohio. My position as Chair also required me to meet regularly with and attend the formal meetings of the State Conference of Chief Justices and to work with them in areas of interest common to both the state and federal courts. As an outgrowth of my work on behalf of the Federal-State Jurisdiction Committee, Chief Justice Rehnquist also appointed me to serve as Chair of the Ad Hoc Committee on Violence Against Women, 1992-1994.
- On a number of occasions I served at the request of then Chief Judge Gerald Bard Tjoflat in planning the education programs for the Annual Eleventh Circuit Judicial Conferences. I am also a member of the Committee on Pattern Jury Instructions of the District Judges Association of the Eleventh Circuit Court of Appeals, which was asked by Judge Tjoflat to edit, revise and update the pattern jury instructions for use throughout the Circuit.
- Finally, Chief Judge Hatchett has appointed me to serve as a member of the Education Committee of the Judicial Council of the Eleventh Circuit.

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Southern District of Florida

From the summer of 1994 to the present, I have served the district court as a member of a four-judge executive committee whose responsibility it is to make decisions about the administration of the Court. I have also been selected by the Chief Judge to serve as a member of the District Court's Security, Budget and Rules Committees, the Civil Justice Advisory Committee, and, for six years, I chaired the Court's Magistrate's Committee.

Judge Stanley Marcus
United States District Judge
Southern District of Florida

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 areas of financial concern that would represent any potential conflict of interest. However, I am mindful of the provisions of Title 28, U.S.C. §§ 455 and 144, and the Canons of Judicial Ethics.

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 for 1997.

See attached Financial Disclosure Report for 1996.

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

See attached form.

AO-10
REV. 1/97

**FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1996**

Report Required by the Ethics
Reform Act of 1989, Pub. L. No.
101-194, November 30, 1989
(5 U.S.C. App. 4 101-112)

1 Person Reporting (Last name, first, middle initial) MARCUS, STANLEY	2 Court or Organization U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT	3 Date of Report 9/23/97
4 Title (Article III judges indicate active or senior status. Magistrate judges indicate full- or part-time) U.S. CIRCUIT COURT NOMINEE	5 Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination. Date 9/25/97 — Initial — Annual — Final	6 Reporting Period 1/1/97-9/23/97
7 Chambers or Office Address 301 North Miami Avenue 5th Floor Miami, Florida 33128	8 On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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.

POSITIONS. (Reporting individual only, see pp 9-13 of Instructions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
<input checked="" type="checkbox"/> NONE (No reportable positions)	

I. AGREEMENTS. (Reporting individual only, see pp 14-17 of Instructions.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
<input checked="" type="checkbox"/> NONE (No reportable agreements)	

III. NON-INVESTMENT INCOME. (Reporting individual and spouse, see pp 18-25 of Instructions.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>GROSS INCOME</u> (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		
1 1997	Professor-Trial Advocacy Course-Brooklyn Law School (May-July 1997)	\$ 7,000
2 1997	Williams-Sonoma, Inc. (S)	\$ _____
3 1997	Temple Beth Am (S)	\$ _____
4		\$ _____
5		\$ _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
MARCUS, STANLEYDate of Report
9 /23 /97

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. 26-29 of Instructions.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>
<input type="checkbox"/>	NONE (No such reportable reimbursements or gifts)	
1	Brooklyn Law School	May-July 1997, Coach air fare and lodging at Brooklyn Law School Dormitory (May 28, June 2, 9, 16, 23, June 30-July 9).
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. 30-33 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. 34-36 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			

*Value Codes: J-\$15,000 or less K-\$15,001-\$50,000 L-\$50,001-\$100,000 M-\$100,001-\$250,000 N-\$250,001-\$500,000
 O-\$500,001-\$1,000,000 P1-\$1,000,001-\$5,000,000 P2-\$5,000,001-\$25,000,000
 P3-\$25,000,001-\$50,000,000 P4-\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting STANLEY MARCUS	Date of Report 9/23/97
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VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A Description of Assets (including trust assets) Indicate where applicable, owner of the asset by using the parenthetical "(1)" for joint ownership of reporting individual and spouse, "(5)" for separate ownership by spouse, "(DC)" for ownership by dependent child Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Amt. Code (A-H)	Type (e.g. div., rent or int.)	Value Code (L-P)	Value Method Code (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-N)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income assets, or transactions)									
1 First Union Miami, FL Checking	A	Int	J	T					
2 T. Rowe Price Small-Cap Value Mutual Fund - IRA	A	Div	J	T					
3 Vanguard Index 500, Mutual Fund - IRA	A	Div	J	T					
4 Fidelity Bl. Chp. Growth Mutual Fund-IRA, Cin., OH	A	Div	J	T					
5 Fidelity SoftWCom Mutual Fund-IRA, Cin., OH	A	Div	J	T					
6 U.S. Treasury Note 99 NV 30	B	Int	K	T					
7 Coca Cola Common Stock Stanley Marcus, Cust. for Jonathan Marcus (son)	A	Div	J	T					
8 Young Stovall & Co. (Alliance Money Mkt Fund)	A	Div	J	T					
9 Dell Computer Common S* k Jonathan (son) & Judith A Marcus (spouse)	A	Div	J	T	Buy	8/1	J		
10									
11									
12									
13									
14									
15									
16									
17									
18									
1 Incr/Gain Cds (Col. B1, D4)	A-\$1,000 or less F-\$50,001-\$100,000		B-\$1,001-\$2,500 C-\$2,501-\$5,000 D-\$100,001-\$1,000,000		E-\$5,001-\$15,000 H-\$1,000,001-\$5,000,000		G-\$15,001-\$50,000 I-\$50,001-\$100,000 J-\$100,001-\$250,000 K-\$250,001-\$500,000 L-\$500,001-\$1,000,000 M-\$1,000,001-\$5,000,000 N-\$5,000,001 or more		
2 Val Cds (Col. C1, D3)	J-\$15,000 or less D=\$500,001-\$1,000,000 F=\$250,000,001-\$500,000,000		K-\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 P4=\$50,000,001 or more		L=\$50,001-\$100,000 M=\$100,001-\$250,000 P2=\$5,000,001-\$25,000,000		N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P3=\$25,000,001-\$250,000,000		
3 Val Mch Cds (Col. C2)	Q-Appraisal U-Book Value		R=Cost (real estate only) V=Other		S=Assesment W=Estimated		T=Cash/Market		

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	STANLEY MARCUS	9/23/97

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

My son, Jonathan Marcus' bank account (NationsBank-Savings) listed in Part VII, line 7, on my 1996 Annual Report dated 5/12/97, is now below the value that requires reporting.

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. App. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations

Signature

Stanley Marcus

Date

Sept. 23, 1997

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. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.,
Washington, D.C. 20544

FD-10
Rev. 1/97

**FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1996**

Report Required by the Ethics
Reform Act of 1985, Pub. L. No.
101-194, November 30, 1989
15 U.S.C. App. 6, 101-1121

1 Person Reporting (Last name, first, middle initial) MARCUS, STANLEY	2 Court or Organization U. S. DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA	3 Date of Report 5/12/97
4 Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time) U.S. District Judge - Active Status	5 Report Type (check appropriate type) ___ Nomination, Date ___/___/___ ___ Initial X Annual ___ Final	6 Reporting Period 1/1/96123196
7 Chambers or Office Address 301 North Miami Avenue 5th Floor Miami, Florida 33128	8 On the basis of the information contained in this Report and any modifications pertaining thereto, as is, in my opinion, in compliance with applicable laws and regulations Reviewing Officer _____ Date _____	
<p>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.</p>		

POSITIONS. (Reporting individual only; see pp. 9-13 of Instructions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
<input checked="" type="checkbox"/> NONE (No reportable positions)	

I. AGREEMENTS. (Reporting individual only; see pp. 14-17 of Instructions.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
<input checked="" type="checkbox"/> NONE (No reportable agreements)	

II. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>GROSS INCOME</u> <small>(yours, not spouse's)</small>
<input type="checkbox"/> NONE (No reportable non-investment income)		
1 1996	Williams-Sonoma, Inc. (S)	\$ _____
2 1996	Temple Beth Am (S)	\$ _____
3		\$ _____
4		\$ _____
5		\$ _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

MARCUS, STANLEY

Date of Report

5 /12 /97

V. 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. 26-29 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		

VI. 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. 30-33 of Instructions.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<input checked="" type="checkbox"/>	NONE (No such reportable gifts)		
1			\$ _____
2			\$ _____
3			\$ _____
4			\$ _____

VII. 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. 34-36 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			

*Value Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000
 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting MARCUS, STANLEY	Date of Report 5 12 97
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II. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp 37-54 of Instructions)

A Description of Assets (including trust assets) 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 Place "XXX" after each asset exempt from prior disclosure	B Income during reporting period		C Gross Value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Asset Code (A-H)	Type (e.g. div, rent, int.)	Value Code (J-P)	Value Method Code (Q-W)	(1) Type (e.g. buy, sell, transfer, redemption)	(2) Date Month Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of Buyer/Seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 First Union Miami, FL Checking	A	Int	J	T					
2 Nations Bank, Miami, FL	A	Int	J	T	Close				
3 T. Rowe Price Small-Cap Value Mutual Fund IRA, Baltimore, MD	A	Div	J	T					
4 Vanguard Indx 500, Mutual Fund IRA, Valley Forge, PA	A	Div	J	T					
5 Fidelity BI. Chp Growth Mutual Fund IRA, Cin., OH	A	Div	J	T					
6 Fidelity SoftWcom Mutual Fund, IRA, Cin., OH	A	Div	J	T					
7 Nations Bank (Savings) Miami, FL (son)	A	Int	J	T					
8 U.S. Treasury Note 99 NV 30	B	Int	K	T					
9 Intel Common Stock	A	Div	J	T	Sold	9/24	J	C	
10 Alliance Tech Mutual Fund CL.A	A	Div	J	T	Sold	9/24	J	A	
11 Coca Cola Common Stock Stanley Marcus, Cust. for Jonathan Marcus (son)	A	Div	J	T					
12 Young Stovall & Co. (Alliance Money Mkt Fund)	A	Div	J	T	Buy	9/24			
14									
15									
16									
17									
18									
1 Inc/Gain Cds (Col B1, D4)	A=\$1,000 or less F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H=\$5,001-\$15,000 I=\$15,001-\$50,000,000		E=\$15,001-\$50,000 J=\$50,000,001 or more		
2 Val Cds (Col C1, D3)	J=\$15,000 or less O=\$500,001-\$1,000,000 P=\$250,000,001-\$50,000,000		K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$5,000,000 N=\$5,000,001-\$25,000,000		P1=\$1,000,001-\$5,000,000 P4=\$50,000,001 or more		M=\$100,001-\$250,000 N=\$250,001-\$500,000 P2=\$5,000,001-\$25,000,000		
3 Val Mch Cds (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

MARCUS, STANLEY

Date of Report

5/12/97

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

- 1) Chase Federal, Miami, FL Savings (son) Bank was acquired by Nations Bank, Miami, FL, Savings Account transferred to Nations Bank; See Sec. VII (#7).

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. 4, § 501 et seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Stanley Marcus

Date

May 12, 1997

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. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.,
Washington, D.C. 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	22	370	40	Notes payable to banks—secured			
U.S. Government securities—add schedule	27	000	00	Notes payable to banks—unsecured			
Listed securities—add schedule	28	998	40	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	148	291	44
Real estate owned—add schedule	250	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—itemize:			
(2) Autos and other personal property	20	175	00	Perkins (Student loan)		750	00
Cash value—life insurance							
Other assets—itemize:							
Florida Pre Paid College Program	7	097	41				
				Total Liabilities	148	071	44
				Net Worth	206	549	77
Total Assets	355	591	21	Total liabilities and net worth	355	591	21
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosmaker or guarantor	NA			Are any assets pledged? (Add schedule.)	YES		
On leases or contracts	NA			Are you defendant in any suits or legal actions?	NO		
Legal Claims	NA			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	Current						
Other special debt	NA						

Schedules to Financial Statement

Re: Stanley Marcus
SSN# 112-34-2417

U.S. Government Securities

Nations Securities	
7.75% Treasury Bond - Due 11/99	\$ <u>27,000.00</u>

Listed Securities

50.398 shares - Coca Cola C. In name of Stanley Marcus, Custodian for Jonathan Marcus, Son	3,014.30
15 shares - Dell Computers C. In name of Jonathan and Judith Marcus	1,477.50

I.R.A. Accounts

Fidelity Select Software	4,132.36
Fidelity Blue Chip Growth	8,625.40
T. Rowe Price Small Cap Fund	4,847.80
Vanguard Index Trust 500	<u>6,851.04</u>
	\$ <u>28,948.40</u>

Real Estate Owned

Residence: Miami, Florida	
Current estimated value	\$250,000.00
Mortgaged: See below	

Real Estate Mortgages Payable

First Mortgage on Residence: GE Mortgage Services	\$126,436.67
Home Equity Line: NationsBank	21,854.77

<u>Perkins (Student Loan)(Elizabeth Marcus)</u>	<u>750.00</u>
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\$149,041.44

Judge Stanley Marcus
United States District Judge
Southern District of Florida

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.

Judge Stanley Marcus
United States District Judge
Southern District of Florida

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 district judge I have not engaged in any pro bono activity, but as a member of our Court's Civil Justice Advisory Committee, I worked with District Judge Lenore C. Nesbitt, the Committee, and the Court, in establishing a Voluntary Lawyers' Project to provide legal support for indigent litigants in non-Criminal Justice Act cases, which include, for example, a variety of claims arising under Title VII, Age Discrimination Act, Americans With Disabilities Act, claims of ownership in civil forfeiture, non-prisoner § 1983 civil rights litigation, and Freedom of Information Act cases. The project has received the voluntary services of lawyers in this district and appears to be a real and working solution to an old and vexing problem.

I also expended substantial time over a seven-year period in service of the Judicial Conference of the United States. I served from 1988-1992 as a member of the Federal-State Jurisdiction Committee of the Judicial Conference. In 1992, Chief Justice Rehnquist appointed me to serve as Chair of that same committee, a position I held until the term expired in September of 1995. In this capacity I represented the Judicial Conference in connection with legislation that affected the federal judiciary and involved the intersection between federal and state jurisdiction. As an outgrowth of this work, the Chief Justice also appointed me to serve from 1992 to 1994 as Chair of the Ad Hoc Committee on Violence Against Women, which also required extensive time commitments.

I have further served the judiciary as a member of a number of other committees. I was appointed to committees to plan the education programs for the Eleventh Circuit's Annual Judicial Conference. I served on the Committee on Pattern Jury Instructions, appointed to edit, revise and update the standard instructions used throughout the Circuit. For the past three years, I have served the district court as a

Judge Stanley Marcus
United States District Judge
Southern District of Florida

member of a four-judge executive committee, which meets weekly to make decisions about the administration of the court. I have also served the district court as a member of its Security, Budget, and Rules Committees, the Civil Justice Advisory Committee, and I chaired the Magistrate's Committee for six 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).

I am unaware of the involvement of any selection commission in connection with this nomination. I was recently asked by the Office of Counsel to the President to fill out a judicial questionnaire, and was invited to an interview by representatives of the Department of Justice and the Counsel's Office in July 1997. I also had occasion to be interviewed by representatives of the FBI and the ABA.

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."

Judge Stanley Marcus
United States District Judge
Southern District of Florida

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 judicial branch by its very nature, armed with neither sword nor purse, derives its power entirely from its legitimacy with the people, from the widespread belief that it does not more nor less than apply the known and established law to real and actual controversies. If the people come to believe that the courts are overreaching the boundaries of the law and in circumstances that may not justify judicial intervention of any kind, the people will withdraw their support from the judicial process exposing the nation to the great danger of lawlessness. In a democracy, the judicial branch -- the one branch that does not directly derive its power from the democratic process -- must, to preserve its effectiveness under the Constitution, scrupulously limit the exercise of its power to real cases ripe for decision. Moreover, its remedies must be calculated to pose the minimum feasible judicial interference that will still achieve a fair resolution. This is not to say that broad judicial remedies are always wrong, but they certainly can be

Judge Stanley Marcus
United States District Judge
Southern District of Florida

wrong often. Where such remedies are clearly necessary to the vindication of fundamental constitutional rights, they may be unavoidable. Where, as in most situations, broad remedies are not indispensable, resort to such remedies will tend inevitably to detract from the democratic character of our society and the proper role of the courts. The brilliance of our constitutional system is that the simple, narrow and precise case-by-case enforcement of the rights and obligations it has spawned will in itself tend to the creation of a just society.

Judge Stanley Marcus
United States District Judge
Southern District of Florida

EXHIBIT A

ATTACHMENT TO QUESTION 15 (3) 27.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

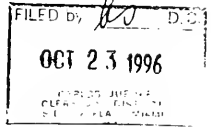
CASE NO. 96-0745-CIV-MARCUS

ROBERT A. McLAUGHLIN,
et al.,

Plaintiffs,

v.

ORDER



METROPOLITAN DADE
COUNTY,

Defendant.
_____ /

THIS CAUSE comes before the Court upon the Defendant's Motion for Summary Judgment, filed August 26, 1996, and the Plaintiffs' Cross-Motion for Summary Judgment on Liability, filed September 10, 1996. Both of these motions are ripe for resolution, and the Court took brief argument on them at the pre-trial conference on October 22, 1996. After a thorough review of the record and pleadings, and being otherwise advised in the premises, the Defendant's motion must be and is GRANTED. The Plaintiffs' cross-motion is DENIED.

I.

This litigation concerns the enforcement of a Florida statute that, among other things, prohibits any use of a public street in a manner that creates a hazard to motorists or pedestrians. This statute, codified at Fla. Stat. §337.406(1), provides in pertinent part:

It is unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto . . . in any manner that interferes with the safe and efficient movement of people and property from

place to place on the transportation facility. Failure to prohibit the use of right-of-way in this manner will endanger the health, safety and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities. Such prohibited uses include, but are not limited to, the free distribution or sale of any merchandise, goods, property or services; the solicitation for charitable purposes, the servicing or repairing of any vehicle, except the rendering of emergency service; the storage of vehicles being serviced or repaired on abutting property or elsewhere; and the display of advertising of any sort

(emphasis added). Fla. Stat. §334.03(22) defines "right-of-way" as "land in which the state, the department, a county, or a municipality owns the fee or has an easement devoted to or required for use as a transportation facility." Fla. Stat. §334.03(31) defines "transportation facility" as "any means for the transportation of people and property from place to place which is constructed, operated, or maintained in whole or in part from public funds." A violation of the statute constitutes a misdemeanor of the second degree. Fla. Stat. §337.406(4).

A.

The facts giving rise to this lawsuit were set out during an evidentiary hearing conducted on May 2, 1996 in conjunction with the Plaintiffs' motion for preliminary injunction.¹ Testimony at

¹The parties agree that the record developed during the May 2nd evidentiary hearing may be considered in resolving the pending summary judgment motions. Relatively little has been added to the record since that time, and neither party has

the May 2nd hearing established the following: Plaintiffs Michael Vance, Eric Seralnick and Robert A. McLaughlin sell flowers and other floral products within the boundaries of Metropolitan Dade County. Vance sells flowers in northeast Dade County, typically at the intersection of Ives Dairy Road and Biscayne Boulevard, both of which are state roads. When selling flowers on the street, Vance waits until the traffic light turns red and the stopped vehicles back up six car lengths. At that point he walks between the lanes of traffic, displaying arrangements of flowers to drivers and passengers who are seated in the vehicles, and carrying change in his pocket or hands. Vance testified that he could not recall ever walking in front of a moving vehicle, and could not recall ever seeing an accident involving a flower vendor.

On Thanksgiving Day, 1995, Vance was taken aside by Lieutenant Joseph McGillivray, an officer with the Intracoastal District of the Metro-Dade Police Department. McGillivray advised Vance that he could not sell flowers on a state road. At the time McGillivray approached Vance, Vance was standing on the sidewalk. Several weeks later, McGillivray again approached Vance while Vance was on the sidewalk, and warned him that he could not sell flowers on a state road. At some point in late February or early March of 1996, McGillivray confronted Vance while he was sitting on a bucket of flowers on private property. McGillivray advised him that if he continued to sell flowers on the street in violation of section

introduced evidence to contradict or rebut testimony presented at the hearing.

337.406, he would be arrested and not permitted to secure his release on bond. McGillivray testified at the May 2nd hearing that, on this and other occasions, he had observed Vance in the roadway after the light turned green, delaying traffic and causing motorists to honk their horns in frustration.

Seralnick, like Vance, sells flowers to motorists at the intersection of Biscayne Boulevard and Ives Dairy Road as well as other locations in northeastern Dade County. He has sold flowers on the street for the past two years. His practice is to stand at the start of the median while waiting for a red light. Once the light turns red, he walks between lanes of traffic at the beginning of the line of stopped cars. As soon as the light turns green, he moves back to the median, walks to the head of the intersection and waits for the next red light. Seralnick testified that he has never walked in front of a moving vehicle, and has never seen an accident involving a flower vendor. He added that each transaction takes no more than a couple of seconds, and that if he is unable to complete a transaction before the light turns green, he will walk away from the sale.

On or about January 26, 1996, Seralnick was arrested and given a notice to appear for an alleged violation of section 337.406. Margaret Romero, a Metro-Dade police officer assigned to the Intracoastal district, made the arrest. At the May 2nd hearing, Romero testified that, when she arrested Seralnick, he was making use of a state road in a manner that interfered with the safe and efficient movement of people and property. She had observed

Seralnick selling flowers on the street, walking among cars stopped in the two westbound left-turn lanes of northbound Biscayne Boulevard at the intersection with Ives Dairy Road. According to Romero, when the traffic light for the left-turn lanes turned green, Seralnick was still in the road, which delayed the progress of cars through the turn and forced a number of vehicles that ordinarily would have made it through the light to wait for the next green. Romero explained that, once Seralnick saw her, he stepped onto the median, at which time she effected the arrest. Romero explained that she was not monitoring the intersection for the purpose of arresting flower vendors or any other vendors, but rather as part of her normal routine during "down time" when she was not responding to a call elsewhere.

McLaughlin supplies the flowers that are sold by Vance and Seralnick. He drops off bunches of flowers at various street corners, where they are picked up by flower vendors. He returns to these corners at the end of the day, and picks up whatever flowers have not been sold. McLaughlin testified that he has cautioned Vance and Seralnick not to interfere with moving traffic, and that he has never observed one of his vendors obstruct a vehicle. He is not aware of an accident involving a vendor or an instance where a car had to swerve to avoid a vendor. McLaughlin added that he has observed Vance and Seralnick walk away from sales when it appeared that the transaction could not be completed before the light turned green. According to McLaughlin, the practice of soliciting in the middle of streets in Dade County has been going on as long as he

can remember.

Lieutenant McGillivray testified that he has seen Seralnick, Vance and others selling flowers at the intersection of Ives Dairy Road and Biscayne Boulevard, both of which he described as heavily traveled roads. McGillivray has warned individuals about violations of Fla. Stat. §337.406 on many occasions, based on activities at that intersection and at other locations in his district. McGillivray said he has never given a warning unless he felt the individual was interfering with the safe and efficient movement of people and property by wandering between lanes of traffic and causing a delay. When questioned on cross-examination, McGillivray stated unequivocally that he would not arrest someone under section 337.406 unless he believed that the individual was obstructing traffic.

McGillivray noted that the activities of the Plaintiffs and others have generated complaints from neighborhood citizen groups. According to McGillivray, when vendors are in the street after the light turns green, drivers are forced to decrease their speed, change lanes or swerve to avoid hitting them. The delays caused by the presence of vendors also agitates drivers in cars further back in the line, who start to yell or honk their horns. McGillivray said he has observed accidents, near-accidents and traffic tie-ups result from the activities of on-street vendors and solicitors who walk between lanes of traffic at busy intersections. He said that he recalls incidents where drivers have jammed on their brakes and honked their horns in order to avoid collisions with vendors,

because of uncertainty as to whether the vendors would walk to the left or the right in order to avoid the rush of traffic. He has observed cars forced to wait at green lights to allow vendors additional time to reach the sidewalk or median. McGillivray explained that the presence of vendors and other solicitors in the street causes anxiety to the many elderly drivers in the area who become frightened or unsettled when unfamiliar persons approach their cars. The anxieties of these elderly drivers exacerbate the multiple safety and traffic flow problems that already exist on Biscayne Boulevard and Ives Dairy Road.

Like McGillivray, Officer Romero testified that she has observed accidents, near-accidents and traffic jams as a result of the activities of vendors who sell their goods in the street in violation of Fla. Stat. §337.406. She stated that she has made arrests under the statute at the intersection of Ives Dairy Road and Biscayne Boulevard, as well as at other locations in Dade County. Romero explained that she has never made an arrest or issued a warning under this statute unless she saw a dangerous condition or a disruption to traffic (except in instances involving older pedestrians). According to Romero, when she observes an apparent violation of section 337.406, she gives the violator a warning, and advises him that he will be arrested if he continues to obstruct traffic.

Vance, Seralnick and McLaughlin testified that they have seen vendors for the Miami Herald, as well as panhandlers and representatives of charitable groups and political organizations,

engage in solicitation on state roads in the vicinity of Ives Dairy Road and Biscayne Boulevard. Nevertheless, according to the Plaintiffs, they have never seen Metro-Dade police officers arrest or warn these individuals for violating the law. Officer Romero testified, without contradiction, that she has warned and arrested individuals other than flower vendors for violations of Fla. Stat. §337.406. Lieutenant McGillivray added that although he has not arrested or warned individuals other than flower sellers, officers under his command have done so. McGillivray explained that most of the vendors who used to sell their wares on the street no longer do so, as a result of Metro-Dade's enforcement of section 337.406. He explained that charitable groups sometimes attempt to solicit contributions while standing in the roadway, but that these groups either leave the area or move to the sidewalk after being advised of the applicable laws and regulations.

Both McGillivray and Romero acknowledged that they have not enforced section 337.406 against vendors of the Miami Herald or other newspapers. According to McGillivray, the officers in his district have refrained from enforcing the statute against Herald vendors because of a bulletin from the Police Department's legal staff, which expressed concern about the constitutionality of applying a former version of section 337.406 to newspaper sales. McGillivray and Romero testified that Metro-Dade officers do not arrest flower vendors on the basis of the content of their message or their race, religion or political beliefs. Indeed, both McGillivray and Romero testified that they are not aware of the

race, religion or political beliefs of the Plaintiffs, and have never overheard the substance of Plaintiffs' remarks to motorists while selling their goods.

B.

Plaintiffs filed their complaint on March 18, 1996, along with a motion for preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.² The complaint arises under 42 U.S.C. §1983, and seeks a declaration that Fla. Stat. §337.406 is overbroad and unconstitutional as applied or selectively enforced in violation of the First and Fourteen Amendments to the United States Constitution. Plaintiffs request an injunction prohibiting enforcement of the statute, damages and other relief.

The Plaintiffs moved for a hearing on their request for an injunction in an emergency motion dated April 4, 1995. The parties appeared for a status conference on April 15, 1996, at which time the Court scheduled the parties for an evidentiary hearing. At the hearing on May 2nd, the Court took testimony from five witnesses and listened to oral argument on the outstanding motions. In a lengthy Order dated May 6, 1996, the Court denied Plaintiffs' motion for preliminary injunctive relief, finding no likelihood of success on the merits. First, the Court held that section 337.406 is not facially unconstitutional, because it is narrowly tailored to serve the State of Florida's significant interest in

²The complaint initially named the State of Florida as a co-Defendant. In the May 6th Order, however, we dismissed the claims against the State on Eleventh Amendment grounds.

facilitating traffic flow and ensuring the safety of motorists and pedestrians. Second, the Court held that section 337.406 was not unconstitutional as applied to the Plaintiffs and their customary method of selling flowers, because Plaintiffs had failed to show that their practice could never violate the statute or give rise to the concerns that led to its enactment. Third, the Court found no persuasive evidence that Fla. Stat. §337.406 was being selectively enforced against flower vendors.

II.

The standard to be applied in reviewing summary judgment motions is stated unambiguously in Rule 56(c) of the Federal Rules of Civil Procedure:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

It may be entered only where there is no genuine issue of material fact. Moreover, the moving party has the burden of meeting this exacting standard. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). As the Eleventh Circuit has explained:

In assessing whether the movant has met this burden, the courts should view the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion. Adickes, 398 U.S. at 157, 90 S. Ct. at 1608; Marsh, 651 F.2d at 991. All reasonable doubts about the facts should be resolved in favor of the non-movant. Casey Enterprises v. Am. Hardware Mutual Ins. Co., 655 F.2d 598, 602 (5th Cir. 1981). If the record presents factual issues, the court must

not decide them; it must deny the motion and proceed to trial. Marsh, 651 F.2d at 991; Lighting Fixture & Elec. Supply Co. v. Continental Ins. Co., 420 F.2d 1211, 1213 (5th Cir. 1969). Summary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts. Lighting Fixture & Elec. Supply Co., 420 F.2d at 1213. If reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment. Impossible Electronics, 669 F.2d at 1031; Croley v. Matson Navigation Co., 434 F.2d 73, 75 (5th Cir. 1970).

Moreover, the party opposing a motion for summary judgment need not respond to it with any affidavits or other evidence unless and until the movant has properly supported the motion with sufficient evidence. Adickes[], 398 U.S. at 160 . . .; Marsh, 651 F.2d at 991. The moving party must demonstrate that the facts underlying all the relevant legal questions raised by the pleadings or otherwise are not in dispute, or else summary judgment will be denied notwithstanding that the non-moving party has introduced no evidence whatsoever. Brunswick Corp. v. Vineberg, 370 F.2d 605, 611-12 (5th Cir. 1967). See Dalke v. Upjohn Co., 555 F.2d 245, 248-49 (9th Cir. 1977).

Clemons v. Dougherty County, 684 F.2d 1365, 1368-69 (11th Cir. 1982); see also Amey, Inc. v. Gulf Abstract & Title, Inc., 758 F.2d 1486, 1502 (11th Cir. 1985), cert. denied, 475 U.S. 1107 (1986).

The United States Supreme Court has provided significant additional guidance as to the evidentiary standard which trial courts should apply in ruling on a motion for summary judgment:

[The summary judgment] standard mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict.

Brady v. Southern R. Co., 320 U.S. 476, 479-80, 64 S. Ct. 232, 234, 88 L. Ed. 239 (1943).

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). The Court in Anderson further acknowledged that "[t]he mere existence of a scintilla of evidence in support of the position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant]." Id. at 252 (emphasis added). In determining whether this evidentiary threshold has been met, the trial court "must view the evidence presented through the prism of the substantive evidentiary burden" applicable to the particular cause of action before it. Id. at 254. If the non-movant in a summary judgment action fails to adduce evidence which would be sufficient, when viewed in a light most favorable to the non-movant, to support a jury finding in his favor, summary judgment may be granted. Id. at 254-55.

In a companion case, the Supreme Court declared that a non-moving party's failure to prove an essential element of his claim renders all factual disputes as to that claim immaterial and requires the granting of summary judgment:

In our view, the plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the

nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (emphasis added). We measure the parties' cross-motions for summary judgment against these standards.

III.

Plaintiffs now concede that section 337.406, properly interpreted, is constitutional on its face. P'tiff. Resp., at 8. Nevertheless, they renew their argument that the statute is unconstitutional as applied to them and their customary method of selling flowers. In our May 6th Order, we rejected the Plaintiffs' argument on this point in the following terms:

The Plaintiffs' next argument concerns whether Fla. Stat. §337.406 is unconstitutional as applied to the Plaintiffs' conduct in selling flowers on streets in North Dade. The issue here is not whether, in any specific instance, one of the Plaintiffs did or did not violate the statute. Rather, the issue is whether selling flowers in the manner that the Plaintiffs do makes application of the statute to them — as opposed to others — unconstitutional, because (1) their speech warrants special protection or (2) the manner in which the Plaintiffs sell their flowers is such that enforcing the statute against them could never serve the significant state interests that give rise to the section 337.406.

The Plaintiffs do not — and cannot — argue that the speech element of selling flowers is somehow entitled to a higher measure of constitutional protection than the speech associated with selling sandwiches or sunglasses or engaging in other commercial transactions. Moreover, the evidence establishes that the practice of mixing

pedestrian flower-sellers with temporarily stopped motor vehicles will, in some if not all instances, "pose a safety hazard [and] cause delays and disruptions to traffic as vehicles become detained at traffic lights while drivers fumble for money and vendors provide change." [News & Sun Sentinel Co. v. Cox, 702 F. Supp. 891, 900 (S.D. Fla. 1988)]. In the case at bar, Lieutenant McGillivray and Officer Romero testified to the various hazards actually created by vendors who peddle their wares while walking between lanes of traffic at red lights. These hazards include drivers swerving to avoid accidents, drivers slamming on their brakes to avoid collisions with vendors or other cars, and drivers who become agitated at the presence of strangers near their car window or at vendors' apparent nonchalance in stepping off the road once the light turns green.

Vance and Seralnick testified that they have never been involved in an accident as a result of their flower selling, and that they try to conduct their business in a manner that is not dangerous and does not delay traffic. This evidence is not compelling, however. As the Eight Circuit noted under similar circumstances in [Acorn v. St. Louis County, 930 F.2d 591, 596 (8th Cir. 1991)]:

The fact that there was no evidence of Acorn's solicitors being hurt is of no probative value. The government need not wait for accidents to justify safety regulations. Nor is it sufficient for Acorn to show that its particular practices are safe if the practice of in-the-roadway solicitation generally is dangerous. It is the regulation's relationship "to the overall problem that the government seeks to correct," not its necessity in Acorn's particular case, that determines its validity.

The evidence does not establish that the Plaintiffs' practice of selling flowers by weaving between lanes of traffic while cars are stopped at red lights — and stepping off

to the sidewalk or median once the light turns green — is at all times compatible with the State's need to ensure traffic safety and prevent unreasonable delay to motorists. It is inevitable that this practice will, on occasion, be unsafe or disruptive, no matter how cautious or considerate the Plaintiffs might be. Indeed, on this limited record, the evidence establishes that Vance and Seralnick do not always conduct their business in the innocuous manner that they suggest. Officer Romero testified that, when she arrested Seralnick, he had been lingering in the left-turn lanes after the traffic light turned green, causing a delay that limited the number of cars able to complete the turn before the light turned red again. Lieutenant McGillivray testified that he has observed Vance remaining on the street after the light turned green, disrupting traffic and causing cars to honk their horns. Under these facts and circumstances, the Plaintiffs have not met their burden of showing that the enforcement of section 337.406 against them could never serve the State of Florida's interest in preventing interference with the movement of people and property on state roads.

Order, at 23-26 (citations to factual findings omitted).

The principal basis for the Plaintiffs' opposition to summary judgment is their supposition that, as far as the County is concerned, the Plaintiffs' customary method of selling flowers can never be carried out in a manner that does not violate the statute. According to the Plaintiffs, the County is prepared to arrest flower vendors without regard to whether their conduct in any particular instance "interferes with the safe and efficient movement of people and property." Thus, they seek "protection from this [C]ourt to prevent officers of Dade County from enforcing a new policy of the County to make arrests of flower vendors, regardless of whether plaintiffs obstruct traffic or otherwise

interfere in the free flow of traffic." P'tiff. Resp., at 1.

This argument is unconvincing. To begin with, the record does not support the Plaintiffs' belief that Metro-Dade police are arresting flower vendors under Fla. Stat. §337.406 without regard to the limitations of the statute. The Defendant acknowledges for purposes of its motion that "some arrests occurred although the accused was able to return to the median island or the shoulder before the light turned green and traffic began to move." Def. Mot., at 2. There is no evidence, however, that these arrests were made without a sufficient basis for the arresting officer to believe that the accused was "interfer[ing] with the safe and efficient movement of people and property." During the May 2nd evidentiary hearing, Officers McGillivray and Romero stated unequivocally that they would not cite an individual for a violation of the statute unless they felt that the individual was obstructing the flow of traffic or pedestrians. See Order of May 6, 1996, at 6-8. Plaintiffs have come forward with no record evidence to suggest that Metro Dade officers regularly are abusing the statute, or have a policy of making arrests under section 337.406 without probable cause to believe that an infraction has occurred.

The Plaintiffs call our attention to what appears to be a Dade County arrest form dated January 2, 1996. See P'tiff. Resp., at exh. 6. The arrest form, executed by an Officer Ankney, charges Plaintiff Seralnick with violations of two Florida statutes: section 337.406, and a separate provision for "doing business

without a license." The narrative portion of the report explains that Seralnick was observed "walking along the roadway for the purpose of selling merchandise."³ Plaintiffs seem to suggest that this police report, standing alone, is sufficient to create a triable issue of fact on the question of whether the County has a policy of enforcing Fla. Stat. §337.406 without regard to whether a violation of the statute has taken place. We disagree. Absent meaningful details about the circumstances leading to the arrest, it is impossible for us to ascertain whether the arresting officer had cause to believe Seralnick was "interfering with the safe and efficient movement of people and property" at the time of his arrest. Moreover, even affording this police report the weight that Plaintiffs suggest, the record falls short of establishing a policy or pattern of making arrests pursuant to Fla. Stat. §337.406 without regard to the statute's limitations.

The heart of the Plaintiffs' argument is their opposition to the County's assumption that there can be an interference "with the safe and efficient movement of people and property" even in situations where vendors are able to leap onto the median or sidewalk before the light turns green. Plaintiffs once again

³Although Plaintiffs refer in passing to deposition testimony concerning this arrest, no testimony is cited in the briefs, and the deposition transcript is not in the record. Thus, Plaintiffs' statement that "[i]n his deposition testimony officer Ankney stated that he was unaware that this statute had been declared unconstitutional . . ." is not competent evidence. P'tiff. Resp., at 3. We note, however, that the version of section 337.406 on the books in January, 1996 had not been declared unconstitutional by any Court.

insist that they sell their goods in a manner that does not create a hazard to vehicles or pedestrians. They also stress that Metro-Dade Police cannot recount a single instance where an accident resulted from their conduct. But as this Court suggested in its May 6th Order, no reasonable trier of fact could find that the Plaintiffs' customary practice of weaving between lanes of traffic while cars are stopped at red lights — and attempting to step off to the sidewalk or median once the light turns green — could never "interfere with the safe and efficient movement of people and property." See Order, at 25-26. Even in situations where the Plaintiffs managed to step off to the median or sidewalk before the light turned green, an officer could conclude that, under the circumstances, the Plaintiffs' presence in the roadway had threatened to undermine the safe and efficient movement of people and property. See Def. Mot., at 4 (noting that individuals who engage in on-the-roadway solicitation "distract drivers from . . . watching the intersection and being alert to move when the light changes, and thereby create probable cause to believe that traffic is thereby impeded"). As the Eighth Circuit observed in Acorn v. City of Phoenix, 798 F.2d 1260 (9th Cir. 1986):

Unlike oral advocacy of ideas, or even the distribution of literature, successful solicitation requires the individual to respond by searching for currency and passing it along to the solicitor. Even after the solicitor has departed, the driver must secure any change returned, replace a wallet or close a purse, and then return proper attention to the full responsibilities of a motor vehicle driver. *The direct personal solicitation from drivers distracts them from their primary duty*

to watch the traffic and potential hazards in the road, observe all traffic control signals or warnings, and prepare to move through the intersection.

789 F.2d at 1269; see also City of Baton Rouge 876 F.2d at 498 (quoting this language). In City of Phoenix, as in City of Baton Rouge, the Court of Appeals applied these principles to uphold against First Amendment challenge municipal ordinances that effectively banned all roadway solicitations, whether or not they "interfered with the safe and efficient movement of people and property." These cases reflect the courts' ambivalence with the notion that no obstruction of pedestrian or vehicular traffic exists so long as the individual making the solicitation is able to step off the roadway when the light turns red. This Court shares that ambivalence, and is unpersuaded by Plaintiffs' suggestion that Fla. Stat. §337.406 cannot constitutionally be applied in situations where they are not found in the roadway at the precise moment vehicular traffic resumes.

To reiterate, the question for purposes of determining whether a statute is unconstitutional as applied is not whether it has been applied properly in any particular instance; rather, we must ask if the statute could ever be applied constitutionally to the Plaintiffs' customary practice. See, e.g., County of St. Louis, 930 F.2d at 596. The answer to this question is clear. Even assuming that the Plaintiffs invariably are able to leap onto the median or sidewalk before the light turns green (a factual predicate not supported by the record), no reasonable trier of fact

could disagree that their presence in the roadway at certain points while the light is red may create a risk of undermining the safe and efficient movement of people and property on the road, within the meaning of Fla. Stat. §337.406. No genuine issue remains, therefore, as to whether the statute is unconstitutional as applied to the Plaintiffs' customary method of selling flowers. Metro-Dade police are entitled to enforce the statute on a case-by-case basis; and to the extent that one of the Plaintiffs believes that, in a particular instance, he has been arrested without probable cause, section 1983 provides an altogether satisfactory vehicle for relief from that incident.

Vance and Seralnick next reprise their argument that Fla. Stat. §337.406 is being selectively enforced against them. As support for this contention, Plaintiffs once again highlight the County's practice of enforcing Fla. Stat. §337.406 against flower sellers, but not against vendors of the Miami Herald. As noted in the May 6th Order, however, this fact does not establish selective enforcement:

In order to establish a claim for selective enforcement, a plaintiff must show (1) he has been singled out for prosecution among others similarly situated who commit the same offense and (2) the singling out was invidious or done in bad faith. See Geaneas v. Willets, 911 F.2d 579, 587 (11th Cir. 1990), cert. denied sub. nom., 499 U.S. 955 (1991); Fillingim v. Boone, 835 F.2d 1389, 1399 (11th Cir. 1988); United States v. Lichenstein, 610 F.2d 1272, 1281 (5th Cir. 1980) (listing racial and religious discrimination as examples of impermissible considerations). The burden of proof in making a prima facie showing of selective prosecution has been characterized

as "heavy." Filligim, 835 F.2d at 1399 (citing United States v. Johnson, 577 F.2d 1304, 1308 (5th Cir. 1978)). These cases reflect the principle that even the conscious exercise of some selectivity in enforcement of a statute is not in and of itself a constitutional violation. Oyler v. Boles, 368 U.S. 488, 450 (1962); Owen v. Wainwright, 806 F.2d 1519 (11th Cir. 1986), cert. denied sub. nom., 481 U.S. 1071 (1987).

The Plaintiffs allege that the section 337.406 has been applied selectively by Dade County. See Compl. at ¶17 (asserting that "while plaintiffs and others selling flowers to motorists have been arrested and threatened with arrest by officers of the Dade County Police Department other vendors, and specifically vendors of the Miami Herald, a local newspaper, have not been so harassed or threatened with arrest, and have been specifically permitted to sell newspapers at the same locations where plaintiffs have been deprived of the right to sell their products"). All three of the Plaintiffs testified that they were not aware of anyone other than a flower vendor being arrested for a violation of Fla. Stat. §337.406. McGillivray and Romero, however, stated unequivocally that Metro-Dade officers have arrested or warned others for apparent violations of the statute. Moreover, McGillivray and Romero made plain that they would not make an arrest under the statute unless they genuinely believed that the individual, whatever his activity, was causing a delay or creating a safety hazard. Although the evidence establishes that officers do not arrest newspaper vendors, McGillivray explained that this policy is based not a desire to limit all speech other than that contained in newspapers, but rather a good faith belief that such arrests or citations would be incompatible with the First Amendment.

These facts make clear that the Plaintiffs have not been singled out for enforcement and that flower vendors are not targeted on the basis of the content of their speech. We stress that the pertinent question

is whether the Plaintiffs — and flower sellers in general — were the subject of selective enforcement, and whether the decision to target these vendors (as opposed to others violating the statute) was done in bad faith or for an invidious motive. Thus, the mere fact that Metro Dade Police officers did not arrest or warn Miami Herald vendors does not, in and of itself, establish that the officers selected the flower vendors for impermissible reasons or on the basis of their message. At all events, the record evidence plainly does not support the Plaintiffs' contention that Fla. Stat. §337.406 was enforced solely against flower vendors. The Plaintiffs' Equal Protection claim is, therefore, without foundation.

Order, at 26-28 (emphasis added) (citations to factual findings omitted).⁴ Plaintiffs have introduced no persuasive new evidence or case law to support their selective enforcement claim, which continues to rest on the mistaken assumption that the County's reluctance to enforce Fla. Stat. §337.406 against newspaper vendors establishes the selectivity of its enforcement of the statute against all other offenders.

⁴Testimony at the May 2nd hearing established that the County's concern about enforcing section 337.406 against newspaper vendors stems from the Judge Hastings' decision in Cox. In COX, the court held that the former version of section 337.406 was unconstitutional, in the context of a case brought by the publisher of various newspapers who argued that the statute abridged First Amendment free press rights. Shortly after Cox, in a memorandum dated June 8, 1989, the Police Legal Bureau advised officers that enforcement of the statute was to be immediately discontinued. See P'tiff. Resp., at exh. 1. Subsequent to the date of this memorandum, the language of section 337.406 was revised and narrowed in an effort to avoid any perceived constitutional infirmities. See Order of May 6, 1996, at 18 n.6. The issue of whether section 337.406, in its present form, may be constitutionally enforced against newspaper vendors is not before this Court, and Plaintiffs' argument that newspaper vendors create every bit as much of a safety risk as other roadside vendors is of no moment here.

Plaintiffs do cite a February 12, 1996 memorandum from Robert Diers, a Lieutenant with the Special Operations Unit, to certain police personnel. The memorandum states the following:

We have received numerous complaints reference illegal flower vendors in the area of Ives Dairy Road and Biscayne Boulevard, and Miami Gardens Drive and Biscayne Boulevard.

As well as being illegal, these vendors take customers away from legitimate business owners who pay rent and taxes in order to operate their businesses. They also present a traffic hazard to motorists who have to stop because another motorist is obstructing traffic to make a purchase from the vendor. It should also be noted that many of these vendors have outstanding bench warrants for failing to appear in court for previous vending arrests.

Please assign a unit from your squad to investigate these vendors and take the appropriate enforcement action. Attached is a copy of Legal Bulletin 95-4, which lists the County Ordinances and Florida State statutes that are applicable to these situations.

P'tiff. Resp., at exh. 5.

Plaintiffs highlight this memorandum as evidence that the County is arresting flower vendors not because they threaten motorist and pedestrian safety, but rather because they are drawing business from local merchants. The record plainly does not support this accusation, nor the concomitant assumption that arrests are being made even if the Plaintiffs are not obstructing pedestrian or vehicular traffic. Moreover, a claim of selective enforcement requires proof that "the selection was deliberately based upon an unjustifiable standard such as race, religion or other arbitrary classification." Oyler, 368 U.S. at 456; cf. United States v.

Armstrong, — U.S. —, 116 S. Ct. 1480, 1486-87 (1996) (holding that, to establish a claim of selective prosecution based on race, the defendant must meet a "demanding standard" and produce "clear evidence" that similarly situated individuals of a different race were not prosecuted). The Diers memorandum does not constitute significant proof of the kind of invidious motive that gives rise to a constitutional violation, and Plaintiffs cite no case law to the contrary. Indeed, Plaintiffs concede that "[i]n this case, flower vendors are [not] a 'suspect class.'" P'tiff. Resp., at 10.

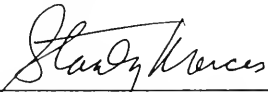
For all of the foregoing reasons, no reasonable trier of fact could conclude that Fla. Stat. §337.406 is being applied in an unconstitutionally restrictive or selective manner. The Plaintiffs ask us to rule that they "are entitled as a matter of law to sell flowers to motorists stopped in the street, so long as they do not obstruct traffic." P'tiff. Resp., at 6. But what Plaintiffs seek is nothing more or less than what the statute permits now. The essence of Plaintiffs' objection is their belief that their customary sales practice does not obstruct traffic, and can never give rise to the safety and efficiency concerns that led to the statute's enactment. But absent some persuasive indication that their method of selling flowers can never create a safety hazard or interfere with the smooth passage of vehicles or pedestrians, or that Metro-Dade officers have a policy of regularly arresting individuals even if they have no probable cause to believe that an offense has occurred, it is not for us to enjoin the County from enforcing an otherwise constitutional law. The Plaintiffs remain

free to sell flowers on state roads; they simply may not do so in a manner that violates a state statute.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Defendant's motion for summary judgment is GRANTED, and the Plaintiffs' cross-motion is DENIED. All other pending motions are DENIED AS MOOT. The Defendant shall submit a proposed Order of Final Judgment within ten (10) days of the date of this Order.

DONE AND ORDERED in Miami, this 28th day of October, 1996.



STANLEY MARCUS
UNITED STATES DISTRICT JUDGE

copies to:
counsel of record

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Rodney W. Sippel

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

Home: Kirkwood, Missouri

Office: Husch & Eppenberger
100 North Broadway, Suite 1300
St. Louis, Missouri 63102

3. Date and place of birth.

July 26, 1956; Jefferson City, Missouri

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 (Manning) Sippel
Nurse
Cardinal Glennon Children's Hospital
1465 South Grand Boulevard
St. Louis, Missouri 63104

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

Washington University School of Law
St. Louis, Missouri
Dates Attended: August, 1978 through December, 1981
Degree: J.D., December, 1981

University of Tulsa
Tulsa, Oklahoma
Dates Attended: August, 1974 through June, 1978
Degree: B.S., with Honors, 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.

1978 to June, 1979	Employee, National Museum of Transport 3015 Barrett Station Road St. Louis, Missouri 63122
June, 1979 to May, 1980	Staff Assistant Office of U. S. Senator Thomas F. Eagleton 1520 Market St. Louis, Missouri 63102
May, 1980 to November, 1980	Field Director Eagleton Campaign Committee 7701 Clayton Road St. Louis, Missouri 63105
November, 1980 to March, 1982	Staff Assistant Office of U.S. Senator Thomas F. Eagleton 1520 Market St. Louis, Missouri 63102
March, 1982 to December, 1988	Associate Husch & Eppenberger 100 North Broadway, Suite 1300 St. Louis, Missouri 63102
January, 1989 to April 1993	Partner Husch & Eppenberger 100 North Broadway, Suite 1300 St. Louis, Missouri 63102
May, 1993 to October, 1995	Administrative Assistant Congressional Office of U.S. Congressman Richard A. Gephardt 11140 South Towne Square #201 St. Louis, Missouri 63104
October, 1995 to Present	Partner Vice-Chairman Litigation Department Husch & Eppenberger 100 North Broadway, Suite 1300 St. Louis, Missouri 63102

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.

Eagle Scout

University of Tulsa

Phi Eta Sigma (Freshman Honorary Society)
 Omicron Delta Kappa (Leadership Honorary Society)
 Mortar Board (Scholarship/Leadership Honorary Society)
 W.V. Holloway Prize in Political Science
 Outstanding Senior Award, 1978
 Rhodes Scholar Nominee

Washington University School of Law

Order of the Barristers
 Moot Court National Competition Team
 International Law Moot Court National Competition Team:
 • National Semi-Finalist

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.

Bar Association of Metropolitan St. Louis
 Missouri Bar Association
 American 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. Louis Zoo Friends: since approx. 1992

St. Louis Art Museum: since approx. 1992

University of Tulsa Alumni Association: since 1978

- served as St. Louis Coordinator
- served on National Board of Directors

KETC/Channel 9 (Public Television Station):
currently a member and have been a member
in other 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 membership. Give the same information for administrative bodies which require special admission to practice.

Missouri Supreme Court, 1982

United States District Court
for the Eastern District of Missouri, 1982

United States District Court
for the Southern District of Illinois, 1987

United States Court of Appeals
for the Eighth 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.

As part of a CLE publication "For the Defense: Limiting Damages in Missouri", I wrote a chapter "Discovery Techniques for the Defense."

I have also written an outline on Noncompetition Agreements under Missouri Law, which has been distributed at CLE's as a hand-out.

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

Excellent. May, 1996.

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.

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 did not serve as a clerk.

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.

March, 1982 to December, 1988
Associate
Husch & Eppenberger
100 North Broadway, Suite 1300
St. Louis, Missouri 63102

January, 1989 to April, 1993
Partner
Husch & Eppenberger
100 North Broadway, Suite 1300
St. Louis, Missouri 63102

- 1988-1991 - Chairman
Hiring Committee
- 1989-1993 - Coordinator
Volunteer Lawyer Program

May, 1993 to October, 1995
Administrative Assistant
Congressional Office of
U.S. Congressman Richard A. Gephardt
11140 South Towne Square #201
St. Louis, Missouri 63104

October, 1995 to Present
Partner
Husch & Eppenberger
100 North Broadway, Suite 1300
St. Louis, Missouri 63102

- Vice Chairman - Litigation
Department
- Compensation Committee

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 handled hundreds of litigation matters ranging from personal injury claims to RICO and antitrust cases.

My practice has evolved from defense of personal injury cases to complex commercial litigation during the past 15 years.

Upon graduation from law school, I joined the St. Louis law firm of Husch & Eppenberger. My initial focus was defense of personal injury cases. The primary client in these matters was the Bi-State Development Agency (the local public transportation authority). From 1985 through 1988, I was the supervising attorney for Bi-State cases assigned to Husch & Eppenberger. At any given time, I handled a docket of at least 30 to 40 personal injury cases pending in the Circuit Court of the City of St. Louis. The nature of the personal injury cases ranged from "soft tissue" injuries to wrongful death cases. The volume of personal injury cases I was handling dictated that I was on the trial docket on almost a weekly basis.

Even while I was managing a substantial personal injury caseload, I always handled a few commercial cases for lending institutions. As the number and complexity of the commercial cases grew, my practice shifted over time toward a commercial litigation practice. This transition also shifted the focus of my practice from the state courts to the federal courts. For example, my personal injury docket of 30 to 40 cases was typically pending in the Circuit Court for the City of St. Louis. Today, I do not have a single case pending in the City Circuit Court. Rather, the commercial cases I am currently handling

are almost exclusively pending in the United States District Court for the Eastern District of Missouri or other federal courts.

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

My current commercial litigation practice includes cases involving federal antitrust law, the Uniform Commercial Code, lender liability, non-compete agreements and Lanham Act claims (primarily disputes over counterfeit merchandise). During the past year, my clients have primarily been the General Electric Capital Corporation and Lloyd's of London in commercial matters, and the St. Louis Convention and Visitors Commission in its antitrust case against the National Football League.

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.

During the first seven years of my practice, I was in court on a weekly basis. As my practice evolved from personal injury defense (primarily state court cases) to complex commercial defense (primarily federal court cases) my court appearances became less frequent.

2. What percentage of these appearances was in:
- (a) federal courts: 60%
 - (b) state courts of record; 35%
 - (c) other courts. 5%
3. What percentage of your litigation was:
- (a) civil; 99%
 - (b) criminal. 1%

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 handled at least 15 cases to verdict or judgment. Six of these cases were jury trials. I was sole counsel in four jury trials and six bench trials. The remaining cases were tried as an associate or co-counsel.

5. What percentage of these trials was:

- (a) jury; 40%
(b) non-jury. 60%

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. Hardin v. Lloyd's of London, 4:96CV02252GFG, United States District Court for the Eastern District of Missouri. The Honorable Judge George F. Gunn, Jr.

I was co-counsel for the defendant Lloyd's of London.

SUMMARY: Plaintiffs "Names" sought to enjoin payment of letters of credit issued to Lloyd's of

London as security for insurance underwriting risks made by the plaintiff "Names" at Lloyd's of London.

The case presented issues relating to: i) the limited circumstances under which a letter of credit may be enjoined; ii) enforcement of venue selection provisions; and iii) collateral estoppel.

The original petition was filed in state court. I removed the action to the United States District Court for the Eastern District of Missouri. Briefs were filed and oral arguments heard on the request for a Temporary Restraining Order on November 15, 1996.

RESULT: Plaintiffs' request for a TRO was denied and Lloyd's was permitted to collect the money due pursuant to the terms of the letters of credit.

OTHER COUNSEL:

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Telephone: (314) 241-1800
Counsel for Plaintiffs

CO-COUNSEL:

Mr. Alex Bartlett
Husch & Eppenberger
235 East High Street
Jefferson City, Missouri (65101)
Telephone: (573) 635-9118
Co-Counsel for Lloyd's

2. E. Bruce Nangle, et al. v. Mark Twain Bank, Adv. No. 87-0029-BKC-JJB, United States Bankruptcy Court for the Eastern District of Missouri. This case is still active although it has been pending since 1987.

I serve as sole counsel for the defendant Mark Twain Bank.

SUMMARY: Plaintiffs claim that Mark Twain Bank violated the Uniform Fiduciaries Law in making certain loans to a Missouri limited partnership, Crossroads USA Limited II, causing injury to the plaintiffs who were limited partners in the partnership.

The substantive issue in this case was whether and under what circumstances the Bank owed a fiduciary duty under the Uniform Fiduciaries Law to limited partners in making a loan to a limited partnership. Additionally, this was a case of first impression regarding the applicable statute of limitations for claims arising under the Uniform Fiduciary Law.

RESULT: Summary Judgment was entered for Mark Twain Bank. See, In re Lauer, 97 Bkty. Rptr. 544 (Bkty. E.D.Mo. 1989). The judgment was upheld by the District Court. The United States Court of Appeals for the Eighth Circuit recently remanded the case for further proceedings.

OTHER COUNSEL:

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Telephone: (314) 991-4999
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Mr. Michael D. Stokes
1215 Pine Street
St. Louis, Missouri 63103
Telephone: (314) 621-3743
Counsel for Plaintiffs

3. Calvin Klein Jeanswear Company v. Venture Stores, Inc., Cause No. 4:96CV01263, United States District Court. The Honorable Judge E. Richard Webber.

I was co-counsel for plaintiff, Calvin Klein Jeanswear Company.

SUMMARY: Calvin Klein filed a Complaint for trademark infringement seeking injunctive relief arising out of the alleged sale of counterfeit or "seconds/irregular" tee shirts by Venture Stores as first quality Calvin Klein merchandise.

The primary issue in this case was whether Venture Stores was selling counterfeit or "second" merchandise as first quality Calvin Klein merchandise. TRO hearing was commenced in May, 1996. Settlement discussions precluded the submission of the claim to the court for judgment.

RESULT: A consent agreement was negotiated and its implementation is the subject of ongoing discussions.

COUNSEL:

Mr. Loel Seitel
Law Offices Marc F. Desiderio
45 Birch Street
Englewood Cliffs, New Jersey 07632
Telephone: (201) 568-3003
Co-Counsel for Plaintiff

Mr. Alan Nemes
Kalish & Gilster
500 North Broadway, Suite 1200
St. Louis, Missouri 63102
Telephone: (314) 436-1331
Counsel for Venture

4. Thera-Kinetics, Inc. v. Dan Mecklenberg, Cause No. 4:95CV2283JCH, United States District Court for the Eastern District of Missouri. The Honorable Jean C. Hamilton.

I was sole counsel for defendant former employee Dan Mecklenberg.

SUMMARY: Complaint filed by former employer sought relief for breach of contract, trade secrets and a non-compete agreement.

The primary issues in this case focused on traditional non-compete issues relating to the existence of an employer's "protectable interest"

in the goodwill of its customers balanced against an employee's right to seek new employment. The case also involved choice of law issues and traditional unfair competition issues.

RESULT: Case was settled in May of 1996.

OTHER COUNSEL:

Mr. Harry W. Wellford, Jr.
Thompson Coburn
1 Mercantile Center
St. Louis, Missouri 63101
Telephone: (314) 552-6000
Counsel for Plaintiff.

5. Stewart, et al. v. Fry, et al., Cause No. 84-4325, United States District Court for the Southern District of Illinois. The Honorable Judge James L. Foreman.

I was sole counsel for former Bank Officers and Directors, including former Bank President Thomas E. Fry, Jr.

SUMMARY: Plaintiff purchased "control" of the Ina State Bank through a stock purchase. The Bank failed shortly after the purchase. Plaintiff sued the sellers and the Bank's former Board of Directors for securities fraud and common law fraud. Discovery in this case and the companion cases proceeded almost full time for approximately one year.

The primary issue was the nature and extent of the duty to disclose and whether the former Board of Directors failed to fully disclose the financial condition of the Bank during plaintiff's due diligence examination of the Bank. Discovery and depositions of Bank officers, auditors, accountants and FDIC personnel continued virtually full-time for more than one year spanning a period of time from 1984 through 1985.

RESULT: Case resulted in a favorable settlement for defendants when the companion case against the policy carrier was settled.

OTHER COUNSEL:

Mr. John A. Klobasa
 Kohn, Shands, Elbert, Gianoulakis & Giljum
 1 Mercantile Center
 St. Louis, Missouri 63101
 Telephone: (314) 241-3963
 Counsel for Plaintiff

Mr. Terrance J. Good
 Lashly & Baer
 714 Locust
 St. Louis, Missouri 63101
 Telephone: (314) 621-2939
 Counsel for Co-Defendant Accounting Firm

Ms. Susan Bennett Green, Law Clerk
 The Honorable John R. Gibson
 837 U.S. Court House
 811 Grand
 Kansas City, Missouri 64102
 Telephone: (816) 426-3169
 Counsel for Co-Defendant Bank Directors

Mr. Kent Knickmeyer
 Thompson Coburn
 1 Mercantile Center
 St. Louis, Missouri 63101
 Telephone: (314) 552-6000
 Counsel for Co-Defendant Bank Director.

COMPANION CASES: FDIC v. Withers, et al., Cause No. 85-4070, United States District Court for the Southern District of Illinois; F & D Company of Maryland v. Fry, et al., Cause No. 89-3070, United States District Court for the Southern District of Illinois.

6. C.I.T. v. Duncan Grading & Construction, Inc., Cause No. 82-0305(2), United States District Court for the Eastern District of Missouri. The Honorable Chief Magistrate Judge David D. Noce. I was co-counsel for C.I.T. at trial and briefed and argued the appeal in the United States Court of Appeals for the Eighth Circuit.

SUMMARY: C.I.T., a commercial lender, sought payment due on a promissory note and security agreement including attorneys' fees and costs of repossessing the pledged equipment. Despite defendants' refusal to pay the amounts due under the promissory note and hiding the collateral, defendant claimed that the conduct of the repossession and the sale of repossessed equipment was not "commercially reasonable" under the Uniform Commercial Code.

The fundamental issue in this case was whether CIT's sale of the collateral was commercially reasonable under Article 9, Section 504, of the Uniform Commercial Code.

This case was tried to verdict in a one day trial in December, 1982.

RESULT: Trial court determined that C.I.T. complied with the requirements of Article 9 of the Uniform Commercial Code and entered judgment for the balance due to C.I.T. The United States Court of Appeals for the Eighth Circuit upheld the trial verdict. See C.I.T. Corporation v. Duncan Grading & Construction, Inc., 739 F.2d 359 (8th Cir. 1984).

OTHER COUNSEL:

Mr. David Lander
Thompson Coburn
1 Mercantile Center
St. Louis, Missouri 63101
Telephone: (314) 552-6000
Trial Co-Counsel;

Mr. Sidney Rubin
230 South Bemiston
St. Louis, Missouri 63105
Telephone: (314) 862-6000
Counsel for the Defendant.

7. Horseshoe Entertainment, a Louisiana Limited Partnership, and Robinson Property Group Limited Partnership, Cause No. 4:96CV00695, United States District Court for the Eastern District of Missouri. The Honorable Charles A. Shaw.

I was lead counsel for General Electric Capital Corporation.

SUMMARY: Horseshoe Entertainment sought to recover a prepayment premium previously paid to GE Capital. Horseshoe claimed that a loan officer at GE Capital had orally agreed to waive any prepayment premium under certain conditions. GE Capital denied any such agreement and relied on Missouri's newly enacted statute of frauds governing credit agreements (\$432.045 R.S.Mo. (1994)) whereby credit agreements may not be amended except in writing upon compliance with the statute.

This was a case of first impression under Missouri's statute of frauds governing credit agreements.

The Court determined that the statute of frauds governing credit agreements precluded any action, including promissory estoppel and fraud, arising out of an oral amendment to a credit agreement.

RESULT: Summary judgment for GE Capital was granted on February 21, 1997.

OTHER COUNSEL:

Mitchell A. Margo, Esq.
Green, Schaaf & Margo, P.C.
7733 Forsyth Boulevard
Suite 800
St. Louis, Missouri 63105
Telephone: (314) 862-6800
Facsimile: (314) 862-1606
Counsel for Plaintiff Horseshoe Entertainment

8. Pohlmann v. Bil-Jax, Inc., Cause No. 932-8665, Circuit Court for the City of St. Louis, Missouri. Trial Judge: The Honorable Circuit Judge James Edwards.

I was co-counsel at trial for defendant Bil-Jax. I handled expert and damages testimony at the trial. The jury trial lasted one week during April of 1996.

SUMMARY: Plaintiff Pohlmann suffered a crushed left leg and ankle in a fall from a scaffold allegedly manufactured by defendant. The plaintiff alleged that the scaffold was unreasonably dangerous as designed. The extent of plaintiff's injuries and resulting damages were disputed.

The primary medical issues presented by this case related to the causation of plaintiff's alleged permanent injuries and future medical expenses.

RESULT: Jury verdict for plaintiff Pohlmann. The trial court ordered a remittitur of damages or re-trial on the issue of damages only. The case is presently on appeal to the Missouri Court of Appeals.

OTHER COUNSEL:

Matthew D. Menghini
Husch & Eppenberger
100 North Broadway, Suite 1300
St. Louis, Missouri 63102
Telephone: (314) 421-4800
Co-Counsel for Defendant

Mr. John J. Allan
8000 Maryland Avenue, Suite 1000
Clayton, Missouri 63105
Telephone: (314) 725-4545
Counsel for Plaintiff

9. Wilson, et al. v. Purdy, et al., Cause No. 914-00135, Circuit Court for the City of St. Louis, Missouri. The Honorable Judge Edward M. Peek.

I was sole counsel for newly elected members of the City of St. Louis School Board.

SUMMARY: This case was a challenge to the election results in City of St. Louis School Board election in April, 1991. Despite losing the City wide election by more than 8,000 votes, the unsuccessful candidates claimed that sufficient irregularities existed in election results to warrant new election.

RESULT: As provided for under Missouri's election law statutes, defendants demanded and received an immediate trial. After a one day hearing, judgment was entered for defendants and the election results were upheld.

OTHER COUNSEL:

Mr. Edward R. Joyce
1108 Olive Street
St. Louis, Missouri 63101
Telephone: (314) 241-2317
Counsel for Plaintiffs;

Mr. Leo V. Garvin
Anderson & Gilbert
7800 Forsyth Boulevard, 6th Floor
P. O. Box 50210
St. Louis, Missouri 63105
Telephone: (314) 721-2777
Counsel for City Election Board.

10. Trigg, et al. v. Leader Motors, Inc., et al., Cause No. 892-01066, Circuit Court for the City of St. Louis, Missouri. The Honorable Circuit Judge Jack L. Koehr.

I was sole counsel for the defendant automobile dealer, Leader Motors in the trial court during the class action certification hearings.

SUMMARY: Plaintiff sought to certify a class action against defendant car dealer, Leader Motors, Inc., and the Ford Motor Company for alleged oral misrepresentations by different salesmen in the sale of used rental cars as "program" or "executive driven" cars.

The primary issue in the case was whether different oral misrepresentations by different salesmen to different parties at different times could be certified as a class action under Missouri law.

The class certification issues were argued at a series of hearings held on February 6, 1991 and March 20, 1991, and on January 27, 1992.

A Writ of Prohibition was filed in the Missouri Court of Appeals on January 30, 1992. The Missouri Supreme Court accepted transfer on September 22, 1992.

RESULT: Trial court certified the class action. The Missouri Court of Appeals reversed the trial court. The Missouri Supreme Court reversed the Court of Appeals and upheld the original trial court ruling.

OTHER COUNSEL:

Mr. Jim Virtel
Armstrong Teasdale Schlafly & Davis
One Metropolitan Square
St. Louis, Missouri 63102
Telephone: (314) 621-5070
Counsel for Ford Motor Company;

Mr. Jeff Lowe
Gray & Ritter
701 Market Street
St. Louis, Missouri 63101
Telephone: (314) 241-5620
Counsel for Plaintiff.

In addition to the lawyers identified in the cases above, the following lawyers have had recent contact with me:

Mr. Mike Reid
Missouri Ethics Commission
P. O. Box 1254
Jefferson City, Missouri 65102
Telephone: (573) 721-2020
Toll Free: (800) 392-8660

Mr. Rodney D. Brown
Region Counsel
General Electric Capital Corporation
Commercial Equipment Financing
44 Old Ridgebury Road
Danbury, Connecticut 06810
Telephone: (203) 796-1064

Mr. Mike Wolff
Professor of Law
St. Louis University Law School
3700 Lindell Boulevard
St. Louis, Missouri 63108
Telephone: (314) 977-2774

Mr. Richard E. Haferkamp
Rogers, Howell & Haferkamp, L.C.
7733 Forsyth, #1400
Clayton, Missouri 63105
Telephone: (314) 727-5188

Mr. Frank J. Elpers
Elders & Inman, P.C.
601 Market Street
P. O. Box 404
Ste. Genevieve, Missouri 63670
Telephone: (573) 883-5000

Mr. Bradley A. Winters
Thompson Coburn
One Mercantile Center
St. Louis, Missouri 63101
Telephone: (314) 552-6000

Mr. Richard A. Riezman
Riezman & Blitiz, P.C.
120 South Central Avenue
Clayton, Missouri 63105
Telephone: (314) 727-0101

The Honorable Edward L. Filippine
319 U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101
Telephone: (314) 539-3623

The Honorable Catherine D. Perry
U. S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101
Telephone: (314) 539-6192

Mr. Richard P. Magurno
 Senior Vice President and General Counsel
 Trans World Airlines, Inc.
 One City Centre; 515 North 6th Street
 St. Louis, Missouri 10549
 Telephone: (314) 589-3000

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 had the opportunity to handle a number of matters which I believe served to enhance the St. Louis Metropolitan Community.

I handled the legal aspects of ballot proposition campaigns which sought to enhance the economic stability of St. Louis' Forest Park (Proposition P in 1992) and a bond issue to expand Lambert St. Louis Airport (Proposition L in 1991).

I was intimately involved in the negotiations between the City of St. Louis and Trans World Airlines which allowed TWA to emerge from bankruptcy protection (the first time) in 1993. The result of those negotiations also gave the City of St. Louis more control over the future of the airport.

I am also proud of the role that I have played in mentoring and training a large number of associates at Husch & Eppenberger.

In addition to the above, there is no other "legal activity" that compares to my experience in the adoption of our son. An adoption is obviously an intensely personal experience. But as a lawyer, I experienced the legal system from a different point of view. To lawyers, the courthouse and the courtroom become familiar places, like old friends. As a party to a legal proceeding, even an adoption, the courthouse becomes an intimidating place where your future hangs in the balance. Even in our adoption proceedings, where the result was never really in doubt, the uncertainty was unsettling.

While the experience did not change the substantive "practice of law" for me, I know I am a better lawyer as a result of my experience as a "party" to my son's adoption.

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.

By reason of my prior and present association with Husch & Eppenberger, I participate in the Husch & Eppenberger Profit Sharing Plan and Trust of which all my 401(k) monies are currently invested with the American Bar Association Members Retirement Program. My interest in the plan is fully vested and any future earnings or payments I would receive are governed by federal law.

By reason of my prior employment by the United States Congress, I am a participant in the United States Government Thrift Savings Plan. My interest in the plan is fully vested and any future earnings or payments are governed by federal law.

I do not qualify for any retirement benefits from the Federal Employees Retirement System.

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.

My affiliation as a partner at Husch & Eppenberger and confidential knowledge of specific pending cases will present conflict issues at least until those specific cases are resolved.

I will engage in a case by case analysis of each case that might come before me to determine if disqualification under 28 USC §455 is appropriate. I will follow the Code of Judicial Conduct in reviewing any case for 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.

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 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.

In 1980, I was a Field Director in Thomas F. Eagleton's re-election campaign to the United States Senate. I was responsible for general campaign activity in portions of the St. Louis area and Southeast Missouri.

In 1992, I was involved in Robert L. Holden's campaign for Missouri State Treasurer as a general unpaid advisor.

I have not otherwise been personally involved or employed by or served in an official capacity in any other political campaigns. I have served as paid legal counsel for several campaign committees, primarily related to ethics issues.

I have served as paid legal counsel for the following campaign committees relating to ballot propositions:

1. Proposition O (ballot proposition for the construction of facilities for the Olympic Festival in St. Louis) in 1992

2. Proposition P (ballot proposition to fund support for Forest Park) in 1992
3. Proposition L (ballot proposition for a bond issue for expansion of Lambert Airport) in 1991
4. Proposition A (referendum relating to the expansion of St. Louis Art Museum) in 1992

AG-10
Rev. 5/96
FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1996

 Report Required by the Ethics
 Reform Act of 1989, Pub. L. No.
 101-194, November 30, 1989
 15 U.S.C. App. 4, 351-1121

1. Person Reporting (Last name, first, middle initial) Sippel, Rodney W.	2. Court or Organization United States District Court for the Eastern District of Missouri	3. Date of Report 5 / 16 / 97
4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time) United States District Judge - Nominee	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 5 / 15 / 97 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period 1 / 1 / 96 - 12 / 31 / 96
7. Chambers or Office Address 100 N. Broadway, Suite 1300 St. Louis MO 63102	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
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. 9-13 of Instructions.)

 POSITION
 NAME OF ORGANIZATION/ENTITY
 NONE (No reportable positions)

Partner _____ Husch & Eppenberger _____

II. AGREEMENTS. (Reporting individual only, see pp. 14-17 of Instructions.)

 DATE
 PARTIES AND TERMS
 NONE (No reportable agreements)

1996 _____ Husch & Eppenberger Employee Profit Sharing Plan & Trust (currently invested in the ABA Retirement Program) _____

1996 _____ Husch & Eppenberger partnership income and redemption of partnership interest as determined by partnership agreement upon termination _____

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

 DATE
 SOURCE AND TYPE
 GROSS INCOME
(Spouse's Net Spouse's)
 NONE (No reportable non-investment income)

1	1996 & 1997	Cardinal Glennon Children's Hospital	\$ _____
2	1996 & 1997	Husch & Eppenberger (Income)	\$157,000 (annu)
3	_____	_____	\$ _____
4	_____	_____	\$ _____
5	_____	_____	\$ _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Sippel, Rodney W.

Date of Report
5 / 16 / 97

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets (including trust assets) <small>Indicate where applicable: owner of the asset by using the parenthetical (C) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (DC) for ownership by dependent child, (P) for place, (M) for trust, each asset except from prior disclosure.</small>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period						
	(1) Code (A-M)	(2) Type of Int.	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (C-S) Buy/Sell Date Month Day	If not exempt from disclosure				(6) Identity of Buyer/seller if private transaction	
						(3) Date Month Day	(4) Value Code (T-F)	(5) Gain Code (A-N)	(6)		
<input type="checkbox"/> NONE (No reportable income assets, or transactions)					(E X E M P T)						
1 ABA 401(k)			M	I							
2 Manning Services Stock (S)	D	Div.	K	U							
3 Exxon Common Stock (J)	A	Div.	J	T							
4 Zoom Telephonics Common Stock (J)	A	Div.	J	T							
5 AT&T Common Stock (J)	A	Div.	J	T							
6 St. Louis Teachers Credit Union (S)	A	Int.	J	T							
7 Mark Twain Bank St. Louis, MO (J)	A	Int.	J	T							
8											
9											
10											
11											
12											
13											
14											
15											
16											
17											
18											

1. Income/Gain Codes: A-\$1,000 or less (See Col. B1 & D4) F-\$15,001 to \$25,000 B-\$1,001 to \$2,500 P-\$50,001 to \$100,000 C-\$2,501 to \$5,000 D-\$5,001 to \$15,000 W-More than \$1,000,000
 2. Value Codes: J-\$15,000 or less (See Col. C1 & D3) M-\$250,001 to \$500,000 K-\$15,001 to \$50,000 L-\$50,001 to \$100,000 I-\$100,001 to \$100,000 N-More than \$1,000,000
 3. Value Method Codes: Q-Appraisal U-Book Value R-Cost (real estate only) V-Other S-Assessment W-Estimated T-Cash/Market

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Sippel, Rodney W.

Date of Report

5 / 16 / 97

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. 26-29 of Instructions.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>
<input type="checkbox"/>	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. 30-33 of Instructions.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 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
 N = \$250,001 - \$500,000 O = \$500,001 - \$1,000,000 P = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Sippel, Rodney W.

Date of Report

5/16/ 97

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

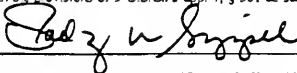
IX. CERTIFICATION.

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

May 16, 1997

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.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
One Columbus Circle, N.E., Suite 2-301
Washington, DC 20544

A ONE-PAGE FINANCIAL STATEMENT - NET WORTH DOCUMENT IS
AFTER PARAGRAPH 5 AND BEFORE SECTION III.

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	Notes payable to banks—secured	2	267
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Listed securities—add schedule	24	140	Notes payable to relatives		
Unlisted securities—add schedule	52	400	Notes payable to others		
Accounts and notes receivable:			Accounts and bills due	4	000
Due from relatives and friends			Unpaid income tax due 6/15/97	13	500
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule	223	900
Real estate owned—add schedule	310	000	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Autos and other personal property	38	500	Advance Carpet	4	200
Cash value—life insurance	4	007			
Other assets—itemize:					
401(k)	149	305			
U.S. Government Thrift Savings Plan	7	500			
			Total liabilities	247	867
			Net Worth	361	985
Total Assets	609	852	Total liabilities and net worth	609	852
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	0		Are any assets pledged? (Add schedule.)	No	1
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				

1 Pledge of automobile is reflected in Notes Payable to Bank - Secured

**RODNEY and MARY SIPPEL
ACCOUNT VALUATION***

<u>NO. OF SHRS.</u>	<u>SECURITY</u>	<u>MARKET VALUE*</u>
100	AT&T	\$ 3,375
100	ARAKIS ENERGY CORP.	\$ 365
200	EXXON CORP.	\$11,700
32	LUCENT TECHNOLOGIES, INC.	\$ 2,000
800	ZOOM TELEPHONICS, INC.	\$ 6,700
		<hr/> \$24,140

**As of close of business 5/6/97; subject to market fluctuation.*

Unlisted Securities:

Manning Services, Inc.	\$ 20,000
Husch & Eppenberger partnership interest	\$ 32,400

Real Estate Owned:

Kirkwood, Missouri 63122	\$ 310,000
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Real Estate Mortgages Payable:

Countrywide Homes Loans (on residence) P. O. Box 67009 Dallas, Texas 75267-0009	\$ 223,900
---	------------

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.

Legal Services for Eastern Missouri Volunteer Program:

In response to a request by Legal Services of Eastern Missouri and Husch & Eppenberger's managing partner, I started and organized a program by which the firm began accepting "referrals" on a pro bono basis from Legal Services. From 1990 through 1993, I supervised the firm's pro bono programs. Specifically, I supervised and handled at least 33 domestic matters for indigent individuals in abusive marriages. My work included drafting motions and petitions for protection, and court appearances as needed.

Flood of 1993:

During the Flood of 1993, I coordinated community outreach efforts as part of my job responsibilities with Congressman Gephardt. This outreach included involving and coordinating efforts with the Legal Services of Eastern Missouri. I also dealt with a large number of regulatory issues presented by FEMA and HUD, and other federal agencies, during the disaster and the subsequent recovery efforts.

Campaign to enhance the public perception of Missouri's Judges:

Circuit Court Judges in Missouri's metropolitan areas as well as all Missouri Court of Appeals and Supreme Court Judges are selected pursuant to what is known to as the "Missouri Plan". Under the Missouri Plan judges are selected by a non-partisan court commission and then appointed by the Governor. A judge continues to serve subject to a "retention" vote of the people. Judges stand for retention on a separate judicial ballot, without party designation. The issue submitted to the electorate is whether the particular judge should be retained in office by a vote of yes or no.

In 1992 I assisted in an educational campaign sponsored by the Missouri Bar to educate the public about the Missouri Plan and the judiciary in general. No individual judge's retention was advocated. The goal was to enhance the overall public perception of Missouri's judicial branch of government.

Missouri Valley Athletic Conference:

I served as a volunteer during the past seven seasons at the annual Missouri Valley Conference Basketball Tournament held in St. Louis.

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).

No. I provided materials to Congressman Richard A. Gephardt similar to materials provided to the ABA and the Senate Judiciary Committee. I was then interviewed by Congressman Richard A. Gephardt. Congressman Gephardt forwarded the background materials which I provided to him to Senator Christopher Bond and Senator John Ashcroft. On February 6, 1997, I met with staff members for Senator Bond and Senator Ashcroft. Since that time, I have provided materials to and met with representatives of the United States 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.

There is no role for "judicial activism" in the Federal judiciary. "Judicial activism" undermines the appropriate balance of authority among the three branches of our Federal government.

It is important to remember that the fundamental legal doctrine of *stare decisis* controls the decisions of the District Court. The personal opinion of a District Court Judge of what the law should be must be set aside and the previous holdings of appellate courts must be followed. As a result, the proper scope of the District Court's authority is to apply the law to the facts of the cases which are properly before the court.

Further, while the District Court has an obligation to protect individual rights and liberties, the Court should not do so by sitting as a "super legislature," or by substituting the Court's judgment for that of the Legislative and/or Executive branches.

Additionally, each case must be initially reviewed to determine whether Federal jurisdiction exists. Cases which properly belong in state courts should be dismissed or remanded as the procedure dictates. This initial analysis is important because it allows the District Court to not only preserve the appropriate balance of power among the branches of the Federal government, but also preserve the appropriate jurisdictional authority among the state, local and Federal governments.

In order to avoid unnecessary and far reaching opinions, it is also important for the District Court to determine whether the parties have standing to bring the claims presented and whether such claims are ripe for adjudication.

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).
Norman Kenneth Moon
2. Address: List current place of residence and office address(es).
Residence:
Lynchburg, Virginia

Office:
Court of Appeals of Virginia
Central Fidelity Bank Building
18th Floor
Ninth and Main Streets
Lynchburg, Virginia 24504

Office Mailing Address:
Court of Appeals of Virginia
Post Office Box 657
Lynchburg, Virginia 24505
3. Date and place of birth.
November 4, 1936
Lynchburg, Virginia
4. Marital Status (include maiden name of wife, or husband's name). List spouses occupation, employer's name and business address(es).
Barbara Wooldridge Moon
Not employed outside our home.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
University of Virginia School of Law
Master of Laws (Judicial), 1986 - 1988; Degree: May 22, 1988

University of Virginia School of Law
Bachelor of Laws, 1959 - 1962; Degree: June 3, 1962

University of Virginia
Bachelor of Arts, 1955 - 1959; Degree: June 2, 1959
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.

Court of Appeals of Virginia: Judge, January 1, 1985 - present; Chief Judge, May 1, 1993 - present. (I was re-elected to serve a second term as Chief Judge, beginning May 1, 1997).

Twenty-fourth Judicial Circuit of Virginia: Judge, April 15, 1974 - December 31, 1984; Chief Judge, July 1, 1983 - December 31, 1984.

Edmunds, Williams, Robertson, Sackett, Baldwin & Graves: Partner, January 1, 1970 - April 15, 1974.

Air Pollution Control Board of the City of Lynchburg: Chairman, July 1, 1972 - April 15, 1974. I was appointed to the Board by the City of Lynchburg City Council and elected by the other board members as chairman for this unpaid position.

Williams, Robertson & Sackett: Associate, June 4, 1962 - December 31, 1966 (except during military service); Partner, January 1, 1967 - December 31, 1969.

United States Army, 1st Battalion, 35th Artillery: First Lieutenant, February 17, 1963 - January 28, 1965.

State Farm Mutual Automobile Insurance Company: Claims adjuster, June 1 - August 3, 1961.

Wooldrige Motor Company: Car salesman, June 1 - August 15, 1960.

Moco Oil Company: Service station attendant, June 1 - August 15, 1959.

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 served in the military.

Date: February 17, 1963 - January 28, 1965

Branch of service: U.S. Army (Artillery)

Rank: 1st Lieutenant

Serial No: 05207642

Present Status: Retired

Discharge: Honorable

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

William J. Brennan, Jr. Award, awarded by University of Virginia School of Law for excellence in teaching trial advocacy, 1997.

William Folkes Scholarship, University of Virginia, 1955-59.

Intermediate Honors, University of Virginia, 1957.

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Raven Society, 1958.

Omicron Delta Kappa, 1958.

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.

National Council of Chief Judges, Executive Committee: Treasurer 1996 - present, Secretary 1995-96, member 1993 - present.

Virginia Bar Association, Judicial Section: Vice Chairman 1997, member 1995 - present.

Judicial Council of Virginia: 1993 - present.

State-Federal Judicial Council for Virginia: 1993 - present.

Boyd-Graves Conference, Steering Committee: 1986 - present.

Judicial Conference, Judicial Administration Committee: Chairman 1985-87.

Model Jury Instructions Committee: Chairman 1983-86, member 1981-86.

Committee to Draft the Rules for the Court of Appeals of Virginia: 1983-84.

Virginia State Bar: 1962 - present.

Ethics Committee, Sixth District: Chairman 1972-74, member 1971-74.

Virginia Bar Association.

Judiciary Committee: 1972-74.

Insurance Committee: 1969-74.

Young Lawyers Section: Southside Regional Vice-President 1968-69, member 1963-73.

American Bar Association: 1972 - present.

National Institute of Trial Advocacy: 1996 - present.

American Judicature Society: 1974 - present.

Institute of Judicial Administration: 1985 - 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.

Lobbying Groups:

Commission on Family Violence Prevention (previously Commission Against

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Domestic Violence): 1993 - present.

Virginia Bar Association: 1962 - present.

American Bar Association: 1972 - present.

Other Memberships:

National Council of Christians & Jews: Board Member 1989-94.

Peakland Baptist Church: Finance Committee 1992-93, Executive Committee Chairman 1989-90, Board of Deacons 1971-73, 1987-89.

Thirteen Club: November 20, 1974 - present (no bylaws).

John Lynch Society: 1967 - present (no bylaws).

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership 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 Virginia - June 4, 1962

United States District Court for the Western District of Virginia - June 7, 1965

United States Court of Appeals for the Fourth Circuit - October 7, 1972

United States Supreme Court - May 29, 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.

VIRGINIA MODEL JURY INSTRUCTIONS (Michie 1986) (four volumes, updated annually) (contributed to the 1981-86 volumes).

A Proposal to Simplify Virginia Burdens of Proofs, 12 George Mason Law Review 1 (1989).

Virginia Bar Association, Continuing Legal Education: *Tips for Getting the Judge to Try Your Case and Not You* (July 18, 1997) (handout).

I have made some informal talks that touched on constitutional law and legal policy. I spoke from notes.

See Attachment A ("Publications") for a copy of the article, the CLE handout, and speech notes.

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

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I am in excellent health. I had my last physical examination on July 3, 1997.

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.

Court of Appeals of Virginia, Chief Judge, 1993 - present, Judge, 1985 - present. (I was re-elected by the members of the Court to serve a second term as Chief Judge, beginning May 1, 1997). I was elected to the Court by the General Assembly of Virginia. The Court of Appeals of Virginia is an intermediate court of appeal with jurisdiction over appeals from criminal cases in which capital punishment was not imposed, domestic relations cases, worker's compensation cases, and administrative agency appeals that were first appealed to a circuit court.

Twenty-fourth Judicial Circuit of Virginia, Chief Judge, 1983-84, Judge, 1974-85. I was elected to the Court by the General Assembly of Virginia and was elected Chief Judge by the other judges in the circuit. The Circuit Courts of Virginia are trial courts of general jurisdiction.

15. Citations: If you are or have been 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.

(1) The ten most significant opinions I have written.

Williams v. Williams, 24 Va. App. 778, 485 S.E.d 651 (1997).

Walton v. Commonwealth, 24 Va. App. 757, 485 S.E.2d 641 (1997).

Mills v. Commonwealth, 24 Va. App. 95, 480 S.E.2d 746 (1997).

Horen v. Commonwealth, 23 Va. App. 735, 479 S.E.2d 553 (1997).

Tench v. Commonwealth, 21 Va. App. 200, 462 S.E.2d 922 (1995).

Barfield v. Commonwealth, 20 Va. App. 447, 457 S.E.2d 786 (1995).

Hughes v. Commonwealth, 18 Va. App. 510, 446 S.E.2d 451 (1994).

Broady v. Commonwealth, 16 Va. App. 281, 429 S.E.2d 468 (1993).

Farmer v. Commonwealth, 12 Va. App. 337, 404 S.E.2d 371 (1991).

Jones v. Colonial Williamsburg Foundation, 10 Va. App. 521, 392 S.E.2d 848 (1990).

(2) A short summary of and citation for all appellate opinions where my

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decisions were reversed or where my judgment was affirmed with significant criticism of my substantive or procedural rulings.

Cases I decided as a circuit court judge in Virginia's 24th Judicial Circuit (none of which were written decisions) which were reversed by the Supreme Court of Virginia:

- 1) Alls v. Alls, Circuit Court of Campbell County (June 15, 1975) reversed by Alls v. Alls, 216 Va. 13, 216 S.E.2d 16 (1975).

As trial judge in a divorce proceeding, I awarded a husband a divorce on the ground of desertion and awarded him custody of the couple's child. The Supreme Court reversed, holding I erred in finding that a wife's departure from the family home one day after her suit for divorce alleging cruelty was filed, constituted desertion on the wife's part, for one spouse is not guilty of legal desertion in separating from the other after the institution of a suit for divorce or during its pendency. The Supreme Court also ordered that the custody determination be reconsidered.

- 2) Early Settlers Ins. Co. v. Jordan, Circuit Court of Nelson County (June 13, 1975) reversed by Early Settlers Ins. Co. v. Jordan, 217 Va. 462, 229 S.E.2d 871 (1976).

Plaintiff was injured by his contact with his car which he was driving when the car struck a tree. His father's insurance policy provided medical coverage if plaintiff was struck by an automobile. I held that his injury was covered. The Supreme Court reversed.

- 3) Watson v. Shepard, Circuit Court of Campbell County (Nov. 24, 1976) reversed by Watson v. Shepard, 217 Va. 538, 229 S.E.2d 897 (1976).

As a trial judge, I denied a petition by the natural mother to regain custody because she was unfit. I allowed adoption by the "psychological parents" who had custody of the child and their own child, who looked upon the adoptive child as its sibling. The Supreme Court reversed, holding that it was error to approve adoption by a couple while they were divorcing. The Court held that the irrevocable step of terminating the natural parent's rights, even though no question was raised about the adoptive parents' fitness as parents, should not be taken at a time when the adoptive parents were separated and their marital problems were unsettled.

- 4) Cole v. Waynesboro, Circuit Court of the City of Waynesboro (July 8, 1976) reversed by Cole v. Waynesboro, 218 Va. 827, 241 S.E.2d 765 (1978).

Landowner challenged a grant of a special use permit to allow construction of a ten-story apartment building for elderly and handicapped residents in a block zoned for general business and residential use. As trial judge, I entered judgment against the landowners, upholding the granting of the permit because the evidence did not show that the city clearly abused its power in exercising its legislative power. The Supreme Court had previously held this to be the standard. Byrum v. Board of Supervisors, 217 Va. 37, 225 S.E.2d 369 (1976).

Reversing my decision, the Supreme Court held that notwithstanding

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the issuance of a special permit a legislative action must comport with good zoning practices or the purpose of the city ordinances.

5) Baker v. Commonwealth, Circuit Court of Campbell County (July 25, 1978) reversed by Baker v. Commonwealth, No. 781235 (Va. Apr. 13, 1979).

Baker, a prisoner, was convicted of escape. On appeal, it was determined that he was prosecuted under the wrong escape statute because he was technically a prisoner in a jail not a part of the Department of Corrections.

6) Woodson v. Lynchburg Div. of Social Servs., Circuit Court of the City of Lynchburg (Sept. 23, 1980) reversed by Woodson v. Lynchburg Div. of Social Servs., 223 Va. 235, 288 S.E.2d 410 (1982).

As a trial judge, I terminated the residual parental rights to the illegitimate child of a biological father and authorized the social service agency to place the child for adoption. The father, who had not supported the child or had any meaningful contact, had numerous other illegitimate children whom he was not supporting. The father intervened in the proceeding after the natural mother was found unfit and was about to have her parental rights terminated. I believed his intention was to delay adoption and to leave the child in the custody of the unfit mother.

The Supreme Court reversed, holding that: (1) the statute permitting termination of parental rights of a parent or parents who, without good cause, have been unwilling or unable within a reasonable period to remedy substantially the conditions which led to the child's foster care placement eliminated the necessity for specific finding of parental unfitness in termination proceedings between parents and social service agencies; (2) finding that the factors listed in the statute exist is tantamount to a finding of parental unfitness; and (3) where an unmarried father was not offered services of a rehabilitative agency prior to the termination of his parental rights, order would be reversed and father would be given the opportunity to show what progress he could make with the assistance of rehabilitative agencies toward establishing, within a reasonable period, a suitable home for the child subject to the termination order.

7) Kern v. Freed Co., Circuit Court of Nelson County (Jan. 8, 1980) reversed by Kern v. Freed Co., 224 Va. 678, 299 S.E.2d 363 (1982).

As trial court judge, I held that a homeowner was indebted to the seller on the sale of household appliances and entered judgment accordingly. The Supreme Court reversed, holding that a principal is not bound when an agent acts beyond its authority and that no unjust enrichment was shown in an implied contract to pay for goods.

8) School Board v. Burley, Circuit Court of Amherst County (Apr. 29, 1983) reversed by School Board v. Burley, 225 Va. 376, 302 S.E.2d 53 (1983).

Vendors brought suit against school board for specific performance for sale of real estate. As trial judge, I held that under the facts and circumstances of the case, the school board was estopped from interposing as a defense that the contract was not in writing and was therefore

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unenforceable. I ordered specific performance. The Supreme Court reversed, holding that an oral contract for the purchase of land by a school board under former Code Sec. 22-150 (now superseded by Code Sec. 22.1-128) is ultra vires and void and that there was no estoppel against the Board to raise defense of lack of writing.

9) Pierce v. Martin, Circuit Court of Campbell County (Oct. 24, 1980) reversed by Pierce v. Martin, 230 Va. 94, 334 S.E.2d 576 (1985).

Truck driver sued car driver for contribution to recover one-half of amounts paid by the truck driver to the car passengers in settlement of the injury claims. I entered judgment for truck driver. The Supreme Court reversed in part and affirmed in part, holding that some, but not all, of the injured parties were prohibited by their own testimony from recovering against the defendant.

Cases decided by a three-judge panel of the Court of Appeals of Virginia in which I wrote the decision for the panel and the decision was reversed by either the Court of Appeals sitting en banc or the Supreme Court of Virginia:

1) National Linen Service v. McGuinn, 3 Va. App. 73, 343 S.E.2d 42 (1986) reversed by National Linen Service v. McGuinn, 5 Va. App. 265, 362 S.E.2d 187 (1987) (en banc).

The Court of Appeals en banc affirmed the decision of the Workers' Compensation Commission and reversed my panel decision. The Court held that the commission correctly determined that because of the employer's failure to execute and file a memorandum of agreement, its payment of compensation to the employee for a period of thirteen months, and its failure to contest the compensability of the injury, the employer could not be placed in a better position than it would have been in had it complied with the provisions of Code Sec. 65.1-93. The Court further held that there was credible evidence to support the commission's finding that the employee reasonably believed that he was entitled to compensation because the employer paid benefits for thirteen months without executing a memorandum of agreement.

2) Clinebell v. Commonwealth, 3 Va. App. 362, 349 S.E.2d 676 (1986) reversed in part by Clinebell v. Commonwealth, 235 Va. 319, 368 S.E.2d 263 (1988).

We held that certain hearsay statements of a child victim under Virginia law were inadmissible to impeach the child's testimony. The Supreme Court adopted a new exception to the hearsay rule and reversed.

3) Hill City Trucking v. Christian, 7 Va. App. 78, 371 S.E.2d 572 (1988) reversed by Hill City Trucking v. Christian, 238 Va. 735, 385 S.E.2d 377 (1989).

This was a worker's compensation claim in which Christian, a long-distance truck driver, was shot by robbers who, pretending to be police officers, stopped his truck at 3:00 A.M. on a deserted road. We held that the injury arose out of a risk of Christian's employment and was

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compensable. The Supreme Court reversed, holding that the risk of being robbed and shot at 3:00 A.M. on a highway was not proven to be greater for a truck driver than the ordinary citizen, and thus the injury did not arise out of a risk of his employment.

4) Jimenez v. Commonwealth, 10 Va. App. 277, 392 S.E.2d 822 (1990) reversed by Jimenez v. Commonwealth, 241 Va. 244, 402 S.E.2d 678 (1991).

Jimenez was charged and tried for the statutory offense of defrauding a person under a construction contract. One of the elements of the charged offense was that the victim had made demand for repayment in writing. The Commonwealth failed to prove a written demand. On appeal, we held that because Jimenez did not object to the finding instruction and the evidence was sufficient to prove the crime of obtaining money by false pretenses, of which he was found guilty, he was barred on appeal from raising as an issue the Commonwealth's failure to prove that a letter was sent by the victim demanding repayment. The Supreme Court reversed, holding that Jimenez had been convicted of an offense that was not a crime.

5) Campbell v. Commonwealth, 13 Va. App. 33, 409 S.E.2d 21 (1991) reversed by Campbell v. Commonwealth, 14 Va. App. 988, 421 S.E.2d 652 (1992) (en banc).

Defendant was convicted of forging a public record. On appeal he argued that the trial court erred in instructing the jury. The panel decision held that he could not raise the issue because he had not objected to the instruction. Reversing my panel decision, the Court of Appeals en banc held that the trial court erred, and that the ends of justice exception to Rule 5A:18 allowed the Court to consider the issue on appeal.

6) Commonwealth v. Woodward, 17 Va. App. 526, 438 S.E.2d 77 (1993) reversed by Commonwealth v. Woodward, 249 Va. 21, 452 S.E.2d 656 (1995).

We held that an injured prisoner, who had signed a contract of employment with the Virginia Department of Highways, was covered by worker's compensation. The Supreme Court reversed, holding that a prisoner was legally incompetent to contract; therefore, he was not employed under a contract of hire and was ineligible for compensation.

7) Cem Fahrettin Curmak v. Commonwealth of Virginia, No. 0037-94-2 (Va. Ct. App. Mar. 14, 1995) (memorandum opinion) reversed by Cem Fahrettin Curmak v. Commonwealth, No. 950975 (Va. Feb. 16, 1996) (per curium).

We affirmed the circuit court decision refusing to order a bill of particulars. The Supreme Court reversed.

8) Braithwaite v. Commonwealth, No. 0790-94-2 (Va. Ct. App. Aug. 15, 1995) reversed by No. 0790-94-2 (Va. Ct. App. Apr. 23, 1996) (en banc) (order).

Panel held that lying on a pillow with a large revolver and drugs beneath it was sufficient circumstantial evidence to support conviction of

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possession of a firearm and drugs. The Court of Appeals en banc adopted the panel dissent, holding that evidence was insufficient to support conviction.

Cases decided by a three-judge panel of the Court of Appeals of Virginia in which I voted with the majority of the panel but did not write the decision and the decision was overturned by either the Court of Appeals sitting en banc or the Supreme Court of Virginia:

1) Lambert v. Commonwealth, No. 0438-86-3 (Va. Ct. App. Apr. 9, 1987) reversed by Lambert v. Commonwealth, No. 870469 (Va. Mar. 18, 1988).

The Supreme Court reversed our determination that Lambert had not timely filed his notice of appeal in the trial court.

2) Johnson v. Chesterfield, 5 Va. App. 15, 359 S.E.2d 833 (1987) reversed by Johnson v. Chesterfield, 237 Va. 180, 376 S.E.2d 73 (1989).

We affirmed the Industrial Commission and held that the injury sustained by a claimant who fell down steps while turning was compensable under the Workers' Compensation Act. The Supreme Court reversed, holding that traversing steps was not a risk of employment and was not, therefore, compensable.

3) Llamera v. Commonwealth, No. 0322-90-4 (Va. Ct. App. June 4, 1991) (memorandum opinion) reversed by Llamera v. Commonwealth, 243 Va. 262, 414 S.E.2d 597 (1992).

We affirmed the trial court order which found the defendant guilty of possession with intent to distribute cocaine. The Supreme Court reversed, holding that prejudicial error occurred when a police officer was allowed to testify over objection that in his opinion, the quantity of cocaine "would suggest" that the owner of the cocaine was a person who sold cocaine and that such quantity was inconsistent with personal use, thereby expressing an opinion on the ultimate issue in the case.

4) Stevenson v. City of Falls Church, No. 1956-89-4 (Va. App. Apr. 23, 1991) (memorandum opinion) reversed by Stevenson v. City of Falls Church, 243 Va. 434, 416 S.E.2d 435 (1992).

A police officer found the defendant asleep inside a motor vehicle, behind the steering wheel, with the key in the ignition. When the officer woke the defendant, it was apparent to her that the defendant was intoxicated. Defendant was charged and convicted with drunk driving under the city's drunk driving ordinance. On appeal we affirmed, holding that the defendant was the "operator" of his car within the meaning of the relevant statute, because he was in actual physical control of the motor vehicle.

The Supreme Court reversed, holding that for the purposes of the city ordinance, which invoked statutory definitions from the Virginia Code, an "operator" of a vehicle does not include an intoxicated occupant of a car who is merely seated behind its steering wheel with the key in the ignition switch.

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- 5) Reid v. Reid, 14 Va. App. 505, 419 S.E.2d. 398 (1992) reversed by Reid v. Reid, 245 Va. 409, 429 S.E.2d. 208 (1993)

We held that husband could seek restitution of spousal support paid pursuant to an order that had been reversed. The Supreme Court held that trial court did not have statutory or inherent authority to order restitution of spousal support already paid.

- 6) Henrico County School Board v. Bohle, 14 Va. App. 801, 421 S.E.2d 8 (1992) reversed by Bohle v. Henrico County School, 246 VA. 30, 431 S.E.2d 36 (1993).

We reversed a decision of the Workers' Compensation Commission suspending an employee's benefits until such time as the employee had incurred a specified sum of compensation benefits and expenses computed based upon the amount of the net third-party recovery. We held that under the circumstances, the commission erred in determining both the amount at which further benefits would accrue and the method by which further benefits would be calculated.

The Supreme Court reversed, holding that the Court of Appeals applied the wrong method for apportioning attorney's fees and expenses when payment of compensation benefits had been suspended following a settlement between the employee and the third-party tortfeasor.

- 7) In re Baskins, 16 Va. App 241, 430 S.E.2d 555 (1993) reversed by Jamborsky v. Baskins, 247 Va. 506, 442 S.E.2d 636 (1994).

A juvenile filed application for a writ of prohibition to prevent the circuit court from trying him as an adult on felony charges. We held that: (1) date of "receipt" of a case from the juvenile court, as contemplated by statute providing that circuit court should, within 21 days after receipt of case from juvenile court, enter an order either remanding the case to the juvenile court or advising the attorney for the Commonwealth that he may seek an indictment, was the date the circuit court takes physical possession and control of the file from the juvenile court, and (2) the statute was mandatory.

The Supreme Court reversed, holding that: (1) compliance with the 21-day time period provided in the statute setting the procedure for transfer of the juvenile to the circuit court for trial as an adult was directory and procedural rather than mandatory and jurisdictional, and (2) the juvenile did not suffer any prejudice as a result of the three-day delay in the circuit court's assumption of jurisdiction over his felony charges.

- 8) Kelley v. Kelley, 17 Va. App. 93, 435 S.E.2d 421 (1993) (en banc) reversed by Kelley v. Kelley, 248 Va. 295, 449 S.E.2d 55 (1994).

Husband appealed the decision of the circuit court that invalidated a portion of a property settlement agreement that previously had been incorporated into the divorce decree. We held en banc that upon passage of twenty-one days from the entry of the final decree, the trial court lacked jurisdiction to modify the terms of the decree.

The Supreme Court reversed, holding that because the property settlement agreement involved the rights of children to support, and such rights cannot be impinged by contract, the decree was void and could be attacked and vacated in any court at any time, directly or collaterally.

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9) Bottoms v. Bottoms, 18 Va. App. 481, 444 S.E.2d 276 (1994) reversed by Bottoms v. Bottoms, 249 Va. 410, 457 S.E.2d 102 (1995).

We held that the evidence was insufficient to support a trial judge's decision that a lesbian mother was an unfit parent and his award of custody of her biological child to her mother. The Supreme Court held that the evidence was sufficient to support the trial court's finding of unfitness, reversed the Court of Appeals, and reinstated the trial court decision.

10) Barrett v. Commonwealth, 18 Va. App. 773, 447 S.E.2d 243 (1994) reversed by Barrett v. Commonwealth, 250 Va. 243, 462 S.E.2d. 109 (1995).

We held that a police officer, who observed Barrett's truck stopped, turned around and went to inquire if help was needed and then saw the truck slowly moving with its wheels partially on the shoulder of the road and partially in the road, had the right to stop the truck in the exercise of the "community caretaker function" articulated in Cady v. Dombrowski, 413 U.S. 433 (1973). The Supreme Court reversed, holding that the circumstances did not justify the stop.

11) Stenrich Group v. Jemmott, No. 1910-94-2 (Va. Ct. App. April 4, 1995) (memorandum opinion) reversed by Stenrich v. Jemmott, 251 Va. 186, 467 S.E.2d 795, 17 O.S.H. Cas. (BNA) 1573 (1996).

We held that credible evidence supported a finding that Jemmott's carpal tunnel syndrome was a condition characterized as a "disease." The Supreme Court reversed, holding that job-related impairments resulting from cumulative trauma caused by repetitive motion, however labeled or however defined, are, as a matter of law, not compensable under the present provisions of the Workers' Compensation Act.

12) Donald v. Fairfax County Dept. of Hum. Dev., 20 Va. App. 155, 455 S.E.2d 740 (1995) (en banc) reversed by Fairfax County Dept. of Hum. Dev. v. Donald, 251 Va. 227, 467 S.E.2d 803 (1996).

In child abuse/neglect proceeding, sitting en banc, we reversed the trial court's denial of attorney fees and remanded for determination of reasonable attorney fees. Holding that the appeal from the trial court was untimely, the Supreme Court reversed, holding that attorney fees could only be awarded in matters "properly before" the court, and that when an appeal was not taken within ten days of the trial court's final order, the matter was not "properly before" the circuit court and therefore fees could not be awarded.

13) Allen v. Commonwealth, 20 Va. App. 630, 460 S.E.2d 248 (1995) reversed by Allen v. Commonwealth, 252 Va. 105, 472 S.E.2d 277 (1996).

We affirmed the decision of the trial court, holding that the appellant had waived his double jeopardy objections. On grant of limited review, the Supreme Court reversed.

14) Griswold v. Commonwealth, 21 Va. App. 22, 461 S.E.2d 411 (1995) (en banc) reversed by Griswold v. Commonwealth, 252 Va. 113, 472 S.E.2d 789

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(1996).

Defendant was convicted in the trial court of driving under the influence of alcohol after having previously been convicted of a like offense. On appeal, sitting en banc, we affirmed the trial court. The Supreme Court reversed, holding that (1) the defendant's prior misdemeanor DUI conviction was invalid because defendant had not been properly represented by counsel; (2) allowing the jury to convict the defendant based on a prior invalid conviction was reversible error; but (3) defendant's other unrepresented misdemeanor conviction for which defendant spent no time in jail was valid.

(3) Citations for significant opinions on federal or state constitutional issues:

Williams v. Williams, 24 Va. App. 778, 485 S.E.2d 651 (1997).

Walton v. Commonwealth, 24 Va. App. 757, 485 S.E.2d 641 (1997).

Horen v. Commonwealth, 23 Va. App. 735, 479 S.E.2d 553 (1997).

Tench v. Commonwealth, 21 Va. App. 200, 462 S.E.2d 922 (1995).

Hall v. Commonwealth, 12 Va. App. 972, 406 S.E.2d 674 (1991).

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 was Chairman of the Air Pollution Control Board of the City of Lynchburg from its inception on July 1, 1972 until April 15, 1974. I was appointed to the Board by the City of Lynchburg City Council and elected by the other board members as chairman.

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 addressed 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;

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June 4, 1962 to December 31, 1969 - Williams, Robertson & Sackett, 709 Krise Building, Lynchburg, Virginia 24503 (from January 1 to December 31, 1969, the address was 816 Main Street, Lynchburg, Virginia 24503). I was an associate with the firm except during the two years spent in the Army. I became a partner on January 1, 1967. On January 1, 1970, the firm of Williams, Robertson & Sackett merged and became Edmunds, Williams, Robertson, Sackett, Baldwin & Graves, of which I was a partner until April 15, 1974, when I became a judge for the 24th Judicial Circuit.

- 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?

The majority of my practice involved tort litigation in which I primarily represented defendants. During the last three years of my practice, I was also involved in employment discrimination cases and frequently consulted with business clients regarding their compliance with federal employment law. I practiced before both state and federal courts.

On April 15, 1974, I became a judge for the 24th Judicial Circuit of Virginia. I was elected Chief Judge by the other judges in the circuit on July 1, 1983 and served in that capacity until my selection to the Court of Appeals of Virginia on January 1, 1985. On May 1, 1993, I was elected by the other members of the court to serve as Chief Judge, and I continue to serve in that capacity.

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

A typical client was the insured of a liability insurance company. With my partners, I regularly represented State Farm Mutual Automobile Insurance Company, Allstate Insurance Company, The Travelers Insurance Company, Lumbermens Mutual Insurance Company, and Royal Globe Insurance Company. We also represented the Southern Railway Company, the C & O Railroad Company, and the Lynchburg Transit Company. From 1962 to 1963, before my military service, I defended mostly property damage claims, did some real estate work, and defended indigent persons charged with crimes.

From 1965 to 1969, I specialized in representing defendants in personal injury litigation. After 1970, in addition to the other insurance companies, I represented several major employers in labor matters, principally discrimination claims. Among my clients were Babcock & Wilcox Company, General Electric Company, Gould National Battery Company, Limitorque Corporation, and the City of Lynchburg.

- 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. From the beginning of my practice I appeared in court frequently.

2. What percentage of these appearances was in:

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(a) Federal courts: Approximately twenty percent of my time in court was in federal courts, but less than twenty percent of my cases were federal cases.

(b) State courts of record: Seventy-five percent.

(c) Other courts: Five percent.

3. What percentage of your litigation was:

(a) civil: Ninety percent.

(b) criminal: Five percent.

(c) other: Five 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.

I tried approximately two hundred cases to verdict or judgment. In seventy-five percent of them, I was sole counsel. In fifteen percent, I was chief counsel, and in ten percent, I was associate counsel.

5. What percentage of these trials were:

(a) jury: Sixty percent.

(b) non-jury: Forty percent.

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. Cox v. Babcock & Wilcox Co., 471 F.2d 13 (4th Cir. 1972).

Summary of substance of case:

Calvin A. Cox brought a class action against Babcock & Wilcox Company, claiming that he personally had been discriminated against on account of his race in both his hiring and firing. He also claimed that he was a proper person to represent the class consisting of others similarly discriminated against.

Significance of case:

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The case, although not uniquely, stands for the proposition that although there may be an overall pattern of discrimination, all persons within the discriminated class are not entitled to recovery unless they were personally discriminated against. It was the first significant employment discrimination case in the area.

Party I represented:

Babcock & Wilcox Company.

Nature of my participation:

On behalf of Babcock & Wilcox I conducted all of the discovery, prepared for trial, and tried the case in bifurcated proceedings. I was assisted by Babcock & Wilcox's corporate counsel in discovery and trial preparations.

Trial Decision:

An advisory jury found in favor of Babcock & Wilcox. The trial court entered judgment for the defendant which was appealed to the Fourth Circuit.

Appellate Decision:

The Fourth Circuit affirmed the trial court but provided that some person, other than Cox, appropriate to represent the class could intervene to represent the class.

a) Dates of Trial: November 9, 1971 - November 10, 1971;
December 13, 1971 - December 14, 1971.

b) Name of Court and Judge:

United States District Court for the Western District of Virginia, Lynchburg Division, before the Honorable H. Emory Widener.

c) 1) Names, address, and phone number of co-counsel:

John R. Lewis
Assistant General Counsel, Babcock & Wilcox Technologies, Inc.
Route 726, Mt. Athos
Lynchburg, Virginia 24506
(804) 522-5021

2) Names, address, and phone number of counsel for other parties:

Trial:

Charles M.L. Mangum
2058 Garfield Street
Lynchburg, Virginia 24501
(804) 845-3431

Henry B. Hinton
RD2360
Worcester, Vermont 05682
(802) 828-3168

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Appeal:

William L. Robinson
Dean, University of District of Columbia
4250 Connecticut Avenue
4th Floor, Washington D.C. 20008
(202) 274-7400

2. Anderson v. Denny, 365 F. Supp. 1254 (W.D. Va. 1973).

Summary of substance of case:

Denny directed the plaintiffs, Mrs. Anderson and Mrs. Long, to vacate their apartments. Both were served with unlawful detainer warrants.

The suit challenged the constitutionality of Virginia's eviction proceedings.

Significance of case:

Virginia eviction procedures held to be constitutional.

Party I represented:

L. John Denny.

Nature of my participation:

I served as chief counsel and handled all of the federal court proceedings.

Trial Decision:

Judgment for the defendant.

Appellate Decision:

The case was not appealed.

- a) Date of Trial: August 7, 1973.

- b) Name of Court and Judge:

The case was tried in the United States District Court, Charlottesville Division, before the Honorable James C. Turk.

- c) 1) Names, address, and phone numbers of co-counsel:

John A. Dezio
414 E. Jefferson Street
Charlottesville, Virginia 22902
(804) 295-4138

Dezio handled collateral state court proceedings.

- 2) Names, address, and phone number of counsel for other parties:

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For Anderson and Long:

Ronald R. Tweel
Suite 300, 500 Court Square
Charlottesville, Virginia 22902-0298
(804) 977-3390

3. Howell v. San Miguel, No. 71-C-45-L (W.D. Va. Sept. 17, 1973).

Summary of substance of case:

Howell, a guest in San Miguel's car, sustained a head injury when San Miguel lost control of his car and it overturned.

Significance of case:

The District Court upheld the constitutionality of Virginia's gross negligence statute applicable to guests who sued their host drivers.

Party I represented:

Peter Frank San Miguel.

Nature of my participation:

I represented the defendant during discovery, briefing of the constitutional issue, and trial.

Trial Decision:

Jury verdict for the defendant.

Appellate Decision:

The case was not appealed.

a) Date of Trial:

September 17, 1973

b) Name of Court and Judge:

U. S. District Court, Western District of Virginia, Lynchburg Division, before the Honorable James C. Turk.

c) 1) Names, address, and phone number of co-counsel:

None.

2) Names, address, and phone number of counsel for other party:

Earl C. Dudley, Jr.
Williams, Connolly & Califano
1000 Hill Building
Washington, D.C. 20006

Now at University of Virginia School of Law

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580 Massie Road
Charlottesville, VA 22903
(804) 924-8813

4. Mrs. Giles County Kitchen, Inc. v. National Biscuit Co., No. 68-C-386-L (W.D. Va. Apr. 7, 1971).

Summary of substance of case:

Mrs. Giles County Kitchen, Inc., a processor of salads and sandwich spreads, purchased from National Biscuit Company pimentos which were used in production of pimento cheese. After customers complained of glass in their pimento cheese, Mrs. Giles recalled and destroyed all of the pimento cheese in stock and on the shelves of its distributors. The suit alleged that the glass was in the pimentos and thus Nabisco breached its warranty and was negligent in the processing of its pimentos.

Significance of case:

The questions in the case were whether the glass came from Nabisco pimentos, whether Nabisco was negligent in its processing, the reasonableness of Mrs. Giles in destroying all of the pimentos in stock and on the store shelves, and the measure of damages.

Party I represented:

National Biscuit Company.

Nature of my participation:

I conducted most of the discovery and shared in the trial with Henry M. Sackett, Jr.

Trial Decision:

There was a verdict for the plaintiff in the sum of \$17,277.60.

Appellate Decision:

The case was not appealed.

a) **Date of Trial:**

April 6-7, 1971.

b) **Name of Court and Judge:**

United States District Court for the Western District of Virginia, Lynchburg Division, before the Honorable H. Emory Widener, Jr.

c) 1) **Name, address, and phone number of co-counsel:**

Henry M. Sackett, Jr. (deceased).

2) **Name, address, and phone number of counsel for other parties:**

S.J. Thompson, Jr. (deceased).

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5. United Services Automobile Ass'n v. Epperson, No. 68-C-27-L (W.D. Va. June 2, 1969).

Summary of substance of case:

In a declaratory judgment action, USAA sought a determination of whether it must provide coverage to Robert H. Epperson, Jr., a former insured, who was ineligible to be reinsured but had represented himself to a USAA agent as being an insured and thus obtained a confirmation of insurance coverage. When USAA discovered that Epperson was not entitled to be reinsured, its agent by telephone notified him that his coverage was not in force. Within twenty-four hours, Epperson was involved in an automobile accident seriously injuring a number of persons. Epperson denied that he was notified that he had no coverage.

Significance of case:

The case established that an insurer is not required to provide coverage to one who obtained coverage knowing that he was not entitled to be insured, where the insurer, upon discovery of its mistake, forthwith notified the person that he was not covered.

Party I represented:

United Service Automobile Association.

Nature of my participation:

I was sole counsel in the case. I conducted the discovery, deposed the witnesses, helped negotiate settlement of the collateral state court personal injury cases, and represented USAA at the final hearing.

Trial Decision:

There was a determination that USAA did not provide coverage to Robert H. Epperson, Jr.

Appellate Decision:

The case was not appealed.

a) **Date of Trial:**

June 2, 1969.

b) **Name of Court and Judge:**

United States District Court for the Western District of Virginia, Lynchburg Division. (Final hearing of case was in the United States District Court at Richmond, Virginia, before the Honorable John MacKenzie).

c) 1) **Name, address, and phone number of co-counsel:**

None.

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2) Name, address, and phone number of counsel for other parties:

For Robert H. Epperson, Jr.:

Paul H. Coffey, III
CCR Title
1134 Thomas Jefferson Road
Forest, Virginia 24551
(804) 525-0041

For Virginia Farm Bureau Insurance Company:

S.J. Thompson, Jr. (deceased)

For Aetna Casualty & Surety Company and Edward Houston Moore:

William Rosenberger, Jr.
1915 Quarry Road
Lynchburg, Virginia 24503
(804) 384-3681

For the Injured Parties:

For Clyde Washington Fincham, Sr., Administrator, Phillip Eugene Kerr, and George Westley Kerr:

W.H. Overbey, Jr.
Courthouse Square
Rustburg, Virginia 24588
(804) 332-5155

For Carlton G. Meador, Administrator, Brenda K. Meador, and Linda Fay Meador:

Thomas L. Phillips
Irongate At Spring Hill
Rustburg, Virginia 24588
(804) 821-5022

Lacey E. Putney
305 Otey Street
Bedford, Virginia 24523
(540) 586-0080

6. Estate of John G. Hamilton, Jr. v. Stapleton, No. 70-C-45-L (W.D. Va. Apr. 12, 1971).

Summary of substance of case:

This was a wrongful death action arising out of an automobile accident. John G. Hamilton, Jr. was a resident of Patrick Henry Boys Plantation and had substantially been abandoned by his mother who would have benefited from a plaintiff's verdict.

Significance of case:

The questions were whether Stapleton was driving, whether he was guilty of gross negligence, and whether any part of a recovery

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should be awarded to his mother.

Party I represented:

George Warren Stapleton (the driver).

Nature of my participation:

I was sole counsel for the defendant. I conducted the discovery and tried the case.

Trial Decision:

There was a verdict for the plaintiff in the sum of \$15,500.

Appellate Decision:

The case was not appealed.

a) Date of Trial:

April 12, 1971.

b) Name of Court and Judge:

United States District Court for the Western District of Virginia, Lynchburg Division, before the Honorable Ted Dalton (deceased).

c) 1) Name, address, and phone number of co-counsel:

None.

2) Name, address, and phone number of counsel for other party:

W.H. Overbey, Jr.
 Courthouse Square
 Rustburg, Virginia 24588
 (804) 332-5155

7. Travelers Indemnity Co. v. Michigan Mutual Liability Co., 259 F. Supp. 606 (W.D. Va. 1966).

Summary of substance of case:

The issue was whether Michigan Mutual, which had issued a fleet policy to a Virginia insurer specifically covering an automobile driven by the Virginia insurer's employee, was subject to Virginia's uninsured motorist provisions.

Significance of case:

It established that a fleet insurer must provide primary uninsured motorist coverage for the driver of its insured vehicles and that the insurer of the driver's personal vehicle only must provide excess coverage in accordance with the terms of the policy.

Party I represented:

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Travelers Indemnity Company.

Nature of my participation:

I solely represented The Travelers Indemnity Company, conducted the discovery, filed a memorandum of law, tried, and argued the case.

Trial Decision:

Decision in favor of Travelers Indemnity Company and Fidelity and Casualty Company of New York.

Appellate Decision:

The case was not appealed.

a) **Date of Trial:** July 29, 1966.

b) **Name of Court and Judge:**

United States District Court for the Western District of Virginia, Lynchburg Division, before the Honorable A.D. Barksdale (deceased).

c) 1) **Names, address, and phone number of co-counsel:**

None.

2) **Names, address, and phone number of counsel for other parties:**

For Travelers Indemnity Company:

S.J. Thompson, Jr. deceased

For Michigan Mutual Liability Company:

R.W. Duling
800 E. Marshall Street
Richmond, Virginia 23219
(804) 780-6511

For Robert F. Lawhorne, Clarence George, Jr., and State Farm Mutual Automobile Insurance Company:

Shuler A. Kizer (deceased)

William T. Robey, III
131 W. 21st Street
Buena Vista, Virginia 24416
(540) 261-2575

8. Sun Oil Co. v. Lawrence, 213 Va. 596, 194 S.E.2d 687 (1973).

Summary of substance of case:

Dale Lynn Lawrence, an employee of an independent service station dealer that sold Sun Oil products, sustained an injury during the course of his employment. His direct employer had no worker's compensation insurance. Lawrence filed a claim in the Industrial

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Commission of Virginia (now Worker's Compensation Commission) claiming that he was a statutory employee of Sun Oil because Sun Oil operated four service stations in Virginia which had employees doing the same type of work that he did.

Significance of case:

Distributors, who also had minimal retailing operations, were held not thereby to be a statutory employer liable for worker's compensation claims from the employees of all the independent dealers who purchased and sold the distributors' products.

Party I represented:

Sun Oil Company.

Nature of my participation:

I represented Sun Oil before the Deputy Commissioner, and later before the Full Commission. I appealed the case to the Supreme Court, wrote the brief, and argued the case.

Trial Decision:

The Industrial Commission found in favor of Lawrence and assessed attorney's fees against Sun Oil for defending the proceedings "without reasonable grounds."

Appellate Decision:

The Supreme Court of Virginia reversed the decision and dismissed the claim.

a) Date of Trial: March 5, 1973.

b) Name of Court and Judge:

The Industrial Commission of Virginia, by the Honorable M.E Evans, Commissioner, and later by the Full Industrial Commission.

The case was appealed to the Supreme Court of Virginia.

c) 1) Names, address, and phone number of co-counsel:

None.

2) Names, address, and phone number of counsel for other parties:

For Lawrence:

Robert L. Dolbeare
700 East Main Street
Richmond, Virginia 23219
(804) 780-2900

For the employer:

Marshall Frost (deceased)

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9. Younger v. Appalachian Power Co., 214 Va. 662, 202 S.E.2d 866 (1974).

Summary of substance of case:

There were four plaintiffs in the case, all insured by State Farm Mutual Automobile Insurance Company, whose automobiles at different times struck and damaged wooden electric line poles owned by Appalachian Power Company. Appalachian Power Company contended that its poles did not depreciate, and therefore, no depreciation should be recognized in its recovery for damages. We were able to demonstrate that the poles did have a certain life expectancy that Appalachian Power Company had admitted to under other circumstances.

Significance of case:

The case established that Virginia trial courts should recognize that power line poles depreciate. The case set a formula for determining depreciation and other damages to electric power and telephone companies whose property was damaged as the result of negligence.

Party I represented:

All four defendants.

Nature of my participation:

I had the cases, which were pending in various circuit courts, consolidated and tried in the Circuit Court for the City of Lynchburg. I was the sole attorney in the case. After a verdict for Appalachian, I appealed the case to the Supreme Court, wrote the brief for the appellants, and argued the case before the Supreme Court.

Trial Decision:

There was a verdict for the plaintiffs.

Appellate Decision:

The Supreme Court reversed the trial court and remanded for a new trial.

a) **Date of Trial:**

December 13, 1972.

b) **Name of Court and Judge:**

Circuit Court for the City of Lynchburg, before the Honorable William W. Sweeney.

c) 1) **Names, Address, and Phone No of Co-Counsel:**

None.

2) **Names, address, and phone number of counsel for other parties:**

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For Appalachian Power Company:

William Rosenberger, Jr.
1915 Quarry Road
Lynchburg, Virginia 24503
(804) 384-3681

10. Woody v. Commonwealth, 214 Va. 296, 199 S.E.2d 529 (1973).

Summary of substance of case:

Woody was charged with burglary as an accessory before the fact.

Significance of case:

It established that a juvenile witness is subject to the same scope of cross-examination as any other witness and that publication prohibitions relating to juvenile records may not override the constitutional right to cross-examination.

Party I represented:

Charles F. Woody.

Nature of my participation:

I was sole counsel in the case. I investigated and tried it and appealed it to the Supreme Court of Virginia.

Trial Decision:

There was a verdict for the Commonwealth.

Appellate Decision:

Reversed and remanded.

a) Dates of Trial:

September 8, 1972.

b) Name of Court and Judge:

Circuit Court for the City of Lynchburg, before the Honorable O. Raymond Cundiff (deceased).

c) 1) Names, address, and phone number of co-counsel:

None.

2) Names, address, and phone number of counsel for other parties:

Trial:

Royston Jester, Jr. (deceased)

Appeal:

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Linwood T. Wells, Jr.
Assistant Attorney General
101 North Eighth Street
Richmond, Virginia 23219
(804) 786-4642

Because the majority of the cases are more than five years old, here are the names, addresses and phone numbers for twelve members of the legal community who have had recent contact with me:

John R. Alford
2306 Atherholt Road
Post Office Box 6360
Lynchburg, Virginia 24505
(804) 846-2731

Mary V. Barney
715 Court Street
Post Office Box 739
Lynchburg, Virginia 24505
(804) 528-0411

Edwin R. Burnette, Jr.
Suite 400, 800 Main Street
Post Office Box 958
Lynchburg, Virginia 24505
(804) 846-9000

Judge Sam W. Coleman, III
109 North 8th Street
Richmond, Virginia 23219-2305
(804) 371-2458

John E. Falcone
801 Main Street
Post Office Box 957
Lynchburg, Virginia 24505
(804) 528-1058

Judge Johanna L. Fitzpatrick
Suite 200, 10201 Main Street
Fairfax, Virginia 22030-2403
(703) 359-1158

A. David Hawkins
Courthouse Square
Post Office Box 38
Rustburg, Virginia 24588
(804) 332-5155

Justice Barbara Milano Keenan
Suite 501, 2101 Parks Ave.
Virginia Beach, Virginia 23451
(757) 491-5472

Arelia S. Langhorne
2700 Langhorne Road
Post Office Box 2453

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Lynchburg, Virginia 24501
(804) 528-1560

Daniel J. Meador, Professor of Law Emeritus
University of Virginia School of Law
580 Massie Road
Charlottesville, Virginia 22903-1789
(804) 924-3947

Kent Sinclair
Suite 104, 1928 Arlington Blvd.
Post Office Box 5104
Charlottesville, Virginia 22903
(804) 924-4689

Kenneth S White
Suite 400, 800 Main Street
Post Office Box 958
Lynchburg, Virginia 24505
(804) 846-9000

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 privilege has been waived).

Boyd-Graves Conference, Steering Committee: 1986 - present.

The Boyd Graves Conference studies issues relating to Virginia civil procedure. It makes recommendations to the General Assembly for statutory changes and makes recommendations to the Virginia Supreme Court for rule changes that would affect civil procedure.

Judicial Conference, Judicial Administration Committee: Chairman, 1985-87.

The Judicial Administration Committee studies issues affecting the administration of justice in the Commonwealth of Virginia. It studies legislation pending before the General Assembly that would affect the administration of justice and recommends to the Judicial Conference whether the Conference should ask the Judicial Council to support or oppose the legislation.

Model Jury Instructions Committee: Chairman, 1983-86; Member, 1981-86.

The Model Jury Instruction Committee drafted model jury instructions to be used in Virginia criminal and civil cases. The committee is a standing committee that reviews statutory changes and judicial decisions that require amendment of the instructions. The committee prepares annual supplements reflecting changes in the instructions.

Committee to Draft the Rules for the Court of Appeals of Virginia: 1983-84.

The committee drafted proposed rules of court that were approved by the Judicial Council and the Supreme Court of Virginia to be used in the Court of Appeals of Virginia which started operation January 1, 1985.

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Virginia State Bar: 1962 - present.

The Virginia State Bar is the governing body of the legal profession in Virginia. Every practicing lawyer is required to belong and judges are ex officio members. The Virginia State Bar conducts continuing legal education programs. I have lectured or have been a panel member at its programs.

Ethics Committee, Sixth District: Chairman, 1972-74; Member, 1971-74.

The Committee investigates charges of professional misconduct and made recommendations to the Supreme Court of Virginia concerning whether disciplinary action should be taken against accused lawyers.

Virginia Bar Association: 1968 - present.

The Virginia Bar Association is a voluntary organization of Virginia lawyers and judges who serve as ex officio members. The Bar Association conducts continuing legal education programs. I have lectured or have been a panel member at its programs.

Young Lawyers Section, Southside Area: Vice-President, 1968-69; Member 1963-73.

The Young Lawyers Section prepared and distributed handbooks for young lawyers and presented programs in the public schools. The committee also initiated a program for presenting Liberty Bell Awards to non-lawyers who had made a substantial contribution to the respect for and maintenance of the rule of law. During my tenure as Piedmont Regional Vice-President, I directed the Liberty Bell Award program and the high school educational programs.

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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 futura benefits which you expect to derive from previous business relationships, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have a 401(k) Plan, its value being \$100,826. I am eligible to withdraw the amount without penalty. The source of the funds I contributed to this 401(K) was from my employment with the law firm of Edmunds, Williams, Robertson, Sackett, Baldwin & Graves, which employment terminated April 15, 1974. The Keogh Plan which the law firm had was invested with Central Fidelity Bank. I rolled over into a 401(K) with United Services Automobile Association, Cornerstone Strategy Fund.

I have a vested interest in the Virginia Supplemental Retirement System by virtue of my employment as a judge in the State of Virginia Judiciary System. The vested amount in the plan today is \$ 119,114. Should I retire from the Virginia Judiciary System, I am eligible to receive benefits of up to seventy-five percent of the average of my last three years salary which would be 81,936 annually.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these area 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 follow the Code of Judicial Conduct. If I perceive any interest, real or apparent, in any matter before the court, I will recuse myself. The only potential conflict I can imagine occurring during my initial service would come from an appellant filing a writ of habeas corpus in the district court who previously had an appeal reviewed by the Court of Appeals when I was a judge. I would recuse myself form consideration of the writ of habeas corpus.

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 am committed to teach trial advocacy at the University of Virginia Law School at the Fall 1997 session and Spring 1998 session. Compensation is at \$4,000 for each session. Should I be appointed and confirmed for this position, and there are no legal prohibitions or conflicts with my judicial duties, I would anticipate keeping my commitment.

4. List sources and amounts of all income received during that 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 \$500.00 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 Attachment B ("Financial Disclosure Report").

Norman K. Moon

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

Please see Attachment C ("Financial Statement: Net Worth")

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.

From 1965 to 1974, I was involved in almost every political election in Lynchburg, frequently as a campaign manager for one of the candidates. For most of that time, I was a member of the City Democratic Committee. I managed both Lynchburg senatorial campaigns for William B. Spong, Jr., in 1966 and 1972. In 1966, I served as Co-Chairman of the Byrd-Spong ticket. I managed William Battle's 1969 Lynchburg campaign for Governor, as well as Andrew Miller's 1973 campaign for Attorney General.

Norman K. Moon

QUESTIONNAIRE FOR JUDICIAL NOMINEES

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 comply with the canons of judicial ethics which prohibit any such participation or solicitation.

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 own membership in any organization that discriminates on the basis of race, sex, or religion. I belonged to Boonsboro County Club from 1968 to 1996. I believe that the club discriminated into the 1970s. In 1984 following an incident calling into question the Club's policy, a formal resolution of non-discrimination was adopted. To the best of my knowledge a clear policy of non-discrimination has existed since then. During the entire time I was a member of the club, I advocated to members of the board that the club pursue a policy of non-discrimination. I was one of the persons who sponsored the first African-American for membership and was instrumental in persuading him to join.

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 Robb appointed a commission to review nominations. It is my understanding that the commission recommended me. When Judge Jackson Kiser announced that he was taking senior status, I contacted several members of the bar and asked them to sound out others members of the bar to determine if my candidacy would be favorably looked upon by the lawyers who practiced before me as a trial judge before I went on the Court of Appeals. They reported that the bar was generally enthusiastic. These bar members also approached former State Senator Elliott Schewel and former Congressman Watkins M. Abbitt to determine if they could support my candidacy. When they reported they could, I decided to apply for the position. As a candidate, I have also been reviewed by 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

Norman K. Moon

that could reasonably be interpreted as asking how you would rule on such case, issue, or questions? 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.

Judicial activism is an attack upon the prerogatives of the legislative and executive branches. Courts should grant full legal relief to litigants, but when courts become unduly creative in their remedies they upset the balance of power between the branches of the government. Furthermore, the law is always best created by the legislative branch. The legislature has the ability to investigate and develop laws which are most compatible with society's needs and beliefs. Ideally, the law should be so clear that if the parties can agree upon the facts, then a good lawyer, with reasonable certainty, can predict the outcome of a dispute without going to trial. The law, as enacted by the legislature, carries with it a presumption of regularity. When a judge fails to follow precedent or unduly expands the law, he not only does an injustice to one immediate party, but encourages litigation that would not have been brought had the judge complied with stare decisis.

Norman K. Moon

ATTACHMENT B

Financial Disclosure Report

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

Question 4.

FINANCIAL DISCLOSURE REPORT

Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L. No. 101-194, November 30, 1989 (3 U.S.C. App. 4, Sec. 101-112)

AO-10 (w)
Rev. 8/96

1. Person Reporting <i>(Last name, first, middle initial)</i> Moon, Norman K.	2. Court or Organization Western District of Virginia	3. Date of Report 10/03/1997
4. Title <i>(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</i> U.S. Dist. Court Judge Nominee	5. Report Type (check type) X Nomination. Date / / ___ Initial ___ Annual ___ Final	6. Reporting Period 01/01/1996 to / /
7. Chambers or Office Address Post Office Box 657 Lynchburg, Virginia 24505	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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 the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions)*

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Chief Judge	Court of Appeals of Virginia
2 Lecturer	University of Virginia School of Law
3	

II. AGREEMENTS *(Reporting individual only; see pp. 14-17 of Instructions)*

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1	
2	Virginia Supplemental Retirement System (no control)
3	

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 18-25 of Instructions)*

DATE	PARTIES AND TERMS	GROSS INCOME <i>(yours, not spouse's)</i>
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1997	Court of Appeals of Virginia, salary YTD	\$ 85,456.44
2 1997	UVA School of Law, Trial Ad Lecturer, salary YTD	\$ 6,111.10
3 1996	Court of Appeals of Virginia, salary	\$ 112,510.00
4 1996	UVA School of Law, Trial Ad Lecturer, salary	\$ 8,000.00
5 1995	Court of Appeals of Virginia, salary	\$ 107,151.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hoon, Norman K.	10/03/1997

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. 26-29 of Instructions.)

	SOURCE	DESCRIPTION
<input type="checkbox"/>	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. 30-33 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
<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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities)		
1	First Federal Sav. & Loan (J)	Mortgage on personal residence	L
2	Crestar Bank	Personal line of credit	K
3	American Express	Charge Card	J
4			
5			
6			
7			

* VAL CODES J = \$15,000 or less K = \$15,001-\$50,000 L = \$50,001 to \$100,000 M = \$100,001-\$250,000 N = \$250,001-\$500,000
 O = \$500,001-\$1,000,000 P1 = \$1,000,001-\$5,000,000 P2 = \$5,000,001-\$25,000,000 P3 = \$25,000,001-\$50,000,000 P4 = \$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Moon, Norman K.	Date of Report 10/03/1997
	- income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions.)	

VII. Page 1 INVESTMENTS and TRUSTS

A Description of Assets <i>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.</i> <i>Place "X" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period					
	(1) Amt. Code (A- H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure				
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
NONE (no reportable income, assets, or transactions)										
1 USAA 401(K) Account - Cornerstone Strategy Fund	E	Dividend	L	T	EXEMPT					
2 USAA Account - Cornerstone Mutual Fund	C	Dividend	J	T	EXEMPT					
3 Lynchburg property, Lot		None	K	T	EXEMPT					
4 Crestar Bank Checking Account #1 (J)		None	J	T	EXEMPT					
5 Crestar Bank Checking Account #2 (J)		None	J	T	EXEMPT					
6 Crestar Bank Money Market Account (S)	A	Interest	J	T	EXEMPT					
7 Central Fidelity Bank Money Market Account (S)	A	Interest	K	T	EXEMPT					
8 First Federal S&L Money Market Account (S)	B	Interest	K	T	EXEMPT					
9 One Valley Bank CD (S)	D	Interest	L	T	EXEMPT					
10 Nations Bank CD (S)	D	Interest	L	T	EXEMPT					
11 Central Fidelity Bank CD (S)	C	Interest	L	T	EXEMPT					
12 Crestar Bank CD #1 (S)	C	Interest	L	T	EXEMPT					
13 Crestar Bank CD #2	B	Interest	K	T	EXEMPT					
14 First Federal Bank Corp. Common Stock (S)	B	Dividend	L	T	EXEMPT					
15 One Valley Bank Common Stock (S)	B	Dividend	K	T	EXEMPT					
16 Bristol Myers Squibb Common Stock (S)	A	Dividend	K	T	EXEMPT					
17 Mobil Oil Common Stock (S)	A	Dividend	J	T	EXEMPT					
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	F=\$50,001-\$100,000	B=\$1,001-\$2,500	G=\$100,001-\$1,000,000	C=\$2,501-\$5,000	H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000	H2=\$5,000,001 or more	E=\$15,001-\$50,000		
2 Val Codes (Col. C1, D3)	J=\$15,000 or less	K=\$15,001-\$50,000	L=\$50,001-\$100,000	M=\$100,001-\$250,000	N=\$250,001-\$500,000	P1=\$1,000,001-\$5,000,000	P2=\$5,000,001-\$25,000,000	P3=\$25,000,001-\$50,000,000	P4=\$50,000,001 or more	
3 Val Mth Codes: (Col. C2)	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	Date of Report
	Moon, Norman K.	10/03/1997

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of report.)

NONE (No additional information or explanations.)

VII-A

Campbell County property, 52.64 acres, assessed value is \$24,483.00

Amherst County property, Parcels #1 and #2 are assessed together at \$1,200.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Moon, Norman K.	Date of Report 10/03/1997
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SECTION HEADING. (Indicate part of report.)**SECTION 3. NON-INVESTMENT INCOME** (cont'd.)

Li. Date	Parties and Terms	Gross Income
=====		
6 1995	UVA School of Law, Trial Ad Lecturer, salary	\$ 8,000.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	MOON, Norman K.	10/03/1997

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. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature

Norman K. Moon

Date

10/7/97

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. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
 Administrative Office of the United States Courts
 One Columbus Circle, N.E.
 Suite 2-301
 Washington, D.C. 20544

ATTACHMENT C
Financial Statement
Net Worth

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

Question 5.

FINANCIAL STATEMENT

NET WORTH

ASSETS				LIABILITIES			
Cash on hand and in banks		73	600	Notes payable to banks - secured	0		
U.S. Government securities - add schedule		1	000	Notes payable to banks - unsecured	0		
Listed securities - add schedule		137	346	Notes payable to relatives	0		
Unlisted securities - add schedule		16	220	Notes payable to others	0		
Accounts and notes receivable	0			Accounts and bills due			500
Due from relatives and friends	0			Unpaid income tax	0		
Due from others		3	000	Other unpaid tax and interest	0		
Doubtful	0			Real estate mortgages payable - add schedule		83	400
Real estate owned - add schedule -		460	683	Chattel mortgages and other liens payable	0		
Real estate mortgages receivable		64	500	Other debts - itemize:			
Autos and other personal property - approximately		155	000	Crestar Bank credit line		17	000
Cash value - life insurance - approximately		8	000	American Express Nations Bank Credit Card		6	000
Other assets - itemize:				Crestar Bank Credit Card		3	600
USAA 401(K) Account, Cornerstone Strategy Fund		100	826	USAA Savings Bank Credit Card		5	000
Virginia Supp. Ret. System		119	114	Total liabilities		120	500
USAA Account, Cornerstone Strategy Fund		7	722	Net worth	1	337	011
Certificates of Deposit		310	000	Total liabilities and net worth	1	457	511
Total Assets	1	457	511				
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	0			Are any assets pledged? (Add schedule)	No		
On lease or contracts	0			Are you a defendant in any suits or legal actions?	No		
Legal claims	0			Have you ever taken bankruptcy?	No		

Norman K. Moon

Provision for Federal Income Tax	0						
Other special debt	0						

QUESTIONNAIRE FOR JUDICIAL NOMINEES
FINANCIAL STATEMENT - NET WORTH

SCHEDULES

ASSETS

1. U.S. Government securities:
 - fifteen \$200 Series EE savings bonds, value \$100 each, total value \$1,500
2. Listed securities:
 - Coca Cola Common Stock, 16 shares, value \$982
 - Mobil Oil Common Stock, 200 shares, value \$14,912
 - Bristol Myers Squibb Common Stock, 200 shares, value \$17,237
 - One Valley Bank Common Stock, 1047 shares, value \$38,215
 - First Federal Bank Corporation Common Stock, 2000 Shares, value \$66,000
3. Unlisted securities:
 - Great Dames Investment Club, 1/15 interest in present portfolio value of \$243,303.72 consisting of:
 - AT&T, 258.513 shares
 - Abbott Labs, 302.201 shares
 - Biomet, 100 shares
 - Bristol Myers Squibb, 231.7761 shares
 - Cisco Systems, 200 shares
 - Coco Cola, 272.919 shares
 - Diebold Inc., 250 shares
 - DuPont, 241.6838 shares
 - Exxon, 217.249 shares
 - FFVA Financial Corp., 100 shares
 - GE, 315.2276 shares
 - Gillette Co., 100 shares
 - H.J. Heinz, 191.0035 shares
 - Lucent Technologies, 117.4194 shares
 - McDonalds, 100 shares
 - Microsoft, 200 shares
 - Phillip Morris, 338.203 shares
 - Motorolla Inc., 100 shares
 - Sara Lee Corp., 151.4552 shares
 - Washington Gas & Light, 113.2778 shares
4. Real estate owned:
 - Personal residence, Lynchburg, Virginia, value \$395,000
 - Lot adjacent to personal residence, value \$40,000
 - Campbell County property, 52.64 acres, Campbell County, Virginia, assessed value of \$24,483.00
 - Amherst County property, two parcels, 1.5 acres, assessed together at value of \$1,200

Norman K. Moon

QUESTIONNAIRE FOR JUDICIAL NOMINEES
FINANCIAL STATEMENT - NET WORTH

SCHEDULES - PAGE TWO

LIABILITIES

1. Real estate mortgages payable:
 - Personal residence, original mortgage \$100,000, 15 year term, 6.75% interest rate, \$83,955.06 presently owed

Norman K. Moon

QUESTIONNAIRE FOR JUDICIAL NOMINEES

1. Full Name: Ann Louise Aiken
2. Address: Residence: 2510 Highland Drive, Eugene, OR 97403
Office: Lane County Courthouse, 125 East 8th Avenue, Eugene, OR 97401
3. Date and place of birth.
December 29, 1951 in Salem, Oregon
4. Martial Status: List spouse's occupation, employer's name and business address.

Married to James Richard Klonoski, Professor Emeritus of Political Science, University of Oregon, Eugene, Oregon. Retired from tenured position December 15, 1994.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
 - a. Juris Doctor, 1976-1979
University of Oregon School of Law
Eugene, Oregon
Degree Received: May 19, 1979
 - b. Master of Arts, Political Science, 1975-1976
Rutgers University
New Brunswick, New Jersey
Degree Received: October 1, 1976
 - c. Bachelor of Science, Political Science, 1970-1974
University of Oregon
Eugene, Oregon
Degree Received: August 1974
 - d. School of Nursing, Summer of 1972
Oregon Health Sciences University,
Portland, Oregon
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. Circuit Court Judge February 1993-Present
- b. District Court Judge July 1988-January 1993
- c. Attorney October 1983-July 1988
Thorp, Dennett, Purdy, Golden & Jewett PC
- d. Chief Clerk December 1982-August 1983
House of Representatives
- e. Fundraiser/Field Staff August 1982-November 1982
Kulongoski for Governor
- f. Attorney August 1980-August 1982
Sahlstrom & Dugdale PC
- g. Law Clerk August 1979-August 1980
Hon. Edwin E. Allen
- h. Law Clerk (part time) 1978 - 1979
Public Defender Services, Inc.
- i. Law Clerk (part time and concurrent to above)
May 1978 - January 1979
Legal Counsel to the Governor
- j. Office Clerk/Lobbyist February 1977 - July 1977
Democratic Party of Oregon
- k. Researcher July 1977 - September 1977
University of Oregon School of Law
- l. Organizer July 1977 - September 1977
Jarl Associates
- m. Office Clerk 1976 - 1977
Democratic Party of Oregon
- n. Researcher One week December 1976
Office of Congressman James Weaver
- o. Staff July 1976 - November 1976
Weaver For Congress Committee
- p. Administrative Assistant May 1976 - July 1976
Office of Congressman James Weaver
- q. Administrative Assistant December 1974 - July 1975
Speaker Pro Tem Albert Densmore
- r. Salesclerk January 1975 - December 1974
Jas-Ko-Skiing & Sport, Inc. ** Out of Business
- s. Field Staff August 1974 - November 1974
Betty Roberts for U.S. Senate

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.

Eagleton Fellowship at Rutgers University, 1975-76

Health, Education & Welfare (H.E.W.) Public Service Education Fellowship, Rutgers University, 1975-76

Outstanding Young Oregonian for Lane County, 1989

Outstanding Young Oregonian, 1989

Outstanding Service Award as a Lane County District Judge, 1993 - Awarded by the Chair of the Lane County Board of Commissioners

Recipient of the Woman of Achievement Award, 1993
Presented by the State of Oregon Commission for Women

Certificate of Appreciation, April, 1994 - Presented by the United States Department of Justice, Office of Justice Programs for outstanding dedication and service on behalf of crime victims

The White Rose, Woman of Achievement Award, 1995
Presented by the March of Dimes, Lewis & Clark Chapter

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

Judicial Branch (Appointments by Chief Justice Wallace Carson):

- a) Member, State Court Study Advisory Committee, appointed August 1994. (Authorized by OBRA 1993 to study how courts handle proceedings related to foster care and adoption.)
- b) Member, Advisory Committee on Budget Matters for the Judicial Department, chaired by the Hon. Greg Foote, 1991-94
- Member, Subcommittee on Legislative Matters, 1991-94
 - Member, Subcommittee on Staffing, 1991-94
 - Member, Subcommittee on Retirement, 1991-94

- c) Member, Judicial Conference Committee on Retirement, 1991-Present
- d) Member, Judicial Conference Committee on Family and Juvenile Law, 1991-Present
- e) Member, Oregon State Bar Association, 1980-Present
-- Member, Judicial Administration Committee, 1982-85
- f) Member, Lane County Bar Association
-- Lobbyist on behalf of the Lane County Bar Association, 1981
-- Member, Judicial Administration Committee, 1989-Present
-- Member, Lane County Board of Directors, 1981-83
-- Chair, Judicial Administration Committee, 1990-92
-- Member, Pro Bono Committee, 1991-92
-- Member, Law Day Committee, 1987-88; 1991-92
-- Member, Juvenile Law Committee, 1992-94
-- Member, Family Law Committee, 1992-94
-- Member, Nominating Committee, 1990-94
-- Member, Alternative Dispute Resolution Committee, 1995-present
-- Member, Federal Court Committee, 1995-present
-- Member, Family and Juvenile Law, 1995-present
Member, Steering Committee
- g) Team Leader, Roland K. Rodman Inn of Court, Eugene Chapter, 1990-Present
- h) Member, Governor's Task Force on Juvenile Justice, 1994-Present
-- Co-chair, Sub Committee III (Dependency jurisdiction/Juvenile court authority and function/Substantive law and procedures for delinquent youth 13 years old and under)
- i) Vice Chair, State of Oregon Juvenile Justice Advisory Committee, 1989-91
- j) Charter Member, Oregon Women Lawyers, 1990-Present
-- Director, Board of Oregon Women Lawyers, 1990-91
- k) Secretary, Circuit Judges' Association, 1993-94
- l) Treasurer, Circuit Judges' Association, 1994-95
- m) Member, Steering Committee for Court Appointed Special Advocate Program (CASA), 1993
- n) Member, CASA Board of Directors, 1994-96

- o) Member, Lane County Domestic Violence Council, 1993-94
 - Member, Subcommittee on Criminal Justice, 1993-94
 - Member, Subcommittee on Civil Justice, 1993-94
 - p) Member, Lane County Bar Association Committee on Racial/Ethnic Issues in Judicial System, 1994-present
 - q) Member, Governor's Commission on Pregnant Substance Abusers, 1990-91
 - r) Member, The National Council of Juvenile and Family Court Judges, 1994-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.

I belong to the following organizations that are active in lobbying:

- a) Oregon Circuit Court Judges' Association
- b) Oregon Judicial Conference
- c) The Relief Nursery
- d) State Court Study Advisory Committee

I belong to the following other organizations:

- a) YMCA--family membership
- b) Advisory Board to the Junior League of Eugene
- c) Roland K. Rodman Inn of Court
- d) International Women's Forum
- e) American Leadership Forum
- f) Oregon Women Lawyers Association
- g) Lane County Women Lawyers Association
- h) Parent Teacher Organization for Fox Hollow French Immersion School
- i) Parent Teacher Organization for Roosevelt Middle School
- j) Parent Teacher Organization for International High School at South Eugene High School

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 Oregon, 1980

United States Federal Court, 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.

Report of the Governor's Commission on School Funding Reform entitled "Small Steps to a Distant Goal." Chaired by Robert Ridgley.

Report of the Governor's Commission on Pregnant Substance Abusers. Chaired by the Honorable Betty Roberts.

A subcommittee report entitled "Effective Advocacy for Dependent Children: A Systems Approach" prepared by Subcommittee 3 of the Governor's Task Force on Juvenile Justice. Chaired by Attorney General Theodore R. Kulongoski.

Report of Governor's Task Force on Juvenile Justice. Chaired by Attorney General Theodore R. Kulongoski.

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

Excellent. February 27, 1995.

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.

Lane County Circuit Court Judge, 1993 to present. Appointed by Governor Barbara Roberts, February, 1993, and sworn in March 15, 1992. Elected to the Lane County Circuit Court May 1994, to serve a six year term commencing January 1, 1995. This is the general jurisdiction trial court in Oregon.

Lane County District Court Judge, 1988 to 1992. Appointed by Governor Neil Goldschmidt, May 1988, and sworn in July 7, 1988. Reappointed to fill a term beginning January 1, 1989. Elected to the District Court May 1990, to serve a six year term beginning January 1991. The District Court is a court of limited jurisdiction consisting of civil claims not exceeding \$10,000.00, misdemeanor criminal matters, traffic violations and small claims.

15. Citations: If you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written. If any of the opinions listed were not officially reported, please provide copies of the opinions.

In the Oregon district and circuit courts, the standard practice is for judges to make findings of fact and conclusions of law on the record rather than prepare written opinions in the event of an appeal. The appellate courts use a transcript of the trial and the briefs submitted by the parties to decide the issues on appeal. Therefore, with the exception of an opinion letter I wrote in *City of Eugene v. David Henry Miller*, case no. 90-50053, *aff'd*, 114 Or. App. 271, 835 P.2d 144 (1992), I do not have any written opinions.

(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;

State of Oregon v. David Allen Gilbertson, Case No. 89-20630, conviction affirmed; judgment vacated and case remanded to reconsider probation conditions 4a and 4b, 101 Or. App. 241, 789 P.2d 19 (1990) (per curiam opinion). Defendant was convicted on a charge of telephonic harassment. I suspended imposition of sentence and placed Defendant on probation. I informed Defendant of the conditions of probation, including restrictions on drug and alcohol use. The Court of Appeals concluded that condition 4a, which required Defendant to abstain from the use of intoxicants, was inconsistent with condition 4b, which prohibited Defendant from "using intoxicants to excess." The Court of Appeals held that there was a basis for imposing the restrictions, but remanded for clarification of the inconsistent terms of probation.

State of Oregon v. Gary Warren Johnson, Case No. 88-20829, *aff'd* in part; vacated in part, 96 Or. App. 641, 773 P.2d 812 (1989) (per curiam). While on probation, Defendant committed criminal mischief in the third degree and disorderly conduct. I revoked Defendant's probation, imposed a fine, and sentenced him to a period of incarceration. Additionally, I ordered "Defendant shall be rereferred to Lane County Mental Health for evaluation and treatment." On appeal, the state argued that the court should treat the mental health rereferral as a "sentencing judge's nonbinding recommendation that Defendant submit to mental health treatment." The Court of Appeals held that the mental health rereferral exceeded the maximum sentence allowed. ORS 138.500. The court upheld the case in all other respects.

State of Oregon v. Mehran Montazer, Case No. 10-93-07185, conviction affirmed; remanded for resentencing, 133 Or. App. 271, 891 P.2d 662 (1995). Defendant was convicted of sexual abuse in the first degree. I sentenced Defendant as an 8-I, using Oregon's sentencing guidelines, which has a presumptive sentence of 16 to 18 months. I stated that Defendant's term of imprisonment was "not to exceed eighteen months." Defendant argued that the trial court erred in admitting certain evidence and in not sentencing him to a definite term of imprisonment. The Court of Appeals held that a range is not a presumptive sentence and that the trial court did not err in admitting the evidence. Therefore, the court upheld the conviction but remanded so that the trial court could sentence the defendant to a definite term of incarceration. On remand, the defendant was sentenced to 18 months in prison.

State of Oregon v. Sindy Lynn Lyman, Case No. 10-93-02538, judgment vacated and case remanded after reconsidering its earlier decision, 133 Or. App. 600, 891 P.2d 24 (1995), affirming without opinion a conviction for possession of a controlled substance. The Court of Appeals ordered the trial court to make further findings regarding the tenants' authority to enter defendant's upstairs/front room, accompanied by law enforcement, without defendant's permission. 134 Or. App. 212, 894 P.2d 1219 (1995). The appellate court also ordered the trial court to make a ruling on defendant's motion to suppress consistent with those findings. On remand, the defendant advised the court that the tenants did not have authority to enter the defendant's private premises without her permission, and the state did not oppose. Therefore, the state moved to dismiss the indictment and judgment, and the court granted the motion.

State of Oregon v. Morton/Evans, reversed and remanded on charges against defendant Morton, but otherwise affirmed, 137 Or. App. 228, 904 P.2d 631 (1995) (en banc). These cases were consolidated for appeal because the state raised the same legal issue in both cases. Both defendants moved to suppress evidence seized from an arrest made pursuant to an allegedly unauthorized warrant. The warrant was based on Morton's failure to appear on a citation for a traffic infraction. While the police were arresting Morton on the warrant, a plastic container fell from her jacket. She denied ownership and knowledge of the container. The detective found a controlled substance and drug paraphernalia in the container. The officer then arrested Evans, who was with Morton, and searched him.

The trial court granted Morton's motion to suppress because the statute cited as the basis for the warrant only authorizes warrants for failure to appear on traffic crimes, not traffic infractions. The trial court also found the arrest of Evans was unlawful because there was no testimony showing that the state had probable cause to arrest Evans.

The Court of Appeals found that the warrant was void because the statute only authorized warrants in cases involving traffic crimes; nonetheless, because Morton had disclaimed any and all interest in the container, she had no legal standing to challenge its seizure. *Id.* at 234, 231-32. Thus, the court reversed and remanded on charges against Morton.

As for Evans, the appellate court held the warrant for Morton's arrest was unlawful; the state failed to argue at trial that Evans lacked standing to contest the seizure of the container; and a lack of standing argument against Morton does not preserve the same argument against Evans. *Id.* at 237. Therefore, the trial court did not err in granting Evans' motion to suppress.

- (3) citations for significant opinions on federal and state constitutional issues, together with the citation to appellate court rulings on such opinions.

City of Eugene v. David Henry Miller, case no. 90-50053, aff'd, 114 Or. App. 271, 835 P.2d 144 (1992). Defendant demurred on first amendment and equal protection grounds.

The following is a list of attorneys who have appeared before me in either circuit or district court:

1. Jan T. Baisch, Paulson & Baisch Trial Lawyers PC, 1000 SW Broadway, Suite 1660, Portland, OR 97205. Telephone 503-226-6361.
2. Larry A. Brown, Brown, Roseta, Long & McConville, 210 Northbank Building, 44 Club Road, Eugene, OR 97401. Telephone 503-686-1883.
3. Win Calkins, Calkins & Calkins, 1163 Olive Street, Eugene, OR 97401. Telephone 503-345-0371.
4. Don E. Corson, Johnson, Clifton, Larson, & Corson, PC, 975 Oak Street, Suite 800, Eugene, OR 97401. Telephone 503-484-2434.
5. Robert Fraser, Luvaas, Cobb, Richards & Fraser, PC, #300 Forum Building, 777 High Street, Eugene, OR 97401. Telephone 503-484-9292.

6. David L. Jensen, Jensen, Fadeley & Elmore, PC, 1399 Franklin Blvd., Suite 220, Eugene, OR 97403. Telephone 503-342-1141.
 7. Shaun McCrea, McCrea, PC, 1147 High Street, Eugene, OR 97401. Telephone 503-485-1182.
 8. Terri Wood, 804 Pearl Street, Eugene, OR 97401. Telephone 503-484-4171.
 9. Bruce E. Smith, Gleaves, Swearingen, Larsen, Potter, Scott & Smith, 975 Oak Street, Suite 800, Eugene, OR 97401. Telephone 503-686-8833.
 10. William G. Wheatley, Jaqua & Wheatley, PC, 825 E. Park Street, Eugene, OR 97401. Telephone 503-686-8485.
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.

Democratic Party Precinct Person, 1984
 Delegate to the 1984 Democratic Convention in San Francisco, California

Appointed and elected Chief Clerk, House of Representatives, State Capital, Salem, Oregon, December 1982 to August 1983

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 period you were a clerk;

Law Clerk, 1979-1980
 Honorable Edwin E. Allen, Presiding Judge, Lane County Circuit Court, 125 E. 8th Avenue, Eugene, OR 97401

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

No, I did not practice as 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;

Associate Attorney, 1980-1982
 Sahlstrom & Dugdale, PC, 915 Oak Street, Suite 300,
 Eugene, OR 97401

Fundraiser/Field Staff, Kulongoski for Governor
 August to November 1982

Chief Clerk, House of Representatives, 1983
 Oregon State Capitol
 Salem, OR 97310

Associate Attorney, 1983-1988
 Thorp, Dennett, Purdy, Golden & Jewett PC,
 644 North "A" Street, Springfield, OR 97477

District Court Judge, Lane County, 1988-93
 Lane County Courthouse
 125 E. 8th Avenue
 Eugene, OR 97401

Circuit Court Judge, Lane County, 1993-Present
 Lane County Courthouse
 125 E. 8th Avenue
 Eugene, OR 97401

- 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 with the firm of Sahlstrom and Dugdale, PC, in 1981-82 consisted primarily of family law matters. I tried dozens of cases for the firm in the two years I worked there. In addition, I tried and assisted in some personal injury matters and several criminal cases. Predominantly, my cases involved custody and visitation issues. Occasionally, I handled a matter in juvenile court for a long-standing client and an adoption.

In the late summer of 1982, I took a leave from the practice of law to serve as a fundraiser and field staff person on gubernatorial candidate Ted Kulongoski's campaign staff. After the campaign ended, I was nominated by the Speaker and elected by the full membership of the House of Representatives of the Oregon Legislature to serve as Chief Clerk. My responsibilities included overseeing the clerk's staff, publication of daily schedules and calendar, maintaining the journal of all proceedings, and serving as the body's parliamentarian.

Following the end of the 1983 legislative session, I was hired by Thorp, Dennett, Purdy, Golden & Jewett, PC, to take over the firm's Domestic Law practice.

During the years at the firm, I handled a range of domestic matters from simple dissolutions to complex domestic matters that included substantial amounts of property and assets. In addition, I assisted several of the partners in general litigation preparation. I co-counseled work in a variety of areas including criminal law, municipal law, and general civil litigation.

In 1988 Governor Neil Goldschmidt appointed me to fill a vacancy on the Lane County District Court bench. A year later, upon the recommendation of the Oregon Supreme Court's chief justice, I served as presiding judge for the district court. As such, I managed thousands of cases and worked closely with constituencies of the court to ensure timely and economical resolution of pending cases. I also shared responsibility for arraignments and sentencing. I continued in that capacity until my appointment to the Lane County Circuit Court in 1993.

As a circuit court judge, I hear a variety of civil and criminal matters. Additionally, in my first year on the circuit court bench, I presided over out of custody circuit court arraignments and served as a primary sentencing judge. Most recently, I am serving as the managing show cause judge and back-up juvenile judge.

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

My specialty was complex domestic matters and child custody cases. My former clients included men and women from every economic condition, state criminal defendants, private individuals, and municipalities.

- 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 tried cases on a fairly regular basis. I was generally scheduled to try 4-5 cases per month with the expectation most would settle. In addition, I generally had court hearings on the show cause docket weekly to resolve pendente lite orders. In the practice of family law, the majority of cases are resolved through settlement negotiations, which was the result with most of my cases.

2. What percentage of these appearances was in

- (a) Federal courts -- 0%
- (b) State courts of record -- 99%
- (c) Other courts -- 1%

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.

I cannot tell you the number of cases I tried to verdict or judgment, however, I would estimate that I tried 2 or 3 per month in the seven years I was in private practice.

5. What percentage of these trials was

- (a) Jury -- 2%
- (b) Non-jury -- 98%

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 was in private practice for seven years before coming on the bench. From 1980-82 I worked for Sahlstrom & Dugdale in Eugene, Oregon. From 1983-88 I worked for Thorp, Dennett, Purdy, Golden & Jewett, P.C. in Springfield, Oregon. At both firms, my area of practice was family law. In family law cases, the goal is to reach a reasonable resolution, preferably out of court, so most of my cases settled prior to trial. From those cases that did not settle, I have picked ten that I believe are fairly representative of the kinds of family law matters I routinely handled. I tried all of these cases in Lane County Circuit Court as the attorney of record. Child custody, child and spousal support, insurance, income tax exemptions for dependent children, and property distribution were the issues in all of these cases.

In Sharon I. Callahan v. Daniel Callahan, 15-81-00196, tried on October 21, 1981 before the Honorable Edwin E. Allen, I represented the Petitioner Sharon I. Callahan. Opposing counsel was David West, whose address and telephone number are Suite 215, 500 W. 8th St., Vancouver, WA 98660; (206) 737-0415. Callahan is significant because it was the first case tried in Lane County under the child support guidelines set out in Smith v. Smith, 290 Or. 675, 626 P.2d 342 (1981). The Smith court stated that child support should be figured by a ratio of the non-custodial parent's income to the income of the custodial parent. I won custody for the Petitioner and spousal and child support from the Respondent.

In Josephina E. Pereyra v. Gregorio P. Pereyra, 15-85-04876, tried from February 5-12, 1986 and on February 17, 1986 before the Honorable F. Gordon Cottrell, I represented the Respondent Gregorio P. Pereyra. Opposing counsel was James M. O'Kief of Morris & O'Kief, whose address and telephone number are Suite 350, 400 Country Club Road, Eugene, OR 97401; 503-344-4010. This was a complex child custody matter with allegations of abuse. Despite an explicit statutory provision prohibiting the court from giving weight to the mother for the very reason she is the mother, in 1986 it was still difficult for a father to prevail. The young age of the little girl in this case made an award of custody to my client, the father, even more doubtful. Nearly fifty witnesses testified in a week long trial. At the conclusion of the trial the judge took the case under advisement for almost six weeks. Ultimately, the judge awarded custody to my client.

In Sharon Lavelle Willis v. Larry Dean Willis, 15-85-08624, tried on April 4, 1986 and between April 8-11, 1986 before the Honorable Maurice Merten, I represented the Respondent Larry Dean Willis. Opposing counsel was E. B. Sahlstrom, whose address and phone number are P.O. Box 10427, Eugene, Oregon 97440; (503) 687-1718. This was a complex custody case involving two young boys close in age, one of whom was adopted and had learning disabilities. The wife was diagnosed with bipolar disorder (manic depression). The parties owned an ultralight airplane business, which the wife ransacked and destroyed. Due to the mother's potential to cause harm, obtaining custody for the father was essential to the well-being of the boys. The day after my client was awarded custody, he died in a mysterious ultralight plane crash. A guardian was named for the boys and many of the issues from the dissolution proceeding were revisited.

In Donald D. Stapleton v. Sharon Ann Stapleton, 15-85-03273, tried on December 11, 1985, December 13, 1985, and between December 17-20, 1985 before the Honorable Maurice Merten, I represented the Respondent Sharon Ann Stapleton. Opposing Counsel was Linda Wilson, whose address and phone number are 1397 Willamette St., Eugene, OR 97401; (503) 343-1242. This case was complex because the parties had substantial assets including interest in a timber operation. I brought in an accountant to "audit" the business records and provide an expert opinion on the value of the parties' interest. I then presented a sixty-page trial memorandum outlining all of the assets and interests. Petitioner's counsel claimed the assets were so encumbered that the value was substantially lower than our expert's opinion. Judge Merten ruled in favor of my client.

In Geoffrey S. Simmons v. Cathleen I. Simmons, 15-82-04151, tried between March 20-22, 1984, before the Honorable George Woodrich, I represented the Petitioner. Opposing counsel was Doug McCool, whose address and phone number are 400 Country Club Road, Suite 210, P.O. Box 7372, Eugene, OR 97401; (503) 485-8114. Doug Dennett, Dennett & Fredericks, P.C., 199 E. 5th Avenue, Eugene, OR 97401; (503) 345-4704, and I were co-counsel in an action to modify a dissolution decree. By applying the analysis set out in two cases that I had argued before the Oregon Court of Appeals, Carter v. Carter, 54 Or. App. 86, 634 P.2d 265 (1981) and Schaffer v. Schaffer, 57 Or. App. 43, 643 P.2d 1300 (1982), I was able to convince the court that the support was not property, but alimony. Had the court found that the support was property, then the award would have been inalterable, but because the court held that the support was alimony, the court was able to consider the wife's present standard of living. Respondent had remarried and was living at a higher standard of living than she was when she was living with our client. Consequently, Petitioner's spousal support obligation terminated by order of the court. Our client estimated that we saved him approximately \$100,000.

In Sandra Minasian Stenius v. Ranier Konrad Stenius, 15-83-08690, tried between March 26-28, 1985 before the Honorable William Beckett, I represented the Petitioner Sandra Minasian Stenius. Opposing counsel was Laura Parrish of Hutchinson, Anderson, Cox & Teising, P.C., whose address and phone number are P.O.Box 3219, Eugene, OR 97403; 503-485-6162. Petitioner was the primary parent, maintained the home, and contributed financially. Respondent had a long history of alcohol abuse and unemployment. Consequently, Petitioner was

able to overcome a rebuttable presumption under Oregon law that both parties equally contributed to the marriage, which is a difficult presumption to overcome.

In Sarah Lynn Wing v. Leonard David Wing, Jr., 77-5638, tried on January 14, 1986 before the Honorable Greg Foote, I represented the Respondent Leonard David Wing, Jr. Oposing counsel were Jim Palmer and Denise Fjordbeck, whose addresses and phone numbers are Suite 403, 44 W. Broadway, Eugene, OR 97401; 503-343-8281; Department of Justice, 450 Justice Building, Salem, OR 97310; 503-378-6313. This was another complex custody modification proceeding. Petitioner, the custodial parent, remarried and agreed to move herself and her two daughters to New York with her new husband without giving notice to the Respondent. On behalf of Respondent, I moved for a change of custody and an order restraining Petitioner from removing the children from the state before a hearing could be held. Judge Foote granted custody to my client due to a substantial change in circumstances. In a later proceeding before the Honorable William Beckett on November 27, 1987, the court found that Ms. Wing's changed status from unemployed to employed coupled with my client's increased need to receive support amounted to a substantial change in circumstances. Again, my client prevailed, this time overcoming the presumption that a mere increase in income does not satisfy the test of a substantial change in circumstances.

In Emma E. Boller v. John J. Boller, 87 Or. App. 550 (1987), tried between March 5-10, 1986 before the Honorable George Woodrich, I represented the Petitioner Emma E. Boller. Oposing counsel was Russell D. Bevans, whose address and phone number are Suite C 175, 895 Country Club Road, Eugene, Oregon 97401; (503) 484-0332. This case represents the many cases involving substance abuse and domestic violence. Respondent had a history of drug and alcohol abuse and, on occasion, he physically and emotionally abused my client and the two children. Ultimately, Respondent abandoned Petitioner and his two children on a rural piece of property with no means of support. The court agreed that my client should receive the greater share of the assets in lieu of spousal support because Respondent had not made any temporary support payments, even though the court had ordered him to do so. Respondent appealed. I briefed and argued Petitioner's case before the Court of Appeals. The court issued a per curiam opinion affirming the trial court decision as modified. The court modified one provision of the decree regarding a china cabinet to "further the disentanglement of the parties."

In Christian Peter Stehr v. Gisela Hildegard Stehr, 15-79-00192 tried on July 2, 1981 before the Honorable Maurice Merten, I represented the Petitioner. Opposing counsel was Doug McCool, whose address and phone are 400 Country Club Road, Suite 210, P.O. Box 7372, Eugene, Oregon 97402; (503) 485-8114. The case was highly charged, the client was difficult to handle, and the financial matters were complex. Opposing counsel was an extremely experienced attorney. Mr. McCool and I negotiated at length. Finally, we reached a resolution and put the settlement on the record. Rather than sign the decree prepared in accordance with the settlement put on the record, Respondent moved to set the settlement aside. After a hearing on the motion, Judge Merten concluded that we had negotiated the agreement in good faith. Consequently, he signed my proposed decree.

In Pamela D. Delker v. Thomas W. Delker, No. 15-84-07223, tried on October 17 and 18, 1985 before the Honorable George Woodrich, I represented the Petitioner Pamela D. Delker. Opposing counsel was Marc Perrin, whose address and phone number are 777 High Street, Suite 110, Eugene, OR 97401; 503-345-0003. The wife worked part-time at an unskilled position, took care of the young children and managed the household. The husband worked full time with greater opportunity for career advancement because his duties at home were less on account of the wife bearing the majority of those responsibilities. Respondent contested Petitioner's need for and right to the spousal and child support that would enable her to provide adequately for their minor children. Despite lengthy settlement discussions, the case went to trial and my client prevailed. My client received enough support to complete the Forestry program at a local community college so that she could become self-sufficient while continuing to raise the children.

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.)

From the time I graduated from law school, I have given great attention to ways in which the law can and should improve the lives of children and protect the well-being of families. I developed a strong understanding of the needs of children and families while practicing as a domestic

relations attorney. When I was appointed to the bench, I noted early on that criminal activity was often a consequence of problems stemming from cycles of abuse and neglect, drug and alcohol use, and poor education. I also realized that there was a lack of resources for defendants to use to address drug and alcohol abuse, child abuse and neglect, lack of parenting skills and lack of education.

Governor Neil Goldschmidt and Governor Barbara Roberts recognized my commitment to finding solutions to these problems. They were aware, as well, of my role in bringing competing governmental entities and constituencies together. For example, as presiding judge of the district court, I developed a jail arraignment process and model plea negotiation system that saved countless dollars and time. Consequently, they appointed me to implement a system that would address the increase in drug and alcohol affected babies; to create a profile for children at risk of abuse and neglect and develop a system for effectively intervening in the families by studying the factors that led to the deaths of thirty-two children in Oregon in 1992; to serve as vice-chair of the Oregon Juvenile Justice Advisory Committee; and to participate in the Governor's Task Force on Juvenile Justice.

Most recently, the Chief Justice of the Oregon Supreme Court has appointed me to the State Court Advisory Committee authorized under OBRA 1993 to study how courts handle proceedings related to foster care and adoptions. Additionally, I co-chaired a subcommittee mandated to report to the 1995 Oregon Legislature on what Oregon should do to meet the American Bar Association guidelines for effective representation of children in dependency cases. I enjoyed a strong working relationship with William Wheatley, immediate past president of the Oregon State Bar, who served as a member of the committee.

On a local level, I am a former member of the Commission on Children and Families for Lane County charged with devising a long-term strategic plan for the healthy development of children and families. Over the last eight years, I have served in various capacities on the Board of the Lane County Relief Nursery, which is dedicated to finding and implementing effective methods for intervening in the lives of high risk families.

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 am a member of the Public Employees Retirement System.

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 fully comply with 28 U.S.C. § 455. I will recuse myself from any proceeding in which I have an actual or apparent conflict. I do not foresee any categories of litigation or financial arrangements that will present a 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?

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 Form AO-10 incorporated by reference herein.

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

See attached forms.

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.

1. Betty Roberts for Governor, 1973-1974

I served as the University of Oregon campus coordinator for the Lane County campaign and at some point in the Fall of 1993, I was named co-chair of the Lane County Campaign. My responsibilities included organizing and supervising all the canvassing, lawn signs, local fundraising events, staffing the headquarters and local advance work. The campaign manager was Leonard Bergstein and I ran Lane County as a volunteer.

2. Betty Roberts for U.S. Senate, 1974

Senator Wayne Morse died in the summer of 1974 and Betty Roberts was selected by the State Central Committee to replace the Senator. The campaign hired me to assist with the field organization. I lived and worked out of Portland. Later in the campaign, I was reassigned as the candidate's driver and personal staff. I worked from August, 1994 through the general election on the first Tuesday in November, 1974.

3. Kulongoski for U.S. Senate, 1980

I was a volunteer in the campaign in Lane County. I stuffed envelopes and performed general office work for the campaign with my new baby, Jake, over a six week period before the November 1980 election. Linda Lynch was the County Coordinator.

4. Kulongoski for Governor, 1982

In December 1981, Ted Kulongoski decided to run for Governor and came to tell me in my hospital room where I had just given birth to my second son. I performed volunteer work under Linda Lynch, County Organizer, throughout the primary and during the summer. In the late summer, the campaign needed staff and asked me to consider the job. I commuted to Portland initially to do scheduling, but was reassigned to fundraising and field work.

5. Neil Goldschmidt for Governor, 1986

In 1986, Neil Goldschmidt called a group together to decide whether he should run for Governor. My husband and I were included in the discussion. I worked as a volunteer throughout the primary and was named one of three Lane County co-chairs for the general election. My responsibilities included grassroots organization, staffing the office, advance, lawn signs, and participation in the local fundraising activities. The other co-chairs were Dorothy Chase and Maury Jacobs (now deceased).

6. Hans Linde for the Supreme Court, 1984

Justice Linde was challenged in his re-election to the Oregon Supreme Court. As a former student, he asked for my help. I was a volunteer coordinator of the local lawn sign effort.

7. Debra Ehrman for City Council, 1984

I served on the steering committee for Debra Ehrman's successful city council race. I volunteered to canvas, helped with lawn signs, mailings and did some fundraising.

8. Jim Weaver for Congress, 1976

I served as a field organizer for Mr. Weaver's congressional campaign. My responsibilities included managing volunteers, advancing the candidate, coordinating lawn signs and canvassing.

9. As a precinct committee person and part time office staff to the Democratic party, I did volunteer work for dozens of legislative, local and statewide races. I would canvass a precinct, stuff envelopes or help with campaign strategy.

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.

Guest Lecturer, Interdisciplinary Doctoral Program Seminar, College of Education Division for Special Education and Rehabilitation, Professor Dan Close. (Lectured yearly since 1988).

Guest Lecturer, Foundations of Disability (Master's Program), College of Education Division for Special Education and Rehabilitation, Professor Dan Close.

Guest Lecturer, Psychology of Exceptional Children (Master's Program), College of Education Division for Special Education and Rehabilitation, Professor Dan Close. (Lectured twice yearly from 1988 to 1993).

Guest Lecturer, Supreme Court and Civil Rights and Civil Liberties, Department of Political Science, University of Oregon, Professor James Klonoski.

Courthouse Tours/Mock Trials. Since 1988, I have presided over the Thurston High School mock trial sponsored by the Honor Society. The event is a popular school activity that requires hundreds of volunteer hours on the part of local lawyers and teachers. The mock trial is featured in an all school performance and has expanded to two trials.

In addition, I have coordinated literally hundreds of school tours for elementary through secondary school students. During my term on the Law Day Committee, we conducted a four hour in service day for middle and high school social science teachers. This informal arrangement has been extremely popular.

As a member of the Lane County Bar Association Pro Bono Committee, I recommended the creation of the Andrew Clement Pro Bono Award. The award was named after my colleague following his death after serving two months on the Lane County District Court. The award is given annually to an individual for exceptional pro bono service to person of limited means.

I have been involved in the Relief Nursery, which is an effective family-centered program aimed at ending the devastating cycle of child abuse and neglect. The

therapeutic preschool and family services have been a lifeline to so many people in Lane County. The therapeutic preschool serves 170 children a week and many more families through outreach and the drug and alcohol programs. Families with children at risk of serious abuse and neglect are served by highly trained staff and teachers who are literally changing the lives of families daily. (The Relief Nursery has been replicated in Portland, Klamath Falls, Cottage Grove and we are in the beginning stages of negotiations with Deschutes and Marion Counties).

In July of 1993, the Relief Nursery consolidated the four classrooms located in donated church space around town and a fifth site which housed the administrative staff into a new 13,000 square foot, 1.9 million dollar building designed specifically to meet the needs of our families. The building has been described as the "finest children's facility in Oregon".

I serve on the steering committee of the Court Appointed Special Advocates (CASA) program. Starting in January 1994, we created the program, hired two staff directors, wrote three grants (received funding for two), recruited 140 applicants, and screened and trained our first class of volunteers. This program means children and families will have a true public advocate to ensure they receive appropriate services and court intervention to arrive at a permanent family placement. Most recently Gwyneth Hamacker, Program Coordinator, has requested that I serve on the CASA of Lane County Foundation Board to ensure the smooth growth of the program.

I have supervised, as well, a cadre of young people who have given volunteer time for the Courts under my supervision each year. Since 1988, I have had 4 to 6 students from various high schools participate in a structured yet flexible community service project. Four of the students were so experienced and talented that they have been paid judicial employees between semesters at college and over the summer. The split is approximately about half women and half men. I maintain contact with each student and have appreciated all they have given the judicial system as volunteers.

I also serve as a mentor for students at the University of Oregon School of Law and Roosevelt Middle School. I have been involved in these programs since my appointment to the bench.

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 -- though either formal membership requirements or the practical implementation of membership 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).

A Judicial Selection Advisory Committee appointed by members of Oregon's congressional delegation and Governor Barbara Roberts was convened to conduct interviews and recommend candidates for nomination. The committee was comprised of twelve lawyers and two state court judges. The committee included members of racial minorities. There were three past presidents of the Oregon State Bar.

The committee reviewed the written applications of all applicants and selected 13 finalists to be interviewed. Background checks were done by committee members on the finalists prior to interviews. On October 21, 1994, and October 22, 1994, interviews of the finalists were conducted. Following the interviews the committee recommended four names to Oregon's Congressional delegation for nomination.

Congressman Ron Wyden and Governor Barbara Roberts conducted a second round of interviews. Thereafter, Congressman Wyden consulted with all members of the Oregon Congressional delegation and Governor Roberts and prepared the letter to President Clinton recommending my name. In addition, I have been interviewed by a panel of attorneys at the Department of Justice, the Federal Bureau of Investigation, and 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?

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 judiciary in American government is to decide justiciable cases and controversies. Congress decides the limits of a federal court's jurisdiction. The judiciary's primary task is to apply the law created by Congress. In doing so, the judiciary should always abide by the constitutional requirements for standing, invoke the prudential doctrines of mootness and ripeness, and rely on case law precedents.

Always the judiciary should consider whether the issue before the court is a political question better left to the other branches of government for resolution. When applying these doctrines of justiciability, a federal district court judge should limit her ruling to the grounds necessary for resolving the controversy.

To make the ruling, a federal district court judge in Oregon should first consider the relevant legal precedent of the Ninth Circuit Court of Appeals and the United States Supreme Court. Second, a federal district court judge should fashion a resolution that takes into account the preferability of legislative and executive solutions and the constitutional guarantees of individual freedom, limited government, private property, and the Bill of Rights.

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1995/1996
AO-10
Rev. 1/96

1 Person Reporting (Last name, first, middle initials) Aiken, Ann L.	2 Court or Organization U.S. District Court, Oregon	3 Date of Report 12/17/96
4 Title (Article III judges indicate active or senior status. Magistrate judges indicate full or part-time) Article III Judge (Active)	5 Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination. Date <u> / / </u> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6 Reporting Period 1/1/96-12/16/96
7 Chambers or Office Address Lane County Courthouse 125 E. 8th Avenue, Eugene, OR 97401	8 On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
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 9-13 of Instructions)
POSITIONNAME OF ORGANIZATION/ENTITY

NONE (No reportable positions)

Director Relief Nursery (Non-profit) Board of DirectorsDirector Relief Nursery (Non-profit) Board of Stewards
II. AGREEMENTS. (Reporting individual only, see pp 14-17 of Instructions)
DATEPARTIES AND TERMS

NONE (No reportable agreements)

1995-96 Public Employees Retirement System (P.E.R.S.) for the State of Oregon
III. NON-INVESTMENT INCOME. (Reporting individual and spouse, see pp 18-25 of Instructions)
DATESOURCE AND TYPEGROSS INCOME
(years, not spouse)

NONE (No reportable non-investment income)

1	<u>1995</u>	<u>State Board of Higher Education-State of Oregon</u>	<u>\$ (S)</u>
2	<u>1995-1996</u>	<u>State of Oregon-Judicial Branch</u>	<u>\$147,203.43</u>
3	<u>1995-1996</u>	<u>Public Employees Retirement System (P.E.R.S.)</u>	<u>\$ (S)</u>
4	_____	_____	<u>\$ _____</u>
5	_____	_____	<u>\$ _____</u>

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Aiken, Ann L.

Date of Report

12/17/96

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. 26-29 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. 30-33 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. 34-36 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
 N = \$250,001 - \$500,000 D = \$500,001 - \$1,000,000 P = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Aiken, Ann L.

Date of Report

12/17/96

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A Description of Assets (including trust assets) 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. Place "(R)" after each asset exempt from prior disclosure.	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Asc. I Code (A-H)	(2) Type (e.g., div., rent or int.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
¹ U-Lane-O Credit Union Savings (DC)	A	INT	J	T					
² U-Lane-O Credit Union Savings (DC)	A	INT	J	T					
³ U-Lane-O Credit Union Savings (DC)	A	INT	J	T					
⁴ U-Lane-O Credit Union Savings (DC)	A	INT	J	T					
⁵ U-Lane-O Credit Union Savings (DC)	A	INT	J	T					
⁶ Teachers Insurance Annuity Association (TIAA (S))	D	DIV	K	E					
⁷ Oppenheimer Funds Investment Account	C	DIV	L	T					
⁸ U-Lane-O Credit Union (J)	A	INT	K	T					
⁹ Common Stock-State Bank Sauemin, Illinois	A	NONE	J	U					
¹⁰ I.R.A. (Jackson National Life)	C	DIV	K	T					
¹¹ C.R.E.F. (Equity Account) (S)	F	DIV	K	T					
12									
13									
14									
15									
16									
17									
18									
1 Income/Gain Codes (See Col. B1 & D4)	A=\$1,000 or less B=\$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 (See Col. C1 & D3)	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

Name of Person Reporting

Aiken, Ann L.

Date of Report

12/17/96

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

1. Pursuant to my mother's will, I hold the stock but my father receives the dividends from the stock until his death.

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

Ann Aiken

Date

January 7, 1997

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)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to

Committee on Financial Disclosure
Administrative Office of the
United States Courts
One Columbus Circle, N.E., Suite 2-301
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	500 00	Notes payable to banks—secured	7	000 00
U.S. Government securities—add schedule			Notes payable to banks—unsecured	4	500 00
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	244	873 00
** Real estate owned—add schedule	332	280 00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Automobiles and other personal property	50	000 00	Credit Cards	6	750 00
Cash value—life insurance	13	000 00			
Other assets—itemize:					
Oppenheimer Funds Investment Account	75	000 00			
TIAA/CREF	65	000 00			
* PERS (Jim—approximately)	191	000 00	Total liabilities	263	123 00
* PERS (Ann—approximately)	63	000 00	Net Worth	564	657 00
* Total Assets (See attached also)	827	780 00	Total liabilities and net worth	827	780 00
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner 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				

***OTHER ASSETS CONTINUED**

IRA (Ann-approximately) \$ 28,000.00

Shares: State Bank of Saunemin, Illinois (Family Owned Bank) \$ 2,000.00

Public Employees Retirement System (PERS). My husband retired December 15, 1994. He began drawing a monthly defined benefit of \$3,200.00 in January 1995. (Life annuity with 100% survivorship).

****REAL ESTATE OWNED**

2510 Highland Drive, Eugene, OR (Residence) \$332,280.00

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Jerome Barry Friedman
"Jerry"

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

Residence:
Virginia Beach, VA 23456

Office:
Circuit Court Judges' Office
2305 Judicial Blvd.
Building 10, Fourth Floor
Virginia Beach, VA 23456

3. Date and place of birth.

February 19, 1943
Newark, New Jersey

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

Sandra Katz Friedman
Teacher
Kempsville High School
5194 Chief Trail
Virginia Beach, VA

Jerome B. Friedman

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

9/65 to 6/69 - Wake Forest School of Law - Degree J.D. 6/69

**Please note that I had to leave school for one year due to illness of my father in order to help my parents. I was supposed to graduate in 1968 and most correspondence from law school indicates that I was in the Class of 1968, although I graduated in 1969.

9/61 to 6/65 - Old Dominion University - Degree B.S. in Finance 6/65

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 6/65 - 8/65 - Shoe Salesman

Hofheimer Shoe Company
Norfolk, VA

Summer 7/66 to 9/66 - Taxi Driver

Norfolk Taxi Company
Norfolk, VA

Summer 1967 - Worked in Winston-Salem, North Carolina for Attorney Walter Holton, who is now deceased.

1/68 to 5/68 - Management

Astro TV (My father's business)
Norfolk, VA

5/68 to 1/69 - Trust Administrator

First Union National Bank
Greensboro, NC

Est. 6/69 to 9/70 - Assistant Trust Officer

First Union National Bank
Greensboro, NC

Jerome B. Friedman

9/70 to 1/71 - Associate in Law Firm

Steingold & Steingold

Norfolk, VA

1/71 to 5/71 - Associate in Law Firm

Shapero, Levine & Abraham

Norfolk, VA

5/71 to 12/71 - Associate in Law Firm

Shapero & Levine

Norfolk, VA

1/72 to 1/74 - Partner in Law Firm

Shapero, Levine & Friedman

Norfolk, VA

1/74 to 12/82 - Partner in Law Firm

Levine & Friedman

Virginia Beach, VA

1/83 to 6/85 - Partner in Law Firm

Pender & Coward

Virginia Beach, VA

6/85 to 1/91 - Judge, Juvenile & Domestic Relations District Court

Juvenile & Domestic Relations District Court

Virginia Beach, VA

1/91 to Present - Circuit Court Judge

Circuit Court Judges' Office

Virginia Beach, VA

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.

Jerome B. Friedman

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

During my senior year at Old Dominion University I was elected first runner up as Mr. Troubadour for general achievements. At Wake Forest I was elected District President of Phi Alpha Delta Law Fraternity.

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.

I was a member of the Virginia Beach Bar Association, Norfolk and Portsmouth Bar Association, Virginia State Bar, Virginia Bar Association, Virginia Trial Lawyers Association and the American Bar Association while I practiced law. I now hold judicial memberships in some of the above groups. I also previously held a judicial membership in the P'anson-Hoffman American Inns of Court. I am a member of the Judicial Conference of Virginia.

Prior to becoming a judge, I was a member of the 2nd District Grievance Committee of the Virginia State Bar from 1983 to 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.

At this time I do not belong to any organization. Some of the bar groups listed in question number 9 may, on a small scale, lobby in the Virginia General Assembly.

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

Upon passing the bar exam in 1969, I was admitted to practice in all state courts in Virginia. I was also admitted to practice before the United States District Court for the Eastern District of Virginia on March 22, 1971, and United States Court of Appeals, 4th Circuit, on August 15, 1975.

Jerome B. Friedman

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 written any articles to the best of my knowledge. I have made speeches to Bar groups, civic groups, high school and college classes; however, I do not have copies of the speeches and did not retain my notes.

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

My health is fine. My last complete physical examination was about one year ago. I had a partial examination on March 24, 1997.

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.

July 1985 to January 1991

Judge - Virginia Beach Juvenile and Domestic Relations District Court

I was elected by the Virginia General Assembly for a full six year term. This court hears all cases involving juveniles, either as defendants or victims to conclusion. In some cases this court determines probable cause for felonies. Abuse and neglect cases are heard including termination of parental rights. The court determines support and custody matters not associated with a divorce.

January 1991 to Present

Judge - Virginia Beach Circuit Court.

I was appointed for an interim statutory term to this court by Governor L. Douglas Wilder until the next session of the General Assembly. At that session the General Assembly elected me for a full eight year term. The Circuit Court is Virginia's court of general jurisdiction and is a court of record.

15. **Citations:** If you are or have been judge, provide: (1) the following are the ten most significant opinions I have written. The opinions are attached. (2) a short summary of and citation for all appellate opinions where your decisions were

Jerome B. Friedman

reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; (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 following are the ten most significant opinions I have written. The opinions are attached.

Wilshire Credit Corporation v. H. Webster Brown
Docket No.: CL96-2103

Johnny E. White v. James L. Miller and Gary Samuel White
Docket No.: CH96-3555

Robert L. Johnson, Executor, etc., et al v. George S. Walsh and A. Jackson Mason
Docket No.: CL96-2077

Russell H. Carter v. Food Lion, Inc.
Docket No.: CL95-1048

Pamela M. Veit, Administratrix of the Estate of Andre Maurice Veit v. Lakeside Construction Corporation, et al
Docket No.: CL94-3087

Robert E. Hudson v. First Union National Bank of Virginia
Docket No.: CH96-1380

Charles W. Austin, Jr. v. Norris & St. Clair, P.C.
Docket No.: CH95-632

Kiera Inman Redd, et al v. Commonwealth of Virginia
Docket No.: CL95-3248

Arlene M. McCord, Administratrix v. John C. Gribble, d/b/a/ G&G Cycle Works, et al
Docket No.: CL94-900

Jerome B. Friedman

Frances C. Hayes v. Hamid Hambaz
Docket No.: CL94-1367

(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;

Although I have been affirmed many times by the Supreme Court of Virginia and the Court of Appeals of Virginia in published and unpublished opinions, the following is a brief description of all reversals by these courts:

Cohn-Phillips, Ltd. v. Marina Shores, Ltd., Marina Shores, Ltd. v. Cohn-Phillips, Ltd., 246 Va. 222, 435 S.E. 2d 136 (1993). This case involved a breach of a lease, tortious interference and civil conspiracy. The Supreme Court ruled that I should have granted the possession to Marina Shores, Ltd. because the lease was breached by Cohn-Phillips, Ltd. for not paying rent on time. I ruled that Cohn-Phillips, Ltd. did not breach the terms of the lease when rent was tendered by them late.

Curtis A. Brandon v. Commonwealth of Virginia, 22 Va. App. 82, 467 S.E. 2d 859 (1996). When this robbery case was first tried, during the cross-examination of a prosecution witness, the Commonwealth's Attorney strongly objected to a question about the witness' alleged conviction of rape in the Juvenile and Domestic Relations District Court. The Commonwealth's Attorney indicated to me that this witness was very important to the Commonwealth and since the question had been asked improperly, he asked me to declare a mistrial. After some thought, I did. Prior to the next trial, the defendant's attorney moved that this matter be dismissed on double jeopardy grounds. I denied the motion and the defendant was tried and convicted. The Court of Appeals reversed stating that I should have allowed the cross-examination in order to show bias. The Court ruled that the record did not support the Commonwealth's claim of manifest necessity for a mistrial to be declared.

David A. Parker Enterprises v. Templeton, 251 Va. 235, 467 S.E. 2d 488 (1996). The Supreme Court, in a 5 to 2 opinion, ruled that I should not have allowed two doctors to testify that in their opinion a motor boat propeller was rotating when the plaintiff was injured.

Jerome B. Friedman

Dan L. Harris v. City of Virginia Beach, 19 Va. App. 214, 450 S.E. 2d 401 (1994). The defendant was driving a motor vehicle and was involved in two accidents about a mile apart. One police officer charged the defendant with reckless driving and another charged the defendant with driving under the influence. The defendant was found guilty in another court of reckless driving. I found the defendant guilty of the DUI. The Court of Appeals reversed my conviction in accordance with Virginia Code Section 19.2-294.1, stating that both offenses grew out of the same continuous, uninterrupted course of operation of the motor vehicle.

E. Hawley Brooks v. Carolyn M. Rogers, 18 Va. App. 585, 445 S.E. 2d 725 (1994). The Court of Appeals affirmed most of my rulings in this cause. They reversed my decision to impute some extra income to Mr. Brooks and remanded the cause for redetermination of child support.

Monette Hoffman v. Joseph A. Love, 245 Va. 311, 427 S.E. 2nd 357 (1993). In this 4 to 3, decision the Supreme Court ruled that although liability was admitted, I should have allowed the jury to decide whether the plaintiff was entitled to punitive damages based on the defendant's intoxication.

Christopher Associates, L.P. v. J.C. Sessions, Jr., et al., 245 Va. 18, 425 S.E. 2nd 795 (1993). The Supreme Court ruled that I wrongly construed a certain term of a real estate contract.

Mary Ellen Guilfoyle v. Joseph Charles Guilfoyle, 95 Vap. Unp 0561941 (1995). The Court of Appeals affirmed many rulings, but reversed my lump sum spousal award in favor of periodic spousal support. They also said there should be a division of a certain certificate of deposit.

Walter Lee Cherry, Jr. v. Commonwealth of Virginia, 21 Va. App. 132, 462 S.E. 2nd 574 (1995). The Court of Appeals affirmed this case. One judge dissented stating that he believed the search of the defendant's house exceeded the scope of the anticipatory search warrant and was unreasonable under the Fourth Amendment.

Jerome B. Friedman

(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.

Curtis A. Brandon v. Commonwealth of Virginia, 22 Va. App. 82, 467 S.E. 2d. 859 (1996).

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 addressed 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;

9/70 to 1/71 - Associate in Law Firm
Steingold & Steingold
Norfolk, VA

Jerome B. Friedman

1/71 to 5/71 - Associate in Law Firm

Shapero, Levine & Abraham
Norfolk, VA

5/71 to 12/71 - Associate in Law Firm

Shapero & Levine
Norfolk, VA

1/72 to 1/74 - Partner in Law Firm

Shapero, Levine & Friedman
Norfolk, VA

1/74 to 12/82 - Partner in Law Firm

Levine & Friedman
Virginia Beach, VA

1/83 to 6/85 - Partner in Law Firm

Pender & Coward
Virginia Beach, VA

6/85 to 1/91 - Judge, Juvenile & Domestic Relations District Court

Juvenile & Domestic Relations District Court
Virginia Beach, VA

1/91 to Present - Circuit Court Judge

Circuit Court Judges' Office
Virginia Beach, VA

- 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?

General practice with an emphasis in civil litigation (plaintiff and defense), real estate, domestic relations, criminal, collections, bankruptcy.

Jerome B. Friedman

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

I represented some insurance companies such as Old Republic Insurance Company and The Hartford and some small corporations. Most clients were average people in the general practice of 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.

Generally, I appeared in court two to three days a week.

2. What percentage of these appearances was in:

- (a) federal courts;

Approximately 10%

- (b) state courts of record;

Approximately 45%

- (c) other courts.

Approximately 45%

3. What percentage of your litigation was:

- (a) civil;

80%

- (b) criminal;

15%

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(c) other;

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.

Since I have been a judge for 12 years this is difficult to answer. My best recollection over the years is about 50 cases, mostly as chief counsel.

5. What percentage of these trials were:

(a) jury;

10%

(b) non-jury.

90%

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.

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**Herbert Cherry v. Paul Robinett and Portsmouth General Hospital
Portsmouth Circuit Court**

Docket No.: L79-956 (1979)

Presiding Judge: Lester E. Schlitz

This was a serious and difficult medical malpractice case. I filed suit against a very prominent surgeon and the hospital. The negligence alleged occurred during and after surgery to remove a tumor from Mrs. Cherry's thyroid gland. There was a protracted medical malpractice review panel hearing and we prevailed. Shortly before trial this case was settled for \$400,000.00. Mrs. Cherry remained in a coma until she died several months after the settlement. I was lead counsel for the plaintiff and co-counsel was Glenn McClanan, Esquire, Kempsville Professional Center, 425 South Witchduck Road, Virginia Beach, VA 23462, (757) 497-9451. Opposing counsel was Thomas J. Harlan, Jr., Esquire, 1200 Dominion Tower, 999 Waterside Drive, Norfolk, VA 23510. His phone number is (757) 625-8300.

Robert James Drury v. Catherine C. Drury

Virginia Beach Circuit Court

In Chancery No.: CH84-2198; **Ended #:** C2322-84 (1984)

Presiding Judge: Kenneth N. Whitehurst, Jr.

Commissioner in Chancery: Edward T. Caton, P. O. Box 6, Virginia Beach, VA 23458, (757) 428-4681

This was an interesting and important divorce case because it was probably the first equitable distribution case in Virginia Beach. There were no legal precedents in Virginia at that time and I had to rely mostly on New Jersey law. The court did not agree with my argument concerning equitable distribution. My client, Mr. Drury, did not want to appeal the ruling. Several years later the statute was changed and with the change we would have prevailed. The case was heard by the Commissioner in Chancery and the exceptions which were filed to the Commissioner's Report were heard by Judge Whitehurst. Opposing counsel was Glenn R. Croshaw, Esquire, One Columbus Center, Suite 1010, Virginia Beach, VA 23466, (757) 628-5625. I was the only counsel for Mr. Drury.

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Commonwealth v. Danny LeaNorfolk Circuit CourtDocket No.: F77-1198 (1977)Presiding Judge: Alfred W. Whitehurst

This was a high profile murder case. The defendant and some others killed a man on a bridge and threw him into the water. After several days of trial, the jury convicted the defendant of second degree murder and not first degree murder. We were able to prove that the defendant was intoxicated and not capable of premeditation. I was sole counsel for Mr. Lea. He thought his conviction for second degree murder was a victory. Representing the Commonwealth of Virginia was Lawrence Lawless who is now a General District Court Judge in Norfolk, 811 East City Hall Avenue, Norfolk, Virginia 23510, (757) 664-2583.

Mildred S. Bales, in her own right, Mildred S. Bales, Administratrix of the Estate of Benny E. Bales v. Old Republic Life Insurance CompanyHampton Circuit CourtDocket No.: 9500 (1971)Presiding Judge: Nelson T. Overton

This was an emotional trial involving litigation over the proceeds of a group mortgage life insurance policy against my client, Old Republic Life Insurance Company. The plaintiff was the wife of the decedent. We alleged that Mr. Bales, a police officer, falsely answered questions of a material nature relating to his health. This case was important because the Supreme Court of Virginia clarified the issue of our proper burden of proof. We did not prevail at trial, but the Supreme Court of Virginia reversed and remanded the case because the judge improperly instructed the jury on the burden of proof. My partner at the time, William Shapero, and I tried the case. When we argued the case before the Virginia Supreme Court, Mr. Shapero argued first and I made the rebuttal argument. Mr. Shapero later became a judge in the Norfolk General District Court and is now retired and lives in Florida. His address is 2701 N. Ocean Boulevard, Apt. E-406, Boca Raton, Florida 33431, and his phone number is (561) 391-5435. Opposing counsel was George C. Overman, Esquire, 739 Thimble Shoals Boulevard, Suite

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507, Newport News, VA 23606, (757) 873-1188. The Virginia Supreme Court cite is, Old Republic Life Insurance Company v. Mildred S. Bales, etc., et al, 213 Va. 771 (1973).

James M. Walker, Lenore Walker, Pealage P. Walker, IV, v. Grace Walker Schmucker

Norfolk Circuit Court

Docket No.: C80-1180; Ended #: C1350-81 (1980)

Presiding Judge: Thomas R. McNamara

My client was the trustee of a testamentary trust created by her mother. The remaindermen of the trust filed a bill for declaratory judgment alleging the trust purposes had been accomplished and asked that the trust be terminated and the trust property be delivered to them. My client asserted that the trust should not be terminated. A major issue in this case was whether this trust was active or passive. We lost this case at trial but successfully appealed and the Supreme Court of Virginia reversed the trial court and entered final judgment for my client. I was the only counsel for my client. Opposing counsel was Stanley G. Bryan, Esquire, 801 S. South George Washington Highway, Chesapeake, Virginia 23323.

The Virginia Supreme Court cite is, Grace Walker Schmucker v. Pealage P. Walker, IV, et al, 226 Va. 582 (1984).

James E. & Janet Walker v. Chester & Gloria Gifford

United States District Court for the Eastern District of Virginia

Docket No.: C/A 78-344-N (1978)

Presiding Judge: J. Calvitt Clarke, Jr.

This was a case filed under Title 42 U.S.C. § 1982, Discrimination under the Federal Fair Housing Law. My clients were black and attempted to rent a house from the defendants who were well known business people in the area. The evidence at trial was that once the defendants determined that my clients were black, they declined to rent their house to them. At one point, there was a third party defendant, Woodard Realty Company, that was dismissed from the case prior to trial. This case was a bench trial and the judge found for plaintiff. The plaintiff was awarded compensatory damages in the amount of \$2,000.00, punitive damages in the amount of \$1,000.00, attorney's fees in the amount of \$1,000.00, and all taxable costs. Although this was not a large verdict, the issues were

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very significant. I was sole counsel for the plaintiffs. Counsel for the Giffords was originally Robert G. Jones, Esquire, whose address is 128 South Lynnhaven Road, Suite 100, Virginia Beach, Virginia 23452, and his phone number is (757) 486-0333. Mr. Jones withdrew from the case and the Giffords were represented at trial by Michael S. Weisberg, Esquire, whose address is 101 West Plume Street, Suite 5, Norfolk, Virginia 23510 and his phone number is (757) 622-7740.

John W. Gee v. City of Norfolk, a municipal corporation, H. I. Watkins, W.L. Moore, Dwight Minyard and Charles D. Grant, Chief of Police

United States District Court for the Eastern District of Virginia
Docket No.: CA82-753 - N (1982)

Presiding Judge: Walter E. Hoffman

This was a police brutality suit filed under Title 42 U.S.C. § 1983. The case was a two-day jury trial. The jury found in favor of the defendants. Prior to trial on December 22, 1982, defendants, City of Norfolk and Charles D. Grant, Chief of Police, were dismissed from the case by consent order. My client was hurt rather seriously; however, liability was difficult to prove. We felt it was important that the judge allow the issues to go to the jury, but unfortunately their verdict was for the defendant. I was sole counsel for the plaintiff. Philip R. Trapani, Esquire, was the attorney for all of the defendants. His address is Office of the City Attorney, 908 City Hall Building, Norfolk, VA 23510, and his telephone number is (757) 664-4529

Susan Adams v. United States of America

United States District Court of the Eastern District of Virginia
Docket No.: CA79-606-N (1979)

Presiding Judge: J. Calvitt Clarke, Jr.

This was a suit filed under Title 28 U.S.C. § 2671, the Federal Tort Claims Act. It was a personal injury suit which alleged negligence during surgery. The case never went to trial. A stipulation for compromise settlement was presented to the Court on February 26, 1980, and an order dismissing the case based on the stipulation was entered on April 3, 1980. I was sole counsel for the plaintiff in the case. The U. S. Attorney, Justin W. Williams, and Assistant U. S.

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Attorney John F. Kane represented the defendant. The address for the U. S. Attorney's Office is 101 West Main Street, World Trade Center, Suite 8000, Norfolk, Virginia 23510, and the phone number is (757) 441-6331. However, Justin W. Williams is now with the U.S. Attorney's Office in Alexandria. His address is 2100 Jamieson Avenue, Alexandria, Virginia 22314, and his phone number is (703) 299-3700.

William Charles Simpson, individually and trading as Simpson Home Improvement Co. v. Clarence Love

Virginia Beach Circuit Court

Docket No.: 16932 Ended No.: 20145 (1971)

Presiding Judge: George W. Vakos

This was a breach of contract case. The plaintiff was seeking as damages the amount owed on the contract for home improvement work performed at the defendant's residence. The defendant filed a counterclaim claiming that plaintiff failed to complete such work and sums of money were expended to correct defective work that had been performed. The case was tried before a jury and the jury found in favor of the defendant on the plaintiff's motion for judgment, and found in favor of the plaintiff on the defendant's counterclaim. Neither side received any monetary award. When we tried to settle this case, Ms. Brydges and I recommended to our clients exactly what the jury ultimately did. A significant issue arose in this two-to-three day trial involving possible heart problems incurred by the defendant because of the aggravation he had during the time the parties were having their problems. Originally, Aldine J. Coffman, Jr., Esquire, represented the plaintiff. I was substituted as counsel and solely represented the plaintiff at trial. Janet B. Brydges, Esquire, represented the defendant. Her address is 1369 Laskin Road, Virginia Beach, VA 23451, and her phone number is (757) 428-6021.

Robert M. Cole v. Hardees Food Systems, Inc.

Virginia Beach Circuit Court

Docket No.: L-4479; Ended No.: 23431 (1971)

Presiding Judge: George W. Vakos

Mr. Cole alleged that his supervisors at Hardees in South Carolina defamed him when they fired him for taking money without their

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permission while he was an employee. There was extensive discovery. This case was very important to my client because of the potential ramifications if they lost including adverse publicity. If I recall correctly, this case was settled just prior to trial for a very small sum for economic reasons. I was sole counsel for Hardees. Glenn B. McClanan, Esquire, was counsel for plaintiff. His address is 425 South Witchduck Road, Virginia Beach, Virginia 23462-3614. His phone number is (757) 497-9451.

Please find listed below the names, addresses and phone numbers of 12 members of the legal community who have had recent contact with me.

Mary M. Kellam, Esquire
Slipow, Robusto & Kellam, P.C.
2625 Princess Anne Road
P. O. Box 6304
Virginia Beach, VA 23456
(757) 427-5094

Glenn R. Croshaw, Esquire
Willcox & Savage, P.C.
One Columbus Center, Suite 1010
Virginia Beach, VA 23466-1888
(757) 628-5625

Moody E. Stallings, Jr., Esquire
Stallings & Richardson
2101 Parks Avenue
Suite 801, Pavilion Center
Virginia Beach, VA 23451
(757) 422-4700

Richard G. Brydges, Esquire
Brydges, Mahan & O'Brien, P.C.
1369 Laskin Road
Virginia Beach, VA 23451
(757) 428-6021

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John Franklin, III, Esquire
Taylor & Walker, P.C.
1300 First Virginia Tower
555 Main Street
Norfolk, VA 23514
(757) 625-7300

Hunter W. Sims, Jr., Esquire
Kaufman & Canoles, P.C.
One Commercial Place
P. O. Box 3037
Norfolk, VA 23514
(757) 624-3272

Jerrauld C. Jones, Esquire
Jones & Carlson
Suite 300, 125 St. Paul's Blvd.
Norfolk, VA 23510-2708
(757) 627-6568

James O. Broccoletti, Esquire
Zoby & Broccoletti, P.C.
6663 Stoney Point South
Norfolk, VA 23502
(757) 466-0750

Robert J. Humphreys, Esquire
Commonwealth's Attorney
2305 Judicial Blvd., Bldg. 10B
Second Floor, Judicial Center
Virginia Beach, VA 23456
(757) 427-8978

Peter T. Legler, Esquire
Office of the Public Defender
Municipal Center
Virginia Beach, VA 23456
(757) 427-4657

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Fay F. Spence, Esquire
Spence & Whitlow
1630 Dominion Tower
999 Waterside Drive
Norfolk, VA 23510
(757) 624-9649

Charles R. Hofheimer, Esquire
Charles R. Hofheimer, P.C.
Ocean Plaza Corporate Center
303 34th Street, Suite 8
Virginia Beach, VA 23451
(757) 425-5200

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 privilege has been waived).

I handled some interesting social security appeals, one involving carpal tunnel syndrome, and we prevailed. I have also handled over 100 real estate closings, some of which were very unusual and time consuming. In addition, there were many interesting and complicated divorce matters and most settled without contested hearings. While in practice I served on the Virginia State Bar's Second District grievance committee.

I was Chief Judge for four years in the Juvenile and Domestic Relations District Court. While I was Chief Judge I implemented a CASA program, a driving school for juveniles and their parents, and a street law program. I have been Chief Judge of the Circuit Court since July 1, 1994. The Chief Judge is responsible for handling numerous administrative matters, dealing with local governing bodies, budgets, assignments of cases and some personnel matters.

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QUESTIONNAIRE FOR JUDICIAL NOMINEES**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, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Under the JRS Retirement System, if I continued in my present position, it is estimated that my retirement benefits on February 1, 1999 would be approximately \$4,850.00 per month. Early retirement benefits can be collected beginning at age 55. At this time, if confirmed by the Senate, I do not know whether I will request early benefits upon reaching age 55.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these area 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.

As far as I know there should be no conflict of interest. I have always followed the Code of Judicial Conduct and will continue to do so.

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 that 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 \$500.00 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.)

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My income and my wife's income and any interest received from savings account and bonds are the sources of all income received. See attached Financial Disclosure Report.

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

See Attached 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 worked at the polls for one or two local political candidates approximately 15 years ago. I have never been on anyone's campaign staff. Prior to becoming a judge, I probably have not contributed more than \$300.00 to all candidates I supported. I have not been involved in politics at all since becoming a judge.

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QUESTIONNAIRE FOR JUDICIAL NOMINEES

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 practicing law I always was on various court appointed lists to represent indigent defendants. I was a cub scout den leader for two years. I was a member of the Rotary Club for several years. I served on the Board of Directors for Temple Israel for many years and the Hebrew Academy of Tidewater as Vice President. While a judge in Juvenile and Domestic Relations District Court, I was a mentor in a program established by the school system for three 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?

I have never belonged to any such organizations. For several years while I practiced law and until approximately 1986, I was a member of the Rotary Club. At that time only males were allowed membership. Several years after I resigned from the club, the Rotary Club began admitting females.

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 Robb selected a screening committee and I, along with others, appeared before it in January, 1997. I was one of three recommended. The Senator arrived at a list of five candidates and I was included. The Norfolk-Portsmouth

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Bar Association rated me and two others as “highly qualified.” (Note: This bar association has about 1500 members). I was recommended by the Virginia Bar Association, the Virginia Trial Lawyers Association, and the Virginia Women’s Attorneys Association. The most important bar recommendation was from the Virginia State Bar. The five candidates were interviewed by an entire committee in February 1997. I, along with two others, were given their highest endorsement. On March 15, 1997, I had a very thorough interview with Senator Robb in Washington before he recommended me. In addition, the Department of Justice, the Federal Bureau of Investigation and the American Bar Association have completed their respective evaluations concerning my candidacy. On June 10, 1997, I had a meeting with Senator John W. Warner in Washington.

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 questions? 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;

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- 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.

A judge has to make many difficult decisions. It can be especially difficult when the law, as applied to a particular state of facts, results in what appears to be a harsh or unfair result. It is at those times the temptation can arise to “bend” or “creatively interpret” the law in order to achieve a more palatable result. It is my firmly held belief that when a judge gives into such a temptation, he crosses the line from being a judge (whose job it is to apply the law) to becoming a legislator (whose job it is to create the law).

After 12 years as a judge, I am well aware that sometimes it is difficult to interpret what the law is or the meaning of the statutes. That is when the trial court judge must rely on well-established rules of statutory construction and *stare decisis*, always with the goal of carrying out the intention of the legislature. It is never proper for a judge to use a case before him to advance his own personal social agenda.

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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		8500	00	Notes payable to banks - secured		2200	00
U.S. Government securities - add schedule - see schedule "A"		13,000	00	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	-----	-----0-----	-----	Accounts and bills due		46,600	00
Due from relatives and friends				Unpaid income tax	-----	-----0-----	-----
Due from others				Other unpaid tax and interest	-----	-----0-----	-----
Doubtful				Real estate mortgages payable - add schedule - see schedule "E"		172,000	00
Real estate owned - add schedule - see schedule "B"		260,000	00	Chattel mortgages and other liens payable	-----	-----0-----	-----
Real estate mortgages receivable	-----	-----0-----	-----	Other debts - itemize:			
Autos and other personal property - approximately		60,000	00	Pledge to Temple Israel		4,000	00
Cash value - life insurance - approximately		5,000	00	Balance due on leased automobile - approximately		6,400	00
Other assets - itemize: see schedule "C"		215,034	00	Balance due on auto and home insurance		720	00
See schedule "D"				Pledge due United Jewish Federation		500	00
				Total liabilities		232,420	00
				Net worth		329,114	00
Total Assets		561,534	00	Total liabilities and net worth		561,534	00
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	-----	-----0-----	-----	Are any assets pledged? (Add schedule)	No		
On lease or contracts	-----	-----0-----	-----	Are you a 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-----	-----				

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QUESTIONNAIRE FOR JUDICIAL NOMINEES
FINANCIAL STATEMENT - NET WORTH

SCHEDULE A

U. S. Savings Bonds	\$3,000.00
U. S. Treasury Note - My wife just purchased at auction in May, 1997.	\$10,000.00
	<hr/>
	\$13,000.00

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QUESTIONNAIRE FOR JUDICIAL NOMINEES
FINANCIAL STATEMENT - NET WORTH

SCHEDULE B

Personal residence owned with
my wife - approximate value

\$260,000.00

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QUESTIONNAIRE FOR JUDICIAL NOMINEES
FINANCIAL STATEMENT - NET WORTH

SCHEDULE C

Checking Account jointly owned with my mother (her funds) at Crestar Bank	\$4,800.00
Money Market account jointly owned with my mother (her funds) at BB&T	\$3,300.00
Two Certificates of Deposit jointly owned with my mother (her funds) at Life Savings	\$45,000.00
Checking Account jointly owned with my mother-in-law, Cenit Bank	\$9,900.00
Money Market Account jointly owned with my mother-in-law (her funds)	\$19,000.00
Judicial Checking Account at Signet Bank. Only to be used for judicial purposes, not for personal use.	\$6,800.00
Certificate of Deposit at Cenit Bank owned jointly with my mother-in-law, (her funds) and my wife.	\$39,265.00
Certificate of Deposit jointly owned by my mother-in-law, (her funds) and my wife.	\$65,912.00
Two Money Market Accounts at Cenit Bank jointly owned by my wife and mother-in-law, (her funds).	\$3,170.00 \$7,695.00
Money Market Account at Signet Bank jointly owned by my wife and mother-in-law, her funds	<u>\$10,192.00</u>
Total	\$215,034.00

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QUESTIONNAIRE FOR JUDICIAL NOMINEES
FINANCIAL STATEMENT - NET WORTH

SCHEDULE D

Under the JRS Retirement System it is estimated that my retirement benefits on February 1, 1999 would be approximately \$4,850.00 per month.

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QUESTIONNAIRE FOR JUDICIAL NOMINEES
FINANCIAL STATEMENT - NET WORTH

SCHEDULE E

**Mortgage on residence with
GE Capital Mortgage Services**

Approximately \$172,000.00

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NOMINATIONS OF JAMES S. WARE (U.S. CIRCUIT JUDGE); LYNN S. ADELMAN, CHARLES R. BREYER, FRANK C. DAMRELL, JR., MARTIN J. JENKINS, MICHAEL P. McCUSKEY, G. PATRICK MURPHY, AND FREDERICA MASSIAH-JACKSON (U.S. DISTRICT JUDGES)

WEDNESDAY, OCTOBER 29, 1997

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

The committee met, pursuant to notice, at 2:02 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Jon Kyl presiding.

Also present: Senators Specter, DeWine, Sessions, Kohl, Feinstein, Feingold, and Durbin.

**OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR
FROM THE STATE OF ARIZONA**

Senator KYL. Good afternoon. This Senate Committee on the Judiciary judicial nominations hearing will now begin.

In order to expedite the process—we have a lot of candidates today—we will follow a procedure which will divide our witnesses into three panels. The first panel will be Members of the Senate and House who will introduce candidates. Sometimes in the past, we have had the candidates come forward at the same time. We will not do that this afternoon. We will hear the Members of the House and Senate first.

Then the second panel will be the bulk of the candidates who will come forward and be seated at the table and I will administer the oath at that time to all of the candidates and then proceed to ask questions seriatim. In that second panel, we will begin with a nominee for circuit court. The third panel will do the same with nominees for the district court, and the fourth panel will consider a district court nominee who was carried over from a hearing yesterday.

We will necessarily, because of the presence of certain Senators and absence, take these nominees not necessarily in any particular order but as the Members of the House and Senate appear.

I might also indicate to the people who are in the audience that we might be able to use a little judicial help here on the Senate floor. We are in a bit of a procedural snafu at the moment and I do not expect that we will have any votes, but there will be Sen-

ators missing as a result of what is occurring and there are also some Senators who are occupied elsewhere.

Finally, in order to conclude our hearing today in an expedited way, I would ask all witnesses to be very brief, if you would, please. I learned very early on in my judicial career that when you are ahead, the best thing to do is to keep it short and sit down. I think all of these witnesses, by virtue of their qualifications, are certainly ahead by virtue of their being here today and so I would urge all the witnesses to be brief in their presentations.

We have Senators from some of the States who are present here, and since both Senators from Wisconsin are here, let me call upon Senator Kohl and Senator Feingold to make their introduction here first.

Senator Kohl.

STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. Senator Kyl, Mr. Chairman, let me thank you for holding this hearing so promptly and let me take this opportunity to tell you why Lynn Adelman, the President's nominee for the U.S. District Court for the Eastern District of Wisconsin, is such a fine choice to fill the vacancy created when Judge Curran took senior status.

First, Lynn Adelman has a record of unquestioned skill and unequalled experience in his 30 years of practice. His dedication, his hard work, and his intelligence have been displayed in both civil and criminal cases before the Wisconsin Supreme Court and before the Supreme Court of the United States.

Second, Lynn Adelman has spent a life devoted to public service. He has dedicated a great deal of his professional time to disadvantaged clients, and rather than pursue his private practice full time, he has simultaneously served in public office. As a State senator for 20 years, much of the time serving as chairman of the Judiciary Committee, Adelman has championed the causes of families, crime victims, and government accountability.

Of course, a few have suggested that legislators generally should not be trusted to serve as judges or that Mr. Adelman, who has always held strong opinions, will not be able to resist making law from the bench. In fact, precisely the opposite is true. Like so many former elected officials who have proved themselves worthy Federal judges, people like Charles Evans Hughes, William Howard Taft, and the current District Court Judges Bob Warren and John Chabazz of Wisconsin, Lynn Adelman understands the distinction between judges and legislators. The role of a judge is to enforce and to interpret laws and not to make them.

Based on this outstanding record, Lynn Adelman received high marks from the nonpartisan commission that Senator Feingold and I established with the State bar and his nomination has bipartisan support, including the endorsement of Wisconsin's Republican Governor Tommy Thompson. Although they have not always seen eye to eye, Governor Thompson wrote that, "Lynn is thoughtful, fair, and open minded, as well as someone who is sensitive to and has respect for the principle of separation of powers." Adelman under-

stands the proper role of each branch of government. Mr. Chairman, I request that the Governor's letter be placed in the record.
 Senator KYL. Without objection, so ordered.
 [The letter of Governor Thompson follows:]

GOVERNOR, STATE OF WISCONSIN,
 March 21, 1997.

Hon. HERBERT H. KOHL,
 U.S. Senator, Hart Senate Office Building,
 Washington, DC.

Hon. RUSSELL D. FEINGOLD,
 U.S. Senator, Hart Senate Office Building,
 Washington, DC.

DEAR SENATOR KOHL AND SENATOR FEINGOLD: I am writing to express my support for the appointment of State Senator Lynn Adelman to fill the Judicial vacancy in the Eastern District of Wisconsin.

I have worked with Lynn Adelman for many years both in my capacities as Governor and as State Representative. He is thoughtful, fair and open-minded. He is also independent, and a very hard worker.

As a State Senator and a lawyer, Lynn Adelman has had a distinguished career. For the past twenty years Lynn has led Wisconsin's efforts to combat drunk driving. He authored the state's comprehensive drunk driving law which has saved many lives.

Lynn Adelman has also been an effective advocate for crime victims. He authored an amendment to the Wisconsin Constitution to protect the rights of crime victims. He has also championed legislation aimed at compensating crime victims, ensuring them access to the criminal justice system, and protecting them from reprisals.

For many years, Lynn Adelman has served as the Chair of the Senate Judiciary Committee. In that capacity he has demonstrated that he is an able and skilled legislative craftsman. For example, recently Lynn crafted an anti-stalking law that satisfied both battered women concerned about their safety and pro-life activists worried that the law might limit their right to demonstrate peacefully.

While we do not always agree, I have worked with Lynn Adelman on many issues. For example, we have worked together to enact a number of important anti-crime measures. During my first term as Governor, Lynn helped to enact what has come to be known as the "Life Means Life" law. For many years a life sentence in Wisconsin was not really a life sentence because of the way in which the parole system worked. I proposed permitting judges to set specific dates for parole eligibility so that a life sentence would truly be a life sentence. Lynn served on the conference committee which approved the final version of the bill, and he actively worked for its passage. Since this law was enacted, hundreds of dangerous offenders have remained in prison, and, as a result, Wisconsin is a safer place.

Lynn Adelman and I also worked together in an effort to fight drug use in Wisconsin. In 1989, I called a special session of the legislature and proposed a sweeping bill that increased penalties for possession of heroin, cocaine, and other drugs. My bill also established drug courts in Milwaukee County and contained numerous other anti-crime and anti-drug provisions. Lynn worked with me to ensure this bill was enacted.

In 1993, I proposed an omnibus crime bill to address the problem of gang-related crime and a number of other criminal justice problems. Lynn Adelman worked with me to help pass this bill.

Lynn Adelman was the only Senate Democrat to vote for my 1995-97 state budget because it provided property tax relief to Wisconsin residents. He was one of only three Senate Democrats to support construction of a new stadium for the Milwaukee Brewers because he believed it was essential to keep major league baseball in Wisconsin. He is one of only a handful of Democrats who has consistently supported my welfare reform initiatives over the years, and he voted for W-2 because he believed it was an effective step toward eliminating dependency.

Lynn Adelman is sensitive to and has respect for the principle of the separation of powers. He understands the proper role of each branch of government.

I am pleased to support Lynn Adelman for appointment to the federal bench. If I can provide you with any additional information, please do not hesitate to contact me.

Sincerely,

TOMMY G. THOMPSON, *Governor.*

Senator KOHL. Finally, let me conclude on a personal note. My family has known the Adelman family for over 30 years and I have known Lynn personally for more than 20. I know that he has the capacity, integrity, and the skill that will make him a valuable addition to the bench. I look forward to his testimony and to his speedy confirmation and I thank you for this opportunity, Mr. Chairman.

Senator ASHCROFT. Thank you, Senator Kohl.
Senator Feingold.

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

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

It is such a pleasure to hear the fine words of my senior colleague, Senator Kohl, on behalf of Lynn Adelman. I want to join in those words.

I was extremely pleased to hear of President Clinton's choice of Lynn Adelman from the various names that were submitted to him. After Senator Kohl and I received the recommendations of the committee, we asked to look at this issue. I believe that when the members of this committee have an opportunity to hear Lynn Adelman's record and to hear from him directly, you will reach the same conclusion that Senator Kohl and President Clinton and people all across Wisconsin and I have reached, and that is that Lynn Adelman will be an exemplary jurist for the citizens of Wisconsin and for the country.

Lynn Adelman was born in Milwaukee and is a graduate of Princeton University and Columbia Law School. He graduated with honors from both of these excellent institutions. After a brief period working in New York, he returned to Wisconsin and began what to this day has been a career of dedicated public service to the people of our State.

Lynn worked in private practice in Wisconsin beginning in 1972 and continues to do so today as a partner in the Milwaukee law firm of Adelman, Adelman, and Murray. His wife, Elizabeth, is also a partner in this successful firm.

He was elected in 1977 to the Wisconsin State Senate for the 28th District. In the 20 years that Lynn has represented that district, he has been a leading voice in the Wisconsin legislature. I can tell you this because I served with him myself for 10 of those years as a member of the Wisconsin State Senate and as one of the members of the Wisconsin State Senate Judiciary Committee, which he chaired.

Lynn's legislative record and commitment to the people of his district and the State of Wisconsin has earned him a great deal of bipartisan praise. I just want to reiterate what Senator Kohl said. He has been warmly and strongly endorsed by our very prominent Republican Governor Tommy Thompson, who writing in support of the nominee, again, I want to repeat, characterized Lynn Adelman as thoughtful, fair, and open minded. The Governor notes how he and Lynn worked hand in hand to ensure the passage of important legislation, ranging from anticrime and antidrug legislation to welfare reform. I think that is a significant bipartisan statement.

As I mentioned earlier, Lynn is also a very successful attorney. During the 20 years he has served in the Wisconsin Senate, he has continued to practice law. During his legal career, Lynn has appeared frequently in both criminal and civil cases in both State and Federal courts and Lynn's considerable skills also resulted in him arguing a case before the U.S. Supreme Court in 1993. At the same time, he has been very respected in the State legislature.

Mr. Chairman, in light of your admonition that our remarks should not be too long if we are, indeed, ahead, which I believe we are on this issue, let me ask that the remainder of my statement be placed in the record.

Senator KYL. Without objection.

[The prepared statement of Senator Feingold follows:]

PREPARED STATEMENT OF SENATOR RUSSELL D. FEINGOLD

I am pleased today to join with my colleague, Senator Kohl, in recommending Lynn Adelman to this Committee for confirmation to the federal judiciary. I was pleased to see President Clinton choose Lynn Adelman's name from the three forwarded to him by the nominations committee that Senator Kohl and I have established to review potential nominees for Wisconsin's federal bench.

I believe that when the Members of this Committee have an opportunity to review Lynn Adelman's record and to hear from him directly, you will reach the same conclusion that Senator Kohl, President Clinton, people all across Wisconsin and I have reached. That being that Lynn Adelman will be an exemplary jurist for the citizens of Wisconsin.

Lynn Adelman was born in Milwaukee and is a graduate of Princeton University and Columbia Law School. He graduated cum laude from both of these excellent institutions. After a brief period working in New York, Lynn returned to his native Wisconsin and began what to this day has been a career of dedicated public service to the people of our State. Lynn worked in private practice in Wisconsin beginning in 1972 and continues to do so today as a partner in the Milwaukee law firm of Adelman, Adelman and Murray. His wife Elizabeth is also a partner in this successful firm.

In 1977, Lynn was elected to the Wisconsin State Senate for the 28th District. In the twenty years that Lynn has represented the 28th District, he has been a leading voice in the Wisconsin Legislature. During his tenure in the Wisconsin Senate, Lynn has served on the Judiciary Committee and chaired that important panel on two separate occasions, first from 1979 through 1993, and then again from 1995 until today. I had the distinct honor of serving with Lynn for ten years while I was a Wisconsin State Senator and worked with him on the Judiciary Committee.

Lynn's legislative record and commitment to the people of his district and the State of Wisconsin has earned him bi-partisan praise. In fact, Republican Governor Tommy Thompson, writing in support of this nominee, characterized Lynn Adelman as ". . . thoughtful, fair and open-minded . . ." The Governor goes on to note how he and Lynn worked hand in hand to ensure the passage of important legislation ranging from anti-crime and anti-drug legislation to welfare reform. This bi-partisan praise is a significant statement and illustrates what those of us who have known and worked with Lynn all know. That being that during his career, he has always placed the best interests of the people of Wisconsin above politics and partisanship.

Lynn's efforts have also garnered him recognition from many civic groups as well. In 1995, for example, he received the Lifetime Achievement Award for Leadership Against Drunk Driving from Mothers Against Drunk Driving. Lynn has also been a tireless leader in the fight to set high standards of ethics in government. His hard work has resulted in open records laws and ethical codes for elected officials. Lynn's work in this important area has helped to preserve and ensure the integrity of representative government in the State of Wisconsin.

As I mentioned earlier, Lynn is also a successful attorney. During the twenty years he has served in the Wisconsin Senate, he has continued to practice law. During his legal career, Lynn has appeared in both criminal and civil cases, in both State and federal courts. Lynn's considerable skills also resulted in him arguing before the United States Supreme Court in 1993. At the same time he has been an influential leader in the State senate, he has also been, and continues to be, a significant and well-respected voice in the Wisconsin legal community.

Mr. Chairman, there can be little doubt that Lynn Adelman's career makes him well suited to sit on the federal judiciary. He has served with distinction in the legislative branch and understands, first-hand, the constitutionally based principle of separation of powers—a principle which is essential to preserving our democratic form of government.

His considerable experiences in the courtroom will also be an asset to him on the bench. He has a unique understanding of our legal system which will provide him with the temperament necessary to treat everyone who comes before him with the respect they deserve and should expect from all judges. In short, he has all the tools necessary to serve the people of Wisconsin with distinction. As that is the standard that has marked his illustrious career to date, I have no doubt it will continue to do so following his confirmation.

I want to congratulate Lynn and Elizabeth and their family on this nomination. The people of Wisconsin, in my view, deserve nothing less than the best when it comes to those who sit on the federal bench in our State. I believe Lynn Adelman meets this high standard. I give my strongest possible support for the nomination of Lynn Adelman and I look forward to working with you and other Members of the Committee as this nomination moves through the Committee and the full Senate.

Thank you.

Senator FEINGOLD. I would also like to ask that in addition to the letter from Governor Thompson, which Senator Kohl had placed in the record, I have a number of letters of support from people all across our State, Democrats and Republicans alike, including Jim Doyle, our attorney general, and many of Lynn's Senate colleagues, such as Republican State Senator Michael Ellis. I ask that these letters be placed in the record at this time.

Senator KYL. Without objection, so ordered.

[Senator Feingold submitted the following letters:]

Chambers of
John W. Reynolds
Judge

United States District Court
Eastern District of Wisconsin
296 U.S. Courthouse
517 E. Wisconsin Ave.
Milwaukee, Wisconsin 53202-4583

COPY

(414) 297-3188
FAX (414) 297-3191

January 9, 1997

WISCONSIN FEDERAL NOMINATING COMMISSION

Dear Commissioners:

I am pleased to be able to recommend and attest to the qualifications of Lynn Adelman for the vacancy on this court. I have known Lynn for almost thirty years, during which time he has practiced law in this court, devoted his life to public service as a member of the State Senate, and he has been a good friend. He is a very capable and dedicated human being.

He would bring to the position not only the dedication and commitment to justice, but a judicial temperament and a sensitivity to the rights of human beings. And so, it is a pleasure for me to recommend him for this position.

Sincerely yours,


John W. Reynolds
Judge



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL
Burneatta L. Bridge
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
V/TTY 608/267-8902

January 13, 1997

Wisconsin Federal Nominating Commission

Dear Committee Members:

I understand that Lynn Adelman has expressed an interest in being appointed as a federal judge for the U.S. District Court, Eastern District of Wisconsin. I have known Mr. Adelman for many years, as a lawyer, a legislator and a friend.

As an attorney in private practice, I worked together with Mr. Adelman on several matters. As Attorney General, I have been on the opposite side from Mr. Adelman in a number of important issues. Most notably, Mr. Adelman and I argued the opposing positions before the United States Supreme Court in State v. Mitchell, the challenge to Wisconsin's hate crimes statute.

Mr. Adelman is an attorney of great skill, creativity and tenacity. His legal work, as a litigator, writer and legislator, manifests his strong commitment to the Constitution. While a strong litigator, he has always shown courtesy and respect for the other side. He has an inquisitive mind with the ability to clearly analyze a legal issue. I believe that he would be a fine judge.

Mr. Adelman's legislative career has also shown his devotion to the law. He has been the main architect of Wisconsin's statutes designed to curb drunk driving; he has been the acknowledged legislative leader in the area of open meetings and public records; he has been committed to ensuring that Wisconsin courts are accessible to the people of this state.

Thank you for your consideration. If I can provide any further information, please let me know.

Sincerely,

James E. Doyle
Attorney General

JED:js

January 17, 1997

Wisconsin Federal Nominating Committee

Dear Members of the Committee:

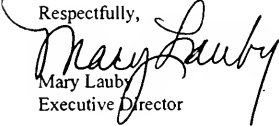
It is my understanding that your office is currently in the process of screening candidates to fill a vacancy on the United States District Court for the Eastern District of Wisconsin. I am writing to strongly encourage the consideration of Wisconsin State Senator Lynn Adelman for an appointment to this Court.

The Wisconsin Coalition Against Domestic Violence has been involved in policy development at the state legislative level for over fifteen years. We have promoted passage of victims rights' laws as well as proposals to provide safety and protection for battered women and their children. There have been occasions when our opinions as victims rights' advocates and those of Senator Adelman have differed. However, Senator Adelman has been consistent in his representation of the position that we will never gain rights for one segment of society by taking away the rights of another segment of society. His reputation for being a friend of the Constitution precedes him wherever he goes. Senator Adelman has always maintained integrity, regardless of the power and influence of the opposing view.

We have worked with (and sometimes in opposition of) Senator Adelman on a number of occasions. With each experience we have left with a greater appreciation and respect for the need to balance the constitutional rights of all persons. This was evident as we worked on developing a "stalking law" for Wisconsin. After intense negotiations with many powerful groups, it was Senator Adelman's revision that gained our support and, in the end, passage. Regardless of whether or not his stand was popular, it always reflected the need to acknowledge the rights of all participants in our system of justice.

The Wisconsin Coalition Against Domestic Violence wholeheartedly endorses Senator Adelman's consideration for a federal judgeship. If he is selected, our only regret will be our loss of a fine statesman in the Wisconsin State Senate.

Respectfully,


Mary Lauby
Executive Director



1400 EAST WASHINGTON AVENUE | SUITE 232 | MADISON, WISCONSIN 53703
608|255|0539 | FAX: 608|255|3560

UNIVERSITY OF
WISCONSIN
M A D I S O N

February 25, 1997

Wisconsin Federal Nominating Commission
c/o George Brown
State Bar of Wisconsin
402 W. Wilson St.
Madison, WI 53703

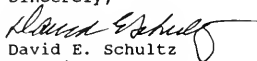
Dear Members of the Commission,

Wisconsin State Senator Lynn Adelman asked if I would write to the Commission to describe my experience in working with him on substantive legal issues. I am happy to do so.

Over the past five or ten years I have had several opportunities to work closely with Sen. Adelman on criminal law issues. He has taken a strong interest in several questions of substantial importance, such as the revision of sexual assault laws, modification of the so-called rape shield statute, and review of the need for legislation relating to battered spouses. On each occasion, Sen. Adelman's interest and understanding of the substantive issues has impressed me very favorably. He has shown a solid grasp of complex legal issues and an ability to engage in the often difficult work of translating policy judgments into statutory language that will carry them out. This indicated to me not only a high degree of interest and commitment, but also the ability of a first-rate lawyer to understand challenging problems and to propose solutions for them. Of equal importance, he showed great fairness in attempting to balance the interests of victims and defendants.

My experience with Sen. Adelman has been limited to working with him on criminal law issues like those mentioned above. With respect to those issues, Sen. Adelman has demonstrated substantive knowledge and legal ability that indicates he would be well qualified to address them as a federal district judge.

Sincerely,


David E. Schultz
Associate Dean
Professor of Law

Continuing Education and Outreach
Law School

**Milwaukee
POLICE
Association**
Local #21 IUPA-AFL-CIO



OFFICE: 1840 N. FARWELL AVENUE (SUITE 400) MILWAUKEE, WI 53202
PHONE: (414) 273-2515

Bradley DeBraska
President

William P. Ward
Vice-President

Petrick Doyle
Secretary/Treasurer

Trustees:

Gary J. Brazgel John P. Harrington Edward Heidemann James Nisiewicz
David Stetter Michael J. Zivicki

Office Secretaries:

Debra Schneider

Candy Mahler

FAX: (414) 273-7237

March 17, 1997

Senator Herb Kohl
330 Hart Senate Office Building
Washington, DC 20510
Attention: Jon Liebowitz

COPY

Senator Russell D. Feingold
502 Hart Senate Office Building
Washington, DC 20510
Attention: Susanne Martinez

Dear Messrs. Kohl and Feingold:

This is to let you know of our support for the appointment of Lynn Adelman to the vacant judicial post in the Eastern District of Wisconsin. Our organization knows Lynn Adelman well both as a senator and as an attorney who has frequently represented police officers.

Lynn Adelman would make an outstanding district court judge. He is a street-smart, no-nonsense type of person. He is tough on crime, and he would follow the law. You can be sure the Lynn Adelman would not be a judicial "activist." He has great respect for the law and for the proper roles of the different branches of government.

If I can provide any additional information please do not hesitate to call.

Sincerely,

MILWAUKEE POLICE ASSOCIATION

Bradley DeBraska

Bradley DeBraska
President

Local #21, IUPA, AFL-CIO,

BD/cmm



Karen M. Ordinans
Milwaukee County

Chairman
County Board of Supervisors



March 25, 1997

The Honorable Mr. Clinton
 President of the United States of America
 1600 Pennsylvania Avenue
 Washington, D.C. 20515

Dear President Clinton:

I am writing to express my support of the nomination of Wisconsin State Senator Lynn Adelman to the United States District Court - Eastern District of Wisconsin.

I have known Senator Adelman for ten years and have always found him to be hard working, honest and fair. The qualities that have made him an excellent lawmaker-- analytical thinking, balance, and a commitment to the common good--will serve him well in the Judiciary. The type of unbiased, thoughtful deliberation that Lynn has brought to the legislature will be an asset on the Federal bench.

While the State of Wisconsin will miss his leadership and expertise, the United States of America will gain a genuine public servant who values her Constitution and the rights and responsibilities of her citizenry. I give Lynn Adelman my endorsement and respectfully request that you give every consideration to his nomination.

Sincerely,

Karen M. Ordinans

Karen M. Ordinans
 Chairman
 Milwaukee County Board of Supervisors

KMO:swr



County of Milwaukee

Office of the Sheriff
821 West State Street • Milwaukee, Wisconsin 53233 • 414-278-4766

Sheriff

Leverett F. Baldwin

March 26, 1997

The President
The White House
1600 Pennsylvania Avenue
Washington, D C 20500

Dear Mr President

I am writing in support of Senator Lynn Adelman's candidacy for appointment to a federal judgeship in Milwaukee

I have personally known Lynn Adelman for many years and highly recommend him for this position. The Senator would bring honesty, integrity and compassion to the Federal Bench

Any consideration you can give toward the Senator's appointment would be greatly appreciated

Respectfully yours,

A handwritten signature in cursive script that reads "Leverett F. Baldwin".

Leverett F Baldwin, Sheriff
Milwaukee County, Wisconsin

LFB/jmk
cc Senator Lynn Adelman

PATRICK T. SHEEDY
 Chief Judge
 Telephone (414) 278-5112

THOMAS P. DOHERTY
 Deputy Chief Judge
 Telephone (414) 278-5113

FRED R. COOPER
 District Court Administrator
 Telephone (414) 278-5113

MICHAEL G. NEIMON
 Asst. District Court Administrator
 Telephone (414) 278-5113

STATE OF WISCONSIN

FIRST JUDICIAL DISTRICT

MILWAUKEE COUNTY COURTHOUSE
 901 NORTH NINTH STREET, ROOM 609
 MILWAUKEE, WISCONSIN 53233-1425

FAX (414) 223-1264

March 27, 1997



Mr. Charles Ruff
 Counsel to the President
 The White House
 Washington, D.C.

Dear Mr. Ruff:

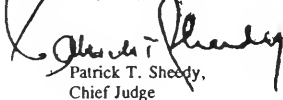
I have known Lynn Adelman for many years. At this time, I know he has been in practice for 29 years; and I believe that I have had dealings with him during all those years. Lynn is an excellent State Senator and an excellent attorney. Lynn practices in all areas of law and does an extremely creditable job.

Also, I have had opportunities to examine his briefs, and they are done in a scholarly manner. I certainly believe that he would be an asset to any court.

In addition, his interest in the administration of justice is laudatory. This is a prerequisite of a good judge today.

Please feel free to call upon me if you wish further information.

Very truly yours,


 Patrick T. Sheedy,
 Chief Judge

PTS:mm



ASSEMBLY SPEAKER
BEN BRANCEL

April 2, 1997

Mr. Charles Ruff
 Office of White House Counsel
 The White House
 1600 Pennsylvania Avenue, N.W.
 Washington, D.C. 20500

Dear Mr. Ruff:

This letter serves to endorse the nomination of Senator Lynn Adelman to fill the vacancy on the United States District Court in the Eastern District of Wisconsin.

I have served in the Legislature with State Senator Lynn Adelman for many years. Although we differ on many issues, Senator Adelman would bring to the court much experience. Lynn is a legislator and an attorney who not only does his homework, researching issues in depth, but is able to articulate his position well. The experience he has gained serving on the Senate Judiciary Committee as well as in his private law practice would be an asset to the court. Lynn certainly has the qualifications and credentials needed to be a federal judge.

Please know, that if President Clinton decides to nominate Lynn Adelman to fill the vacancy in the Eastern District, I will do whatever I can to insure his speedy confirmation.

Very truly yours,

A handwritten signature in cursive script that reads "Ben Brancel".

Ben Brancel
 Speaker

BB:lq

cc: U.S. Senator Russell Feingold
 U.S. Senator Herbert Kohl

April 3, 1997

Mr. Charles Ruff
Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. Ruff:

As a leader in the Republican caucus of Wisconsin's State Senate and as a local official prior to this role, I have known Lynn Adelman as an individual who is dedicated to the law and its significance in the lives of our citizens. He has been a zealous defender of the rights of people in the manner in which law and government affects their lives.

His Senate district is contiguous to mine and we have worked together on a number of issues in a true bipartisan manner.

I would encourage your serious consideration of him for an appointment to the Federal Bench in this district.

Sincerely,



Senator Margaret Farrow
Republican Caucus Chair



Wisconsin Senate Assistant Republican Leader

Senator Brian D. Rude

April 4, 1997

Charles Ruff
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Ruff:

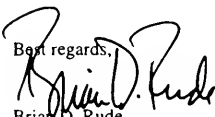
I am writing to you today on behalf of State Senator Lynn Adelman, my colleague in the Wisconsin State Senate. I support the nomination of Senator Adelman for the position of District Court Judge in the Eastern District of the State of Wisconsin. I believe Senator Adelman would be an excellent choice for this position.

I am a Republican State Senator, while Senator Lynn Adelman is a Democrat. We differ on many issues, and bring different philosophies to our work in the Legislature and to the political process in general. Yet, I admire Senator Adelman for his tenacity, his honesty, his incredible level of energy and hard work, and most of all for his willingness to speak out for the issues he believes in. The qualities I have seen in his legislative work are qualities which I believe would translate into an excellent background for the judiciary, specifically for the position of District Court Judge in the Eastern District.

Senator Adelman has never been one to shy away from tough or controversial issues. He votes his conscience, even when it is clear he is in a distinct minority. There are times when his actions in Legislature are very unpopular, and yet he always carries through with the causes, concerns and philosophies he believes in. This dedication to principle, philosophy and values would serve Senator Adelman well were he to become a judge.

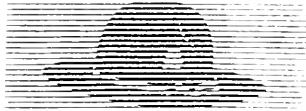
Thank you for the opportunity to comment on this nomination. I believe you would find Senator Adelman to be a thoughtful and effective judge. It would be a fitting tribute to his many years of service to the people of Southeastern Wisconsin if he were to continue that service by becoming a judge. I think he would be a very strong appointment which would be universally praised on both sides of the aisle and by the people of our state.

I would welcome the opportunity to personally discuss the appointment of Senator Lynn Adelman to this distinguished post.

Best regards,

 Brian D. Rude
 State Senator

BDR/mq

Executive Director
Jan Steinbergs



Wisconsin Troopers' Association, Inc.

P O Box 769 • East Troy, WI 53120
1-800-232-1392

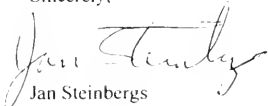
April 7, 1997

Charles Ruff Counsel to the President
White House
1600 Pennsylvania Ave
Washington, D.C. 20510

Dear Mr. Ruff,

I has come to my attention that Wisconsin State Senator Lynn Adelman is under consideration for appointment to the judicial vacancy in the Eastern District. While I do not always agree with Senator Adelman's position on various issues, I do know him to be an individual of uncommon determination, integrity, courage and hard work. His reputation as a fighter against all odds has me conclude that he is a person of powerful commitment. If the criteria for selection include any of the above, Senator Lynn Adelman would be the choice.

Sincerely,


Jan Steinbergs



Proud Member of the National Troopers Coalition

MICHAEL G. ELLIS
SENATE REPUBLICAN LEADER



19TH SENATE DISTRICT

Wisconsin State Senate

April 8, 1997

Charles Ruff
Counsel to the President
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. Ruff:

I am writing to offer my recommendation and support for Wisconsin State Senator Lynn Adelman for the appointment to District Court judge in the Eastern District of Wisconsin.

Lynn Adelman and I have been colleagues in the Wisconsin Legislature for more than 20 years. We belong to different political parties and we have not always seen eye to eye on the issues we have debated over the years. Whether or not we have agreed on a particular issue, however, I have always considered Lynn to be a highly principled, honest and intelligent public servant.

Lynn Adelman possesses an independent, but decidedly principled, spirit that I believe makes him uniquely qualified to be a judge. This has been demonstrated repeatedly as he, a good Democrat, has been elected and reelected by a heavily Republican constituency.

In the Legislature, Lynn Adelman always judges an issue on its merits before considering partisan matters. He has been a Senate leader in such areas as demanding high ethical standards for government and protecting free speech and other civil liberties.

I believe Lynn Adelman has all the qualifications and more to serve as a federal judge. I am convinced he is as deserving of this appointment as anyone else you may consider. Lynn Adelman will make a fine judge and I do not hesitate to offer my strong recommendation for such an appointment.

Thank you for your consideration. If you have any further questions, please let me know.

Sincerely,

MICHAEL G. ELLIS
Republican Leader
Wisconsin State Senate

MGE/mfb

cc: The Honorable Senator Orin Hatch
The Honorable Senator Herbert H. Kohl
The Honorable Senator Russell D. Feingold

Alberta Darling

Wisconsin State Senator

April 8, 1997

Mr. Charles Ruff
Counsel to the President
White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. Ruff:

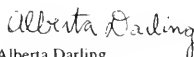
I am a Republican State Senator representing the northern portion of Milwaukee County and parts of Waukesha, Washington and Ozaukee Counties. Lynn Adelman and I have worked together in the state legislature for over six years. I have the highest regard for his legal expertise and integrity. Lynn would be an astute, conscientious and effective judge on the United States District Court, Eastern District of Wisconsin.

During our time in the legislature together, Lynn and I have had our disagreements yet I respect his vast knowledge of judiciary and consumer matters. Lynn has been a passionate and articulate advocate for consumers and open government. He is one of the few practicing attorneys in the Senate and brings an applied knowledge to many laws being debated

In addition, the fact that he has been re-elected five times to a conservative, Republican majority district speaks highly of his respect from and ability to work with people from all political persuasions.

Lynn Adelman is a consummate student and practitioner of good law and good government. I have every reason to believe that he will continue to uphold the highest standards of law in a court. His unique perspective as a lawmaker and practicing attorney make him an excellent candidate for the opening on the U.S. District Court.

Sincerely,



Alberta Darling
State Senator
8th Senate District

Committee	Capitol Office	District Office	Home
Education and Financial Institutions, Chair	P.O. Box 7882	P.O. Box 17952	1325 West Dean Road
Judiciary	Madison, Wisconsin, 53707-7882	Milwaukee, WI 53217-0952	River Hills, Wisconsin, 53217
Business, Economic Development and Urban Affairs	Phone 608-266-5830	Phone 414-352-7877	414-352-0390
State & Federal Relations	Fax 608-266-7038	Fax 414-352-2818	
Joint Committee for the Review of	Toll-free 1-800-863-1113		

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REPRESENTATIVE
 S T E V E N
FOTI
 ASSEMBLY
 MAJORITY LEADER

April 8, 1997

Mr. Charles Ruff
 Office of the White House Counsel
 The White House
 1600 Pennsylvania Avenue, N.W.
 Washington, D.C. 20500

Dear Mr. Ruff:

This letter endorses the nomination of State Senator Lynn Adelman to fill the vacancy on the United States District Court in the Eastern District of Wisconsin.

Through his tenure in the State Legislature, I have had the opportunity to work with Senator Adelman on several issues facing Wisconsin. I have found Senator Adelman to be a judicious legislator who is responsive to his constituents. In addition, he has consistently demonstrated a zealous attention to detail that serves him well as a legislator and as an attorney. His talents and strengths would match the requirements of a federal judge.

Sincerely,

STEVE FOTI
 Wisconsin State Representative
 Assembly Majority Leader

MADISON OFFICE:
 ROOM 215 WEST
 STATE CAPITOL

POST OFFICE BOX 8952
 MADISON, WISCONSIN 53708

(608) 266-2401
 FAX: (608) 261-6925

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SMF/ma

Daniel M. Finley
County Executive

Waukesha COUNTY

OFFICE OF COUNTY EXECUTIVE

April 8, 1997

Charles Ruff
Counsel to the President
The Whitehouse
Washington, D.C.

Dear Mr. Ruff:

I am pleased to offer my strong recommendations on behalf of Wisconsin State Senator Lynn S. Adelman for appointment to the position of District Court Judge in the Eastern District of Wisconsin. He will make an outstanding jurist.

Senator Adelman has long been a champion of open government and justice related issues. Wisconsin state government reflects the many victories that Senator Adelman has won in making us more open and responsive to the people and to the rights of individuals.

He has served Waukesha County well in the Wisconsin State Senate. He has, for the better part of his time in public office, been the only Democratic representative from this highly Republican County. He has always persevered because of his strong record of service to his constituents and thoughtful law making. As a Republican myself, I am proud to support his nomination.

If I can offer any further help to you in this selection process, please don't hesitate to contact me. Senator Adelman has been a great champion in his career for the cause of good and open government and would make an excellent jurist for the Eastern District.

Sincerely,



Daniel M. Finley
County Executive

DMF:sh

1320 Pewaukee Road
Waukesha, Wisconsin 53188
(414) 548-7902
Fax: (414) 548-7913
TDD (414) 548-7903

SCOTT KLUG
SECOND DISTRICT, WISCONSIN

COMMERCE COMMITTEE
SUBCOMMITTEES
HEALTH AND THE ENVIRONMENT
TELECOMMUNICATIONS AND FINANCE
CHAIR
REPUBLICAN TASK FORCE ON
PRIVATIZATION
MEMBER
REPUBLICAN TASK FORCE ON
WELFARE REFORM

Congress of the United States
House of Representatives
Washington, DC 20515-4902

April 9, 1997

Mr. Charles Ruff
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

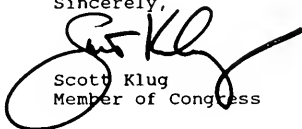
Dear Mr. Ruff:

I am writing on behalf of State Senator Lynn S. Adelman. Senator Adelman has been recommended to the President for nomination to a federal district judgeship for Wisconsin's eastern district.

Senator Adelman has served in the Wisconsin State Legislature since 1976. During that time, he has been a member of the Senate Judiciary Committee, where he has earned a reputation as a strong, aggressive advocate of the judicial system. He is widely recognized as someone who is hard working and scholarly. He's willing to extend a cooperative hand to find a balance in making public policy decisions and has the kind of studious temperament that would make him an excellent judge.

Thank you for your time and consideration of my comments.

Sincerely,



Scott Klug
Member of Congress

Thanks Mark!

PLEASE RESPOND TO

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MADISON, WI 53703
(608) 257-9200

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LEE SHERMAN DREYFUS
GOVERNOR
1979 - 1983

Charles Ruff
Counsel to the Pres.

4/9/97
Wausau, WI.

Dear Mr. Ruff,

As you can probably tell from the dates above, the President + I served as freshmen governors in the WGA so you can check my credentials with him if needed. I write to recommend strongly the appointment of State Senator Lynn Adelman for the judicial vacancy on the Federal bench here in Wisconsin's eastern district.

I have known Lynn for most of his adult life. As a Republican governor I often found myself in ideological combat with him. It never became personal, & I always found his positions to be carefully crafted & logical.

I think his experience as a leading member of the legislature will serve him well on the bench because he understands clearly which branch of government legislates in our system. That understanding is needed now more than ever before. The President would find support from both sides of the political coin with this appointment. You should also know that the

man is & has been a fierce defender of our freedoms. Today with the Bill of Rights being assailed from both the left & the right we need a Virginia type mind on every Federal bench. Adelman's stands in that area have long reminded me of Mason, Randolph & Jefferson.

If you or the President need further direct input from me, I will provide it in any forum.

Sincerely yours

Lee Sherman Dreyfus

THOMAS E. PETRI
6TH DISTRICT - WISCONSIN

2262 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4906
(202) 225-2476

Congress of the United States
House of Representatives
Washington, DC 20515-4906

6TH DISTRICT OFFICES
FOND DU LAC, WI
(414) 922-1180
OSHKOSH, WI
(414) 231-8333

April 14, 1997

Charles Ruff
Counsel to the President
The White House

Dear Mr. Ruff,

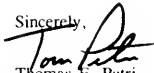
I am writing to support the candidacy of Lynn Adelman for appointment to the U.S. District Court for the Eastern District of Wisconsin. I have known Lynn for nearly twenty years and have worked closely with him for three of those years.

While Lynn and I have our political differences, he has my respect

Lynn Adelman is honest, bright and conscientious. I believe he has the breadth of experience, intellect and judgment to be a fine judge for the Eastern District

I strongly urge you to recommend his selection by the President.

Sincerely,



Thomas E. Petri
Member of Congress

WISCONSIN PROFESSIONAL POLICE ASSOCIATION

April 16, 1997

The Honorable Russell D. Feingold
 United States Senate
 502 Hart Senate Office Building
 Washington, DC 20510-4904

Dear Senator Feingold:

On behalf of the 7000 members of the Wisconsin Professional Police Association, I want to take this opportunity to recommend Senator Byron Adelman for the vacant United States Court of Appeals seat for the 7th Circuit.

We have worked with Senator Adelman as a legislator for a number of years and as an advocate. We have found him to be a conscientious, hard worker able to work with groups of people with diverse points of view and reach consensus.

Here in Wisconsin, Senator Adelman has a reputation as a man of sincerity and integrity. We urge you to seriously consider him for the 7th Circuit Court of Appeals Position.

Thank you for your consideration.

Sincerely,



John E. Charewicz
 President, WPPA

JEC:jep

cc: Senator Adelman

Professional Fire Fighters of Wisconsin, Inc.

7 North Pinckney Street • Suite 135 • Madison, WI 53703-2840 • 608/251-5832
 Member of INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS Fax 608/251-8707
 Member of WISCONSIN STATE A F of L C I O

Mark D. Zeier
State President
 2513 South 14th Street
 Sheboygan, WI 53081
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Michael Dobish
State Vice President
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 Oshkosh, WI 54901
 Home Phone (614) 233-2125
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Rick Gale
State Sec. Treas.
 2831 South 114th Street
 West Allis, WI 53227
 Home Phone (414) 321-6590
 Fire Phone (414) 302-8000
 Fax (414) 321-7596



April 17, 1997

CHARLES RUFF
 COUNSEL TO THE PRESIDENT
 THE WHITE HOUSE
 WASHINGTON DC

Dear Mr. Ruff:

It is with great enthusiasm that I write to express the recommendation of the Professional Fire Fighters of Wisconsin for State Senator Lynn Adelman for the position of District Court Judge in the Eastern District of Wisconsin.

We have worked well with Senator Adelman throughout his long and distinguished career in the Wisconsin State Legislature. He has been a tireless advocate for working people, and has authored landmark legislation in the fields of ethics, marital property and open records.

His public service background alone would not be sufficient, however, to recommend him for a position as a District Court Judge. As an attorney, Senator Adelman has demonstrated the courage and commitment to stand up for his progressive principles. His leadership in such cases as the overturning of the "gag rule" for public employees, and the challenges to the bail and hate crime provisions of state law, establish his legal credentials very well.

We are honored that you would consider our opinion on this matter, and we urge you to strongly consider Senator Adelman for this position.

Sincerely,

Mark D. Zeier
 State President

PEGGY ROSENZWEIG



State Senator, 5th Senate District

April 28, 1997

Charles Ruff
Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. Ruff:

I heartily recommend Wisconsin State Senator Lynn Adelman for appointment to the United States District Court's Eastern District of Wisconsin judgeship.

Though Senator Adelman and I sit on opposite sides of the partisan aisle, I have greatly admired his independence and sense of fairness during my 15 years in the Wisconsin Legislature. His ability to consider all sides of an issue without preconceptions or personal bias would be a true asset on the federal bench. He brings the demeanor of a judge to each legislative session and hearing, and he commands the same measure of respect. No Wisconsin lawmaker knows more about the law.

Lynn Adelman's appointment would be applauded by conservatives and liberals, Republicans and Democrats alike. He merits your utmost consideration.

Sincerely,

PEGGY ROSENZWEIG
State Senator - Wisconsin
5th District

PR/rs



Fred Risser

President
Wisconsin State Senate

May 1, 1997

Charles Ruff
Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. Ruff,

I am writing to express my strong support for the appointment of Lynn Adelman to the judicial vacancy in the United States District Court in the Eastern District of Wisconsin.

I have served with Senator Adelman in the Wisconsin Senate since he was first elected in 1976. During most of that time, I have also served as President of the Senate. While Lynn has chaired the Judiciary Committee, he has been an integral part of the Democrats' leadership team in the Senate and I have worked closely with him in developing our caucus' legislative agenda. I have always found Lynn to be a thoughtful and hard-working legislator deeply committed to Democratic principles, and I think that Lynn will make an excellent federal judge.

Although Senator Adelman will be sorely missed in the legislature for his attention to detail and ability to forge compromises on difficult issues, his talents and background certainly qualify him to serve as a judge. I am pleased to provide any additional information about Senator Adelman's qualifications for the federal bench.

Sincerely,

Fred Risser
State Senator
26th Senate District



RACINE COUNTY COURTHOUSE
1931

730 Wisconsin Avenue

RACINE, WISCONSIN

53403

COUNTY EXECUTIVE
JEAN M. JACOBSON

PHONE 414-636-3118
Racine County Courthouse Toll Free
1-800-242-4202

May 1, 1997

Charles Ruff
Counsel to the President
White House
Washington, D.C.

Dear Mr. Ruff:

I am writing to endorse the appointment of Lynn Adelman to serve as a judge in the Eastern District of Wisconsin. State Senator Adelman is thoughtful, hard-working and honest. He has served our district with distinction in the State legislature, and he would serve with distinction as a federal judge.

Thank you for your consideration of my recommendation.

Very truly yours,

Jean M. Jacobson
County Executive



State of Wisconsin
Lieutenant Governor

Scott McCallum
Lieutenant Governor

State Capitol, Room 22 East • Madison, Wisconsin 53702
608/266-3516 Fax 267-3571

May 5, 1997

Charles Ruff, Counsel to the President
The White House
West Wing, 2nd Floor
1600 Pennsylvania Avenue, N W
Washington, D C 20500

Dear Mr Ruff

I am writing to recommend State Senator Lynn S Adelman for appointment to the United States District Court for the Eastern District of Wisconsin. Senator Adelman's background and experience make him eminently qualified for this judgeship.

I have known Lynn Adelman since 1976 when we both were elected to the Wisconsin State Senate. Through the last several years Senator Adelman has served as chairman or ranking minority leader of the Senate committees related to the judiciary. Furthermore, he has long been active in revising and updating the laws of this state. Currently, he is working toward the recodification of Wisconsin's criminal laws. Lynn Adelman's intellect and abilities are respected by his colleagues on both sides of the aisle.

Given his long and distinguished service to the State of Wisconsin and his thorough knowledge of the law, I believe Lynn Adelman is an excellent and logical candidate for the federal bench. Therefore, I urge the Clinton Administration to give Senator Lynn S Adelman serious consideration for appointment to the U S District Court for the Eastern District of Wisconsin.

Thank you for your attention to this matter.

Sincerely,

Scott McCallum
Lieutenant Governor

Senator KYL. The Chair will announce at this time that the record will remain open for 3 days for submission of any material that the members would like to submit.

On the assumption that these are the two introductions of Mr. Adelman, Mr. Adelman, would you please stand so at least we can all see who these nice words have been spoken about. We will call you forward in a moment. I thank both of the Senators from Wisconsin for that introduction.

Since we have another member of the committee, and I see at least one House Member, from the State of Illinois for the purpose of making introductions of the Illinois nominees, Senator Durbin, could I ask you to make the next introduction, please?

**STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR
FROM THE STATE OF ILLINOIS**

Senator DURBIN. Mr. Chairman, can Congressman Evans join me at this point?

Senator KYL. Yes; he certainly can. Representative Evans from Illinois, as well.

Senator DURBIN. Thank you, Mr. Chairman and members of the Judiciary Committee. It is my pleasure to introduce to you two nominees for the Federal district courts in Illinois, Michael McCuskey and Pat Murphy. Judge Michael McCuskey is the nominee for the central district and Pat Murphy is the nominee for the southern district. Both men possess the necessary qualities to make outstanding judges.

In an effort to abbreviate my remarks, to follow the chairman's admonition, I would only add that Senator Carol Moseley-Braun and I went through an extensive process, entertaining nominees from across the State for the various vacancies, and after their clearance by a commission, professional commission, we narrowed it down to these two finalists in central and southern Illinois, I think for good reason.

I think they bring more than legal ability to the job. Mike McCuskey is well known throughout central Illinois and Peoria for his work with children in local grade schools and reading projects and also with senior citizens. Pat Murphy, we came to learn during the course of our review of his background. He is not only a veteran but really gives of himself unstintingly on behalf of veterans and he has a policy in his office—you do not make much money with this policy, but he has given local veterans pro bono representation whenever they walk through the door.

Indeed, if you hear their stories, you can understand why Senator Carol Moseley-Braun and I were so impressed. Pat Murphy was born and raised in Marion, IL. He enlisted in the Marine Corps at the age of 17. He arrived in Vietnam to celebrate his 18th birthday, where he served a tour of duty as an enlisted man in the 1st Marine Corps weapons platoon. When he returned to Illinois, he earned his college degree and law degree with the help of the G.I. bill, and after both his parents passed away, he helped to raise his four younger siblings, although as he puts it, they all raised one another.

Since beginning to practice law, Mr. Murphy has tried almost 100 cases before juries and another 200 before the bench. He has

represented banks, municipalities, school boards, insurers, and individuals in both civil and criminal matters. Mr. Murphy is married and has three children. I am sorry that they could not be here with him today. Two are in school, one of them has to be at work, and Mrs. Murphy is at home keeping an eye on the kids.

Mike McCuskey's story is no less impressive. For the last 9 years, he has served as a State court judge, for 2 years a circuit judge in the 10th judicial district, and since 1990, been a justice with the Third District Appellate Court. Born in Peoria, before going to law school, he worked for the local high school as a history teacher and a baseball coach. During law school, he paid his bills by working as a security guard. After graduating, he started his own law firm.

Judge Mike McCuskey has an extraordinary reputation. I am sure that Senator Carol Moseley-Braun was struck, as I was, by the type of people who came forward to say, this man is fair, he is firm, he has exactly the kind of temperament that we need on the Federal bench. His family could not be with him today, but he has a wife and two children and the children are in school and his wife is home with them.

I am pleased to introduce these two individuals and to defer to my colleague here. She will reiterate, I am sure, the need to fill these vacancies as quickly as possible. In the Southern and Central District, we have four judges allocated for each and two vacancies in each of the districts, so they have been declared judicial emergencies. I think it is very important that we move forward as quickly as we can and I am pleased that we could bring two such qualified nominees to the committee for consideration.

Senator KYL. Thank you very much, Senator Durbin.

We are now joined by Senator Moseley-Braun. Would you like to make the next introduction?

Senator MOSELEY-BRAUN. I would, Mr. Chairman. However, Congressman Evans, who is here to speak on behalf of the nominees, has a vote on the House side and I would just as soon let him go forward.

Senator KYL. I would be happy to defer to Lane Evans.

STATEMENT OF HON. LANE EVANS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. EVANS. Thank you, Senator. Thank you, Mr. Chairman.

I am very proud to be here to testify in support of the nomination of Michael McCuskey for U.S. district judge for the Central District of Illinois. I have known him for over 16 years as a former constituent, as a lawyer, and as a judge. I believe he possesses the skills and background we seek in Federal judges.

The Peoria Journal Star called his performance as judge of the 10th Judicial Circuit of Illinois exceptional. He was recognized for running a fast-paced courtroom. He has worked long hours to reduce the backlog of criminal cases. He dispensed tough sentences and always considered the rights of victims. He insisted on courtroom order, but he was also known for his engaging personality.

These qualities are the reasons he received the highest score of all attorneys in 21 Illinois counties in a poll of candidates for the appellate and supreme court judge positions. On the appellate

bench, Judge McCuskey has continued to display great legal skill and made important contributions to the administration of justice.

In 1991, the supreme court appointed Judge McCuskey to the administrative committee of the Illinois court. He also was selected to serve as presiding judge of the third appellate district during 1993. His public speaking appearances, particularly in the area of criminal law, demonstrate the high respect fellow judges and the bar have for his skills and legal ability. A graduate of high school with only a senior class of 16 students, he knows the value of hard work. A former teacher and coach, he understands the importance of rules and the impact law has on citizens and communities.

He is an excellent choice for the Federal bench. I salute my two Senators for nominating him and I know he will be a great judge. Thank you, Mr. Chairman.

Senator KYL. Thank you very much, Representative Evans.

Senator Moseley Braun.

**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 very pleased to be here this afternoon as the Senate Judiciary Committee considers the nominations of G. Patrick Murphy and Michael McCuskey, both nominees for the U.S. District Court of Illinois. These two men represent the highest caliber of public servants. They are here today because they possess the legal credentials, the experience, and temperament necessary to serve as Federal judges. I believe that their broad legal backgrounds will help them serve the litigants of Illinois, as well.

As you may know, Mr. Chairman, Senator Durbin and I established a judicial nominations commission to help us locate the most qualified persons to fill vacancies on the Central, Southern, and Northern District courts. The commission publicized the U.S. district court vacancies widely, thoroughly considered the questionnaires of all the applicants, extensively interviewed and investigated the candidates, and recommended three candidates to us for each of the two vacancies. After this extensive process, our personal interviews, we personally interviewed the finalists for each vacancy and we were pleased to forward to the President the names of Mr. Murphy and Judge McCuskey.

As you have heard already, G. Patrick Murphy is a Vietnam veteran whose level head and sound moral judgment have shaped his legal reputation. During his 19 years in private practice, Mr. Murphy has displayed outstanding legal expertise in both the Federal and State courts. Colleagues, former adversaries, judges, and employees alike hold him in extremely high regard, both personally and professionally. He has always shown a deep respect for the law and an acute ability to make tough decisions.

As a judge in the Illinois court system since 1988, Michael McCuskey has earned a reputation for being tough, but fair. He is known statewide as being the first judge from Peoria to sentence a criminal to Peoria's boot camp. Throughout his legal career, Judge McCuskey has displayed the highest standards of personal honesty and professional ethics. In the courtroom, his manner is el-

loquent, his opinions are well organized and well written, and he insists on moving his docket along.

While their backgrounds may differ, these men share a common desire to give back to their communities. They are both well known for their community outreach and their public service. In the course of their nomination, I came to know Mr. Murphy as an avid worker for the American Red Cross and someone who has a passion for working with and for children. Judge McCuskey, in kind, is known throughout central Illinois for his immense volunteer work on veterans' issues.

The challenges that these two men will face are formidable. Every district in our State, in Illinois, is facing serious problems as a result of not operating with a full bench and the Southern and Central Districts are no exception. In the Southern District, the Chief Judge has not been able to hold a civil trial for over a year, and even as I speak to you, a major civil trial is being delayed in the Central District, again, because of understaffing of the bench.

I am confident, however, that Judge McCuskey and Mr. Murphy understand the challenges that they face and that they have the qualifications, the temperament, and the compassion necessary to meet those challenges.

I want to thank you, Mr. Chairman, sincerely for calling these nominations forward. For all of what goes on around the nominations process, the fact is that the American people need to have these positions filled so that the judiciary can do what it is supposed to do, which is to administer justice and recognizing the distinction between the legislative branch and the judicial one, recognizing that they are kind of two different orbits. The fact is that this particular orbit really does touch the lives of Americans in a particular way and the people of our State, of all the States that are involved with this nominations process, deserve to have these nominations acted upon expeditiously.

So I want to thank you, Mr. Chairman, for calling these nominations forward, for moving them forward. It is a step in the direction of getting the Federal bench filled with competent, qualified, and good people who will see to it that the laws of this country are fairly administered and appropriately administered for all the people. Thank you.

Senator KYL. Thank you, Senator Moseley-Braun. You have my assurance, and I am sure I speak for the chairman of the full committee, that the purpose for this hearing today is to get this process moving to the next step so that we can proceed to get the nominees confirmed, at least voted on confirmation as quickly as possible.

Senator MOSELEY-BRAUN. Thank you.

Senator KYL. I should also mention that Congressman Ray LaHood has been detained on the floor. His statement of introduction will be submitted for the record.

[The prepared statement of Mr. LaHood follows:]

PREPARED STATEMENT OF HON. RAY LAHOOD, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF ILLINOIS

Thank you, Mr. Chairman, for allowing me to be present here today for the nomination of Judge Michael McCuskey to the federal judiciary. I believe Judge McCuskey will be an outstanding addition to the ranks of the federal judiciary, and it is truly an honor to be here to provide introductory remarks.

Judge McCuskey, who is a lifelong resident of Illinois, has tirelessly and selflessly served his community well as a teacher, an advocate, lawyer and a judge. All of these experiences will serve him well as a member of the federal judicial branch. His legal background includes service as the Marshall County Public Defender, Circuit Judge of the 10th Judicial Circuit, and his present position as a Judge of the Third District Appellate Court. In 1991, in recognition of his hard work, he received the Illinois Public Defender Association's Award of Excellence and Meritorious Service. His service as a felony court judge in Peoria, Illinois earned him a listing in "Who's Who in Law Enforcement." In addition, he is the senior member of the Administrative Committee of the Illinois Appellate Court and was Chairman of the Appellate Court Executive Committee.

Judge McCuskey's public service has not been limited to the legal arena. From 1989 to 1995 he was a member of the Board of Directors of the Central Illinois Chapter of the American Red Cross. He also serves as a member of the Peoria League of Women Voters and the Peoria Rotary Club. And, before attending the law school at Saint Louis University, he taught history and coached baseball at Ottawa Township High School.

Mr. Chairman, I am proud to join my distinguished colleagues in the Senate, Senators Carol Moseley-Braun and Dick Durbin in introducing Judge McCuskey to your committee. If Judge McCuskey's past service is any indication, and it should be, we will all benefit greatly from his confirmation to the federal bench. Thank you.

Senator KYL. Could I ask these two nominees now to stand? First of all, Judge McCuskey, would you stand? Thank you very much. We will hear from you more in just a moment. And Mr. Murphy, Mr. Patrick Murphy? Great. Thank you for those fine statements of introduction.

Now, since we have Senators from two other States, Senator Feinstein being a member of the committee, I am going to ask her for the first nomination and then we will see what other members come forward at that time. Senator Dianne Feinstein. Senator Boxer, please take one of those chairs. Thank you.

Senator Feinstein.

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

Senator FEINSTEIN. Thank you very much, Senator Kyl and Senator DeWine, Senator Feingold. I want to begin by thanking Chairman Hatch for scheduling these hearings. I am very appreciative, and I am honored and delighted to recommend to the committee three district judges and one Federal appellate court nominee from my home State, California.

Let me just begin alphabetically with the two that I nominated to the President, the first being Charles Breyer, known as Chuck Breyer. He has a broad range of experience in both criminal and civil law. He is extremely well qualified for the appointment. He served as a special prosecutor during Watergate. He has prosecuted violent felons for 7 years as an assistant D.A. in San Francisco and he has worked to reduce youth violence as the current chairman of the Juvenile Probation Commission of San Francisco. He is also experienced in civil trials and he is a partner of a top law firm.

He graduated cum laude from Harvard in 1963. He earned his J.D. from Boalt Hall, the University of California, in 1966. He clerked for Judge Oliver Carter in the district court in northern California for a year following his graduation. From 1967 to 1972, he was assistant district attorney for the city and county of San Francisco, something my daughter has been, where he prosecuted more than 50 felony trials, including numerous homicide cases. He

returned to the district attorney's office in 1979 to serve as the chief assistant, where he supervised 90 attorneys.

He was appointed by Archibald Cox to serve as Assistant Special Prosecutor on Watergate from 1973 to 1974. During his 2 years in Washington, he also conducted grand jury proceedings into criminal allegations of abuse of power by White House employees. He has served with his present law firm, Coblenz, Cahen, McCabe, and Breyer, since 1975, except for a 1-year leave of absence for the return to the D.A.'s office. His practice focuses primarily on complex litigation matters, both civil and criminal, in both the State and Federal courts.

I mentioned he served as president of the Juvenile Probation Commission. He was recommended to that spot by the San Francisco Superior Court.

His strong record as a prosecutor has earned him the respect of many law enforcement officers. Of the finalists recommended to me for this appointment, Charles Breyer was the No. 1 choice of the California Narcotics Officers Association and he was also endorsed by the San Francisco Police Officers for this position.

He is, quite simply, an outstanding man, a proven leader, and a person of high integrity. I am very proud to recommend him to this committee.

I would also like to recommend Frank Damrell to the members of the committee in hopes that he will be confirmed to serve on the Federal District Court for the Eastern District of California. Mr. Damrell is widely respected in the Central Valley and Sacramento areas of our State. His 30-year career in the legal profession has included both extensive experience in civil courts and several years of criminal trial experience as a deputy district attorney and a deputy attorney general in California.

After graduating from Yale, he returned to California from 1965 to 1967, worked as a State deputy attorney general in the San Francisco office. In only his second year in the office, he was the first deputy assigned to the newly created consumer fraud unit. In 1966, he moved back to his home town of Modesto and became a senior trial deputy in the Stanislaus County district attorney's office. He has handled numerous jury trials, including three murder trials, during his time.

From 1968 to 1980, he opened his own law office, which is probably the largest law firm in the Central Valley. Over the years, the Damrell firm has grown to become one of the most respected legal firms in the State. The practice is primarily civil, with a broad range of business litigation matters.

Since 1988, his legal practice has focused again on complex business litigation. His clients include publicly owned corporations, closely held family corporations, public entities, and individuals. Their businesses include farming, trucking, food processing, wineries, construction, and manufacturing companies, distributorships, and professional corporations. He has also had specific experience in securities fraud and antitrust law.

Former Senator John Danforth wrote, and I quote,

Frank has all the qualifications that are important for the bench. He is smart, he is experienced, he is sensible, and he is dedicated to doing good. He has no trace

of what could become "federalitis", and he is not the kind of person who would use his position to grind some personal or political ax.

Former Agriculture Secretary Dick Lyng wrote, "Frank Damrell is exceptionally well qualified to serve in this post. * * * I believe [he] will be an outstanding judge." And it goes on and on, Mr. Chairman. Ann Veneman, the secretary of the California Department of Food and Agriculture, is a supporter, as are presiding Judge Hugh Rose of the Stanislaus County Superior Court, Sheriff Les Weidman of Stanislaus County—and I would like to submit for the record a number of letters supporting his candidacy.

Senator KYL. Without objection, those letters will be considered a part of the record.

[Senator Feinstein submitted the following letters:]

DEPARTMENT OF FOOD AND AGRICULTURE

1220 N Street, Rm. 409
Sacramento, CA 95814
(916) 654-0433



January 17, 1997

The Honorable Dianne Feinstein
United State Senator
525 Market Street, Suite 3670
San Francisco, CA 94105

Dear Senator Feinstein:

It was nice to see you this week in Manteca during your visit with the victims of our recent floods.

As you well know, an advisory committee has submitted Frank Damrell's name to your office for consideration of an appointment to the United States District Court for the Eastern District of California. I believe, Frank would be an extraordinary choice to fill this vacancy on the bench.

I have personally and professionally known Frank Damrell for over twenty years. I am routinely impressed by Frank's ethical nature, sound judgment and professional ability.

Frank is exceptionally learned in the law. He began his career as a Deputy Attorney General in San Francisco and returned home to Modesto to work for Stanislaus County as a Deputy District Attorney where he prosecuted numerous felony jury trials.

In 1968, Frank began a solo law practice that has grown to become one of the premier law practices in the San Joaquin Valley, with a current staff of 18 attorneys. Frank has practiced in federal courts and also has a strong knowledge of public policy issues. Throughout each of his professional accomplishments, Frank has demonstrated the highest level of ethics and personal integrity.

Yet, there is no other accomplishment that Frank is more proud of than his own commitment to his family and community. Frank is a dedicated husband, father and grandfather. He is also a leader of his community, contributing both time and resources to numerous Stanislaus County charitable organizations and causes.

I am reminded that since 1945, only two Stanislaus County residents have been appointed to the federal bench. In fact, the last federal appointment to the bench from Stanislaus County was over 17 years ago.

I have enclosed a recent *Modesto Bee* profile on Frank that I feel accurately details his spirit and commitment. I believe Frank would serve the United States District Court with distinction and honor. I would appreciate your consideration on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ann M. Veneman', written over a horizontal line.

Ann M. Veneman
Secretary

Enclosure

A dream believer

Damrell turns vision into reality

By Cheryl Matthews
See staff writer

Frank C. Damrell Jr.'s favorite photographs sit in frames in his home library. Here is Frank Damrell entertaining Jimmy Carter in his front yard on Wycliffe. There he is shaking hands with Joe Montana, talking to Muhammad Ali, posing with Jerry Brown, eating dinner with President Clinton.

The diplomas are reserved for his office walls. Damrell, 58, is a lawyer, a graduate of Yale Law School. He has one of the largest law practices in the Central Valley. The five-story office building he built three years ago in downtown Modesto is named after his father, Frank C. Damrell Sr., who was a labor law and trial attorney and Stanislaus County judge.

Family portraits hang on nearly every wall of his home and his office. There's his great-grandfather, who came west to California in 1849, and innumerable photos of Damrell's wife, four children, two grandchildren and dog Bo.

"Ask anyone who knows him well, and they'll say Frank Damrell is a family man and a lawyer with friends in high places. Moreover, he's a thinker, an unassuming man of vision and action, which is something that can't be captured in a picture frame."

"To me, Frank is a Renaissance man," says Ray Simon, a county supervisor who has been a friend for 35 years. "I've never known anyone with an interest in so many things. And for Frank, there is no such thing as a casual interest."

There's a sense of Damrell's vision in downtown Modesto — I Street in particular. For Damrell, I Street is more than a part of the original alphabet grid. It is a symbol for Modesto's



Bar! Ah! You/The Bee
Frank C. Damrell Jr.'s interests and loves are captured on the walls of his Modesto home.

revitalization. And it is more

After all, Frank Damrell started his life just off I Street.

While Damrell was growing up in old Modesto during the post-World War II years, he would stand at one end of the long, tree-lined I Street at dusk with his sister, Marie, and his dog, Mickey. They would watch their father make his sidewalk commute from his office at 10th and I to the house, with the front yard flagpole on Kimble Street.

For the young Damrell, I Street and the small town blocks on either side contained his whole, perfect world. There was the hospital where he was born, the streets where he played ball, the mayor's house, where his father talked politics, the

See Back Page **Vision**



This is another in an occasional series profiling people who make the news.

Name: Frank C. Damrell Jr.

Age: 58

Job: Attorney with Damrell, Nelson, Schrimp, Pallios and Ladine

Years in profession: 31

Education: Graduate of Yale Law School, University of California at Berkeley, and Modesto High School. Also attended Sacred Heart

Novitate seminary and Saint Clara University

Family: Wife, Ludy Damrell; sons, Frank Damrell III and Jim Damrell; daughters, Lia Damrell, McKee and Anne Damrell; grandchildren, Cap and Katherine; sister, Marie Gallo

Favorite book: Carl Sandburg's "Lincoln"

Favorite music: Classical, especially Mozart

Favorite person from history: Abraham Lincoln

Favorite leisure activity: Attending San Francisco 49er games

Persons he most admires: Father; Gary Smith and Mother Teresa

grammar school, the movie theater and the library.

Fifty years since his first vigilant watch over I Street, Damrell takes in the view from his fifth-floor luxury law office at 16th and I streets. He can see the rooftops of nearly every downtown store and office building, the pinnacle of the McHenry Mansion — and I Street, still lined with trees.

"Growing up, this street was the center of my universe," he says. "In my mind, it is still the heart of old Modesto, but the downtown has lost a lot of its luster. Somehow, I feel an obligation to preserve it. If we let the downtown decay, our identity as a community is at risk, and that affects the soul of everyone."

What an unexpected twist for a man who spends his days practicing civil law and business litigation to talk about a street with such passion, to link it with something as vast as a "communal soul."

But in Damrell's world, I Street is an icon — one that led him out of town after high school graduation and brought him back again as an adult — and more importantly, one that has an impact on the entire community.

Four years of silence

When Damrell left Modesto after high school in 1955, he went to Santa Clara University. After a year, he changed his course in a way that few people do. He dropped out of school to lead a secluded life at Sacred Heart Novitiate, a Jesuit seminary in Los Gatos, where he studied to become a priest. While there, he wasn't allowed to go home, not at Christmas or Easter or even when his only sister married Robert Gallo.

The seminary experience is one he shares with Jerry Brown, who had been his roommate at Santa Clara.

"The seminary was an intense education, an experience shaped by a certain era of Catholicism, which is largely faded from the world today," Brown says. "We lived a life of poverty, chastity, obedience and spiritual reading. It was a world apart, where friendships were developed and perspectives adapted."

Damrell hears how Brown describes the experience and chuckles. "We didn't just sit around, meditating, reading and speaking Latin. We worked the fields and harvested grapes."

Still, it was unlike anything he had ever experienced in his privileged upbringing.

"Seminary life would be pretty foreign for anyone, especially for a fellow like me coming out of Modesto in 1955."

After four years, Brown and Damrell realized they weren't cut out for the cloistered life. Both enrolled at the University of California at Berkeley and then went on to Yale Law School.

Brown, of course, eventually became governor of California and twice ran, unsuccessfully, for president. Today he lives in Oakland and does a radio talk show called "We The People."

And Damrell? He, too, sought a more worldly alternative to the priesthood. The theological training led to law — his father's profession — which brought him back to Modesto.

Politics, law and family

Like Brown, Brown's father and his own father, Damrell was drawn to politics, both as a lawmaker-lobbyist and as a campaign activist.

During the John F. Kennedy presidential campaign, he had a chance to talk to Kennedy when the candidate flew in to Moffett Field with Brown's father, Pat, who was governor.

The invitation to Kennedy's inauguration that followed is one of Damrell's greatest keepsakes, but it wasn't his springboard to the Democratic Party. He had decided on his party allegiance long before meeting Kennedy.

"I grew up thinking it was perfectly logical to be a Democrat," he says. "It was the party of my father and of Roosevelt and Truman and Kennedy. They cared for the little guy, the forgotten person, the people left behind."

Over the years, Damrell stayed behind the scenes in politics, never running for office himself. Instead he walked precincts and held fund-raisers in his home for numerous Democratic candidates, such as Brown and his sister, Kathleen Brown, Vic Fazio, Tony Coelho and Dianne Feinstein. When former President Jimmy Carter came to Modesto in 1980, the Damrells had a Fourth of July fund-raiser in their yard.

Today, while partisan lines have blurred, Damrell still is a Democrat.

"I suppose it's something that's part of my life, part of my family's life and part of the

tradition that I carry out for my father. I'm a Democrat and I always will be a Democrat."

That doesn't mean he doesn't have Republicans for friends. Has has many. Ann Veneman, for one, says she and Damrell call each other the day after every election. She is state secretary of agriculture and daughter of the late John Veneman, assemblyman and assistant secretary of health, education and welfare.

"We're from two different parties, but we have a strong bond when it comes to talking about politics," Veneman says. "Our tradition is to call each other on the phone after every election to hash out the details."

Veneman was the first woman attorney hired by Damrell's law firm. She worked there for several years before she went to work as deputy secretary for the U.S. Department of Agriculture during the Bush presidency.

"Somehow, I became part of the Damrell family while I worked at the firm," she says. "I've been gone nine years now, and it's never changed."

As a colleague, Veneman saw several sides of Damrell.

"Frank works very hard. When he's engaged in a case, he works night and day. He's a big-picture thinker, and he's very dedicated to his work."

Law, after all, holds an even greater interest to Damrell than politics.

"In law, you're given a set of facts that are new, you learn about a business, devise strategies, and it's kind of like a mystery or a detective story," he says. "There's a spint of competition and an intellectual challenge of ideas, which ultimately is what the law is about — and from that, hopefully, the truth emerges."

Certainly, Damrell's firm has been successful. With 18 attorneys, it is one of the largest firms in the Central Valley. Damrell started the firm in 1968 when he moved back to Modesto with his wife, Ludy Dykzeul, a nurse whose family had migrated to Oakdale after working with the Dutch underground during World War II. After Damrell Sr., known even to his grandchildren as "The Judge," retired from the Stanislaus County Superior Court bench, he joined his son in the firm.

Marc Gallo, Damrell's sister, describes her brother as a chip

off the old block. Their father died in 1988, two days after the death of their mother, Honora Mae Damrell.

"My father had a deep, true love for his community, and my brother loves this town, too. He cares about people deeply. At the same time, there's a whimsical kid in him."

Damrell, an early riser, reads four papers every morning and often attends Mass before he goes to the office. He loves books, travel, classical music, the arts and the San Francisco 49ers. He went to the very first 49er game in 1946 when he was 8 years old.

Frank and Ludy raised four children in their rambling home on Wycliffe Drive. Now they are empty-nesters. Ludy Damrell keeps busy as a volunteer at the Parent Resource Center, a facility that works to prevent child abuse. She also sings in the choir and teaches children at St. Joseph's Catholic Church.

Their two older children live in Modesto. Frank Damrell III is a stockbroker. He and his wife, Gayle, have two children, Cap and Katherine. Lia Damrell-McKeon is married to a cattle rancher, Alex McKeon, and is the community resources director for the Center for Human Services. The two youngest children are in college — Anne at Santa Clara University and Jim at Notre Dame University Law School.

All four say their father encouraged them to give something back to their communities.

"Dad instilled in us the responsibility we have to our community," says Frank III, who spent three months working in an orphanage with Mother Teresa in India. "After I had graduated from college, he encouraged me to do some spiritual introspection beyond the annual retreats we took together to a Benedictine monastery. That's when I decided to go to India."

Lia remembers her father's talks — life's lessons at the dinner table, more serious discussions in the library, and now, conversations over coffee at her farmhouse in Oakdale.

"He's constantly motivating us," she says. "He recently gave me the book, 'The Road Less Traveled.' He tells us we can be anything we want to be. I think he has a deep understanding of what that is about."

Damrell laments some of the family trade-offs he made over the years.

"When I was younger, I was involved in more boards than I could count," he says. "I was heavily involved in politics and I spent a good deal of my time in Washington and Sacramento."

Says Lia, "He tells us all the time about how he regrets not being with us more while we were teen-agers."

Maybe that's why he hearkens back to I Street. It keeps him closer to home.

Downtown rebirth

Damrell sees not just the ghosts of his past along I Street, but the future — a place where there's a permanent farmers market and an art gallery that isn't relegated to the basement of the McHenry Museum.

"We need a place for public art, which is something we can all enjoy. We need to make a permanent home for the Modesto Symphony. We need to celebrate the talent we have in our community."

He's working on these projects, and if his friends are right, he'll find a way to make them happen.

"Frank is a very persuasive guy, and his heart is in the right place," says the Rev. Gary Smith, a friend from Modesto High School. Smith, a Jesuit priest, has a jail ministry and works with the homeless in Portland, Ore.

"He knows how to wheel and deal with people, and I use that term in the best possible sense. He's driven by the big picture, and that's a pretty tough thing to argue with."

Consider the story of McClatchy Square. Damrell saw the quarter-acre corner with its abandoned gas pumps as the last open space on I Street, a place where people could sit on park benches in a public rose garden. After a reception in 1991, he stood on the front steps of McHenry Mansion and talked to the chairman of McClatchy Newspapers about donating the land, owned by The Modesto Bee, for a city park.

"I wasn't going to let that one get away," Damrell says. "I was going to stay with it, no matter what it took."

It took two years of persuasion, but McClatchy donated the property, and for the next four years, Damrell, city

officials and others worked to raise the \$135,000 to turn the lot into a park.

Damrell takes little credit. "One of my happiest days was taking this picture with the construction workers who donated their time to work on the park. They are the heroes. My vision without their sweat wouldn't mean much."

There's more to be done downtown, of course, and Damrell believes the city and county need to get together to rebuild the city core. He is a public member of the City County Facilities Committee, which had studied downtown redevelopment proposals.

Meanwhile, Damrell is working on another project, an idea he spawned. It is a plaza to honor filmmaker George Lucas at the Five Points intersection at McHenry Avenue. Construction is expected to begin in the spring. A focal point will be a life-size bronze sculpture of two teen-agers in early '60s clothing and a '57 Chevy, representative of the era of cruise celebrated in the Lucas film, "American Graffiti."

The George Lucas Plaza project shows how Damrell operates when he gets an idea, says Mayor Dick Lang.

"Frank initiates the spark that ignites the fire under us," the mayor says. "He has a vision that few people share, and he will take that on as a personal task and challenge. He initiates calling together parties that he thinks will be interested in participating and before you know it, you've got a committee and they're off and running."

That's why, Lang says, "When Frank calls, you listen."

As usual, Damrell is modest but articulate.

"One thing leads to another," he says. "You find these treasures in your community, like George Lucas, who grew up in Modesto, and you realize we need to celebrate them because that's what gives our community identity. That's a reflection of our communal soul."

There it is again. Community. Soul.

Damrell leans back in his leather chair and takes off his glasses. He pauses for a moment.

"What it comes down to is that I'd like to do something that has permanence, to leave a legacy. I think I can do that in our community. I think I can do that on I Street — and beyond."



OFFICE of the CHAIRMAN

E. & J. GALLO WINERY • Modesto, California

January 17, 1997

The Honorable Dianne Feinstein
525 Market Street, Suite 3670
San Francisco, CA 94105

Dear Dianne:

I have been advised that Frank Damrell, Jr. is being considered for a possible appointment to the United States District Court for the Eastern District of California.

I have known Mr. Damrell for many years. I greatly value his abilities as an attorney and have found his judgement and integrity to be of the highest order.

I believe he would be an outstanding choice for this most important office.

All the best,

A handwritten signature in cursive script that reads "Ernest Gallo". The signature is written in dark ink and is positioned above the printed name.

Ernest Gallo

EG:om

JAN 27 1997

Congress of the United States
House of Representatives
Washington, DC 20515

January 21, 1997

The Honorable Dianne Feinstein
525 Market Street
Suite 3670
San Francisco, California 94105

Dear Senator Feinstein,

We write to you on behalf of Frank C. Damrell, Jr. and urge your highest consideration for his appointment to the United States District Court for the Eastern District of California

Frank Damrell distinguished himself as a graduate of U.C. Berkeley and Yale Law School, then went on to become a prosecutor as the Deputy Attorney General in San Francisco and as a Senior Deputy District Attorney for Stanislaw County.

His private law practice now consists of eighteen attorneys with offices in Modesto, Sacramento, and Oakdale California. He has admission to the United States Supreme Court and the U.S. District Court of California

Frank Damrell's depth of knowledge on the issues of agriculture, education, energy, transportation, and business-related litigation is unsurpassed.

He and his wife, Lidwiena, have raised four outstanding children while simultaneously committing themselves to their community which is legendary in the Central Valley. Frank Damrell's affiliations and activities read like a "who's who" of citizen leadership. We are enclosing a copy of this honor roll of service for your perusal.

Not since 1979 has any individual been appointed to serve from this region to the U S District Court for the Eastern District of California

The appointment of Frank Damrell would bring great distinction to the court, be a noble addition to our nation's system of jurisprudence, and would validate what we and people of The Valley already know and deeply appreciate that Frank Damrell is an extraordinary human being and a man of great intellect, integrity and accomplishment.

We are very proud to support him

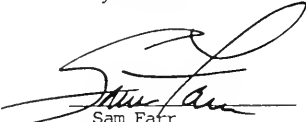
Sincerely



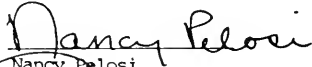
Gary Condit



Anna G Eshoo



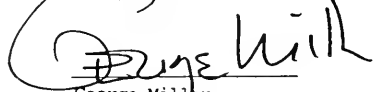
Sam Farr



Nancy Pelosi



Howard Berman



George Miller

FEB 12 1997



United States Department of the Interior

OFFICE OF THE DEPUTY SECRETARY
Washington, D.C. 20240

January 21, 1997

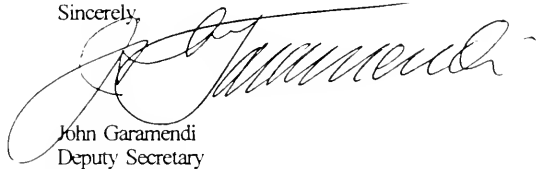
Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

Dear Senator Feinstein:

Frank Damrell has been recommended for a judgeship in the Sacramento district. He is well qualified, well known, and well suited for the appointment. Since we have both worked with Frank for many years, I am sure you already know that he would be a good, solid confirmable appointee.

Please give Frank your full consideration.

Sincerely,



John Garamendi
Deputy Secretary



Bank of America

January 21, 1997

Kathleen Brown
Senior Vice President &
Managing Director
Sales and Marketing Investment
Management Services Group

The Honorable Dianne Feinstein
525 Market Street
Suite 3670
San Francisco, CA 94105

Dear *Dianne*

I am writing to urge you to nominate Frank Damrell for an appointment to the United States District Court for the Eastern District of California.

I have known Frank since he and my brother, Jerry, joined the Sacred Heart Novitiate over 40 years ago. Thus, I speak with some authority about his character for the court and his judicial temperament.

Frank is above all a man of integrity, intelligence and loyalty. He is a family man, a thinker and a doer. He has devoted his life to the practice of law and to serving his community. Unlike many who simply give their name, Frank gives his time, his resources and his heart to the causes which he supports.

Frank has deep roots in the Eastern District and a track record of serving the people in that community. He would represent the Court with honor and distinction and make you proud that he was your nominee.

As recently noted in an article in the Modesto Bee, Frank Damrell is "an unassuming man of vision and action, which is something that cannot be captured in a picture frame." I enthusiastically urge your affirmative consideration for his nomination.

Sincerely,

KB/lou

LAW OFFICES
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

WALTER L. NOSSAMAN
 (1888-1884)

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 IRVINE, CA 92715-1007
 (714) 833-7800

January 22, 1997

SACRAMENTO
 SUITE 1000
 815 L STREET
 SACRAMENTO, CA 95814-3701
 (916) 442-8888

WILLIAM T. BAGLEY

REFER TO FILE NUMBER

411111-111

The Hon. Dianne Feinstein
 United States Senate
 SH-331 Hart Senate Office Building
 Washington, DC 20510-0504

Dear Dianne:

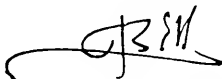
RE: U.S. District Court - Eastern District
Frank Damrell, Jr.

Here is a candidate/applicant who is willing to give up a most prominent, most successful law practice in Central California to serve. And here is a most qualified lawyer who, bar none, is a most wonderful, thoughtful, decent, and fair human being. These are not fancy adjectives; they are simple true statements.

Obviously Frank is a friend. During a recent chat he mentioned a possible Judgeship and I volunteered to write to you. Please note UCB and Yale Law School, note the broad expanse of his volunteer service and of course his very significant Party activities.

I know you know Frank but for your files I enclose a personal and legal biography. His would be a great appointment and a great addition to the Federal Bench in California.

Respectfully yours,



William T. Bagley

WTB/hm

Enclosures

cc: San Francisco Office
 Frank C. Damrell

SF970210041

VITA

FRANK C. DAMRELL, JR.**PERSONAL:**

Wife:

Lidwiena J. Damrell

Children and Spouses:

Frank C. Damrell III and his wife, Gayle

Alida Damrell McKeon and her husband, Alex

Anne Marie Damrell

James Brockton Damrell, who is a law student at Notre Dame

EDUCATION:

Santa Clara University 1955-56

Sacred Heart Novitiate, Los Gatos, Calif., a Roman Catholic seminary
for the Jesuit Order 1956-60

University of California, Berkeley 1961 B.A.

Yale Law School 1964 L.L.B.

**PROFESSIONAL ADMISSIONS
AND AFFILIATIONS:**

State Bar of California

United States Supreme Court

U.S. District Courts of California

American Bar Association

Stanislaus County Bar Association

Federal Bar Association

**PROFESSIONAL
HISTORY:**

Upon graduation from law school, I spent four years as a prosecutor, first as a Deputy Attorney General in San Francisco and then, upon my return to Modesto, as a Senior Deputy District Attorney for Stanislaus County where I had numerous felony jury trials, including two murder trials.

I commenced my private law practice as a sole practitioner in 1968, and our firm now consists of 18 attorneys with offices in Modesto, Sacramento, and Oakdale, California. My law practice has been unusually multi-faceted and covers a wide spectrum of clients and cases. The following is a brief profile of the history of my practice.

For approximately the first twelve years, my practice was devoted exclusively to trial work. This included criminal defense, plaintiff's personal injury and business-related litigation. I also was engaged in state and federal appellate court practice.

Between 1978 and 1988, in addition to my trial practice, I spent substantial time in Washington,

D.C., as an attorney and lobbyist on behalf of California public and educational entities, agricultural associations, and the energy and transportation industry. I appeared before both the House and Senate Agriculture Committees and the House Interior and Senate Energy Committees and worked with several federal departments and agencies. During this same period, I also represented corporate clients before state legislative committees and state agencies in Sacramento.

Since 1988, I have devoted my practice to complex business litigation matters in both federal and state courts. My clients include publicly owned corporations, closely held family corporations, public entities and individuals. My business clients include various wineries, distributorships, farming enterprises, trucking, food processing, construction and manufacturing companies.

The balance of my trial practice involves litigation relating to antitrust law and securities fraud. I have been both lead counsel and co-lead counsel in class actions filed in federal and state courts. My clients in these cases include private and public entities, such as Stanislaus County.

All of the above litigated matters involve an extensive law and motion practice, as well as comprehensive pre-trial orders, discovery plans, and ultimately arbitration or court and jury trials.

AFFILIATIONS AND ACTIVITIES:

Santa Clara University Law School Board of Regents (1986-94)
 Santa Clara University Law School Board of Visitors (1983-94)
 Chair of Stanislaus County International Friendship Committee with France and Portugal (1990-97)
 Chair of "I" Street Renaissance Committee (City of Modesto) (1990-97)
 Chair of McClatchy Square Citizens Committee (City of Modesto) (1994-95)
 Chair, George Lucas Plaza Project Committee (City of Modesto) (1996-97)
 Public Member, City-County Public Facilities Committee (1996-97)
 Member of Citizens Study Group (sponsored by *The Modesto Bee*) to study the "Valley of the Poor" (1996)
 Chair of the California State Consumer Advisory Council (1975-80)
 Member of the California State Consumer Advisory Council (1973-80)
 President of the Consumer Federation of California (1972-76)
 Delegate, Democratic Conventions (1976, 1980)
 Democratic National Committee (1980)
 Member of Board of Central Catholic High School Foundation
 Member of Board of Directors of Pacific Institute for Community Organizations
 County Co-Chair of "Keep the Promise" campaign (University of Calif., Berkeley)
 Member of the Board of Directors, California Farmer Consumer Information Committee
 Chair of the Stanislaus County Consumer Protection Committee
 Chair of the City of Modesto Crime Study Committee
 Member of Citizens for Public Safety Committee (Proposition 172)
 Member of the Board of Directors, Stanislaus County Legal Assistance
 Member of the Sickle Cell Anemia Foundation Board
 Member of Board of Directors of Learning by Earning
 President of the Sportsmen of Stanislaus
 Chair of the March of Dimes, Stanislaus County
 Treasurer of the Modesto City Schools Bond Campaign for Johansen High School
 Member of the Board of Directors of the Modesto Symphony
 Member of the Board of Directors of the Stanislaus Creative Arts Council
 Vice President of the Big Brothers of Greater Modesto

JAN 24 1997



GOVERNOR'S OFFICE

January 23, 1997

The Honorable Dianne Feinstein
525 Market Street, Suite 3670
San Francisco, CA 94105

Dear Senator Feinstein:

It has come to my attention that Frank Damrell, an attorney and lifelong resident of Modesto has been nominated for appointment to the United States District Court for the Eastern District of California. I have known Mr. Damrell for several years in many capacities - as a member of the Community, as a wife of a Superior Court Judge, and as the former Mayor of the City of Modesto. He has exhibited all the qualities and experience which will qualify him to become a seasoned and thoughtful District Court Judge, able to apply his perspective and understanding, as well as his knowledge of the law to the cases and decisions which will come before him.

Frank Damrell has demonstrated a consistent commitment to the community and has often used his knowledge of the law and government to serve it. As a prosecutor in the Attorney General's office, and as a Deputy District Attorney, Frank represented the people's interest in law enforcement. He has represented a broad array of clients on a wide range of legal issues and has demonstrated a record of success in legal representation of some very complicated cases. But more than that, Frank Damrell has always been available to assist in community projects. He has worked quietly, often behind the scenes to see that the often underrepresented members of the community received a voice and assistance when needed.

While I served in elected office, and as Mayor of Modesto, Frank provided assistance in government and legal issues, and supported the City whenever needed.

Though we are of different political parties, I know Frank Damrell to be balanced and fair, concerned and compassionate, respectful and knowledgeable about the law, its intent and application.

I am sure there will be many qualified applicants for this position, I can think of none who will bring more to the position and be a greater credit to you and to the Nation. You may certainly feel free to contact me if you need more information on this important decision.

Sincerely,

A handwritten signature in cursive script that reads "Carol G. Whiteside".

Carol G. Whiteside
Director
Intergovernmental Affairs

WASHINGTON, D.C.
 NEW YORK, NEW YORK
 KANSAS CITY, MISSOURI
 OVERLAND PARK, KANSAS
 PHOENIX, ARIZONA
 LOS ANGELES, CALIFORNIA
 SANTA MONICA, CALIFORNIA
 IRVINE, CALIFORNIA

BRYAN CAVE LLP
 ONE METROPOLITAN SQUARE, SUITE 3600
 ST. LOUIS, MISSOURI 63102-2750
 (314) 259-2000
 FACSIMILE: (314) 259-2020

Bill

LONDON, ENGLAND
 FRANKFURT AM MAIN, GERMANY
 RIYADH, SAUDI ARABIA
 KUWAIT CITY, KUWAIT
 DUBAI, UNITED ARAB EMIRATES
 HONG KONG
 AFFILIATED OFFICE IN BEIJING

JOHN C. DANFORTH

(314) 259-2980

January 23, 1997

The Honorable Dianne Feinstein
 United States Senate
 Washington, D.C. 20510

Dear Dianne:

I understand that you are considering Frank Damrell for nomination to the Federal District Court for the Eastern District of California. In my opinion he would be an excellent choice.

Frank was one of my closest friends at Yale Law School, and we have kept in touch since then. He is bright, and beyond his obvious credentials, I can tell you that he is a good person. He has character and good values. Also, he has a great sense of humor and an ability to laugh at himself, which is preventative medicine to that dread disease of the Federal bench, "Federalitis."

I am certain that being a Federal judge would be a financial sacrifice for Frank. It would also be an opportunity for him to be of service to the country and to people, which is consistent with his motives.

It was good to see you at the farewell party for departing Senators. Best wishes to you in your efforts to rebuild the center of the Senate.

Sincerely,

Jack

NANCY PELOSI
8TH DISTRICT, CALIFORNIA

2457 RAYBURN BUILDING
WASHINGTON, DC 20515-0508
(202) 225-4965

DISTRICT OFFICE
FEDERAL BUILDING
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102-3460
(415) 556-4862

Congress of the United States
House of Representatives
Washington, DC 20515-0508

January 28, 1997

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES
LABOR HEALTH AND
HUMAN SERVICES EDUCATION
FOREIGN OPERATIONS, EXPORT FINANCING
AND RELATED PROGRAMS
PERMANENT SELECT COMMITTEE
ON INTELLIGENCE
RANKING MEMBER,
SUBCOMMITTEE ON TECHNICAL AND
TACTICAL INTELLIGENCE
COMMITTEE ON STANDARDS
OF OFFICIAL CONDUCT
CONGRESSIONAL WORKING
GROUP ON CHINA, CHAIR
AT-LARGE WHIP

The Honorable Dianne Feinstein
Office of Senator Dianne Feinstein
525 Market Street
Suite 3670
San Francisco, CA 94105

Dear Senator Feinstein:

Frank C. Damrell, Jr. has expressed an interest in an appointment to the United State District Court for the Eastern District of California. I understand that you will soon recommend your nominee to President Clinton and I hope you will give Frank Damrell serious consideration.

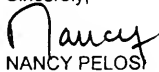
Frank Damrell is eminently qualified for this appointment. Prior to his private practice, Frank served at a Deputy Attorney General in San Francisco and as a Senior Deputy District Attorney for Stanislaus County. He began his private law practice in 1968 as sole practitioner and the firm currently has 18 attorneys and two offices.

Frank has experience in trial work including criminal defense, plaintiff's personal injury and, recently, antitrust law and securities fraud. Frank has worked in Washington, D.C. as an attorney and lobbyist and has appeared before the House and Senate Agriculture Committees and the House Interior and Senate Energy Committees.

Frank Damrell is a well respected member of his field and of the community and would be an asset to the U.S. District Court for the Eastern District of California. I am pleased to give his candidacy my highest recommendation.

Thank you for your consideration of Frank Damrell's qualifications.

Sincerely,


NANCY PELOSI
Member of Congress

NP:ljp

REPLY TO
) CAPITOL OFFICE
 ROOM 4066
 STATE CAPITOL
 SACRAMENTO CA 95814
 (916) 445 2407
 DISTRICT OFFICES
 311 E CHANNEL STREET
 ROOM 440
 STOCKTON CA 95202
 (209) 948 7930
 FAX (209) 948 7993
 1020 N STREET
 ROOM 504
 SACRAMENTO CA 95814
 (916) 323 4306
 FAX (916) 323 2596

SENATE CALIFORNIA LEGISLATURE



SENATOR
 PATRICK JOHNSTON

FIFTH SENATORIAL DISTRICT
 SERVING SACRAMENTO AND SAN JOAQUIN COUNTIES

COMMITTEES
 APPROPRIATIONS
 CHAIR
 AGRICULTURE & WATER
 RESOURCES
 CONSTITUTIONAL
 AMENDMENTS
 INSURANCE
 LOCAL GOVERNMENT
 NATURAL RESOURCES
 & WILDLIFE
 TRANSPORTATION

January 28, 1997

The Honorable Diane Feinstein
 United States Senate
 525 Market Street
 Suite 3670
 San Francisco, Calif., 94105

Dear Senator Feinstein:

You have before you a number of applications from individuals requesting your nomination to President Clinton for an appointment to the United States District Court for the Eastern District.

It is my understanding that Frank C. Damrell Jr. is one of those who has submitted his name for consideration.

In my opinion Frank possesses all of stellar qualities of a federal court judge, namely: legal scholarship, judicial temperament, intellectual and personal integrity, a strong work ethic, and an abiding commitment and loyalty to his community and country.

His interest in the law was born from his early childhood observations and admiration of his father's legal career. As you may know, the senior Frank Damrell's history of legal and judicial service to the citizens of the Central Valley of California is highly regarded and chronicled in local and statewide records. After many years in private practice advocating the causes of labor, Frank's father spent years on the Superior Court before leaving the bench to return to private practice with Frank Jr.

Frank's education at Santa Clara, U.C. Berkeley, and Yale Law School gave him a strong foundation upon which to build a well deserved reputation as both legal scholar and a formidable litigator.

For almost 30 years Frank has dedicated himself to all facets of the law. He spent years as a criminal prosecutor. In civil practice he earned a well deserved reputation as a superb trial lawyer in complex business litigation cases in

both federal and state courts. Before state and federal regulatory boards and commissions, as well as in a lobbying capacity, he has earned the respect and admiration of those he has appeared before. His hallmark is preparation and a dogged determination to achieve results by finding consensus through creative thinking.

Members of the local bench and bar associations attest to Frank's outstanding reputation for integrity and ethical conduct in professional and personal dealings. It is a reputation that is well deserved.

Most people who have accomplished as much as Frank has during his career, would be content to retire or, at the very least, reduce their work schedule considerably. Frank's work in the law gives meaning to his life. Being a federal court judge would bring additional meaning and, I believe usher in a greater period of service, from Frank, to his community.

If a judge should have both a knowledge of the law and the community that he serves, Frank is eminently qualified.

Frank was born and raised in the Central Valley. He and his wife, Ludy, are recognized throughout the area for their unflagging commitment to charitable and civic causes. The depth and breadth of their volunteer efforts is unequalled.

The quality of the Eastern District bench will be richly enhanced by the addition of Frank Damrell Jr.

I most strongly recommend his nomination to the President of the United States for this appointment.

Sincerely yours,

[Signature]
PATRICK JOHNSTON
Fifth Senate District

PJ:rls

Scanne,

This is a very good friend who has all the qualities to be outstanding on the bench!



Congress of the United States
House of Representatives
Washington, D. C. 20515

Anne G. Esher
Franklin District
California

Tuesday 4 February 1997

Dear Dianne,

I thank you very much for your letter of
January 29th regarding Frank Dainell.

Frank's practice representing clients of major
agribusiness, corporations and the wine
industry, with all the demands that
come with such a practice, set him apart
as uniquely qualified for the federal bench.

I have every confidence that Frank Dainell
will bring you, as our Senator, great credit
pride to all Californians and 'distinction'
to our nation.

I look forward to seeing you soon.

Sincerely, 

FEB 10 1997



SANTA CLARA UNIVERSITY

OFFICE OF THE PRESIDENT

February 6, 1997

The Honorable Dianne Feinstein
525 Market Street, Suite 3670
San Francisco, CA 94105

Dear Senator Feinstein:

It is my understanding that Frank C. Damrell, Jr. is being considered for an appointment to the United States District Court for the Eastern District of California. I am pleased to write in support of his appointment.

I have known Frank for many years and can speak of both his legal and personal qualities. His legal experience has been extensive and varied, from public prosecutor at the State and county level to private practice involving criminal defense, personal injury and for the last nine years complex business litigation in both Federal and State courts. His experience has given him both a practical and theoretical appreciation of the law and its complexities and he is highly regarded by his peers in the legal profession.

For some ten years of his private practice he also spent time in Washington as an attorney and lobbyist for a number of public and educational entities, agricultural associations and the energy and transportation industry. As a result he has appeared before a number of congressional committees and dealt with various federal departments and agencies.

On the more personal level, Frank has been an active member of his community serving on numerous civic and county commissions and being heavily involved in a variety of ways with charity and not for profit groups in the Modesto area. He served for eight years as a member of the University's Board of Regents, the chief advisory board to the President. In that capacity he made thoughtful observations and suggestions on almost any item under discussion and proved himself one of the most valuable members of the Board. He is a person of principled judgement and high moral character who has always looked to the common good of his community rather than individual gain or personal advancement. His personal and professional standards are of the highest caliber.

Frank has both the professional background and the personal integrity to make an outstanding federal judge. I am pleased to recommend him with enthusiasm and without reservation for your consideration.

Sincerely,

Paul Locatelli, S.J.
President

.....
 SAN FRANCISCO 49ERS FEB 12 1997

February 7, 1997



SUPER BOWL CHAMPIONS
 XVI, XIX, XXIII, XXIV, XXIX

Carmen A. Policy
 President

Administrative Office
 Mane P. DeBartolo Sports Centre
 4949 Centennial Boulevard
 Santa Clara, California 95054-1229
 Telephone 408/562-4949
 Fax 408/727-4937

Senator Dianne Feinstein
 United States Senate
 331 Hart Senate Office Building
 Washington, D.C. 20510

Dear Senator Feinstein,

Please accept this letter as an unequivocal endorsement of Attorney Frank C. Damrell, Jr. who is seeking your support for an appointment to the U.S. District Court in the Northern Division of California. Frank is an outstanding attorney, a phenomenal family man and a major contributor to the well being of his diverse community. He and his wonderful wife have reared four beautiful and successful children who are a credit to their parents, themselves and the State of California.

You will be able to notice from the attached Vita Summary that Attorney Damrell's professional and public commitments are the essence of his life. This letter is not intended to be a vehicle for the delivery of voluminous detail. I simply wanted to acquaint you with the fact that Frank is truly an outstanding person who is worthy of your consideration and trust. I would appreciate the opportunity to provide you with specific examples of why I feel so strongly about this man and will therefore call your administrative assistant and try to schedule a personal telephone conversation according to your convenience.

Please let Gail and me know when you will be in the Bay Area so that we can attempt to sequester a small portion of your precious time and enjoy your company in the City. We truly appreciated being included in the Holiday Reception at your home and we were able to rekindle contacts with people we hadn't seen for a period of time. Thank you for always thinking of us and being so gracious. We wish you a healthy and happy 1997 and many more to come.

Very truly yours,

Carmen A. Policy
 President

CAP/fjd
 fe:02077.ltr



OFFICE OF THE
DISTRICT ATTORNEY

JAMES C. BRAZELTON
District Attorney

Court House 11th & I Streets

P.O. Box 442 Modesto, California 95353 Tel. (209) 525-5550 Fax (209) 525-5545

February 14, 1997

Senator Diane Feinstein
United States Senate
331 Hart Building
Washington DC 20510

Re: Frank C. Damrell, Jr.

Dear Senator Feinstein:

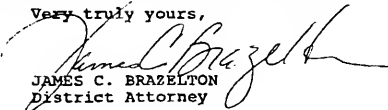
I have learned that Modesto attorney Frank C. Damrell, Jr. has been mentioned as a candidate for appointment to a Federal judgeship. I would enthusiastically urge such an appointment.

As I am sure you are aware, Mr. Damrell is a life-long Modesto resident. His family has strong roots in the community, his father having been a judge on the Superior Court bench for many years. Mr. Damrell and his wife have been very active in community affairs including a great deal of charitable endeavors. Recently, Mr. Damrell was instrumental in the development of a beautiful park near the downtown area of Modesto.

Mr. Damrell and his associates are easily recognized as the most prestigious law firm in Stanislaus County and perhaps the entire San Joaquin Valley. Although the Damrell firm handles very little criminal law, I have had many contacts with Mr. Damrell and other attorneys in his office. I am highly impressed with the character and professionalism of Mr. Damrell and his staff.

Mr. Damrell certainly possesses all of the qualities and experience required of a Federal Judge. I am confident that Mr. Damrell would be a very valuable addition to the Federal bench.

Very truly yours,


JAMES C. BRAZELTON
District Attorney

JCB/ks



Sheriff's Department

P.O. BOX 858 / 1100 "I" STREET
MODESTO, CALIFORNIA 95354
TELEPHONE (209) 525-6456

STANISLAUS COUNTY

LES WEIDMAN
SHERIFF CORONER
PUBLIC ADMINISTRATOR

February 14, 1997

United States Senator Dianne Feinstein
1130 O Street, Ste. 2446
Fresno, CA 93721

Re: Frank Damrell, Jr.

Dear Senator Feinstein:


I am writing to urge your favorable consideration for the appointment of Frank Damrell, Jr. to the Federal Court Bench. I have known Frank personally and professionally for more than 20 years.

Frank is a highly respected lawyer and notable community leader in the Central Valley. He has earned this respect with honesty and integrity and has the judicial temperament necessary for this distinguished position. He is immensely qualified to serve based on his prior experiences which date back to very humble beginnings as a young County criminal prosecutor.

Due to time constraints, I have taken the liberty of garnering the support from Stanislaus County District Attorney Jim Brazelton, Merced County Sheriff Tom Sawyer, and San Joaquin County Sheriff Baxter Dunn for the appointment of Frank Damrell, Jr. to Federal Judgeship.

I look forward to our professional relationship.

Sincerely,



LES WEIDMAN, Sheriff-Coroner
Stanislaus County

LW:bjb

cc: District Attorney Jim Brazelton
Sheriff Baxter Dunn
Sheriff Tom Sawyer

DIANNE FEINSTEIN
CALIFORNIA



COMMITTEE ON FOREIGN RELATIONS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION

United States Senate

WASHINGTON, DC 20510-0504

(202) 224-3841

February 26, 1997

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20050

Dear Mr. President:

I enthusiastically submit the name of Frank Damrell, Jr. for nomination to the Federal District Court for the Eastern District of California. It is my hope that you will forward his name to the United States Senate for confirmation in the very near future.

Mr. Damrell is widely respected in the Central Valley and Sacramento areas of the Eastern District. His 30-year career in the legal professional has included both extensive experience in civil courts and several years of criminal trial experience as a Deputy District Attorney and a Deputy Attorney General in California. After a careful and thorough interview process, I can say that Frank Damrell, Jr. is exceptionally well qualified for this position and would be an outstanding addition to the federal court.

As a managing partner and president of the Modesto law firm of Damrell, Nelson, Schrimp, Pallios & Ladine, Frank Damrell has personally litigated a wide range of civil cases that will undoubtedly prepare him for issues confronting the Eastern District. In order to give a complete description of his noteworthy legal career, I want to outline some of his specific accomplishments:

- ◆ After graduating from Yale Law School, Mr. Damrell returned to his native California and from 1965 to 1967 worked as a State Deputy Attorney General in the San Francisco Office. In only his second year in the office, he was the first deputy assigned to the newly-created Consumer Fraud Unit.
- ◆ In 1966, he moved back to his hometown of Modesto and became a senior trial deputy in the Stanislaus County District Attorney's office. He handled numerous jury trials, including three murder trials, during this time

FRESNO OFFICE
1132 "O" STREET
SUITE 2040
FRESNO, CA 93721
(209) 444-7430

LOS ANGELES OFFICE
11111 Santa Monica Blvd
SUITE 816
LOS ANGELES, CA 90025
(310) 814-7300

SAN DIEGO OFFICE
750 "F" STREET
SUITE 1080
SAN DIEGO, CA 92101
(619) 831-4712

SAN FRANCISCO OFFICE
225 MARKET STREET
SUITE 8070
SAN FRANCISCO, CA 94105
(415) 398-8888

- ◆ From 1968 to 1980, Mr. Damrell opened his own law office. Over the years, the Damrell firm has grown to become one of the most respected legal firms in the State. His firm's practice is primarily civil, with a broad range of business litigation matters.
- ◆ From 1980 to 1988, Mr. Damrell's legal practice expanded and he became involved in a number of major public and private projects. He became counsel for projects such as several public power plants undertaken by local irrigation districts and public utilities; the development and funding of the Superconducting Super Collider by the University of California; and several large real estate developments.
- ◆ Since 1988, Mr. Damrell's legal practice has focused again on complex business litigation. His clients include publicly-owned corporations, closely held family corporations, public entities, and individuals. Clients include wineries, farming enterprises, trucking, food processing, construction, and manufacturing companies, distributor ships and professional corporations. He has also had specific experience in securities fraud and antitrust law.

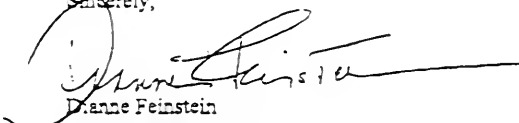
Frank Damrell knows California. I have provided so many details about Mr. Damrell's legal career, because I wanted to make sure you had a sense of his comprehensive experience. It is also important to note that he is one of the most respected lawyers with high ethical standards. He is a hands-on leader with proven courtroom experience. And his additional experience in the area of criminal law makes him the perfect candidate for this position. I hope you'll agree and appoint him in the near future.

Mr. Damrell's varied list of clients has also given him strong bi-partisan support among California and national leaders. I have attached for your review letters I have obtained as of today. Noteworthy letters of endorsements include those from Former United States Senator Jack Danforth, California Agriculture Secretary Ann Veneman, Stanislaus County Sheriff Les Weidman, Modesto County District Attorney James Brazelton, University of California regent Bill Bagley, Ernest Gallo of E & J Gallo Winery, Deputy Secretary of Interior John Garamendi, San Francisco 49ers' President Carmen Policy, State Senator Patrick Johnston, former State Treasurer Kathleen Brown, and six members of California's Congressional delegation.

Seldom does one Californian generate such broad-based and bi-partisan support. As these letters indicate, Mr. Damrell also has extraordinary support among the law enforcement community. He is their No. 1 choice for this position, according to verbal comments by office received from the major law enforcement organizations.

I hope you'll agree with this recommendation. You won't be disappointed. I am certain Frank Damrell, Jr. will serve on the judiciary with great distinction. Please let me know if I can be of any further assistance.

Sincerely,



Dianne Feinstein
United States Senator

Leon E. Panetta

P O Box 42 Carmel Valley, California 93924

April 15, 1997

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20050

Dear Mr. President:

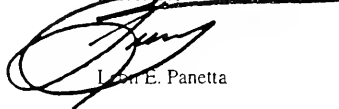
I wish to recommend the name of Frank Damrell, Jr. for nomination to the Federal District Court for the Eastern District of California.

Frank Damrell has a 30-year career in the legal profession which includes both extensive experience in civil courts as well as several years of criminal trial experience as a Deputy District Attorney and a Deputy Attorney General in California. In 1968 he started his law practice in Modesto and his firm has expanded since then to 18 attorneys with offices in Modesto, Sacramento and Oakdale, California. Mr. Damrell has spent a substantial amount of time in Washington DC as a lobbyist on behalf of California public and educational entities, agricultural associations, the energy and transportation industry and worked with several federal departments and agencies on behalf of these interests.

Mr. Damrell is known for being a Democrat who tries to find bipartisan cooperation which is further evidenced by the broad-based and bi-partisan support for his nomination to the Federal Court. With his solid record of community involvement and a reputation for being a key player in helping those in need and the community at large. I believe that Frank Damrell has the personal qualities as well as the legal experience needed to be an understanding but independent decision maker with any issue that would come before him as a Federal District Court Judge.

Thank you for your consideration of Frank Damrell, Jr. for this Federal District Court position.

Sincerely,

A handwritten signature in black ink, appearing to read "Leon E. Panetta", with a long horizontal line extending to the right.

Leon E. Panetta

LEP: co

JAMES R. DIGNAN, C.P.A.

2225 Plaza Parkway C-3
Modesto, California 95350
(209) 544-2093
(209) 526-6109 Fax

April 17, 1997

Senator John Ashcroft
Committee on the Judiciary
224 Dirksen Senate Office Bldg
Washington, DC 20510-6275

Dear Senator Ashcroft:

I am writing to offer my personal recommendation in behalf of Mr. Frank Damrell of Modesto, California to the Federal Court Bench.

I have known and worked with Frank both personally and professionally for the last thirteen years and I can attest to his integrity, his professionalism, and his great concern for the entire community.

Frank is a successful business person and has created one of the most prestigious law firms in the Central Valley of California. He is a solid Catholic and an outstanding husband and father. I cannot recommend him highly enough for such a special appointment.

With all the possibilities of other individuals being considered for Federal judgeship, Frank is a conservative American, with strong moral roots and has demonstrated the highest standards of honesty and integrity.

Thanking you for your attention to this possible nomination. I am confident that Mr. Frank Damrell would be a very valuable appointment to the Federal Court Bench.

Very truly yours,



James R. Dignan



AMADOR VALLEY HIGH SCHOOL
A California Distinguished School
 1155 SANTA RITA ROAD • PLEASANTON, CALIFORNIA 94566-6176
 (510) 846-2818 • FAX (510) 462-6333

PAT GOODEN
 PRINCIPAL

PATTI CROFT
 ASSISTANT PRINCIPAL

FITZ KNIFE
 DEAN

MICHAEL O'LEARY
 DEAN

April 21, 1997

Diane Feinstein, United States Senator
 331 Hart Senate Office Building
 Washington, D.C. 20510

Dear Senator Feinstein:

I am writing in regard to your recent nomination of Frank Damrell, Jr. to the Federal District Court in Northern California. I have known Mr. Damrell on a personal basis for forty years. Congratulations on an extremely wise choice.

I have taught Civics in California for the past thirty-three years. Therefore, I am well aware of how the system works. I realize that Mr. Damrell's association with the Gallo family and business could create an obstacle in this nomination. I do not have any connection to the Gallo's, nor have I ever had need for Mr. Damrell's professional services. I know Frank only as a friend and as a person of impeccable character.

I would be more than happy to testify in Mr. Damrell's behalf if it was felt that I could be of some benefit. Though coming to Washington would create a few challenges as I am in a wheelchair, I would be more than willing to do so at my own expense. I know of Frank's interest and concern in a broad spectrum of social issues, and in the plight of people less fortunate than him. Please have your office contact me if I can be of any help in this matter.

Thank you.

Sincerely,

Everett J. (Skip) Mohatt

939 Kolln St.
 Pleasanton, CA 94566



CHAMBERS OF
MARC POCHÉ
ASSOCIATE JUSTICE

Court of Appeal
MARATHON PLAZA - SOUTH TOWER
203 SECOND STREET, SUITE 600
SAN FRANCISCO, CA 94107

April 23, 1997

The President
The White House
Washington, DC 20500

Re: Frank C. Damrell, Jr.

Dear Mr. President:

This letter is intended as corroboration of the soundness of Senator Dianne Feinstein's nomination of Frank C. Damrell for appointment by you to the U.S. District Court for the Eastern District of California.

I have known Frank and his family well for over forty years. It all began in 1955 when he checked into college and I was assigned as his senior counselor. His work, abilities, achievements and professionalism are all matters of which I have personal, hands on, knowledge and profound admiration. They don't make them any better in life or in law than Frank. In my judgment his appointment to the federal judiciary *at any level* will greatly enhance the reputation, integrity and intelligence of our nation's courts.

Apparently, the only criticism of Senator Feinstein's choice is that somehow Frank's sister's husband's father will influence his judicial decisions. That curious conclusion is bottomed solely on a letter of recommendation by which praised Frank's judgment and integrity as being of the "highest order." As I know you are aware that is also the reputation of the letter writer, Ernest Gallo. In my line of work we characterize such appeals to prejudice as frivolous. I urge you to do the same.

Sincerely,

Marc B. Poché

cc: Senator Dianne Feinstein
Jonathan Yarowsky, Esq.
bcc: Frank C. Damrell, Jr.



BOARD OF SUPERVISORS

1100 H STREET

MODESTO, CALIFORNIA 95354

(209) 525-4445

RAYMOND CLARK SIMON
District Four

April 24, 1997

The President
The White House
Washington, D C 20500

Dear Mr President

I am writing to you on behalf of Frank Damrell who is Senator Feinstein's nominee to fill a vacant Federal District Court Judgeship in California

I, as a Republican official in local government have enthusiastically endorsed Mr Damrell's nomination to this high position

I was, however, appalled to see an article in the Los Angeles Times inferring that his nomination might be a conflict because of his familial relationship to the distinguished Gallo family

It is patently ridiculous to believe that Mr Damrell would not recuse himself if any conflict might arise over any Gallo association

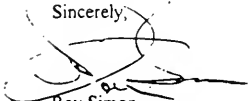
I have known Frank Damrell for 24 years and he is an individual of the highest integrity and morals. His standing in our community as a quality lawyer is unchallenged. His contributions to the social, political and economic welfare of our community are well known and respected. He is truly a person who desires to serve his community and his fellow man

I was also deeply offended about the inferences in that article that the Gallo family would orchestrate any interference in judicial matters. In the 24 years of my elected public service, the Gallo family has never demanded of me preferential treatment in my conduct of affairs that may have effected them

I felt compelled to write this letter after reading the article in order to convey a viewpoint expressed to me a number of times over the past weeks by individuals in our local community. It seems strange that the Los Angeles area would take such an interest in this issue by interviewing people known to have little or no knowledge of the Gallo family and/or Mr Damrell as well as some individuals in the article who have had their own personal difficulties with the winery business. I can assure you that these people are in the minority

I would sincerely hope that you would look favorably upon his nomination because he is one individual who will never embarrass his supporters in this endeavor to serve

Sincerely,


Ray Simon
Supervisor, Fourth District
Stanislaus County

RS/gh

cc Jonathan Yarowsky - Special Associate Counsel of the President



Superior Court of the State of California

COUNTY OF STANISLAUS
P. O. BOX 1011
MERCED, CALIFORNIA 95352

HUGH ROSE III JUDGE

TELEPHONE
(209) 525-6425

April 25, 1997

The President
The White House
Washington, D C 20500

re Nomination of Frank Damrell to the vacancy at the U.S. District Court for the
Eastern District of California

Dear Mr. President.

This letter is written in support of Mr. Frank Damrell for the above-referenced position

By way of background I am the presiding judge of the Stanislaus County Superior Court and have been on the bench for 21 years. I have known Mr. Damrell since we were in the District Attorney's Office together in 1966. I was his supervisor and had the pleasure of supervising his handling of complex criminal and civil litigation. He has been a member of our local legal community since then and I have, of course, observed him in and out of the courtroom over these many years.

Mr. Damrell is a highly respected and valued member of our local bar association and our community at large. He has outstanding experience as a trial lawyer. His ethics are above reproach. A recent article with a Los Angeles Times by-line questioned his appointment as a result of the marriage of his sister to Robert Gallo, president of the Gallo Winery. Mr. Damrell indicates that he would recuse himself on any case involving the Gallos or any other case where there would be even the appearance of impropriety. There is no question that he would so do and to suggest otherwise is absurd. He has even represented Fred Franzia of the Franzia Winery (a Gallo competitor) in wine litigation.

He has ideal judicial temperament. He is even-handed and fair with moderate views. With his educational background, his experience at the California Attorney General's Office, our District Attorney's Office, and his varied civil trial experience Mr. Damrell is eminently qualified to sit on the Federal bench and would be outstanding in that position. I, without reservation, urge his appointment.

If there are any questions I may answer I would be pleased to do so.

Very truly yours,



HUGH ROSE III, Presiding Judge
Stanislaus County Superior Court

HR:dd

cc: Jonathan Yarowsky, Esq.
Frank Damrell, Jr.

LAW OFFICES
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 THOMSON
 & KILROY**

A Professional Corporation

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 120 West 12th Street
 Kansas City, Missouri 64105-1929
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 LARRY S. BAUDERMAN
 J. CALVIN DONNAN
 MICHAEL J. ELTON
 KATHARINE M. NELSON

OF CALIFORNIA
 DONALD D. SHUGHART
 THOMAS J. LEITNER
 MARY L. O'NEIGH
 BOB T. B. KAYGARD

WENTON M. SHUGHART (1991-1992)
 HARRY F. THOMSON, JR. (1971-1984)
 WILLIAM F. KILROY (1941-1947)

*ADMITTED BY KANSAS AND MISSOURI
 *ADMITTED IN CALIFORNIA
 *ADMITTED IN ILLINOIS
 ALL OTHERS ADMITTED BY MODEL
 UNIFORMED PATTERN ATTORNEY

April 25, 1997

Senator Diane Feinstein
 United States Senate
 Hart Senate, Room 331
 Washington, DC 20510

Re: Frank C. Damrell, Jr.
 United States District Court Nominee

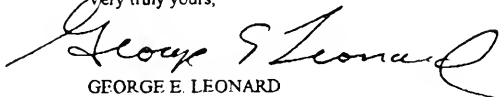
Dear Senator Feinstein:

This is a completely unsolicited letter. I have just learned that you have nominated Frank C. Damrell, Jr. to fill a vacancy on the United States District Court in Sacramento, California.

I have recently finished a lengthy trial defending my client, Rubbermaid Incorporated, in a lawsuit in which Mr. Damrell was the attorney for the plaintiffs. I must say that he is an absolutely outstanding candidate for the Federal bench. I found Mr. Damrell to be extremely bright; his legal theories and legal work were outstanding. He was a lawyer of total and unimpeachable integrity. Although we had never met before the case was filed (because I practice in Missouri and he practices in California), I soon learned that his word was his bond; nothing during the two years of pre-trial discovery nor the three weeks in the San Francisco courtroom of the Honorable William Orrick (in a hard-fought jury trial) ever occurred which gave me the slightest concern about his honesty, his integrity or his character.

I am certainly pleased to learn that he has been nominated for such an important position, and would feel remiss in my duties as an officer of the Court if I didn't express my profound and unqualified support for his nomination. I urge favorable action by the Senate Judiciary Committee on his nomination.

Very truly yours,


 GEORGE E. LEONARD

G:LL bl
 cc: Senator Christopher Bond



CITY of MODESTO

Richard A. Lang, Mayor
(209) 577-5230 FAX (209) 571-5128

801 11th Street, P. O. Box 642, Modesto, CA 95353
[TDD (209) 526-9211 Hearing and Speech Impaired only]

April 30, 1997

The President
The White House
Washington D.C. 20500

Dear Mr. President:

Those of us who reside in the Central Valley of California are a very proud and hard-working group of people. We are very pleased when "one of our own" is recognized for achievement in whatever profession or field they choose. Such was the case when Frank Damrell was nominated for a federal judgeship. Senator Feinstein said it all when she suggested that Frank Damrell was "eminently qualified" to sit on the federal bench. I can say with great certainty that we totally agree.

Frank Damrell has distinguished himself in legal circles and has all the necessary attributes to effectively serve on the federal bench. People of all political persuasions are behind Frank Damrell one hundred percent because of what he represents and the level of professionalism that he has exhibited over these many years.

Recently there was an article in the Los Angeles Times and the Modesto Bee in which they inferred that his connection to the Gallo family through marriage may in some way hinder his objectivity on the bench. Nothing could be further from the truth. In fact, Frank Damrell has been ultra-conscious when taking part in any discussions regarding the Gallo family and their interests. As a federal judge he would simply step down in all issues that were even remotely connected to the Gallo family or their business interests.

The community of Modesto and the entire northern San Joaquin Valley urge you to proceed with the nomination of Frank Damrell for the federal judgeship. I assure you that America's interests will be best served by such an appointment.

Mr. President, as you know, one of the most important legacies of any President is the type and quality of people he appoints to the federal bench. You have here a unique and special opportunity to serve your administration and country well by the appointment of Frank Damrell.

Very truly yours,

Richard A. Lang
Mayor

RAL:las

cc: Jonathan Yarowsky, Esq.
Special Associate Counsel to the President
The White House
130 Old Executive Building
Washington, D.C. 20500

*Superior Court
State of California*

COUNTY OF SONOMA
HALL OF JUSTICE
800 ADMINISTRATION DRIVE
SANTA ROSA, CALIFORNIA 95403

ELAINE WATTERS
JUDGE
COURTROOM 11
(707) 527-2964
FAX (707) 527-1163



May 1, 1997

The President
The White House
Washington, D.C. 20500

Re: Appointment of Frank C. Damrell to the U.S. District Court, Eastern District of California

Dear Mr. President:

This letter is written in strong support of Frank C. Damrell, an outstanding candidate for the U.S. District Court, Eastern District of California. This letter is unsolicited. Rather, when I learned from a newspaper article of his nomination, I volunteered to support his candidacy solely out of a desire to see a highly qualified attorney appointed to the federal bench.

I am a lifelong Democrat, and a 1992 Governor Pete Wilson appointee to the Sonoma County Superior Court. As a trial attorney, my background was exclusively in civil litigation, mostly complex business cases.

Thus it was with great interest that in July 1993 I was assigned as trial judge to try a multimillion dollar, legally complex case between large wineries. Frank Damrell represented the Franzia family, owners of the JFJ Bronco Winery, which after a lengthy jury trial was awarded \$2.5 million for the financial damages it suffered when Glen Ellen Winery (now owned by Heublein) terminated a six-year business relationship. It was not, however, a one-sided victory for the Franzias. The jury also ordered the Franzias to pay \$1.5 million to the Benziger family, owners of Glen Ellen Winery, for financial injuries inflicted on Glen Ellen when the Franzias refused to deliver bulk wine after the breakup of their business relationship in 1991.

The point, of course, is not who won (though it is clear the Franzias came out on top) so much as the excellent lawyering I observed in Frank Damrell throughout the case. Despite representing what might charitably be termed a "difficult" client, Frank was able to maintain as much client control as possible under the circumstances. Frank displayed a keen grasp of difficult legal concepts, submitted well-written, incisive briefs and conducted himself with calm decorum, even when provoked by his opponents. In short, I observed in Frank many qualities one needs as a judge: intelligence, good writing skills, fairness, patience, the ability to communicate, decisiveness, open-mindedness, dignity and honesty. He was also extremely well prepared.

Mr. President, I highly recommend Frank Damrell for judge on the U.S. District Court, Central District of California. The residents of that district, will, I am sure, be forever grateful for your appointment of someone of his stature.

Very truly yours,

Elaine Watters

cc: Hon. Dianne Feinstein
Jonathan Yarowsky, Esq.

31559 Lobo Canyon Rd.
Agoura, California 91376
Tel (818) 735-6640

June 11, 1997

Senator Orrin Hatch
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator Hatch:

I am writing to express my unqualified support for Frank Damrell's nomination to the Federal Court Bench.

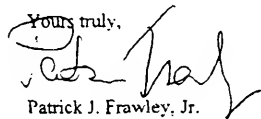
I was able to witness Mr. Damrell's legal skills first hand when he represented our corporation in Northern California several years ago. He effectively mediated a seemingly "intractable" dispute in a manner that satisfied all parties.

Prior to working with him, I knew him only by reputation; afterward I felt he more than deserved plaudits he received from associates in the legal community. He sized up the case quickly and solved it much sooner than I had anticipated anyone could.

Mr. Damrell's resume speaks for itself. His extensive community activities round out an impressive professional profile. Obviously, he has spent a great deal of time getting to know the people in his diverse community. That is just one reason why I believe he would make an excellent judge.

As you know, I am a lifelong Republican. Obviously, partisanship is not an issue here. I support Frank Damrell because he impresses me as being a man who weighs matters carefully. I also believe he would exercise judicial restraint in his rulings.

Again, I urge you to confirm Frank Damrell's nomination to the Federal Court Bench

Yours truly,

Patrick J. Frawley, Jr.

RD
RESOURCE
DEVELOPMENT

August 29, 1997

Senator Orrin Hatch
131 Russell Senate Office Building
Washington, DC 20510

Re: Pending appointment of Frank Damrell to Federal Court

Dear Senator Hatch:

I am a lifelong member of the Republican Party, dating back to my first Eisenhower rally that I attended in the early 1950's.

I am also a longtime (30 years) friend and associate of Mr. Frank Damrell whose Federal Court appointment rests with your committee.

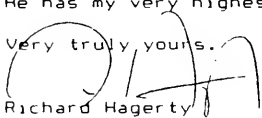
Frank is one of the most honorable gentlemen that I know. He ranks at the very top of the attorney roster in our community, he knows the law and he is a very fair businessman.

Frank has made major, consistent contributions to our community, supporting each and every project which has enhanced our city of Modesto.

Perhaps the only negative that I can share is when he is confirmed it will mean that Modesto has lost one of its finest citizens to the city of Sacramento. We do not have enough Frank Damrells in this town and we will miss him.

He has my very highest endorsement.

Very truly yours,


Richard Hagerty

2020 STANDIFORD AVE . BLDG E-1
MODESTO, CA 95350

TEL (209) 527-7466
FAX (209) 527-7565

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 AFFAIRS, AND CRIMINAL JUSTICE



GARY A. CONDIT
 18TH DISTRICT, CALIFORNIA

Congress of the United States
 House of Representatives

2205 RAYBURN BUILDING
 WASHINGTON, DC 20515-0518
 (202) 226-4131

DISTRICT OFFICES:

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18TH DISTRICT
 TOLL FREE
 1-800-356-6424

email: Rep.Condit@mail.house.gov

September 2, 1997

Senator Orrin G. Hatch
 Senate Judiciary Committee Chairman
 135 Russell Senate Office Building
 Washington, DC 20510-4402

Dear Senator Hatch:


We respectfully request you confirm the nomination of Frank Damrell, Jr., to the Federal District Court for the Eastern District of California.

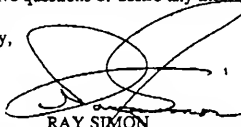
As elected officials, both Democrat and Republican, representing California's Central Valley, we can personally attest to Mr. Damrell's integrity, his commitment to the law, and his ability to work with others. Frank will be the kind of judge of which all of us will be proud. He shares our values and our history. That is why his nomination for this post has won universal praise, including that of law enforcement.

We know Frank Damrell, and are convinced he will establish a record as federal judge that you, and the Judiciary Committee will find exceptional. His common sense, his hard work, his sense of fairness, will serve well the people of the Valley, and the nation.

We urge you to act positively and swiftly on Mr. Damrell's nomination. All of us are available to you and your staff should you have questions or desire any information.

Sincerely,


 GARY A. CONDIT
 Member of Congress


 RAY SIMON
 Stanislaus County Board of Supervisors

Senator Hatch

09/02/97

Page :2



RICHARD MONTEITH
California State Senator



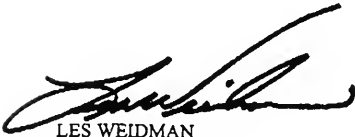
DENNIS CARDOZA
California State Assemblyman



GEORGE HOUSE
California State Assemblyman



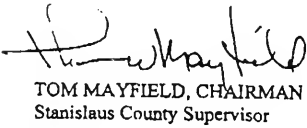
RICHARD LANG
Mayor, City of Modesto



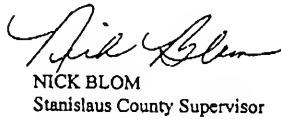
LES WEIDMAN
Stanislaus County Sheriff



JIM BRAZELTON
Stanislaus County District Attorney



TOM MAYFIELD, CHAIRMAN
Stanislaus County Supervisor



NICK BLOM
Stanislaus County Supervisor



PAUL CARUSO
Stanislaus County Supervisor



PAT PAUL
Stanislaus County Supervisor

GAC/jm

Richard Lyng

September 15, 1997

Hon. Orrin G. Hatch
Chairman, Senate Judiciary Committee
131 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to you today as an old friend who wishes you to know of my strong support for the confirmation of Frank Damrell, Jr. to be U.S. District Court Judge for the Eastern District of California.

Frank Damrell is exceptionally well qualified to serve in this important judicial post. As a life-time resident of Modesto, California, who was privileged to serve in high level positions at the United States Department of Agriculture (Secretary, 1969-1972), I believe Frank Damrell will be an outstanding judge in one of the most significant courts in the United States.

Best personal regards.



Richard Lyng

Western Growers Association

Serving the California and Arizona Fresh Produce Industry



October 22, 1997

The Honorable Jon Kyl
United States Senate
Hart Senate Office Building
Washington, DC 20510-0304

Facsimile Transmission
(202) 228-1239

Dear Senator Kyl:

It is with a great deal of pleasure that I am writing to strongly recommend that you confirm the appointment of Frank Damrell, Jr. to the United States District Court for the Eastern District of California.

In my view, Frank Damrell has several unique qualities that will make him the perfect Eastern District Court Judge. His extensive legal practice spanning over 30 years has taken him from duties as a California Deputy Attorney General and Deputy District Attorney to a Washington, D. C. agricultural lobbyist, to the head of his own law firm headquartered in Modesto, California. He has great judgment, enjoys a judicial demeanor, and is one of the more ethical people I have had the pleasure to know.

Not unimportant to me or to Western Growers Association, Frank possesses great knowledge about California agriculture. His firm represents many agricultural enterprises and has represented agricultural interests both in Sacramento and in Washington, D. C. This familiarity with agriculture, combined with his varied legal experiences, makes him ideally suited for the Eastern District appointment which handles numerous agricultural matters. Frank is also community minded and has generously devoted much of his time to civic and charitable activities.

Frank Damrell truly deserves your support for a well earned nomination and confirmation. Please give Frank your strongest consideration when he is before the Senate Judiciary Committee for confirmation.

Sincerely,

DAVID L. MOORE
President

cc: Thomas DiMare

Mailing Address: P.O. Box 2130, Newport Beach, CA 92658 • Street Address: 17620 Firch St., Irvine, CA 92614
(714) 863-1000 • FAX: (714) 863-9028 • Internet Address: <http://www.wga.com>

C'D

01:14PM WESTERN GROWERS 26. 22. 1997



1540 Florida Avenue
Suite 100
Modesto, CA 95350
(209) 577-5557
(800) 346-4674
Fax (209) 579-7246

To: Hon. Orrin G. Hatch
131 Russell Senate Office Building
Washington, D.C. 20510
(202)224-5251

From: L. Stephen Endsley M.D.
Valley Heart Associates

Dear Senator Orrin G. Hatch,

I am writing this unsolicited letter to support the confirmation of Frank C. Damrell Jr. to be a Federal Judge in the Eastern District of California. I have known Frank Damrell for about fifteen years in his role as a leader in community and charitable causes.

I've discussed with him often about solving problems in our community and his love of the law. I have found him to be serious, honest, and hard working, dedicated to people and helping solve their problems. I find him to be highly knowledgeable about the law, but with a sensitive touch about people and their issues. I would strongly recommend him to the Federal Bench.

For your information I am not associated politically to him, or have no business or legal relationships with Frank Damrell.

Sincerely,

L. Stephen Endsley M.D.

Senator FEINSTEIN. I thank you.

In addition to Chuck Breyer and Frank Damrell, Senator Kyl, there are two other candidates, and I know my colleague will particularly speak on one. However, I do want to recommend to the committee Judge James Ware, the administration's nominee for the Ninth Circuit Court of Appeals. I am delighted that this is calendered. As you know, over one-third of that bench is vacant. Its cases have grown dramatically and there are real problems.

He is a fellow Stanford alumnus. He went to Stanford Law School in 1972. He served as a member of the Stanford Board of Trustees. He attended Compton College, earned his B.A. degree from California Lutheran University in 1969, and has served in the Army Reserve.

He has been a State and Federal judge. In 1990, he was appointed by President George Bush to the U.S. District Court for the Northern District, a position which he currently holds. Prior to that, he served for 2 years on the Superior Court for Santa Clara County. Before his judicial appointment, Judge Ware had 15 years of experience in private practice, including significant in-court experience.

I will leave to Senator Boxer her nominee, Judge Martin Jenkins, but I just want to say that at the same time Senator Boxer's committee was screening him, mine was as well, and she beat us to the punch. I can assure you that Martin Jenkins is also well qualified, and I will leave the specifics to my friend and colleague, Senator Boxer.

[Additional remarks of Senator Feinstein follows:]

ADDITIONAL REMARKS OF SENATOR DIANNE FEINSTEIN

I wish to note for the record that the statement given above predated public disclosure that Judge Ware fabricated a critical incident in his past. I would like to file for the record an article that appeared in the Washington Post on November 7, 1997.

[From the Washington Post Nov. 7, 1997]

U.S. JUDGE ADMITS LIE, WITHDRAWS AS NOMINEE

APPEALS COURT CHOICE CLAIMED HE WAS BROTHER OF YOUTH SLAIN IN 1963

(By Joan Biskupic)

A federal judge withdrew his name from consideration for a California-based appeals court seat yesterday after he admitted lying about being the brother of a black youth shot to death after a 1963 church bombing in Birmingham.

U.S. District Judge James Ware, a 1990 trial court appointee of President George Bush who had been nominated by President Clinton for a seat on the 9th U.S. Circuit Court of Appeals, said yesterday, "I regret my lack of honesty."

The Birmingham tale had become a signature of Ware, 51, as he rose through the legal profession. In many public appearances, he claimed that he was the older brother of Virgil Ware, 13, who was shot by two white teenagers in the aftermath of the notorious Sixteenth Street Baptist Church bombing, in which four black girls were killed.

"When I went through the death of my brother I came very close to becoming someone who could hate with a passion," he said in a 1994 interview with the San Jose Mercury News. "What happened to me was a defining experience, a turning point in my life." In a talk this year, he vividly recalled riding his bike to a football game with Virgil on the handlebars when the shots were fired: "The shots knocked us off the side of the road, and he died there by the side of the road."

Ware's nomination, put forward by Clinton in June, had not run into any problems until this. White House counsel Charles F.C. Ruff said yesterday the adminis-

tration's overriding response to Ware's extraordinary admission was one of sadness. "Anytime a man who has had a distinguished career is caught up in a situation like this," Ruff said, "you can't help but feel sad." He said he did not know how the falsehood had remained undetected through background checks.

Ware did not return phone calls to his San Jose office late yesterday but acknowledged to the Associated Press earlier in the day that he had lied. In a letter to the White House, he wrote, "I am deeply committed to the cause of civil rights and do not wish to be seen, as is being suggested, as using the unfortunate tragedy which befell Virgil Ware as trying to better myself at someone else's expense."

He first admitted the lie after the Birmingham News published a story yesterday in which family members of the slain youth disputed the judge's claims.

The Birmingham News quoted Virgil Ware's real brother, also named James, as saying, "I couldn't believe a judge would do something like that, being a man of the law. I think it was wrong. He was trying to better himself off somebody else's grief."

According to the Birmingham News, James Ware, the brother of Virgil, has worked for an Alabama coal mining company for 20 years.

The episode also was another peculiar twist for the 9th Circuit, which with its liberal-leaning rulings, had been a constant target by conservatives on Capitol Hill and the circuit most often reversed by the Supreme Court. Anyone nominated to the court—covering nine western states—draws particular attention, but usually for his or her legal decisions.

Ware's reputation appeared solid. A graduate of Stanford's law school, he was a state judge in California from 1988 to 1990, when he was appointed to the trial court for the northern district of California.

As word of his fabrication spread yesterday, senators from both parties urged him to withdraw. Sen. Dianne Feinstein (D-Calif.), who earlier had supported Ware's nomination, called his admission "a very serious matter. This does not appear to be a youthful indiscretion or misunderstanding about a tragic event that happened many years ago."

Ware, who was born in Birmingham, said he was in the city during the racial upheaval of 1993. He told the Associated Press, "My father had told me he had a son about my age with another woman whose name was James. At one time he told me she had another child named Virge. He told me that we were related to other Wares in Birmingham. I did suffer the death of a sister by shooting at about this same time. I used my tenuous connection with the Wares and my own feeling of loss as a basis for making a speech about Virgil Ware's death.

"After a great deal of soul searching, I request that my nomination be withdrawn from consideration for appointment to the Ninth Circuit Court of Appeals at this time. I am sorry that my misstatements about my background have caused such unintended consequences."

Senator KYL. Thank you very much, Senator Feinstein.

I would note that Representative Gary Condit also planned to be here. He, too, has been on the House floor, but he has submitted a statement of introduction for Frank Damrell and that, of course, will be included in the record.

[The prepared statement of Mr. Condit follows:]

PREPARED STATEMENT OF HON. GARY A. CONDIT, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA

I want to thank you and the committee for the opportunity to appear before you today.

I'm here to urge your confirmation of my friend, Frank Damrell, to the United States Federal Court.

Mr. Damrell is well known to the people of California's central valley. He and his family have established a long record of community service and commitment.

Mr. Damrell's nomination for this position is supported by all the California state legislators representing our area—Democrats and Republicans alike.

In addition, our law enforcement and local government officials also urge Frank's confirmation. For us in the valley, the nomination of Frank Damrell is not controversial. Rather, we view it as expected, and overdue. That is why his nomination has such universal support.

Frank Damrell will bring fairness, common sense, and independence to the bench. Frank Damrell will prove to be an exceptional jurist for California and the nation.

It is also important, Mr. Chairman, that this nomination move swiftly through the process. The federal court in Sacramento will soon be engaging in what is expected to be a lengthy trial in the unibomber case.

The commitments of this trial will delay other federal court activity in the Eastern District. Moving this appointment swiftly is essential to addressing the judicial backlog facing our district.

I respectfully request your committee's positive consideration of Mr. Damrell's nomination.

SENATOR KYL. Might I ask these three people who have been mentioned right now to stand? Let me start with Mr. Breyer. Mr. Breyer, would you please stand, and we will have you come forward in just a moment. Next, Mr. Frank Damrell. Thank you, sir. And finally, Judge James Ware. Judge, we will call you forward as the next panel, all by yourself.

But first, let me ask Senator Boxer now to make her statements of introduction.

STATEMENT OF HON. BARBARA BOXER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

SENATOR BOXER. Thank you so much. Let me, before my colleague leaves, compliment her on her recommendations to the President. I happen to know Frank Damrell and Chuck Breyer quite well and they are fine human beings. They will make great judges. I am very, very pleased that they are here today. I send them my best wishes.

I also want to add my words on behalf of Judge Ware. I think it is really crucial we move on that ninth circuit. We have a third of those seats that are vacant. This is a great choice.

Mr. Chairman, I am so proud to be here today to introduce Judge Martin Jenkins for the U.S. District Court in the Northern District of California. Senator Feinstein alluded to him, and I know she is going to the Senate floor because we have to be there to fight for McClellan Air Force Base, so I will say goodbye to her and see her on the floor.

I wanted to say that Judge Martin Jenkins, this was kind of a race because Senator Feinstein's group thought he was a great choice and my group did, as well, and we did come out first. I would ask if he would stand at this point, and I think his dad is with him. Would his dad stand, as well? We are so proud that you could be here.

SENATOR KYL. Senator Boxer, you beat me to the punch. For those who have not introduced families, I am going to give you all that opportunity in just a moment, so do not think I forgot. But thank you, Senator Boxer.

SENATOR BOXER. Good. I recommended Judge Jenkins to the President on May 5, 1997, because I found him to be eminently qualified for the position, as did my northern district judicial advisory committee. Judge Jenkins has a distinguished legal career. Currently, he serves as a California State Superior Court judge in Alameda County. He was appointed to that position by Republican Governor Pete Wilson.

For years prior to his service on the State superior bench, he served as an Alameda County Municipal Court judge, having been appointed by Republican Governor George Deukmejian in 1989. Judge Jenkins received his Juris Doctorate degree from the Univer-

sity of San Francisco School of Law and his undergraduate degree from the University of Santa Clara.

Early in his career, he was a deputy district attorney in Alameda County and an attorney for the U.S. Department of Justice in the Civil Rights Division for 2 years under President Reagan. Prior to his service as Municipal Court judge, he was an attorney for Pacific Bell.

For years, Judge Jenkins has been involved in numerous professional activities. He was appointed to the prestigious California State Federal Judicial Council by Chief Justice Ronald George. Additionally, he is a member of the California Supreme Court's Advisory Committee on Judicial Ethics and has been active in a variety of education activities for judges, lawyers, and law students.

Judge Jenkins has also been involved in numerous community activities. He was appointed to the Board of Regents for the University of Santa Clara, as well as to the Board of Governors for the University of San Francisco School of Law. He sits currently on the Board of Directors for the University of San Francisco "Street Law Project" and has been active in his church, working with young adults.

Mr. Chairman, this is a man who has support from Republicans and Democrats alike. I urge the members of this distinguished committee to vote Judge Jenkins out of committee in hopes that the full Senate may have the opportunity to act quickly on his nomination. I think that his intelligence, his judicial temperament, his broad experience in professional life and community service and his deep commitment to justice qualify him to serve the people of California and the people of this Nation with great distinction, and I so appreciate this opportunity to introduce such a fine human being to you. Thank you very much.

SENATOR KYL. Thank you very much, Senator Boxer.

We have now a final panel from Pennsylvania. We will be calling the judicial candidates forward after we have finished with our Members of the House and Senate.

Senator Rick Santorum, Congressman Tom Foglietta, and Congressman Chaka Fattah, and I believe that Senator Specter may be here later, so we will go forward with the panel. This is for the nomination of Frederica Massiah-Jackson. Let me begin, Senator Santorum, with your statement of introduction.

STATEMENT OF HON. RICK SANTORUM, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SANTORUM. Thank you, Senator. I would say that Judge Massiah-Jackson has an impressive lineup of a Senator, a Congressman, and an Ambassador all here.

Senator KYL. An Ambassador-in-waiting.

Senator SANTORUM. An ambassador-in-waiting, all here to introduce her to the committee. Let me say also that Senator Kyl mentioned that Senator Specter, I am sure, if he is not here in time to introduce her before she is here, has certainly been very active in supporting Judge Massiah-Jackson. Senator Specter and I have been requesting the committee to hold a hearing to consider her nomination.

Usually, I play second fiddle to Senator Specter, and so anticipating that, I do not have any of the judge's credentials in front of me; because he usually goes through that. So I apologize in advance for that.

But I do know she was raised in Philadelphia and attended college there and was elected to the Court of Common Pleas at Philadelphia in 1983, where she served initially in the criminal division and then later about an equal amount of time in the civil division in the Philadelphia courts.

As the committee knows, Senator Specter and I have set up a nonpartisan, I believe, very much unbiased committee to review nominees for all of the district courts in Pennsylvania. We now have four vacancies in the eastern district and our committee met and convened and recommended three recommendations for each of the positions open.

Judge Massiah-Jackson was recommended as qualified by the committee. We have, as I said, very rigorous committee qualifications and she met those qualifications, and as a result, I am glad the committee has moved forward, given our recommendation from our committee and Senator Specter's and my recommendation to hold a hearing on Judge Jackson. I know there was some hold-up on that, but I am glad that Senator Hatch and the committee has decided to move forward and to give discussion.

I am going to be very candid, and I know the committee has some concerns. Senator Specter and I have the very strong feeling that the judge should be here to be able to hear those concerns and respond to those concerns, and so I am very pleased that the committee decided to hold this hearing and give the judge the opportunity to be heard on her record and on her accomplishments.

I thank the committee for their consideration and recommend action. Thank you.

Senator KYL. Thank you very much, Senator Santorum.
Congressman Foglietta.

STATEMENT OF HON. THOMAS M. FOGLIETTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. FOGLIETTA. Thank you, Mr. Chairman. Let me say at the outset that I am pleased to be here before a committee that you are chairing, after having served with you for so many years on the Armed Services Committee over in the other body.

Second, let me say that although I have been nominated as the Ambassador to Italy and confirmed by your honorable body, I am happy, in a way, that I have not been sworn in yet because it gives me the opportunity to be here before you to tell you that I am not only pleased but I am honored to recommend to you Frederica Massiah-Jackson, an eminent jurist for your confirmation as a member of the U.S. District Court for Eastern Pennsylvania.

Judge Jackson has the qualities that I respect, the qualities that I think that we need in jurists on our Federal bench. She is a person of great intellect. She has a keen commitment and a keen understanding of the law, and most importantly, justice and how justice is to be dispensed. She believes with every iota of energy and soul in her body that she believes in equal justice for all persons,

regardless of their race, regardless of their financial condition, and regardless of their position in life.

She has served on the Philadelphia Court of Common Pleas since 1983, and during that time, she has certainly earned the respect of her peers on the bench, members of the bar throughout Philadelphia, and most importantly, the citizens of Philadelphia during those years. Her knowledge of the law and her very, very high ethical standards are evidenced by her service on the Board of Governors, the Pennsylvania Bar Association, and the hearing committee of the Disciplinary Board of the Supreme Court of Pennsylvania.

She has served on many, many other committees, working with the community in the city of Philadelphia to try to alleviate the suffering that so many of the citizens of our city have because of their financial situation—training programs for young people, educational programs, so many of the things that I admire in an individual, but most importantly, admire in a judge who has so many other responsibilities and time-consuming duties, that she gives of her time and of herself for these wonderful, wonderful causes.

So I really deem it an honor to be able to join my good friends, Senator Rick Santorum, Congressman Chaka Fattah, and I see just arrived my very dear friend and colleague for many, many years, Senator Arlen Specter, in their praise. I am happy to be able to join them in their praise and their support to respectfully urge that you and your committee consider favorably Judge Massiah Jackson for her confirmation to the district court.

Senator KYL. Thank you very much, Representative Foglietta.

Senator Specter, a distinguished member of the committee, has arrived and if it is all right with you, Congressman, we will defer to the senior Senator.

Mr. FATTAH. Absolutely.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

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

We are having Governmental Affairs hearings right down the corridor and I had intended to wait until Judge Massiah-Jackson came, but when I heard that Senator Santorum and Congressman Foglietta and Congressman Fattah were here, I came right over. I did not want to be absent during this important part of the proceeding.

We had a hearing for Judge Frederica Massiah-Jackson in Philadelphia, attended by Senator Santorum, Senator Biden, and myself, and all the testimony at that time was very positive about her. The key witness for Judge Massiah-Jackson, in my opinion, is Mayor Rendell. He was the district attorney during the first 3 years of her tenure and he has been the Mayor for the last 5 years of her tenure and was in Philadelphia at the time and attests to her strong qualifications as a judge.

He pointed out that, of all of the matters taken under her sentencing issue, that only one was appealed, and on that, she was sustained. I know that Mayor Rendell is tough on sentencing because I taught him. He was an assistant district attorney in Philadelphia. I gave Ed Rendell his first job, as an assistant district at-

torney, when he graduated from law school in 1967. He was a tough prosecutor, was chief of the Homicide Division.

So I make these remarks just briefly. I would like to have admitted into the record a letter which was sent to Senator Hatch on the subject.

Senator KYL. Without objection.

[The letter of Senator Specter follows:]

ORRIN G. HATCH, UTAH, CHAIRMAN

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MANUS COONEY, Chief Counsel and Staff Director
 BRUCE A. COHEN, Minority Chief Counsel

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

October 8, 1997

The Honorable Orrin Hatch
 Chairman, Senate Judiciary Committee
 United States Senate
 Washington, DC 20510

Dear Orrin:

On Friday, October 3, Senator Biden, Senator Santorum and I conducted a hearing which lasted a little over two hours in Philadelphia concerning the qualifications of Judge Frederica Massiah-Jackson.

Ten witnesses appeared who voiced strong support for Judge Massiah-Jackson. Five of the witnesses were Common Pleas Judges who know her work in detail. They were: President Judge Alex Bonavitacola, Administrative Judge John Herron, Judge John Young, Judge Richard Klein and Judge Victor DiNubile.

The testimony as to Judge Massiah-Jackson's sentencing record was summed up by President Judge Bonavitacola who said that her comparisons with the statutory guideline ranged from 70% to 86% over the years when the statistics were maintained compared to a 72% to 82% rating for the other Philadelphia Common Pleas Judges.

President Judge Bonavitacola characterized Judge Massiah-Jackson's record as "excellent."

The other five witnesses, including Clifford Haines, Chancellor of the Philadelphia Bar Association, also testified in strong support of Judge Massiah-Jackson.

While Mayor Rendell could not be present because of a prior commitment in Salt Lake City, he had advised in advance of the hearing that he thought Judge Massiah-Jackson had an exemplary record on sentencing. He stated that he was District Attorney during the first three years of her tenure; that he was very concerned about sentencing and that he was satisfied with her sentencing record.

Mayor Rendell further noted that Judge Massiah-Jackson had only had one appeal taken from the District Attorney's office based on her sentencing and on that one, she was affirmed.

With this letter, I am enclosing prepared statements from Mayor Rendell, Clifford Haines, President Judge Alex Bonavitacola, Judge Richard Klein and Samuel Evans, Chairman, AFNA National Education & Research Fund.

Police Commissioner Richard Neal declined our invitation to testify saying that he had nothing to say one way or another. District Attorney Lynne Abraham also declined our invitation.

In advance of the hearing, we had invited people to come if they had anything adverse or favorable to say.

There was no adverse witness.

I believe it is very important that we have a prompt hearing on Judge Massiah-Jackson so that Senators are in a position to make a decision on her nomination before we adjourn in mid-November.

Thanks very much for your consideration of this request.

Sincerely,



Arlen Specter

Enclosures
 HAND DELIVER

Since dictating this letter, we have talked. Please, very much for agreeing to reschedule her hearing on the next date.

Senator SPECTER. I think a hearing is important. I have heard comments about Judge Massiah-Jackson raising questions as to sentencing, and that is inevitable when you have a person on the bench for a long period of time. I have said that anybody who has anything to say, let them come forward. Let us hear what they have to say. Let us make an evaluation. Let us have a hearing.

The reason that Senator Santorum and Senator Biden and I went to Philadelphia was to give people a chance to come in and speak up, and they have a chance to have a hearing now. Let us see what the facts are.

I am going to excuse myself now, Mr. Chairman, to go back to Governmental Affairs. I will return when Judge Massiah-Jackson is up for questioning.

Senator KYL. Thank you very much, Senator Specter.
Congressman Fattah.

STATEMENT OF HON. CHAKA FATTAH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. FATTAH. Thank you, and let me thank the two Senators from the great State of Pennsylvania, Senator Specter and Senator Santorum, for pursuing this nomination. It is a great honor for me to be supportive of President Clinton's nominee for one of the vacancies in the Eastern District of Pennsylvania.

As Senator Santorum mentioned, there are a number of vacancies there, but a vacancy that has existed since the inception of the court is that with this nomination, this would be the first time that an African-American woman would serve in that capacity.

Now, Judge Jackson is extraordinarily qualified. I think you will find through this hearing process that any concerns raised about her record are being raised by people who are not informed. She has handled thousands of cases, and as Senator Specter has just indicated, there was only one appeal and that was sustained.

So I think that this hearing process will provide an opportunity for light to be shone onto her record. It is one in which all who reside in our great State are extraordinarily proud and I want to just join with my colleagues in urging this committee to favorably recommend to the full committee and to the—I used to serve in the Senate in Pennsylvania and we called ourselves the “upper chamber” in comparison to the House. Here, it is only referred to as the “other chamber.”

So whatever the case may be, I am sure that the wisdom of the Senate will be pointed out—

Senator KYL. Flattery will get you everywhere. [Laughter.]

Mr. FATTAH [continuing]. In terms of this nomination and I do appreciate the time and consideration that this committee is providing to my constituent for this hearing.

Senator KYL. Thank you very much for that. In fact, all of the introductory statements, of course, have been very fine statements.

Judge Jackson, would you please stand so everybody here can see you. We will be calling you forward after a bit, too. Thank you very much. And thank you very much to the panel.

I hope that this process will, as I said, enable us to conclude this hearing today. I apologize for not having each of the people who

were introduced at the table when the introductions were being made, but I think this will expedite the process.

Let me now call James J. Ware, Judge Ware of California, to come forward and be the first panel. He is nominated for the U.S. Circuit Court, the ninth circuit. Mr. Ware, will you please stand and be sworn first?

Do you swear that the testimony you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge WARE. I do.

Senator KYL. Thank you. Please be seated.

Judge, if you would like to make any kind of a statement, you are welcome to do that. Otherwise, the committee will begin its questioning. I see that my colleague has departed, so it may be me asking you the questions, but you are welcome to make a statement if you would like, and I would also like you when you are done to introduce the members of your family who might be here or anyone else you would like to introduce.

TESTIMONY OF JAMES S. WARE, OF CALIFORNIA, TO BE U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Judge WARE. Thank you, Mr. Chairman. I do not have a prepared statement, but I would wish to take this opportunity to acknowledge the absence of my wife, Susan, who would very much wish to be here, and my son, Jeremy. They are home in Mountain View, CA. But I am fortunate that my daughter, Carlie, who is a sophomore at Yale, was able to fly down from New Haven to be with me here today.

Senator KYL. Welcome to the committee.

Judge WARE. I also would wish to acknowledge the presence of Jan White, who is a local attorney here in Washington, a classmate of mine from Stanford. We just had our reunion at Stanford and she came, as well, to be supportive.

QUESTIONING BY SENATOR KYL

Senator KYL. Thank you for coming. We appreciate the attendance of all of the people in the audience, friends and family alike.

Judge, you come highly recommended. You have had some wonderful statements said about you and it is the intention of the committee, and I know I speak for the chairman in indicating it is our intention to try to fill these positions. The ninth circuit is the circuit of my State, as well, and we understand how important it is to fill these positions, so you certainly have our commitment to try to move this along as quickly as possible.

Let me ask you a couple of questions. If other members arrive, then, of course I will call upon them to do so.

In a recent article, you criticize the operation of mandatory minimum sentences as inconsistent with the sentencing guidelines scheme. Specifically, you wrote, and I am quoting now, "The judicial branch, charged with imposing a sentence according to law, is empowered to exercise its discretion to modify rigid rules if warranted by circumstances in a particular case." That was in the article, "A Clash of Sentencing Policies: Sentencing Guidelines Versus Mandatory Minimums."

Do you believe that if the sentencing guidelines would prescribe a sentence below a mandatory minimum sentence, that you could ignore the statutory minimum?

Judge WARE. No, Senator. I should say, it was not a recent article. It was an article written very soon after the guidelines had been passed. It had an invitation to write a piece for a meeting of the State Bar of California at one of the annual meetings. There was going to be a discussion of the sentencing guidelines and I was asked to write a piece to be submitted to provoke a discussion about the guidelines and how the policies of the guidelines compared with those of mandatory minimums.

Senator KYL. I appreciate the correction for the record. Could you give us a rough time frame of when that was written, then?

Judge WARE. I believe it was around 1990. The guidelines came into effect in the mid-1980's and this was an article that was submitted in approximately 1990.

Senator KYL. Could you explain, then, your view of what a judge should do when the guidelines and the mandatory minimums clash?

Judge WARE. Well, there is no clash, quite frankly. The mandatory minimum sentence, if it is required by law, is the one that a court must impose. I would follow, and I have followed, the law in that respect in the sentences that have been handed down by me during my tenure as a district judge.

Senator KYL. And I gather it would be your intention to continue to do so?

Judge WARE. Yes, sir.

Senator KYL. In the absence of controlling precedent, how would you characterize your approach to interpreting the Constitution?

Judge WARE. Well, in the absence of precedents, I presume that I would be involved in applying the Constitution to a statute of some sort. It is my belief that statutes passed by Congress should be presumed constitutional. If there are no cases upon which I could rely construing that statute, I would do my best to find as closely analogous a situation that would apply to the case. And in any event, I would attempt to try to decide the case as I believe the Supreme Court would decide it if the case were before it.

Senator KYL. For those who are not schooled in the law, that is kind of a quick question, properly answered, because, of course, in every case the lawyers argue that there is some precedent of some kind or some statutory or other reference to which the judge can make for a decision, and I appreciate that answer.

Can you think of cases that you think were—and I am talking now in the area of constitutional law—where strictly as a matter of first impression, do you think the U.S. Supreme Court improperly departed from the text or the meaning or history of the U.S. Constitution?

Judge WARE. Well, it is difficult to think of a recent case. In our history, I would bring to mind the case of *Plessy v. Ferguson*, which is a case where the U.S. Supreme Court endorsed the separate but equal doctrine. Quite frankly, I believe that the Supreme Court, in making that decision, was attempting, in its own view, to interpret the constitution. But since that case and over time, we have come to a position where the Supreme Court has indicated that separate

but equal is inherently unequal. That is now the law of the land and that is the law which I apply.

Senator KYL. And, of course, as a member of the circuit court of appeals, it is your obligation to apply the law as interpreted by the Supreme Court.

Let me ask you a question about an issue that is becoming important in recent years and ask you to set forth your views on whether, when there is no evidence of past acts of employment discrimination directed at either identifiable individuals or any particular minority groups, and no evidence that members of a particular minority group are underrepresented in an employer's work force, whether an employee may, under the Equal Protection Clause of the 14th amendment or title VII of the 1964 Civil Rights Act, use race, national origin, or gender as the basis for employment decisions.

Judge WARE. You said whether an employee may. I presume you meant employer.

Senator KYL. I misspoke. Employer, you are right.

Judge WARE. The case that I would bring to mind in response to your question is the *Adarand* decision of the U.S. Supreme Court, which, to my understanding, holds that in the absence of past acts of discrimination, race may not be used, that it is a suspect classification and that it is subject to strict scrutiny, the highest constitutional standard available, and it must be measured against whether there is a compelling governmental interest. But in the absence of a case of past discrimination, where race is being used to remedy that, that race may not be used as a basis.

Senator KYL. And that is the standard that you would apply?

Judge WARE. That is the standard I would apply.

Senator KYL. There being no other Senators here, I will ignore the red light and proceed. But what I would like to do is, instead of asking you all the questions which have been prepared by members and staff of various members, perhaps ask one more, since Senator Kohl is now here, and then submit a couple of questions for the record for you to answer. Let me just ask you one more question, and then if Senator Kohl has questions, I will call upon him.

Please state your best independent legal judgment, irrespective of existing U.S. precedent on the constitutionality of capital punishment.

Judge WARE. Capital punishment is constitutional, Mr. Chairman, and that is the law as enunciated to us by the Supreme Court and I have no personal or philosophical beliefs that would in any way interfere with my applying capital punishment. I would not rejoice at the prospect, but in a proper case, I would not hesitate to oblige.

Senator KYL. Thank you very much.

Senator Kohl, do you have questions for the witness?

Senator KOHL. No.

Senator KYL. There are, as I said, a variety of other questions, but frankly, based upon the answers to the questions that you have provided thus far, all of which exhibit a very sound understanding of the law as I understand it and a desire to apply the law as enunciated by the Supreme Court, which is the duty of a member of the

circuit court, I would prefer simply to submit these other questions for the record. They are not unlike the questions that I have just been asking and that way we can move on to some of these other nominees.

I want to tell the people in the audience——

Judge WARE. Thank you very much.

Senator KYL. If I could, while you are just seated here. The effort here, and you have heard reference to it by a couple of the Senators, to urge the Senate to hurry up and get some nominees approved, confirmed, so that these individuals can take their position on the bench, is well taken and our effort here today is to try to expedite that process.

I fear that our effort could be misinterpreted as a lack of interest in each individual nominee and in rushing through, without adequately considering factors pertinent to their nomination or an unwillingness to listen to them and to hear them, I want to assure all of the people in the audience that that is absolutely not the case, that to the extent we proceed quickly through this hearing, it is because of the qualifications of the nominees, that they have satisfied the preliminary tests that the administration and that the Senate staff and that the members themselves have applied to the nominations and that the lack of questions is really a testament to their qualifications and to the probability that the committee will act quickly on the nomination.

So please do not take our failure to hold the witnesses here for 1 hour and subject them to a long line of excruciating questions here as a lack of interest but rather a confirmation of the significant qualifications that they bring, and certainly, Judge Ware, that applies in your case.

Judge WARE. Thank you, Mr. Chairman.

Senator KYL. Senator Kohl, do you have anything else?

Senator KOHL. No.

Senator KYL. Thank you very much for your presence here and we will look forward to seeing you again.

The next panel is a large panel, and let me ask each of you to please come to the table—Mr. Lynn Adelman, of Wisconsin, nominated to be U.S. district judge for the Eastern District of Wisconsin; Mr. Charles Breyer, of California, to be U.S. district judge for the Northern District of California; Mr. Frank C. Damrell, Jr., of California, to be U.S. district judge for the Eastern District of California; Judge Martin J. Jenkins, of California, to be U.S. district judge for the Northern District of California; Judge Michael P. McCuskey, of Illinois, to be U.S. district judge for the Central District of Illinois; and Mr. G. Patrick Murphy, of Illinois, to be U.S. district judge for the Southern District of Illinois. Please stand and raise your right hand.

Do you swear the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ADELMAN. I do.

Mr. BREYER. I do.

Mr. DAMRELL. I do.

Judge JENKINS. I do.

Judge MCCUSKEY. I do.

Mr. MURPHY. I do.

Senator KYL. Senator Kohl has asked, Mr. Adelman, that we begin the questioning with you. I might say preliminarily that because of the size of the panel, when I ask you questions, I may ask it of one and then ask each of the members of the panel, in turn, to respond to that same question. But there may be one or two questions that are unique to individual nominees, and, therefore, we can certainly handle it that way.

Mr. Adelman, let me begin with you and Senator Kohl can begin the questioning.

QUESTIONING BY SENATOR KOHL

Senator KOHL. Thank you very much.

Mr. Adelman, would you give us some of the background in your life, your family experience, some of your philosophy which leads you here today to want to be a Federal judge and which makes you feel that you would be a good Federal judge?

Senator KYL. May I interrupt for just a moment? I forgot to ask each of these nominees to introduce friends and family who are here, and since that is probably pertinent to that question you just asked, let me ask Mr. Adelman, first of all, to introduce the members of his friends or family here who he would like to introduce, and may I also, then, ask each of the other members of the panel to do the same and then we will return to that question, Mr. Adelman, if that is all right with you, Senator Kohl.

TESTIMONY OF LYNN S. ADELMAN, OF WISCONSIN, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WISCONSIN

Mr. ADELMAN. Thank you, Mr. Chairman. First, I would like to introduce my wife, Betty, Betty Adelman, who is also my law partner, and my mother, Edie Adelman, and my father, Ollie Adelman, and my brother, Craig Adelman.

Senator KYL. Welcome to all of you. I gather you are the senior partner in the firm. [Laughter.]

Thank you. Mr. Breyer.

TESTIMONY OF CHARLES R. BREYER, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Mr. BREYER. Thank you very much. I would like to introduce my wife, Sydney Goldstein, and my son, Joseph Goldstein-Breyer, and my daughter, Kate Goldstein-Breyer, and also my godson, Collin Streck, who is here.

Senator KYL. Great. All of you, welcome.

TESTIMONY OF FRANK C. DAMRELL, JR., OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA

Mr. DAMRELL. Mr. Chairman, let me introduce my wife, Lidwiena, my son, Jim, who is a third-year law student at Notre Dame, my daughter, Ann. Two children of ours could not make it, Frank and Alida. They are in California. I have some friends here in Washington who have also attended the hearing I would like to introduce, as well.

Senator KYL. Please.

Mr. DAMRELL. First, close family friend, Ann Veneman, who is the Secretary of Agriculture for the State of California. Charlie McBride, Cheryl Shelby, and Mel Herwitz.

Senator KYL. Welcome to all of you, and to Notre Dame, good luck.

Judge Jenkins.

**TESTIMONY OF MARTIN J. JENKINS, OF CALIFORNIA, TO BE
U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Judge JENKINS. Thank you, Mr. Chairman. I would like to introduce my father, James Jenkins, and a close family friend I have known for about 25 years, Mr. Jim Gilyard, and right behind him, I have some relatives from Philadelphia who have journeyed here today. I have a cousin. Can you stand, Jeff Junior, and Jeff Junior's father, Jeff Senior, and his wife, Angela, and their new child, Jerry, who are right outside. Thank you.

Senator KYL. Great. Thank you very much and welcome to all of you.

Judge McCuskey.

**TESTIMONY OF MICHAEL P. McCUSKEY, OF ILLINOIS, TO BE
U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLI-
NOIS**

Judge McCUSKEY. Thank you, Mr. Chairman.

Unfortunately, as Senator Durbin mentioned, my wife, Brenda, and my son, Ryan, who is a 3-year-old, cannot be here, and my daughter, Melinda, has mid-terms at Southern Illinois University, so I have no one from my family, but I do have some friends I would like to introduce, if possible.

Senator KYL. Please.

Judge McCUSKEY. Bill and Tilla Hancock, who live here in the District. Bill is originally from my area of the State of Illinois, and his wife are both lawyers and have resided here in the District for many years.

Senator KYL. Welcome to both of you.

Judge McCUSKEY. Could I ask, Mr. Chairman, if Congressman LaHood was going to be here and also give introductions today, and the last time I noticed, he was in the chair presiding over the House of Representatives. Will he be afforded the opportunity in the next 3 days to file remarks?

Senator KYL. Absolutely. In fact, I was handed a note that he could not be here because of that. His statement and any other information that he would like to submit will, of course, be made a part of the record.

Judge McCUSKEY. Thank you very much. I appreciate the bipartisan support.

Senator KYL. That is the way this process has to work.

Mr. Murphy.

TESTIMONY OF G. PATRICK MURPHY, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ILLINOIS

Mr. MURPHY. Good afternoon, Mr. Chairman. I am here alone, but I trust my children are in school and diligently applying themselves and my wife is working. Thank you.

Senator KYL. Great. Thank you.

Now, Senator Kohl had asked Mr. Adelman a question. Please proceed.

Mr. ADELMAN. I practiced law for 30 years and served as a legislator. I see serving as a judge as a continuation of public service. I think that the role of a judge would be much different than the roles I have played in the past, but I think my experience as a State legislator has made me very sensitive to the doctrine of separation of powers and to the limited role of a judicial officer.

Senator KOHL. One other question, Mr. Adelman. Many people are concerned that there is too much confidentiality in litigation today, and altogether too often secrecy agreements prevent real dangers to public safety from being disclosed. For example, settlement agreements often require a plaintiff injured by a defective product to take a vow of silence even though the product is still being used by the public.

My question to you is before signing a protective order to confidentiality agreement regarding the public health or safety, would you carefully scrutinize whether such secrecy is needed? How important do you think this issue is?

Mr. ADELMAN. I think it is very important. I would carefully scrutinize whether a secrecy agreement was warranted and I would apply the law as it existed in the Seventh Circuit and provided by the Supreme Court.

Senator KOHL. Thank you, Mr. Adelman. Thank you, Mr. Chairman.

Senator KYL. Senator Feingold.

QUESTIONING BY SENATOR FEINGOLD

Senator FEINGOLD. Thank you, Mr. Chairman.

Mr. Adelman, in addition to your successful law practice, you served with distinction in the Wisconsin State Senate for 20 years, but obviously the role of the legislature is much different, but equally important as that of the judiciary.

Would you please share with the committee your understanding of the separation of powers and how your role will be different on the bench than in the Wisconsin State Senate?

Mr. ADELMAN. It will be very different. As a legislator, one is a policymaker. As a judge, one decides cases before them fairly based only on the facts. Judges do not make policy, and the policymaking is the province of the other branches and I am very sensitive to that limitation.

Senator FEINGOLD. Thank you, Mr. Chairman.

Senator KYL. Thank you.

Senator Durbin.

QUESTIONING BY SENATOR DURBIN

Senator DURBIN. Thank you, Mr. Chairman.

Judge McCuskey, we often wrestle with the issue of sentencing guidelines, and clearly those guidelines have been established at the Federal level. You have probably dealt with the same phenomenon in State law. I would like to hear your experience and thoughts on sentencing guidelines, what you feel about those in terms of your practice on the bench.

Judge MCCUSKEY. Well, one of the things that strikes me is that my entire law practice has been in a determinant sentence situation. When Governor Thompson came into office, Illinois moved to determine its sentences. So we are not a parole State. We do not have extremely large parameters in sentencing, maybe not as narrow as the Federal sentencing guidelines, but we have a statute in Illinois that narrows the range of sentences for judges. And that is what I grew up with as an attorney, as a circuit judge, and now in reviewing sentences.

The Federal sentencing guidelines may contain a narrower range for a Federal district judge, but I am certainly used to working within guidelines and realize that the power of the judiciary is limited by statute and that we must look at the statute and apply the appropriate sentence to the facts.

Senator DURBIN. Mr. Murphy, your practice as an attorney has been on the other side of the bench, and one of the issues that I can recall from my own private practice of great interest was judicial temperament. We are looking for people who are firm and fair and get about their business. I would like you to reflect on the judges that you practiced before without naming names and talk about the elements or qualities that you think are important if you are successful in being confirmed to the Federal bench.

Mr. MURPHY. Senator Durbin, Mr. Chairman, in practicing in front of many judges, Federal and State, all over the Midwest, I have been in front of judges that were just extremely difficult. They were difficult for the lawyers, they were difficult for the litigants, and they were difficult for the people that worked around them.

On the other hand, I have been around judges who were gracious, courteous, professional, and moved the cases along. Some people, it seems, have a personality such that, if given power, they do not handle it well, and when they don't, it makes the litigation process much more difficult than it should be. It is very important, I think, for a judge to be firm, but courteous.

If there is one virtue that comes to me naturally, it is humility, and if anyone knows anything about my background, you would know there are a hundred reasons why that is the case. I have served with men in war. I believe I understand how to get along with people and work with people and lead people, and I know that I can be courteous and firm at the same time and I think that is critical, particularly in the Federal courts.

Senator DURBIN. Judge McCuskey, since you have had this opportunity, without being self-critical, could you comment on this element of a judge's performance?

Judge MCCUSKEY. I think that judicial temperament is the single most defining quality of a judge. Congressman Evans paid me a compliment and I had even forgotten about it. In 1990, 800 lawyers rated my qualifications as a circuit judge in the 21 counties when I ran for the appellate court and I received the highest score on

legal ability. But what made me feel the best was I received the highest score, an exceptionally qualified rating, on judicial temperament, which was my highest score.

I think that a judge in the decisionmaking qualities has to handle what I call the four F's. You have to be fast, you have to be fair, you have to be firm, and a judge must be friendly. People do not always enjoy litigating cases. Jurors certainly don't like lengthy Federal district court jury duty, and we have to remember that the people come before a court and look to the judge for an attitude. And if that attitude is not fair and friendly, that is what they take home, that is what they tell people about the system. And I think it is my responsibility to make them have the best feeling about the court experience and what happens in the courtroom.

Senator DURBIN. Mr. Chairman, I will add in closing that Mr. Murphy here received a very kind and generous letter from Judge Phil Gilbert, who is a Federal district court judge in the southern district. Judge Gilbert was appointed under a Republican administration. I knew his father when his father was a Republican State senator. It is a wonderful family.

And Judge Gilbert had the highest praise for Pat Murphy, who practiced before him, for his knowledge of the law and his fairness, too. And I don't want this to continue to sound like a cheering section, but both Senator Carol Moseley-Braun and I are very proud to present these nominees.

Thank you.

Senator KYL. Thank you, Senator Durbin.

In order to make this not appear to be too easy, let me ask Mr. Adelman a question, if I could. In the October 1993 issue of Wisconsin Lawyer magazine, you authored an article titled "Wisconsin Should Not Reverse 140 Years of History by Reinstating the Death Penalty." In that article, you enumerated a list of arguments against the death penalty, including that it disproportionately applied to racial minorities, it is arbitrarily imposed, it does not effectively deter future crimes, it is unduly expensive, and it reflects badly on the United States vis-a-vis other Western democracies.

Given your forceful personal opposition to the death penalty, do you believe you can effectively and fairly decide capital cases on the Federal bench?

Mr. ADELMAN. Yes, Mr. Chairman, I do. In that article, I was serving as an advocate of a legislative position which has actually been the law in Wisconsin for many, many years. However, my job as a judge would be very different and it would be—the Supreme Court has found that the death penalty is constitutional. It would be my job to uphold the law as a district court, and there is nothing in my personal beliefs that would in any way impair me from following the law as decided by the Supreme Court and the seventh circuit.

Senator KYL. So notwithstanding those personal views, you would apply the law and, if necessary, in appropriate circumstances, be willing to apply the death penalty?

Mr. ADELMAN. That is correct.

Senator KYL. Thank you. May I just ask if any of the other members of the panel have a personal or moral position which would not enable them to apply the death penalty, if warranted, in an ap-

propriate case? And if you don't, then I will take your silence as a statement that you would not have such a problem.

[No response.]

Senator KYL. Mr. Breyer, since I don't think anyone has picked on you yet, in the absence of controlling precedent, how would you characterize your approach to interpreting the Constitution?

Mr. BREYER. Well, again, let me say that I think that you would take a look at the case in front of you. If it were a State statute or an initiative, you would start with the fact that there is a presumption of constitutionality, that the State legislature or that the public, the people and the voters, have enacted a constitutional enactment.

Second, I think you have to take a look at the plain meaning of what it is that they are saying, and then, if necessary, if you have to go for a further analysis, in those rare cases then I think you could take a look at legislative intent.

Senator KYL. Let me ask if any of you on the panel feel constrained to add anything or whether that answer essentially expresses your view of how you would interpret cases as well. And if you don't add anything, I will assume that your response would be roughly along the same lines.

[No response.]

Senator KYL. All right. I asked a case before of Judge Ware and let me—Mr. Damrell, I forgot whether you have been asked a question or not, but we will just go right down the line here. This had to do with the affirmative action issue that I asked Judge Ware and my question was where there is no evidence of past acts of employment discrimination directed at either identifiable individuals or particular minority groups, and no evidence that members of a particular minority group are underrepresented in an employer's work force, then may the employer, under the equal protection clause of the 14th amendment and title VII of the Civil Rights Act, use race, national origin, or gender as the basis for employment decisions?

Mr. DAMRELL. Mr. Chairman, I could simply say I agree with what Judge Ware said, but I think I could at least add to that my own personal words, and that is that I would follow the *Adarand* case. It would appear that based on that case, any race-based classification must be strictly construed, strictly scrutinized, and if there is found to be a compelling interest, which there wouldn't appear to be in this factual context, then, of course, it would be very narrowly construed. But I would think *Adarand* would control under those circumstances.

Senator KYL. Do any of you have anything you would like to add to that? And if you do not, I will assume that your answer would be roughly the same as Judge Ware and Mr. Damrell.

[No response.]

Senator KYL. All right. Well, Judge Jenkins, let me ask you one question, since I don't think you have been asked a question yet, and then we will wrap this up. This has to do with fifth amendment takings under the Constitution. Of course, the amendment provides that private property may not be taken by the government for public use without payment of just compensation to the owner.

Would you state for us your best independent legal judgment on whether a property owner is entitled to just compensation when the Government, through wetlands designation or through other land use, environmental, or endangered species statues or regulations, for example, substantially limits or prohibits an owner's other lawful use or development of his or her property?

Judge JENKINS. Mr. Chairman, my understanding of the U.S. Supreme Court precedent in that regard is that it certainly is possible that that could be construed as a taking. There are several different standards. One is that if the limited use of the property in question has substantially and materially impacted alternative uses, then, in fact, that would be a public taking for which compensation would be due.

Senator KYL. Do any of you have a different understanding of the law or would you like to add anything to that answer?

[No response.]

Senator KYL. Senator Kohl, do you have any additional questions?

Senator KOHL. Just one request of you.

Senator KYL. Sure.

Senator KOHL. Senator Leahy has asked that his statement be made part of the record and I recommend that it be done.

Senator KYL. Certainly. Without objection.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY

I commend the Chairman for holding this confirmation hearing for judicial nominees this afternoon. This is the second hearing held for judicial nominees in two days and if we are able to proceed with these 13 nominees, the Committee will make some progress toward reducing the backlog of judicial nominees pending before the Committee and awaiting their hearings.

I want to apologize to Lynn Adelman, who I understand was told to fly to Washington Monday evening and to be available for a hearing on Tuesday morning at which he was not included.

I am delighted to see Judge Ware included at today's hearing. He is another of the well-qualified nominees for a judicial emergency vacancy on the Ninth Circuit Court of Appeals. That circuit is being forced to operate without 10 judges, which are more than one-third of the Court. The Senate received Judge Ware's nomination over four months ago. It was received before the nomination of Ronald Gilman and three months before the nomination of Stanley Marcus, yet each of them has had a hearing and Mr. Gilman was reported by the Committee on October 10.

While I am encouraged that the Committee is today proceeding with a hearing on these eight nominees, there remains no excuse for the Committee's delay in considering the nominations of such outstanding individuals as Professor William A. Fletcher, Judge James A. Beaty, Jr., Judge Richard A. Paez, Ms. M. Margaret McKeown, and Ms. Susan Oki Mollway, to name just a few of the outstanding nominees who have all been pending all year without so much as a hearing. Professor Fletcher and Ms. Mollway had both been favorably reported last year. Judge Paez had a hearing last year but has been passed over so far this year. Professor Fletcher, Judge Paez and Ms. McKeown are all nominees for judicial emergency vacancies on the Ninth Circuit, as well.

After this hearing, the Committee will still have pending before it over 30 nominees in need of a hearing from among the 73 nominations sent to the Senate by the President during this Congress. From the first day of this session of Congress, this Committee has never had pending before it fewer than 20 judicial nominees for hearings. The Committee's backlog had doubled to more than 40 and will dip below 40 with this week's hearings for 13 of those nominees.

The Committee still has pending before it 10 nominees who were first nominated during the last congress, including five who have been pending since 1995. Thus, while I am delighted that we are moving more promptly with respect to some of

the nominees being considered today, I remain concerned about the other vacancies and other nominees.

I hope that the Committee will now proceed without delay to consider these nominations as well as the nominations of Clarence Sundram and Judge Sonia Sotomayor and the other nominees who participated in yesterday's hearing. We should be moving promptly to fill the vacancies plaguing the federal courts. Twenty-two confirmations in a year in which we have witnessed 115 vacancies is not fulfilling the Senate's constitutional responsibility.

At the end of Senator Hatch's first year chairing the Committee, 1995, the Senate adjourned having confirmed 58 judicial nominations and leaving only 49 vacancies. This year the Senate has confirmed less than half of the number confirmed in 1995 but will adjourn leaving almost twice as many judgeships vacant.

At the snail's pace that the Committee and the Senate are proceeding with judicial nominations this year, we are not even keeping up with attrition. When Congress adjourned last year, there were 64 vacancies on the federal bench. In the last 10 months, another 50 vacancies have occurred. Thus, after the confirmation of 22 judges in 10 months, there has been a net increase of 28 vacancies, an increase of almost 50 percent in the number of current federal judicial vacancies. Judicial vacancies have been increasing, not decreasing, over the course of this year and therein lies the vacancy crisis. The Chief Justice of the United States Supreme Court has called the rising number of vacancies "the most immediate problem we face in the federal judiciary."

I commend Senator Hatch's effort to hold two days of hearings this week and to accelerate the pace at which nominations are moved through the Committee. Unfortunately, this is only the eighth confirmation hearing for judicial nominees that the Committee has convened all year.

Since no regular Executive Business Meeting of the Committee was noticed for this week and none has yet been noticed for next week, which may be our last before adjournment, the Committee may not have an opportunity to report any of the 13 fine judicial nominees who participated in hearings this week or the nomination of Bill Lee to be Assistant Attorney General for the Civil Rights Division.

I have urged those who have been stalling the consideration of these fine women and men to reconsider and to work with us to have the Committee and the Senate fulfill its constitutional responsibility. Those who delay or prevent the filing of these vacancies must understand that they are delaying or preventing the administration of justice. Courts cannot try cases, incarcerate the guilty or resolve civil disputes without judges. The mounting backlogs of civil and criminal cases in the dozens of emergency districts, in particular, are growing more critical by the day.

Senator KYL. Senator Feingold.

Senator FEINGOLD. No, thank you, Mr. Chairman.

Senator KYL. Senator Durbin.

Senator DURBIN. I have no other questions.

Senator KYL. Well, again, they all passed the test, you see, and I think it unnecessary for us to continue to ask questions. We may want to submit some questions for the record. Other members who can't be here may want to do that.

But in view of the distinction of these nominees and the qualifications that they have each brought to their nomination, I don't think it necessary to continue the oral examination here. Therefore, unless any other—Senator Sessions, I know you have just joined us, but if you have no questions of—I know I am catching you off guard—of this panel, we are pretty well through, I think.

Senator SESSIONS. Mr. Chairman, I don't think I have any questions at this time. I might want to submit a written question, but I don't have anything now.

Senator KYL. Well, let me thank all of you again. You are distinguished nominees and we hope we can get through the confirmation process very quickly. Thank you very, very much.

Now, our final panelist is Judge Frederica Massiah-Jackson. Would you please come forward? I will just leave you standing as

I administer the oath, if I could. We will wait until it kind of clears here a little bit.

Do you swear the testimony you shall give at this hearing shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge MASSIAH-JACKSON. Yes, Senator, I do.

Senator KYL. Thank you. Please be seated.

I should by way of explanation note that Judge Jackson was to be on the panel yesterday. We have carried her over to today. Senator Specter wanted to be here and we are hoping that he can come back. And I must announce I have an appointment. I will have to leave in approximately 7 minutes, so I would like, if I could, begin questioning and then turn the gavel over to Senator Sessions or whoever else might be here to continue the hearing to conclusion.

TESTIMONY OF FREDERICA A. MASSIAH-JACKSON, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Judge MASSIAH-JACKSON. Thank you, Mr. Chairman.

Senator KYL. Let me begin by asking you, Judge Jackson, to introduce members of your family or friends who might be here so that we can see them.

Judge MASSIAH-JACKSON. Yes, Senator. My brother, Louis Massiah, is here from Philadelphia today.

Senator KYL. Welcome.

Judge MASSIAH-JACKSON. And my husband was not able to be here today, with the change in schedule. My daughter, who is a freshman at Wesleyan University, is in the middle of mid-terms. And my son, who is a freshman at Carver High School for Engineering and Science, is in the middle of mid-terms. So neither one of them were able to join us today, but they all extend their greetings and thanks for you and the Senate giving me this opportunity to be here. Thank you.

Senator KYL. Thank you. Now, if you would like to make any kind of a statement, please do so. Otherwise, I will just begin some questioning, if that would be acceptable.

Judge MASSIAH-JACKSON. Senator—Mr. Chairman, I do not have a statement.

QUESTIONING BY SENATOR KYL

Senator KYL. All right. Let me ask you, you have heard the questions that I have asked other panelists specifically relating to discrimination cases, to capital punishment, to takings, and to deciding cases where there may be a lack of precedent or an unclear precedent. You have heard the—

Judge MASSIAH-JACKSON. Yes.

Senator KYL [continuing]. Answers that have been given by both the circuit court and district court nominees. In order to save some time, do you have any different answers or anything you would like to add to any of those answers?

Judge MASSIAH-JACKSON. No, Mr. Chairman. I listened carefully to what Judge Ware, as well as the other panelists had to say and I agree with what their position was.

Senator KYL. All right. Let me ask you now some specific questions. In each case, as you know, we have some general questions and then some specific questions that may in some respect represent criticism or writings or the like in your record.

Now, it is my understanding that copies of material relating to cases that you submitted to the committee—that this material was reviewed by you, and among those materials was the transcript of a case in which you used profanity in open court. Would you please tell the committee whether you believe that conduct of that nature is consistent with proper demeanor of a sitting judge and whether there was any action, any ethics action taken or any sanction actions taken as a result of that comment?

Judge MASSIAH-JACKSON. Mr. Chairman and Senator Specter, Senator Sessions, I made a mistake. It was my first or second year on the bench and I did make an intemperate comment at a side bar proceeding. While it was in open court, it was at a side bar talking to counsel. I apologized profusely to that attorney, and I believe in her mind, in my mind, it has been resolved. We have worked together since then. I was admonished by our judicial review board for using intemperate language at the side bar proceeding.

Senator KYL. Now, my understanding is that that case was in 1985. Is that your recollection?

Judge MASSIAH-JACKSON. It was early—it was either 1984 or 1985, but, yes, Senator.

Senator KYL. And is that the only instance in which you have used—to your recollection, that you have used such language on the bench?

Judge MASSIAH-JACKSON. I may have, you know, mumbled something to myself, but in open court, as far as I can recall, to any particular individual, that would be the best of my recollection, yes.

Senator KYL. And in the particular case that I was speaking of, I don't know the circumstances. Did you believe that the behavior of the attorney to whom you spoke was disrespectful or incorrect?

Judge MASSIAH-JACKSON. There is never an occasion when the behavior of an attorney would warrant the kind of language that I used, Mr. Chairman.

Senator KYL. OK, thank you. In a case of *Commonwealth v. Donald Powell*, the Commonwealth's brief on appeal indicates that you wrote letters to both the district attorney's office and to the appellate court in an effort to discourage or dismiss the government's appeal. Do you think it is appropriate for a judge to express such strong opinions that he or she is viewing as acting as an advocate?

Judge MASSIAH-JACKSON. Mr. Chairman, my recollection of that case was I had an interest in judicial economy. I had ordered a new trial and it seemed to me that rather than waiting for 3 hours—I am sorry—for 3 years on appeal, that a new trial could have been ordered within a matter of weeks or within the next 30 days. I had ordered a new trial, so I simply wanted to go forward with that.

Senator KYL. Well, what instances do you think it is appropriate for a judge to attempt to discourage a party from exercising a right to appeal?

Judge MASSIAH-JACKSON. Oh, it is not appropriate for a judge to be an advocate under any circumstances. I simply wanted to try

and move on with that case so that defendant could have another trial.

Senator KYL. I am going to ask you one more question and then I will have to excuse myself and turn the Chair over to Senator Specter.

In a case of *Commonwealth v. Jerome Gray*, which involved a defendant who had beaten his girlfriend in 1989 so severely that she had to be taken to a hospital where she was admitted for three cracked ribs, a collapsed lung and ruptured spleen which had to be removed, the police report shows that the defendant's record check revealed that he had five prior arrests. You gave him 24 months' reporting probation, presumably no jail time.

Could you explain the reasoning in that particular case?

Judge MASSIAH-JACKSON. What is that, 24 month, 2 years' probation?

Senator KYL. Yes, 24 months' probation.

Judge MASSIAH-JACKSON. Mr. Chairman, to the best of my recollection, the victim was not available to testify in court. I believe that person had died some time between the time of the offense and the time of the trial. I have to only assume that based on that factor, I considered that as part of the sentence because I would have sentenced within the guidelines, or certainly given explanations as to why I sentenced outside the guidelines. I simply don't know that specific set of circumstances for that sentence.

[Pause.]

Senator KYL. I have explained to Senator Specter where we are in the proceedings here. Please allow me to excuse myself. Again, I want to thank all of the members of the family and friends who are here, Judge Jackson, and I will turn the hearing now over to Senator Specter.

Judge MASSIAH-JACKSON. Thank you, Mr. Chairman.

Senator SPECTER [presiding]. Judge Jackson, Senator Kyl is saying that because I am the senior Senator remaining, but I am going to yield to Senator Sessions for two reasons. One is he was here earlier and, second, he is not the Senator from your State. So I think it might be a better line for Senator Sessions to question you now.

Senator SESSIONS. Thank you. Senator Durbin maybe—

Senator SPECTER. Senator Durbin, do you want to contest that sequencing?

Senator DURBIN. No. I think it is a good idea.

Senator SPECTER. Senator Sessions.

QUESTIONING BY SENATOR SESSIONS

Senator SESSIONS. On the matter of the Jerome Gray case, sometimes there are reasons, I know, that judges would rule the way they did. But are you saying that the district attorney had agreed to this lighter sentence because of a lack of being able to prove the case, or did you impose this sentence over the objection of the prosecutor or with the prosecutor's consent?

Judge MASSIAH-JACKSON. Senator, I have no recollection of why the sentence was imposed as it was imposed.

Senator SESSIONS. You just don't have a recollection?

Judge MASSIAH-JACKSON. I accept the fact that it may have been 2 years of probation, but I don't know what the circumstances of that particular incident or the background of the defendant which would cause that sentence. I just don't know. My record on these types of cases is very, very clear. I take these cases very seriously.

Senator SESSIONS. Would you say—were there sentencing guidelines in Pennsylvania and this would fall out of that guideline?

Judge MASSIAH-JACKSON. Senator, I don't know enough about the background, but, yes, we do—

Senator SESSIONS. He had four prior arrests or charges. That would probably fall outside of the guideline, would it not?

Judge MASSIAH-JACKSON. Well, the sentencing guidelines take into effect—take into account convictions. I don't know how many convictions that person had. He may have been arrested a multitude of times, but I just don't know the number of convictions. I really don't know.

Senator SESSIONS. I would like to follow up a little bit—I hate to; I think we just need to—

Judge MASSIAH-JACKSON. Sure.

Senator SESSIONS [continuing]. On the comments you made that you have apologized for. I think that is a fact that I will consider, and I know there was some disciplinary action taken for misbehavior by you in that regard.

Judge MASSIAH-JACKSON. Yes.

Senator SESSIONS. What troubled me a little bit about it—it seemed to me it was a little more than that. Maybe it was at a side bar, but you said to Ms. McDermott, referring to the prosecutor, “Would you shut your blank mouth.”

Judge MASSIAH-JACKSON. Yes, Senator.

Senator SESSIONS. And then when asked about it by the Philadelphia Inquirer, you said, quote, “Maybe I would suggest that it offended Ms. McDermott, but I can't imagine the defendant was offended.” Do you recall saying that to the newspaper?

Judge MASSIAH-JACKSON. I have confidence in the Philadelphia Inquirer.

Senator SESSIONS. Well, I guess my point is that suggests that you weren't too contrite or apologetic about it, at least, at that point.

Judge MASSIAH-JACKSON. Oh, I was very contrite and I did, in fact, apologize to Ms. McDermott.

Senator SESSIONS. It was in the *Burgos* case, I believe, you responded to a prosecutor's motion with the following comment, “I don't give a blank.” Do you recall that?

Judge MASSIAH-JACKSON. I agree with what you are saying, but I don't specifically recall it, Senator.

Senator SPECTER. Senator Sessions, is that a case in the memo? I am trying to follow your questions.

Senator SESSIONS. Yes, sir. I have the title of the case *Commonwealth v. Burgos*, B-u-r-g-o-s.

Senator SPECTER. B-u-r-g-o-s?

Senator SESSIONS. Yes. I am not sure that—

Senator SPECTER. Well, I will ask the staff if they can find that for me.

Senator SESSIONS. As a prosecutor myself and having worked with investigators and prosecuted cases, I know it is a tough job. The defense lawyers earn their pay many times being very aggressive, but it is really frustrating if the judge takes sides against you, too. And, to me, in a lifetime Federal appointment, Federal judiciary, we have to be sure that you will give the State a fair trial, as well as the defendant a fair trial. It is particularly true, since the government can't appeal. So they have no right of appeal, so a judge—the prosecutors are at the mercy, for the most part, of a Federal judge's ruling.

In *Commonwealth v. Ruiz*, you acquitted a man accused of possessing \$400,000 worth of cocaine, it is reported to me, because you did not believe the testimony of two undercover officers. In an earlier case, you pointed out those same undercover officers to a public courtroom and told the onlookers to "take a good look at the undercover officers and watch yourself."

Do you recall that and do you have an explanation for that?

Judge MASSIAH-JACKSON. Senator, my recollection of the *Ruiz* case—and I have submitted a written response to the committee about that news article—is that there was a question about whether or not the defendant actually owned the house or lived in the house where the drugs were found, and there was a question about his actual possession of the drugs.

I have the highest regard for law enforcement officers. Over the years when I was in criminal court—and as you know, it has been over 6 years since I have sat in criminal court, but over those years and the more than 4,000 cases that I handled involving criminal matters, I have developed a tremendous respect for police, for the prosecutors, and for law enforcement units.

Senator SESSIONS. If you are confirmed as a Federal judge, prosecutors are pretty much at the mercy of a Federal judge and the judge cannot be removed or have their pay docked or anything like that. And so I think it is important for us to feel comfortable that they will get a fair trial.

With regard to that issue, I was troubled and thought it extraordinary that most of the cases you tried, the defendants waived a jury trial and asked to be tried by you without a jury. In my experience, most defendants feel like they will have a better chance—a jury has to be unanimous, all 12. There is always a chance on any case that one of those three will say no and they won't be convicted. That would indicate to me that you have a reputation as not being very tough on crime.

Judge MASSIAH-JACKSON. Well, I appreciate your concern, Senator. In Philadelphia, unlike any other part of Pennsylvania, actually, we have a special program called our criminal list or Felony Waiver Program. The majority of our cases in Philadelphia—we are so overwhelmed with our criminal calendar, the majority of our cases are handled in this Felony Waiver Program where the defendants, with their attorneys, even before arraignment, I believe, or some early stage of the proceeding many months or even years before trial, they make a decision that they want to have their trial without a jury.

And during my first 3 years on the bench, I would get a list. There were 10 courtrooms of judges with a list of 10 to 15 cases

each day and I would hear 10 to 15 cases each day either by trial or by plea or—but the defendants were not permitted to have a jury trial.

Senator SESSIONS. When they made that filing at that time under the case processing procedure in the court, was it known that you would be the judge?

Judge MASSIAH-JACKSON. Oh, no. All new judges go to felony waiver unit.

Senator SESSIONS. I guess what I am saying is when a person waived a jury trial, would they know whether it would be tried by you or some other judge?

Judge MASSIAH-JACKSON. They would not know. They simply elect to go to a specific program, and that program was called the Felony Waiver Program and that is where I sat for the first 3 years.

Senator SESSIONS. My time is up, Mr. Chairman.

Senator SPECTER. Senator Sessions, if you want more time, why don't you take some more?

Senator SESSIONS. I would ask a couple of more questions, I think.

Search and seizure and rulings from the bench can be devastating to a prosecutor's case. This is what is reported, as I understand the facts, in *Commonwealth v. Jenkins*. The police arrived at the scene of an armed robbery within minutes. They were given detailed descriptions of the robbers and told the subjects had run north on a particular street. The descriptions were broadcast over the radio.

Soon thereafter, other police officers arrested a black male matching the description 1½ blocks from the crime. When approached by the police, the subject withdrew a roll of cash from his pocket and threw it on the ground. When it came before you on a motion, you ruled that probable cause to arrest did not exist and suppressed the stolen cash. You also suppressed the in-court and out-of-court identifications. In your findings of fact, you suggested that the police stopped the subject simply because he was a black male running on the streets in Philadelphia.

Would you like to comment on that and explain that case?

Judge MASSIAH-JACKSON. Yes, Senator. My recollection of that case is that the only description that was given was black male, black jacket, and there was a codefendant, black male, blue jacket. That was my recollection.

Senator SESSIONS. Of course, he was 1½ blocks away. He was apparently running and a roll of cash fell out of his pocket. Would that not give an officer a basis to make an investigatory stop?

Judge MASSIAH-JACKSON. Senator, the appellate court agreed with you and I was reversed.

Senator SESSIONS. Another case that troubled me, because this kind of thing can happen in any court—a defendant was charged with robbery—and this case is *Commonwealth v. Hicks*, H-i-c-k-s— involving theft and receiving stolen property, aggravated assault, and simple assault. The defense made a motion for a continuance because the police officer was not available to testify, apparently, for the defense, even though he had been subpoenaed.

You ruled that the officer was under the State's control and forced the State to nol pros the case. When the prosecutor refused to nol pros the case, you dismissed the charges against them, and that ruling was reversed by the court of appeals. The appellate court noted that the prosecution was ready to try the case and that the only motion before the court was a defense request for a continuance.

You could have simply granted the defense motion to continue instead of dismissing the cases, it seemed to me, and apparently the appellate court thought so. Do you have any comment or explanation on that situation?

Judge MASSIAH-JACKSON. No, Senator, I don't. I overwhelmingly—of the 4,000 cases that I tried—and as you indicated, many of them were bench trials. The defendants went to jail. There were convictions and they are serving substantial time.

Senator SPECTER. Senator Sessions, that is the *Hicks* case?

Senator SESSIONS. The *Hicks* case, H-i-c-k-s.

Those were some cases that, to me—I am concerned not that—I am concerned that it suggests a pattern of lack of sufficient respect for the prosecutor's responsibilities, burdens and problems as much as it does the defendant's burdens and constitutional rights and burdens.

As I say, so often the prosecution may never get a chance to appeal. If you keep certain evidence out and there is a jury verdict of acquittal, there may be no appeal, or a ruling on an evidentiary motion that can deny critical evidence and once a verdict has been rendered and jeopardy is attached, the prosecutor has no right to appeal.

So those are my concerns there and I wanted to ask you about those. I think I agree with you that the kind of language we referred to here is not acceptable on the bench, and if you were to be confirmed, I would hope that you would adhere to that. We simply have to maintain decorum and respect in a court of law.

Judge MASSIAH-JACKSON. I agree.

Senator SESSIONS. The judge has got to give a fair shake to both the prosecutor and their problems, as well as the defendant.

Judge MASSIAH-JACKSON. Senator, I would like to reassure you and the entire committee that I take this position very seriously. This process has been a very humbling one and there is no question in my mind that I would not disappoint you.

I believe that I have a very—the track record indicates that of the 60-some appeals that took place during the time I was in criminal court, 55 of those appeals were from defendants who thought their sentence was too long or that they were wrongfully convicted. And I don't believe that a close reading of my record would indicate any pattern, but I do understand your concerns. Thank you.

Senator SESSIONS. I don't know if the prosecutor can appeal a life sentence, can he?

Judge MASSIAH-JACKSON. Yes.

Senator SESSIONS. Or if they do, they are reluctant to do so in a lot of instances. But defendants will certainly take their opportunity to appeal one they consider too heavy.

Judge MASSIAH-JACKSON. Thank you.

Senator SESSIONS. I think, Mr. Chairman, that is what I would like to ask about at this point.

Senator SPECTER. Well, thank you very much, Senator Sessions.

Judge MASSIAH-JACKSON. Thank you.

Senator SPECTER. Senator Durbin.

QUESTIONING BY SENATOR DURBIN

Senator DURBIN. Thank you very much. I appreciate your being here today, and I would just like to ask three very brief questions. I think there is an express concern, as I mentioned to the Illinois nominees, about judicial temperament, and I am comfortable with the responses that you have given to Senator Sessions about mistakes you have made.

Let me ask you, have you ever been disciplined by bar associations or others beyond this one reference that was made?

Judge MASSIAH-JACKSON. Oh, no, Senator, just that one time. I learned my lesson.

Senator DURBIN. We all do make mistakes.

The second question relates to your reversal rate and I have been trying—in reading the responses which you have given here, you have said that you considered about 4,000 different cases in your career as a judge.

Judge MASSIAH-JACKSON. Yes.

Senator DURBIN. According to the information given to the committee, some 95 were appealed, but those were 95 civil cases, if I am not mistaken.

Judge MASSIAH-JACKSON. No. That was criminal and civil.

Senator DURBIN. Criminal and civil?

Judge MASSIAH-JACKSON. Yes.

Senator DURBIN. And of those, 14 were reversed in whole or in part, is that correct?

Judge MASSIAH-JACKSON. That is correct, 14 overall, criminal and civil.

Senator SPECTER. May interrupt just a minute, Senator Durbin?

I am going to make a couple of comments. Senator Sessions has to leave. I just wanted to make a couple of comments before Senator Sessions left, and I am looking at all of these documents for the first time. In the *Jenkins* case, which was a suppression matter, there was an appellate right in that case. If evidence is suppressed, under Pennsylvania procedure—and I think generally, but know Pennsylvania procedure—there is a right of appeal, so that that order was taken up on appeal and Judge Massiah-Jackson was reversed. So, that was an appellate issue.

Judge MASSIAH-JACKSON. That is right.

Senator SPECTER. And on the case—and I am just taking a look at this case of *Commonwealth v. Hicks*, and I think we ought to make this brief a matter of the record, and also the *Hicks* judgment.

[The brief and the judgment referred to follow:]

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	
Appellant	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ROBERT HICKS,	:	
	:	
Appellee	:	No. 2004 Philadelphia 1987

Appeal from the Order entered June 12, 1987, in the Court of Common Pleas of Philadelphia County, Criminal, No. 86-10-180-182.

BEFORE: McEWEN, OLSZEWSKI, and CERCONE, JJ.

MEMORANDUM:

FILED AUG -1 1988

The Commonwealth appeals from an order dismissing charges against appellant, asserting that the trial court abused its discretion in dismissing the charges. We agree that the trial court abused its discretion and, therefore, we reverse the order of the lower court and remand the case for further proceedings.

On September 13, 1986, appellant was arrested and charged with robbery, theft, receiving stolen property, aggravated assault and simple assault as the result of an attack that took place on September 6, 1986. Following a preliminary hearing on October 2, 1986, appellant was bound for trial on all charges. Several defense continuances and a crowded court docket delayed the trial until June 12, 1987. On that date, counsel appeared before the Honorable Frederica Massiah-Jackson and the following dialogue ensued:

[BY THE COURT]: Robert Hicks, what's the status of the Commonwealth?

MS. SUTTER [FOR THE COMMONWEALTH]: We are ready, Judge.

THE COURT: What's the status of the defense?

MR. CHEW [DEFENSE COUNSEL]: We need a continuance, Your Honor.

THE COURT: I can't hear you.

MR. CHEW: Your Honor, we need a continuance to get the police officer in.

THE COURT: I thought the Commonwealth subpoenaed the police officer.

MR. CHEW: Well, apparently he didn't receive it or there was some foul up somewhere.

THE COURT: Ms. Sutter.

* * *

MS. SUTTER: I did subpoena the officer. Mr. Chew asked me to do so and yesterday our court notices go over at 2:30 in the afternoon and at about 1:30 I put it in the batch that gets taken over here to Court Attendance. I put it in the notice and apparently the officer is on his regular day off.

N.T. 6/12/87 at 2-3. The court officer then informed the judge that he had contacted the police officer's supervisor at the 24th District¹ and was told that no court notice was received by

¹ In the original notes of testimony the court officer stated that he called the 24th Police District to verify receipt of the subpoena. N.T. 6/12/87 at 4. During the proceedings, the court also referred to the officer's district as the "24th." *Id.* at 8. After the charges were dismissed, the Commonwealth noted in a motion for reconsideration that the police officer was assigned to the 25th Police District, not the 24th District. According to the record, the trial court then contacted the the court clerk. Acting upon the court's request, the clerk drafted a letter dated July 9, 1987, and filed of record on July 13, 1987, in which he states that he had called the 25th Police District. Also, in a letter to the court stenographer dated July 9th, the judge noted her own recollection that the court officer had telephoned the 25th Police District and requested that the stenographer review
(continued on next page)

that office. The court officer stated that personnel at Court Attendance also informed him that no court notice was received.

Id. at 3-4. Thereafter, the court stated:

THE COURT: This case is going to be marked as a Commonwealth request for continuance.

* * *

MS. SUTTER: Well, Judge, [defense] counsel asked me to subpoena him. I did it at counsel's request.

THE COURT: No, no; according to -- this is a witness under the control of the Commonwealth, solely and exclusively under the control of the Commonwealth. There is no way for a police officer to come to court unless the District Attorney brings that person to court.

MS. SUTTER: That is not correct, Judge. Defense attorneys subpoena police officers all the time.

THE COURT: But under this particular circumstance this witness is under control of the Commonwealth because you have taken it upon yourself to subpoena him.

* * *

This case is almost eight months old. It's going to be a Commonwealth request and I assure you, Ms. Sutter, you will lose on Rule 1100 because the Commonwealth request to March of 1988 is way, way beyond 180 days.

(continued from previous page)

the notes of the proceeding. In response to the judge's letter, the stenographer "corrected the error in the transcription" by changing the references to the "24th District" to the "25th District." See Correction by court reporter dated 7/13/87.

We offer no comment on this sequence of events as the judge later acknowledged the Commonwealth's documentation that a subpoena had indeed been issued to the police officer. See Opinion denying the Commonwealth's motion for reconsideration dated 1/4/88 at 12-13.

* * *

Well, Commonwealth, the defendant is in custody as a result of this case and now you are going to make him wait until April of '88 [the next available trial date].

* * *

We can't let a man sit in custody until April of '88 when the Commonwealth didn't do what it was supposed to do.

* * *

Well, we can nolle pros [the case]. . . . And then if the Commonwealth gets the witness, we'll give it a trial date. That's what we'll do then. I can't let somebody sit in jail. We don't know if he's guilty or not.

MS. SUTTER: I'm ready to proceed, Judge.

THE COURT: But you didn't bring in the Defense witness and he's under your control. . . . Well, it can't be any plainer than that, Ms. Sutter. Nolle pros, Robert Hicks.

MS. SUTTER: Judge, I will not make a motion to the Court to nolle pros.

THE COURT: It's made on the Court's own motion.

MS. SUTTER: You mean then you are discharging the case. I think that's the difference.

* * *

I'm not going to nolle pros. I'm ready for trial. I'd like the record to reflect that.

THE COURT: You didn't bring in the witness. That's the third case on today's list. Discharged then. Fine. It's got to be discharged. I was going to give you the opportunity for a nolle pros, Ms. Sutter, and if you'd like to, you could take it. I don't want to let you lose the opportunity. Then once you get the Defense witness and your Commonwealth witnesses together, you could petition for a new trial date, but with a discharge, you the Commonwealth won't have that opportunity again.

Id. at 5-12. Having discharged the case, the trial judge adjourned court. A notation on the docket sheet reflected that the trial court dismissed the case because a Commonwealth witness failed to appear.

On July 9, 1987, the Commonwealth filed a motion for reconsideration, presenting documentation that the Commonwealth had indeed subpoenaed the police officer. The lower court refused to hold a hearing on the matter but, in an opinion denying the motion, stated that the charges had been dismissed because the "Court simply did not believe that the Commonwealth's attorney had subpoenaed the necessary police witness." Opinion filed 1/4/88 at 9. The court refused, however, to reinstate the charges, finding that the Commonwealth had "abandoned and waived its opportunity and responsibility to reinstate the charges" by declining the court's invitation to nolle pros the charges. Id. at 13 (emphasis in original). This timely appeal by the Commonwealth followed.²

Having carefully reviewed the record, we are unable to determine the basis for the trial court's decision to discharge the defendant. Indeed, the trial court was unable to justify its decision by citation to rule or law.³ According to the record,

² Although the appeal was filed 31 days after the order was entered, the appeal is timely because the final day for filing the appeal was a Sunday. See Commonwealth v. Revtai, ___ Pa. ___, ___, 532 A.2d 1, 10 (1987) (excluding weekends and holidays pursuant to 1 Pa.C.S. §1908 when computing a time period under the Rules of Criminal Procedure).

³ A court may not on its own motion enter a nolle pros pursuant to Pa.R.Crim.P. 313; such a request is only made upon the motion of the attorney for the Commonwealth. Commonwealth v. Lord, 230 (continued on next page)

however, the only request presented to the court was one by the defense for a continuance. Pursuant to Pa.R.Crim.P. 301, such a request may be heard and granted "in the interests of justice" if "the reasons justifying the granting or denial of the continuance" are contained in the record. Nothing in the record evidences a ruling on the merits of the defense request for a continuance in accordance with the provisions of Rule 301. When the police officer failed to appear, the court should have either ruled upon the defense motion or formally attempted to secure the officer's attendance. The sua sponte dismissal of the charge, however, was in error.

Further, we decline to accept the conclusion that by rejecting the court's recommendation to nolle pros the charges, the Commonwealth "chose" to accept a discharge of the case. As we noted above, the only motion before the court was a defense request for a continuance. Contrary to the statement by the court, the Commonwealth had repeatedly asserted that it was ready to try the case that day; it never requested a dismissal of the case. Consequently, the Commonwealth did not "choose" to have the charges dismissed.

We also reject the court's determination that the Commonwealth must accept the consequences of dismissal of the

(continued from previous page)
 Pa.Super. 96, _____ n. 3, 326 A.2d 455, 458 n. 3 (1974).
 Similarly, pursuant to Pa.R.Crim.P. 315, the court may dismiss a case "[u]pon motion" by defense counsel where the Commonwealth has failed to file an indictment or information within a reasonable time.

charges because it assumed the responsibility for the witness's appearance at trial.⁴ In this regard, we again stress that according to the record, the Commonwealth was prepared for trial despite the officer's absence. Under the circumstances present here, dismissal of the charges was a drastic remedy given that a continuance could have been granted. Cf. Commonwealth v. Yost, 348 Pa.Super. 297, 502 A.2d 216 (1985) (dismissal of charges was inappropriate remedy for discovery violation when a continuance would have been appropriate).

Further, we find irrelevant any implication that the due diligence of the Commonwealth was being tested pursuant to the mandate of Pa.R.Crim.P. 1100. Simply stated, no request for Rule 1100 relief was before the court. See Commonwealth v. Bulling, 331 Pa.Super. 84, _____, 480 A.2d 254, 261 (1984) (Rule 1100 claim waived if no motion to dismiss is presented by the defense).

In any event, we would reverse the order dismissing the charges even if we accepted the lower court's erroneous theory that a discharge is warranted where the Commonwealth fails to subpoena a defense witness. The uncontroverted evidence of record shows that the Commonwealth did, in fact, subpoena the defense witness but that the officer was on an extended vacation

⁴ This is not to say, however, that the Commonwealth may purport to subpoena a witness for the defense and then deliberately fail to do so. Instantly, the record shows that the Commonwealth agreed to issue a subpoena as a matter of professional courtesy; the record also shows that such a subpoena was, in fact, timely issued but the the officer was vacationing at the time and failed to receive it.

at the time and failed to personally receive it. Hence, the lower court's reasoning for dismissing the case is undermined. Indeed, the lower court acknowledged the Commonwealth's proof that the subpoena had been issued and admitted that the "Commonwealth could have easily met its burden" at a Rule 1100 hearing. Opinion dated 1/4/88 at 15.

Finally, we reject the trial court's suggestion that the order dismissing the charges could not be reconsidered and reinstated because the Commonwealth had insisted on appealing the order rather than accepting the court's recommendation to nolle pros the case.⁵ It is well-established that the Commonwealth has the right to appeal from the dismissal of a charge. See, e.g., Commonwealth v. Revtai, ___ Pa. ___, 532 A.2d 1 (1987); Commonwealth v. Wimberly, 488 Pa. 169, 411 A.2d 1193 (1979).

For the reasons stated above, the order dismissing the charges is reversed, the charges are reinstated and the case is remanded for further proceedings. Jurisdiction is relinquished.

⁵ The court expressed some concern that double jeopardy would have attached. This concern is misplaced. The further prosecution of a defendant is not barred by the double jeopardy clause if a dismissal was granted on grounds unrelated to a factual finding of guilt or innocence. Commonwealth v. Adams, 349 Pa.Super. 200, ___, 502 A.2d 1345, 1352 (1986).

COMMONWEALTH OF PENNSYLVANIA, :

IN THE SUPERIOR COURT OF

Appellant :

PENNSYLVANIA

v. :

ROBERT HICKS, :

Appellee :

No. 2004 Philadelphia 1987

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of PHILADELPHIA County be, and the same is hereby THE ORDER DISMISSING THE CHARGES IS REVERSED, THE CHARGES ARE REINSTATED AND THE CASE IS REMANDED FOR FURTHER PROCEEDINGS. JURISDICTION RELINQUISHED.

By THE COURT:

David A. Engel
PROTHONOTARY

Dated: AUGUST 1, 1988

Senator SPECTER. I am only looking at this for the first time, and apparently Judge Jackson suggested a nol pros. The prosecutor refused to do so. Judge Jackson dismissed the case. There was an appeal taken and there was a reversal, which raises a question in my mind as to whether there isn't double jeopardy here, but the court ruled that on the totality of these facts, there was a legal issue raised. So they reversed her there and the case went back for trial.

I don't need to get into the question of whether there had been a trial on the merits. If you went to trial, then you couldn't have an appeal, but they treated it as a legal error and she was reversed and the case went back for trial, so that the Commonwealth had its rights of appeal in both of these cases.

I just wanted to point that out.

Senator SESSIONS. You are a very knowledgeable prosecutor and I think those are good points to make. And I didn't mean to suggest that these could not have been appealed. I think it came in my questioning that there had been reversals.

But, Mr. Chairman, what I am saying is that these are the ones that have been in the record that we know about. They raise troubling questions about an approach to criminal law. My point is that there are many rulings in the midst of a trial that we will never see in the appeals books because they are not appealable by the prosecutor. That is what is really dangerous. If you can get an appeal, an error by a judge can always be corrected. But as to the prosecutor particularly, they are vulnerable to rulings for which they may never have a right to appeal.

Senator SPECTER. Senator, you are absolutely right. Evidentiary rulings are not appealable and acquittals are not appealable. It is a relatively rare judicial ruling which is appealable, and when you raise a question inquiring as to whether there is a pattern, I respect your line of inquiry on that. I just wanted before you left to raise these two procedural issues because you and I are both lawyers and have had some experience in the field, you with a loftier position. You were attorney general. I was just a prosecutor.

Senator SESSIONS. I am not sure which is more lofty. You handled a lot more cases than I did, I am sure.

Senator SPECTER. Well, you do if you are in Philadelphia.

Senator Durbin.

Senator DURBIN. Senator Specter, let me just say as a former defense attorney, it is great to hear two prosecutors at odds here.

Senator SPECTER. I noticed you kept quiet.

Senator DURBIN. My final question to you relates to an experience I had in Chicago recently when I spent a day with some Chicago policemen on some of the meanest streets in our town. And I talked about drug arrests and the like, and they told me stories about taking their arrests down to the State's attorney's office and then to the court. And we talked a little bit and they said, of course, there was one judge, who I won't name—they said it is just hopeless when you go before that judge; you are never going to prosecute a drug case in front of that judge, and every defense attorney knows it and does their best to get in that courtroom.

I want to make sure that the record is clear here if there was any impression created that you were the forum where defense at-

torneys would race to because they felt that they would always get a break or could be hopeful that they would get better treatment.

Can you shed some light on your experience in that regard dealing with drug prosecutions or any serious criminal prosecutions?

Judge MASSIAH-JACKSON. Well, over those 8 years when I have sat in criminal court, a total of 4,000 cases—several hundred of them were drug prosecutions and the majority of those prosecutions were convictions; the same with other violent offenses—robberies; burglaries; rapes; you know, aggravated assaults. And I have already submitted to the committee my computer printouts, the raw data of the numbers and statistics relating to sentencing, as well as to the convictions. But there is no question, Senator, the overwhelming majority—you know, 85, 90 percent were convictions, yes.

Senator DURBIN. Well, thank you for your testimony and I appreciate it. I note that you received high marks from former Senator Wofford, as well as Senator Specter and Congressman Foglietta. I have the highest respect for all three of those and I am glad you came before our committee. Thank you.

Judge MASSIAH-JACKSON. Thank you.

QUESTIONING BY SENATOR SPECTER

Senator SPECTER. Judge Jackson, I am going to ask you a number of questions because this record is going to be reviewed, perhaps, by a number of people, so that I believe that there ought to be as full a record as we can make on the relevant matters, although there are limitations. It is now 3:47 and I have a 4 o'clock conference, which has just been put off for 30 minutes, and the Governmental Affairs hearing I just left on campaign finance reform, and some appointments are waiting in the anteroom, which is par for the course. But this is a matter which I think we ought to develop the record on just a bit.

Senator Kyl told me that he had explored with you briefly judicial philosophy and I would like to go over a bit of that. I could not be here at the very start.

Judge MASSIAH-JACKSON. Right, yes.

Senator SPECTER. There is a lot of concern about activist judges, whether judges are going to make law as opposed to interpreting the law. And, obviously, that is a subject that you know a lot about on the philosophical, ideological level.

How would you characterize yourself as a judge with respect to strict construction, broad construction? Do you believe a judge should very narrowly interpret the law without a view to making law?

Judge MASSIAH-JACKSON. Mr. Chairman, I believe that a judge should be very narrow in constructing precedent, in constructing the particular case that is in front of me. It is inappropriate, with the separation of powers, for a judge to try and make the law. Rather, our role is to apply the law that the legislature has enacted.

Senator SPECTER. All right. Now, could you specify anything in your career which would support your action in support of those principles?

Judge MASSIAH-JACKSON. Well, Mr. Chairman, in following the sentencing guidelines, that is legislation from our State legislature which I follow. And imposing mandatory minimum sentences—that is legislation from our State legislature which I follow.

Senator SPECTER. Senator Kyl told me that he had asked you about the death penalty, and there have been references in some of the materials about some speeches you have made on the death penalty. The death penalty is the law of Pennsylvania. As a judge, have you enforced the law of Pennsylvania as written?

Judge MASSIAH-JACKSON. Yes, I have enforced the law. I have not had the occasion up to this point to impose a death penalty because I have not sat in our homicide program in Philadelphia, which certainly, as you know, is a separate subdivision of the criminal division.

In the speeches, I was specifically asked by our State legislature to give comments of the practical effects of the death penalty, and I do so at their request. But I have nothing in my personal philosophy which would prevent me from imposing the death penalty if called upon to do so.

Senator SPECTER. Would you amplify what you said by way of personal philosophy on the death penalty?

Judge MASSIAH-JACKSON. The State legislature was considering certain crime bills in Pennsylvania and invited several judges, as well as other individuals, to come forward and present testimony. And I simply quoted from one of—a former Supreme Court Justice indicating his opinion on the death penalty and I specifically said that we do not want to coddle criminals. I said that in the same speech. I take a very strong view on law enforcement and keeping crime off the streets.

Senator SPECTER. The question has arisen as to your sentencing, and we have a lot of statistics and I am always very leery, frankly, of citing statistics. In hearings, we cite facts without the kind of precision which has to go on in the courtroom. But the record that has been presented to me shows that in 1984 you had 551—these are criminal cases; 1985, 736 cases; 1986, 653 cases; 1987, 591 cases; 1988, 241 cases; 1989, 354 cases; 1990, 447 cases; 1991 says "N/A," apparently meaning not applicable; 1992 to 1995, 60 to 100 cases a year, and then in 1996, 200 civil dispositions.

The total on the specific cases from 1984 to 1990—I totaled 3,573 cases, and you have referred to more than 4,000 cases. What is your best evaluation or approximation as to the total number of criminal cases you have tried?

Judge MASSIAH-JACKSON. From January 1984 through December of 1991, I think it is about 4,000.

Senator SPECTER. Are all those waiver, that is nonjury cases?

Judge MASSIAH-JACKSON. Most of them were, yes.

Senator SPECTER. Do you sit on jury trial rooms ever?

Judge MASSIAH-JACKSON. Oh, yes; oh, yes, very—there were occasions when defendants requested jury trials and I did sit on jury trials.

Senator SPECTER. How many jury trials did you sit on, if you can quantify that?

Judge MASSIAH-JACKSON. On the criminal side, probably less than 10; on the civil side, every week, one a week, since 1991.

Senator SPECTER. Well, when you had the jury trials, were you in a specific jury trial room?

Judge MASSIAH-JACKSON. I was in a room where a defendant could request a jury trial, yes.

Senator SPECTER. Do they still have the procedure in Philadelphia of having waiver rooms where you may not ask for a jury trial?

Judge MASSIAH-JACKSON. Oh, yes. During—yes.

Senator SPECTER. And jury trial rooms where you may ask for a jury?

Judge MASSIAH-JACKSON. Yes.

Senator SPECTER. But you don't have to ask for a jury?

Judge MASSIAH-JACKSON. That is correct, yes, Mr. Chairman.

Senator SPECTER. Now, the issue was raised as to whether you were a lenient sentencer because people were more interested in trying to you on a waiver. When you sat in jury trial rooms, how frequently did the defendants ask for a jury trial, contrasted with how frequently did they seek to waive a jury trial?

Judge MASSIAH-JACKSON. Most of the times, the defendants either waived their jury trial or they pled guilty.

Senator SPECTER. In the jury trial room?

Judge MASSIAH-JACKSON. Yes, sir.

Senator SPECTER. But you did try some jury cases?

Judge MASSIAH-JACKSON. Oh, yes; oh, yes.

Senator SPECTER. Do you have any judgment or sense as to why they asked for jury trials in those cases?

Judge MASSIAH-JACKSON. No, no, Mr. Chairman. There were many judges. I think the defendants were simply trying to get their cases moving and that was a way to do it.

Senator SPECTER. Well, why did the defendants ask for jury trials in the cases where they asked for them?

Judge MASSIAH-JACKSON. I have no idea. I didn't explore that with them.

Senator SPECTER. According to information provided—and this is from your records. I have asked how many appeals were taken as to your cases and the information you have provided says that there were 95 appeals filed with the Superior Court of Pennsylvania and you were reversed in whole or in part 14 times. Is that accurate?

Judge MASSIAH-JACKSON. That is correct; over 14 years, that is correct.

Senator SPECTER. Were you ever reversed on a sentence?

Judge MASSIAH-JACKSON. Not to my knowledge. It is just the one time, in 1995 or 1996.

Senator SPECTER. On a sentence?

Judge MASSIAH-JACKSON. On a sentence. I was not reversed. I was affirmed on a sentence.

Senator SPECTER. Mayor Rendell told me that you were never reversed on a sentence. Do you think he was wrong?

Judge MASSIAH-JACKSON. I was not reversed on a sentence. I was appealed on that sentence that one time.

Senator SPECTER. OK, but the question was reversed, Judge Jackson, not appealed.

Judge MASSIAH-JACKSON. I apologize. To the best of my knowledge, I have never been reversed.

Senator SPECTER. There was one case where there was an appeal from your sentence.

Judge MASSIAH-JACKSON. Right.

Senator SPECTER. And on that case, you were not reversed?

Judge MASSIAH-JACKSON. That is correct. I apologize.

Senator SPECTER. So Mayor Rendell is not wrong?

Judge MASSIAH-JACKSON. No, no, he is not.

Senator SPECTER. OK. Judge Jackson, had you been informed prior to coming here today that you would be asked questions about any specific cases?

Judge MASSIAH-JACKSON. I had a general knowledge of some of the cases.

Senator SPECTER. Did you know, for example, you would be asked about the *Jenkins* case which involved this question about identification suppression?

Judge MASSIAH-JACKSON. Yes.

Senator SPECTER. You knew you would be asked about that?

Judge MASSIAH-JACKSON. Yes.

Senator SPECTER. How did you know you would be asked about that?

Judge MASSIAH-JACKSON. I received information from the Department of Justice.

Senator SPECTER. Did you know you would be asked about the *Burgos* case?

Judge MASSIAH-JACKSON. Yes, yes.

Senator SPECTER. So you had an opportunity to prepare on that case?

Judge MASSIAH-JACKSON. Yes, I did, Senator.

Senator SPECTER. You have been questioned about language which you used in two cases, Judge Jackson. On the one case which was involved with Ms. McDermott—

Judge MASSIAH-JACKSON. Yes.

Senator SPECTER [continuing]. That case was taken to the Judicial Board of Inquiry and Review?

Judge MASSIAH-JACKSON. That is correct.

Senator SPECTER. And who took the case to that board?

Judge MASSIAH-JACKSON. As far as I know, she did. I don't know. They don't tell us who brings—

Senator SPECTER. And was there a hearing on that case on the record?

Judge MASSIAH-JACKSON. No, simply a—just a letter submitted.

Senator SPECTER. And was any sanction imposed on you for that?

Judge MASSIAH-JACKSON. I received a letter indicating I was admonished for using intemperate language at a side bar proceeding, just a letter.

Senator SPECTER. Have you ever used that word in open court since?

Judge MASSIAH-JACKSON. No, Senator.

Senator SPECTER. Have you ever used that word in any judicial proceeding other than in open court?

Judge MASSIAH-JACKSON. No, Senator.

Senator SPECTER. Ms. Jackson, you have already apologized for it, but I think that there may be some greater interest. And I don't want to unduly prolong it and I have accepted your apology, as far as I am concerned, but I think others might be interested in a little fuller explanation.

Why did you say that? I know it is a long time ago and I read in the record that you were perturbed and that counsel was pushing you, and lawyers do that to judges and judges do respond. But why did you use that kind of language?

Judge MASSIAH-JACKSON. I don't have an answer. I was frustrated, Senator, and it just blurted out.

Senator SPECTER. Senator Thurmond always asks nominees for the bench—I heard him do this for the first time when Judge—she wasn't a judge—when Carol Mansman was up in 1982 with Stapleton, and Senator Thurmond said, "Do you promise to be courteous?" And I thought to myself, what kind of a question is that? What does he expect them to say? And they said, "yes."

And he said in his inimitable southern accent, "Do you promise to be courteous?" And they said, "yes." And then he said, "Because the more power a person has, the more courteous that person has to be." And I have come to view those statements as very, very profound statements, and when Senator Thurmond is not here I always repeat Senator Thurmond's admonition to nominees. Many, after the fact, have told me how they think about Senator Thurmond's admonition.

You were challenged on your language in another case, the—see, they told you about these cases before you got here, but they didn't tell me about the cases before I got here, Judge Jackson. And if they had, it wouldn't have done any good; I would have waited until I got here anyway.

The *Ruiz* case where you said "I don't give a blank"—why did you use that expression?

Judge MASSIAH-JACKSON. I believe that was something I mumbled under my breath that I was just tired.

Senator SPECTER. Well, it says here she said, quote, "In a staged whisper while motioning the court reporter to stop recording, quote, 'I don't give a blank.'" Have you ever said that again?

Judge MASSIAH-JACKSON. No, I have not, Senator.

Senator SPECTER. Why did you say that?

Judge MASSIAH-JACKSON. I have to say I don't specifically remember that incident and I don't know why. I guess I was—

Senator SPECTER. Is the language pretty tough in the Court of Common Pleas in Philadelphia?

Judge MASSIAH-JACKSON. It is very tough. I have learned words that I never knew before I was a judge.

Senator SPECTER. How could that be, Judge Jackson? You grew up in Philadelphia.

Judge MASSIAH-JACKSON. I grew up on the streets of north Philadelphia, but I was—

Senator SPECTER. I didn't know there were any words that weren't used in Philadelphia, especially on the streets of north Philadelphia.

Judge MASSIAH-JACKSON. I was blessed with a family and strong support and I was not—I didn't live on the streets, as many of the defendants and the victims did.

Senator SPECTER. Judge Jackson, I want to make a part of the record for you the memorandum which has quite a number of other cases in it which you have not been questioned about. But before I do, the *Hicks* case—why did you force the—do you recall the *Hicks* case where you, in effect, forced the prosecutor to go on trial?

Judge MASSIAH-JACKSON. Yes. It was my recollection that had been continued several times earlier by the prosecution and I made a ruling on what we call our rule 1100, or speedy trial issue, saying the defendant had not come to trial on time.

Senator SPECTER. Well, you could have dismissed the case based on that.

Judge MASSIAH-JACKSON. That is what I did do. I dismissed it based on rule 1100.

Senator SPECTER. You dismissed the case based on an 1100 ruling?

Judge MASSIAH-JACKSON. Yes, and that is why—

Senator SPECTER. Do you have your opinion in the case, because I don't have it before me here?

Judge MASSIAH-JACKSON. I don't believe I do. I don't what the—

Senator SPECTER. I was district attorney when that rule was put into effect. It started out being 270 days. Then it was—

Judge MASSIAH-JACKSON. Now, it is 180.

Senator SPECTER. We did it for a brief period of time to give us an adjustment period of 270 later. It was 180.

Why did they reverse if the 180 days had run?

Judge MASSIAH-JACKSON. It is my recollection, Senator, that the superior court felt that there should have been one more opportunity for that defendant to go to trial.

Senator SPECTER. Well, but there is no mention here of the 180 days. Well, if this issue is to be carried further, it may be that we will need a further statement from you. I don't know that we will.

Judge MASSIAH-JACKSON. OK.

Senator SPECTER. And I want to make available to you a memorandum which has a number of cases which you haven't been asked about today.

Judge MASSIAH-JACKSON. OK.

Senator SPECTER. But I would like for you to review your records and be in a position to respond on these matters if anybody wants to know about them.

On a total number of cases of more than 4,000, and 95 appeals and 14 reversals, there may not be an issue relating to pattern of conduct, or somebody may raise an issue of pattern of conduct. So I think you ought to be prepared to deal with that.

Judge MASSIAH-JACKSON. OK.

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

Judge MASSIAH-JACKSON. I believe that I do have the temperament, the intellect and the ability to move from the State court to the Federal court. I enjoy the law and I feel that the Federal bench will give me an opportunity to deal with the complex issues that

are involved in the law, rather than the rush that we go through on the State court.

Senator SPECTER. You are tired of being rushed?

Judge MASSIAH-JACKSON. I would like to have time to reflect on serious and complex issues.

Senator SPECTER. Your background will be different on the U.S. District Court for the Eastern District of Pennsylvania than any other judge there now. Do you know the judges' lunch room is at the Federal court?

Judge MASSIAH-JACKSON. I have visited there, I believe.

Senator SPECTER. Have you had lunch there?

Judge MASSIAH-JACKSON. One time, I believe.

Senator SPECTER. Somebody said you would add a new dimension to the lunch room.

Judge MASSIAH-JACKSON. I don't know what that means.

Senator SPECTER. It means they have conversations at lunch, they talk, and that you would bring a little different background—

Judge MASSIAH-JACKSON. I eat at my desk now.

Senator SPECTER [continuing]. To the lunch room.

Judge MASSIAH-JACKSON. Well—

Senator SPECTER. I have had lunch there. They could use some differing backgrounds. They don't need any Senators, but they could use some differing backgrounds.

Judge MASSIAH-JACKSON. Thank you, Senator.

Senator SPECTER. Also, the food is not so good.

I am going to just take a minute to talk to one of the lawyers here.

Judge MASSIAH-JACKSON. Sure.

[Pause.]

Senator SPECTER. In the case of *Commonwealth v. Jahon*, the defendant, so I am told, was charged with first-degree aggravated assault, an offense that carries a mandatory sentence, and you found him guilty of second-degree aggravated assault, a charge that does not carry a mandatory sentence. You found the defendant used his body as a deadly weapon in an effort to satisfy the deadly requirement of the second-degree offense. The transcript states that you said the defendant, quote, "used his body by bumping the victim with his stomach and then tossing him with his hands," close quote.

Are you able to explain your reasoning in that case?

Judge MASSIAH-JACKSON. For the verdict?

Senator SPECTER. For the verdict or your statement.

Judge MASSIAH-JACKSON. It is—

Senator SPECTER. Do you recollect the case?

Judge MASSIAH-JACKSON. Yes.

Senator SPECTER. OK. If you recollect the case, then I think it is a fair question.

Judge MASSIAH-JACKSON. OK.

Senator SPECTER. Go ahead.

Judge MASSIAH-JACKSON. Oh, yes. In Pennsylvania at the time—and I don't know if the case law has changed since those years, but there was a real question as to whether or not one punch or one hit is sufficient to sustain a verdict of aggravated assault of the

first degree. And so I found the defendant guilty of F-2, a felony of the second degree.

Senator SPECTER. Well, did you deliberately ignore evidence of a greater charge to find the defendant guilty of a lesser charge to avoid the necessity for a mandatory sentence? I think that is the import of the committee question?

Judge MASSIAH-JACKSON. No, no, Senator. I don't look at the sentence when I am listening to the case. I consider the facts of the case before I impose whatever the degree of guilt is. Just as a jury would not be considering a sentence before the trial is over, I don't do that either.

Senator SPECTER. Excuse me?

Judge MASSIAH-JACKSON. Just as a jury would not consider a sentence before a trial is over, as a sitting judge at a bench trial, I don't consider the sentence.

Senator SPECTER. Judge Jackson, are you saying that in all cases you isolate those facts and never consider whether there is a mandatory sentence to be imposed if you make a finding of guilt of a certain category?

Judge MASSIAH-JACKSON. That is what I do. I listen to the facts and make a decision based on the facts that are in front of me.

Senator SPECTER. All right. We are going to make these questions available to you, and we will make a part of the record the Commonwealth's brief in the case of *Commonwealth v. Patrick Jenkins*,¹ and the opinion of the court in *Commonwealth v. Hicks*,² superior court, 1987, and a memorandum dated November 7, 1988,³ and the 5 pages which is an extract of a larger memo made for the chairman of the committee. And it is with respect to this larger memorandum that we are asking you to take a look at it and be in a position to respond to questions about the balance of the cases, if that need should arise.

Judge MASSIAH-JACKSON. OK, thank you.

[An extract of the memorandum referred to above follows:]

¹ Retained in Committee files.

² See p. 1027.

³ Retained in Committee files.

Nomination of Judge Massiah-Jackson

Committee's Review of certain cases:

Included among the numerous materials reviewed for the above-named nominee are the following cases: Commonwealth v. Willie Hannibal; Commonwealth v. Donald Powell, Commonwealth v. Patrick Jenkins and Phillip Mayberry; Commonwealth v. Norman Nesmith; Commonwealth v. Gregory Johnson; Commonwealth v. Floyd Decker; Commonwealth v. Jerome Gray Commonwealth v. Jay Hahn; Commonwealth v. Edward Baker. Below is an excerpt or a summary of specific matters in each of these cases.

In Commonwealth v. Willie Hannibal, during a discussion with the prosecution,¹ page 17 of the transcript:

Ms. McDermott: For the record, Your Honor --

THE COURT: That's all I want to hear from you right now.

Ms. McDermott: I request that the Court --

THE COURT: Keep your mouth shut at this point because we are trying to deal with this defendant's right to have a trial, and that is why we are here. Just stop talking.

Ms. McDermott: Your Honor, with all due respect --

THE COURT: You won your motion. Please keep quiet, Ms. McDermott.

Ms. McDermott: Your Honor, I can't --

THE COURT: Please keep quiet, Ms. McDermott.

Ms. McDermott: Will I be afforded --

THE COURT: Ms. McDermott, will you shut your fucking mouth.

¹In Hannibal, the defendant decided at the last minute to not plead guilty to narcotics and assault charges, choosing instead to go to trial. After some discussion, the defense stated that they were not ready to try the case because their witnesses were not present. The Commonwealth argued that it was ready to proceed and the Assistant District Attorney objected to a continuance.

Footnote 6 in the Commonwealth's brief in the case of Commonwealth v. Donald Powell implies that Judge Massiah-Jackson tried to persuade the Commonwealth to dismiss its appeal. That note states in pertinent part:

* * *

Initially, Judge Massiah-Jackson refused to give the Commonwealth a thirty-day continuance so that the Commonwealth could decide whether to appeal her new trial order, informing the assistant district attorney that if the Commonwealth did appeal she would "deal with that if it comes to that. There are a variety of ways to deal with it." Those "ways" apparently included her letter to the Commonwealth suggesting that the appeal be discontinued, her subsequent letter to this Court, after the Commonwealth indicated it would proceed with the appeal, demanding that the President Judge be informed if the Commonwealth withdrew before disposition; her Opinion filed in this matter, in which she recharacterized the legal issue in an attempt to obfuscate the plain appealability of her order; and finally, her "recommendations" to this Court [the appellate court] that, upon dismissing the appeal, it (1) assess costs of the appeal against the Commonwealth; (2) order that the charges against defendant be dismissed if, upon retrial, defendant cannot locate his missing witness (who refused his request to appear at his preliminary hearing and who could not be found at trial) and (3) order that the time between ... (the date of the Commonwealth's response to Judge Massiah-Jackson indicating that it would proceed with this appeal) and defendant's new trial be counted against the Commonwealth for Rule 1100 purposes [Pennsylvania Speedy Trial Act]."

In the Commonwealth's brief of the case of Commonwealth v. Patrick Jenkins and Phillip Mayberry, the government appealed Judge Massiah-Jackson finding that probable cause to arrest defendants did not exist, and her suppression of evidence and her suppression of the victim's identification of the defendant. In arguing that the judge mistakenly found that the officers had stopped the defendant because he was simply a black man the Commonwealth cited the Judge's comment that relied on popular "movies" rather than evidence before the court.

Apparently, because Officer Blanche did not testify at the hearing, the court felt free to suggest, in its findings of fact, that the officers stopped Patrick Jenkins simply because he was a running black male in Philadelphia. As support for this "factual finding," the court cited a movie (Opinion, Finding of Fact No. 30; R. 21a). Despite this injection of racial overtones in a case where none existed, the testimony of other officers on the scene was more than sufficient that both officers were acting properly pursuant to Officer McLaughlin's police radio broadcast.

Commonwealth's brief, Page 21, n. 10.

In the case of Commonwealth v. Norman Nesmith, the defendant was charged with 7 criminal violations [simple assault, aggravated assault; criminal conspiracy; recklessly endangering another person; accident involving death or personal injury - duty to stop, identify self and render assistance; simple assault, aggravated assault] and waived jury trial. Defendant was found guilty by Judge Massiah-Jackson of seven of the above offenses on May 23, 1991; however, she allowed defendant to remain free and reduced his \$10,000 bail bond to "release on his own recognizance." Over the next three years, his sentencing was deferred approximately 13 times during which time he reported to the court and paid various amounts restitution to the victims as ordered. When defendant was finally sentenced on July 14, 1994, he received 2 years probation only to run concurrently for all seven convictions well below any standard guideline range. Furthermore, because defendant had a extensive prior record he would have been eligible for a sentence in the aggravated range.

The District Attorney's Office appealed the sentence of two years probation, but lost on appeal because the state sentencing guidelines are discretionary only.²

Commonwealth v. Gregory Johnson, defendant was charged with robbery first degree; theft, receiving stolen property, violation Uniform Firearm Act; possession instrument of crime. Defendant waived jury trial and was found guilty of offenses by judge on April 26, 1990. Sentencing was deferred until June 5, 1990. Judge Massiah-Jackson found the defendant guilty of the lesser included offense of Robbery in the Second Degree.

Commonwealth v. Floyd Decker, defendant was charged with robbery first degree, and criminal conspiracy, and other offenses. Defendant confessed that he participated in robbery along with two other individuals by driving get-away car from scene. The other individuals robbed the victim at gun point and forced victim to relinquish his possessions: \$200.00 glasses, and sneakers. Defendant was charged with First Degree Robbery. Judge Massiah-Jackson found the defendant guilty of misdemeanor theft, unlawful taking, and criminal conspiracy only. Defendant received 12 months of probation on each charge to run concurrently with one another.

In the case of Commonwealth v. Jerome Gray, victim was taken to hospital for three cracked ribs, collapsed lung, ruptured spleen [which had to be removed] as a result of being beaten by the defendant [her live-in boyfriend of 4 years] on December 15, 1989. Victim was discharged from hospital on January 5, 1990. Sometime, around February 27, 1990, after her hospital release, the victim called the police to report that the defendant had threatened to

²The appeals court held that the guidelines were not intended to trump judicial discretion and that it was not an abuse of discretion for the judge to consider defendant's remorse [by his payment of approximately \$4,000 in restitution to the victims], nor was it unreasonable for her to consider that all prior convictions were misdemeanor offenses [simple assault and sentenced to 11 1/2 to 23 month in county jail], or that the victim had a blood alcohol level of .2 when she stepped in front of defendant's car and was hit.

kill her, and had come over to her house. An arrest warrant was issued, and, thereafter, defendant turned himself in to law enforcement on March 1, 1990. Defendant denied striking victim with his fists and stated that she was hurt as a result of a fall during an argument.

Defendant waived jury trial, and opted for bench trial on charges: Recklessly Endangering Another Person, Terroristic Threats, Aggravated Assault First Degree; Simple Assault. On May 14, 1991, he was found guilty of REAP, Aggravated Assault Second Degree, and Simple Assault, and acquitted of other charges. The defendant was given a sentence of 24 months reporting probation. Later, on October 24, 1991, defendant violated his probation and was given a sentence of between 11 1/2 months and 23 months.

In Commonwealth v. Jay Hahn, the defendant was accused of injuring a 78 year old male. Defendant was parking his car in front of victim's house, when victim requested that he park somewhere else because he was waiting for his wife to return from the grocery store. Defendant told victim to "Go Fuck Yourself" and got out of the car. Defendant then threw victim face first onto the concrete steps in front of a house. Victim had to be treated at a hospital for a broken nose, and received stitches for other facial injuries.

Defendant was charged with Recklessly Endangering Another Person [REAP], Misdemeanor in the Second Degree, Aggravated Assault, Second Degree, Simple Assault. Defendant waived jury trial. On February 15, 1991, he was found guilty of charges. His bail was revoked and his sentencing was deferred until April 30, 1991. He was given a sentence of between 6 months and 23 months. Defendant was paroled that same day from his sentence.

Second Degree Aggravated Assault does not require a mandatory sentence, unlike a charge of First Degree. In order to convict a defendant of a charge of Second Degree a deadly weapon must be used. Page 28 of the Hahn transcript shows that Judge Massiah-Jackson found that the defendant's body was a deadly weapon.

THE COURT: I think that the way Mr. Hahn used his body by bumping him with his hands would either be considered a deadly weapon, the choice Mr. Knochak [defense counsel] is yours and your client, or it was reckless conduct under circumstances manifesting extreme indifference to the value of a 78 year old person's life. So that's the choice.

Defendant's parole was revoked on October 13, 1992 because the defendant violated his conditions and the remainder of his time was reinstated. On November 2, 1993, he was again recommended for parole after having served 21 months, despite committing an infraction [fighting while in prison] for which he received 14 days punitive segregation.

In Commonwealth v. Edward Baker, the defendant robbed his victim at knife point and took \$284.00. He was charged with Robbery, criminal conspiracy, Theft; Possessing Instruments of Crime; Possessing Concealed Weapon; Recklessly Endangering Another

Person; Terroristic Threats; Simple Assault. Defendant waived jury and proceeded to bench trial. He was adjudged guilty of Criminal Conspiracy, Theft, Concealed Weapon charges, and not guilty of Simple Assault, Terroristic Threats, REAP. Defendant had an extensive prior criminal history including charges of statutory rape, multiple assaults, larceny, starting from 1971, [last offense charged prior to offenses in this case were in 1989] defendant sentenced to 2 1/2 - 5 years.

Sentencing Information Received From Pennsylvania Sentencing Commission

The Pennsylvania Sentencing Commission data shows that Judge Massiah-Jackson's sentencing falls most often within the standard guideline range. It is comparable to that of other Philadelphia judges. However, the information also shows that when she has departed from the standard guideline range she has deviated below the guidelines by over 98%, and has deviated only 1.26% above the guidelines. This sentencing deviation is comparable to other Philadelphia and Pennsylvania judges around the state.

According to the Philadelphia Sentencing Commission, it is mandatory that judges report their sentencing information to the Commission. However, a comparison of the number of criminal cases reported to the commission against the information received from the Court of Common Pleas showing the number of criminal cases handled by Judge Massiah-Jackson reveals a huge discrepancy. For example, the information received from the Court shows that she handled over 500 criminal cases for most years. In contrast, the Commission reports total criminal cases handled as follows: 1985-56; 1986-153; 1988-54; 1989-107; 1990-145; 1991-89. At the suggestion of the Director of the Commission, the information received from the Commission for each of the years reported was combined in order to have enough data to analyze.

Criminal case information received from the Court of Common Pleas shows that for the years that Judge Massiah-Jackson served on the criminal bench [1984 to 1991] she handled very few jury trials -- less than 20 total -- compared to the thousands of cases that she tried non-jury.

Senator SPECTER. Thank you all very much, and that concludes our hearing.

[Whereupon, at 4:10 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.)

Willie James Ware. The name I currently use is James Ware. I also use Jim Ware. In the past I used W. James Ware.

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

**Office: United States Courthouse
280 South First Street
San Jose, CA 95113
(408) 535-5454**

Home: Mountain View, CA 94040

3. Date and place of birth.

November 2, 1946; Birmingham, Alabama

4. Marital Status: (Include maiden name of wife, or husband's name.) List spouse's occupation, employer's name and business addresses.

**Married; Susan Ware (nee Susan Stoll)
Deputy County Counsel
Santa Clara County Counsel's Office
70 W. Hedding Street, E. Wing, Fl. 9
San Jose, CA 95110**

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

<u>Institution</u>	<u>Dates of Attendance</u>	<u>Degree or reason for leaving</u>
Compton College	1/65-6/66	Transferred to four-year institution
California Lutheran University	9/66-6/69	B.A. 1969
Stanford Law School	9/69-6/72	J.D. 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.

YEAR	ORGANIZATION	POSITION
1969	The American Lutheran Church East Palo Alto	Guide (I led inner city teens on backpacking trips through the Sierras and counseled them on personal development)
1969	Stanford University	University Library Worker (Work-Study Program)
1970	O'Melvany & Myers Law Offices Los Angeles, California	Summer Associate
1970	United States Army Fort Knox, Kentucky	Active Duty Reserves Basic Training
1971	United States Army Fort Lewis, Washington	Active Duty Reserves Advanced Basic Training
1971	Kadison, Phelzer, Woodard & Quinn Law Offices Los Angeles, California	Summer Associate
1972	United States Army Fort Gordon, Georgia	Active Army Reserve Military Police School
1973-81	United States Army Reserve San Jose, California	Inactive Army Reserve Military Police
1972-77	Blase, Valentine & Klein Law Offices Palo Alto, California	Associate Attorney
1973-83	Urban Coalition Mid Peninsula Chapter Fair Housing Program	Member Volunteer Attorney
1977-88	Blase, Valentine & Klein (Now Ritchey, Fisher, Whitman & Klein) Law Offices Palo Alto, California	Partner/Shareholder

1980	California Lutheran University Thousand Oaks, California	Visiting Professor Administration of Justice & Business Departments
1980-82	YMCA Palo Alto Area Law Offices Palo Alto, California	Member Board of Directors
1983-88	Stanford University	Member Board of Trustees
1984-86	Stanford University Hospital	Member Board of Trustees
1988-90	State of California County of Santa Clara	Judge Superior Court
1990- present	Martin Luther King Papers Project Stanford University	Member Advisory Board
1990- present	United States Government	United States District Judge, Northern District of California
1991-93	American Leadership Forum Silicon Valley Chapter	Member Board of Directors
1993-96	California Lutheran University Thousand Oaks, California	Member Board of Regents
1992- present	Lincoln Law School of San Jose San Jose, California	Member Faculty
1996- present	Santa Clara University School of Law Santa Clara, California	Member Adjunct Faculty

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.

Dates: September 1972 - December 1972

Branch: United States Army
Active Duty for Training
Military Police School
Fort Gordon, Georgia

Rank: Second Lieutenant

Serial No.: 416-58-1395

Status: Graduated

Discharge: Honorable Discharge from Active Duty

Dates: 1973-1987

Branch: United States Army Reserve

Rank: Captain

Serial No.: 416-58-1395

Status: Discharged upon completion of service - 1987

Discharge: Honorable

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

Doctor of Laws (Honorary Degree) California Lutheran University	1997
Fulbright Fellowship for Lectures on American Legal System in the Middle East	1996
Fellowship by the German-Marshall Fund to study at Atlantik-Bruecke Conference in West Berlin	1987
Martindale-Hubbel Law Directory, a.v. rating	1987

Community Service Award, Urban Coalition	1982
Award from the International Academy of Trial Lawyers for Appellate Advocacy	1970
Graduated Most Outstanding Senior California Lutheran University	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.

American Bar Association	Member		1973-88
Santa Clara County Bar Association	Member		1973-88
Palo Alto Area Bar Association	Member		1972-88
Charles Houston Bar Association	Member		1974-present
Santa Clara County Bar Association	Member	Board of Trustees	1981-82
Santa Clara County Bar Association	Member	Judicial Evaluation Committee	1981-82
Palo Alto Bar Association	Chairman	Law for Laymen Committee	1983-84
United States District Court for the Northern District of California	Member	Merit Selection Panel for recommending individuals for appointment to a position as a Magistrate Judge	1982
Administrative Office of the United States Courts	Chairman	Chambers and Courtroom Umbrella Group for Automation and Technology	1992-97

Court of Appeals for the Ninth Circuit	Chairman	Committee on Model Jury Instructions	1995-present
Court of Appeals for the Ninth Circuit	Member	Task Force on Race, Religion and Ethnic Fairness	1995-present
United States District Court for the Northern District of California	Chairman	Local Rules Committee	1994-present
United States District Court for the Northern District of California	Member	Space Committee	1994-present
United States District Court for the Northern District of California	Member	Court Technology Committee	1994-present
United States District Court for the Northern District of California	Member	Unappropriated Funds Committee	1997-present
Santa Clara County Superior Court	Member	Long Range Planning Committee	1988-89
Santa Clara County Superior Court	Member	Research Attorneys Review Committee	1988-89
Santa Clara County Superior Court	Member	Computerization of the Court Committee	1988-89

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 a member of any organization that is active in lobbying before public bodies.

I am a member of the following organizations:

California Lutheran University Alumni Association
 Stanford Law School Alumni Association
 Martin Luther King Papers Project Advisory Committee
 American Leadership Forum Senior Fellows
 Federal Judges Association
 Lincoln Law School of San Jose Faculty
 Santa Clara University Adjunct Faculty
 Charles Houston Bar Association-Judicial Council

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 Court of Appeals For The Ninth Circuit	1972
United States District Court	
Northern District of California	1972
Central District of California	1973
Eastern District of California	1975
California Supreme Court	1972

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.

Books

Co-author, California Residential Landlord-Tenant Practice, CEB 1986 (Excerpt attached as Exhibit "A-1").

Sole author, Chapter 29 "Selection of Tenants," California Residential Landlord-Tenant Practice, CEB 1986 (See copy attached as Exhibit "A-1").

Articles

"Adopting an Educator Habit of Mind: Modifying What It Means to 'Think Like a Lawyer'," 45 Stanford Law Review, 1993 (See copy attached as Exhibit "A-2").

"A Clash of Sentencing Policies: Sentencing Guidelines Versus Mandatory Minimums," State Bar of California, 1993 (See copy attached as Exhibit "A-3").

"An Assessment of the California Drug Diversion Program, CAJC Forum, Oct/Nov 1974 (See copy attached as Exhibit "A-4").

"Earning the Daubert Seal of Approval for Expert Witnesses," ABTL Newsletter, 1995 (See copy attached as Exhibit "A-5").

Speeches

I often speak to various community and legal groups regarding the administration of justice. The speeches are extemporaneous and are not published. In all speeches, I adhere to the Canons of Judicial Conduct. Copies of formal speeches I have given are attached as Exhibit "A-6"

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

Excellent.

My last physical was March 28, 1997.

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.

From October 1988 until October 1990 I served as Judge of the Santa Clara County Superior Court. The California Superior Court is the court of general jurisdiction in the State of California.

In October, 1990 I was appointed by President George Bush to the position of District Judge of the United States District Court for the Northern District of California. The United States District Court derives its jurisdiction from Article III of the Constitution of the United States to the extent authorized by Congress. The Congressional grant of jurisdiction for the District Court is found in Title 28 of the United States Code Sections 1331, 1332, 1346, 1367 and 1441. I currently serve as a 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 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 ten most significant opinions I have written are as follows. Copies of the unpublished opinions are attached as Exhibits "B"

- (a) Earle v. State Farm Fire & Casualty Company, 935 F.Supp. 1076 (N.D. Cal. 1996)
- (b) Yukiyo Ltd. v. Shiro Watanabe, 1996 WL 756803 (N.D. Cal. 1996) (See copy attached as Exhibit "B-1")
- (c) Wiener v. NEC Electronics, Inc., 1995 WL 429204 (N.D. Cal. 1995) (See copy attached as Exhibit "B-2")
- (d) Bell Atlantic Business Systems Services, Inc. v. Hitachi Data Systems Corp., 1995 WL 798932 (N.D. Cal. 1995) (See copy attached as Exhibit "B-3")
1995 WL 798935 (N.D. Cal. 1995) (See copy attached as Exhibit "B-3")
- (e) Bell Atlantic Business Systems Services, Inc. v. Hitachi Data Systems Corp., 1995 WL 836331 (N.D. Cal. 1995) (See copy attached as Exhibit "B-4")
- (f) Engler v. City of San Jose et al., 1995 WL 767816 (N.D. Cal. 1995) (See copy attached as Exhibit "B-5")
- (g) U.S. v. Hopkins, 1996 WL 61152 (N.D. Cal. 1996); 1996 WL 101195 (N.D. Cal. 1996) (See copy attached as Exhibit "B-6")
- (h) George, et al. v. UXB International, Inc., 1996 WL 241624 (N.D. Cal. 1996) (See copy attached as Exhibit "B-7")
- (i) Wilson v. United States, 1996 WL 297051 (N.D. Cal. 1996) (See copy attached as Exhibit "B-8")
- (j) Nordyke v. County of Santa Clara, 933 F.Supp. 903 (N.D. Cal. 1996)

(2) A short summary of and citations for all appellate' opinions where my decisions were reversed or where my judgment was affirmed with significant criticism of your substantive or procedural rulings are as follows:

(Copies of the unpublished opinions are attached as Exhibits "C")

Unless otherwise indicated, citations are to the Federal Reporter, 3rd Series. Any Ninth Circuit decision issued without a published opinion is identified as a "Decision Without Published Opinion" and is attached as an Exhibit.

If the appeal was from a written order in a file which is still maintained by the Clerk's Office, I have also included a copy of the order. Some appeals were taken from rulings made on the record during trial or from the entire trial record which is voluminous, or from orders which are no longer contained in the files of the Clerk of Court. Trial records not maintained are archived at the Federal Records Center. I am in the process of obtaining the records archived from the Federal Records Center.

(a) Yukiyo, Ltd. v. Shiro Watanabe, et al. No. 97-1115 (Fed. Cir. 1997) (Decision Without Published Opinion)

Yukiyo is a multi-district patent litigation action in which Plaintiff is the assignee of a patent for the fabrication of porcelain restorations. The inventor named in the patent is Dr. Gerald McLaughlin. Plaintiff filed a series of lawsuits against various dental laboratories throughout the United States alleging that the labs infringed the patent for porcelain restorations. Phase One of the trial, the validity of the patent, was tried before a jury. The jury returned a verdict in favor of Plaintiff, finding that the patent was valid. On a motion for judgment as a matter of law, or for a new trial, the Court found that the verdict was not supported by the evidence in the case. Rather, the Court found that the undisputed evidence at trial proved that the patent was invalid because, prior to the filing of the patent application, articles were published in professional journals disclosing the method claimed in the patent for fabricating porcelain restorations. Therefore, the Court entered judgment in favor of Defendants. On appeal, the federal circuit determined that there was substantial evidence to support the jury findings and that the Court's decision to grant judgment as a matter of law was improper.

(See copies of my order, as well as the Federal Circuit's order, attached as Exhibits "C-1")

(b) United States v. Clinton Watson, 1997 WL 367384 (9th Cir. 1997)
(Published Opinion, Not Yet Available in F.3d).

Defendant was tried and convicted by a jury for cellular telephone cloning. Prior to trial, the Court granted Defendant's motion to suppress evidence

obtained by the government's seizure of a safe from Defendant's home. The Court ruled that the safe had been improperly seized and that neither the safe nor its contents could be used at trial. However, during Defendant's opening statement, reference was made to the illegal seizure of the safe. Based on such statement, the Court permitted the government to question its witness about such seizure. Although Defendant's conviction was affirmed on appeal, the Court was criticized for permitting evidence regarding the seizure of the safe to be introduced during the government's case-in-chief, since it found that the door had not been opened by opening statement remarks, since such remarks are not evidence in the case.

(See copy of the Ninth Circuit opinion attached as Exhibit "C-2")

(c) Reynolds v. Gomez, 108 F.3d 338 (9th Cir. 1997) (Decision Without Published Opinion)

Petitioner Lee Anthony Reynolds filed a habeas petition, claiming that he was denied a fair trial because his co-defendant was shackled during various portions of the trial. Petitioner also alleged that identification evidence was impermissibly admitted, that details of a prior robbery conviction were impermissibly admitted, and that an omission in the jury instructions rendered them constitutionally inadequate. The district court denied his petition. The Ninth Circuit vacated the district court's judgment and remanded the case only as to whether the shackles denied Reynolds his right to a fair trial.

(See copies of my order, as well as the Ninth Circuit's opinion, attached as Exhibits "C-3")

(d) Moore v. Gerstein, 107 F.3d 16 (9th Cir. 1996) (Decision Without Published Opinion)

Pro se plaintiff Judy Moore sued Dr. Gerstein under Section 1983, alleging that she had been subjected to an unconstitutional seizure and detention at a mental treatment facility for 48 hours. The district court dismissed the claim because Plaintiff had not alleged facts showing that Gerstein "acted with malicious intent or was grossly negligent" in order to overcome Gerstein's entitlement to qualified immunity. The Ninth Circuit reversed because the trial court had applied an incorrect standard for qualified immunity, and because the defense of qualified immunity was not established on the face of the complaint.

(See copies of my order, as well as the Ninth Circuit's opinion, attached as Exhibits "C-4")

(e) Logan v. Gomez, 81 F.3d 169 (9th Cir. 1996) (Decision Without Published Opinion)

Logan, a California state prisoner, filed a petition for habeas corpus relief, asserting that his due process rights were violated because he was shackled during his trial. The trial court denied the petition. The Ninth Circuit found

that the shackling was prejudicial and could have tipped the balance in this closely decided case. The Ninth Circuit vacated and remanded the matter for the district court to conduct an evidentiary hearing on the petition.

(See copies of my order, as well as the Ninth Circuit's opinion, attached as Exhibits "C-5")

(f) Kimes v. Stone, 84 F.3d 1121 (9th Cir. 1996)

Plaintiffs brought a Section 1983 action against a superior court judge and several attorneys. Plaintiffs alleged that the defendants conspired against them to "overturn" a jury verdict, thus depriving plaintiffs, without due process of law, of property they would have otherwise received from their father's estate. The trial court granted defendants' motion to dismiss, relying on Cal. Civ. Code § 47(b), which immunizes parties involved in litigation from civil liabilities for communications made in the course of that litigation. The Ninth Circuit affirmed the trial court's dismissal in favor of defendant Judge Stone and reversed the dismissal in favor of the attorney defendants. The Ninth Circuit reasoned that conduct by persons acting under color of state law which is wrongful under Section 1983 cannot be immunized by state law.

(See copy of my order attached as Exhibit "C-6")

(g) United States v. Mallory, No. 95-10352, (9th Cir. 1996) (No Published Opinion)

Defendant pled guilty to conspiracy to manufacture methamphetamine and for carrying an altered firearm in the commission of a conspiracy to manufacture methamphetamine. The trial court accepted the guilty plea, but deferred deciding whether to accept the plea agreement until a later date. Subsequently, Defendant filed a motion to withdraw his guilty plea and a motion to dismiss the superseding indictment. The trial court denied the motions, accepted the guilty plea, and sentenced Defendant to 288 months imprisonment. The Ninth Circuit held that the trial court abused its discretion in denying Defendant's motions, and accordingly reversed the Defendant's convictions and remanded the matter to the trial court so that Defendant could enter a new plea.

(See copies of my order, as well as the Ninth Circuit's opinion attached as Exhibits "C-7")

(h) IBM v. Zachariades et al., 70 F.3d 1278 (9th Cir. 1995) (Decision Without Published Opinion)

IBM sued Dr. Zachariades for breach of an employment agreement, contending that he wrongfully refused to assign seven patents to IBM. On summary judgment, the trial court held that IBM's claims were time barred because the statute of limitations for all of IBM's claims commenced with the issuance of the first of the patents-in-suit in May 1986. The Ninth Circuit

held that a separate limitations period began to run upon the issuance of each patent to Zachariades.

(See copies of my order, as well as the Ninth Circuit's opinion, attached as Exhibit "C-8")

(i) Jensen v. County of Santa Clara, 69 F.3d 544 (9th Cir. 1995) (Decision Without Published Opinion)

Plaintiff sought damages from the County and Instar Pest Consultant for injuries allegedly resulting from pesticide exposure in the work place. The district court dismissed Plaintiff's eighteen personal injury claims against Instar as time-barred by California's one-year statute of limitations for personal injury actions, California Civil Procedure Code Section 340(3). On appeal, the Ninth Circuit reversed, holding that Plaintiff's personal injury claims were not time barred because her complaint was filed within one year from the time she discovered the cause of her injury.

(See copies of my order, as well as the Ninth Circuit's opinion, attached as Exhibits "C-9")

(j) U.S. Fidelity & Guaranty Co. v. Riggs, 51 F.3d 284 (9th Cir. 1995) (Decision Without Published Opinion)

Defendant Mr. Riggs was found to be negligent as an architect in this insurance contribution action. The Ninth Circuit reversed judgment and remanded the matter to the district court for further proceedings to allocate responsibility between Mr. Riggs in his capacity as a homeowner and Mr. Riggs as an architect. The matter was also remanded for a determination of reasonable attorney's fees.

(See copies of my order, as well as the Ninth Circuit's opinion, attached as Exhibits "C-10")

(k) Bud Antle, Inc. v. Barbosa, 45 F.3d 1261 (9th Cir. 1994)

Bud Antle, Inc. ("Bud Antle") sued the members and executive secretary of the California Agricultural Labor Relations Board ("ALRB"), claiming that the National Labor Relation Act ("NLRA") ousts the ALRB of jurisdiction to adjudicate various unfair labor practice charges which were pending before the state board at the time. Bud Antle sought injunctive relief to prohibit the ALRB from continuing its proceedings. The district court concluded that the NLRA did not preempt ALRB's jurisdiction over the charges. The district court also held that it was required to abstain pursuant to Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed. 669 (1971). The Ninth Circuit reversed, reasoning that the "Garmon preemption," named for San Diego Building Trades Council v. Garmon, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959), preserved the primary jurisdiction of the NLRB by prohibiting the states from regulating activities that are at least arguably protected by §7 of the

NLRA or arguably prohibited by §8 of that statute. Accordingly, the Ninth Circuit also held that the second prong of the Younger doctrine test, that the state proceedings implicate important state interests, was not met. (See copy of my order attached as Exhibit "C-11")

(l) Berg v. Leason, 32 F.3d 422 (9th Cir. 1994)

After successfully defending himself in a federal court action alleging violations of federal securities and racketeering laws, Berg brought a malicious prosecution action in state court. Defendant removed the action to federal court on the basis of federal question jurisdiction. The district court declined to remand the case. The Ninth Circuit reversed, holding that a malicious prosecution claim did not arise under federal law simply because one element required proof that the underlying federal action was legally untenable.

The files of the Clerk's Office containing the underlying record have been archived. Therefore, no copy of my order is attached at this time. Once the records have been retrieved from the Federal Records Center, I will submit a copy of this order.

(m) Kanemoto v. Reno, 41 F.3d 641 (Fed. Cir. 1994)

Kanemoto, a United States citizen of Japanese ancestry, appealed to the district court the Office of Redress Administration's denial of her claim for restitution. The government moved to dismiss the complaint or transfer the case to the Court of Federal Claims, contending that because Kanemoto sought monetary damages from the United States in excess of \$10,000, the Tucker Act, 28 U.S.C. §1491, precluded jurisdiction in the district court. In pertinent part, the trial court denied the government's motion to transfer reasoning that Kanemoto did not seek "monetary damages," but rather "reparation payments" incidental to her claim for equitable relief. On appeal, the Ninth Circuit reversed, holding that a case which seeks reparation payments falls within the jurisdiction of the Court of Federal Claims under the Tucker Act.

(See copy of my order attached as Exhibit "C-12")

(n) United States v. Saldana, 12 F.3d 160 (9th Cir. 1993)

The Government and Saldana entered into a plea agreement providing that Saldana would plead guilty to three charges of cocaine distribution, and in exchange, the Government would move to dismiss the twelve remaining charges for food stamp fraud. The plea agreement also required Saldana to stipulate to certain facts for purposes of the sentencing guidelines. The presentence report calculated a base offense level of twelve and a two level reduction for Saldana's acceptance of responsibility, for a total offense level of ten. The Government challenged the presentence report for disregarding

the twelve food stamp counts in calculating the base offense level. The district court held that it had the discretion to decide whether it would take into consideration the stipulated food stamp counts in determining the offense level, and it declined to do so. The Ninth Circuit vacated the district court's decision and remanded for resentencing of Saldana, holding that the trial court had an obligation under the Sentencing Guidelines to consider the stipulated facts establishing the food stamp fraud offenses in determining the base offense level.

The files of the Clerk's Office containing the underlying record have been archived. Therefore, no copy of my order is attached at this time. Once the records have been retrieved from the Federal Records Center, I will submit a copy of this order.

(o) Murphy v. T. Rowe Price Prime Reserve Fund et al., 8 F.3d 1420 (9th Cir. 1993)

Plaintiff, the executor of an account holder's estate, sued the defendant investment company for the interest accrued on funds from an uncashed check issued to close out the account. One of the plaintiff's theories for recovery was that the investment company was bound by an oral agreement to return all but 18 percent of the interest. The investment company countered that the purported agreement was unenforceable for lack of consideration because the company had a clear statutory right to retain the interest. Without deciding whether there had in fact been an oral agreement, the district court held that Plaintiff's claims were legally invalid and therefore did not constitute consideration for the alleged oral agreement.

The Ninth Circuit reversed, reasoning that the district court erred in equating the potential validity of the Plaintiff's claim ex ante with its own ex post conclusion as to the merits of the claim. Further, the Court held that under California law, a relinquishment of a colorable claim constitutes valid consideration; that Plaintiff's claim was colorable; and therefore, the agreement was not completely invalid.

(See copy of my order attached as Exhibit "C-13")

(p) United States v. \$434,097.70 In U.S. Currency, 1 F.3d 1247 (9th Cir. 1993) (Decision Without Published Opinion)

In this civil asset forfeiture proceeding, the Ninth Circuit held that the trial court erred in its application of the doctrine of issue preclusion.

In the first forfeiture proceeding, the district court found probable cause to forfeit the cash and an automobile seized from a drug dealer named Michael Miroyan. The decision was appealed, and the Ninth Circuit held that the district court had improperly exercised in rem jurisdiction over the cash because the cash had already been the subject of state forfeiture proceedings. On the merits, the Ninth Circuit upheld the district court's finding of probable cause for the forfeiture of the automobile. After the appeal, the

United States re-filed the forfeiture action against the cash. The district court ruled in favor of the government's motion for summary judgment on the grounds that Miroyan had already had a "full and fair" opportunity to litigate the issue of probable cause in the first forfeiture action. The Ninth Circuit reversed.

(See copy of the Ninth Circuit's opinion attached as Exhibit "C-14")

The files of the Clerk's Office containing the underlying record have been archived. Therefore, no copy of my order is attached at this time. Once the records have been retrieved from the Federal Records Center, I will submit a copy of this order.

(q) Martin by and through Martin v. United States, 984 F.2d 1033 (9th Cir. 1993)

Jennifer Martin was abducted and raped while on an outing from a day care center operated by the government. Her claim for negligent supervision went to trial and she was awarded \$200,000 in economic damages and \$600,000 in non-economic damages. On appeal, the government argued that the trial court incorrectly determined that California Civil Code Section 1431.2(a), which mandates apportionment of non-economic damages, does not apply to actions where one tortfeasor is intentional and the other is negligent. The Ninth Circuit reversed, holding that Section 1431.2(a) applied to any personal injury action.

(See copy of my order attached as Exhibit "C-15")

(r) Payne v. Robert Borg, Warden, 982 F.2d 335 (9th Cir. 1992)

Petitioner Payne was found guilty in state court of first degree murder and of a special circumstance that the murder was committed during the course of a burglary. Payne filed a petition for writ of habeas corpus, contesting only the validity of the special circumstance finding, which resulted in a sentence of life imprisonment without the possibility of parole. The district court granted habeas relief, finding that there was insufficient evidence to prove, beyond a reasonable doubt, that Payne had the necessary intent to support his special circumstance conviction. The Ninth Circuit reversed.

The files of the Clerk's Office containing the underlying record have been archived. Therefore, no copy of my order is attached at this time. Once the records have been retrieved from the Federal Records Center, I will submit a copy of this order.

(s) Atari Corporation v. Ernest & Whinny, 981 F.2d 1025 (9th Cir. 1992)

Atari initiated a plan to acquire Federated. Atari's chief financial officer, Greg Pratt, attempted to evaluate Federated's finances and came to the belief that Federated's assets were overstated. Even so, Pratt was not sure of this fact without an audit and, therefore, he proceeded with the deal. After

the deal was closed the results of Coopers and Lybrand's audit were released identifying adjustments of \$43 million dollars, resulting in a reduction of Federated's net worth by \$33 million. Atari sued Federated's auditors for violations of RICO. The district court ruled that the indemnification provision of the parties' agreement did not provide for indemnification for expenses arising out of an action brought by Atari, but only for indemnification for suits brought by third parties. The Ninth Circuit reversed.

The files of the Clerk's Office containing the underlying record have been archived. Therefore, no copy of my order is attached at this time. Once the records have been retrieved from the Federal Records Center, I will submit a copy of this order.

15(3). Citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions are as follows:

- (a) Nordyke v. County of Santa Clara, 933 F. Supp. 903 (N.D. Cal. 1996); 110 F.3d 707 (1997)
- (b) Wilson v. United States, et al., 1996 WL 297051 (N.D. Cal. May 31, 1996); 1995 WL 77506 (N.D. Cal. 1995); 878 F. Supp. 1324 (N.D. Cal. 1995) (See copies of my unpublished decisions attached as Exhibit "B-8"); 60 F.3d 1411 (9th Cir. 1995)
- (c) George v. UXB International, Inc., 1996 WL 241624 (N.D. Cal. 1996) (See copy attached as Exhibit "B-7")
- (d) United States v. Hopkins, 1996 WL 101195 (N.D. Cal. 1996); 1996 WL 61152 (N.D. Cal. 1996) (See copies attached as Exhibit "B-6")
- (e) Engler v. City of San Jose, 1995 WL 767816 (N.D. Cal. 1995) (See copy attached as Exhibit "B-5")
- (f) Helmet Law Defense League v. State of California, 1996 WL 297038 (N.D. Cal. 1996) (See copy attached as Exhibit "B-9")
- (g) Hunter v. Vasquez, 1995 WL 429242 (N.D. Cal. 1995) (See copy attached as Exhibit "B-10")
- (h) Choice Hotels International, Inc. v. Patel, 1994 WL 706270 (N.D. Cal. 1994); 1994 WL 621668 (N.D. Cal. 1994) (See copies attached as Exhibit "B-11")
- (i) Ridgeway v. Flagstar Corp., 1994 WL 665243 (N.D. Cal. 1994); 1994 WL 665414 (N.D. Cal. 1994); 1994 WL 665250 (N.D. Cal. 1994); 1994 WL 564571 (N.D. Cal. 1994); 1994 WL 525553 (N.D. Cal. 1994) (See copies attached as Exhibit "B-12")
- (j) Yin v. State of California, 1994 WL 594043, 5 NDLR P 470 (N.D. Cal. 1994) (See copy attached as Exhibit "B-13"); 95 F.3d 864 (1996)
- (k) Nanut v. Kimberly-Clark Corp., 1994 WL 570561 (N.D. Cal. 1994) (See copy of my unpublished decision attached as Exhibit "B-14"); 1996 WL 344607 (9th Cir. 1996) (See copy of the Ninth Circuit opinion attached as Exhibit "B-15")
- (l) Mission Oaks Mobile Home Park v. City of Hollister, 788 F. Supp. 1117 (N.D. Cal. 1992); 989 F.2d 359 (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.

Other than judicial office, I have held no elected public offices. From 1983 until 1988 I was a Notary Public of the State of California. Notary Publics are appointed by the Secretary of State of the State of California. I did not renew my commission after I was appointed Judge of the Santa Clara County Superior Court.

I have not been an unsuccessful candidate 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 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;

After graduating from law school and fulfilling my active duty military requirement, I became an associate attorney with the law firm of Blase, Valentine & Klein, a Palo Alto law firm which was founded in 1965. I joined the firm as an associate in December 1972. I became a partner in January 1977. I remained with the firm until my appointment to the Superior Court in November 1988. At some time after I left the firm and after the firm's senior partner retired, the firm changed its name to Ritchey, Fisher, Whitman & Klein. The current address of the law firm is:

Ritchey, Fisher, Whitman & Klein
 A Professional Corporation
 1717 Embarcadero Road
 Palo Alto, California 95050

- 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.

My practice involved significant in-court experience in federal and state courts, primarily in Northern California. I also handled major commercial arbitrations and mediations, as well as other alternative methods of dispute resolution. I represented individuals, partnerships and publicly traded and privately held corporations in a wide variety of business litigation matters.

I gained significant experience in handling intellectual property and unfair competition cases (representing both employers and former employees), wrongful termination of employment cases (also representing both employers and former employees), construction disputes, breach of warranty cases, and partnership and corporate dissolution disputes. My legal work in technical fields included cases of license termination and royalty disputes, semiconductor and computer trade secret disputes, and the professional liability defense of architects, engineers and geologists.

During the first seven years of my practice (1973-1980), criminal defense, involving felonies and misdemeanors, comprised approximately one-third of my caseload. Most of the criminal cases were assigned to my office through the San Mateo County Bar Association Private Defender Program. An illustrative case was People v. Haysbert, a defendant convicted of possession of a large quantity of cocaine for distribution. I was sole defense counsel. The case was tried before a jury, Judge Robert E. Carey, San Mateo County Superior Court, presiding. Haysbert was convicted.

Although the primary nature of my practice was business litigation, I represented plaintiffs in civil rights cases on a *pro bono* basis.

- 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 on a regular basis. During the early years of my practice, it was not uncommon for me to try several cases during any given year. During the last half of my practice, the complexity of the cases led to fewer trials.

2. What percentage of these appearances was in:

(a) federal courts;	30%
(b) state courts of record;	70%
(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.

During the course of my sixteen years of practice, I tried approximately 15 cases to verdict or judgment.

I tried 12 cases to verdict or judgment as sole counsel

I tried 1 case to verdict as chief counsel

I tried 2 cases to verdict as associate counsel

5. What percentage of these trials was:
- | | |
|---------------|-----|
| (a) jury; | 40% |
| (b) non-jury. | 60% |

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.

CASE No. 1: Mary Sullivan, M.D. v. The Sequoia Hospital District

COURT: United States District Court for the
Northern District of California

CITATION: [Unreported, Docket No. C 87-5127 SC]

JUDGE: Honorable Samuel Conti
450 Golden Gate Avenue
San Francisco, California 94102
(415) 522-2077

CLIENT: Anesthesiologist Group of Sequoia Hospital
I served as lead counsel.

**ASSOCIATE
COUNSEL:** James Wagstaffe
Cooper, White & Cooper
201 California Street
San Francisco, California 94111
(415) 433-1900

**OPPOSING
COUNSEL:** Clyde Butts
1225 Alpine Road, Suite 204
Walnut Creek, CA 94696
(415) 943-1850

DATE: 1987-88

DESCRIPTION:

I represented a group of anesthesiologists who were members of the medical staff at Sequoia Hospital. My clients were sued by Dr. Sullivan, another anesthesiologist on the hospital staff. Dr. Sullivan claimed that my clients and the Sequoia Hospital, which she also sued, conspired to restrict her privileges. She claimed that the restrictions were imposed to restrict competition by physicians who were not members of the medical group, in violation of federal and state antitrust and civil rights.

I was a key draftsman and strategist in a motion for summary judgment to dispose of the case prior to trial. The joint defense motion demonstrated that the restrictions about which Dr. Sullivan complained were placed upon her by a Medical Review Board, which determined that the restrictions were appropriate after two life-threatening incidents occurred involving patients of Dr. Sullivan. The case required the Court to resolve whether physicians taking actions pursuant to medical review proceedings enjoyed a qualified privilege against the type of claims brought by Dr. Sullivan.

Judge Conti granted judgment was entered in favor of all defendants.

CASE No. 2: Ampex v. Tandon Corporation

COURT: Santa Clara County Superior Court

CITATION: [Unreported - Docket No. 557299]

JUDGE: Honorable Peter Anello (now deceased)

**OPPOSING
COUNSEL:** James N. Penrod
B. Thomas French
Hassard, Bonnington, Rogers & Huber
50 Fremont Street, Suite 3400
San Francisco, CA 94105
(415) 543-6444

William C. Morison-Knox
Pillsbury, Madison & Sutro
P.O. 7880
San Francisco, CA 94120
(415) 983-1000

CLIENT: Tandon Corporation
I served as lead counsel.

DATE: 1984-86

DESCRIPTION:

This was a lawsuit by Ampex alleging that Tandon had infringed trade secrets and proprietary information. The alleged stolen technology involved methods for placing a thin magnetic layer on hard disks so that these disks could be used to store information for use in computers.

I managed a team of four attorneys and three paralegals. To prepare for the case, I was required to acquire a working knowledge of the technology for manufacturing computer "hard disks," the metallic media used in "hard disk drives" for storage of data. The case also involved complex legal issues with respect to whether certain skills or information acquired by an engineer while working with one employer could be used by the engineer while employed at a subsequent employer.

As a means of settlement, a minitrial was conducted before Judge Anello on the issue of the ownership of the technology. A ruling by Judge Anello that a substantial amount of the disk coating skills and information, which Ampex claimed to be proprietary, was in the public domain led to a settlement of the case favorable to Tandon Corporation.

CASE No. 3: Daggett Assembly v. Union Street Investment Co.

COURT: San Francisco Superior Court

CITATION: [Unreported - Docket No. Unavailable]

JUDGE: Honorable John Dearman
San Francisco Superior Court
633 Folsom Street
San Francisco, California 94107
(415) 554-5790

CLIENT: Daggett Assembly
I served as sole counsel

OPPOSING
COUNSEL: James H. Pooley
Fish & Richardson
2200 Sand Hill Road
Menlo Park, California 94025
(415) 322-5070

DATE: 1982-84

DESCRIPTION:

This was a lawsuit in which I represented a general contractor in an action against the owner/developer of a San Francisco Victorian building for recovery of the balance owed for construction fees. The case was factually and legally complex because, in the course of the project, the owner decided to restore the exterior of the building so that it would be historically accurate but wished to have an ultra-modern interior. These changes doubled the cost of construction and, because they were made during the period of construction, they also delayed the time of completion.

When the construction was completed, the owner refused to pay the contractor and asserted a \$1 million cross-complaint, claiming that the delay had caused him to miss a "market window" and had caused him to incur substantial interest expenses.

The case was tried to a jury, which returned a full verdict for my client, the plaintiff. The jury awarded nothing to the defendant on the cross-complaint.

CASE No. 4: Servamatic Solar Systems v. Eleanor Garcia

COURT: Santa Clara County Superior Court

CITATION: [Unreported - Docket No. Unavailable]

JUDGE: (Settled before assignment to a Judge)

OPPOSING
COUNSEL: Richard Goff
Heller, Ehrman, White & McAuliffe
333 Bush Street
San Francisco, CA 94104
(415) 772-6000

CLIENT: Eleanor Garcia, Class Representative
I served as sole counsel for the Class

DATE: 1982-84

DESCRIPTION:

I represented Eleanor Garcia, who had purchased a solar hot water heater ("solar system") from Servamatic. Mrs. Garcia refused to pay for the solar system because it did not perform as the salesman had represented. Servamatic sued her in Municipal Court to collect. She retained me to defend her. The sales literature that she had been given stated that she would experience energy cost savings that were grossly disproportionate to her actual savings. These misrepresentations were apparently a standard practice in all sales by Servamatic.

I removed the case to Superior Court and filed a cross-complaint, alleging a class action against Servamatic for consumer fraud in the sales of solar systems. Servamatic settled the case on the eve of a hearing on my motion to certify the class. The motion contained declarations, photographs and documents demonstrating that Servamatic systematically misrepresented that its system would supply 75% of a consumer's annual PG&E costs on a 68-degree day. In fact, the test used by Servamatic to calculate this 75% savings was done in the middle of the Arizona desert on a 99-degree day.

Under the terms of the settlement, Servamatic was required to rebate to each customer the difference between the price of the system and its fair market value.

CASE No. 5: Jenine Perrignon et al. v. Bergen Brunswig Corp.

COURT: United States District Court for the
Northern District of California

CITATION: (1978) 77 FRD 455, Docket No. C 77-0069 CR

JUDGE: Honorable Charles Renfrew (Now Retired)
LeBoef, Lamb, Greene & MacKae
1 Embarcadero Center
San Francisco, California 94111
(415) 951-1100

CLIENT: Jenine Perrignon
I served as co-counsel

Lead Counsel
Paul C. Valentine
400 Capitol Mall
Sacramento, California 95814
(916) 449-3948

**OPPOSING
COUNSEL:** Howard R. Lloyd, Jr.
Hoge, Fenton, Jones & Appel
60 South Market Street
San Jose, CA 95113
(408) 287-9501

Chris A. Tarkington
Tarkington, O'Connor & O'Neill
One Market Plaza
Spear Street Tower
19th Floor
San Francisco, CA 94105
(415) 777-5501

DATE: 1977-78

DESCRIPTION:

I represented Mrs. Perrignon and her daughter in an action for violation of their rights to privacy and intentional infliction of emotional distress by Mrs. Perrignon's former employer. Mrs. Perrignon's home was burglarized. She received harassing and threatening telephone calls and her home and office telephone lines were tapped. The lawsuit alleged that these acts were done at the direction of the defendant to discourage Mrs. Perrignon from cooperating with U. S. Senate investigators. A subcommittee of the Senate was investigating whether governmental officials responsible for awarding contracts

for the administration of Medicare and Medicaid programs were being paid kickbacks by companies in exchange for contract awards. A subsidiary of Bergen Brunswig was the target of the investigation. Mrs. Perrignon was employed at the Bergen Brunswig subsidiary and saw checks for large amounts of money made out to government officials.

The case involved complex issues of federal and state privacy and agency laws. The case was tried to a jury. However, it was settled favorably to my client, the plaintiff, before it was submitted for decision.

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CASE No. 6: People v. Superior Court (Ho)

COURT: San Mateo County Superior Court

CITATION: (1974) 11 Cal. 3d 59

JUDGE: Honorable Gerald E. Ragan

CLIENT: Lawrence Ho
I served as sole counsel.

OPPOSING
COUNSEL: Rodney J. Blonien
Office of the California Attorney General

 [Mr. Blonien's current business address]
Whitman, Breed, Abbott & Morgan
1121 L. Street No. 507
Sacramento, California 95814
(916) 441-4242

DATE: 1973-74

DESCRIPTION:

I represented Mr. Ho, a defendant charged with possession of drugs. Since this was his first offense, he was eligible to have his case "diverted" from the criminal justice system under Penal Code Section 1000.2, a statute which went into effect on the day of Mr. Ho's arrest. Under the program, first offenders would be placed on pre-trial probation for a period of time. If they successfully completed the program, the charges would be expunged and they would be treated as if no criminal charges had been brought against them.

I requested the court to admit Mr. Ho to the diversion program. The court decided to grant my motion. However, the statute gave the prosecutor the power to veto the judge's decision. When the prosecutor vetoed the diversion, I argued that the provisions allowing a prosecutorial veto were unconstitutional as a violation of the separation of powers provision of the California Constitution. The trial judge agreed with my argument

and ordered diversion. The prosecutor appealed.

The case was appealed to the California Court of Appeal. However, because the case involved an important issue of California constitutional law, it was taken for hearing by the California Supreme Court. I argued the case on appeal to the California Supreme Court. The Supreme Court sustained my argument that once the prosecutor has exercised the prosecutor's discretion to charge an offense, all proceedings with respect to disposition of the case are judicial in nature and may not be made the subject of a prosecutorial veto. The California Supreme Court declared unconstitutional those provisions of Section 1000.2 giving the prosecutor a veto. (The statute was subsequently amended by the California Legislature to delete the unconstitutional provision.)

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CASE No. 7: Jupiter Engineering v. Union Carbide
 COURT: San Mateo County Superior Court
 CITATION: [Unreported; Docket No. 1 Civ. 49045]
 JUDGE: Honorable G. Brooks Ice (Retired)
 CLIENT: Union Carbide Corporation
 I served as lead counsel.

OPPOSING
 COUNSEL: Vincent P. Finigan
 Brobeck, Phleger & Harrison
 One Market Plaza Spear Street Tower
 San Francisco, CA 94105
 (415) 442-0900

DATE: 1979-80

DESCRIPTION:

Jupiter Engineering sued Union Carbide for damages resulting from an allegedly defective railroad carload of defective thermoplastic resin called "polysulfone." Jupiter used the polysulfone resin to manufacture plastic coffee-makers. Jupiter claimed that defects in the polysulfone caused coffee makers to delaminate and fail during use. Jupiter claimed that in one instance the delamination caused a short-circuit in the electrical system in the coffee maker, which caused it to overheat and caused an office fire.

On behalf of Union Carbide, we filed a cross-complaint for recovery of the price of the product. By tracing the batch numbers to other customers who purchased this particular polysulfone and through expert analysis of retained samples, we proved that the resin was not defective. We showed that delamination of the coffee-makers was caused by

an aerosol spray used by Jupiter to prevent the molded parts from sticking to the injection molding machine. Union Carbide had supplied Jupiter and its other customers with a warning against use of this particular mold release spray. The case was tried for two weeks before a jury, which returned a defense verdict.

I also represented Union Carbide on an appeal by Jupiter to the 1st Appellate District, Division 4, No. I CIV 49045. The judgment was sustained in all respects.

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CASE No. 8: Julius and Hertha Kessler v. Las Hadas Apartments

COURT: United States District Court for the
Northern District of California

CITATION: [Unreported, Docket No. C 80-3716 SW]

JUDGE: Honorable Spencer Williams
280 South First Street
San Jose, California 95113
(408) 535-5355

CLIENTS: Julius and Hertha Kessler
I served as sole counsel.

OPPOSING
COUNSEL: Bronson, Bronson & McKinnon
Bank of America Center
555 California Street
San Francisco, CA 94104
(415) 986-4200

DATE: 1975-76

DESCRIPTION:

The Kesslers, who are Jewish, were tenants in the Las Hadas Apartments. The owners hired a new manager. Coincidental to the hiring of the new manager, the Kesslers started to experience harassment. They were told that their minor great grandson could not stay overnight in their apartment, a restriction which was not placed on other tenants. Furthermore, their complaints about broken fixtures were ignored. One day, when they were at the pool in the apartment complex with their great grandson, the manager ordered the child out of the pool. When the Kesslers questioned the manager, she told them that the hours for children in the pool had been changed to Saturdays only. When Mr. Kessler protested the new rule, words were exchanged with the manager, who said that she wished Mr. Kessler had been killed in a gas chamber. This caused Mr. Kessler, an immigrant from Poland and an internee in a concentration camp, and his wife to suffer emotional

distress.

Believing that they were being discriminated on the basis of their religion and ethnicity, the Kesslers complained to a nonprofit fair housing agency. The agency sent "testers" to the apartment, posing as potential tenants. Black, Jewish and white testers investigated the practices at the apartment complex. The differential treatment of the testers led the agency to conclude that the complex treated white apartment-seekers differently from black and Jewish apartment-seekers. The case was referred to me as a volunteer attorney.

On behalf of the Kesslers, I filed an action in the district court claiming a violation of the 1968 Civil Rights Act by Las Hadas Apartments. Judge Williams refused to allow the testimony of the testers on the ground that treatment of prospective apartment-seekers was not relevant to alleged discriminatory treatment of existing tenants. The jury returned a verdict in favor of the defendants.

I represented the Kesslers on appeal from the judgment on the ground that it was error for the trial court to refuse to permit the fair housing testers to testify. The case was settled by a consent decree under which Las Hadas agreed to eliminate the rules which were the source of the conflict, and the appeal was dismissed.

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CASE No. 9: Rainer Schulz v. Computer Curriculum Partnership

COURT: Santa Clara County Superior Court

CITATION: [Unreported-Docket No. unavailable]

JUDGE: Honorable Tsketsugu Takei (Retired)

CLIENT: Rainer Schulz
I served as sole counsel.

OPPOSING
COUNSEL: Sherwood M. Sullivan
Hopkins & Carley
150 Almaden Boulevard
San Jose, CA 95113
(408) 286-9800

DATE: 1982-83

DESCRIPTION:

I represented Mr. Schulz, a member of a real estate investment partnership. The

corporate general partner attempted to terminate his interest under a provision of the partnership agreement. However, the termination notice was defective under the provisions of the agreement. Consequently, Mr. Schulz did not receive notice of deadlines for taking actions to protect certain rights given to him as a partner. In addition, even if his interest was properly terminated, we contended that the partnership accounting was defective and the appraisal of his interest substantially understated. The case was estimated to require one week to try. I made a motion to bifurcate the case in order to first have a trial on the issue of the effectiveness of the notice before proceeding to a trial on the complex issues of evaluating the worth of his interest. The second issue would not need to be reached if improper notice had been given. The court granted the bifurcation motion.

After one day of trial, the court ruled that the notice was ineffective to terminate Mr. Schulz' partnership interest. Consequently, Mr. Schulz was able to retain his partnership interest and the complex and time-consuming appraisal issues were rendered moot.

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CASE No. 10: Motorola Computer Systems v. Phoenix Leasing

COURT: Santa Clara County Superior Court

CITATION: [Unreported - Docket No. 621947]

JUDGE: Honorable Homer Thompson (deceased)

CLIENT: Motorola Computer Systems
I served as sole counsel.

OPPOSING
COUNSEL: John Graham
Frاندzel & Share
8383 Wilshire Boulevard Suite 400
Beverly Hills, CA 90211
(213) 852-1000

DATE: 1986-87

DESCRIPTION:

Phoenix Leasing purchased computer equipment from Motorola Computer Systems, a wholly owned subsidiary of Motorola, Inc., for lease to customers of Phoenix Leasing. Motorola leased equipment to these same customers directly. In order to avoid confusion by customers as to whom payment should be sent, Motorola collected all payments and remitted to Phoenix Leasing its pro rata share. In the course of auditing the account, Motorola determined that it had overpaid Phoenix Leasing \$4.6 million beyond what was owed to it. When Phoenix Leasing was advised of the mistake and of Motorola's intention to adjust the account between the two companies to correct the overpayment, Phoenix Leasing objected and claimed that the payment was actually owed to it. Motorola advised Phoenix Leasing that no

further payments would be made on the account until the overpayment was exhausted. In retaliation, Phoenix Leasing notified Motorola customers to send all lease payments directly to Phoenix Leasing.

Motorola, Inc., was an existing client of my law firm. I was retained to represent Motorola. I filed a motion for a preliminary injunction to prevent Phoenix Leasing from contacting or collecting from Motorola's customers. Judge Thompson granted the motion.

Because of the complexity of the case, it was referred to Retired Judge J. Barton Phelps, as a Special Master for all discovery disputes. In the course of proceedings before the Special Master, the parties were able to reach a settlement of the case. Retired Judge Phelps may be contacted at:

J. Barton Phelps
1755 Embarcadero Road
Palo Alto, California 94303
(415) 858-1414

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.)

1992	Association of Business Trial Lawyers Annual Seminar	Panel Participant Alternative Dispute Resolution in the Federal Courts
1992	California Continuing Education of the Bar Federal Practice Program	Judicial Faculty Participant
1993	American Intellectual Property Law Association Mid-Winter Institute	Panel Member New Developments in Intellectual Property Law
1993	ALI-ABA Seminar	Panel Member New Directions in Antitrust Law
1994-present	Chairman	Local Rules Committee U.S. District Court Northern District of California
1995	United States/Jordan Legal Study Project	Judicial Participant
1994-present	Committee on Model Jury Instructions for the Ninth Circuit	Member and current Chairman

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 do not anticipate receiving any income from previous business relationships, professional services, firm memberships, former employers, clients or customers. I currently receive income as an adjunct faculty member at Lincoln Law School of San Jose and the Santa Clara University School of Law for teaching one evening class.

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 Judicial Code of Conduct with respect to the resolution of any potential conflict-of-interest. I am unaware of any categories of litigation or financial arrangement that are likely to present potential conflicts-of-interest during my initial service in the position of Circuit Judge.

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.

If permitted by the Chief Judge of the Circuit, I plan to continue to teach a class on Civil Procedure at the Santa Clara University School of Law in its Evening Division. The class meets for two and one-half hours, once a week between September and May. I receive a modest compensation for teaching.

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 AO-10 Report attached as Exhibit "D"

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

See attached Exhibit "E"

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 1968 presidential campaign, I was a regional organizer for former President Richard M. Nixon. During 1968, I worked as a consultant to the Minority Affairs Committee of the Republican National Committee. At various times, I have worked as a local campaign worker in the Congressional campaigns of Tom Kuechel, Pete McCloskey, Tom Campbell, Don Edwards and in the Supervisorial campaign of Anna Eshoo. I have held no official campaign position.

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 described above, up until my judicial appointment, I was a member of the Stanford University Board of Trustees. As a Trustee, I participated in numerous meetings and conferences designed to improve the quality of education for disadvantaged students. Approximately one-third of my time was devoted to Stanford or educational matters while serving as a Trustee. This was one of the most rewarding experiences I have ever had.

I am a participant in the Santa Clara County Department of Education "Adopt A School" Program. The goals of this program are to increase knowledge and understanding of the fundamental principles and processes of our legal system among elementary and high school teachers and students and to increase opportunities for students to interact with positive adult role models. I have adopted and regularly participate with three schools in Santa Clara County.

From 1980 until 1982, I was a member of the Board of Directors of the Palo Alto Area YMCA. I am still a Sustaining Member.

I attend United Methodist Church in Los Altos, CA, led by Rev. John Dodson.

My interest in civil rights litigation led me to serve as a volunteer attorney in a pro bono program to represent victims of housing discrimination. From 1973 until 1983, I represented numerous plaintiffs in approximately 70 fair housing cases. Most of the cases were filed in the U.S. District Court for the Northern District of California.

As a result of my work, the fair housing program in which I participated was approved by the Board of Governors of the California State Bar as a Certified Lawyer Reference Service.

The extensive experience in federal procedure which I gained early in my career, through my participation in litigation of fair housing cases, was extremely beneficial to me later in my career when my practice came to involve litigation of intellectual property cases in federal court.

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?

No.

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

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 and (including the circumstances which led to your nomination and interviews in which you participated).

I am unaware of a formal commission. In March, 1997 I received a call from Chief Judge Procter Hug inquiring about my interest in being considered for a position as a circuit judge. I told him of my interest. Afterward, I wrote a letter to President Clinton requesting consideration. I have been interviewed by officials of the Justice Department, the Office of the White House Counsel, 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.

No.

5. Please discuss your views on the following criticism involving judicial activism.¹

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 the term is described above, judges should not be “activist.” The function of the judiciary is to decide the cases presented to the court. The decisions should be made strictly according to the facts of the cases and the applicable laws. Judges should not make decisions based upon fear or favor. In the exercise of discretion, judges should act conservatively.

AO-10 (w)
Rev. 8/96

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Name Reporting (Last name, first, middle initial) WARR, JAMES .		2. Court or Organization U.S. COURT OF APPEALS, 9TH CIR		3. Date of Report 07/01/1997	
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. CIRCUIT JUDGE		5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date 06/27/1997 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final		6. Reporting Period 01/01/1996 to 06/27/1997	
7. Chambers or Office Address U.S. COURTHOUSE 280 SOUTH FIRST STREET San Jose, California 95113		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____			
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 the last page.					

I. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Member of Governing Board	California Lutheran University
2 _____	_____
3 _____	_____

II. AGREEMENTS (Reporting individual only; see pp.14-17 of Instructions.)

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1 _____	_____
2 _____	_____
3 _____	_____

III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 19-25 of Instructions.)

DATE	PARTIES AND TERMS	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1996	LINCOLN LAW SCHOOL-COMPENSATION AS INSTRUCTOR	\$ 3,140.00
2 8/15/96	University of Santa Clara Law School-Instructor	\$ 5,777.76
3 _____	_____	_____
4 _____	_____	_____
5 _____	_____	_____

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	WARE, JAMES .	07/01/1997

IV. REIMBURSEMENTS and GIFTS — transportation, lodging, food, entertainment.

(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. 26-29 of Instructions.)

	SOURCE	DESCRIPTION
<input type="checkbox"/>	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. 30-33 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts)		
	empt		
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. 34-36 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	WARE, JAMES .	07/01/1997

IX. CERTIFICATION

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. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature James Ware Date July 4, 1997

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. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
 Administrative Office of the United States Courts
 One Columbus Circle, N.E.
 Suite 2-301
 Washington, D.C. 20544

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

WARE, JAMES .

Date of Report

07/01/1997

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

 NONE (No additional information or explanations.)

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	\$4,300	Notes payable to banks--secured	0
U.S. Government securities-- Schedule 1	150	Notes payable to banks--unsecured	0
Listed Securities--Schedule 2	70	Notes payable to relatives	0
Unlisted securities--Schedule 3	31,000	Notes payable to others	0
Accounts and notes receivables:		Accounts and bills due	0
Due from relatives and friends	85,000	Unpaid income tax	0
Due from others	0	Other unpaid tax and interest	0
Doubtful	0	Real estate mortgages payable-- Schedule 5	325,000
Real estate--Schedule 4	715,000	Chattel mortgages and other liens payable	65,000
Autos and other personal property	55,000	Other debts--itemize:	
Cash value--life insurance	10,000	Consumer Credit	20,000
Other assets--itemize:		Education Loans	40,000
Boat	30,000		
Household Furnishings & Personal Effects	200,000	Total Liabilities	450,000
		Net Worth	595,520
Total Assets	1,045,520	Total liabilities and net worth	1,045,520
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	None	Are any assets pledged?	No
On leases or contracts	None	Are you defendant in any suits or legal actions?	Yes (See Biographical Questionnaire)
Legal Claims	None	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	Payroll Withholding		
Other special debt	None		

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SCHEDULE 1

United States Savings Bond	
Face Amount	\$250.00
Current Cash Value	150.00

SCHEDULE 2

Common Stock General Motors	
2 Shares (Approximate Value)	70.00

SCHEDULE 3

Thrift Savings Plan	\$15,000
IRA Account	
Dean Witter	9,000
USAA Mutual fund	7,000

SCHEDULE 4

1223 Arbor Court	
Estimated Fair Market Value	\$700,000
R Ranch Time Share	15,000

SCHEDULE 5

Great Western Savings & Loan	\$325,000
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I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Lynn S. Adelman

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

Home: Waterford, Wisconsin

Office: Adelman, Adelman & Murray, S.C. law firm
308 East Juneau Avenue, Milwaukee, WI 53202

3. Date and place of birth.

October 1, 1939, Milwaukee, WI.

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

Married since April 23, 1976 to Elizabeth (maiden name Halmbacher) Adelman. She is an attorney and partner in Adelman, Adelman & Murray, S. C., 308 East Juneau Avenue, Milwaukee, WI 53202.

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

Princeton University, A.B., 1961.
Attended 1957-61, A.B. received 1961

Columbia University Law School, L.L.B., 1965.
Attended 1962-65, L.L.B. received 1965

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.

1961-1962: Sales, Kirby Distributing Company, Trenton, NJ.

1962: Management trainee, Holland Laundry, Philadelphia, PA.

Summer, 1963: Law Clerk, Law firm of Pellettieri & Rabstein, Trenton, NJ.

Summer, 1964: Law clerk to Attorney John Pratt, National Council of Churches, New York, NY.

1965-1966: Research assistant to Professor Monrad G. Paulsen, Columbia University Law School, New York, NY 10027.

1966: Law clerk to Attorney Richard H. Kuh, New York, NY.

1967-1968: Trial attorney, Legal Aid Society, Criminal Courts Division, New York, NY.

1968-1972: Sole practitioner, Law Office of Lynn S. Adelman, New York, NY.

1972-1973: Associate, Law Office of Coffey, Lerner & Murray, Milwaukee, WI.

1973-1978: Partner, Law Office of Lerner & Adelman, Milwaukee, WI.

1978-1983: Sole practitioner, Law Office of Lynn Adelman, Milwaukee, WI.

1983-1988: Partner, Law Office of Adelman & Adelman, Milwaukee, WI.

1988 to present: Partner, Law Firm of Adelman, Adelman & Murray, S. C., Milwaukee, WI.

1977-Present: Wisconsin State Senator, 28th Senate District, State Capitol, Madison, WI.

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.

Graduated *cum laude* from Princeton University and *cum laude* from Columbia Law School.

Award from Legal Action of Wisconsin for outstanding *pro bono publico* service as a dedicated attorney and public servant (1994).

Freedom of Information Award for contribution to freedom of the press and First Amendment rights from the Wisconsin Society of Professional Journalists (1990).

Leadership Award for tireless efforts in setting high ethical standards for Wisconsin state government from Common Cause of Wisconsin (1988).

Lifetime Achievement Award for Leadership Against Drunk Driving from Mothers Against Drunk Driving (1995).

Sheridan-McCabe Memorial Award for service in the consumer interest from the Wisconsin Chapter of the Consumer Federation of America (1987).

Eunice Edgar Award for Lifetime Achievement on behalf of civil liberties from the Wisconsin Chapter of the American Civil Liberties Union (1994).

Award for work on behalf of people with disabilities from Full Citizenship Initiative of Waukesha County for (1990).

Full of Heart Award for being a good employer from the Wisconsin Chapter of 9 to 5, Inc. (1991).

Conservationist of the Year from the Waukesha County Conservation Alliance (1991).

Award for contributions to community based corrections from Wisconsin Corrections Coalition (1992).

Clean 16 Award for work on behalf of the environment from Wisconsin Environmental Decade (numerous times between 1977-1994).

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.

Wisconsin Bar Association, 1972-present.

Wisconsin State Senate Judiciary Committee, 1977-present, Chair 1979-1993; 1995-present.

Wisconsin Judicial Council, 1979-1993; 1995-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.

a. None.

b. Temple Emanuel-Waukesha, Wisconsin, Racine County and Wisconsin Democratic Party, Waukesha Environmental Action League, Greendale Historical Society, Little Muskego Lake Association, New Berlin Prospect Lions Club and American Jewish Committee.

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 in membership. Give the same information for administrative bodies which require special admission to practice.

Admitted to practice in the State of New York, 1967 (membership lapsed when I moved to Wisconsin but has been renewed).

Admitted to practice in United States District Court for the Southern District of New York, 1969.

Admitted to practice in State of Wisconsin, 1972; admitted to practice in United States District Court for the Eastern District of Wisconsin, 1972; Court of Appeals for Seventh Circuit, 1972; United States Supreme Court, 1992.

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 readily available to you, please supply them.

Bad Laws Make Hard Cases: Hate Crime Laws and the Supreme Court's Opinion in Wisconsin v. Mitchell, 29 Gonzaga Law Review 1 (1994).

Child Abuse Reporting Legislation, Some Legislative History, 34 George Washington Law Review 482 (1966).

Departures from the Uniform Marital Property Act Contained in the Wisconsin Marital Property Act, 68 Marquette Law Review 390 (1985).

Introduction, 69 Marquette Law Review 159 (1986).
Volume dedicated to articles on drunk driving.

Should Wisconsin Lower the Blood Alcohol Content to .08 for Driving Under the Influence? Yes, Wisconsin Counties Magazine (May, 1992).

Rewriting the Crime Laws is a Precondition of 'truth in sentencing', Wisconsin Lawyer (June, 1997).

Campaign Finance Reform, Wisconsin Medical Journal (May, 1997).

The Presumption of Release in Bail Decisions, Wisconsin Lawyer (July, 1989).

A Study of James Weldon Johnson, Journal of Negro History, Vol LII, p. 128 (1967).

Wisconsin Should Not Reverse 140 Years of History by Reinstating the Death Penalty, Wisconsin Lawyer (May, 1993).

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

Good. 1997.

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 decision 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 have been Wisconsin State Senator, 28th Senate District since 1977. I was first elected in November, 1976 and re-elected in 1980, 1984, 1988, 1992 and 1996.

I ran unsuccessfully for the House of Representatives in November 1974 in the 9th Congressional District and in the 1982 and 1984 Democratic primaries in the 4th Congressional District.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk of 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; See No. 3 below

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;

1965-1966: Research assistant to Professor Monrad G. Paulsen, Columbia University Law School, 435 West 116th Street, New York, NY 10027.

1966: Law clerk to Attorney Richard H. Kuh, now at 555 5th Avenue, New York, NY 10017.

1967-1968: Trial attorney, Legal Aid Society, Criminal Courts Division, 100 Centre Street, New York, NY 10013.

1968-1972: Law Office of Lynn S. Adelman, 401 Broadway, New York, NY 10013.

1972-1973: Law Office of Coffey, Lerner & Murray, 152 West Wisconsin Avenue, Milwaukee, WI 53202.

1973-1978: Law Office of Lerner & Adelman, 152 W. Wisconsin Avenue, Milwaukee, WI 53202.

1978-1983: Law Office of Lynn Adelman, 411 East Mason Street, Milwaukee, WI 53202 and 1840 North Farwell, Milwaukee, WI 53202.

1983-1988: Law Office of Adelman & Adelman, 828 North Broadway, Milwaukee, WI 53202.

1988 to present: Law Firm of Adelman, Adelman & Murray, S. C., 308 East Juneau Avenue, Milwaukee, WI 53202.

1977-Present: Wisconsin State Senator, 28th Senate District, State Capitol, Madison, WI 53702.

- 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?

1967-1972 practice was primarily a criminal trial practice.

1972-1997 practice has been approximately 75% civil and 25% criminal.

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

I represent individuals, non-profits and small businesses. In the cases involving individuals I do primarily personal injury and criminal work. I have been involved in many cases involving constitutional issues. I have a number of business clients and my business practice is primarily a litigation practice. I also do considerable work in the area of administrative law, particularly zoning.

- 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 the appearances was in:

(a) federal courts;

10%

(b) state courts of record;

80%

(c) other courts.

Local administrative agencies - 10%

3. What percentage of your litigation was:

(a) civil;

75%

(b) criminal.

25%

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 80 cases tried to judgment in which I was sole or lead counsel.

5. What percentage of these trials was:
- (a) jury;
12%
 - (b) non-jury.
88%

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 of parties whom you

represented; describe in detail the nature of your participation in 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. *Wisconsin v. Mitchell*, 113 S.Ct. 2194 (1993). This case involved a challenge to the Wisconsin hate crime law. I filed an *amicus curiae* brief in the Wisconsin Supreme Court arguing that the law punished thought in violation of the First Amendment. The Wisconsin Supreme Court held that the law was unconstitutional and relied heavily on my brief. I then became Todd Mitchell's lawyer and argued the case in the United States Supreme Court on April 21, 1993. The Supreme Court reversed the decision of the Wisconsin Supreme Court. Co-counsel were Kenneth Casey, 161 W. Rockwell Street, Jefferson WI 53549, (414) 674-2800; Pamela Moorshead, 400 North Executive Drive, Brookfield, WI 53005, (414) 821-5559; Susan Gellman, 138 South Third Street, Columbus, OH 43215, (614) 280-1000. Opposing counsel was Attorney General James Doyle, State Capitol, Madison, WI 53702, (608) 266-1221.

2. *Citizens Utility Board, et al. v. Klauser*, 194 Wis. 2d 484 (1995). As lead counsel, I represented the plaintiffs in a challenge to the Governor's attempt to execute a "write-in" veto. I brought the case to the Wisconsin Supreme Court on an original jurisdiction theory, which is used when cases raise significant public issues. The Governor struck an appropriation amount in the budget bill

of \$350,000 and wrote in a different amount, \$250,000. The Supreme Court, in a 4-3 decision, upheld the write-in veto of an appropriation amount. I argued the case in the Wisconsin Supreme Court on April 26, 1995. Opposing counsel was Alan Lee of the Attorney General's Office, 123 West Washington Avenue, Madison, WI 53702, (608) 266-0020.

3. *Risser, et al. v. Klauser*, 207 Wis. 2d 177 (1997). This case also involved a challenge to the Governor's partial veto power and was also brought as an original action. As lead counsel, I represented several legislators and citizens. Here, the Governor attempted a write-in veto of a non-appropriation amount, namely an amount of revenue bonding authority. The Governor deleted the amount set by the legislature and wrote in a figure \$40 million dollars lower. The Supreme Court held in a 4-3 decision that the Governor exceeded the scope of the write-in power authorized in *Citizens Utility Board* and struck down the Governor's attempted veto. This is an historic case for it is the first veto case that the Supreme Court decided in favor of the legislative branch of government. Opposing counsel were Bruce Harms and Michael Modl of 2 East Mifflin Street, Madison, WI 53701, (608) 257-5661. I argued the case in the Wisconsin Supreme Court on October 29, 1996.

4. *Joni B. and Richard S. v. State of Wisconsin; Malmstadt, et al. v. State of Wisconsin*, 202 Wis. 2d 1 (1996). In this case, I represented two parents and seven Milwaukee County trial judges, including Chief Judge Patrick Sheedy (telephone (414) 278-5112) in a challenge to a Wisconsin statute prohibiting courts from appointing lawyers for parents in cases involving alleged neglect of children. Our position was that the statute violated both the separation of powers principle and due process of law. The Supreme Court ruled unanimously in our favor on both grounds. I argued this case in the Wisconsin Supreme Court on May 3, 1996. Co-counsel were David Harth, 150 E. Gilman Street, Madison, WI 53701, (608) 258-4210; and Paula Doyle, 121 South Hamilton Street, Madison, WI 53703, (608) 255-6627. Opposing counsel was Michael Modl of 2 East Mifflin Street, Madison, WI 53701, (608) 257-5661.

5. *Demmith v. Wisconsin Judicial Conference*, 166 Wis. 2d 649 (1992). As lead counsel, I represented the plaintiff in a challenge to the misdemeanor bail schedule used throughout Wisconsin to set bail at night and on weekends when judges

are unavailable. The plaintiff was held for five days in the Milwaukee County jail on money bail for a minor traffic case. He had no previous record and substantial ties to the community. The plaintiff's contention was that the bail schedule did not conform to the statutory requirement that money bail could not be imposed except to ensure the defendant's return to court. The Wisconsin Supreme Court unanimously upheld the plaintiff's challenge and required the Judicial Conference to promulgate a new bail schedule. I argued this case in the Wisconsin Supreme Court, which had original jurisdiction, on January 3, 1992. Co-counsel was Evelyn Mazack, 17 South Fairchild Street, Madison, WI 53707, (608) 264-8574. Opposing counsel was Ray Taffora, 1 South Pinckney, Suite 900, Madison, WI 53703, (608) 257-3501.

6. *Wisconsin Prof. Police Assoc. v. Public Service Commission*, 205 Wis. 2d 60 (Ct. App. 1996). As lead counsel, I represented a number of organizations and individuals concerned about the loss of privacy involved in Caller I.D. telephone service. The staff of the Public Service Commission had made recommendations adverse to my clients. I challenged the recommendations, and the case was tried before a hearing examiner employed by the Commission. The three-member Commission upheld the recommendation of its staff. The Circuit Court of Dane County (Hon. Moria Krueger) reversed the decision of the Public Service Commission. The Public Service Commission appealed to the Wisconsin Court of Appeals, which reinstated the decision of the Public Service Commission (Dyckman J.). I argued the case in the Court of Appeals on June 25, 1996. Opposing counsel was Steve Levine, 610 Whitney Way, Madison, WI 53707, (608) 267-2890. The Wisconsin Supreme Court denied my petition for review.

7. *Barnett v. Wisconsin Ethics Board*, 817 F. Supp. 67 (E.D. Wis. 1993). This case involved a challenge to a statute known as the "gag law" which prohibited state employees from making requests to legislators for appropriations for their agencies. As lead counsel, I represented the plaintiff, a professor at the University of Wisconsin-Milwaukee who sought a declaratory judgment that the law violated his First and Fourteenth Amendment rights. The United States District Court for the Eastern District of Wisconsin (Hon. John W. Reynolds) granted declaratory relief striking down the law. The case was decided on briefs. The

opposing counsel was Assistant Attorney General Alan Lee, 123 West Washington Avenue, Madison, WI 53702, (608) 266-0020.

8. *United States v. Hasiwar*, 299 F.Supp 1053 (1969). I was counsel for the defendants in this federal criminal case. The charge was that the defendants assaulted federal narcotics agents by intervening in an altercation between the agents and other individuals. I argued two sets of motions in this case. First, I successfully argued for a lengthy adjournment on the grounds that necessary witnesses would be unavailable because of pending charges against them. Later, I moved to dismiss the indictment because the statute making it a crime to assault federal employees omitted employees of the Bureau of Narcotics and Dangerous Drugs. The Federal District Court (Hon. Dudley Bonsal) dismissed the indictment. I argued the dispositive motion in 1970. The Government sought a direct appeal to the Supreme Court bypassing the 2nd Circuit Court of Appeals. Ultimately, I persuaded the Government to drop the appeal. The opposing counsel was Sterling Johnson now United States District Judge in the Southern District of New York, 40 Centre Street, New York, NY (212) 791-1140.

9. *Peck v. Meda-Care Ambulance*, 156 Wis. 2d 662 (Ct. App. 1990). In this case, Peck, a lawyer, sued Meda-Care for legal fees. I represented Meda-Care which counterclaimed, alleging negligence. Peck's alleged negligence consisted, among other things, of violating the Code of Professional Responsibility by being a witness in the same case in which he served as counsel. After a jury trial in August, 1989, the Circuit Court (McMahon, J.) set aside the verdict and granted Meda-Care summary judgment. The Court of Appeals (Fine, J.) reversed. The Wisconsin Supreme Court denied a petition for review. The case raised the issue of the relationship between the Rules of Professional Responsibility and the standard of care in a malpractice case against a lawyer. The case is widely discussed at seminars for lawyers concerning ethical issues. The opposing counsel was John DeStefanis, 1011 North Mayfair Road, Milwaukee, WI 53226, (414) 257-1800.

10. *Krug v. Zeuske*, 199 Wis. 2d 406 (Ct. App. 1996) This case involved a successful challenge to five state statutes that appropriated over \$300,000 to road building contractors. As lead counsel, I represented a number of

legislators, taxpayers and local government officials, who contended that the payments constituted "extra compensation" to the contractors in violation of Article IV, Section 26, of the Wisconsin Constitution, which prohibits the legislature from granting "any extra compensation to a... contractor after the services have been rendered or the contract has been entered into." After a hearing in April of 1995, the trial court (Northrup J.) granted summary judgment for the defendants. The Court of Appeals (Eich C.J.) reversed and held that the statutes were unconstitutional. The case was decided on briefs. Opposing counsel were Assistant Attorney General, Gerald S. Wilcox, 123 West Washington Avenue, Madison, WI 53707, (608) 267-2222 and Carl Sinderbrand, 2 East Gilman Street, #300, Madison, WI 53701, (608) 257-5335.

In addition to the foregoing, the following individuals are familiar with my legal abilities: Attorney General James Doyle, State Capitol, Madison WI 53702, (608) 266-1221; Judge James Gramling, 951 North 7th Street, Milwaukee, WI 53233, (414) 278-3800; Chief Judge Patrick Sheedy, 901 North Ninth Street, Milwaukee, WI 53233, (414) 278-5112; Chief Justice Shirley Abrahamson, 231 East State Capitol, Madison, WI 53702, (608) 266-1885; Judge Fred Kessler, 3432 North Shepard Avenue, Milwaukee, WI 53211, (414) 332-6647; Judge Robert Landry, 2245 West Greenwood Road, Milwaukee, WI 53209, (414) 228-1914; Assistant Attorney General Alan Lee, 123 West Washington Avenue, Madison WI 53707, (608) 266-0020; Attorney David Harth, 150 East Gilman Street, Madison WI 53701, (608) 258-4210; Attorney Paula Doyle, 121 South Hamilton Street, Madison WI 53703, (608) 255-6627; Attorney Ken Casey, 161 West Rockwell Street, Jefferson WI 53549, (414) 674-2800.

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.)

Other important legal activities in which I have been involved fall into three broad categories: building a successful law firm, handling a variety of significant cases other than those identified in the answer to question 18 and

shaping Wisconsin law as a state senator.

Building a Law Firm.

I have been primarily responsible for the creation, development and management of the law firm of Adelman, Adelman & Murray. This firm has grown from two lawyers to ten lawyers in the last thirteen years. I have had the experience of building a small business and meeting a payroll. This experience has given me a good sense of the concerns of small businessmen and of ordinary people who have legal problems. This "real world" experience will be an asset to me as a judge.

Shaping Wisconsin Law as a State Senator.

As a state senator I have had a substantial impact on Wisconsin law. As chair of the Senate Judiciary Committee from 1979-1993 and again from 1996-Present, I have shaped legislation concerning the civil and criminal justice systems. My job as chair has been to ensure that any bill which left the committee was defensible as policy and technically sound.

In addition, I have been the principal author of numerous important laws. Some of these laws are listed below under appropriate categories.

Making government more accountable to citizens.

- Ethics code for state and local public officials. This code creates strict standards of conduct for public officials and requires full disclosure of significant economic interests.
- Lobbying law which establishes the principle that public officials can take nothing of value from lobbyists or principals. The law also requires full disclosure of expenditures designed to influence government action.
- Wisconsin open records law. This law establishes the presumption that all government records are accessible to the public and creates an enforcement procedure.

Laws Protecting Public Safety While Respecting Individual Rights.

- Amendment to Wisconsin Constitution prohibiting further expansion of gambling.
- Amendment to Wisconsin Constitution delineating the rights of victims of crimes. This is a balanced measure which promotes participation of victims in the judicial process but protects the rights of defendants.
- Wisconsin drunk driving law. This law establishes an objective standard, defining drunk driving provides strong penalties for violations and requires appropriate education and treatment for all drunk drivers.
- Anti-stalking legislation. I crafted a compromise between anti-domestic violence and pro-life groups by persuading both groups to agree to the model anti-stalking law proposed by the National Institute of Justice.
- A law which provides that subpoenas rather than search warrants be used to obtain personal papers from persons not suspected of any wrongdoing.
- Comprehensive reform of municipal court procedures. This law streamlines procedures for prosecuting municipal violations while protecting the rights of defendants.

Judicial Council Bills.

The Wisconsin Judicial Council is an agency of the Supreme Court the purpose of which is to propose improvements in judicial procedures. I have been a member of the Council for over 15 years. I sponsored and defended all legislation which came out of the Council including major changes in laws regarding venue, statutes of limitation, guardians ad litem, appellate practice, probate, peremptory writs, contempt of court, judge substitution, the insanity defense, small claims procedure, sentencing, restitution and earnings garnishment.

Laws Regarding Families.

- The Wisconsin marital property law establishes the principle that marriage is an economic partnership and recognizes the economic contribution that a non-wage earning spouse makes to a marriage.
- A reform of police and prosecutorial procedures in handling domestic violence cases. The law is designed to get police to arrest and prosecutors to prosecute cases of spousal abuse.
- Paternity law making HLA blood test admissible in evidence thereby improving capacity to identify fathers and collect child support.
- Laws which establish the rights of adoptees, cut red tape in adoption of foreign children and improve procedures in adoption cases.

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.
 1. Wisconsin Deferred Compensation Plan, value of interest is approximately \$80,000, payable on separation from state service.
 2. Wisconsin Retirement System, value of interest is approximately \$175,000, payable in form of annuity after separation from state service.
 3. IRA Account at Everen Securities, approximate value of \$40,000.
 4. Adelman, Adelman & Murray, S.C., accrued bonus, buy-out of interest in law firm, value will be determined and paid out within one year.
 5. Rent from premises at 308 East Juneau Avenue, Milwaukee, WI 53202, \$45,000 per year.
 6. Mortgage due from Milwaukee School of Engineering on property at 1202 North Broadway, Milwaukee, WI 53202 payable by January, 1998. Amount due is \$38,000.
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 will follow the appropriate rules, guidelines and canons of ethics to resolve any potential conflicts of interest, including the Code of Judicial Conduct. I will make full disclosure and/or recuse myself where appropriate. Because my financial involvements are relatively limited I

anticipate few, if any, conflicts.

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 Financial Disclosure Report attached hereto.

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 campaign, your title and responsibilities.

Candidate for state senate 1976, 1980, 1984, 1988, 1992 and 1996.

Candidate for Congress 1974, 1982 and 1984.

AO-10
Rev 1/97FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1996Report Required by the Ethics
Reform Act of 1989, Pub. L. No.
101-194, November 30, 1989
15 U.S.C. App. 4, 101-117

1 Person Reporting (Last name, first, middle initial) Adelman, Lynn S.	2 Court or Organization District Court - Eastern District of Wisconsin	3 Date of Report 09/09/97
4 Title (Article III Judges indicate active or senior status. Magistrate judges indicate full- or part-time) U.S. District Judge Nominee	5 Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 1/1/96 ___ Initial ___ Annual ___ Final	6 Reporting Period 9/9/97
7 Chambers or Office Address 308 East Juneau Avenue Milwaukee WI 53202	8 On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
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 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input checked="" type="checkbox"/> NONE (No reportable positions)	
State Senator	State of Wisconsin
Partner	Adelman, Adelman & Murray S.C.

II. AGREEMENTS. (Reporting individual only; see pp 14-17 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements)	
	Sum certain will be paid out within one (1) year.

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp 18-25 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (years, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		
1995	State of Wisconsin - legislative salary	\$ 38,000
1995	Adelman, Adelman & Murray S.C. - salary and rent	\$ 125,000
2 1995	Spouse employed as attorney for firm of Adelman, Adelman & Murray S.C.	\$
3 1996	State of Wisconsin - legislative salary	\$ 38,000
4 1996	Adelman, Adelman & Murray S.C. - salary and rent	\$ 125,000
5 1996	Milwaukee School of Engineering (sale of building)	20,000
1996	Spouse employed as attorney for firm of Adelman, Adelman & Murray S.C.	\$(down payment)

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Adelman, Lynn S.	Date of Report 09/09/97
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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. 26-29 of Instructions.)

	SOURCE	DESCRIPTION
<input type="checkbox"/>	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. 30-33 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
<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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE	CODE*
<input checked="" type="checkbox"/>	NONE (No reportable liabilities)			
1				
2				
3				
4				
5				
6				

*Value Codes: J-\$15,000 or less K-\$15,001-\$50,000 L-\$50,001-\$100,000 M-\$100,001-\$250,000 N-\$250,001-\$500,000
 O-\$500,001-\$1,000,000 P1-\$1,000,001-\$5,000,000 P2-\$5,000,001-\$25,000,000
 P3-\$25,000,001-\$50,000,000 P4-\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Adelman, Lynn S.	Date of Report 09 / 09 / 97
--	--------------------------------

VII. Page I INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children. See pp 37-54 of Instructions.)

A Description of Assets (including trust assets) <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. Place "(X)" after each asset exempt from prior disclosure.</small>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period					
	(1) AMT. I Code (A-M)	(2) Type (e.g. div. rent or int.)	(1) Value Code (J-P)	(2) Value Method Code (O-W)	(3) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure				
						(2) Date Month Day	(3) Value Code (J-P)	(4) Gain Code (A-M)	(5) Identity of buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)						Exempt				
¹ Amcap Fund, Inc. (J)	D	div.	D	T						
² Delaware Group Value Fund (J) Limited Term Municipal Fund (J)	D	div.	D	T						
³ MFS Fund (J)	C	int.	L	T						
⁴ MFS Fund (J)	C	int.	L	T						
⁵ Morgan Stanley Fund (J)	B	div.	L	T						
⁶ Washington Mutual Fund (J) Growth Fund of America (J)	D	div.	M	T						
⁷ Templeton Emerging Markets Fund (J) Paul Halmbacher Family Trust (S)	B	div.	J	T						
⁸ Puerto Rico Electric Power Authority		NO INCOME	K	T	(see VIII)					
⁹										
¹⁰										
¹¹										
¹²										
¹³										
¹⁴										
¹⁵										
¹⁶										
¹⁷										
¹⁸										
¹ Inc/Gain Cds (Col. B1, D4)	A-\$1,000 or less F-\$50,001-\$100,000	B-\$1,001-\$2,500 C-\$2,501-\$5,000	D-\$5,001-\$10,000	E-\$10,001-\$25,000 F-\$25,001-\$50,000	G-\$50,001-\$100,000 H-\$100,001-\$250,000	I-\$250,001-\$500,000 J-\$500,001-\$1,000,000	K-\$1,000,001-\$2,500,000 L-\$2,500,001-\$5,000,000	M-\$5,000,001-\$10,000,000 N-\$10,000,001-\$25,000,000	O-\$25,000,001-\$50,000,000 P-\$50,000,001-\$100,000,000	Q-\$100,000,001 or more
² Val Cds (Col. C1, O3)	J-\$15,000 or less O-\$50,001-\$1,000,000 P1-\$1,000,001-\$5,000,000 P2-\$5,000,001-\$25,000,000	K-\$15,001-\$50,000 L-\$50,001-\$100,000 M-\$100,001-\$250,000 N-\$250,001 or more	O-\$15,001-\$50,000 P1-\$50,001-\$100,000 P2-\$100,001-\$250,000 P3-\$250,001 or more	Q-\$15,001-\$50,000 R-\$50,001-\$100,000 S-\$100,001-\$250,000 T-\$250,001 or more	U-\$15,001-\$50,000 V-\$50,001-\$100,000 W-\$100,001-\$250,000 X-\$250,001 or more	Y-\$15,001-\$50,000 Z-\$50,001-\$100,000 AA-\$100,001-\$250,000 AB-\$250,001 or more	AC-\$15,001-\$50,000 AD-\$50,001-\$100,000 AE-\$100,001-\$250,000 AF-\$250,001 or more	AG-\$15,001-\$50,000 AH-\$50,001-\$100,000 AI-\$100,001-\$250,000 AJ-\$250,001 or more	AK-\$15,001-\$50,000 AL-\$50,001-\$100,000 AM-\$100,001-\$250,000 AN-\$250,001 or more	AO-\$15,001-\$50,000 AP-\$50,001-\$100,000 AQ-\$100,001-\$250,000 AR-\$250,001 or more
³ Val Mth Cds (Col. C2)	Q-Appraisal U-Book Value	R-Contract V-Other	S-Assessment W-Estimated	T-Cash/Market						

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Adelman, Lynn S.

Date of Report

09/09/97

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

My spouse is a beneficiary of the Paul Halmbacher Family Trust. This Trust is presently in probate and will probably be distributed within the next sixty days.

The Trust consists primarily of stocks.

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. 4, § 501 et seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Lynn Adelman

Date

9/11/97

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. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT
NET WORTH

Assets		Liabilities	
Cash on hand and in banks	10,000	Notes payable to banks-secured	None
U.S. Government Securities- add schedule	None	Notes payable to banks-unsecured	None
Listed securities-add schedule	877,000	Notes payable to relatives	None
Unlisted securities - add schedule	None	Notes payable to others	None
Accounts & notes receivable (Shepherd Express Newspaper)	2,000	Accounts & bills due	None
Due from relatives and friends	None	Unpaid income tax	None
Due from others	None	Other unpaid tax & interest	None
Doubtful	None	Real estate mortgages payable- add schedule	None
Real estate owned - add schedule	400,000	Chattel mortgages and other liens payable	None
Real estate mortgages receivable	38,000	Other debts	None
Autos and other personal property	20,000		
Cash value - life insurance	None		
Other assets-itemized			
State Pension	175,000		
Deferred Compensation	80,000		
IRA	40,000		
Spouses beneficial interest in Paul Halmbacher Family Trust and Estate of Dorothy Halmbacher, presently in probate	600,000		
Total Assets	2,242,000	Total Liabilities	None
NET WORTH	2,242,000	NET WORTH	2,242,000
CONTINGENT LIABILITIES	None	TOTAL LIABILITIES & NET WORTH	2,242,000

GENERAL INFORMATION

Are any assets pledged? No.

Are you a defendant in any suits or legal actions? No.

Have you ever taken bankruptcy? No.

SCHEDULE 1 - MUTUAL FUNDS & SECURITIES

Amcap Fund	\$ 140,000
Delaware Group Value Fund	116,000
Growth Fund of America	158,000
Limited Term Municipal Fund	90,000
MFS Fund	107,000
Washington Mutual Investors Fund	150,000
Templeton Emerging Markets Fund	15,000
Morgan Stanley Asian Growth Fund	71,000
Puerto Rico Electric Power Authority	30,000
TOTAL	\$ 877,000

REAL ESTATE SCHEDULE

Residence:	
Waterford, Wisconsin	\$200,000
Office Building:	
308 East Juneau Avenue, Milwaukee, WI 53202	\$200,000
Total	\$400,000

III. GENERAL (PUBLIC)

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 a substantial amount of pro bono work almost all of which is designed to serve the disadvantaged. I spend about 20% of my professional time on cases which benefit the disadvantaged. Many of the cases discussed previously are of this type. For example, the case of *Demmith v. Wis. Judicial Conference*, 166 Wis. 2d 649 (1992) benefitted all indigent defendants charged with minor offenses. The purpose of my efforts was to eliminate a bail schedule which imposed money bail on poor people even when it was unnecessary to ensure their return to court.

Similarly, the purpose of the case of *Joni B., et al. v. State*, 202 Wis. 2d 1 (1996) was to ensure that, where appropriate, courts can appoint lawyers for parents of children who are subject to CHIPS proceedings. Such parents are usually poor and otherwise disadvantaged. In both the *Demmith* and *Joni B.* cases my work was volunteered.

I also do pro bono work in more ordinary cases. For example, I recently represented a young man with AIDS in a very difficult personal injury case largely because he needed a lawyer. Similarly, I recently represented a high school student who was wrongly denied a college scholarship because of the negligence of the Milwaukee School District. In both cases the work required far exceeded the potential compensation. I took both cases because I thought I could help ensure that justice was done.

I also encourage all the lawyers in my firm to do pro bono work.

I have also tried to serve the disadvantaged as a legislator. I have worked hard on such issues as child abuse prevention and domestic abuse prevention which are important to disadvantaged persons. I have been involved in efforts

to improve state health insurance programs. I have also supported an effective Public Defender System in Wisconsin.

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, yes. In January, 1997, I learned that there would be a vacancy in the Eastern District of Wisconsin. I applied for the position. I was asked to submit an application to the Wisconsin Federal Nominating Commission established by Senators Kohl and Feingold. This Commission was chaired by the Dean of the Marquette Law School and consisted of two appointees by the State Bar and four by each of the senators. I was asked to fill out a questionnaire and was interviewed by the Commission. I was one of five candidates recommended by the Commission. In addition, my qualifications and background have been reviewed by 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 an 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 been subject to 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 courts is to adjudicate cases between litigants. Courts are not legislatures, and they should not legislate. As one who has served as a legislator, I am sensitive to the differences between the legislative and judicial functions. Judges ought to resist each of the above-described tendencies toward judicial activism. Judges should scrupulously respect the limits of judicial power. The role of a judge is to decide cases correctly, based on the facts.

I am also sensitive to the different duties of the three branches of government because, as a lawyer, I have worked on many cases involving separation of powers issues. It is important for judges to pay careful attention to the separation of powers principle. This means that judges should understand that policy-making is the province of the legislative and executive branches of government, not the judicial branch.

Moreover, judges must be sensitive to such doctrines as standing, ripeness and abstention which serve the function of keeping courts from resolving issues which may not be properly before them. These doctrines reflect the important proposition that District Courts are courts of limited jurisdiction.

Because of my work as a legislator and my work as a lawyer in cases involving conflicts between branches of government, I have a highly developed sense of the appropriate roles of the different branches of government and particularly of the limited role of the judicial branch.

I. BIOGRAPHICAL INFORMATION (PUBLIC)1. **Full name (include any former names used.)**

Charles Roberts Breyer

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

Home: San Francisco, CA

Office: Coblenz, Cahen, McCabe & Breyer
222 Kearny Street, 7th Floor
San Francisco, CA 941083. **Date and Place of Birth.**

November 3, 1941; San Francisco, California

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: Sydney Goldstein
Executive Director
City Arts & Lectures.
1415 Green Street
San Francisco, CA 941095. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

<u>Colleges and Law Schools Attended</u>	<u>From</u>	<u>To</u>	<u>Degree Received</u>
Harvard College	1959	1963	A.B. <u>cum laude</u> in economics (June 1963)
Boalt Hall, University of California	1963	1966	L.L.B. (June 1966)

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.**

Employment:

Summer 1963

Playground Director
San Francisco Unified School District
San Francisco, California

Summer 1964

Law Clerk
Lewis & Rouda
San Francisco, California

Summer 1965

Group Leader
Experiment in International Living
Putney, Vermont

August 1966-July 1967

Law Clerk to Judge Oliver J. Carter
Chief Judge
U.S. District Court for the Northern District of California

July 1967-September 1967

U.S. Army Reserve
Fort Ord, California

October 1967-December 1967

Juvenile Hall Project
Legal Aid Society of San Francisco

December 1967-August 1973

Assistant District Attorney
San Francisco District Attorney's Office

August 1973-November 1974

Assistant Special Prosecutor
Watergate Special Prosecution Force
Department of Justice, Washington, D.C.

December 1974 to December 1979

Jacobs, Sills & Coblentz
(now Coblentz, Cahen, McCabe & Breyer)
San Francisco, California

1979

Chief Assistant District Attorney
City and County of San Francisco

1980 to Present

Coblentz, Cahen, McCabe & Breyer
San Francisco, California

Board of Directors, Non-Profit Organizations:

1977

Travelers Aid

1979

Spring Opera

1980

Friends of the San Francisco Public Library

1983-1985

Northern California Chapter of the American Civil Liberties Union

1986-1989

Lawyers Committee for Human Rights

1996-1997

Lawyers Committee for Human Rights, Advisory Council

1995-Present

San Francisco Conservation Corps

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.

1966-1972—U.S. Army ER 19856060
 1966-1969—P.F.C.
 1969-1972—Captain, Judge Advocate General's Corps.
 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.

I have received citations in connection with my services as Assistant District Attorney and Assistant Special Prosecutor. I am also a Fellow of the American College of Trial Lawyers, a recognition conferred by my peers in the practice of trial law. I was selected as a lawyers' representative to the Judicial Conference of the Ninth Circuit from 1989 to 1991. In my youth I was an Eagle Scout and the recipient of the Harvard College Hansen Award.

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 present.

San Francisco Bar Association, 1975 to present.

Chairperson, Ethical Considerations in the Prosecution and Defense of Criminal Cases (American Bar Association), 1976-1982.

Member, Advisory Committee to the United States District Court, Northern District of California. This committee, established by Act of Congress, was appointed by the judges of the District Court to serve as an advisory committee on the implementation of the "Speedy Trial Act" (1975).

Member, Penal Reform Committee, San Francisco Bar Association, (1970).

San Francisco Civil Investigative Grand Jury (1975).

San Francisco Juvenile Probation Commission (1996).

Co-Chair, Special Bar Committee, San Francisco Bar Association, investigation of San Francisco District Attorney's office (1976).

American College of Trial Lawyers, Federal Rules of Criminal Procedure Committee (1997).

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:

- American Bar Association
- American College of Trial Lawyers
- State Bar of California
- San Francisco Bar Association

* * * * *

(b) Other:

- California Tennis Club (Copy of By-Laws attached as Exhibit A)

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.S. District Court for the Northern District of California, 1966
- U.S. District Court for the Central District of California, 1980
- U.S. District Court for the Southern District of California, 1982
- U.S. District Court for the Eastern District of California, 1985
- U.S. District Court for the District of Columbia, 1973
- U.S. District Court for the District of Kansas, 1987
- U.S. District Court for the Northern District of Illinois, 1985
- U.S. District Court for the Southern District of New York, 1988
- U.S. District Court for the Northern Mariana Islands, 1986
- U.S. Tax Court, 1978
- U.S. Supreme Court, 1974
- U.S. Court of Appeals for the Ninth Circuit, 1966
- California Supreme Court, 1966

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 and 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.

Over-crowding in the San Francisco County Jail published in the San Francisco Bar Association Journal (1970). (Unable to locate a copy.)

PUBLICATION	DATE	TITLE
San Francisco Chronicle	5/16/82	Condemning the U.S. Justice System (Book Review)
San Francisco Chronicle	9/12/82	A Country Lawyer's Fear of Rejection (Book Review)
San Francisco Chronicle	12/18/83	Two Versions of A Lawyer's Art (Book Review)
San Francisco Chronicle	1983	Legal Victory At Nearly Any Cost (Book Review)
San Francisco Chronicle	4/1/84	Constitutional "Niceties" Were Just Inconvenient (Book Review)
San Francisco Chronicle	6/2/85	Flawed Study of a Murderer (Book Review)
San Francisco Chronicle	7/30/89	The Power of Life and Death (Book Review)
San Francisco Chronicle	12/3/89	A Pursuit of Justice (Book Review)
San Francisco Chronicle	2/25/90	A Supremely Pragmatic Court (Book Review)
San Francisco Chronicle	3/13/91	Medical Testimony with a Novel View (Book Review)
San Francisco Chronicle	5/19/91	"Chutzpah" Is His Middle Name (Book Review)
San Francisco Chronicle	12/1/91	Washington's Power Lawyer (Book Review)

San Francisco Civil Investigative Grand Jury

Grand Jury Reports	1975	The Office of the Mayor
Grand Jury Reports	1975	San Francisco Police Department
Grand Jury Reports	1975	Sheriff's Department
Grand Jury Reports	1975	Strike Report

Grand Jury Reports	1975	Electronic Data Processing
Grand Jury Reports	1975	The Art Commission
Grand Jury Reports	1975	San Francisco's Legal Services
Grand Jury Reports	1975	Minority Report on the Office of the District Attorney

Copies of the above-referenced materials are attached as Exhibit B.

- 13. Health: What is the present state of your health? List the date of your last physical examination.**
- Excellent. May 28, 1997
- 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 opinion.**
- 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.**

In 1975 I was appointed by the Presiding Judge of the Superior Court to serve as a member of the San Francisco Civil Investigative Grand Jury. We issued detailed reports on local governmental operations, including the County jail facilities, management of the Controller's Office, and the Public Health Service. The term of service was for one year.

In 1994 I was appointed by Frank Jordan, Mayor of the City and County of San Francisco to the Board of Directors of the San Francisco Conservation Corps. My term of service is through 1998.

In 1996 I was appointed by the Mayor of San Francisco, upon the recommendation of the San Francisco Superior Court, to the Juvenile Probation Commission for a four-year term. I presently serve as the President of the Commission. This Commission sets policy for the administration of the Juvenile Justice System. The term of service is March 1996 through January 15, 2000.

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;**

August 1966-July 1967

Law Clerk to Judge Oliver J. Carter
Chief Judge
U.S. District Court for the Northern District of California

- (2) whether you practiced alone and, if so, the addresses and dates.**

I have never practiced as 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;**

October 1967-December 1967

Juvenile Hall Project
Legal Aid Society of San Francisco
1663 Mission Street
San Francisco, California 94103

I served as counsel to indigent juveniles at the Youth Guidance Center in proceedings before Court commissioners and Superior Court judges.

December 1967-August 1973

Assistant District Attorney
880 Bryant Street
San Francisco District Attorney's Office
San Francisco, California 94103

I served as trial counsel representing the State of California in the prosecution of criminal offenses, both misdemeanors and felonies. These offenses ranged from traffic offenses to multiple homicides, for which the death penalty was imposed. I tried over 50 felony jury trials and was certified as a criminal law specialist by the State Bar of California.

August 1973-November 1974

Assistant Special Prosecutor
Watergate Special Prosecution Force
Department of Justice, Washington, D.C.

I was the second chair in the prosecution of the White House "plumbers" for violation of the civil rights of Dr. Louis Fielding. I also conducted grand jury proceedings into illegal wiretaps and illegal campaign contributions.

December 1974 to December 1979

Jacobs, Sills & Coblentz
(now Coblentz, Cahen, McCabe & Breyer)
222 Kearny Street, 7th Floor
San Francisco, California

I joined the firm in December 1974, and became a partner in 1975. Since that date I have specialized in civil and criminal complex litigation.

1979 ..

Chief Assistant District Attorney
City and County of San Francisco
880 Bryant Street
San Francisco, California 94103

1980-Present

Coblentz, Cahen, McCabe & Breyer
222 Kearny Street, 7th Floor
San Francisco, California 94108

- (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 year?**

And

- (2) **Describe your typical former clients, and mention areas, if any, in which you have specialized.**

I have a general litigation practice specializing in the trial of cases. From 1967 to 1974 as a prosecutor, I appeared in court on a daily basis and was certified by the State Bar of California as a criminal law specialist. Upon entering private practice, I have represented defendants in criminal matters, with an emphasis on "white collar" offenses. In civil matters, I have tried a wide variety of cases including matters relating to construction defects, trusts and estates, securities, entertainment law and real estate. I have no "typical" client. My clientele ranges from private individuals to publicly-held corporations and financial institutions.

- (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 date.**

I have appeared in court frequently throughout my practice. As an Assistant District Attorney, I appeared in court daily. As a private practitioner, I appear at least once a week, and more often if I am in trial.

- (2) **What percentage of these appearances were in:**

- | | | |
|-----|--------------------------------|-----|
| (a) | federal courts: | 60% |
| (b) | state courts of record: | 30% |
| (c) | other courts: | 10% |

- (3) **What percentage of your litigation was:**

- | | | |
|-----|------------------|-----|
| (a) | civil: | 50% |
| (b) | criminal: | 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.**

I have tried between 75 to 100 jury trials as an Assistant District Attorney serving as sole counsel. As a private practitioner, I have tried numerous cases along with co-counsel.

(5) What percentage of these trial were:

- (a) jury: (Approximately) 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.

United States v. John D. Ehrlichman, et al., 546 F.2d 910 (D.C. Cir. 1977).

Judge:

Honorable Gerhard A. Gesell
 (deceased)

Opposing Counsel:

William Snow Frates
 4745 South West 76th Terrace
 Miami, FL
 305/666-2553

Co-Counsel:

William H. Merrill
 (Address Unknown)

Henry L. Hecht
 University of California
 Boalt Hall, School of Law
 Berkeley, CA
 510/642-1787

As a Watergate Assistant Special Prosecutor, I tried high government officials for conspiracy to violate the civil rights of Dr. Lewis Fielding (psychiatrist to Daniel Ellsberg, an author of the Pentagon Papers). This case, which involved the White House "Plumbers"—G. Gordon Liddy, Howard Hunt, David Young and Egil Krogh—and Special Assistant to the President, Charles Colson—demonstrated that no purported "National Security" defense excuses the violation of a citizen's rights. The Grand Jury proceedings lasted eight months and the trial lasted one month. I was second chair. All defendants were convicted in July of 1974.

There were, of course, numerous other activities investigated in connection with this matter, including the use of wiretaps on the press, attempts to stop the publication of the Pentagon Papers, and improper contacts by the White House with the judiciary in an effort to influence the court. This case, in which the verdict was obtained before President Nixon's resignation, brought to public view a multitude of governmental abuses of power.

People of the State of California v. Sandoval, San Francisco Superior Court Case Numbers 78C58, 78331

Judge:

Honorable Robert J. Drewes
(deceased)

Opposing Counsel:

John Nash
P.O. Box 22032
San Francisco, CA 94122
[No telephone number available]

In 1972 I prosecuted Enrique Sandoval on two counts of murder. The trial lasted approximately four months with the jury returning verdicts of guilty on both counts. Upon completion of the penalty phase, the defendant was sentenced to death. This case was the first capital judgment rendered by a San Francisco jury in more than 10 years. I was sole government counsel. Subsequently, in People v. Anderson, 6 Cal. 3d 628 (1972) the California Supreme Court nullified all capital sentences. Mr. Sandoval was then sentenced to life in imprisonment.

People of the State of California v. Poole, San Francisco Superior Court Case Number 82901

Judge:

Honorable John Ertola (Ret.)

Opposing Counsel:

Joe R. McCray
433 Turk Street
San Francisco, CA 94102
415/775-3900

As an Assistant District Attorney, I prosecuted Junious Poole for the murder of a police officer. The trial lasted approximately 2 months in which the defense of diminished capacity was presented. After extensive psychiatric testimony, this defense was rejected by the jury. The defendant was sentenced to life imprisonment.

People of the State of California v. Simmons, San Francisco Municipal Court

No Judge

Opposing Counsel:

Stanley J. Friedman
13255 San Pablo Avenue
San Pablo, CA 94806
510/215-7888

As Chief Assistant District Attorney in 1979, I presented evidence to the Grand Jury of laundering of political contributions by the defendant. This investigation covered a six-month period, at which time the Grand Jury returned an indictment to which the defendant plead guilty. This was the first case brought in San Francisco involving violation of the laws relating to the reporting of political contributions.

United States v. David Weiss (N.D. Cal. 1988, Case Number CR 88 20047 WAI).

Judge:

Honorable William A. Ingram
United States District Court

Opposing Counsel:

Terry Lee
Santa Clara District Attorney's Office
70 West Hedding Street
San Jose, CA 95110
408/299-7503

People of the State of California v. Weiss (Santa Clara County Superior, Case Number 603123).

Judge:

Honorable John S. Pasco
Santa Clara Municipal Court

Opposing Counsel:

William Larsen
Santa Clara District Attorney's Office
70 West Hedding Street
San Jose, CA 95110
408/299-7503

In 1988, Weiss, charged with income tax evasion, was the contractor for the San Jose Transit Mall. He was the target of investigations conducted by more than ten governmental agencies and had acquired an extremely negative reputation in the community. The grand jury investigation was two years in duration and the trial lasted several months. Weiss was acquitted because; in my opinion, the jury followed the law and did not permit the community's feelings to influence the verdict. In the companion state cases, after lengthy motions, there was a dismissal of the principal charges by the District Attorney.

Donna L. Whitney, et al. v. David W. Mitchell, et al., State of Minnesota, County of Hennepin, Court File No. 89-15980

Judge:

Honorable Thomas H. Carey
Judge of the District Court
for Hennepin County

Opposing Counsel:

Herbert Stern
David Stone
Stern & Greenberg
75 Livingston Avenue
Roseland, NJ 07068
201/535-1900

Co-Counsel:

Richard G. Wilson
Maslon, Edelman, Borman & Brand
3300 Norwest Center
Minneapolis, MN 55402
612/672-8200

This legal malpractice matter involved a claim in excess of fifty million dollars. Pre-trial matters consumed many months, including summary adjudication and motions. The court followed the unusual procedure of requiring counsel to preview their opening statements before "opposing" counsel and clients. Subsequent to this presentation, the matter settled.

Estate of Elvis Presley v. Col. Tom Parker, Court: Labor Commissioner, State of California, Case Number 4-82.

Opposing Counsel:

Edmund S. Schaffer
1801 Century Park E., Ste. 2222
Los Angeles, CA 90067
310/522-1707

Co-Counsel:

L. Peter Parcher
Parcher, Hayes & Liebman
500 Fifth Avenue
New York, NY 10010
212/382-0200

I was retained by the Presley Estate to bring this case against the late artist's unlicensed manager, requiring disgorgement of all fees received during the manager's representation of the artist. The case incorporated the doctrine set forth in Buchwald v. Katz 8 Cal.3d 493 (1972), in which I participated on behalf of the Jefferson Airplane once the case was remanded for trial. These cases protected the rights of artists who are often ill-equipped to exercise control over their commercial benefits. I was co-counsel with L. Peter Parcher in these matters which ultimately settled without a hearing.

Max Sobel Wholesale Liquors v. Commissioner of Internal Revenue 630 F.2d 670 (9th Cir. 1980) C.J. Choy, Tang and D.J. Reed.

United States Court of Appeals for the Ninth Circuit

Opposing Counsel:

Edward B. Simpson
Internal Revenue Service
160 Spear Street, 9th Fl.
San Francisco, CA 94105
415/744-9208

My client included the cost of promotional merchandise (extra bottles of liquor) in the cost of goods sold although the sale of this promotional merchandise was in violation of state liquor laws. The 9th Circuit upheld the tax court's ruling that the Revenue Code is neutral in its application of accounting practices. Thus, even if the sale of the promotional merchandise was illegal, it was not for the taxing authorities to attempt either directly or indirectly to enforce state laws which are criminal in nature. I served as trial counsel with my tax partner in the tax court in a two-day trial and as the advocate before the 9th Circuit.

United States v. Harris, (N.D. Cal. 1991, Case Number CR 90-0456 CAL).

Judge:

Honorable Charles A. Legge
United States District Court
Northern District of California

Opposing Counsel:

Scott McKay
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
202/514-2000

Co-Counsel:

Robert P. Feldman
Wilson, Sonsini, et al.
650 Page Mill Road
Palo Alto, CA 94304
415/493-9300

Jeff Chanin
Keker & Van Nest
710 Sansome Street
San Francisco, CA 94111-1704
415/391-5400

My client, Ronald Schultz, was accused of bribing a foreign official in an effort to obtain a contract for telephone equipment in violation of the

Foreign Corrupt Practices Act. The significance of this case lies in the degree of preparation required in order to defend against a two-year governmental investigation spanning three continents. After a three-week presentation by the Government of its case in chief, the Court directed verdicts of acquittal as to all defendants.

People of Micronesia, Inc. et al. v. Continental Airlines, Inc., et al. U.S. District Court for the Northern Mariana Islands, Civil Action No. 85-0002.

Judge:

Honorable Alfred Laureta
Saipan, CNMI

Opposing Counsel:

Peter Donnici
Dennis Kerwin
Donnici, Kerwin & Donnici
One Post Street, Suite 2450
San Francisco, CA 94104-5228
415/986-8881

Co-Counsel:

Donald C. Williams
Carlsmith, Wichman, Case, Mukai
and Ichiki
P.O. Box 241 CHRB
Saipan, CNMI 96950
671/322-3455/56

In 1985, a default was entered against Continental Airlines based upon a complaint seeking more than fifty million dollars in damages. I was retained for the purpose of seeking relief from the default. Our motion to set aside the default required two extensive hearings before the Court over a six month period. Prior to the Court's ruling on our motion, the matter was settled.

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 represented clients on numerous occasions who were under investigation for alleged criminal activities. Many of these matters did not result in indictment.

In addition to representing clients, I believe that my teaching is of some significance in serving the legal community. Fifteen years ago, along with two of my colleagues, developed a course for lawyers on the subject of

trial preparation. This course, under the auspices of the California Continuing Education of the Bar, has been given every other year since its inception. We present our program which is entitled "Preparing a Case for Trial in the Last One Hundred Days" throughout Northern California.

I also have participated in panel discussions under the auspices of the Practising Law Institute, Hastings College of Trial Advocacy, Harvard Law School Evidence Project and the California Association of Business Trial Lawyers. All these services were provided on a pro bono 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.**

See attached Exhibit C.

- 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 a full disclosure to litigants and their counsel of any relationship, business or otherwise, should be made at the first available opportunity. I would follow the procedure for resolving potential conflicts set forth in the Canon of Ethics and applicable judicial procedures. I would not hear matters involving my law firm.

- 3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with 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 attached Exhibit D.

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

See attached Exhibit E.

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 am presently on the Board of Directors of the San Francisco Conservation Corps and provide legal services to that organization.

The San Francisco Conservation Corps is a non-profit job training and education program serving youth ages 12-24. Program participants, called Corpsmembers and Junior Corpsmembers, develop job skills, academic and leadership abilities, and environmental awareness as they serve the diverse communities of San Francisco through their work on a variety of education, conservation and community service projects. These individuals also participate in education programs which include academic enrichment studies, leadership development, GED preparation for adults, environmental education, and computer training.

In 1996 I was appointed by the Mayor of San Francisco, upon the recommendation of the San Francisco Superior Court, to the Juvenile Probation Commission for a four-year term. I presently serve as the President of the Commission. This Commission sets policy for the administration of the Juvenile Justice System, which addresses the problems of disadvantaged youth.

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 1967, I joined a San Francisco social club known as "The Family" as a participant in their performing arts (singing) section. In the late 1980s, I advocated a change in the gender discrimination policy. Unfortunately, this policy was not discontinued, and I resigned in 1990.

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 Dianne Feinstein established a Judicial Selection Commission to interview candidates for this position. I have been interviewed by a sub-committee of two members, and then by the full commission on two separate occasions. I understand that my name was forwarded to Senator Feinstein in 1994 and again this year for her consideration. Upon the forwarding of my name on both occasions, I was interviewed by Senator Feinstein. After my name was forwarded to the President, I was interviewed by the Department of Justice, the Federal Bureau of Investigation, and the Standing Committee on Federal Judiciary 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 the 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."**

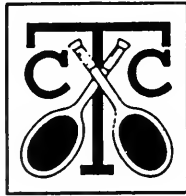
The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of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

- (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 that the judge's job is to apply and to uphold the law, following the Constitution, the statutes as written by Congress, and applicable rules and regulations—all as interpreted by governing precedent. This latter role is the role the Constitution foresees for a judge; it is the role that he or she promises to play in the oath of office. A judge fulfills this role by discharging his or her judicial duties with integrity and objectivity.

I also believe that a judge should interpret statutes, apply case law, and administer the law in individual cases, with an eye to the basic purposes of the law—Congress's ultimate purpose in respect to statutes; and the basic purpose of a precedent or rule or regulation as well.

**CALIFORNIA
TENNIS
CLUB**



BY- LAWS

Founded in 1884

ARTICLE I

NAME AND PURPOSE

SECTION 1. Name and Purpose.

The corporation shall be known as the California Tennis Club, hereinafter referred to as "the Club." The purpose of the Club is to promote the game of tennis by providing tennis and social facilities principally for its Members.

SECTION 2. Non-Profit.

The Club is a non-profit corporation organized under the Non-Profit Corporation Law of the State of California.

ARTICLE II

MEMBERSHIP

SECTION 1. Classification.

Membership of the Club shall consist of the following classifications:

- A. **REGULAR MEMBERS.** Regular Members are those men and women, age eighteen (18) or over (excluding Junior Members), who are admitted into Regular Membership in the Club. The total number of Regular Members shall not exceed four hundred seventy-five (475); however, a marginal temporary increase in said number resulting from reinstatement to Regular Membership of Non-Resident Members as provided in these By-laws may be allowed at the discretion of the Board of Directors. A Regular Member shall pay such initiation fee, dues, other charges and assessments as may be established for Regular Members from time to time by the Board of Directors.
- B. **REGULAR/I MEMBERS.** The total number of Regular/I Members shall not exceed twenty-five (25). Regular/I Members are entitled to full Membership privileges, including voting rights, except they may play tennis at the Club only eighteen (18) times in any calendar year. Unlike Social Members, however, Regular/I Members may play tennis without being guests of Regular Members (or other Regular/I Members) and may bring their own guests. Dues in this category shall be set midway between Regular Membership dues and Social Membership dues. In addition, a Regular/I Member shall pay such other charges and assessments as may be established for Regular/I Members from time to time by the Board of Directors.

A Regular Member in good standing may, at any time and for any reason, request transfer to Regular/I Membership status by giving a written request to the Board of Directors. Provided that there are fewer than twenty-five (25) Regular/I Members at the time, the Board shall immediately grant the request. A Regular Member

making such transfer must remain in Regular/I status for at least one year. Thereafter, said Member may request the Board of Directors to reinstate him or her to Regular Membership status. Said Member shall not be required to make a formal reapplication nor shall said Member be required to pay any additional initiation fee. Provided that said Member is in good standing at the time of requesting reinstatement, said Member shall be immediately re-admitted as a Regular Member or, if there are no openings for additional Regular Members at that time, the name of said Member shall be immediately placed on the list of those waiting to be admitted as Regular Members as is provided in Subsection 2(G) of this Article II.

- C. **SPECIAL SENIOR PENDING VACANCY.** Individuals accepted to Regular Membership in the Club for whom openings are not available may elect to become a Special Senior Pending Vacancy while awaiting an opening. The total number of Special Seniors Pending Vacancy shall not exceed twenty-five (25). Members in this category are entitled to full Social Membership privileges, including voting rights, and to use of the courts during specific limited hours of play as set by the Board of Directors. Members in this category who violate the time limitations on playing privileges shall suffer immediate expulsion from the Club and forfeiture of their Membership. Individuals accepting Membership in this category shall pay one-half the initiation fee then prevailing for Regular Membership and their dues shall be set midway between Regular Membership dues and Social Membership dues. At the time the individual becomes a Regular Member, he or she must pay the remaining one-half of said initiation fee. In addition, Members in this category shall pay such other charges and assessments as may be established for this category from time to time by the Board of Directors. At the time the individual becomes a Regular Member, he or she must pay the remaining one-half of said initiation fee. In addition, Members in this category shall pay such other charges and assessments as may be established for this category from time to time by the Board of Directors. When an opening in Regular Membership occurs for a Special Senior Pending Vacancy, such Member must become a Regular Member by paying the balance due of his or her initiation fee within a period of thirty (30) days after receipt of written notice from the Club of such opening or his or her Membership in the Club shall automatically be terminated.
- D. **JUNIOR MEMBERS.** Junior Members are those men and women who have not attained the age of twenty-five (25); (excluding Regular Members who elected to apply for Regular Membership after attaining the age of eighteen (18)). No application for Junior Membership may be made after the eighteenth (18th) birthday of the applicant and the total number of Junior Members shall not exceed one hundred eighty-five (185). Junior Members shall pay such initiation fee, dues, other charges and assessments as may be established for Junior Members from time to time by the Board of Directors. Upon attaining the age of twenty-five (25), Junior Members shall be given the opportunity to apply to become Regular Members as provided hereinbelow in this Subsection 1(D); pro-

vided, however, that any Junior Member may apply to become a Regular Member at any time after attaining the age of eighteen (18) and prior to reaching the age of twenty-five (25) by giving written notice to the Membership Committee. Promptly after receipt of such notice, the Membership Committee shall send to the applicant instructions for making an application for Regular Membership status. Such application shall be governed by the procedures and requirements set forth below in Subsections 1(D)(2) through 1(D)(5) of this Article II.

The procedures and requirements for a change in status from a Junior Member to a Regular Member are as follows:

1. The Club shall send written notice to each Junior Member promptly after the twenty-fifth (25th) birthday of such Member. This notice shall give the Junior Member ninety (90) days to request and complete an application for change in status to Regular Membership. In the event that a completed application for Regular Membership is not received by the Membership Committee from such Junior Member within said ninety (90) day period (or such longer period as the Membership Committee may approve upon a showing of good cause), such Member's Membership in the Club and his or her eligibility to advance to Regular Membership from Junior Member status shall automatically be terminated.
2. Upon timely filing of a completed application with the Membership Committee, the application shall be processed in the same manner and using the same criteria as for all other applications for Regular Membership status in accordance with the admission procedures set forth in Subsections 2(B) through 2(F) of this Article II.
3. Within thirty (30) days after notice of approval of his or her application by the Board of Directors, the applicant shall make payment of at least twenty percent (20%) of the difference between the then current initiation fee for Regular Members and the amount of the initiation fee paid by the applicant to become a Junior Member. If no opening is then available in the Regular Membership, the applicant will be positioned on the Regular Membership waiting list in such place and in such order of advancement as shall be established by resolutions duly adopted by the Board of Directors.
4. While waiting an opening to be admitted as a Regular Member, the applicant shall have the status of a Junior Pending Vacancy and shall pay all dues, charges and assessments chargeable to Regular Membership, and shall be entitled to all privileges of Regular Membership except that of voting in Club elections.
5. Upon advancement of the applicant to Regular Membership, the balance of the required initiation fee shall be immediately due and payable. At the Member's request, the balance due

may be paid in equal monthly installments over a period of up to four (4) years; provided, however, that if the Member elects to pay the balance due over a two (2) year period, the total payment required shall equal one hundred twenty percent (120%) of the balance due; if the Member elects to pay the balance due over a three (3) year period, the total payment required shall equal one hundred thirty percent (130%) of the balance due; and if the Member elects to pay the balance due over a four (4) year period, the total payment required shall equal one hundred forty percent (140%) of the balance due.

- E. **SOCIAL MEMBERS.** Social Members are entitled to all Membership privileges except use of the tennis-playing facilities (which they may use only as guests of Members who have tennis-playing privileges). A Social Member shall be a fully qualified voting Member of the Club and entitled to election to the Board of Directors, in accordance with these ByLaws. A Social Member shall pay such initiation fee, dues, other charges and assessments as may be established for Social Members from time to time by the Board of Directors. The number of Social Members shall not exceed ninety-five (95) although the Board of Directors shall have authority to increase the limit temporarily in order to reinstate Non-Resident or Inactive Social Members, or to accommodate Regular or Regular/I Members desirous of changing to Social Membership Status.

A Regular Member or Regular/I Member in good standing may, at any time and for any reason, request transfer from Regular or Regular/I Membership to Social Membership and shall be entitled to reinstatement to such Member's former Membership category as provided below in this section 1(E).

Should any Social Member, other than one who was a Regular or Regular/I Member immediately before becoming a Social Member, transfer to Regular Membership, the additional initiation fee shall consist of the difference between the Social Member's original initiation fee and the Regular Membership initiation fee in existence at the time of transfer.

Any Social Member who was a Regular or Regular/I Member immediately before becoming a Social Member and who has remained in Social Membership status for at least one year may thereafter request reinstatement to his or her former Membership category by giving a written request for reinstatement to the Board of Directors. Such Member shall not be required to make a formal reapplication nor shall said Member be required to pay any additional initiation fee. Provided that said Member is in good standing at the time of requesting reinstatement, said Member shall be immediately readmitted as a Regular or Regular/I Member or, if there are no openings for additional Regular or Regular/I Members at that time, the name of said Member shall be immediately placed on the list of those waiting to be admitted as Regular or Regular/I Members as is provided in Subsection 2(G) of this Article 11.

- F. **NON-RESIDENT MEMBERS.** A Regular, Regular/I, or Social Member, whose principal residence is at least one hundred (100) miles away from the Club, may elect to become a Non-Resident Member by giving a written notice to the Board of Directors explaining the reason for the requested change in Membership status. Such Non-Resident Members shall pay dues of not less than fifty percent (50%) of the dues in their former Membership category and such other charges and assessments as may be established for Non-Resident Members from time to time by the Board of Directors. Non-Resident Members shall be entitled to all privileges of their former Membership classification with the exception of voting.

If the principal residence of a Non-Resident Member changes so that said Non-Resident Member no longer qualifies for Non-Resident Membership, said Non-Resident Member shall so notify the Board of Directors within thirty (30) days of such change. Any Non-Resident Member failing to notify the Board of such change in accordance with this provision shall be subject to having his or her Membership in the Club revoked. Effective as of the date of such change, the Non-Resident Member shall be required to pay this full amount of the dues and other charges payable by individuals in the category of Membership to which the Non-Resident Member will be returning.

Non-Resident Members in good standing will immediately be eligible for reinstatement to their former Membership category upon giving the required written notice of change of principal residence to the Board of Directors and approval of reinstatement by the Board of Directors. Provided said Member is in good standing at the time he or she makes a request for reinstatement, said Member shall be immediately readmitted to Membership in his or her former Membership category. However, if there are no openings in such Membership category at that time and the Board of Directors does not exercise its discretion to increase temporarily the maximum allowed number of Members in such category under Subsections 1(A) or 1(E) of this Article, the Board shall place the Member in the temporary status of Non-Resident Member Pending Change of Status to Regular, Regular/I or Social Membership, and the name of said Member shall then have priority on the waiting list over all other applicants for the Membership category to which said Member is returning. During any such period of temporary status, said Member shall pay the dues, charges and assessments payable by a Member in the Membership category to which he or she is waiting to return; and said Member shall have all of the privileges of a Member in such Membership category.

- G. **INACTIVE MEMBERS.** The Board of Directors has the discretion to grant Inactive Member status to any Member of the Club for any reason deemed appropriate by the Board. If Inactive Member status is granted, the Member so affected must remain in said status for a minimum of six (6) months. An Inactive Member shall have all of the privileges of such Member's former Membership category except tennis-playing privileges. An Inactive Member shall pay dues which shall be not less than fifty percent (50%) of

the dues in such Member's former category, and such other charges and assessments as may be established for Inactive Members from time to time by the Board of Directors.

Inactive Members may be reinstated to the Membership category held at the time of being granted Inactive Member status upon written application to and approval by the Board of Directors, but only as openings occur within the specified limits of the appropriate Membership category. If there is no opening at the time for an additional Member in the Membership category to which an Inactive Member is eligible to return, the name of said Member shall be immediately placed on the list of those waiting to be admitted into such Membership category as is provided in Subsection 2(G) of this Article. II

- H. **SPECIAL MEMBERS.** The Board of Directors shall have authority to grant Special Membership to outstanding amateur or professional tennis players, high government officials, foreign diplomats, or distinguished public figures. Except for outstanding tennis players, no Special Membership shall be available to permanent residents of the nine-county San Francisco Bay Area.

Each Special Membership shall be granted for a period not to exceed one year, subject to annual renewal on review and approval by the Board of Directors. Payment of the initiation fee or a portion thereof may be waived by the Board of Directors, but the dues of a Regular Member (and such other charges and assessments as may be established for Special Members from time to time by the Board of Directors) shall be paid by each Special Member throughout the term of such Membership.

- I. **LIFE MEMBERS.** Any Member who has been a dues-paying Member for fifty (50) years may elect to convert to this Membership Status. Life Members shall not have to pay dues, nor shall they be subject to any Board of Directors imposed charges or assessments. Life Members shall be voting Members and shall have full tennis-playing privileges.

SECTION 2. Admission Procedures.

- A. For an applicant to receive an application form, a written request must be made to the Membership Committee by two (2) Club Members in good standing.
- B. When the application form has been issued, completed by the applicant, and filed with the Membership Committee, the name of the applicant shall be posted on the Club bulletin board for a period of thirty (30) days and transmitted in writing to the Club Membership.
- C. Should the Board of Directors receive from ten (10) or more Regular, Regular/I or Social Members signed and stated objections to the application within thirty (30) days after posting, the application will be rejected. The applicant may reapply on approval of

the Board of Directors, provided that an interval of at least twelve (12) months shall have elapsed since the original rejection.

- D. After the thirty (30) day posting period, provided that the application has not been rejected as provided in Section 2(C) above, the Membership Committee shall review the application, interview the applicant and submit its recommendation to the Board of Directors.
- E. Should the recommendation of the Membership Committee be affirmative, the Board of Directors shall vote upon the application at its next regular meeting. Should two (2) or more Directors vote negatively on the application, the application will be denied and may not be reconsidered before an interval of twelve (12) months.
- F. Should the vote of the Board of Directors be affirmative, the name of the applicant will be placed in its proper sequence on the admission waiting list.
- G. Regular/I Members eligible to be readmitted to Regular Membership, Social Members eligible to be readmitted to Regular or Regular/I Membership and Inactive Members eligible to be readmitted to Regular, Regular/I or Social Membership as provided in Section 1 of this Article II, for whom openings are not available in the appropriate Membership category when such Member becomes eligible to be readmitted, shall be placed on the appropriate waiting list above (and shall thereby have priority over) all Non-Member Applicants on said list. In addition, any Non-Resident Members eligible to be readmitted to Social, Regular or Regular/I Membership shall at all times be placed or remain above and thereby have priority over all other Members then or thereafter placed upon the waiting list for such Member's former Membership category. As between Social Members, Regular/I Members and Inactive Members whose names are placed on the waiting list for an opening in any Membership category, priority on the waiting list shall be given to the Member making the earliest request or application for reinstatement as determined by the date of receipt thereof by the Board of Directors. Likewise, as between two (2) or more Non-Resident Members, priority at the top of the appropriate waiting list shall be given to the Non-Resident Member whose notification of change of principal residence is first received by the Board of Directors.

SECTION 3. Initiation Fees.

Before becoming a Member in good standing entitled to the privileges of the Club, the newly elected Member must pay the required initiation fee within thirty (30) days after notice of election to Membership has been mailed to the post office address entered on the application form. Exception: Junior Members advancing to Regular Membership may arrange for installment payments as stipulated in Subsection 1(D) of this Article II.

SECTION 4. Membership Rights.

Membership in the Club shall be non-proprietary. Upon a Member's death or other termination of Membership, all rights of such Member and/or his or her heirs shall terminate.

SECTION 5. Disciplinary Action.

Any Member considered guilty of unbecoming or offensive conduct, or dishonesty, or who fails to abide by Club rules and regulations, may be requested by the Board of Directors by means of registered mail to appear before the Board for a private discussion of the conduct prompting the request. The Member shall be notified of the conduct under consideration and that he or she has the right to present any facts or testimony by way of defense, excuse or mitigation of said conduct. The aforementioned notice to the Member shall be given not less than fifteen (15) days prior to said discussion. Should the conduct or attitude of such Member be considered intransigent or unacceptable, the Board of Directors may, by majority vote, expel or suspend such Member and such action shall be final and without recourse on the part of such Member.

ARTICLE III**FINANCIAL MATTERS****SECTION 1. Changes in Dues, Initiation Fees, and Other Charges.**

The Board of Directors shall have, at all times, the power to increase or decrease initiation fees, dues and other charges of all classes of Membership and within any class of Membership, provided that at least thirty (30) days' notice in writing of any increase or decrease shall be given all Members.

The Board of Directors may also levy assessments to meet the requirements of the Club. The Members shall not be personally liable for such assessments but if any Member fails to pay any assessment within the time prescribed, his or her Membership shall automatically be forfeited without further notice.

SECTION 2. Payment.

Monthly dues of all classes of Membership shall be payable in advance, together with any indebtedness incurred during the previous month. If payment of dues, fees, charges and other indebtedness is not made in full on or before the twenty-first (21st) day of the month for which the dues are billed, they shall become past due and the Member shall be informed in writing by the Club.

SECTION 3. Delinquencies.

- A. If all indebtedness to the Club, including new charges and dues, has not been paid by the fifteenth (15th) day of the month succeeding the past due month, the amount thereof shall become

delinquent, and personal notice of the same must be given by the Manager in writing to all delinquent Members and their names posted at the Club; and if any Member shall not make payment within ten (10) days after the receipt of such notice, such Member shall be barred from use of the Club. Reinstatement at any time within three (3) months thereafter may be made by the affirmative vote of a majority of the Board of Directors and payment in full of the amount due plus a ten percent (10%) penalty on the delinquent amount. If payment in full of the delinquent amount does not occur within said three-month period, such Member's Membership will be terminated.

Personal notice shall be deemed to have been given to any Member when mailed by certified mail to the Member's last known address. During the period the Member is barred from the use of the Club, the delinquent Member shall be charged with monthly dues, other charges and assessments and the applicable penalty.

- B. The Board of Directors may, upon a showing of good cause, extend, limit or deny credit to any Member or defer termination of Membership of a delinquent Member for such time and under such conditions as it deems appropriate.

ARTICLE IV

OBLIGATIONS AND PRIVILEGES

SECTION 1. Resignations.

Any Member who is not indebted to the Club may resign his or her Membership. Members wishing to resign must so notify the Board in writing. Should such written notification be received prior to the twentieth (20th) day of the month, the resignation will become effective at the end of that month on condition that any outstanding charges must be paid by the resigning Member by the twenty-first (21st) day of the following month. Resigning Members whose accounts are not cleared by that date shall be subject to monthly dues until their account is cleared; however, they shall not be entitled to any of the privileges of Membership following the effective date of their resignation.

SECTION 2. Family Social Privileges.

The immediate household family of any Member shall be entitled to the social privileges of the Club, but only when accompanied by such Member.

SECTION 3. Tennis-Playing Guests.

- A. Members with tennis-playing privileges may invite guests, not exceeding three (3) in number at any one time, to play tennis upon paying the prescribed fee for each guest and provided that such guests play in the company of the host Member. No individual may be a playing guest more than eighteen (18) times in any calendar year.

- B. Members shall register their guests by name prior to playing. Failure to do so will result in a penalty equivalent of three (3) times the prescribed guest fee, and repeated occurrences of such failure shall be considered cause for disciplinary action by the Board.
- C. Tennis-playing privileges may be granted to non-resident guests upon written application initiated by a Member and approval of the Board of Directors or the Club. These privileges shall entitle the holder to the privileges of the Club for a period of one month. Each such guest shall pay in advance 1-1/2 times the Regular Member monthly dues for all persons twenty-five (25) and over and 1-1/2 times the Junior monthly dues for persons under the age of twenty five (25). Renewal, extension, or reissue of these privileges shall be subject to the approval of the Board of Directors, and shall in no event exceed six (6) months in any given five (5) year period.
- D. Members inviting guests or applying for guest privileges shall be responsible for all debts to the Club incurred by their guests and for all damage done by them.
- E. The Board of Directors shall have the right to make special rules for guests involved in tournament play. It shall likewise prescribe the rules governing the inviting of guests to the Club for social purposes only.

SECTION 4. Compensation of a Member, Director, or Officer.

No Member, director, or officer shall receive any salary or compensation from the Club for services or expenses except where authorized by the Board of Directors in writing.

SECTION 5. Address Changes.

All Members must immediately notify the Club of any change of address, and failure to do so shall constitute a waiver of any right to notice provided by these By-laws and rules of the Club.

ARTICLE V

DIRECTORS AND OFFICERS: POWERS, DUTIES, AND MEETINGS

SECTION 1. General.

The management of the affairs of the Club shall be vested in a Board of Directors consisting of nine (9) of its resident Members one (1) of whom may be a Social Member. Three (3) Directors are to be elected each year serving for three (3) years each. In addition the Board may delegate the day-to-day management of the Club to a Manager who shall be an employee of the Club. The Club year for purposes of accounts, reports and terms of office shall be the calendar year.

SECTION 2. Powers.

The Board of Directors shall have all powers not inconsistent with the laws of the State of California and the By-laws of the Club, to establish rules for Club and court use, and to control and manage the affairs and property of the Club, subject, however, to the following restrictions:

- A. The Board of Directors shall have no authority to subject the property of the Club to any mortgage, lien, or other encumbrance without first obtaining the approval of a majority of the voting Members of the Club of the proposed action.
- B. Even though no encumbrance is imposed on the Club, the Board of Directors shall have no authority to subject the Club to an indebtedness or expenditure in excess of \$25,000, except for maintenance or resurfacing of tennis courts, without prior approval of a majority of the voting Members of the Club. The debt limit of \$25,000 is intended to be exclusive of indebtedness presently existing or any remaining portion thereof.
- C. The Board of Directors shall have no authority to acquire by purchase or otherwise any real property for an amount exceeding \$25,000, or to dispose of any real property of the Club for an amount exceeding \$1,000, unless such transaction has first been approved by a majority of the voting Members of the Club.
- D. The Board of Directors shall have no authority to liquidate or distribute the assets of the Club, or to dissolve the Club, unless at least eighty-five percent (85%) of the voting Members of the Club have first approved such action.

SECTION 3. Duties.

A. The President shall:

- 1). preside at all meetings of the Board of Directors and of the Club, shall call such meetings as are herein provided, shall see that these By-laws and such rules and regulations as may be adopted by the Board of Directors are enforced, shall supervise generally the affairs of the Club, and shall make an annual report to the general Membership.
- 2). sign jointly with the Secretary or Treasurer all contracts, bonds and other instruments in writing which have first been approved by the Board of Directors.
- 3). shall appoint chairpersons of standing committees who shall be Members of the Board, subject to confirmation by the Board and shall be an ex-officio Member of said committees. Chairpersons of committees shall by February 1st of each year, submit to the Board a list of their committee Members for approval of the Board. In particular, the Membership Committee shall consist of not less than eight (8) Members, of whom at least two (2) shall be Directors.

- B. The Vice President shall perform all the duties of the President in the latter's absence or inability to serve.
- C. The Secretary shall keep a record of all proceedings of the Board of Directors and of the Club. If both the President and the Vice-President are absent, the Secretary shall call the meeting to order and a temporary chairperson shall be chosen.
- D. The Treasurer shall have charge of the funds of the Club, and shall be responsible for the keeping of proper records of all receipts and disbursements of the Club funds and proper accounts of its assets, liabilities, expenses and income.

SECTION 4. Meetings.

- A. The Board of Directors shall hold at least three (3) regular meetings each quarter. Regular or special meetings may be called at any time on order of the President or two (2) Directors. Each Director shall be given notice of such meeting at least one (1) day prior to the day of the meeting, either orally or in writing. The minutes of all Directors' meetings and all meetings of the Members, on being read and approved, shall be conclusive on the question of service of notice. Five (5) Directors shall constitute a quorum. No action may be taken by the Board without a quorum and a majority vote of those present shall be required for the Board to take any action.
- B. The Annual Meeting of the Club shall be held in November on a date to be set by the Board of Directors. Twenty-five (25) Members entitled to vote shall constitute a quorum and a majority vote of those present shall be required for the Membership to take any action.

ARTICLE VI

NOMINATING COMMITTEE

SECTION 1. Selection.

The Nominating Committee shall consist of five (5) voting Members. The Chairperson shall be the most recent past President of the Club who is not a Member of the Board of Directors. The election of the four (4) remaining members of the Nominating Committee shall be conducted in accordance with the following rules:

- A. Any voting Member is eligible for election, provided that no Member may at the same time serve on the Board of Directors and the Nominating Committee.
- B. Nominating Committee Members shall serve for one (1) calendar year, and are not eligible for re-election until after the lapse of one (1) year from the year that they served on the Committee.

- C. Nominations shall be made from the floor at the Annual Meeting. If more than four (4) Members are nominated, voting shall be by secret ballot of all voting Members present at the meeting. Each voting Member may cast four (4) votes but may not cast more than one (1) vote for any one (1) candidate. The four (4) candidates receiving the largest number of votes shall be declared elected. Two (2) Judges of Election shall be appointed by the President to count the ballots and announce the results thereof.
- D. Should any Member of the Nominating Committee cease to be a Member of the Club, or should a vacancy in the Committee otherwise occur, prior to the completion of such Committee's duties as herein provided, such vacancy shall be filled by appointment by the Board of Directors.

SECTION 2. Responsibilities.

The Nominating Committee, prior to the Annual Meeting, shall invite voting Members of the Club to submit recommendations for candidates for the Board of Directors. Such recommendations may be submitted in writing if the Member prefers. The Nominating Committee shall then submit a number of nominees at least equal to the number of vacancies on the Board of Directors to be filled for the ensuing calendar year. The names selected by the Nominating Committee shall be posted on the bulletin board of the Club at least three (3) weeks prior to the Annual Meeting. These names shall be designated as nominations of the Nominating Committee.

ARTICLE VII

ELECTIONS

SECTION 1. Board of Directors.

A ballot containing names of candidates selected by the Nominating Committee shall be circulated by mail to the voting Members at least three (3) weeks prior to the Annual Meeting, with a request that the ballots be returned at least five (5) days prior to the Annual Meeting. Space shall be provided on the ballot for write-in candidates.

- A. Two (2) Judges of Election shall be appointed by the President. They shall count and certify the ballots, and report the results of the election to the incumbent President, who shall publish the results.
- B. In case two (2) or more candidates shall have received an equal number of votes, and all cannot be elected, selection shall be made by secret ballot at the Annual Meeting.
- C. Directors shall not be eligible for reelection until after a lapse of one (1) year after the expiration of their term of office, except as provided below. Vacancies occurring on the Board of Directors from any cause other than expiration of a Director's term shall be filled by vote of the Board. In the event a Director resigns, or

when for any reason a substitute Director is elected by the Board, the substitution shall be for the unexpired term of the Director replaced, and Directors selected in this manner may be renominated at the expiration of their term.

SECTION 2. Officers.

At the November meeting, the Board of Directors shall elect a President from the Members of the Board who have one or two years remaining to serve. Also before the Annual Meeting, and following the election of the new President the six continuing Directors, the three outgoing Directors and the three newly elected Directors shall elect a Vice-President, Secretary and Treasurer from among the Directors who will be serving during the forthcoming year.

ARTICLE VIII

AMENDMENTS AND APPEALS

SECTION 1. Amendments.

A. Adoption.

Power to repeal or amend any of these By-laws and to adopt new By-laws is delegated to the Board of Directors. This power shall not be exercised in any case except upon three (3) weeks' written notice mailed to each voting Member of the Club at his or her last known address. Such notice shall briefly describe the subject matter of any By-law intended to be repealed or adopted, and if it is intended to amend the By-laws, a brief description of the amendment. A copy of the existing By-laws shall be forthwith posted upon the bulletin board and made available to any voting Member upon request. With respect to amendments, a copy of the By-law as it will read when amended shall also be posted on the bulletin board and delivered to any voting Member upon request.

B. Objections.

If at least twenty-five (25) voting Members, before the meeting of the Board of Directors at which these By-laws are to be repealed, adopted or amended, notify the President in writing that they object to the repeal, adoption or amendment, these By-laws shall not be repealed, adopted or amended except by majority vote of the Members who vote in a mail ballot. Within twenty (20) days after the objection is filed, ballots will be mailed to all voting Members. The ballot shall contain the text of the challenged By-Law changes; brief statements (less than 250 words) for and against the changes to be written, respectively, by a proponent and an opponent selected by the President; the deadline set by the Board for return of the ballots (which shall be at least twenty (20) days after the ballot is mailed to the voting Members). Only those ballots which are marked and returned to the President at the Club by the specified deadline will be counted as votes in the referendum. In the absence of such objection, the Board of

Directors shall have the power, at said meeting, to repeal, adopt or amend any By-laws described in the notice mailed to all voting Members in accordance with such notice.

SECTION 2. Appeals.

The decision of the Board of Directors is final with respect to all matters within its power, including the interpretation of its rules and By-laws, subject, however, to an appeal of voting Members which meets the following requirements:

- A. The appeal shall be considered only if at least twenty-five (25) of the voting Members shall file a written appeal with the President within ten (10) days after the publication of the challenged decision of the Board of Directors. If such an appeal is filed, the Board of Directors shall submit the challenged decision to a referendum by mail of the Membership.
- B. If two-thirds (2/3) of the voting members vote to reverse the decision of the Board of Directors, the Board shall reverse the decision in question. If less than two-thirds (2/3) vote to reverse the decision, the decision shall stand.

[EXCERPT]

COBLENTZ, CAHEN, McCABE & BREYER, LLP
AMENDED AND RESTATED
PARTNERSHIP AGREEMENT
AS OF NOVEMBER 9, 1995

VIII.

PAYMENTS TO A TERMINATED PARTNER

8.1 (a) A "Terminated Partner" shall mean any partner whose Partnership interest has been terminated, whether by withdrawal (including disability), expulsion or by operation of bankruptcy under Section VII above, death or retirement, and shall include the successors in interest of a deceased partner or in the case of a professional corporation, the sole shareholder of any corporate partner or the successor in interest thereto.

(b) A Terminated Partner shall not remove from the Partnership premises any Partnership property and shall promptly deliver to the Partnership all of the Partnership property in his/her possession.

8.2 The Partnership's Profits and Losses for the portion of the fiscal year in which a Terminated Partner terminates shall be determined on an interim closing of the books method on the date the Partnership year closes with respect to the Terminated Partner. In the event a Terminating Partner's date of termination is other than the last day of the month, the date upon which the Partnership shall close its books with respect to the terminated partner shall be either (i) the last day of the month which immediately precedes the month in which such termination occurs or (ii) the actual date upon which the Terminated Partner's partnership interest terminates, in the sole discretion of the partnership (or, in the case of that partner's bankruptcy, the date of the bankruptcy filing) ("Valuation Date"). All Profits and Losses shall be allocated to the capital accounts of the partners as though such interim closing of the books constituted the end of the Partnership's fiscal year. For purposes of the preceding sentence, the Partnership's Profits and Losses for such period shall reflect as operating expenses of the Partnership all items of accrued expenses, prepaid expenses, and other items required in accordance with Section 706(d)(2) of the Internal Revenue Code of 1986, as amended. In addition, accrued expenses shall specifically include a reasonable provision for accrual of a pro-rata share of typical year end expenses, and any other expenses which are not incurred equally throughout the year, including, but not limited to, employee

compensation, fringe benefits and bonuses, and preparation of Partnership tax and pension returns. The stationery and supplies on hand shall not be included in prepaid expenses. Any life insurance (specifically including insurance on the life of the deceased partner for the purpose of calculating that partner's interest) shall be carried at its cash surrender value and not at its maturity value.

8.3 Upon termination of a partner, other than a partner subject to the provisions of Article X, the Terminated Partner shall sell, and the continuing Partnership shall purchase, the Terminated Partner's interest in the Partnership as of the Valuation Date for a purchase price equal to the sum of the following items, as determined pursuant to Section 8.4 hereof:

(a) The Terminated Partner's capital account as of the Valuation Date;

(b) One-half (1/2) of the Terminated Partner's Percentage of all accounts receivable as of the Valuation Date; and

(c) One-half (1/2) of the Terminated Partner's Percentage of all contingency matters and statutory fee probate estates as of the Valuation Date, as provided in Section 8.4(c).

(d) In the event the Partnership has either fixed or contingent liabilities as of the Valuation Date in excess of \$25,000 which are not included on the balance sheet (other than salaries but including any obligation owing to any other Terminated Partner), said purchase price shall be reduced by an amount equal to the Terminated Partner's Percentage of such liability, provided that said purchase price

shall not be less than the Terminated Partner's capital account as of the Valuation Date. If such liability is contingent, the amount of such reduction, if any, shall be determined at such time that the liability becomes fixed and the Partnership may in its discretion establish a reasonable reserve for such contingent liability. Rent payable for the Partnership's offices for the three (3) months immediately following the Valuation Date shall be considered as a liability of the Partnership; provided, if such three (3) month period falls within a period when Partnership office rent is waived or substantially reduced (a "free rent" period), the liability for rent shall be determined as if rent was payable during the free rent period at the rate payable immediately after the expiration of the free rent period. Any Partnership furniture or equipment leases shall be considered as a liability (but not as an asset) and valued at an amount equal to three (3) months rent, pursuant to said lease.

8.4 (a) The "capital account" of a Terminated Partner's interest in the Partnership shall mean the capital account determined in accordance with the customary method of keeping the books of account of the Partnership and after all allocations of Profits and Losses for the interim period of the fiscal year as determined under Section 8.2. The determination of the partner's capital accounts shall be made on a review basis by the accountants regularly employed by the Partnership, shall be conclusive on all parties thereto and the Terminated Partner shall bear his/her Percentage of such expense.

(b) Accounts receivable, where used herein, shall mean the amount of billed but unpaid fees for legal services (excluding client costs advanced)

rendered by the Partnership as of the Valuation Date, to the extent that such accounts receivable are collected by the Partnership within twelve (12) months of the Valuation Date.

(c) Contingency matters shall mean the prorated amount of any contingency fees to the extent collected by the Partnership after the Valuation Date with respect to written contingency fee agreements in existence prior to the date of the partner's termination. Such fees shall be prorated as follows: The total fee shall be multiplied by a fraction, the numerator of which is the total value of all attorney and paralegal time expended on such matter from its commencement until the Valuation Date, and the denominator of which is the total value for all attorney and paralegal time expended on such matter from its commencement until its conclusion. Fees for statutory fee probate estates shall be prorated in the same manner, after taking into account any partial payments. Payments due hereunder shall be made within thirty (30) days after receipt by the Partnership of any payments for such matters.

(d) Attached hereto as Exhibit B is the calculation of the payment to a hypothetical Terminated Partner whose termination occurs in December, 1993. Each partner acknowledges that he or she has reviewed said Exhibit B and understands how such payment was determined.

8.5 As used in this Article 8, a Terminated Partner's Percentage shall be that existing at the time of termination. A Terminated Partner's Percentage shall not

be increased as a result of the termination of any other partner during the same fiscal year.

8.6 (a) Only a Terminated Partner who has been a member of the Partnership for a period of forty-eight (48) months or more prior to termination shall be entitled to full payment under this Section 8 for the Terminated Partner's interest in accounts receivable and contingency matters of the Partnership as of the date of termination.

(b) With respect to a Terminated Partner who has not completed the aforesaid 48 month period, the following schedule of percentage vesting in accounts receivable and contingency matters shall apply:

<u>NUMBER OF COMPLETE MONTHS AS PARTNER</u>	<u>VESTING</u>
0-5	0%
6-12	20%
12-24	40%
24-34	60%
36-48	80%

In the event that a Terminated Partner is not entitled to full payment for the Terminated Partner's Percentage in accounts receivable and contingency matters, then such partner's responsibility for liabilities, either fixed or contingent existing prior to said Terminated Partner's entry into the Partnership shall be limited to the amount of his/her vested percentage. However, said Terminated Partner shall be responsible for

any and all liabilities arising on or after said Terminated Partner's entry into the Partnership until the date of such partner's termination.

8.7 The Partnership shall pay for the purchase of the Terminated Partner's interest (i.e., the Purchase Price) as follows:

(a) 80% of the estimated Purchase Price shall be paid in the form of monthly installments of \$7,500, beginning at the end of the first month following termination, including interest at the prime interest rate as announced on the first day of each calendar quarter by The Wall Street Journal on the reducing balances of the Terminated Partner's capital account, but without interest on the balance of any other amounts owed to the Terminated Partner. The first payments made to the Terminated Partner shall be applied toward the purchase of the Terminated Partner's capital account.

(b) The final 20%, adjusted to reflect actual receivables and any other appropriate updates to the calculation, shall be paid on the first anniversary of the termination date.

(c) Notwithstanding anything herein to the contrary, however, in no event shall the Partnership be obligated to pay in the aggregate under Section 8.7(a) more than (i) \$7,500 per month to Terminated Partners during such time as the Partnership is not making payments to any other Terminated Partners whose termination date precedes the date of this Agreement, or (ii) \$10,000 per month during such time as the Partnership is making payments to other Terminated Partners whose termination date precedes the date of this Agreement. If the monthly payment

to Terminated Partners would exceed \$7,500 or \$10,000, as applicable, but for the immediately preceding sentence, such monthly payments shall be reduced pro rata.

(d) Notwithstanding the foregoing, the Partnership may elect to pay the Purchase Price owed to a Terminated Partner by assigning to him an interest (which may be less than 100%) in one or more receivables not older than 60 days from clients of the firm which authorize the transfer of any of their files to the Terminated Partner.

8.8 For purposes of determining the Terminated Partner's interest in the Partnership, other than as specifically provided above, no adjustment shall be made to the book value of the fixed assets, including but not limited to art, equipment, or tenant improvements and intangibles owned by the Partnership. In addition, the omission of any provision in this Article 8 for valuation of Partnership goodwill and work in progress (other than contingency matters) is deliberate. Each partner knowingly waives the right to receive payment on termination as a partner any amount for such partner's interest in (i) the goodwill of the Partnership, and (ii) the work in progress of the Partnership (other than as provided herein).

8.9 All payments under Section 8.3(a) above to a Terminated Partner are intended to be payments for the Terminated Partner's interest in the Partnership property under Section 736(b)(1) of the Internal Revenue Code of 1986 as amended. All payments for such Partner's interest (other than such partner's capital account) under Section 8.3(b) and 8.3(c) are intended to be income payments under Section 736(a) of the Internal Revenue Code of 1986 as amended. The partners agree

not to take a position inconsistent with this Section in relation to their individual federal and state income tax returns with respect to payments under this Article.

IX.

LIFE AND DISABILITY INSURANCE

9.1 The Partnership may at its expense carry life and disability insurance on each partner naming the Partnership as beneficiary in any amount to reduce the burden on the Partnership for the payments to the partner's estate and to compensate the Partnership for the loss of the partner's services. The estate of a deceased partner shall have no interest in such insurance proceeds. Larger amounts of insurance may be carried by a partner at his/her discretion and at his/her expense. In addition, in the event that the Partnership carries insurance on a partner and designates as the beneficiary the deceased partner's estate or heirs-at-law, then the amount of such payment to such beneficiary shall be deemed for purposes of this Agreement as a credit against the Partnership's obligation to pay the purchase price of a Terminated Partner's interest.

X.

SPECIAL PROVISIONS

10.1 Notwithstanding anything herein to the contrary, it is agreed that with respect to Allen E. Broussard, (i) his entire compensation, including payments, if any, upon withdrawal shall be fixed from time to time by the Compensation Committee

X X X

GREYER

6/ 8/1994

TO BE ADJUSTED FOR ACTUAL 1994 RECEIPTS ON RECEIVABLES AS OF 12/31/93 AND VALUE OF CONTINGENCY AND STATUTORY FEE PROBATE MATTERS ON THE BOOKS AS OF 12/31/93.

Per paragraphs B.3 and B.4 of Partnership Agreement as of January 1, 1994

Partnership Valuation For: **A TYPICAL PARTNER**

Valuation Date: 12/31/93

Effective Ownership % as of 1/1/93: 3.382%

B.3. Upon termination of a partner, the Terminated Partner shall sell, and the Continuing Partnership shall purchase, the Terminated Partner's interest in the Partnership as of the last day of the month preceding the month in which such termination occurs (the "Valuation Date") for a purchase price equal to the sum of the following items:

(a) The Terminated Partner's capital account as of the Valuation Date: **41,640**

(b) One-half (1/2) of the Terminated Partner's percentage of accounts receivable as of the Valuation Date:

Collectible Fees Receivable as of Valuation Date: **1,419,843**
 X % OWNE **24,010**

(c) One-half (1/2) of the Terminated Partner's Percentage of matters as of the Valuation Date: **NONE**

B.3 (d) In the event the Partnership has either fixed or contingent liabilities in excess of \$25,000 which are not included in the balance sheet including any obligations owing to any partner, said purchase price shall be reduced by an amount equal to the Terminated Partner's Percentage of such liability, provided that said purchase price shall not be less than the Terminated Partner's capital account as of the Valuation Date.

For purposes of this illustration liabilities were taken from 12

Item	Value
3 Month's Rent	26,925
3 Month's Equipment Lease	286,336
Total Non Balance Sheet Liabilities:	313,261

AT OWNERSHIP PERCENTAGE = **10,594**

NET VALUE AS OF: 12/31/93 **65,055**

B.3(b) "Accounts receivable," where used herein, shall mean the amount of billed but unpaid fees for legal services (excluding client costs advanced) rendered by the Partnership as of the Valuation date, to the extent that such accounts receivable are collected by the Partnership within twelve (12) months of the Valuation Date."

For purposes of this estimate, this value was calculated as: Total fees receivable at 12/31/93 (\$2,169,583) less all over 120 days past due (749,740); the actual payout will be based on dollars collected in 1994 on receivables as of 12/31/93.

NOTE: Shaded areas are quoted directly from Partnership Agreement.

AO-10 (w)
Rev. 8/96FINANCIAL DISCLOSURE REPORT
Nomination ReportReport required by the Ethics
Reform Act of 1989, Pub. L. No.
101-194, November 30, 1989
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Breyer, Charles R.	2. Court or Organization U.S. District Court N.D. of California	3. Date of Report 07/25/1997
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) US District Judge, Nominee	5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date <u>07/24/1997</u> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period 01/01/1996 to 06/30/1997
7. Chambers or Office Address 222 Kearny Street, 7th Floor San Francisco, Ca. 94108	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
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 the last page.		

I. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Partner	Coblentz, Cahen, McCabe & Breyer (CCM&B)
2 Trustee	Edward & Dorian Goldstein Trust
3 Trustee	Helen Roberts Trust

II. AGREEMENTS (Reporting individual only; see pp. 14-17 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 12/31/97	Termination Agreement - CCM&B (no control)
2 Current	CCM&B - Pension and Profit Sharing Plan
3	

III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 18-25 of Instructions.)

DATE	PARTIES AND TERMS	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1996	City Arts & Lectures, Inc. (S)	
2 1996	CCM&B partnership income	\$ 450,000.00
3 1995	City Arts & Lectures (S)	
4 1995	CCM&B partnership income	430,000.00
5		

VII. Page 4 INVESTMENTS and TRUSTS - Income, value, transactions (includes those of spouse and dependent children. See pp. 37-34 of instructions.)

A. Description of Assets <i>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. Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month: Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (no reportable income, assets, or transactions)					EXEMPT				
52 Condo, Silverado, California		None	N	W					
53 Apartment, Comstock Apartments, San Francisco, California		None	O	W					
54 Charles Breyer 401k Account									
55 Highmark Money Market Fund	A	Dividend	K	T					
56 US Treasury Strips, Due 11/15/2000		None	K	T					
57 US Treasury Strips, Due 2/15/2001		None	H	T					
58 US Treasury Strips, Due 5/15/2001		None	K	T					
59 Alza Sub. Deb. 5.000%, due 5/01/2006	B	Interest	K	T					
60 Masco Corp 5.500%, due 2/15/2012	B	Interest	K	T					
61 Park Electro Chem 5.500%, due 3/01/2006	B	Interest	K	T					
62 TCI communications, preferred stock	A	Dividend	K	T					
63 Abbott Labs, common stock	A	Dividend	K	T					
64 Alrtouch Communications, common stock		None	K	T					
65 Allegiance Corp, common stock	A	Dividend	K	T					
66 American Greeting Corp, common stock	A	Dividend	K	T					
67 Ameritech Corp, common stock	A	Dividend	K	T					
68 AMP Inc, common stock	A	Dividend	K	T					
1 Ino/Outin Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

CHARLES R. BREYER FINANCIAL STATEMENT—NET WORTH

<u>Assets</u>	
Cash on hand and in banks	\$100,000
U.S. Government Securities	None
Listed securities (see schedule)	\$286,050
Unlisted securities (see schedule)	\$920,000
Accounts and notes receivable:	
Dues from relatives and friends	None
Due from others	None
Doubtful	None
Real Estate Owned	\$3,007,500
Real estate mortgages receivable	None
Autos and other personal property	\$75,000
Cash value-life insurance	\$97,500
Other assets—itemized:	
Profit-Sharing Sharing Plan	\$1,285,000
Total Assets	\$5,771,050

Contingent Liabilities

As endorser, comarker or guarantor	No
On leases or contracts	No
Legal Claims	No
Provision for Federal Income Tax	No
Other special debt	No

Liabilities

Notes payable to banks—secured	None
Notes payable to banks—unsecured	None
Notes payable to relatives	None
Notes payable to others	\$260,000
Accounts and bills due	\$10,000
Unpaid income tax	None
Other unpaid tax and interest	None
Real estate mortgages payable—see schedule	\$1,119,000
Chattel mortgages and other liens payable	None
Other debts	None
TOTAL LIABILITIES	\$1,389,000
Net Worth	\$4,382,050

General Information

Are any assets pledged?

No, except for mortgages

Are you a defendant in any suits or legal actions?

No

Have you ever taken bankruptcy?

No

CHARLES BREYER
 ATTACHMENT To FINANCIAL STATEMENT
 AS OF JUNE 30, 1997

LISTED SECURITIES:

CALIF PUBLIC WORKS COLLEGE SAVINGS PROGRAM	135,000
WESTERN INVESTMENT REAL ESTATE TRUST	7,500
NIKE	1,200
BAYVIEW FEDERAL	13,000
FIRST BANK SYSTEMS	46,800
COKE COLA	12,000
PACIFIC GAS AND ELECTRIC	26,400
CALIF ST DEPT OF TRAN SER A	44,350

 286,050

Unlisted Securities:

FRESNO INDUSTRIAL PARK, GENERAL PARTNERSHIP	875,000
AIRPORT COLISEUM, LIMITED PARTNERSHIP	15,000
392 FALLON STREET, GENERAL PARTNERSHIP	15,000
BACHARACH RAPHAEL, GENERAL Partnership	15,000

 920,000

REAL ESTATE

PERSONAL RESIDENCE, SAN FRANCISCO	1,950,000
SECOND HOME, LARKSPUR	950,000
SKI CABIN, NORDEN	7,500
COMMERICAL RENTAL, FRESNO	100,000

 3,007,500

REAL ESTATE LOANS

PERSONAL RESIDENCE, SAN FRANCISCO, 1st Nationwide Mortgage	507,000
SECOND HOME, LARKSPUR, Countrywide Home Loans	407,000
COMMERICAL RENTAL, FRESNO, Wells Fargo Bank	20,000
FRESNO INDUSTRIAL PARK, GENERAL PARTNERSHIP, BREYER SHARE, Roberts-Packer partnership interest	185,000

 1,119,000

UNITED STATES TAX COURTRECEIVED
JUL 5 1984

CHARLES R. BREYER and)	
SYDNEY GOLDSTEIN,)	
)	
Petitioners,)	
)	
v.)	Docket No. 13834-84
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1 and 2. Admits.

3. Admits, and alleges for clarification that the negligence penalty is asserted pursuant to the provisions of I.R.C. §6653(a) of the Internal Revenue Code of 1954.

4. Denies.

5. (A) (1) Admits.

(2) Denies.

(3) Admits.

(4) Denies.

(B) (1) Denies.

6. Denies.

7. FURTHER ANSWERING the petition, respondent alleges that the claimed charitable contribution is disallowed because petitioners have not satisfied the provisions of either I.R.C. § 170(f)(3)(B)(iii) or I.R.C. § 170(h)(4)(B)(ii) in that petitioners have not substantiated that the building located

at 2661 Clay Street, San Francisco, California is located in a restricted historic district (as defined in I.R.C. § 48(g)(3)(B)) and is certified by the Secretary of the Interior as being of historic significance to the district.

8. FURTHER ANSWERING the petition, the respondent alleges that the petitioners' request for attorneys' fees is premature because the petitioners have not established their status as a prevailing party as required by section 7430(a) of the Internal Revenue Code of 1954 and Rule 34(b) of the Rules of Practice and Procedure of the United States Tax Court and that Rule 34(b) also provides that a claim for reasonable litigation costs shall not be included in the petition in a deficiency or liability action.

WHEREFORE, it is prayed:

- 1) That the relief sought in the petition be denied;
- 2) That the deficiency in income tax for the taxable year 1980, as set forth in the statutory notice, be in all respects approved;
- 3) That the addition to tax for the taxable year 1980 under the provisions of I.R.C. § 6653(a), as set forth in the statutory notice be in all respects approved.

4) That the Court determine that the petitioners' request for attorneys' fees under I.R.C. § 7430 is premature.

FRED T. GOLDBERG, JR.
Chief Counsel
Internal Revenue Service

Dated: JUL 03 1984

By: (Signed) Eugene H. Ciranni BK
EUGENE H. CIRANNI
Assistant District Counsel

OF COUNSEL:

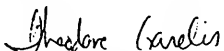
BENJAMIN C. SANCHEZ
Regional Counsel
THEODORE GARELIS
Attorney
Internal Revenue Service
Two Embarcadero Center, Suite 900
San Francisco, California 94111
Tel. No. (415) 556-7855

CERTIFICATE OF SERVICE

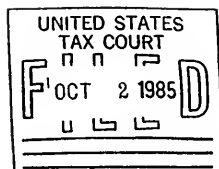
This is to certify that a copy of the foregoing paper was served on Jeffrey A. Bernstein, Esq., by mailing the same on JUL 03 1984 in a postage-paid wrapper addressed to him at Coblenz, Cahen, McCabe & Breyer, 35th Floor, One Embarcadero Center, San Francisco, California 94111.

This is to further certify that the original of the aforementioned paper was mailed to the Tax Court on JUL 03 1984.

Dated: JUL 03 1984


THEODORE GARELIS
Attorney

UNITED STATES TAX COURT



Charles R. Breyer and
Sydney Goldstein,

Petitioners,

vs.

Commissioner of Internal Revenue,

Respondent.

Docket No. 13834-84

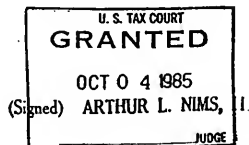
PETITIONERS' MOTION FOR CONTINUANCE

Petitioners Charles R. Breyer and Sydney Goldstein, pursuant to Rule 134 of the Rules of the Tax Court, request the Court to grant a Continuance in the above-captioned case and state the following as reasons therefor:

1. This case has been calendered at the session of the Court beginning November 12, 1985 in San Francisco, California;
2. Petitioners have met with Mr. Ken Laverty, IRS Appellate Conferee and in response to the meeting Petitioners have been actively obtaining various factual material to support their position and to clarify the issues. These materials have been submitted to the IRS, but petitioners need additional time to obtain other supporting material.
3. This case contains complex factual issues including an issue regarding the valuation of property contributed to a qualified charity. Negotiations are in progress with the IRS

2934-001

1.



Appellate Conferee and it would be an unnecessary utilization of the resources of the Court and of counsel were this case to be tried at this time rather than allowing the parties the opportunity to settle.

4. Counsel for Petitioners will not be available for trial since he will be out of the country on a business trip commencing the end of October and extending through the trial date.

5. This motion was discussed with Mr. Ken Laverty, IRS Appellate Conferee and he has indicated no objection to this Continuance being granted. Counsel for Respondent has indicated that he is opposed to a Continuance being granted.

6. Petitioners have not received any prior Continuance of the trial in this case.

7. In the event an adverse decision is proposed by the Court, Petitioners request a telephone conference with the Court.

For the foregoing reasons, it is respectfully submitted that the Petitioners cannot adequately prepare for trial nor adequately present its case if this matter should remain on the

November 12, 1985 trial calendar. Therefore, the Motion should be granted.

Dated: September 30, 1985

Jeffry A. Bernstein

Jeffry A. Bernstein, Counsel
for Petitioners
COBLENTZ, CAHEN, McCABE & BREYER
35th Floor, One Embarcadero Center
San Francisco, California 94111
(415) 391-4800

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing paper was served on Benjamin C. Sanchez, Esq. and Theodore Garelis, Esq., by mailing the same on September 30, 1985 in a postage-paid wrapper addressed to them at Internal Revenue Service, 160 Spear Street, San Francisco, CA 94105.

This is to further certify that the original of the aforementioned paper was mailed to the Tax Court on September 30, 1985.

Dated: September 30, 1985

Jeffry A. Bernstein
JEFFRY A. BERNSTEIN
Attorney

-CEIVED
DEC 2 - 1985
COBLENTZ CAHEN
MCCABE & BREYER

CHARLES R. BREYER and
SYDNEY GOLDSTEIN

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 13834-84

DECISION

Pursuant to agreement of the parties in the above-entitled case, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioners for the taxable year 1980 in the amount of \$4,704.00.

That there is no addition to the tax due from the petitioners for the taxable year 1980, under the provisions of section 6653(a) of the Internal Revenue Code of 1954.

(Signed) SAMUEL B. STERRETT

Judge.


Entered: NOV 25 1985


* * * * *

It is hereby stipulated that the Court may enter the foregoing decision in the above-entitled case.

It is hereby stipulated that, effective upon the entry of this decision by the Court, petitioners waive the restrictions contained in section 6213(a) of the Internal Revenue Code of 1954 prohibiting assessment and collection of the deficiencies (plus statutory interest) until the decision of the Tax Court has become final.

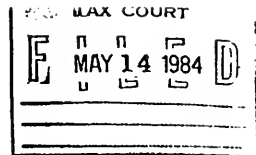
FRED T. GOLDBERG, JR.
Chief Counsel
Internal Revenue Service

By: 
JEFFREY A. BERNSTEIN
Counsel for Petitioner
Coblentz, Cahen, McCabe & Breyer
35th Floor, One Embarcadero Center
San Francisco, CA 94111
Tel. No. (415) 391-4800

By: 
EUGENE H. CIRANNI
Assistant District Counsel
Internal Revenue Service
160 Spear Street, Room 504
San Francisco, CA 94105
Tel. No. (415) 974-9271

Dated: 10/30/85

Dated: 11/19/85



UNITED STATES TAX COURT

13034-84

Docket No. _____

CHARLES R. BREYER and
SYDNEY GOLDSTEIN,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

Petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Service Symbols: 411-Field-90D San Francisco), dated February 17, 1984, and as the basis for their case allege as follows:

1. Petitioners are husband and wife with legal residence now at 2661 Clay Street, San Francisco, California 94115. Petitioners' Social Security Numbers are as follows:

Breyer - 562-48-3508
Goldstein - 550-66-0013

Petitioners timely filed a joint income tax return for the calendar year 1980 with the Office of the Internal Revenue Service at Fresno, California.

//

2. The Notice of Deficiency (a copy of which, including so much of the statement and schedules accompanying the notice as is material, is attached and marked Exhibit A), was mailed to the Petitioners on February 17, 1984, and was issued by the Office of the Internal Revenue Service at San Francisco, California.

3. The deficiencies, as determined by the Commissioner, are in income taxes for the calendar year 1980 in the amount of \$25,793.00 plus a negligence penalty of \$1,290.00, all of which amounts are in dispute.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(A) The Commissioner erred in determining that the Petitioners are not entitled to a charitable deduction of \$48,000 for a contribution of property because Petitioners have not established that the property had any value.

(B) The Commissioner erred in determining that Petitioners are subject to a penalty under Section 6653(a) (I.R.C.) for negligence or intentional disregard of the rules.

5. The facts upon which Petitioners rely, as the basis of their case, are as follows:

(A) (1) Petitioners are the owners of the house ("Property") in which they reside and which is located at 2661 Clay Street, San Francisco, California.

//

(2) The Property has been determined to be an architecturally significant structure.

(3) In 1980 Petitioners contributed a preservation easement interest in the Property to the Foundation for San Francisco's Architectural Heritage ("Foundation"), a tax-exempt public charitable organization and such contribution was accepted by the Foundation.

(4) The fair market value of the contributed preservation easement was determined by an independent appraiser. to be \$48,000, which amount was properly deducted as a charitable contribution by Petitioners in their 1980 income tax return pursuant to Section 170 (I.R.C.).

(B) (1) Petitioners have not been negligent in their actions nor have they intentionally disregarded the rules. Accordingly, the imposition of any penalties pursuant to section 6653(a) is improper.

6. Affirmative Defense.

Respondent's erroneous determination that said contribution had no value was made without Respondent making any effort to discuss or meet with Petitioners or their representatives and without reviewing the supporting appraisals and documentation. Respondent's representatives have denied Petitioners their right to exhaust their administrative remedies, resulting in undue prejudice and cost to Petitioners. Such

//

denial of Petitioners' right to exhaust their administrative remedies is contrary to Respondent's rules and policies.

WHEREFORE, Petitioners pray that this Court may try this case and determine that there are no deficiencies in income taxes and that no penalties should be imposed and to give such other and proper relief, including costs and attorneys fees as in the premises the Court may deem fit and proper.



JEFFREY A. BERNSTEIN, ESQ.
COBLENTZ, CAHEN, McCABE & BREYER
One Embarcadero Center
35th Floor
San Francisco, California 94111
(415) 391-4800

Dated: May 11, 1984

Tax Year Ended	Deficiency	Penalty - Section 6653(a)			
December 31, 1980	\$ 25,793.00	\$ 1,290.00	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

CERTIFIED MAIL
 Charles R. Breyer
 Sydney Goldstein
 2661 Clay Street
 San Francisco, CA 94115

Person to Contact:
 Notices Unit
 Contact Telephone Number:
 (415) 556-0294

Dear Taxpayer:

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this deficiency in court before making any payment, you have 90 days from the above mailing date of this letter (150 days if addressed to you outside of the United States) to file a petition with the United States Tax Court for a recetermination of the deficiency. The petition should be filed with the United States Tax Court, 400 Second Street NW, Washington, D.C. 20217, and the copy of this letter should be attached to the petition. The time in which you must file a petition with the Court (90 or 150 days as the case may be) is fixed by law and the Court cannot consider your case if your petition is filed late. If this letter is addressed to both a husband and wife, and both want to petition the Tax Court, both must sign the petition or each must file a separate, signed petition.

If you dispute not more than \$5,000 for any one tax year, a simplified procedure is provided by the Tax Court for small tax cases. You can obtain information about this procedure, as well as a petition form you can use, by writing to the Clerk of the United States Tax Court, 400 Second Street NW, Washington, D.C. 20217. You should do this promptly if you intend to file a petition with the Tax Court.

If you decide not to file a petition with the Tax Court, we would appreciate it if you would sign and return the enclosed waiver form. This will permit us to assess the deficiency quickly and will limit the accumulation of interest. The enclosed addressed envelope is for your convenience. If you decide not to sign and return the statement and you do not time petition the Tax Court, the law requires us to assess and bill you for the deficiency after 90 days from the above mailing date of this letter (150 days if this letter is addressed to you outside the United States).

If you have any questions, please contact the person whose name and telephone number is shown above.

Sincerely yours,

Roscoe L. Egger, Jr.
 Commissioner

By *Michael Sassi*
 Michel Sassi
 District Director

Enclosures:
 Copy of this letter
 Waiver
 Envelope
 P. O. Box 36040, San Francisco, California 94102

Form 5601 (Rev. 6-79)

Exhibit A

It is determined that part of the underpayment of tax for the taxable year(s) shown on Form 5564 is due to negligence or intentional disregard of rules and regulations. Consequently, the 5 per centum addition to the tax provided by section 6553(a) of the Internal Revenue Code is asserted for this year(s).

Form 5278 (Rev. May 1982)		Department of the Treasury - Internal Revenue Service Statement - Income Tax Changes		Return Form No. 1040	Schedule No. 1
Name(s) of Taxpayer(s) Charles R. Breyer Sydney Goldstein				<input checked="" type="checkbox"/> Notice of Deficiency <input type="checkbox"/> Other (specify) <input type="checkbox"/> Settlement Computation	
				Tax Years Ended	
1. Adjustments to income				December 31 1980	
a. Contributions - non-cash				\$ 48,000.00	
b.					
c.					
d.					
e.					
f.					
g.					
2. Total adjustments				\$ 48,000.00	
3. a. <input type="checkbox"/> Taxable income <input type="checkbox"/> Adjusted gross income					
b. As shown in:					
<input type="checkbox"/> Preliminary letter dated _____ <input type="checkbox"/> Notice of deficiency dated _____					
<input checked="" type="checkbox"/> Tax table income <input checked="" type="checkbox"/> Return as filed				50,534.00	
4. <input type="checkbox"/> Taxable income as revised <input checked="" type="checkbox"/> Tax table income as revised				48,534.00	
<input type="checkbox"/> Adjusted gross income as revised					
5. Tax from <input type="checkbox"/> Tax tables <input type="checkbox"/> Tax rate schedules				\$ 39,363.00	
<input checked="" type="checkbox"/> Schedule TC					
6. Alternative tax if applicable (from page _____)					
7. Corrected tax liability (lesser of line 5 or 6)				\$ 39,363.00	
8. Less credits (specify)					
a. Political Contribution Credit				50.00	
b. Investment Tax Credit				83.00	
c. Residential Energy Credit				195.00	
9. Balance (line 7 less amounts on lines 8a through 8c)				\$ 39,035.00	
10. Plus					
a. Tax from recomputing prior year investment credit					
b. Self-employment tax					
c.					
11. Total corrected income tax liability (line 9 plus amounts on lines 10a through 10c)				\$ 39,035.00	
12. Total tax shown on return or as previously adjusted				\$ 13,242.00	
13. Increase or (decrease) in tax (difference between lines 11 and 12)				\$ 25,793.00	
14. Additions to the tax (listed below)					
Penalties, IRC section 6653(c)				1,290.00	(\$25,793.00 x 5%)

UNITED STATES TAX COURT
 WASHINGTON, D.C. 20217
 June 3, 1985

CHARLES R. BREYER AND SYDNEY GOLDSTEIN	}	Docket No.: 13834-84
<i>Petitioner.</i>		Trial On: November 12, 1985
v.	}	Trial At: Room 2021, Federal Building and Courthouse 450 Golden Gate Avenue San Francisco, California 94102
COMMISSIONER OF INTERNAL REVENUE,		
<i>Respondent.</i>		

NOTICE SETTING CASE FOR TRIAL

The parties are hereby notified that the above-entitled case is set for trial at the Trial Session beginning on the date indicated above.

The calendar for that Session will be called at 10:00 a.m. on that date and both parties are expected to be present at that time and be prepared to try the case. YOUR FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF THE CASE AND ENTRY OF DECISION AGAINST YOU.

Your attention is called to the Court's requirement that, if the case cannot be settled on a mutually satisfactory basis, the parties, before trial, must agree in writing to all facts and all documents about which there should be no disagreement. Therefore, the parties should contact each other promptly and cooperate fully so that the necessary steps can be taken to comply with this requirement. YOUR FAILURE TO COOPERATE MAY ALSO RESULT IN DISMISSAL OF THE CASE AND ENTRY OF DECISION AGAINST YOU.

If there are a number of cases to be tried, the Court will fix the time of each trial at the end of the calendar call. The Court makes every effort to suit the convenience of the petitioners in fixing trial times, but because of conflicting requests received from petitioners, the final determination of trial times must rest in the Court's discretion.

Charles L. Casazza
 Clerk of the Court.

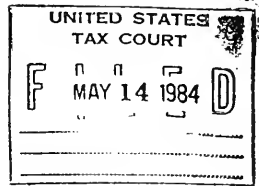
To: Counsel for Respondent

RECEIVED
 JUN 7 1985

COBLENTZ, CAHEN
 McCABE & BREYER

To: Jeffrey A. Bernstein
 (COBLENTZ, CAHEN, MC CABE
 AND BREYER)
 One Embarcadero Center, 35th Floor
 San Francisco, CA 94111

UNITED STATES TAX COURT



CHARLES R. BREYER and
SYDNEY GOLDSTEIN,

Petitioners,

vs.

Docket No. 13334-84

COMMISSIONER OF INTERNAL
REVENUE

Respondent.

REQUEST FOR PLACE OF TRIAL

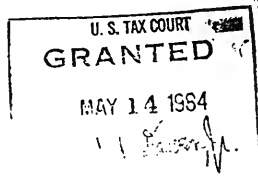
Petitioners hereby request that trial of this case be held in San Francisco, California.

Dated: May 11, 1984

Jeffrey A. Bernstein
Signature of Petitioner or Counsel

Jeffrey A. Bernstein, Esq.
Coblentz, Cahen, McCabe & Breyer
35th Floor, One Embarcadero Center
San Francisco, CA 94111

PLEASE SEND ONLY ORIGINAL AND
2 COPIES OF PETITION (RULE 34(d))
OR DESIGNATION OF PLACE OF TRIAL
(RULE 140(b)).



MAY 18 1984

PETITION SERVED ON RESPONDENT
FILING FEE ALSO ACKNOWLEDGED

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE**I. BIOGRAPHICAL INFORMATION (PUBLIC)****1. Full name (include any former names used)**

Frank Cadmus Damrell, Jr.

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

Office: Damrell, Nelson, Schrimp, Pallios & Ladine
1601 I Street, Fifth Floor
Modesto, California 95354

Home: Modesto, California

3. Date and place of birth.

July 6, 1938, Modesto, California

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

Lidwiena Josephina Dykzeul Damrell
Housewife and volunteer at Parent Resource Center (county-wide agency which serves families to prevent child abuse and to provide parent and family mentoring).

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

<u>College and Law Schools Attended</u>	<u>Dates</u>	<u>Degree Received</u>
University of Santa Clara*	1955-60	
University of California, Berkeley	1960-61	B.A., 1961
Yale Law School	1961-64	L.L.B., 1964

*Entered a Roman Catholic Seminary, Sacred Heart Novitiate, which was affiliated with Santa Clara University, to study for the priesthood. I remained a student there until leaving the seminary in 1960 to complete my undergraduate studies at U.C. Berkeley.

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.
- | | |
|--------------|--|
| 1962 | E. & J. Gallo Law Department, Modesto, CA (summer) |
| 1963 | Community Progress Inc. Legal Service, New Haven, CT (summer) |
| 1964 | State of California Attorney General's Office, Law Clerk |
| 1965-66 | State of California Attorney General's Office, Deputy Attorney General |
| 1966-68 | Stanislaus County District Attorney's Office, Deputy District Attorney |
| 1968-70 | Law Office of Frank C. Damrell, Jr., Sole Practitioner |
| 1970-76 | Damrell & Damrell, Partner |
| 1976-90 | Damrell, Damrell & Nelson, Partner |
| 1990-present | Damrell, Nelson, Schrimp, Pallios & Ladine, President |
| 1992-present | The Shannon Company, Managing General 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.
- 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.
- 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.
- California Bar Association
 American Bar Association - Antitrust Section and Litigation Section
 Federal Bar Association
 Stanislaus County Bar Association
 Stanislaus County Women Lawyers' Association
 State Bar Disciplinary Hearing Board
 Senator Feinstein's Advisory Committee for the United States District Court, Eastern District of California
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.

Aside from the California State Bar Association, I am aware of no such organization that is active in lobbying.

Other Organizations

Sportsmen of Stanislaus, a family athletic club. A copy of its bylaws is attached as Exhibit "A."

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.

1965 Supreme Court of California
 1965 United States District Court, Eastern District of California
 1965 United States District Court, Northern District of California
 1965 United States Court of Appeals, Ninth Circuit
 1979 United States Supreme Court
 1980 United States District Court, Central District of California

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.

Commentary on the Rules of the United States District Court for the Eastern District of California, which is in the final editing stage for publication in 1997. The publisher is Michie Parker Publications, P.O. Box 9040, Carlsbad, CA 92018-9040. A copy of the draft is attached as Exhibit "B."

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

It is excellent. My last physical examination was January 23, 1997.

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 spent several years as a member (1973-80) and as Chair (1975-80) of the California State Consumer Advisory Council, the advisory committee to the State Department of Consumer Affairs. I was appointed by Governors Reagan and Brown.

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 clerk for a judge.

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

Yes, from 1968 to 1970, I was a sole practitioner at 820 12th Street in Modesto, California.

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;

<u>Employer</u>	<u>Position</u>	<u>City</u>	<u>Dates</u>
Damrell, Nelson, Schrimp Pallios & Ladine 1601 I Street and 1625 I Street, Modesto	President	Modesto, CA	1990-97
Damrell, Damrell & Nelson 1625 I Street and 911 13th Street, Modesto, CA	Managing Partner/ President	Modesto, CA	1976-90
Damrell & Damrell 911 13th Street, Modesto	Managing Partner	Modesto, CA	1970-76
Law Offices of Frank C. Damrell, Jr. 820 12th Street	Sole Practitioner	Modesto, CA	1968-70
Stanislaus County 1100 I Street, Modesto	Deputy District Attorney	Modesto, CA	1966-68
State of California Office of the Attorney General 50 Fremont St., #300, San Francisco	Deputy Attorney General	San Francisco, CA	1965-66
State of California Office of the Attorney General 50 Fremont St., #300, San Francisco	Law Clerk	San Francisco, CA	1964

- 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?

1965-1968

Upon graduation from law school, I spent four years as a prosecutor, first as a Deputy Attorney General, then as a Senior Deputy District Attorney for Stanislaus County. As a Deputy Attorney General, I was just assigned to the Criminal Appeals Division where I was responsible for approximately 50 appeals, including a number of Habeas Corpus Writs. During my last year,

I was assigned as the first Consumer Fraud Deputy for the San Francisco office. In that capacity, I filed several injunctive actions in the San Francisco Superior Court and conducted evidentiary hearings. As a Deputy District Attorney, I tried numerous criminal jury trials (including three murder trials). I also conducted a number of preliminary hearings and misdemeanor juries as well.

1968-80

I commenced my private law practice as a sole practitioner in 1968. Initially, my practice was exclusively trial work. I tried a number of jury and bench trials, primarily personal injury, criminal defense, and family law matters. After several years, however, my litigation practice became more business-related. When my father retired from the Superior Court in 1970, he joined me in the practice of law. Soon thereafter, Duane Nelson joined our firm out of law school. He remains a partner to this day. In 1980, our firm grew to ten lawyers with a satellite office in Los Angeles to assist several important business clients who were headquartered in the Los Angeles area.

1980-1988

By 1980 several California-based business clients had asked me to assist their Washington, D.C. counsel. As a result, during this period, I spent considerable time in Washington, D.C. as an attorney and lobbyist on behalf of California public and educational entities, agricultural associations, and the energy and transportation industry. I appeared before both the House and Senate Agriculture Committees and the House Interior and Senate Energy Committees and worked with several federal agencies. On several occasions during this time, I also represented corporate clients before state legislative committees and state agencies.

I also represented corporations and institutions relating to large capital projects. The following are some examples of projects in California. I was retained by the University of California regarding the possible location in California of the Superconducting Super Collider. This involved representation of the University with local citizens groups and communities in San Joaquin County. I also represented the University in its efforts to obtain funding for the project from the State of California, Congressional support, and a favorable decision from the U.S. Department of Energy. I also was retained by a New York-based venture capital group to provide legal counsel for the development of a resource recovery project, which would incinerate California's waste tires to produce electric energy. It was the

largest facility of its kind in the United States. Our firm was retained under my direction to prepare contracts, to obtain local, state and federal permits, and to work with bond counsel and underwriters counsel regarding the issuance and sale of bonds to finance the project. The project was successfully completed. Our firm represented the same client regarding the development of a resource recovery facility. This one utilized rice hulls and straw for energy production. I also represented the builder and operator of the Stanislaus County Waste Energy Facility, the largest of its kind in California. This facility was constructed in Stanislaus County to burn all solid waste from the City of Modesto and surrounding communities. Again, I directed the preparation of contracts, obtained local and state permits and assisted bond counsel regarding issuance and sale of bonds to finance the project. In addition, I was engaged to represent several clients in the development of several large real estate projects.

1988-present

Our firm now consists of 18 attorneys with offices in Modesto, Sacramento, and Oakdale, California. My law practice is multi-faceted and covers a wide spectrum of clients and cases. In 1988, I decided to devote full-time energy to my practice in California. While on occasion I represent clients in disputes with state and federal regulatory agencies, I have generally confined my recent legal practice for the most part to major litigated matters.

For the last ten years, I have spent virtually all of my time on complex business litigation in both federal and state courts. My clients include publicly owned corporations, closely held family corporations, public entities and individuals. Such clients include wineries, farming enterprises, trucking, food processing, construction and manufacturing companies, distributorships, and professional corporations.

Another significant aspect of my trial practice involves litigation relating to securities fraud and antitrust law. I have been both lead counsel and co-lead counsel in several federal class actions. My clients in these cases include individuals, as well as private and public entities. Such cases involve an extensive law and motion practice, as well as comprehensive pre-trial orders and discovery plans. Essentially, most securities/antitrust litigation is usually resolved after pre-trial motions, hearings, and extensive discovery.

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

Agricultural associations - Administrative law, Congressional lobbying
 Agricultural production companies - Business litigation, administrative law
 Construction - Construction and real estate litigation, lender liability litigation
 Consumer product manufacturers - Administrative law, business litigation
 Food processing - Administrative law, administrative mandamus,
 environmental law
 Public entities - Antitrust litigation, state administrative proceedings,
 Congressional lobbying
 Resource recovery companies - Administrative law, business litigation,
 environmental law
 Retail store companies - Business litigation, advertising laws, liability defense
 litigation
 Wineries - Business litigation, administrative law, state and federal alcoholic
 beverage laws and regulations

In addition, from time to time, I represent or advise numerous individual and business clients I have known for years, some for a lifetime, on a variety of business-related legal problems.

- 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.

1965-1980

Initially, most of my litigation experience was in state courts and state agencies. As a state prosecutor and as a private litigator, I appeared frequently in court on law and motion matters and bench and jury trials. From time to time throughout this period, I conducted trials in federal court and represented clients before state appellate courts and in state administrative hearings.

1980-1988

Through much of the 1980s, I spent considerable time in Washington, D.C., on behalf of various clients. As discussed above, during this time period I was engaged as counsel for a number of major public and private capital projects. They included several resource recovery projects; a dispute relating to off-shore oil leases in the Santa Barbara Channel on behalf of a consortium of independent oil companies; several public power projects undertaken by local irrigation districts/public utilities; the purchase of Conrail by a major transportation company; the development and funding of the

Superconducting Super Collider by the University of California; the development of federal marketing orders for California table grapes; and several large real estate developments. In addition, I also was retained to represent several California agricultural associations and food processing and manufacturing companies relating to a variety of legal, administrative, and legislative issues. As a result, for a period of time, my litigation practice was somewhat limited. Nevertheless, I made a number of appearances on behalf of clients in state courts and before administrative bodies and occasionally in federal court.

1988-present

I resumed a full-time business litigation practice, which has recently become primarily focused in the federal courts of the Eastern, Northern and Central Districts of California. However, since 1988, I have also made frequent appearances in state court as well.

2. What percentage of these appearances was in:

- (a) Federal courts: 20%
- (b) State courts of record: 65%
- (c) Other courts: 15%

As noted above, my practice has increasingly involved federal court matters.

3. What percentage of your litigation was:

- (a) Civil: 90%
- (b) Criminal: 10%

1965-80

In my early years of practice as a prosecutor, all litigated matters were criminal. My first several years in private practice I also defended a number of criminal matters.

1980-present

Since 1980 my practice has been virtually all civil in nature.

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.

Trials as sole counsel - approximately 100

Trials as chief counsel - approximately 15

Trials as associate counsel - approximately 15

1965-80

During my years as a prosecutor, I conducted numerous jury and bench trials as well as approximately 40 criminal appeals and writs. In private civil practice the number of trials decreased as their complexity grew.

1980-present

Increasingly, I act as chief counsel with several attorneys assisting me in very complex matters.

5. What percentage of these trials was:

(a) Jury: 25%

(b) Non-jury: 75%

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. *Bronco Wine Co. v. Bureau of Alcohol, Tobacco and Firearms, et al.*

Summary: In October 1996, the Bureau of Alcohol, Tobacco and Firearms summarily and without notice seized 32,000 cases of Rutherford Vineyards brand wine from our client. I was chief counsel assisted by several law firms in Sacramento, San

Francisco, Washington, D.C. and New York City. The ATF claimed the label was in violation of 27 C.F.R. 4.39(i) which provides that wine sold under brand names incorporating the names of viticultural areas must be produced from the viticultural area. After months of negotiations, Bronco filed an action for injunctive relief alleging violation of due process of the Fifth Amendment and the federal APA (Administrative Procedures Act). A hearing was held on a temporary restraining order, and the court denied the application. An amended complaint has been filed adding the denial of due process on grounds that 4.39(i) violates 15 U.S.C. 1052(a) (the Lanham Act), which implements the provisions of the recently enacted Uruguay Round Agreement Act, 19 U.S.C. 3501, et seq. There has been considerable discovery. I have conducted virtually all depositions and most hearings on behalf of the plaintiff. The challenge to the federal wine label regulations based on U.S. trademark law has attracted wide-spread interest throughout California's wine industry and has been discussed in various trade journals and magazines. As a result, the industry has formed a special committee to study the matter as the issue affects literally hundreds of wine labels.

- a. 1996-present
- b. Counsel for Plaintiff
Court: U.S. District Court for the District of California, Eastern District, Case No. CV-F-96-6354 REC DLB
Judge: Hon. Robert E. Coyle
- c. Opposing Counsel: Daniel E. Bensing, U.S. Attorney's Office, 1130 O Street, Fresno, CA 93721, Phone (209) 498-7272

2. *Hará Soderholm and Cheryl Soderholm v. Rubbermaid, Inc.*

Summary: This case was filed on behalf of Hardy and Cheryl Soderholm against Rubbermaid, Inc., in the United States District Court for the Northern District of California for several hundred thousand dollars for fraud, negligent misrepresentation and punitive damages. I was chief counsel and handled some 30 depositions in California, Colorado, Ohio, Pennsylvania and New Jersey. I also and handled numerous motions including a motion to dismiss, summary judgment and some 15 motions in limine. The jury trial lasted three weeks and resulted in a verdict for the defendant. Rubbermaid falsely represented to Mr. and Mrs. Soderholm that it supported Plaintiff's business plan to franchise "Everything" Rubbermaid stores. Upon the successful completion of a test program, Plaintiffs intended to own a number of such stores themselves. Rubbermaid failed to disclose to Mr. and Mrs. Soderholm's intention to go into the corporate retail business itself and to use the Soderholms' single store as a test for its own corporate program. Rubbermaid withdrew its

support of the Soderholms' store after they had invested their life savings in the business plan. The case presented a challenge to this corporation's conduct in defrauding and misleading these individual entrepreneurs to their substantial detriment for the benefit of the corporation. Legal issues related to fraud, promissory estoppel, breach of contract, breach of third party beneficiary contract, admissibility of hearsay evidence, expert and lay opinion testimony, and character evidence, determination of the proper measure of damages for fraud and tortious interference with contractual relations and economic advantage.

- a. 1994-1996
- b. Counsel for Plaintiffs
Court: U.S. District Court for the District of California, Northern District, Case No. C94-3583
Judge: Hon. William H. Orrick
- c. Opposing Counsel: George E. Leonard, Esq., Shughart, Thomson & Kilroy, Twelve Wyandotte Plaza, 120 W. 12th Street, Kansas City, MO 64105-1929, Phone (816) 421-3355

3. *Bronco Wine Co, et al. adv. Glen Ellen, et al.*

Summary: This was a cross-complaint filed in Sonoma County Superior Court on behalf of the California wine distributor of Glen Ellen wines, the largest selling Chardonnay wine in America, for wrongful termination of a distributorship, which claimed damages for failure of plaintiff to honor bulk wine contracts. The case was widely reported in the wine trade press since it involved important industry issues relating to wine distributorship and long-term wine supply agreements. I was chief counsel and conducted virtually all discovery and motions, as well as the jury trial, on behalf of the plaintiff. The pre-trial motions included demurrers, motions for injunctive relief, summary judgment, and some 25 motions in limine. The jury trial lasted three months and resulted in a verdict on the cross-complaint for \$2.5 million, as well as a verdict against the cross-complainant for several million dollars.

- a. 1990-1993
- b. Counsel for Defendant Bronco Wine Co.
Court: Sonoma County Superior Court, Case No. 187834
Judge: Hon. Elaine Waters
- c. Opposing Counsel: Robert R. Cross, Esq., Broad, Schultz, Larson & Wineberg, One California Street, 14th Floor, San Francisco, CA 94111-5482, Phone (415) 986-0300

4. *S. Martinelli & Co. v. Department of Conservation, et al.*

Summary: There was a complaint for writ of mandate and permanent injunction against the Department of Conservation of the State of California. At issue was enforcement of a recently enacted Beverage Container Recycling and Litter Reduction Act (known as the "Bottle Bill") against a major California fruit juice manufacturer, S. Martinelli & Co., without hearing or opportunity to explain its legal position that it was legally exempt from the Bottle Bill. I was chief counsel in this matter. The State contended Martinelli's product was no different than a soft drink such as Coke or Pepsi. Martinelli was ordered to relabel over 300,000 cases of juice which had been packaged before the enactment of the Bottle Bill. In addition, Martinelli was ordered to relabel over a million bottles of its products and pay nearly \$300,000 in redemption fees. A hearing was held before Superior Court Judge Cecily Bond in Sacramento. The case was important to the fruit juice industry. At the hearing I established that California's Food & Drug Law and parallel provisions of Federal law exempted undiluted fruit juice from the definition of "soft drink." As a result, the court enjoined the enforcement of the Bottle Bill against undiluted fruit juice products, and Martinelli in particular. I was chief counsel in this matter.

- a. 1987-1991
- b. Counsel for Plaintiff
Court: Sacramento County Superior Court, Case No. 364946
Judge: Hon. Cecily Bond
- c. Opposing Counsel: Charles Getz, Esq., Attorney General's Office, 50 Fremont Street, Suite 300, San Francisco, CA 94105-2239, Phone (415) 703-1308

5. *C. Mondavi & Sons v. The Bureau of Alcohol, Tobacco and Firearms, et al.*

Summary: In June 1997, the Bureau of Alcohol, Tobacco and Firearms (ATF) issued a cease and desist order against C. Mondavi & Sons, which operates the Charles Krug Winery, the oldest winery in the Napa Valley. C. Mondavi & Sons does business under the name CK Mondavi. ATF claimed that CK Mondavi brand wines were labeled in violation of 27 C.F.R. Section 4.39(k), which is part of the Federal Alcohol Administration Act (FAA Act). Section 4.39(k) prohibits any statements or representations on wine labels which indicate an origin other than the true place of origin of the wine. Since 1995, CK Mondavi brand wines have been made from grapes grown throughout the State of California, however, the labels contain references to the "Napa Valley," the location of the winery. As a result of the ATF's cease and desist order, the Mondavi family was prohibited from selling their CK Mondavi brand wines in interstate commerce and conducting any further bottling activities at a substantial loss to the winery. After several unsuccessful attempts at

resolving the matter through discussions with ATF, C. Mondavi & Sons filed an action in the United State District Court for the Northern District of California for injunctive relief alleging violations of the due process clause of the Fifth Amendment and the federal Administrative Procedure Act (APA). The hearing on Mondavi's application for a temporary restraining order was held on Thursday, July 3. The Court postponed its ruling on the TRO and continued the matter pending further settlement discussions between the parties. The parties have now negotiated a settlement of most issues and, in all likelihood, will reach a final settlement agreement within the next month. I have conducted all of the settlement negotiations with the ATF and its counsel.

- a. 1997
- b. Counsel for Plaintiff
Court: U.S. District Court for the District of California, Northern District, Case No. 97-2375 SBA
Judge: Hon. Sandra B. Armstrong
- c. Opposing Counsel: Joann Swanson, Esq., U.S. Attorney's Office, Northern District, 450 Golden Gate Avenue, San Francisco, CA 94102, Phone (415) 556-1126.

6. *Cal-Lina v. Congleton*

Summary: This involves a complex series of business transactions between Cal-Lina, Inc. and Vern and Carol Congleton regarding the purchase of real property, a loan of \$325,000.00 by Cal-Lina to the Congletons and an agreement to develop and market a patented braking system for the trucking industry. I was chief counsel in the matter. Eventually, the Congletons filed for protection under the bankruptcy laws. In addition to claims filed by Cal-Lina against the debtors, Cal-Lina sought relief from an automatic stay to pursue its rights to enforce a state court judgment for unlawful detainer. A hearing was held first to determine whether the debtors' legal and equitable interest in the real property was terminated under 11 U.S.C. 365. The judge granted relief from the automatic stay, and trial was held for claims for possession of the real property in question and claims against Cal-Lina for certain monies owed to the debtors. Cal-Lina prevailed on all issues.

- a. 1988
- b. Counsel for Cal-Lina
Court: U.S. Bankruptcy Court for the Eastern District of California, Case No. 988-02504, M88-0619
Judge: Hon. J. W. Hedrick, Jr.

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- c. Opposing Counsel: Cliff McGhee, Esq., 1130 L Street, Suite B, Modesto, CA 95354, Phone (209) 577-8000

7. *MidCal Aluminum, Inc. v. Baxter Rice as Director of the Department of Alcoholic Beverage Control of the State of California; California Retail Liquor Dealers Association, Intervenor*

Summary: This case was a mandamus action filed by MidCal Aluminum, a subsidiary of E. & J. Gallo Winery, challenging California's Liquor Fair Trade Law as a violation of the Sherman Act. I was sole counsel through the state appellate process and then served as co-counsel when the petition of writ of certiorari was filed in the U.S. Supreme Court. The essence of the challenge was that the State of California had no vital interest or oversight of setting the retail price of wine. Essentially, absent a clearly articulated state policy, the California wine retailers were engaging in price fixing in violation of Section One of the Sherman Act. After filing of briefs by Petitioner, the State of California, and Intervenor, California Retail Liquor Dealers Association, and after oral argument, Justice Robert Puglia issued an alternative writ of mandate commanding the stay of enforcement of the wine price posting provisions of the California Alcoholic Beverage Control Act. After further briefing and oral argument, the appellate court rendered a unanimous decision finding California's Alcoholic Beverage Control Law in violation of the Sherman Act and issued the peremptory writ. (*MidCal Aluminum, Inc. v. Rice* (1979) 90 Cal.App.3d 979). A petition for rehearing was denied. Intervenor then petitioned the California Supreme Court for hearing. Upon issuance of a stay by the intermediate appellate court, Intervenor then petitioned the United States Supreme Court for issuance of a writ of certiorari. The Supreme Court issued the writ. Jack Owens of the law firm of Orrick Herrington became lead counsel at this time. Mr. Owens argued the case before the Supreme Court. In an opinion rendered by Justice Powell, the United States Supreme Court found that California Alcoholic Beverage Act violated the Sherman Act. (*California Retail Liquor Dealers Association v. MidCal Aluminum, Inc.*, 445 U.S. 97 (1980)). *MidCal* is the landmark antitrust case defining the state action doctrine.

- a. 1978

b. Co-counsel for MidCal Aluminum: Co-Counsel: Jack Owens, E. & J. Gallo Winery, P.O. Box 1130, Modesto, CA 95353 (209) 579-3791

Court: Court of Appeal of the State of California, Third Appellate District, Case No. 3 CIV 17992

Judge: Hon. Robert Puglia

- c. Opposing Counsel: Attorneys for Defendant: L. Stephen Porter and George J. Roth, Attorney General's Office, 555 Capitol Mall, Suite 350, Sacramento, CA 95814, Phone (916) 445-6221; Attorney for Intervenor: William T. Chidlaw, Point West

Executive Centre, 1455 Response Road, Suite 191, Sacramento, CA 95815, Phone (916) 920-0202

8. *G. W. Hume Company, Zack C. Monroe, et al. v. Merchants Refrigerating Company of California; Intervenor: California Freestone Peach Assn.*

Summary: My client, G. W. Hume Company, was a major cannery which had filed for protection under Chapter XI of the Bankruptcy Act after an action had been filed in Superior Court alleging negligence in the processing of a large quantity of peaches for freezing. I was sole counsel for Hume. Hume was one of California's primary processors of canned peaches. G. W. Hume delivered over 80,000 cases of canned peaches to be quick frozen at Merchant Refrigerating Company for delivery to various U.S. military installations. This represented a significant portion of the 1970 peach crop. The peaches spoiled during the freezing process. As a result, claims were filed by the California Freestone Peach Association against Hume for improperly canning the peaches. After Hume filed for bankruptcy protection, Hume filed a claim for damages negligence against Merchants for failure to properly freeze the peaches. The matter was litigated over a period of several weeks. Several food processing experts testified, and numerous witnesses testified on both sides as to harvesting, processing and freezing of peaches. The court found in favor of Hume and found Merchants liable for damages caused by its negligence and breach of implied warranty.

a. 1971-72

b. Counsel for Plaintiff

Court: Stanislaus County Superior Court, Case No. 111123 and U.S. Bankruptcy Court Case No. 19189

Judge: Hon. William Zeff (Superior Court) and Hon. Fred Reyland (Bankruptcy Court)

c. Opposing Counsel: Attorney for Defendant: Jerome F. Downs, Thornton, Taylor & Downs, 311 California Street, San Francisco, CA 94104, Phone (415) 421-8890; Attorney for Intervenor: William J. Bush, Hanson, Bridgett, Marcus & Jenkins, Citizens Building, One Kearny Street, San Francisco, CA 94105, Phone (415) 781-5500

9. *Ronald Davis, et al. v. Del Puerto Hospital, et al.*

Summary: I was Plaintiff's counsel for the family of a 16-year-old girl who was found dead in a barn on the family ranch the morning after her release from the hospital for injuries sustained in an automobile accident. I was plaintiff's trial counsel. The cause of death was determined to be trauma to the brain. The hospital's defense was that the

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young woman died as a result of a fall in the barn or foul play. After extensive discovery and a lengthy jury trial, the jury found 9 to 3 for the hospital.

- a. 1978
- b. Counsel for Plaintiffs
Court: Stanislaus Superior Court, Case No. 133579
Judge: Hon. Gerald V. Underwood
- c. Opposing Counsel: Mario Beltrami, McCormick, Barstow, Sheppard, Coyle & Wayte, 400 Guarantee Savings Building, 1171 Fulton Mall, Fresno, CA 93721, Phone (209) 442-1150

10. *Sueanne Smith, et al. v. Nicanor Villanueva Munoz, et al.*

Summary: The Plaintiff was a teenager who was a passenger on a motorcycle operated by one of the defendants. I was plaintiff's trial counsel. The operator lost control of the motorcycle in an effort to brake the vehicle. As a result, Sueanne Smith's right leg was caught under the motorcycle and was extensively damaged. The use of her right leg was permanently impaired. Defendant Munoz had limited assets and insurance; however, during the course of discovery, it was disclosed that the motorcycle had been repaired just prior to the accident by the Sears Roebuck Automobile Repair Center. The trial turned on the issue of causation of the repair work on the apparent malfunction of the motorcycle. After extensive testimony of various witnesses, including plaintiff's expert engineers, plaintiff rested. Defendant Sears Roebuck decided to pay Plaintiff's demand for damages of several hundred thousand dollars.

- a. 1975
- b. Counsel for Minor Plaintiff and Mother as Guardian ad Litem
Court: Stanislaus County Superior Court, Case No. 122433
Judge: Hon. Frank Pierson
- c. Opposing Counsel: For Defendant Munoz: Cruz F. Portillo, 316 Bank of America Building, Stockton, CA, (current address and phone number unknown); for Defendant Sears, Roebuck & Co.: Krolloff, Belcher, Smart, Ford & Norris, 1044 N. El Dorado, Stockton, CA, Phone (209) 478-2000; for Defendant J.V.L. Enterprises, Inc.: Mayall, Hurley, Knutsen, Smith & Green, 37 Hunter Square Plaza, Stockton, CA, Phone (209) 477-3833; for Defendant Rodney Blane Farrell: Brunn & Lacey, 928 12th Street, Modesto, CA, Phone (209) 521-2133.

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.)

1. *County of Stanislaus, a public entity, and Mary Grogan, an individual, on behalf of themselves and all entities and persons similarly situated v. Pacific Gas & Electric Co., et al.*

This was a complaint filed in the United States District Court for the Eastern District of California on behalf of California ratepayers against PG&E and its subsidiaries for violation of federal and state antitrust laws, which claimed damages of nearly one billion dollars compensatory damages in addition to treble damages. The complaint alleges that PG&E and its subsidiaries entered into an illegal agreement in Canada with a cartel of Canadian natural gas producers to fix the price of gas sold to California businesses and consumers and to preclude them from purchasing alternate, lower cost Canadian gas from any other supply. The pivotal legal issues related to the application of the filed rate doctrine (*Keogh v. Chicago & N.W. Railway*, 260 U.S. 156 (1922)) and the state action doctrine (*California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, (445 U.S. 97 (1980))). The case has been closely followed throughout the natural gas industry by industrial users of gas and the California Public Utilities Commission since it involved significant issues relating to the purchase and sale of natural gas. The high cost of natural gas in California is often cited as the reason that many businesses have either left the state or have selected other states to start their operations. The case involved extensive briefing and oral argument, including motions to dismiss the original and first amended complaints, as well as subsequent appellate briefs and oral argument. The Ninth Circuit affirmed the District Court's decision to grant a 12(b)(6) motion on the first amended complaint. Plaintiffs intend to file a petition for writ of certiorari in the United States Supreme Court. The State of California intends to join as an amicus petitioner in this matter.

2. *Betty L. Annoni, et al. v. Gottschalks, Inc.*

Gottschalks owns a chain of department stores through California. This case was a class action filed in the United States District Court for the Eastern District on behalf of a class of individual purchasers of Gottschalks, Inc. common stock against Gottschalks, Inc., several of its officers and directors, Ernest and Young, the company's accountant, and various underwriters of the company's public offerings for violations of Sections 11, 12 and 15 of the Securities Act of 1933, Section 10b of the Securities Exchange Act of 1934 and Rule 10b-5, as well as various state law causes of action, which claimed several millions dollars in compensatory and punitive damages. The case was widely reported throughout Northern California since the case involved serious wrongdoing on the part of a large, local retailer and its individual officers and directors. Many residents throughout California lost substantial

amounts of money when the price of Gottschalks' stock dropped upon the announcement by the company that it had misstated the true condition of the company and made false and misleading statements regarding its Voluntary Employee Benefits Association Plan. Criminal proceedings were initiated against various officers of the company. The pre-trial motions included multiple hearings on motions to dismiss. The case was settled in favor of the plaintiff class for an amount in excess of \$5 million.

3. Bronco Wine Company / California Department of Agriculture / Annual Grape Crush Report Administrative Action

Each year wineries are required to furnish the California Department of Food & Agriculture (the "department") with certain information pertaining to the annual grape harvest, including tonnage and price of grapes purchased by grape growing district. The department then summarizes the information and publishes it in an annual report entitled the California Grape Crush Report. The department's authority to collect such data and publish the report is set forth in the State Food & Agriculture Code. These reporting instructions were gradually changed through a series of private meetings with selected industry members without following formal rulemaking procedures.

While our client continued to report the same data it had reported for the past twenty years, it now found itself in violation of the new reporting instructions. I claimed that the department's newly adopted instructions, in effect, created a regulatory scheme without following the formal rulemaking procedures and without authorization of the enabling statute. When the notice was given to the department that our client refused to follow this illegal regulation, the department announced that it would not enforce the instructions. Instead, the department initiated formal rulemaking, proposing a regulation nearly identical to the previous instructions. Essentially, the proposed instructions sought to change the character of the report from a statistical tool to a pricing index in direct contravention to the enabling statute. I challenged the original changes to the instructions at the administrative hearing. All segments of California's wine industry participated. The Administrative Law Judge concurred with our argument and evidence and declared the proposed regulation invalid.

4. University of California / Superconducting Super Collider

This involved an effort by the University of California to develop a massive multi-billion dollar scientific research facility encompassing thousands of acres to be build in San Joaquin County, California. The funding of this project was subject to Congressional appropriations and the selection of a site among several competing state universities, most notably Colorado and Texas. The University retained me to coordinate legal aspects of the project with state and local agencies. It became necessary to conduct meetings with community groups throughout California's Central Valley, to meet with members of California's Governor's office and legislature regarding the extent of state funding and support, and to coordinate the

lobbying activity with various firms in Washington.

5. Coachella Valley Table Grape Growers Association

During the 1980s, I was involved in several Congressional lobbying efforts on behalf of both public and private entities, including local public utilities, a major transportation company, and agricultural organizations. An example of one such effort is the Coachella Valley Table Grape Growers Association.

The Coachella Valley is located in the Palm Spring/Indio region of Riverside County in Southern California. Because of unique climate and soil conditions, the Coachella Valley produces the first and largest crop of America's table grapes. It faced competition from table grapes from Mexico which did not meet the same quality standards as the American grapes. As a result, I was retained to draft and lobby a federal marketing bill which would require Mexican table grapes to meet the same quality standards as American grapes. As a result, I was engaged over a twelve-month period (1) preparing testimony, (2) meeting with members and staff revising legislation drafts, (3) meeting with representatives of U.S. Agriculture Department and U.S. State Department, and (4) negotiating with Government of Mexico and the Washington law firm of Arnold & Porter. In 1983, Congress passed the bill which enacted the federal marketing order for Coachella Valley table grapes.

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.**

Upon termination of my employment, the firm will purchase my shareholder interests in the firm pursuant to a firm shareholder agreement. There are several contingent fee class action matters pending. If fees are realized in these matters, I will receive a percentage of the fees earned by our firm that will be set prior to my departure.

It is my present intention to remain as a general partner in The Shannon Company. I would continue to receive income derived from rents from the property owned by Shannon. My wife and I would continue to own an office building currently leased from which we derive rental income.

I expect to continue as a trustee for a Gallo family trust, the beneficiaries of which are my nieces and nephews. I receive no compensation as trustee and undertake this responsibility solely as a family member.

I would recuse myself from all matters in which the above parties or entities or interests are involved.

- 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 matters which include any clients of my firm or members of my firm, as well as the litigants or attorneys involved in the cases specified in Answer 1 above. I will also recuse myself from any matters involving tenants of the buildings I own or have an economic interest in. In all matters, 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.**

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 attached as Exhibit "C."

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

See attached net worth statement attached as Exhibit "D."

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. From time to time I have assisted candidates by hosting events and providing informal advice to several candidates for state and national office. I may have received honorary titles such as County Chair or Co-Chair or member of a Steering Committee, but I had no official role in the campaigns.

Jerry Brown for President, 1976 -- Delegate to Democratic National Convention, 1976
Jimmy Carter for President, 1980 -- Delegate to Democratic National Convention, 1980

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.**

Pro Bono Activities

Parent Resource Center
811 5th Street
Modesto, CA 95351

Day-to-day advice to volunteer county-wide agency which serves families to prevent child abuse and to provide parent and family mentoring. On many occasions I provided legal advice and personal assistance to the Center.

Sickle Cell Anemia Foundation
c/o Mel Williams
704 Spencer Avenue
Modesto, CA 95351

Preparation of corporate documents; review of annual minutes (1978-92). I have routinely provided advice to the Foundation's president from time to time.

In addition, I have supervised or provided pro bono legal services to the following:

Haven Women's Center of Stanislaus County
619 13th Street, Suite I
Modesto, CA 95354
(209) 524-4331

I have supervised legal services including review of pleadings filed on behalf of clients of the Center.

Central Valley Village Corporation (a facility for those with limited physical functions)
 c/o Madelyn Amaral
 1030 Elm Avenue
 Modesto, CA 95351
 (209) 578-5780

I met with the Corporation's organizers at the inception of their efforts and provided legal assistance including drafting of incorporation documents, siting and permitting of the facility.

St. Joseph Church
 1813 Oakdale Road
 Modesto, CA 95355

Provided legal counsel to parish priest from time to time and retained on pro bono basis to advise relating to potential liability issues.

Townsend Opera Players
 P.O. Box 4519
 Modesto, CA 95352
 Legal advice

Finally, on numerous occasions, I advise individuals or groups of minimal or no income in legal matters for no fee.

Throughout my professional life, I have tried to use my skills and experience for the service of my community. The following are some examples. Early in my career I assisted in the creation of a Stanislaus County Consumer Complaint and Advisory position. I spent several years as a member and as Chair of the California State Consumer Advisory Council (appointed by Governors Reagan and Brown), the advisory committee to the State Department of Consumer Affairs. This department licenses and regulates much of the business and professional services from pharmacists to the automobile repair industry. The Council reviewed complaints from consumers and regulated business regarding the operation of the Department and made recommendations to both the Department and the Governor. In my capacity as President of the California Consumer Federation, I led a state volunteer organization which reviewed all consumer-related legislation and policy for the State of California.

I have volunteered my time to a variety of local community endeavors. These endeavors have ranged from the arts to education to social issues and basic human needs such as food and shelter. I have regularly served and delivered food for the needy and hosted numerous fund-raisers for various charities which assist the disadvantaged.

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?**

Initially, the Sportsmen of Stanislaus was an athletic club limited to adult male membership. There were no other restrictions on membership. Since 1985, it has been open to men, women and families due, in part, to efforts of our law firm to expand the membership. I was involved, as were members of our firm, in changing the bylaws to open membership to women. I have been a member since 1968.

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.
Yes, the committee recommended me.

In December I was again asked to serve as a member of Senator Feinstein's advisory committee for judicial appointments to the Eastern District of California. I advised the Senator's Chief of Staff that I would not be able to serve as I was considering applying for a newly vacant position myself.

I was initially interviewed by the Senator's Advisory Committee in Sacramento. I had only met one of the committee members previously. I was advised that I was the only candidate outside of the Sacramento area. (Modesto is some 70 miles south of Sacramento.) I believe there were four candidates recommended out of many applicants. I was one of the four. I was then interviewed by Senator Feinstein. She asked me a number of questions, most of which are contained in this questionnaire. When she asked why I wished to leave a successful law practice, I recounted a similar question I asked my father many years ago when he left his law practice to become a state trial judge. His answer to me was one word, "service." According to my father, service to others was the highest form of citizenship. I can think of no greater honor for any citizen than to serve our country as a federal judge.

Subsequently, I was involved in several extensive interviews by representatives of the

Department of Justice. Initially, I was interviewed individually on several occasions and then was the subject of a lengthy interview by four representatives of the Department. I also had several lengthy interviews with an agent of the Federal Bureau of Investigation. These interviews encompassed my entire professional life as well as my personal life, including my association with public activities and individuals, my travels and virtually every aspect of my life since my high school years.

Most recently, I had a three-hour interview with a representative of the Standing Committee on Federal Judiciary of the American Bar Association. I was questioned extensively about my legal experience, my reasons for seeking judicial office and my academic, public, and personal activities.

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.**

At the core of Article III jurisdiction are the notions of injury and causation. The judge who strays from these strictures to solve “problems” tends to personalize or politicize the judicial process. Not every problem is susceptible to a judicial solution. Without abdicating the role of the federal judiciary to ensure compliance with the Constitution, the court must adhere to the notion that the business of the federal district court is to decide controversies, not offer pronouncements for future generations. In doing so, the district court must, whenever possible, follow the path of precedent in its judgment of such controversies.

A tendency to engage in judicial regulation usurps the constitutional authority of the other branches of government and, in the long run, undermines the court’s own authority. The more broad the order, the more difficult the compliance and enforcement. In short, the imposition of extensive affirmative duties on litigants and the corresponding oversight responsibilities of a district court judge should be avoided.

Finally, the “who” and “when” of justiciability are central to federal court jurisdiction. While the distinction between standing and ripeness is sometimes blurred, clearly, federal adjudication must be predicated on present or imminent injury which is at hand and ready for adjudication. The “loosening” of these basic requirements can only undermine the Constitutional mandate of Article III jurisdiction.

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Martin Joseph Jenkins

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

a. Residence.
Oakland, California

b. Office.
Alameda County Superior Court
Juvenile Division, Dept. 25
400 Broadway Street
Oakland, California 94607

3. Date and place of birth.

November 12, 1953; San Francisco, California.

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

I have never been married or divorced. I am a single and I do not have any children.

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

<u>Colleges and Law Schools Attended</u>	<u>From</u>	<u>To</u>	<u>Degree Received</u>
City College of San Francisco	1971	1973	A.A. (6/73)
Santa Clara University	1973	1976	B.A. History (12/96)
University of San Francisco School of Law	1977	1980	J.D. (6/80)

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) January 1977-January 1979; San Francisco Parks and Recreation Department, Part-time Recreation Director
 - b) April 1977-August 1977; Seattle Seahawks Professional Football Team-Professional Athlete
 - c) May 1979-August 1979; Alameda County District Attorney's Office, Student Law Clerk
 - d) August 1980-July 1983; Alameda County District Attorney's Office, Student Law Clerk and Deputy District Attorney
 - e) August 1983-May 1985; United States Department of Justice, Civil Rights Division-Criminal Section, Trial Attorney
 - f) From May 1985-December 1989; Pacific Bell Company Legal Department, General Litigation Department
 - g) From December 1989-January 24, 1992; Judge of the Oakland-Piedmont-Emeryville Municipal Court Judge
 - h) From January 24, 1992-Present; Judge of the Alameda County Superior Court.
7. **Military Service:** Have you had any military service? If so, give particulars, including dates, branch of service, rank or rate, serial number and type of discharge received.
- I have never served in the military.
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) John F. Kennedy Scholarship, University of Santa Clara (1973-1975)
 - b) Bronco Bench Athletic Scholarship, University of Santa Clara (1976)

- c) National Collegiate Athletic Association, Division II All American Team; Honorable Mention 1977
- d) George Helmer Scholarship Award; University of San Francisco School of Law (1978)
- e) Judge Harold J. Haley Award; "Awarded annually to the Dean and Faculty of the University of San Francisco School of Law to the member of the Graduating Class evidencing Exceptional Distinction in Scholarship, Character and Activities" (1980)
- f) United States Department of Justice Commendation Award; In Recognition of Outstanding Service to the Attorney General's Task Force on Family Violence (1984)
- g) Barrister's Club of San Francisco, Board of Directors Award: For Exemplary Contributions to the Life of the Club and to the Ideals of Legal Justice and Professional Service (1988)
- h) Abraham Lincoln High School "Wall of Fame Inductee" (May 1996)
- i) Barrister's Club of San Francisco, Board of Directors Award: For Exemplary Contributions to the Life of the Club and to the Ideals of Legal Justice and Professional Service (1988).

I have also received letters of commendation from the Federal Bureau of Investigation, the University of San Francisco and local high schools in San Francisco and Oakland.

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 California (1981-1990)

American Bar Association (1991-1993)

Alameda County Bar Association (1989-1994)

California Judges Association (1990-Present)

Association of Business Trial Lawyers (1997-Present)

Charles Houston Bar Association (1982-Present)

San Francisco Bar Association Barristers' Club (1985-1989)

Donald R. McCullum Moot Court Board (1993-Present)

American Inns of Court, Earl Warren Inn (1996-Present)

University of San Francisco Law Assembly (1994-Present)

National Institute for Trial Advocacy Teaching faculty (1990-1993)

California Judicial Council's Family and Juvenile Law Advisory Committee, Executive Committee Member (June 1996 to June 1997)

Teaching Faculty-California Center on Judicial Education and Research (CJER) (1990-Present).

California Supreme Court's Advisory Committee on Judicial Ethics (March 1995-November 1996)

California State-Federal Judicial Council (November 1996 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.

Organizations which lobby before public bodies:

Other than the California Judges Association and other bar organizations, I do not belong to any organizations that lobby before public bodies. However, from June 1996 through June 1997, I was a member of the Executive Committee of the California Judicial Council's Family and Juvenile Law Advisory Committee. The Executive Committee occasionally submits proposed legislation and apprises the legislature of the impact of pending legislation on the California Juvenile Courts.

Other memberships:

Santa Clara University Board of Regents (1990-1995);

University of San Francisco Street Law Program, Board of Directors (1988-Present);

Prescott-Joseph Center For Community Enhancement, Board of Directors (1995-Present);

Charles R. Lawrence III Scholarship Committee (1985-Present);

Abraham Lincoln High School Alumni Association (May 1996-present)

Board of Directors, University of San Francisco Para-Legal Studies Program (July 1990-June 1995);

Northern California Football Officiating Association (1985-1997);

Collegiate Officials Association (1992-1997)

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 Supreme Court and Intermediate Appellate courts (May 1981);

California Trial Courts (May 1981);

United States District Court, Northern District of California (May 1981);

United States District Court, Eastern District of Wisconsin (May 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.

a) California Code of Judicial Ethics and Commentary, (April 15, 1996);

b) Controlling your Courtroom: Voir Dire and Trial Management Workshop, "Statutes Related to Voir Dire" (September 29, 1992).

The final draft of the California Code of Judicial Ethics was a collaborative effort with Ethics Committee Members and Staff Attorneys from the California Administrative Office of the Courts involved in editing the Code. I have also attached an overview of California Statutes relating to the conduct of Voir Dire that I routinely give to all participants in my Voir Dire Workshops. A copy of the materials referenced above are attached hereto as Exhibit A.

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

The present status of my health is good. My last physical examination was in April 1997.

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.

In January 1992, I was appointed by Governor Pete Wilson to the Alameda County Superior Court and took my oath of office on January 25, 1992. The Superior Court is the California's trial court of general jurisdiction where civil cases, irrespective of amount in controversy, and criminal felony charges are litigated. There are no limitations on the jurisdictional reach of the California Superior Courts save and except those matters heard in inferior courts (i.e., municipal and justice courts) and those matters specifically venued in the Federal Court. I was re-elected to my Superior Court Office in an uncontested election and began my new six year term on January 1, 1993. In November of 1989, I was appointed by then Governor George Dukemejian as a Judge of the Oakland-Piedmont-Emeryville Municipal Court and took my oath of office on December 26, 1989. California Municipal Courts are courts of limited jurisdiction and, as such, only civil cases where the amount in controversy is less than \$25,000.00, misdemeanor criminal trials and felony preliminary hearings are heard there. I held my Municipal Court Office until January 24, 1992, when I was elevated to the Alameda County Superior 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 our 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. *Ten most significant written opinions:*

As a Judge of the Superior Court I have not typically issued written rulings and/or opinions. However, I was assigned by Malcolm Lucas, Chief Justice of the California Supreme Court, to sit as a Justice Pro-Tem at the California Court of Appeal, First District-Division Three from May 1994 through September 1994. I have selected ten opinions I wrote during my tenure on the Court of Appeal for your review. A copy of the unpublished opinions referenced below are attached hereto as Exhibit B.

- a) Pamela R. DeWitt-Carter et al. v. Sharon Sharp, As Director, etc., et al. California Court of Appeal, First Appellate District-Division Three, Case No.: A063985;
- b) People v. Stone. California Court of Appeal, First Appellate District-Division Three Case No.: A061456. This decision is published and may be found in the decisions of the California Courts of Appeal, 27 Cal. App. 3rd 187 (1994);
- c) Robert Bushong v. Frank S. Zolin, as Director, etc., California Court of Appeal, First District-Division Three, Case No.: A063372;
- d) Farrell v. Wolf. California Court of Appeal, First District-Division Three, Case No.: A061337
- e) Samuel Rosario v. Diamond Shamrock Corp, California Court of Appeal, First Appellate District-Division Three, Case No.: A059644;

- f) People v. Edward Sanders, California Court of Appeal, First Appellate District-Division Three, Case No.: A060819;
- g) Felzer v. Founders Title Company, California Court of Appeal, First Appellate District-Division Three, Case No.: A062989;
- h) In re Jason Cecil Bell, California Court of Appeal, First Appellate District-Division Three, Case No.: A065285;
- i) People v. Jason Bell, California Court of Appeal, First Appellate District-Division Three, Case No.: A060970;
- j) Roger C. On. v. Raymond Choy et al., California Court of Appeal, First Appellate District-Division Three, Case No.: A063285;

2. *Summary of reversals or affirmance with significant criticism:*

People v. Duong L., California Court of Appeal, First Appellate District, Division Four, Case No.: A074976. The minor, Duong L., and several other minors were charged with First Degree Robbery. After hearing the evidence, I found the allegations true and committed the minor to our County juvenile camp. At the sentencing hearing I also increased the minor's maximum custody time from six to eight years because he acted "In Concert" with several other minors in the commission of the Robbery. The appellate court reversed only that part of my decision which subjected the minor to an increase in maximum custody time. The court held that the increase in the minor's potential custody time violated his right to notice under the Due Process Clause inasmuch as the petition (complaint) failed to specifically allege the "In Concert Allegation." A copy of the appellate opinion in the Duong case is attached hereto as Exhibit C.

3. *Citations for significant opinions on federal or state constitutional rulings:*

- 1) People v. Stone, Case No.: A061456
First Appellate District, Division Three, Case No.: A061456. This decision is published and may be found in the decisions of the California Courts of Appeal, 27 Cal. App. 3rd 187 (1994).

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 a clerk;

I have never clerked for a judge.

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

I have never practiced as 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;

August 1980-June 1983

Alameda County District Attorney's Office, 1225 Fallon Street-9th Floor, Oakland CA., 94612. I was employed initially as a student legal intern and promoted to the position of Deputy District Attorney. As a Deputy District Attorney, I was assigned a docket of criminal misdemeanor and felony cases for prosecution.

August 1983-May 1985

United States Department of Justice, Civil Rights Division-Criminal Section, 950 Pennsylvania Avenue N.W., Washington D.C. 20530. I was hired as a Trial Attorney and prosecuted criminal civil rights cases.

May 1985-December 1989

Pacific Bell Company Legal Department, 140 New Montgomery Street, 10th Floor, San Francisco, California 94105. I was assigned to the General Litigation Department and represented Pacific Bell in civil litigation matters.

December 1989-January 1992

Judge of the Oakland-Piedmont-Emeryville Municipal Court, 661 Washington Street, San Francisco, California 94607. As a Judge of the Oakland Municipal court, I presided over misdemeanor criminal matters, felony preliminary hearings and civil cases where the amount in controversy was less than \$25,000.00.

January 1992 to Present

Judge of the Alameda County Superior Court, 1225 Fallon Street, 2nd Floor, Oakland, California 94612. As a judge assigned to California's trial court of general jurisdiction, I preside over felony criminal matters and a wide variety of civil matters.

- 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?

From May 1985 through December 1989, I was an attorney in the General Litigation Division of Pacific Bell's Corporate Legal Department. As an attorney with Pacific Bell, I represented Pacific Telesis and other Telesis subsidiaries including; Pacific Bell, Pac-Tel Mobile Access and Pacific Bell Directory on a wide variety of legal matters. My practice involved litigation in the following areas: contracts, wrongful termination, personal injury/product liability claims, real property, insurance coverage, and some debtor claims in bankruptcy court.

In addition, I was routinely called upon to provide advice and counsel to Telesis subsidiaries in the following areas: federal and state court ordered wiretaps, and telephone fraud investigations conducted by Pacific Bell, Sprint, MCI and AT&T.

From August 1983 through April 1985, I was employed as a Trial Attorney with the United States Department of Justice, Civil Rights Division, Criminal Section in Washington D.C. The Criminal Section is responsible for the investigation and prosecution of federal criminal civil rights

violations in the following areas: use of excessive force under color of state law, denial of equal access to public accommodations on the basis of race, and interference with housing rights on grounds of race or religious affiliation. As a trial attorney with the Criminal Section, I directed the investigation and prosecution of criminal civil rights from grand jury presentation through pre-trial motions and trial. I also represented the Government in United States v. Monville et. al, wherein the Justice Department successfully prosecuted several defendants for conspiring to deprive an interracial couple of their statutory right, pursuant to 42 U.S.C. 3631, to rent and occupy their home. The Monville case was the Justice Department's first successful jury prosecution of federal statute, 18 U.S.C. 241, where the underlying violation involved a statutory right to housing. 42 U.S.C. 3631.

During my employment with the Department of Justice, I was selected by Assistant Attorney General Lois Haight Herrington to serve as a staff member of "The United States Attorney General's Task Force on Family Violence." The "Task Force" was commissioned by Attorney General William French Smith to investigate and recommend more effective methods and procedures to reduce the growing incidence of spousal abuse, incest, child abuse and elder abuse in the United States. I worked with prosecutorial and other public agencies to identify and prepare victims of "family violence" to give oral testimony at public hearings in New York and several other States. The Task Force's Report was published in 1984, however I did not participate in writing or editing the Report.

From May 1981 through July 1983, I was a Deputy District Attorney in the Alameda District Attorney's Office. I prosecuted numerous felony cases involving allegations of rape, robbery, murder, theft and narcotic offenses. I personally tried to verdict approximately 50 misdemeanor and felony jury and bench trials during my employment with the District Attorney's Office. I also clerked for the Alameda County District Attorney during and after my graduation from law school.

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

In my capacity as an attorney with the United States Department of Justice and the Alameda District Attorney's Office, I represented local and federal law enforcement agencies.

In my capacity as a litigation attorney with Pacific Bell, I represented a private investor owned regional telephone company. Pacific Bell was subject to regulation by the California Public Utilities Commission and the Federal Communication Commission.

- 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 date.

In all of my professional endeavors as a lawyer, I have regularly appeared in court. As a Deputy District Attorney in Alameda County, I appeared in court every day. As a Trial Attorney with the Department of Justice, I appeared in court during jury trials and on all motions related to trial. As an attorney with Pacific Bell, I appeared in court at least once a week and more often when I was in trial.

2. What percentage of these appearances were in federal and/or state courts of record:

- a) *Pacific Bell (1985-1989);*
 federal courts: 20%
 state superior courts: 70%
 state municipal courts: 10%
- b) *United States Department of Justice (1983-1985);*
 federal courts: 100%
- c) *Alameda County District Attorney's Office (1980-1983)*
 federal courts: 0%
 state superior courts: 50%
 state municipal courts: 50%

3. What percentage of your litigation was:

civil:	60%
criminal:	40%

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 personally tried in excess of 50 cases to verdict in state and federal courts of record. I have served as sole counsel in the majority of my jury trials; however while employed with the Department of Justice, I was routinely assigned co-counsel to assist in the preparation and trial of cases.

5. What percentage of these trials were:

(a) jury:	approximately 70%
(b) non-jury:	30%

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 the 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.

Significant Cases:1) **HALEM v. PACIFIC BELL DIRECTORY**

San Francisco Superior Court, Case No.: 865-250

Type of Litigation: Civil Jury, Breach of Contract

Trial Dates: May 5 through May 15, 1989

Judge: Honorable Ralph Flageollet-Civil

Attorneys:

For Pacific Bell: Martin Jenkins.

For Plaintiff: Michael Sorgen, Attorney at Law

22 2nd Street-Suite 500, San Francisco California
94105 (415) 543-5805.

DESCRIPTION OF CASE: Plaintiff contracted with Pacific Bell Yellow Pages Directory for a half page advertisement in the 1985 San Francisco Directory under the business name "Orient Express Rug Company." When the directory was published in September 1985, Plaintiff's business address and telephone number were incorrectly listed. Plaintiff alleged that it suffered losses in excess of \$500,000.00, as a result of the erroneous listing. During the trial of this matter, Plaintiff called several economists and marketing experts to substantiate its damages claim. I was able to demonstrate that any change in plaintiff's gross profit was due to the relocation of Plaintiff's store (which coincided with the release of the directory). After a two week trial, during which my client admitted liability, the jury returned a verdict in Plaintiff's favor in the amount of \$5000.00.

2) **PAGE, AKULIAN & HARKINS v. PACIFIC BELL**

San Francisco Superior Court; Case No.: 863-466

Type of Litigation: Breach of Contract

Unfair Trade Practices and Injunctive Relief

Judge: Ira Brown

Period of Litigation: September 2, 1986-September 8, 1987

Attorneys:

For Pacific Bell Directory: Martin Jenkins

For Defendants: Marshall Krause, Krause & Baskin,
1120 Nye Street-Suite 300, San Rafael, California
94901, (415) 456-2500.

DESCRIPTION OF CASE: Plaintiffs sought to advertise in the 1986 Contra Costa Yellow Pages Directory utilizing the logo "Divorce for Men Only". Pacific Bell Directory refused to print Plaintiffs' advertisement on the grounds that it was discriminatory in nature and therefore proscribed under the California Civil Rights Law-The Unruh Act. Further, as a publisher, my client asserted

its First Amendment right to regulate the content of the advertisements appearing in its Yellow Pages Directories. Plaintiffs sued Pacific Bell seeking injunctive relief to compel Pacific to print their advertisement as requested.

After presentation of legal memoranda and extensive oral argument, Plaintiffs' request for injunctive relief was denied. Subsequent to Judge Brown's ruling, Plaintiff dismissed the lawsuit.

3) CIMA INVESTMENTS v. PACIFIC BELL DIRECTORY

Sonora County Superior Court; Case No.:24594

Type of Litigation: Commercial Litigation-
Breach of Contract, Fraud and Negligence

Period of Litigation: January 1986-December 1986

Judge: Honorable Joseph Hardin

Attorneys:

For Pacific Bell: Martin J. Jenkins.

For Cima Investments: Richard Matranga of
Angermillerand Matranga, 270 S. Baretta Street #A,
Sonora, California 95730, (209) 533-4955.

DESCRIPTION OF CASE: Plaintiff, Cima Investments, owner of the Twaine Heart Motel contracted for advertising in the 1985 Pacific Bell Tuolumne Yellow Pages Directory ("Directory"). When the 1985 "Directory" was published, Plaintiff's advertisement was omitted. Plaintiff sued my client for general damages and lost profits in the amount of \$100,000.00. I filed a motion for summary judgment seeking a ruling on the enforceability of a limitation of liability clause contained in Pacific Bell's contract with Cima Investments. The limiting clause capped Plaintiff's damages, in case of a breach, to the amount Plaintiff paid for the advertisement. This case was of particular significance to my client inasmuch as there had been no previous judicial ruling on the validity of the limiting clause. Judge Hardin ruled that the limiting clause was valid and enforceable and entered judgment against my client for \$750.00, the cost of Plaintiff's advertisement.

- 4) **UNITED STATES v. HENRY MONVILLE ET AL.**
 United States District Court, Eastern
 District of Wisconsin. Case No.: 84-CR-70
 Type of Litigation: Criminal Federal Civil Rights
 Prosecution.
 Charges: 18 USC Sec. 241; 42 USC Sec. 3631
 Judge: Honorable John Reynolds.
 Trial Date(s): September 4, 1984 to September 15, 1984.
 Attorneys:
 For United States of America: Martin J. Jenkins
 and the Honorable Patricia Gorrence (formerly Asst.
 U.S. Attorney), United States Court House, 517 East
 Wisconsin Avenue-Rm 264, Milwaukee, WI, 53202 (414)
 297-4165.
 For Defendants:
 William Burke, 850 Honey Creek Parkway, Watautosa
 WI, 53213, (414) 276-1717;
 Martin Love, 6525 West Blue Mound Road, Milwaukee
 WI, 53213 (414) 258-5989;
 Robert Dvorak, 823 North Cass Street, Milwaukee WI,
 53202 (414) 273-0373.

DESCRIPTION OF CASE: In June 1983, Mr. John Smith, a member of the United States Peace Corps, purchased a home in rural Crivitz, Wisconsin, and moved there with his wife and infant son. Mr. Smith, a white male, and his wife, a black citizen of Liberia, introduced themselves to their new neighbors after moving to Crivitz. Shortly after they moved into their new home, the Smiths began to receive threatening phone calls--including one from an anonymous caller who suggested that Mr. Smith "take his bride back to Africa." On the evening of July 10, 1983, the Defendants drove to the Smiths' residence where they burned a five-foot cross on the Smiths' front lawn. The prosecution of this matter was particularly difficult as there were no percipient witnesses to the cross burning. Agents of the Federal Bureau of Investigation were unable to lift any latent finger prints from the cross found at the victims home. Several neighborhood children observed the defendants' build a cross on the day of the offense. However, when called to testify at trial, these minors completely recanted their grand jury testimony after being pressured to do so by their parents and friends of the defendants. After a three-week trial, during which over 30 witnesses were called, the defendants were convicted of all charges. All defendants were sentenced to terms of incarceration in federal prison.

5) JACOBS v. PACIFIC BELL ET AL.

United States District Court-Northern District of California; Case No.: C68-7169 EFL

Type of Litigation: Civil-Personal Injury

Period of Litigation: January-October 1987

Judge: Honorable Eugene Lynch

Attorneys:

For Pacific Bell: Martin J. Jenkins

For Plaintiff: Stewart I. MacKenzie, 3900 New Park Mall Road, Newark CA 94560 (510) 791-8113.

DESCRIPTION OF CASE: This case involved the service of a search warrant by United States Customs Agents. The agents, in seeking to execute the warrant authorizing the seizure of illegal drugs, relied upon residence information obtained from my client's non-published data base. Plaintiff, a resident at the location where the warrant was served, was home when the agents arrived. Plaintiff's complaint alleged that the Agents stormed her house and illegally detained her and her minor son during the course of their search. Plaintiff's complaint further alleged that Pacific Bell negligently provided the "Agents with incorrect address information-which led to the service of the warrant." On behalf of Pacific Bell, I moved to dismiss Plaintiff's complaint for lack of subject matter jurisdiction based upon Plaintiff's failure to allege that my client's action violated any Federal Constitutional Right or federal statute. After extensive presentation of legal authorities, the court granted my client's motion to dismiss.

6) CREATIVE LEISURE v. PACIFIC BELL ET AL.

San Francisco Superior Court; Case No.: 829-499

Type of Litigation: Civil-Negligence-Failure to adequately protect telephone facilities

Judge: Honorable Lucy McCabe

Period of Litigation: February 1985 to May 22, 1987

Attorneys:

For Pacific Bell: Martin J. Jenkins

For Plaintiff: Robert Links of Berger, Nadel & Vanelli, 1 California Street-Suite 2750, San Francisco, California 94111, (415) 362-1940

DESCRIPTION OF CASE: Plaintiff, a wholesale marketer of Hawaiian and Mexican vacation packages, conducted its business with retail travel agents throughout the country by telephone. Plaintiff subscribed to telephone service with Pacific Bell. Plaintiff alleged that on several occasions between September 23, 1982 and April 13, 1982, Pacific Bell's underground cables were struck by

contractors causing interruptions in Plaintiff's telephone service and a corresponding loss of profit. Plaintiff further alleged that my client was responsible for its loss of profits because "Pacific Bell failed to mark, when requested, the location of its underground cables." After extensive discovery, I moved for summary judgment on the ground that my client's liability, if any, was governed by California Public Utilities Tariffs which limited Pacific Bell's liability for errors in the provision of telephone service to the cost of the service during the period of interruption. After extensive briefing and oral argument, the Court granted my motion for summary adjudication of issues and the matter ultimately settled on terms favorable to my client.

7) **PEOPLE v. DANE E. WOODWARD**

Alameda County Superior Court; Case No.: H-2520

Judge: Honorable Jacqueline Taber

Type of Litigation: Criminal Mental Health Re-commitment

Trial Date(s): May 20-May 27, 1983

Attorneys:

Deputy District Attorney: Martin Jenkins;

For Defendant: Albert Wax, 2004 Cedar Street,
Berkeley, California 94709, (510) 548-9800

Description of Case: In 1981, Mr. Woodward allegedly assaulted and tried to rape thirteen year old Patricia Maes. Mr. Woodward was charged with felony assault with intent to commit rape. The complaint also alleged that Mr. Woodward had sustained a previous conviction for molesting a two year old girl. At trial several experts opined that Mr. Woodward suffered from Organic Brain Syndrome, a condition that precluded him from controlling his sexual and aggressive desires. After several days of testimony, the jury found Mr. Woodward not guilty by reason of insanity and he was committed to Atascadero State Hospital. In January 1983, just two years after his commitment to Atascadero, Defendant filed a petition in the Alameda Superior Court seeking his release on the ground that his sanity had been restored under Penal Code Section 1026.2. It was at this juncture that the case was assigned to me for trial. After a review of the case file and psychological reports, I concluded that Mr. Woodward was still a danger to the community and objected to his release. As such, Mr. Woodward's petition was set for jury trial. Several psychiatrists, psychologist, and members of the defendant's family testified at the trial. The jury concluded that Mr. Woodward was "presently a danger to himself and others" and he was re-committed to Atascadero.

8) **PEOPLE v. BELLARD**

Oakland-Piedmont-Emeryville Municipal Court; Case No.: 177434

Type of Litigation: Criminal Prosecution.

Charge: Penal Code Section 245 a- Assault

Trial date(s): July 1981

Judge: Honorable Roderick Duncan

Attorneys:

Deputy District Attorney: Martin J. Jenkins

For Defendant: Scott Sugarman, Sugarman & Cannon, 1

Kaiser Plaza, Suite 1750, Oakland, California 94612

(510) 465-1932.

Description of Case: The victim was allegedly shot by defendant, Charles Bellard, after a heated argument on a North Oakland Street. The defendant shot the victim because the victim had informed law enforcement authorities that the defendant was responsible for a rash of burglaries in the City of Oakland. The victim was rushed to the hospital after the shooting and doctors determined that the bullet could not be removed because of its proximity to the victim's spinal cord. There were no independent witnesses to the shooting. After a trial of approximately two weeks, during which the defendant presented an alibi defense, the jury found the defendant guilty as charged in July 1981.

9) **DORRIS JELAVICH v. PACIFIC BELL**

San Francisco Superior Court; Case No.: 813673

Type of Litigation: Civil Litigation-Products

Liability

Judge: Honorable Stuart Pollack for Motions

Period of Litigation: September 1983 to September 1989

Attorneys:

For Pacific Telephone and Telegraph:

Martin J. Jenkins

For Plaintiff: William Antonioli, 4410 El Camino Real, Suite 105, Los Altos, California 94022, (415) 941-5100.

Description of Case: Plaintiff Dorris Jelavich allegedly sustained a hearing loss while using a cordless telephone manufactured by Uniden Corporation. Ms. Jelavich complained of hearing a loud piercing noise just as she placed the receiver to her ear. Plaintiff's counsel opined that the noise she experienced was caused by the repair of Pacific Bell's switching equipment which occurred coterminous to her use of the cordless phone. Plaintiff's medical records established that she had

sustained a "sensory-neural hearing loss" over speech frequency range 1000 hertz to 4000 hertz as a result of this incident. Investigation of this matter revealed that while several of my client's customers experienced distracting noises during the repair of my client's switching equipment, the sounds emitted over my client's network were not of sufficient amplitude to cause Plaintiff's injury. As a result of my investigation this case settled favorably for my client.

10) **BAKER ET AL. v. PACIFIC BELL ET AL.**

Alameda County Superior Court, Case No.: H125327

Type of Litigation: Civil-Personal Injury

Period of Litigation: June 1987-September 1989

Attorneys:

For Pacific Bell: Martin J. Jenkins

For Plaintiffs: R. Lewis Van Blois, 1 Kaiser Plaza, Suite 2245, Oakland CA 94612, (510) 444-1906.

DESCRIPTION OF CASE: This wrongful death action was brought by the parents of Donald Baker, Sue Cox and Guy Enos (hereinafter "minors"). The complaint in this matter alleged "that the minors were killed when a 1965 Ford Mustang, in which they were passengers, struck a telephone pole owned and negligently placed on a public thoroughfare by my client." I engaged in a course of discovery which established that my client did not own nor have any equipment on the pole in question at the time of the accident. At the conclusion of discovery, Plaintiffs' counsel dismissed my client from the action.

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.)

Legal Activities:

As a lawyer, I participated in pro bono activities discussed below in response to Question 1 of Part III., of this Questionnaire. As a judge, I have taught in many programs sponsored by a wide range of organizations. During my tenure on the Oakland Municipal Court, I was asked by the American Judicature Society (AJS) to serve as a panelist on its National Pre-Bench Seminar held in March 1991. The purpose of the seminar was to orient new judges to ethical issues, (i.e. ex-parte contacts and rude and insolent behavior by attorneys and litigants) and to discuss appropriate ways to resolve them. The seminar was taped by (AJS) and the tape has been made available to new judges across the country. I have also been a member of the teaching faculty for the California Center on Judicial Education and Research (CJER), Teaching Faculty from 1990 to the present. I have taught on several programs sponsored by CJER including, but not limited to:

- a) Controlling your Courtroom: Voir Dire and Trial Management Workshop, (September 29-October 2, 1992)
- b) Domestic Violence Seminar: Effective ways of Handling Domestic Violence Cases, (October, 1992)
- c) Wheeler; Race and Gender Bias in the Exercise of Peremptory Challenges: California Judges Assn., Mid year Conference, (May 2-4, 1993)
- d) Criminal Law and Procedure: Continuing Judicial Studies Program (CJSP), Fall 1995
- e) New Judges Orientation: Ethics and Fairness, California Judges Education and Research (CJER), 1993-Present.

I was also a member of the California Supreme Court's Advisory Committee on Judicial Ethics. The Ethics Advisory Committee, Chaired by Justice Charles S. Vogel of the Second Appellate District, was asked by the California Supreme Court to assist the Court in the development and promulgation of the California Code of Judicial Ethics. The Ethics Advisory Committee submitted its recommendations to the Supreme Court in January 1996, and the Court approved the publication of the Committee's proposed Code on April 15, 1996. In November 1996, I was appointed to the California State-Federal Judicial Council by the Justice Ronald George, Chief Justice of the California Supreme Court. The Judicial Council is comprised of sitting judges from the state and federal courts and provides a vehicle for direct and personal communication between judges in these courts regarding matters of mutual interest and concern.

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 no financial arrangement(s) or previous business relationships from which I expect to be compensated in the future. I make monthly contributions to the California Judges Retirement System (CJRS) and if confirmed, I will be entitled to reimbursement of all contributions made to the Judges Retirement Program. I also make monthly contributions to a Savings Plus Program which is a deferred compensation program administered by the State of California.

- 2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining 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 a potential conflict-of-interest arose, I would first determine whether the conflict necessitated recusal. If the potential conflict did not mandate per se recusal, I would disclose the potential conflict and decide, after hearing the parties concerns, whether it was appropriate for me to continue hearing the matter. In order to avoid conflict(s) of interest, I would list all of my prior major clients and engage all parties in discussions that would be reasonably likely to uncover any information that could lead to a conflict of interest and reassignment of 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 salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500.00 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 attached hereto as Exhibit D. I also officiate high school and small college football games. I receive \$45.00 per game for high school games and \$75.00 per game for small college games. I earn approximately \$800.00 annually for officiating football games.

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

See Attached Exhibit E.

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 role 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.**

For approximately five years (1985-1989), as an attorney with Pacific Bell, I was a committee member and ultimately co-chair of the San Francisco Barristers' Club "Can I Do It Without a Lawyer Program." Through this program, the San Francisco Bar Association provides free legal advice to indigent individuals in the San Francisco Bay Area in the areas of landlord-tenant law, consumer law, family law and also presented role plays on the most effective means of presenting small claims cases. In addition, from 1981-1989, as a member of the Charles Houston Bar Association, I participated in law day programs, and free legal advice clinics annually. I am currently on the Board of Directors of the "Prescott-Joseph Center for Community Enhancement. The Prescott Joseph Center is a non-profit entity that provides a myriad of programs for seniors and youth in the West Oakland Community, including but not limited to tutorial programs for youth and senior citizen wellness programs. I also serve as a mentor for young adults at St. Patrick's Church.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a Judge to hold a 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 the dates of membership. What you have done to try to change these policies?**

I do not belong, nor have I ever belonged, to any organization that invidiously discriminates on the basis of race, sex or religion.

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 received a letter from Senator Boxer's office soliciting applications from all persons interested in serving as a federal district court judge. I submitted an application in February 1997. Thereafter, I was interviewed by the Senator's judicial nominations committee. The Committee selected me as a finalist for the position. I was then interviewed by the Senator's Office. After my interview, I was informed that Senator Boxer was going to recommend me to President Clinton for nomination to the Federal District Court. After my name was forwarded to the President, I was interviewed by the Department of Justice, the American Bar Association and Federal Bureau of Investigation.

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 a case, issue or question.**

No.

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

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 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;**

JUDICIAL CONFERENCE OF THE UNITED STATES
COMMITTEE ON FINANCIAL DISCLOSURE

Judge Frank Magill, Chair

Judge Robert R. Beezer
Judge Garrett E. Brown, Jr.
Judge Albert J. Engel
Judge Marvin J. Garbis
Judge Richard W. Goldberg
Judge Marvin Katz
Judge Robert B. Krupansky

Judge Ronald R. Lagueur
Judge Alan D. Lourie
Judge Richard Mills
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Judge Dale E. Saffels
Judge Frederick J. Scullin, Jr.
Judge William J. Zloch

One Columbus Circle, NE
Washington, D.C. 20544
Telephone: (202) 273-4626
Facsimile: (202) 273-1884

August 11, 1997

Honorable Martin J. Jenkins
Alameda County Superior Court
Juvenile Division, Department 25
400 Broadway
Oakland, CA 94607

Re: Nomination Financial Disclosure Filing

Dear Judge Jenkins:

Thank you for submitting your Financial Disclosure Report in connection with your appointment as a United States District Judge in the Northern District of California. I have reviewed your nomination Report and wish to provide you with the following comments on Parts III and VI.

In Part III, you must report compensation, other than from the United States Government, in excess of \$5,000 in any of the two calendar years prior to the calendar year during which you file your first report. In addition, you must include the identity of each source of such compensation and a brief description of the nature of the duties performed or services rendered by the reporting person for each source. Please inform the Committee if you had any reportable compensation during the calendar year 1995. You may wish to refer to page 60 of the Instructions.

In Part VI, line 3, you reported an automobile loan with "Patelco Credit Union." For your future reference, you are not required to report any loan that has been secured by a personal motor vehicle. Please refer to page 35 of the Instructions.

Please provide our Committee with three copies of your response to the second paragraph within thirty days. If you should have any questions about this letter, please contact the Office of the Committee on Financial Disclosure at (202) 273-4626. Thank you for your cooperation.

Sincerely,


Frank Magill
Chair

August 19, 1997

Honorable Frank Magill
Chair, Committee on Financial Disclosure
Judicial Conference of the United States
One Columbus Circle, N.E.
Washington D.C., 20544

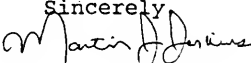
Re: **Nomination Financial Disclosure Filing**

Dear Judge Magill:

As requested in your letter of August 11, 1997, by this letter I hereby inform the Committee on Financial Disclosure that I did earn income in calendar year 1995, which I inadvertently failed to disclose in Part III of my 1996-97 Financial Disclosure Filing. My income for calendar year 1995 is set forth below:

<u>SOURCE AND TYPE</u>	<u>GROSS INCOME</u>
State of California Superior Court Judge Salary	\$99,011.00

If you have any further comments regarding my Financial Disclosure Filing, I can be reached at (510) 268-7384. Thank you for your cooperation and assistance in this matter.

Sincerely,

Martin J. Jenkins

mj/mjj

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 has always been my philosophy to decide cases on an individual basis and issue rulings in accord with the facts and legal principles that govern each case. Strict adherence to Constitutional principles such as standing and ripeness is important to ensure that the court decides cases when, and only when, appropriate, and any remedial relief prayed for is granted only to aggrieved parties. The notion that judges may use decisions in individual cases to impose broad and continuing affirmative duties upon governments and agencies strikes at the very heart of our system of democracy and the bedrock Constitutional principle: "Separation of Powers." Often, the solution to societal ills may lie beyond the purview of the particular statutes or Constitutional provisions impacted by the legal issues before the court. When judges reach beyond the applicable statutes and governing law of their jurisdiction to decide cases, they are apt to run afoul of and tip the delicate "Balance of Powers" which is central to our Constitutional democracy.

**MARTIN J. JENKINS NET WORTH FINANCIAL STATEMENT
SCHEDULED: "ACCOUNTS AND BILLS DUE/OTHER DEBTS"****1. Accounts and bills due/other debts:**

a. Chase Manhattan Visa Account	Balance:	\$1300.00
b. Bank of America Mastercard Account	Balance:	\$3500.00
c. Bank of America Visa Account	Balance:	\$4000.00
d. American Express Delta Sky Miles	Balance:	\$1,600.00
e. Patelco Credit Union Account*	Balance:	\$18,500.00

*This debt is shared by my brother Darrell Jenkins, and my sister, Monica Jenkins and arises from the purchase of a new automobile for my father's birthday on October 16, 1995. Our respective co-pay is \$248.00 per month, on a monthly payment of 743.00.

Total accounts and bills due: \$28,900.00

**MARTIN J. JENKINS NET WORTH FINANCIAL STATEMENT
SCHEDULE E: "REAL ESTATE MORTGAGES PAYABLE"**

1. Real estate mortgages payable:

- a. 1347 Bates Road
Oakland, CA 94610

First mortgage holder:	Glendale Federal Mortgage Corporation	
Balance:		\$282,000.00
Monthly Payment:		\$2117.00

Second mortgage holder:	First United Services Credit Union	
Balance:		\$22,000.00
Monthly payment:		\$419.00.

Total monthly mortgage paid: \$2536.00

- b. 7 Richards Circle*
San Francisco, CA 94124

First mortgage holder:	Home Savings and Loan Company	
Balance:		\$169,000.00
Monthly payment:		\$0.00*

Second mortgage holder:	San Francisco Employees Credit Union	
Balance:		\$24,000.00
Monthly payment:		0.00*

* I own this property with Mr. Jimmie Gilyard. Mr. Gilyard makes all mortgage payments on this property. I do not receive any rental income from this property and I do not take any income tax deduction(s) for this property.

Total monthly mortgage paid: \$0.00

Mortgage liability for all real estate owned: \$497,000.00

Total monthly mortgage paid: \$2536.00**

**I only pay the first and second mortgage on my primary residence at 1347 Bates Road in Oakland.

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 approximately five years (1985-1989), as an attorney with Pacific Bell, I was a committee member and ultimately co-chair of the San Francisco Barristers' Club "Can I Do It Without a Lawyer Program." Through this program, the San Francisco Bar Association provides free legal advice to indigent individuals in the San Francisco Bay Area in the areas of landlord-tenant law, consumer law, family law and also presented role plays on the most effective means of presenting small claims cases. In addition, from 1981-1989, as a member of the Charles Houston Bar Association, I participated in law day programs, and free legal advice clinics annually. I am currently on the Board of Directors of the "Prescott-Joseph Center for Community Enhancement. The Prescott Joseph Center is a non-profit entity that provides a myriad of programs for seniors and youth in the West Oakland Community, including but not limited to tutorial programs for youth and senior citizen wellness programs. I also serve as a mentor for young adults at St. Patrick's Church.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a Judge to hold a 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 the dates of membership. What you have done to try to change these policies?**

I do not belong, nor have I ever belonged, to any organization that invidiously discriminates on the basis of race, sex or religion.

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 received a letter from Senator Boxer's office soliciting applications from all persons interested in serving as a federal district court judge. I submitted an application in February 1997. Thereafter, I was interviewed by the Senator's judicial nominations committee. The Committee selected me as a finalist for the position. I was then interviewed by the Senator's Office. After my interview, I was informed that Senator Boxer was going to recommend me to President Clinton for nomination to the Federal District Court. After my name was forwarded to the President, I was interviewed by the Department of Justice, the American Bar Association and Federal Bureau of Investigation.

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 a case, issue or question.

No.

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

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 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 has always been my philosophy to decide cases on an individual basis and issue rulings in accord with the facts and legal principles that govern each case. Strict adherence to Constitutional principles such as standing and ripeness is important to ensure that the court decides cases when, and only when, appropriate, and any remedial relief prayed for is granted only to aggrieved parties. The notion that judges may use decisions in individual cases to impose broad and continuing affirmative duties upon governments and agencies strikes at the very heart of our system of democracy and the bedrock Constitutional principle: "Separation of Powers." Often, the solution to societal ills may lie beyond the purview of the particular statutes or Constitutional provisions impacted by the legal issues before the court. When judges reach beyond the applicable statutes and governing law of their jurisdiction to decide cases, they are apt to run afoul of and tip the delicate "Balance of Powers" which is central to our Constitutional democracy.

**MARTIN J. JENKINS NET WORTH FINANCIAL STATEMENT
SCHEDULED: "ACCOUNTS AND BILLS DUE/OTHER DEBTS"****1. Accounts and bills due/other debts:**

a. Chase Manhattan Visa Account	Balance: \$1300.00
b. Bank of America Mastercard Account	Balance: \$3500.00
c. Bank of America Visa Account	Balance: \$4000.00
d. American Express Delta Sky Miles	Balance: \$1,600.00
e. Patelco Credit Union Account*	Balance: \$18,500.00

*This debt is shared by my brother Darrell Jenkins, and my sister, Monica Jenkins and arises from the purchase of a new automobile for my father's birthday on October 16, 1995. Our respective co-pay is \$248.00 per month, on a monthly payment of 743.00.

Total accounts and bills due: \$28,900.00

**EXHIBIT D: SENATE QUESTIONNAIRE FOR JUDICIAL
NOMINEES, PART II, QUESTION #4 "1996 FINANCIAL
DISCLOSURE REPORT"**

- 1) 1996 Nomination Financial Disclosure Filing.

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Jenkins, Martin J.	07/27/97

III. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part II. AGREEMENTS - The balance in my California Judges Retirement Plan is approximately \$60,000.00. I expect that the State of California will reimburse me for all contributions made if I am confirmed by the Senate.

~~Part VI. LIABILITIES - *The liability referred to here references a residence that I co-own with a friend of mine. I do not receive any income nor do I take any tax deduction for this property. This property is located at 7 Richards Cir. San Francisco, California 94124. Home Savings and Loan holds the first mortgage and San Francisco Employees Credit Union holds a second mortgage on the Richards Circle property.~~

~~** This debt is shared by my brother, Darrell Jenkins and my sister, Monica Jenkins. This debt arises from the purchase of a new automobile for my father, James Jenkins, on October 16, 1995. Our respective co-pay per month is \$248.00.~~

Part VII. INVESTMENTS AND TRUSTS - *This refers to a loan I made in 1994 to Sidney Hughes, a friend of mine who was starting a new business venture at that time. There is no written agreement to verify the loan, however I do have the cancelled check. This is an interest free loan and to date I have not received payment in whole or in part.

X. 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. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Martin J. Jenkins

Date July 27, 1997

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. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.,
Washington, D.C. 20544

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, 101-112)

AO-10 Rev. 1/97

FINANCIAL DISCLOSURE REPORT FOR CALENDAR YEAR 1996

1. Person Reporting (Last name, first, middle initial) Jenkins, Martin J.	2. Court or Organization United States District Court	3. Date of Report 07 /27 /97
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time) Article III Judge	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 7/24/97 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period 1 / 1 /96 - 7 /30/ 97
7. Chambers or Office Address Alameda County Superior Court Juvenile Division, Department 25 400 Broadway, Oakland, CA 94607	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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.

POSITIONS. (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions)	
	<u>Board of Directors-Prescott Joseph Center for Community Enhancement</u>
	<u>Advisory Board-Center for Community Legal Education</u>

AGREEMENTS. (Reporting individual only; see pp. 14-17 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements)	
<u>1996 - 97</u>	<u>Collegiate Officials Association (\$75.00 per game officiated, 11 game season)</u>
<u>1996-97</u>	<u>Northern California Football Officials Assn. (45.00 per game, 6 game season)</u>
<u>1996-97</u>	<u>California Judges Retirement System (Reimbursement of \$60,000.00 contributed)</u>

I. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (years, not spouse '97)
<input type="checkbox"/> NONE (No reportable non-investment income)		
<u>1996</u>	<u>State of California, Superior Court Judge, Alameda County</u>	<u>\$109,000.00</u>
<u>1996</u>	<u>Collegiate Officials Association (\$75.00 per game)</u>	<u>\$ 925.00</u>
<u>1996</u>	<u>Northern California Football Officials Assn. (\$45.00 per game)</u>	<u>\$ 215.00</u>
		\$ _____
		\$ _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Jenkins, Martin J.Date of Report
07 / 27 / 97**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. 26-29 of Instructions.)

SOURCEDESCRIPTION **NONE** (No such reportable reimbursements or gifts)EXEMPT

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. 30-33 of Instructions.)SOURCEDESCRIPTIONVALUE **NONE** (No such reportable gifts)EXEMPT

		\$
		\$
		\$
		\$

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. 34-36 of Instructions.)CREDITORDESCRIPTIONVALUE CODE* **NONE** (No reportable liabilities)

Home Savings and Loan Corp.	Mortgage on residential property I Co-own with a friend.	M*
San Francisco Employees Federal Credit Union	2nd Mortgage on home listed above	K*
Patelco Credit Union	Auto loan on vehicle purchased for my dad	K**

*Value Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000
 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

UNITED STATES SENATE
Committee on the Judiciary
Washington DC 20510-6275

Questionnaire for Judicial Nominee
Michael Patrick McCuskey

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Michael Patrick McCuskey
Michael P. McCuskey
Mike McCuskey

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

Residence:
Washburn IL 61570

Office:
124 SW Adams Street
Suite 595
Peoria IL 61602

3. Date and place of birth.

June 30, 1948
Peoria IL

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 Brenda H. McCuskey (Maiden name is Huber)
Homemaker

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

Illinois State University, Normal IL
1966-1970
B.S. in Education June 6, 1970

Saint Louis University School of Law, St. Louis MO
1972-1975
Juris Doctor May 10, 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.

06/01/70-08/31/70: Employed as a Security Guard for Hiram Walker & Sons, Inc., Peoria IL.

09/01/70-05/31/71: Employed as a High School History Teacher and Baseball Coach at Ottawa Township High School, Ottawa IL.

06/01/71-08/31/71: Employed as a Security Guard for Hiram Walker & Sons, Inc., Peoria IL.

09/01/71-05/31/72: Employed as a High School History Teacher and Baseball Coach at Ottawa Township High School, Ottawa IL.

06/01/72-08/31/72: Employed as a Security Guard for Hiram Walker & Sons, Inc., Peoria IL.

06/01/73-08/31/73: Employed as a Security Guard for Hiram Walker & Sons, Inc., Peoria IL.

06/01/74-08/31/74: Employed as a Security Guard for Hiram Walker & Sons, Inc., Peoria IL.

06/01/74-08/31/74: Employed as a Law Clerk for Michael M. Mihm, then State's Attorney of Peoria County IL.

08/01/75-11/30/88: Partner in law firm of Pace, McCuskey & Galley, Lacon IL. Managing Partner from 1980-1988.

1975-1978: Member of the Board of Directors of the Lacon-Sparland Emergency Ambulance Service, Lacon IL.

06/01/76-11/30/88: Public Defender of Marshall County, Lacon IL.

1977-1981: Member of the Board of Directors of the Quad-County Counseling Center in Princeton IL.

01/78-11/30/88: Member of the Board of Directors of the St. Joseph's Nursing Home, Lacon IL.

01/81-11/30/88: Member of the Board of Directors of Evans Mutual Insurance Company, Varna IL.

01/81-11/30/88: Member of the Board of Directors of The First National Bank of Lacon IL.

12/05/88-12/02/90: Circuit Judge of the Tenth Judicial Circuit, Peoria IL.

1989-1995: Member of the Board of Directors of the Central Illinois Chapter of the American Red Cross, Peoria IL.

12/03/90-present: Justice of the Third District Appellate Court of the State of Illinois, Ottawa IL.

1990-present: Member of the Criminal Justice Advisory Committee of Illinois Valley Community College, Oglesby IL.

1991-present: Member of Administrative Committee of the Illinois Appellate Court.

10/92-present: Alternate member of the Appellate Division of the Illinois Industrial Commission.

1993: Member of Education Committee of the Illinois Judicial Conference.

1994: Chair of the Executive Committee of the Illinois Appellate Court.

1996-present: Member of the Board of Directors of the Illinois State University Alumni Association, Normal IL.

1996-present: Member of the Board of Directors of the Illinois State University Varsity I-Club, Normal IL.

May 15, 1997-present: Member of Board of Directors of the Illinois Appellate Lawyers Association.

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 never served in the military.

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

The Illinois Public Defender Association gave me an award at its annual convention on May 17, 1991, which stated: "Award of Excellence and Meritorious Service in Recognition and Sincere Appreciation of the Outstanding Service to the American Justice System by Devotion and Duty to the Precepts of the United States Constitution".

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.

I previously was a member of the American Bar Association, the Illinois Trial Lawyers Association, and the American Judges Association.

Currently, I am a member of the Illinois Judges Association, Illinois State Bar Association, Peoria County Bar Association, Marshall County Bar Association, LaSalle County Bar Association, Tazewell County Bar Association, American Inns of Court--Abraham Lincoln Inn where I serve as a Master of the Bench, and American Inns of Court--Clarence Darrow Inn where I serve as a Master of the Bench. I have been the Treasurer of the Clarence Darrow Inn since June 1, 1996.

I am a member of the ISBA General Practice Section Council, 1991-present; Member of the ISBA Criminal Practice Section Council, 1994-present; Member of the ISBA Family Law Section Council, 1997-present; Elected Member of the ISBA Assembly, 1992-Present; Member of the Credentials Committee of the Assembly, 1996; Chair of Rules and Bylaws Committee of the Assembly, June 21, 1997-present.

In 1994-1995, I served on a special ad hoc committee of the ISBA which recommended legislation to the Illinois General Assembly creating alternative drug treatment programs to reduce the imprisonment of non-violent, first-time drug offenders. A copy of the ad hoc committee's Rehabilitative Incarceration Program legislation is attached at the end of the questionnaire.

Also, I am a member of the convention committee of the Illinois Judges Association and a member of the Speakers Bureau of the Illinois Judges Association.

On May 15, 1997, I was appointed to the Board of Directors of the Illinois Appellate 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.

The League of Women Voters of Greater Peoria IL, The Illinois State Bar Association, Illinois Judges Association, Illinois State Troopers Lodge #41 of the Fraternal Order of Police, Illinois State Grange-Richland

Chapter (Associate Member). All of these organizations lobby before public bodies.

The other organizations to which I belong are as follows:

Illinois State University Alumni Association, Rotary Club of Peoria, Illinois State University Varsity I-Club, Italian American Society of Peoria IL (Honorary Member), Hiram Walker Retirees Club, Sons of the American Legion of Lacon IL, Ancient Free & Accepted Mason of Illinois-Lacon Lodge #61 of Lacon IL, Ancient Accepted Scottish Rite-Valley of Peoria IL, Mohammed Temple A.A.O.N.M.S. of Peoria IL, and the Illinois Appellate Lawyers Association (Honorary Member).

The by-laws for these organizations are attached at the end of the questionnaire.

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.

All Courts of the State of Illinois --
October 15, 1975

U.S. District Court, Central District of Illinois --
September 11, 1987

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.

McCuskey, Trend of Illinois Appellate Court Opinions 1992-1995*: The Effect of Amended Supreme Court Rule 23 and Administrative Order MR No. 10343, Ill. St. B. A. Sec. Crim. Jus., Vol. 39, No. 8 (May 1996); Ill. St. B. A. Sec. Gen. Prac., Vol. 24, No. 5 (Apr. 1996). Corrections in article: Ill. St. B. A. Sec. Crim. Jus., Vol. 40, No. 1 (July 1996); Ill. St. B. A. Sec. Gen. Prac., Vol. 24, No. 6 (June 1996).

McCuskey, Supreme Court Rule 23 -- Brief Comments on the New Changes, Ill. St. B. A. Sec. Crim. Just., Vol. 38, No.

4 (December 1994); Ill. St. B. A. Sec. Gen. Prac., Vol. 23, No. 3 (November 1994).

McCuskey, Internal Procedures of the Third District Appellate Court -- Docketing to Decision, Appellate L. Rev., Winter 1994, at 18; Ill. St. B. A. Sec. Gen. Prac., Vol. 22, No. 5 (May 1994).

McCuskey, Appellate Practice -- 10 Brief Tips, Appellate L. Rev., Winter 1993, at 34 (Copy Attached); Ill. St. B. A. Sec. Gen. Prac., Vol. 22, No. 2 (Nov. 1993).

McCuskey, The Recent Growth of Appellate Review, Ill. St. B. A. Sec. Gen. Prac., Vol. 21, No. 5 (Apr. 1993).

McCuskey, Professionalism in the Practice of Law -- Good Advice from Honest Abe, Ill. St. B. A. Sec. Gen. Prac., Vol. 21, No. 2 (Nov. 1992).

See attached newspaper articles. There are no speeches attached because I speak extemporaneously without notes.

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

Health: Excellent.

Last Physical Examination: May 30, 1997.

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 Judge of the Third District Appellate Court of the State of Illinois on November 6, 1990. The court is located in Ottawa, IL, and handles all appeals from the circuit courts of 21 counties located in North Central Illinois. In addition, the Third District Appellate Court hears appeals from various administrative bodies of Illinois government, including the Illinois Environmental Protection Agency, the Illinois Human Rights Commission, the Illinois Property Tax Appeal Board, and the Illinois Commerce Commission.

The only limitations upon the jurisdiction of the Third District Appellate Court are in cases where the Circuit Court has declared a statute unconstitutional or where the death penalty has been imposed. These cases go directly to the Supreme Court of Illinois without appellate court review.

The Illinois Supreme Court has appointed me to serve as an alternate member of the Appellate Division of the Illinois Industrial Commission. This court hears appeals in all workers' compensation cases filed in the State of Illinois. As a result of this assignment, I have served many times over the years as a member of this five-judge court of review.

Elected Judge of the Tenth Judicial Circuit on November 8, 1988. The Tenth Judicial Circuit of the State of Illinois is the general trial court for the counties of Peoria, Tazewell, Marshall, Putnam and Stark. From 1988 to 1990, I was assigned to the trial court in Peoria County. My courtroom assignments included Chancery, Equity, Miscellaneous Remedies, Municipalities, Taxation, Probate and Misdemeanor. Also from 1988 to 1990, the Chief Judge of the Tenth Judicial Circuit would assign me to handle various cases in Marshall, Putnam and Stark Counties when conflicts arose in those courts.

During 1990, I served as a Felony Court Judge in the Circuit Court of Peoria County IL.

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.

Explanation for 15(1):

1. People v. Lego, 212 Ill. App. 3d 6, 570 N.E.2d 402 (1991).
2. In re B.A., 284 Ill. App. 3d 930, 671 N.E.2d 69 (1996).
3. People v. Nitz, 285 Ill. App. 3d 364, 674 N.E.2d 802 (1996).
4. Dickman v. E.I. Du Pont, 278 Ill. App. 3d 776, 663 N.E.2d 507 (1996).
5. W.R. Grace v. Ensey, 279 Ill. App. 3d 1043, 666 N.E.2d 8 (1996).
6. Parro v. Industrial Commission, 260 Ill. App. 3d 551, 630 N.E.2d 860 (1993), aff'd, 167 Ill. 2d 385, 657 N.E. 2d 882 (1995).

7. People v. Raya, 267 Ill. App. 3d 705, 642 N.E.2d 923 (1994).
8. In re Marriage of Elliott, 279 Ill. App. 3d 1061, 665 N.E.2d 883 (1996).
9. People v. Perez, ___ Ill. App. 3d ___, 681 N.E.2d 173 (1997).
10. People v. William Courtney, Sr., ___ Ill. App. 3d ___, ___ N.E.2d ___ (May 30, 1997), 1997 WL 405335.

Explanation for 15(2):

Appellate opinions that I authored which were reversed by the supreme court:

1. People v. Kilpatrick, No. 3--93--0347 (September 9, 1994) (unpublished order under Supreme Court Rule 23). Supreme Court citation - 167 Ill. 2d 439, 657 N.E.2d 1005 (1995). Trial court originally sentenced defendant to consecutive terms of 9 years for attempted murder and 6 years for home invasion. Defendant filed a motion to reconsider sentence, arguing that consecutive sentences were not permissible. The trial court granted the motion to reconsider and imposed a single sentence of 15 years. The appellate court affirmed in an unpublished order. The supreme court reversed, finding that the trial court could not increase a sentence once it was imposed pursuant to section 5--8--1(c) of the Unified Code of Corrections (730 ILCS 5--8--1(c) (West 1994)). Two justices dissenting.
2. People v. Pastewski, 251 Ill. App. 3d 358, 622 N.E.2d 69 (1993). Supreme court citation - 164 Ill. 2d 189, 647 N.E.2d 278 (1995). The defendant was found not guilty by reason of insanity. The appellate court held that the trial court improperly relied on the extended-term sentencing statute in calculating the defendant's maximum period of commitment in a mental institution. The supreme court reversed, finding that the trial court properly used the extended-term statute in determining the maximum period of commitment for an insanity acquittee. Two justices dissenting.
3. Village of Bolingbrook v. Citizens Utilities Co., 231 Ill. App. 3d 740, 597 N.E.2d 246 (1992). Supreme Court citation - 158 Ill. 2d 133, 632 N.E.2d 1000 (1994). The Village filed complaints against the utility company claiming it violated its ordinances prohibiting the unlawful discharge of waste in a natural outlet. The appellate court affirmed the trial court's dismissal of the complaints, finding that the Public Utilities Act

preempted the Village's ordinances. The supreme court reversed, holding that the Public Utilities Act did not preempt the Village's home rule power.

4. People v. Hundley, 227 Ill. App. 3d 1056, 591 N.E.2d 903 (1992). Supreme Court citation - 156 Ill. 2d 135, 619 N.E.2d 744 (1993). The appellate court held that evidence found during a warrantless inventory search of a vehicle was properly suppressed by the trial court because the police officer did not open a closed container pursuant to a standardized State Police procedure. The supreme court reversed, finding that a general order of the Illinois State Police was adequate to allow the warrantless search. Three justices dissenting.

Judgments made when I was a circuit court judge which were reversed or vacated by the appellate court:

1. Jack Bradley, Inc. v. Department of Employment Security, 204 Ill. App. 3d 708, 562 N.E.2d 345 (1990). Supreme Court citation - 146 Ill. 2d 61, 585 N.E.2d 123 (1991). The plaintiff provided persons to work as food demonstrators for various food vendors and retailers. These demonstrators signed a written contract stating they were not employees but were independent contractors. The Illinois Department of Employment Security determined that the services provided by the food demonstrators were "employment" for purposes of the Unemployment Insurance Act. Accordingly, the Department found that the plaintiff owed for unpaid unemployment contributions. On administrative review to the circuit court, I reversed the Department's decision, finding it was against the manifest weight of the evidence. On appeal, the appellate court reversed, finding that the food demonstrators were employees of the plaintiff and were not independent contractors. One justice dissented. The supreme court agreed and affirmed the appellate court.
2. People v. Randle, 213 Ill. App. 3d 1082, 572 N.E.2d 1207 (1991). Following a jury trial, the jury found the defendant not guilty of attempted murder but guilty of armed violence, two counts of aggravated battery, reckless conduct and unlawful use of weapons. I imposed concurrent terms of imprisonment for the five offenses the defendant was found guilty of committing. On appeal, the appellate court reversed the defendant's convictions, finding the jury's verdicts were legally inconsistent as the defendant could not simultaneously possess reckless and knowing intent. The cause was remanded for a new trial.
3. People v. Burnside, 212 Ill. App. 3d 605, 571 N.E.2d 487 (1991). Following a jury trial, the defendant was

convicted of unlawful use of weapons by a felon and unlawful possession of a controlled substance with intent to deliver. I imposed sentence for the two offenses. On appeal, the appellate court affirmed the controlled substance conviction but reversed the conviction of unlawful use of weapons by a felon. The court found the prosecutor had misstated the law in its rebuttal closing argument. The cause was remanded for a new trial on that charge. Also, because that conviction was considered in imposing sentence for the other offense, the cause was also remanded for resentencing on the controlled substance conviction.

4. People v. Monigan, 204 Ill. App. 3d 686, 561 N.E.2d 1358 (1990). Following a bench trial, the defendant was convicted of home invasion, residential burglary and aggravated battery. On appeal, the appellate court reversed the defendant's conviction of aggravated battery because it was based on the same physical acts as the conviction of home invasion. The sentence imposed for aggravated battery was vacated. The remaining convictions and sentences were affirmed.
5. In re Estate of Smith, 201 Ill. App. 3d 1005, 559 N.E.2d 571 (1990). After receiving a judgment in its favor, the plaintiff filed a written motion seeking an award of attorney fees and other expenses. I held a hearing on the motion and entered an order denying an award of fees and expenses. The appellate court noted that the order was silent as to whether the parties were given an opportunity to introduce evidence at the hearing. The appellate court vacated my order and remanded the cause. The court held that the trial court's order was only entitled to deference after the trial court conducted an evidentiary hearing.
6. Fernandez v. Margolis, 201 Ill. App. 3d 47, 558 N.E.2d 699 (1990). The plaintiff, an officer with the Illinois State Police, filed a two-count complaint against the Director of the Department of State Police. Count I alleged retaliatory discharge and Count II alleged a failure to follow the Department's termination procedures. I dismissed both counts, holding that the substance of the cause of action was against the State of Illinois, and the circuit court lacked jurisdiction to hear the cause. The appellate court affirmed in part, reversed in part and remanded. The court held that it was error to dismiss Count II because the plaintiff's discharge was an unlawful act, which is not immunized by the doctrine of sovereign immunity or by the Court of Claims Act. The court affirmed my dismissal of Count I. The court held that a

claim for retaliatory discharge is against the State of Illinois and must be brought in the Court of Claims.

7. Bowers v. Allstate Insurance Co., 192 Ill. App. 3d 725, 549 N.E.2d 21 (1989). The plaintiffs brought a declaratory judgment action against the defendant to determine if the automobile policy issued by the defendant provided coverage to the plaintiffs at the time of an accident. The defendant claimed that coverage was not in effect at the time of the accident because the plaintiffs did not pay their premium in full on the due date. I granted the defendant's motion for summary judgment. On appeal, the plaintiffs' main argument was that the defendant waived its right to cancel the policy by accepting late payments after the cancellation date. The appellate court reversed, finding there were contested facts concerning the waiver issue. The appellate court concluded that it was a question of fact whether or not the plaintiffs were entitled to coverage. As a result, the appellate court held that summary judgment was improper.

Explanation for 15(3):

1. People v. Perez, ___ Ill. App. 3d ___, 681 N.E.2d 173 (1997).
2. People v. William Courtney, Sr., ___ Ill. App. 3d ___, ___ N.E.2d ___ (May 30, 1997), 1997 WL 405335.
3. W.R. Grace & Co. v. Ensey, 279 Ill. App. 3d 1043, 666 N.E.2d 8 (1996).
4. People v. Nitz, 285 Ill. App. 3d 364, 674 N.E.2d 802 (1996).
5. In re B.A., 283 Ill. App. 3d 930, 671 N.E.2d 69 (1996).
6. People v. Portuquez, 282 Ill. App. 3d 98, 667 N.E.2d 1080 (1996).
7. People v. Koutsakis, 272 Ill. App. 3d 159, 649 N.E.2d 605 (1995).
8. People v. Taylor, 259 Ill. App. 3d 289, 630 N.E.2d 1331 (1994).
9. Land & Lakes Co. v. Illinois Pollution Control Board, 245 Ill. App. 3d 631, 616 N.E.2d 349 (1993).
10. People v. Kuhfuss, 241 Ill. App. 3d 311, 608 N.E.2d 1204 (1993).

11. People v. Leinweber, 234 Ill. App. 3d 748, 600 N.E.2d 901 (1992).

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.

Marshall County Public Defender from 1976-1988. This part-time position is appointed by the Circuit Judges of the Tenth Judicial Circuit of the State of Illinois.

I have never been an unsuccessful candidate 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 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;

I never practiced law 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;

1975-1988: Law Firm of Pace, McCuskey & Galley, 414 Fifth Street, P.O. Box 279, Lacon IL 61540. I was a partner in this law firm.

1976-1988: Public Defender of Marshall County, IL, 414 Fifth Street, P.O. Box 279, Lacon IL 61540.

1988-1990: Circuit Judge of the Tenth Judicial Circuit of the State of Illinois, c/o Peoria County Courthouse, 324 Main Street, Peoria IL 61602.

1990-present: Justice of the Third District Appellate Court of the State of Illinois. The address for the Third District Appellate Court is 1004 Columbus Street, Ottawa IL 61350. My office is located at 124 SW Adams Street, Suite 595, Peoria IL 61602.

- 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 a general practice trial attorney, I handled all types of litigation from small claims to first degree murder. Additionally, I litigated real estate tax matters, social security administration disability claims, and unemployment compensation cases before administrative law judges throughout Central Illinois. Also, I represented individuals and businesses before the Internal Revenue Service. Moreover, I had an extensive general law practice covering everything from real estate to probate law. Finally, I represented many municipalities, townships and school boards. The character of my law practice remained the same from 1975 until I became a Circuit Judge in December 1988.

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

My typical former clients included corporations such as the Deneen River Company of Lacon, IL; The First National Bank of Lacon, IL; The Marshall County State Bank of Varna, IL; Illinois Valley Savings & Loan Association of Henry, IL; The Daughters of St. Francis of Assisi of Lacon, IL; St. Joseph's Nursing Home of Lacon, IL; Evans Mutual Insurance Company of Varna, IL; Village of Sparland, Village of Benson, Village of Washburn, City of Lacon, Sparland School District #3, as well as numerous individuals and businesses in all areas of general practice. Also, I represented defendants in criminal cases.

While my trial and law office practice included everything from A to Z in the general practice of law, my principal concentration would be in the area of

criminal law, taxation, family law, real estate, probate, estate planning, as well as advising and representing the various corporations and governmental agencies listed 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.

From 1975 to 1988, I appeared regularly in the Circuit Courts of Central Illinois, as well as the Third District Appellate Court.

2. What percentage of these appearances was in:
- (a) federal courts; 1%
 - (b) state courts of record; 98%
 - (c) other courts. 1% in the Third District Appellate Court
3. What percentage of your litigation was:
- (a) civil; 50%
 - (b) criminal. 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.

100-150. Very frankly, at this late date in my legal career, it is impossible to determine the exact number. I know that I tried at least one litigated matter during each month of my legal career. My former law office does not maintain client records after 10 years. As a result, I have been forced to reconstruct my litigation career through microfilmed records obtained from various circuit clerks' offices.

5. What percentage of these trials was:
- (a) jury; 10%
 - (b) non-jury. 90%

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.

Explanation for Case No. 1:

Estate of Clara M. Evans, Plaintiff, v. First National Bank of Peoria, n/k/a Commerce Bank, Executor, Defendant, In the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois, Case No. 82-P-264. I represented the Estate throughout the proceedings until I became a Circuit Judge in December 1988. Ultimately, the Estate became involved in litigation with the Internal Revenue Service which was litigated in the United States Tax Court in St. Louis, MO, before the Honorable William A. Goffe. The United States Tax Court case was Docket No. 9010-87, and was known as Illinois Masonic Home, et al., Petitioners, v. Commissioner of Internal Revenue Service, Respondent, Case No. 93-TC-15.

Capsule Summary:

Clara M. Evans died testate on April 19, 1982. The First National Bank of Peoria was named as the Executor in her Last Will and Testament. The Bank employed me as their attorney to handle the probate of the Will and give legal advice during the administration of the Estate. On January 19, 1983, the Federal Estate Tax Form 706 was filed along with a payment of \$776,116.63 for the Federal Estate Tax liability. The Commissioner of the Internal Revenue Service conducted an audit of the Federal Estate Tax Return, and the parties agreed to an additional tax liability of \$101,392.82. The additional tax was paid on March 1, 1985. The Commissioner mailed an Estate Tax Closing Letter, Form 627, on May 13, 1985. The period of limitations for assessment of additional federal estate tax expired on January 19, 1986. After the expiration of the statute of limitations, I advised the estate to distribute the assets to the beneficiaries. On April 3, 1986, the assets of the estate were distributed. On

December 17, 1986, the Commissioner executed a Reopening Memorandum, Form 4505. On January 16, 1987, the Commissioner issued statutory notices to the beneficiaries which assessed additional estate taxes, penalty and interest.

I advised the Executor and the beneficiaries that the Commissioner was without authority to reopen the estate tax proceedings. Consequently, I advised the Executor and the beneficiaries not to pay any additional estate taxes, penalties or interest. I concluded that case law supported my position. I believed the Commissioner was estopped from reopening the estate tax proceedings because the assets of the estate had been distributed after the statute of limitations had expired.

Attorney David L. Higgs, 101 SW Adams Street, Suite 800, Peoria, IL 61602, Telephone: 309/637-4900, was hired by the Executor and the beneficiaries of the Estate to proceed in the United States Tax Court because I was a candidate for Circuit Court Judge and a potential witness if the case went to trial.

The counsel for the Commissioner of the Internal Revenue Service was David R. Reed. I have been unable to obtain his address or any further information concerning his present location.

Trial took place in the United States Tax Court in St. Louis, MO, on May 16, 17 and 18, 1989. I testified on March 17, 1989, as a witness regarding the preparation of the Federal Estate Tax return. At the time I testified, I was a Circuit Court Judge in the State of Illinois.

Ultimately, Judge William A. Goffe ruled on August 2, 1989 in favor of the beneficiaries of the Estate and against the Commissioner of the Internal Revenue Service. The citation of the reported case is as follows: Illinois Masonic Home v. Commissioner of Internal Revenue, 93 T.C. 145 (1989). Please note that the actual court case was designated 93 T.C. 15.

Explanation for Case No. 2:

In the Matter of the Estate of James Tully, Deceased, In the Circuit Court of the Tenth Judicial Circuit, Marshall County, Illinois, Case No. 86-P-48. I represented the Catholic Diocese of Peoria, IL, and St. Joseph's Nursing Home of Lacon, IL, throughout the probate litigation and during the appeal to the Third District Appellate Court in Ottawa, IL. The heirs of the Estate of James Tully, Deceased, filed a will contest and were represented by

Alexander L. Haglund, who is now deceased. Haglund's successor law firm is the Feldman Law Office, 224 E. 3rd Street, Sterling, IL 61081, Telephone: 815/625-7409. The co-executors of the Estate were: Lewis Campbell and John J. Wosik. The co-executors were represented by Michael T. Mahoney, 1011 North 2nd Street; P.O. Box 295, Chillicothe, IL 61523, Telephone: 309/274-5451. The will contest and the appeal to the Third District Appellate Court is captioned In the Matter of the Estate of James Tully, Deceased.

Capsule Summary:

On March 14, 1979, James Tully executed his Last Will and Testament, naming Lewis Campbell and John J. Wosik as co-executors. Paragraph Two of the Will gave his residence in Lacon, IL, and its contents to his niece, Margaret Glassburn. The Third Paragraph of the Will gave and bequeathed "to St. Joseph's Nursing Home in Lacon, Illinois, any and all accounts that I may have as savings accounts and/or certificates of deposit for my care and maintenance during my lifetime and upon the condition that in the event that there are insufficient funds that they not place any claim and/or lien against my dwelling house hereinabove mentioned so that the same may be devised to my niece, Margaret Glassburn, in fee simple without any encumbrances."

The Will contained no residuary clause. James Tully died on November 27, 1986. His estate consisted of his residence and approximately \$170,000 in savings accounts. The Will was admitted to probate on December 17, 1986. The heirs of James Tully filed a will contest and a petition to construe the will on June 12, 1987. On behalf of St. Joseph's Nursing Home and the Catholic Diocese of Peoria, I filed a motion to dismiss the Will Contest and a motion for judgment on the pleadings. On July 27, 1987, Judge Robert Cashen granted my motion for judgment on the pleadings and dismissed with prejudice the petition to construe the will. The judge also granted my motion to dismiss the will contest and gave the heirs 30 days to file an amended complaint.

The heirs filed a notice of appeal with the Third District Appellate Court. The heirs claimed that the trial court's order granting judgment was erroneous.

On June 17, 1988, the Appellate Court issued an opinion affirming the trial court's judgment in all respects. The Appellate Court's published opinion is cited as follows: In re Estate of Tully, 171 Ill. App. 3d 286, 525 N.E.2d 244 (1988).

Explanation for Case No. 3:

In re the Marriage of Mary C. Cotten, Petitioner, Counter-Respondent, Appellant, v. Joseph A. Cotten, Respondent, Counter-Petitioner, Appellee, In the Circuit Court of the Tenth Judicial Circuit, Marshall County, Illinois, Case No. 82-D-106. I represented Joseph A. Cotten, Respondent, throughout the trial proceedings and during the appeal to the Third District Appellate Court in Ottawa, IL. Mary C. Cotten, Petitioner, was represented by James Hatcher, Hatcher & Rose, 321-A Main Street, Peoria, IL 61602, Telephone: 309/676-1639.

Capsule Summary:

In 1982, Mary Cotten filed a petition seeking a legal separation from Joseph Cotten. I was retained by Joseph Cotten. I filed, on his behalf, a counter-petition for dissolution of marriage. Eventually, the issues of legal separation and dissolution of marriage were tried in the Circuit Court of Marshall County before the Honorable Charles M. Wilson. Evidence was presented on September 12 and 13, 1984. Final argument was heard on September 27, 1984. Judge Wilson entered a judgment of dissolution of marriage in favor of Joseph Cotten on October 4, 1984. No appeal was taken from this judgment.

All issues of property and maintenance for Mary Cotten were tried before the Honorable James M. Bumgarner, Retired. Evidence was presented in the Circuit Court on May 9, 1985; June 17, 1985; June 19, 1985 and August 7, 1985. Final arguments were presented on September 25, 1985. A final judgment was entered by Judge Bumgarner. The judgment divided the parties' property and denied Mary Cotten's claim for maintenance and reimbursement of attorney fees. On November 6, 1985, the trial court denied Mary Cotten's petition for rehearing. Mary Cotten appealed the judgment to the Third District Appellate Court in Ottawa. Oral argument took place on June 19, 1986.

On July 31, 1986, the Third District Appellate Court issued an unpublished decision which affirmed the trial court in all respects.

Explanation for Case No. 4:

Michael C. Conness and Lucille V. Conness, Plaintiffs/Counter-Defendants, v. Bernard A. DeRubeis, Jr., Frank DeRubeis, and Melvin DeRubeis, Defendants/Counter-Plaintiffs, In the Circuit Court of the Tenth Judicial Circuit, Marshall County, Illinois, Case

No. 84-LM-188. I represented the DeRubeis brothers, Defendants/Counter-Plaintiffs, throughout the trial proceedings. Michael C. Conness and Lucille V. Conness, Plaintiffs/Counter-Defendants, were represented throughout the trial proceedings by: Bruce Thiemann, 627 Commerce Bank Building, Peoria, IL 61602, Telephone: 309/673-0030.

Capsule Summary:

Plaintiffs sued Defendants for damages allegedly caused by Defendants' use of an agricultural easement across Plaintiff's land. Defendants counter-claimed, seeking injunctive relief against Plaintiffs for allegedly blocking the Defendants' use of the agricultural easement.

The damage question was tried before a jury on May 20 and 21, 1985. The issue of injunctive relief was heard solely by James M. Bumgarner, who was also the trial judge. The jury awarded no compensatory damages to plaintiffs. However, the jury did award plaintiffs punitive damages in the amount of \$500 against defendant Frank DeRubeis. Judge James M. Bumgarner granted Defendants' injunctive relief against Plaintiffs.

Explanation for Case No. 5:

People of the State of Illinois, Plaintiff, v. Timothy W. Franklin, Defendant, In the Circuit Court of the Tenth Judicial Circuit, Marshall County, Illinois, Case No. 80-CF-116. I represented the Defendant throughout the trial proceedings. The People of the State of Illinois were represented by the State's Attorney of Marshall County, IL. Donald D. Knuckey was the State's Attorney who initially charged Timothy W. Franklin and assisted in handling the extradition proceedings in Canada. His current address is: Marshall County Courthouse, Lacon, IL 61540, Telephone: 309/246-2028. Edward Zukosky was the State's Attorney of Marshall County during 1981. Mr. Zukosky represented the People of the State of Illinois during the jury trial. His address is: 138 Chestnut Street, Wenona, IL 61377, Telephone: 815/853-4335.

Capsule Summary:

On May 27, 1980, the defendant was charged with six felony counts. The offenses alleged included rape, attempted murder, aggravated battery, unlawful restraint and two counts of deviant sexual assault. The defendant was a Canadian citizen who lived in London, Ontario Province, Canada. Franklin and a companion were charged with abducting an exotic dancer from Peoria and taking her to Marshall County where the alleged crimes occurred at a

residence in rural Lacon. As Marshall County Public Defender, I was appointed to represent the defendant who fled to Canada after the incident.

The defendant refused to waive extradition. As a consequence, international extradition proceedings ensued between the United States of America and the Canadian government. An evidentiary hearing was held in Ontario Province to determine whether extradition to the United States should be granted. The victim and Marshall County police authorities were required to testify in Canada. Extradition was ultimately granted, and the defendant was extradited to the United States for trial in the State of Illinois.

The defendant was later indicted by a Marshall County grand jury on January 14, 1981. He was indicted for rape, attempted murder and unlawful restraint. A jury trial took place on March 10, 11 and 12, 1981. It ended in a mistrial when the jury was unable to render a verdict. My investigation revealed that only one juror favored conviction on the charges of rape and attempted murder, while only one juror believed the defendant was not guilty of the offense of unlawful restraint. Consequently, prior to re-trial, the defendant entered into a negotiated plea agreement with the State's Attorney. The defendant pleaded guilty to unlawful restraint, while the rape and attempt murder charges were dismissed. The defendant agreed to a sentence of 3 years' imprisonment in the Illinois Department of Corrections and was given credit for 310 days served. The trial proceedings were handled by Judge Edward E. Haugens, Deceased.

Explanation for Case No. 6:

People of the State of Illinois, Plaintiff, v. Russell D. Turk, Defendant, In the Circuit Court of the Tenth Judicial Circuit, Tazewell County, Illinois, Case No. 79-Y-216. I represented the Defendant in the circuit court on the motion to withdraw his guilty plea and during the appeal to the Third District Appellate Court. Erik I. Blanc was the Assistant State's Attorney of Tazewell County who handled the proceedings on behalf of the People of the State of Illinois. Mr. Blanc is currently an Associate Circuit Judge of the Tenth Judicial Circuit and can be contacted at: c/o Peoria County Courthouse, 324 Main Street, Peoria, IL 61602, Telephone: 309/672-6047.

Capsule Summary:

Defendant, Russell D. Turk, was charged with the felony offense of theft over \$150. He entered a plea of guilty

to the offense. Sentencing was set for a hearing approximately five weeks later. Turk was released on bond with the special condition that he continue to reside at the Stonehedge Drug Rehabilitation Facility in Peoria. Through this portion of Turk's criminal case, he was represented by Attorney John Bernardi, 334 Elizabeth, Pekin, IL 61554, Telephone: 309/347-7764.

Turk failed to appear at the sentencing hearing. Moreover, he did not appear in the circuit court until he was arrested on a different offense 18 months later. I entered my appearance as his attorney. I filed a motion to withdraw the defendant's guilty plea. The motion claimed that Turk did not voluntarily enter a plea of guilty because the trial court failed to strictly follow the requirements of Illinois Supreme Court Rule 402(b) when it accepted the defendant's guilty plea. On February 13, 1981, following a hearing, Judge Ivan L. Yontz, Retired, denied my motion and sentenced the defendant to an extended term of 7 years' imprisonment. I filed a notice of appeal on Turk's behalf.

The case was orally argued in the Third District Appellate Court during the summer of 1981. The issues on appeal were: (1) whether the defendant should have been allowed to withdraw his plea of guilty because of the trial court's failure to fully comply with Supreme Court Rule 402(b); and (2) whether the trial court's sentence was excessive.

On November 12, 1981, the Appellate Court affirmed the trial court in an unpublished opinion.

Explanation for Case No. 7:

Illinois Valley Savings and Loan Association, an Illinois Banking Corporation, Plaintiff-Appellee, v. Vann C. McPeake and Carole Lee McPeake, Defendants, and Thomas J. Fallbacher and Yolanda Fallbacher, Defendants-Appellants, In the Circuit Court of the Tenth Judicial Circuit, Putnam County, Illinois, Case No. 77-L-73. I served as co-counsel for Illinois Valley Savings and Loan Association, Plaintiff-Appellee, with my partner, O. B. Pace, Jr., Deceased, during the trial proceedings and on appeal. Vann C. McPeake and Carole Lee McPeake, Defendants, were pro se and ultimately defaulted during the trial proceedings. Thomas J. Fallbacher and Yolanda Fallbacher, Defendants-Appellants, were represented in the trial court and on appeal by Attorney Karl G. LaPinske, Deceased.

Capsule Summary:

Defendants Vann and Carole McPeake built an A-frame home on a portion of Lot 487 in Lake Thunderbird Hills. The McPeakes negligently constructed their residence on part of the wrong lot. The McPeakes owned Lot 486, while Lot 487, which was unimproved, was owned by defendants, Thomas and Yolanda Fallbacher. The McPeakes were adjudicated bankrupt on March 24, 1975. As a result of their bankruptcy, Illinois Valley Savings and Loan Association (Illinois Valley) received notice of the bankruptcy proceedings because they had loaned the McPeakes money to construct the house on Lot 486. On July 1, 1975, the Fallbachers notified Illinois Valley of the McPeakes' error. Illinois Valley attempted to resolve the matter with the Fallbachers by way of negotiation. In the meantime, on or about March 17, 1976, the Fallbachers acquired all of the McPeakes' interest in Lot 486 through a quitclaim deed, along with an easement across that lot.

Thereafter, Illinois Valley filed a foreclosure complaint against Lot 486 joining the McPeakes and Fallbachers as Defendants. On June 25, 1979, Judge Edward E. Haugens, Deceased, granted Illinois Valley summary judgment. On August 27, 1979, Judge Haugens granted Illinois Valley a judgment of foreclosure. The judge ordered the sale of Lot 486 free and clear of the Fallbachers' recorded easement.

On September 27, 1979, the Fallbachers appealed the trial court's orders. Oral argument took place in the Third District Appellate Court during the spring of 1980. The Appellate Court affirmed the trial court in a published opinion filed August 8, 1980.

The case is cited as follows: Illinois Valley Savings and Loan Association, an Illinois Banking Corporation, Plaintiff-Appellee, v. Vann C. McPeake, Carole Lee McPeake, Defendants, Thomas J. Fallbacher and Yolanda Fallbacher, Defendants-Appellant, 87 Ill. App. 3d 39, 409 N.E.2d 97 (1980).

Explanation for Case No. 8:

In re the Marriage of Cheryl Peros, Plaintiff, and Alex Peros, Defendant, In the Circuit Court of the Eleventh Judicial Circuit, Livingston County, Illinois, Case No. 76-D-162. I represented the defendant in the motion to vacate the divorce decree and during his appeal to the Fourth District Appellate Court. The Plaintiff-Appellee was represented throughout the trial proceedings and on

appeal by Rodney H. Loy, 207 Crestview Drive, Pontiac, IL 61764, Telephone: 815/842-6568.

Capsule Summary:

On June 23, 1977, Judge William T. Caisley, Retired, entered a judgment of dissolution of marriage incorporating therein the parties' settlement agreement. Alex Peros claimed that he did not voluntarily enter into the settlement agreement. As a result, he contested the trial court's entry of the divorce decree. Alex Peros retained me to contest the judgment and have the property settlement agreement vacated. On July 1, 1977, I filed a motion to vacate the judgment. On August 10, 1977, I entered my appearance, and a hearing was held on the motion to vacate the judgment. The trial court denied my motion, and I filed a notice of appeal to the Fourth District Appellate Court in Springfield, IL.

During the spring of 1978, I orally argued the case before the Appellate Court. I argued that Alex Peros had been denied his constitutional right to effective assistance of counsel. Based on this claim, I asked the court to vacate the judgment. The Appellate Court disagreed with my argument and affirmed the trial court.

The Appellate Court issued its unpublished order on April 21, 1978.

Explanation for Case No. 9:

Roger and Judy Hoskins, Plaintiffs, v. Jerry Abbott, Marshall County Supervisor of Assessments, Defendant, in the Circuit Court of the Tenth Judicial Circuit, Marshall County, Illinois, Case No. 76-MR-172. I served as co-counsel for the Plaintiffs with my partner, O.B. Pace, Jr., Deceased. The Defendant was represented by Donald D. Knuckey, Marshall County State's Attorney, 122 North Prairie, Lacon, IL 61540, Telephone: 309/246-2028

Capsule Summary:

Plaintiffs were real estate taxpayers whose property taxes had been re-assessed in successive years by the Marshall County Supervisor of Assessments. Our law office filed a complaint seeking a Writ of Mandamus against the Supervisor, requiring him to rescind the real estate assessment. The complaint alleged that the Supervisor lacked legal authority to increase the assessed valuation of plaintiffs' property in a non-quadrennial year. The case was presented to the Circuit Court by way of a stipulated set of facts. As a result, no evidence was

presented to the court other than the stipulated facts of the parties. Circuit Judge Edward E. Haugens, Deceased, ordered the Writ of mandamus to issue against the Supervisor.

The Supervisor appealed the decision to the Third District Appellate Court. A motion was made by the Supervisor to transfer the case to the Illinois Supreme Court. The motion was granted by the Supreme Court. Oral argument was heard during the spring of 1977. I participated in all phases of the litigation, including the proceedings before the Supreme Court.

On November 30, 1977, the Illinois Supreme Court reversed the judgment of the Circuit Court. The decision was published and is cited as follows: Roger Hoskins, et al., Appellees, v. Jerry Abbott, County Supervisor of Assessments, Appellant, 69 Ill. 2d 20, 370 N.E.2d 514 (1977).

Explanation for Case No. 10:

People of the State of Illinois, Petitioner-Appellee, v. Daryl Wealer, Respondent-Appellant, In the Circuit Court of the Tenth Judicial Circuit, Marshall County, Illinois, Case No. 75-F-274. Daryl Wealer, Respondent-Appellant, was represented in the trial court by my partner, O.B. Pace, Jr., Deceased. I represented the Respondent-Appellant on appeal to the Third District Appellate Court. The People of the State of Illinois were represented in the trial court and on appeal by then-Marshall County State's Attorney, Robert A. Barnes, Jr., who is now a Circuit Judge in the Tenth Judicial Circuit. He can be contacted at: c/o Peoria County Courthouse, 324 Main Street, Peoria IL 61602, Telephone: 309/672-6047.

Capsule Summary:

On September 8, 1975, Daryl Wealer, a 16-year-old girl, burglarized Owen's pharmacy in Henry, IL. Wealer and Lori Maubach took several thousand pills which they were going to sell in Peoria. The People filed a petition seeking to have Daryl Wealer declared a delinquent and a ward of the court. On December 3, 1975, after a dispositional hearing, Judge Edward E. Haugens, Deceased, found Wealer to be a delinquent child and remanded her to the custody of the Juvenile Division of the Illinois Department of Corrections. Shortly thereafter, I filed an appeal with the Third District Appellate Court.

The appellate case was orally argued the summer of 1976. I appeared on behalf of the minor and argued to the

Appellate Court that the statutory requirements of the Illinois Juvenile Court Act had not been met. Consequently, I claimed that Judge Haugens' dispositional order was against the manifest weight of the evidence and should be reversed and remanded for a new dispositional hearing. The Appellate Court agreed with my argument and reversed the trial court's dispositional order.

The Appellate Court's published opinion was issued on September 29, 1976. The opinion is cited as follows: People of the State of Illinois, Petitioner-Appellee, v. Daryl Wealer, Respondent-Appellant, 42 Ill. App. 3d 479, 355 N.E.2d 187.

Professional reputation list of 10-12 members of the legal community who have had recent contact with me:

Honorable Michael M. Mihm, Chief Judge of the United States District Court for the Central District of Illinois, Federal Building, 100 NE Monroe, Peoria IL 61602, Telephone: 309/671-7113

Honorable Joe B. McDade, Judge of the United States District Court for the Central District of Illinois, Federal Building, 100 NE Monroe, Peoria IL 61602, Telephone: 309/671-7821

Honorable Robert J. Kauffman, Magistrate Judge of the United States District Court for the Central District of Illinois, Federal Building, 100 NE Monroe, Peoria IL 61602, Telephone: 309/671-7140

Honorable Richard Parsons, Chief Federal Defender of the Central District of Illinois, 401 Main Street, Suite 1500, Peoria IL 61602, Telephone: 309/671-7891

Honorable Tom M. Lytton, Presiding Justice of the Third District Appellate Court, 1515 5th Avenue, Suite 503, Moline IL 61265, Telephone: 309/757-9458

Honorable Kent Slater, Appellate Judge of the Third District Appellate Court, 219 North Randolph Street, P.O. Box 554, Macomb IL 61554, Telephone: 309/833-1704

Honorable John Gorman, Chief Judge of the Tenth Judicial Circuit of the State of Illinois, Peoria County Courthouse, 324 Main Street, Peoria IL 61602, Telephone: 309/672-6047

Honorable Richard E. Eagleton, Attorney at Law and Former United States Attorney for the Central District of Illinois and Retired Chief Judge of the Tenth Judicial

Circuit of the State of Illinois, Hinshaw & Culbertson,
456 Fulton, Suite 298, Peoria IL 61602, 309/674-1025

Honorable Peter J. Paolucci, Attorney at Law and Retired
Chief Judge of the Tenth Judicial Circuit of the State of
Illinois, 414 Fifth Street, P.O. Box 279, Lacon IL 61540,
Telephone: 309/246-6775

Honorable Kevin Lyons, State's Attorney of Peoria County,
Peoria County Courthouse, 324 Main Street, Peoria IL
61602, Telephone: 309/672-6900

Mr. Robert V. Dewey, President of the Peoria County Bar
Association, c/o Heyl, Royster, Voelker & Allen, 124 SW
Adams Street, Suite 600, Peoria IL 61602, Telephone:
309/676-0400

Mr. Michael T. Reagan, Attorney at Law and Past President
of the Illinois Appellate Lawyers Association, c/o
Herbolsheimer, Lannon, Henson, Duncan and Reagan, P.C.,
433 LaSalle Street, Suite 409, Ottawa IL 61350

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 am very active in the Illinois State Bar Association, Illinois Judges Association and the American Inns of Court. I spend numerous weekends each year attending Bar Association functions. I believe that judges should give as much time as possible to bar associations to assist in the improvement of the legal profession. In attempting to carry out this mission, I participate in numerous Illinois State Bar Association Committees and frequently lecture at legal educational seminars. Additionally, I attempt as much as possible to assist the law schools of the State of Illinois in preparing law students to be advocates and litigators.

For the past five years, I have served the Illinois Appellate Lawyers Association and the Illinois State Bar Association as one of three judges hearing the final oral arguments in the All-Illinois Moot Court competition. Eight law schools in the State of Illinois annually participate in the competition with the final oral arguments being heard in the Illinois Supreme Court in Springfield IL.

Also, during the past six years, I have traveled twice a year to Carbondale, IL, to hear oral arguments at Southern Illinois University School of Law. Last November, I judged the National Health Law Moot Court Competition for Southern Illinois University School of Law. This competition involved 22 law schools from throughout the United States. I have been invited back to judge this year's competition on November 7 and 8, 1997.

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.

State of Illinois Judicial Retirement System:
 Pension at age 60
 State of Illinois Municipal Retirement System:
 Pension at age 62
 State of Illinois Deferred Compensation Plan
 Fidelity Investments -- IRA
 American Century Investments -- IRA

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 strictly follow the Code of Judicial Conduct for United States District Court Judges. Moreover, I believe that I have no potential conflicts of interest which would affect my service as a United States District Court Judge for the Central 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.

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 Net Worth Statement and Explanation Schedule.

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 in a political campaign or political party. I did play a role in the 1988 and 1990 primary and general elections in Illinois because I was a candidate for judicial office.

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 served on the Board of Directors of the Central Illinois Chapter of the American Red Cross from 1989-1995.

In addition, I have served the Red Cross on the Health Services Committee for the past seven years, and was recently appointed to serve on the Safe Communities Advisory Council.

I previously served as a board member of the Red Cross DUI Awareness Task Force which administered a grant from the Illinois Department of Transportation. The grant was used to educate high school students about the effects of alcohol. Mock crash scenes were re-created at various high schools. The Illinois Department of Transportation and the Illinois State Police proclaimed the program a success.

My American Red Cross activities consume approximately 5-10 hours a month.

I have served many years as a member and Chair of the Minority Involvement Task Force for the Central Illinois Chapter of the American Red Cross.

For the past nine years, I have served as the Chair of the Marshall-Putnam County Fair Association Senior Citizens' Day Committee. As Chair, I plan the annual Senior Citizens' Day entertainment and emcee all Senior Citizens' activities during the fair. This activity consumes about 25 hours per year.

I serve on the Criminal Justice Advisory Committee of Illinois Valley Community College in Oglesby, IL. I have served on this Committee from 1990 to the present. The advisory board assists the Director of the Criminal Justice Department in developing the public outreach of the program. Also, I have lectured students of the college on the importance of a career in law enforcement. This activity consumes about 10-15 hours per year.

From 1977-1981, I served on the Board of Directors of the Quad-County Counseling Center in Princeton, IL. This advisory board assisted psychologists in developing a mental health treatment program in a four-county area in Central Illinois.

In 1975, I incorporated the Lacon-Sparland Emergency Ambulance Service. Also, I served three years on the Board of Directors, and I assisted raising funds for the ambulance service. This volunteer organization provides the only emergency ambulance service available in Lacon and Sparland IL.

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 for the United States District Court for the Central District of Illinois. The commission recommended my nomination to United States Senators Carol Moseley-Braun and Dick Durbin.

During the judicial selection process, I completed a questionnaire and submitted it on March 20, 1997 to the United States Senate Nomination Commission for the Central District of the State of Illinois.

On May 3, 1997, I was interviewed in Springfield by the United States Senate Nomination Commission for the Central District of the State of Illinois.

On May 5, 1997, the Commission recommended to United States Senators Carol Moseley-Braun and Dick Durbin my nomination for the vacancy on the U.S. District Court for the Central District of Illinois.

On May 9, 1997, I was interviewed in Springfield by the Illinois State Bar Association Judicial Evaluations Committee.

On May 12, 1997, I was advised by the Illinois State Bar Association Judicial Evaluations Committee that I was found to be well-qualified for the position of United States District Court Judge for the Central District of Illinois.

On May 13, 1997, I was interviewed in Washington, DC, by United States Senators Carol Moseley-Braun and Dick Durbin.

On May 19, 1997, I was advised by United States Senators Carol Moseley-Braun and Dick Durbin that they were sending the President of the United States my nomination for the judicial vacancy on the United States District Court for the Central District of Illinois.

On May 20, 1997, I was advised by the Office of Counsel to the President of the United States that my nomination had been accepted by the President.

Following my nomination by United States Senators Carol Moseley-Braun and Dick Durbin, I completed extensive questionnaires for the Department of Justice and the American Bar Association.

On June 23, 1997, I was interviewed by the Department of Justice in Washington, DC.

On July 15, 1997, I was interviewed by the American Bar Association in Chicago, IL.

During the summer of 1997, five special agents of the Federal Bureau of Investigation conducted a thorough background check regarding my character and fitness to be a U.S. District Court Judge.

On July 28, 1997, I was advised by the Department of Justice that my nomination had been forwarded to the Office of Counsel to the President of the United States.

On July 31, 1997, I was advised by the Office of Counsel to the President of the United States that President Clinton had nominated me to fill the vacancy on the United States District Court for the Central District of Illinois and that my nomination had been filed with the Committee on the Judiciary of 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.

Answer to Question No. 5:

I firmly believe that legal decisions should be decided on a case-by-case basis with the holding aimed solely at resolving the conflict before the court. I do not believe that trial judges should decide cases with an eye toward achieving a broad resolution of issues.

A United States District Court Judge should follow the letter of the law and not attempt to interfere with the other branches of government. District Court Judges should resolve the issues and disputes before the court without attempting to set policy. Judges in all trial courts in the United States should follow the constitutional mandate that the executive, legislative and judicial branches of government are separate entities. Moreover, the judicial branch should not attempt to usurp the powers granted to the other two branches of government.

FD-278
Rev. 3/97FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1996Report Required by the Ethics
Reform Act of 1995, Pub. L. No.
104-184, November 12, 1995
15 U.S.C. App. 4, 131-132

1. Person Reporting (Last name, first, middle initial) McCuskey, Michael P.	2. Court or Organization U. S. District Court -- Central District of Illinois	3. Date of Report 08 01 /97
4. Title (Article III Judges indicate active or senior status; Magistrate judges indicate full- or part-time) Nominee for U. S. District Court Judge	5. Report Type (check appropriate type): X Nomination, Date 7/31/97 ___ Initial ___ Annual ___ Final	6. Reporting Period 11/1/96 - 7/1/97
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
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. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions)	
<u>Director</u>	<u>Illinois State University Alumni Association</u>
<u>Director</u>	<u>Illinois State University Varsity "I" Club</u>

II. AGREEMENTS. (Reporting individual only; see pp. 14-17 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements)	
<u>Vested Member</u>	<u>Illinois Judicial Retirement System</u>

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (Yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		
<u>1995</u>	<u>State of Illinois -- Judicial Salary</u>	<u>\$109,750.90</u>
<u>1996</u>	<u>State of Illinois -- Judicial Salary</u>	<u>\$117,108.81</u>
	<u>My wife is a homemaker. She was not employed during</u>	<u>\$</u>
	<u>1995 and 1996.</u>	<u>\$</u>
		<u>\$</u>

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting McCuskey, Michael P.	Date of Report 08 / 01 / 97
--	--------------------------------

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. 26-29 of Instructions.)

SOURCE DESCRIPTION

NONE (No such reportable reimbursements or gifts)

EXEMPT

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. 30-33 of Instructions.)

SOURCE DESCRIPTION VALUE

NONE (No such reportable gifts)

EXEMPT

\$ _____

\$ _____

\$ _____

\$ _____

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. 34-36 of Instructions.)

CREDITOR DESCRIPTION VALUE CODE*

NONE (No reportable liabilities)

1	_____	_____	_____
2	_____	_____	_____
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____

*Value Codes: J-\$15,000 or less K-\$15,001-\$50,000 L-\$50,001-\$100,000 M-\$100,001-\$250,000 N-\$250,001-\$500,000
 C-\$50,001-\$1,000,000 P-\$1,000,001-\$5,000,000 F1-\$5,000,001-\$25,000,000
 F2-\$25,000,001-\$50,000,000 F4-\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

McCuskey, Michael P.

Date of Report

08/01/97

I. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets (including trust assets) 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. Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Int. Code (A-K)	Type (G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AB, AC, AD, AE, AF, AG, AH, AI, AJ, AK, AL, AM, AN, AO, AP, AQ, AR, AS, AT, AU, AV, AW, AX, AY, AZ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BK, BL, BM, BN, BO, BP, BQ, BR, BS, BT, BU, BV, BW, BX, BY, BZ, CA, CB, CC, CD, CE, CF, CG, CH, CI, CJ, CK, CL, CM, CN, CO, CP, CQ, CR, CS, CT, CU, CV, CW, CX, CY, CZ, DA, DB, DC, DD, DE, DF, DG, DH, DI, DJ, DK, DL, DM, DN, DO, DP, DQ, DR, DS, DT, DU, DV, DW, DX, DY, DZ, EA, EB, EC, ED, EE, EF, EG, EH, EI, EJ, EK, EL, EM, EN, EO, EP, EQ, ER, ES, ET, EU, EV, EW, EX, EY, EZ, FA, FB, FC, FD, FE, FF, FG, FH, FI, FJ, FK, FL, FM, FN, FO, FP, FQ, FR, FS, FT, FU, FV, FW, FX, FY, FZ, GA, GB, GC, GD, GE, GF, GG, GH, GI, GJ, GK, GL, GM, GN, GO, GP, GQ, GR, GS, GT, GU, GV, GW, GX, GY, GZ, HA, HB, HC, HD, HE, HF, HG, HH, HI, HJ, HK, HL, HM, HN, HO, HP, HQ, HR, HS, HT, HU, HV, HW, HX, HY, HZ, IA, IB, IC, ID, IE, IF, IG, IH, II, IJ, IK, IL, IM, IN, IO, IP, IQ, IR, IS, IT, IU, IV, IW, IX, IY, IZ, JA, JB, JC, JD, JE, JF, JG, JH, JI, JJ, JK, JL, JM, JN, JO, JP, JQ, JR, JS, JT, JU, JV, JW, JX, JY, JZ, KA, KB, KC, KD, KE, KF, KG, KH, KI, KJ, KK, KL, KM, KN, KO, KP, KQ, KR, KS, KT, KU, KV, KW, KX, KY, KZ, LA, LB, LC, LD, LE, LF, LG, LH, LI, LJ, LK, LL, LM, LN, LO, LP, LQ, LR, LS, LT, LU, LV, LW, LX, LY, LZ, MA, MB, MC, MD, ME, MF, MG, MH, MI, MJ, MK, ML, MM, MN, MO, MP, MQ, MR, MS, MT, MU, MV, MW, MX, MY, MZ, NA, NB, NC, ND, NE, NF, NG, NH, NI, NJ, NK, NL, NM, NO, NP, NQ, NR, NS, NT, NU, NV, NW, NX, NY, NZ, OA, OB, OC, OD, OE, OF, OG, OH, OI, OJ, OK, OL, OM, ON, OO, OP, OQ, OR, OS, OT, OU, OV, OW, OX, OY, OZ, PA, PB, PC, PD, PE, PF, PG, PH, PI, PJ, PK, PL, PM, PN, PO, PP, PQ, PR, PS, PT, PU, PV, PW, PX, PY, PZ, QA, QB, QC, QD, QE, QF, QG, QH, QI, QJ, QK, QL, QM, QN, QO, QP, QQ, QR, QS, QT, QU, QV, QW, QX, QY, QZ, RA, RB, RC, RD, RE, RF, RG, RH, RI, RJ, RK, RL, RM, RN, RO, RP, RQ, RR, RS, RT, RU, RV, RW, RX, RY, RZ, SA, SB, SC, SD, SE, SF, SG, SH, SI, SJ, SK, SL, SM, SN, SO, SP, SQ, SR, SS, ST, SU, SV, SW, SX, SY, SZ, TA, TB, TC, TD, TE, TF, TG, TH, TI, TJ, TK, TL, TM, TN, TO, TP, TQ, TR, TS, TT, TU, TV, TW, TX, TY, TZ, UA, UB, UC, UD, UE, UF, UG, UH, UI, UJ, UK, UL, UM, UN, UO, UP, UQ, UR, US, UT, UY, UV, UW, UX, UY, UZ, VA, VB, VC, VD, VE, VF, VG, VH, VI, VJ, VK, VL, VM, VN, VO, VP, VQ, VR, VS, VT, VU, VV, VW, VX, VY, VZ, WA, WB, WC, WD, WE, WF, WG, WH, WI, WJ, WK, WL, WM, WN, WO, WP, WQ, WR, WS, WT, WU, WV, WW, WX, WY, WZ, XA, XB, XC, XD, XE, XF, XG, XH, XI, XJ, XK, XL, XM, XN, XO, XP, XQ, XR, XS, XT, XU, XV, XW, XX, XY, XZ, YA, YB, YC, YD, YE, YF, YG, YH, YI, YJ, YK, YL, YM, YN, YO, YP, YQ, YR, YS, YT, YU, YV, YW, YX, YY, YZ, ZA, ZB, ZC, ZD, ZE, ZF, ZG, ZH, ZI, ZJ, ZK, ZL, ZM, ZN, ZO, ZP, ZQ, ZR, ZS, ZT, ZU, ZV, ZW, ZX, ZY, ZZ							
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)					EXEMPT				
1 First National Bank of Lacon IL	A	Int	J	T					
2 Pfizer, Inc. Common Stock (S)	A	Div	K	T					
3 Smith Barney Mutual Fund (S)	C	Div	L	T					
4 Fidelity Fund IRA	E	Div	M	T					
5 American Century Funds IRA	B	Div	J	T					
6 Fidelity Puritan Fund Tax Deferred	D	Div	K	T					
7 Illinois Judicial Retirement System		Future	P4	T					
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									

1 Inc./Gain Cds: A-\$1,000 or less; B-\$1,001-\$5,000; C-\$5,001-\$50,000; D-\$50,001-\$100,000; E-\$100,001-\$250,000; F-\$250,001-\$500,000; G-\$500,001-\$1,000,000; H-\$1,000,001-\$5,000,000; I-\$5,000,001 or more

2 Val. Cds: J-\$15,000 or less; K-\$15,001-\$50,000; L-\$50,001-\$100,000; M-\$100,001-\$250,000; N-\$250,001-\$500,000; O-\$500,001-\$1,000,000; P-\$1,000,001-\$5,000,000; Q-\$5,000,001 or more

3 Val. Meth Cds: R-Appraisal; S-Book Value; T-Cash/Market; U-Other (real estate only); V-Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting
McCuskey, Michael P.Date of Report
08/01/97

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

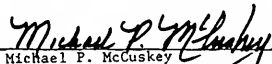
IX. CERTIFICATION.

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)(e), 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. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Michael P. McCuskey

Date August 1, 1997

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. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 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	21329		Notes payable to banks--secured		
U.S. Government securities--add schedule			Notes payable to banks--unsecured	20000	
Listed securities--add schedule	73932		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 Promissory Note	6000		Real estate mortgages payable--add schedule First of America	52000	
Real estate owned--add schedule	152000		Chattel mortgages and other liens payable	5300	
Real estate mortgages receivable			Other debts--itemize:		
Autos and other personal property	30000				
Cash value--life insurance					
Other assets--itemize:					
State of Illinois Bonds	40000				
IRA's--See Attached Schedule	164301				
Deferred Compensation--See Attached Schedule	126448		Total Liabilities	77300	
			Net Worth	33670	
Total Assets	614010		Total Liabilities and net worth	614010	
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				

ATTACHMENT TO FINANCIAL STATEMENT
OF
MICHAEL P. McCUSKEY AND BRENDA H. McCUSKEYListed Securities

Pfizer, Inc. Common Stock	18,688
Smith Barney Mutual Fund	55,244

Real Estate Owned

Personal Residence	135,000
Washburn IL	
1/3 Interest in Condominium	17,000
St. Petersburg FL	

Individual Retirement Accounts

Fidelity Investments	154,090
American Centry Investments	10,211

Deferred Compensation

With State of Illinois as Employer--Invested in Vanguard Inst. Index Fund	22,513
State of Illinois Judicial Retirement System	93,259
Illinois Municipal Retirement Fund	10,676

BIOGRAPHICAL INFORMATION (PUBLIC)

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

George Patrick Murphy

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

**Office: G. Patrick Murphy, Attorney at Law
104 W. Calvert, P.O. Box 907
Marion, IL 62959**

Home: Marion, IL 62959

3. Date and place of birth.

**12/1/48
Carbondale, Illinois**

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 Gail Diane (Sanders) Murphy
Spouse's occupation: Student**

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

**John A. Logan Junior College, 1969 - 1970
Southern Illinois University, 1970 - 1975
Bachelor of Science - May 17, 1975
Southern Illinois University School of Law, 1975 - 1977
Juris Doctorate, Dec. 17, 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.

(1) James W. Sanders & Associates

**1978 - 1982
Associate**

- | | | |
|-----|---|--|
| (2) | Garrison & Garrison | 1982 - 19
Associat |
| (3) | Winters, Brewster, Murphy,
Crosby & Patchett | 1983-19
Partn |
| (4) | G. Patrick Murphy, Attorney at Law | 1994 - Prese
Self-employ
Sole practition |

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.

June 30, 1966 / April 18, 1969

Marines - Viet Nam -K Co 3d Bn 1st Marines

Rank: E4

Serial Number: 2286652

Honorably discharged

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

Fellow -- American College of Trial Lawyers

Member -- National Board of Trial Advocacy

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.

Fellow, American College of Trial Lawyers

(Illinois Downstate Committee)

National Board of Trial Advocacy, Member, Civil Section

Illinois State Bar Association, Member

American Bar Association, Member

(Forum on Construction Law,

Tort & Insurance Practice Section, Litigation Section)

Illinois Trial Lawyers Association, Member

The Association of Trial Lawyers of America, Member

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 a member of the following organizations and each one is active in lobbying before public bodies:**

**Veterans of Foreign Wars
American College of Trial Lawyers
Illinois State Bar Association
American Bar Association
Illinois Trial Lawyers Association
Association of Trial Lawyers of America
Marine Corp League**

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, Illinois Appellate Court, and Illinois trial courts.
May 19, 1978**

United States District Court for the Southern District of Illinois, 1980

United States Court of Appeals for the Seventh Circuit, May 19, 1985

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 spoken on issues of constitutional law or legal policy.

Southern Illinois University Law Journal **Volume 20, Summer 1986**
Survey of Illinois Law: Evidence

Southern Illinois University Law Journal **Volume 13, Spring 1989**
Civil Procedure

Similar Occurrences **April 10, 1982**
ISBA Law Ed Series
Bloomington, IL

Discovery in a Products Case **April 10, 1982**
From the Plaintiff's Perspective

Comparative Negligence ITLA	April 28, 1984
Pretrial Discovery – Tips & Tactics	April 8, 1988
Hot Tips Slip, Trip & Fall Mishaps Plaintiff Perspective	November 1, 1993
Anatomy of a Trial Civil Practice & Procedure Pretrial Preparation ISBA Law Ed Series	April 11, 1994
Anatomy of a Trial Part II: Recurring Evidentiary Issues ISBA Law Ed Series Bloomington, IL	November 17, 1994
Current Topics in Injury Victim Advocacy Evidence of Previous Injuries St. Louis, MO	April 8, 1995
The Future of Health Care: Doing More With Less The Legal Aspects of Managed Care & Medicare-Medicaid Fraud and Abuse Collinsville, IL	October 22, 1996
How to Make Money, Keep Money, and Sleep at Night in Handling Plaintiff Litigation Settlement Offers and Liens ISBA Law Ed Series	February 12, 1997

13. Health: What is the present state of your health? List the date of your last physical examination.
- Good. Last Exam: June 19, 1997**
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.

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;

I currently practice alone and have done so since January 1, 1994.

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) **James W. Sanders & Associates** **1978 - 1982**
Associate

(2) **Garrison & Garrison** **1982 - 1983**
Associate

- | | | |
|-----|---|--|
| (3) | Winters, Brewster, Murphy,
Crosby & Patchett | 1983-1993
Partner |
| (4) | G. Patrick Murphy, Attorney at Law | 1994 - Present
Self-employed
Sole practitioner |

- 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 been a trial lawyer since I started practicing law. Initially, I defended municipal bodies and school boards in employment and civil rights litigation. While I was employed at Garrison & Garrison, I handled personal injury cases on behalf of insurers and their insureds. While I was a partner at Winters, Brewster, Murphy, Crosby & Patchett, I divided my practice between insurance coverage litigation for the insured, construction litigation, and plaintiff's personal injury litigation. Since I have been a solo practitioner, I have primarily handled plaintiff's personal injury cases with a sprinkling of insurance defense work as well as commercial and construction litigation.

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

Generally, I represent individuals who have been injured and are seeking damages. I also represent banks and businesses in litigated matters. I have specialized in civil litigation.

- 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 on a regular basis; I am in court on a daily basis.

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; | 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.

Approximately 250 tried to verdict or judgment as sole counsel.

5. What percentage of these trials was:
- | | |
|---------------|-----|
| (a) jury; | 35% |
| (b) non-jury. | 65% |

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. ***Mid-America Bank & Trust v Commercial Union*,
587 NE2d 81, 224 Ill App 3d 1083 (1992)**

Summary: A complicated insurance coverage case. The insurer, Commercial Union, refused to accept a reasonable settlement demand until the eve of trial, which resulted in a verdict many times the amount of the coverage. The plaintiff in the underlying case obtained an assignment from the insured and his lawyer referred the coverage case to me. The insurer refused to settle the coverage case and it was tried to a jury. My client, a severely injured minor, received the entire amount of his original verdict along with his attorneys' fees.

Represented: Mid-America Bank & Trust Company, Administrator of the Estate of David Struempf, a Disabled Adult
Detail participation: Sole counsel
Court: Circuit Court, Madison County
Judge: The Honorable Gordon Maag

Opposing Counsel: Michael J. Pitzer
 Rabbitt, Pitzer & Snodgrass, P.C.
 One Boatmen's Plaza, Suite 2300
 800 Market Street
 St. Louis, MO 63101-2608
 Phone: 314-421-5545

2. *People v Bebout* (1984) 84-CF-190, Williamson County, First Judicial Circuit

Summary: A murder case where I represented a young handyman charged with killing an elderly woman with a garrote. The defendant was found not-guilty of all charges.

Represented: Donald Bebout
Detail Participation: Lead counsel
Date of Trial: 1984
Court: Circuit Court, Williamson County
Judge: The Honorable Robert H. Howerton
Co-Counsel: Brocton Lockwood
 Attorney at Law
 802 N. Court, P.O. Box 1208
 Marion, IL 62959
 Phone: 618-997-3202

Opposing Counsel: Brian D. Lewis
 (then Asst. Wmsn. Co. States Attorney)
 Attorney at Law
 503 W. Jackson
 Marion, IL 62959
 Phone: 618-997-6211

3. *Swink v KLLM*
 90-4094, So. Dist. of IL (1990)

Summary: A catastrophic injury case that was tried to verdict in federal district court for the Southern District of Illinois. Mr. Swink was struck by a truck while assisting a stranded motorist on the shoulder of the highway. Although he was severely injured, there was no offer before trial. The jury's verdict for the plaintiff resulted in a \$13,350,000 judgment that was completely satisfied by the defendant's insurer.

Represented: Dennis Swink
Detail Participation: Lead counsel
Date of Trial: 1990
Court: U.S. District Court, So. District of Illinois -- Benton
Judge: The Honorable James L. Foreman
Co-Counsel: Ronald E. Osman
 Ronald E. Osman & Associates
 1602 West Kimmel, P.O. Box 939
 Marion, IL 62959
 Phone: 618-997-5151

Opposing Counsel:

Jerome E. McDonald
 Campbell, Black, Carnine & Hedin, P.C.
 108 S. 9th Street
 P.O. Drawer C
 Mt. Vernon, IL 62864
 Phone: 618-242-3310

Richard Record
 Craig & Craig
 1807 Broadway Ave.
 P.O. Box 689
 Mattoon, IL 61938
 Phone: 217-234-6481

4. *County of Massac v United States Fidelity and Guaranty Co.*
 446 NE2d 584, 113 Ill App 3d 35 (1983)

Summary: An insurance coverage case. The plaintiff in the underlying case, Mark Kruger, was injured when his car struck a partially completed bridge being constructed over a creek. He sued the construction company and my client, the County of Massac, for negligently failing to provide adequate warning signs, barricades, or lighting to alert motorists that the bridge was under construction. The county's insurer, USF&G, refused to defend the county on the grounds the applicable policy did not provide coverage. Later, USF&G took the position that it did not provide a defense to the county because this would have created a conflict of interest. The Appellate Court held that USF&G was estopped from asserting a coverage defense as it wrongfully refused to defend the county. Moreover, the court found that there was no conflict of interest.

Represented: The County of Massac
Detail Participation: Sole Counsel
Date of Trial: 1983
Court: Circuit Court, Massac County
Judge: The Honorable James R. Williamson

Opposing Counsel: J. C. Mitchell
 Mitchell & Mitchell
 404 N. Monroe
 Marion, IL 62959
 Phone: 618-993-2134

5. *People v Cornille*
 484 NE2d 301, 136 Ill App 3d 1011 (1983)

Summary: A criminal case where a sheriff was charged with official misconduct. He was collecting fines and depositing them in his personal account. He could not account for all of the fines he collected nor could he account for what he had expended. I represented the sheriff and presented a defense consistent with his assertion that he was using the money to pay informants. He was found guilty on two of four counts. The guilty judgments were affirmed on appeal.

Represented: Sheriff Cornille
Detail Participation: Sole counsel
Date of Trial: 1983
Court: Massac County, Ill
Judge: The Honorable William A. Lewis

Opposing Counsel: Special Prosecutor now Associate Judge
 The Honorable Rodney A. Clutts
 Union County Courthouse
 309 W. Market Street
 Jonesboro, IL 62952
 Phone: 618-833-8114

6. *Landmark Structures, Inc. v F.E. Holmes & Son Const. Co.*
 552 NE2d 1336, 195 Ill App 3d 1036 (1990)

Summary: A commercial case where my client, a general contractor, was sued by a siding manufacturer because of his failure to pay for siding. The siding was used on several sets of apartment buildings and ultimately buckled and had to be replaced. My client counter-claimed and was completely successful in the trial court. The trial court was affirmed on appeal.

Represented: F.E. Holmes & Son Construction Co.
Detail Participation: Sole counsel

Date of Trial: 1990
Court: Circuit Court, Johnson County
Judge: The Honorable James R. Williamson

Opposing Counsel: Ronald E. Fuhr
 Parker, Seimer, Austin & Resch
 P.O. Box 697
 307 North Third Street
 Effingham, IL 62401
 Phone: 217-342-9291

7. *Kigin v Woodmen of the World Ins.*
 541 NE2d 735, 185 Ill App 3d 400 (1989)

Summary: A young girl who was a guest at a Woodmen of the World summer camp was sexually assaulted by an intoxicated counselor. The trial court dismissed the case on the pleadings as there was no allegation that the defendant was aware of the counselor's intoxication or propensity to take advantage of young girls. The Appellate Court reversed and remanded the case for a trial on the merits. The case ultimately settled.

Represented: Darlene Kigin, Next Friend of Misty Mitchell, a minor
Detail participation: Sole counsel
Date of Trial: 1989
Court: Circuit Court, Williamson County
Judge: The Honorable Robert H. Howerton
Opposing Counsel: James B. Bleyer
 Bleyer & Bleyer
 601 W. Jackson, P. O. Box 487
 Marion, IL 62959
 Phone: 618-997-1331

8. *Salo v Singhurse*
 537 NE2d 339, 181 Ill App 3d 641 (1989)

Summary: A personal injury case arising out of an intersection collision. My client, Mike Salo, was assessed a percentage of comparative negligence, a finding from which I prosecuted an appeal. The case was remanded for a new trial on the issue of liability and ultimately settled for the entire amount of the damages awarded in the first trial without reduction for comparative fault.

Represented: Mike Salo
Detail participation: Sole counsel
Date of Trial: 1989

Court: Circuit Court, Franklin County
Judge: The Honorable Loren Lewis

Opposing Counsel: Michael J. Pitzer
 Rabbitt, Pitzer & Snodgrass, P.C.
 One Boatmen's Plaza, Suite 2300
 800 Market Street
 St. Louis, MO 63101-2608
 Phone: 314-421-5545

9. *Carlisle v Harp*
 558 NE2d 318, 200 Ill App 3d 908 (1990)

Summary: A personal injury case arising out of an intersection collision. I represented the plaintiff, Dorothy Carlisle, who was traveling west into an intersection. The defendant was traveling north into the intersection. It was an open intersection and both parties' visibility was hampered by vegetation. The defendant, Harp, was carrying out his duties as a mail carrier when the collision occurred. He admitted driving into the intersection without knowing what was coming from his right. Shortly before trial, defense counsel sought to have the plaintiff examined by his retained expert. This request was denied on the grounds it was untimely. After trial started, he attempted to assert the defense of plaintiff's contributory negligence. The court denied his request to amend his answer and assert this defense. The plaintiff recovered a verdict in the amount of \$40,000 for a back injury and this verdict was affirmed on appeal.

Represented: Dorothy Carlisle
Detail participation: Sole counsel
Date of Trial: 1990
Court: Circuit Court, Franklin County
Judge: The Honorable Terrence Hopkins

Opposing Counsel: Paul Giamanco
 Attorney at Law
 1008 Jordan, P.O. Box 882
 Mt. Vernon, IL 62864
 Phone: 618-244-5737

10. *Murphy v Inter-City Products*
 93-CV-526, So. District of Illinois

Summary: Raymond Murphy, no relation to Attorney Murphy, was assaulted by an employee of an outside security agency at a factory

auction. Mr. Murphy was not physically injured. The security company and the factory owner took the position that since there was no physical injury, Mr. Murphy was not entitled to damages. The jury returned a verdict for \$20,000.

Represented: Ray Murphy
 Detail participation: Sole counsel
 Date of Trial: October 12 - 14, 1994
 Court: U.S. District Court, So. District of Illinois –
 E. St. Louis
 Judge: The Honorable Clifford Proud
 Opposing Counsel: Stephen C. Mudge
 Reed, Armstrong, et al.
 101 N. Main, P.O. Box 368
 Edwardsville, IL 62025
 Phone: 618-656-0257

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.)

Davis v Showa Denko, MDL-865, So. Dist. of IL, (1994) settled before trial. My client, like thousands of other middle-aged American women suffered rheumatoid type symptoms as a result of using an over-the-counter food supplement, L-Tryptophan. L-Tryptophan is an amino acid that is essential for a healthy diet. The Japanese defendant, Showa Denko, devised a method of synthetically producing L-Tryptophan which was sold to American distributors through a wholly owned subsidiary, Showa Denko of America, Inc. Unfortunately the product was not wholesome and thousands of consumers were injured as a result. This case is significant because the liability aspect of the case was consolidated and the lawyers for the victims, working together, put together a solid case that resulted in all of the cases being settled except for one in California. The case involved multi-jurisdictional discovery (Germany, Japan, and England) as well as cutting edge medical science. The case settled on terms very satisfactory to my client.

The most significant non-litigated matter I have been involved in is acting in the capacity as Guardian for a disabled minor. I believe my ward, in years to come, will enjoy a quality of life that she would not have otherwise experienced but for my efforts.

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 intend to refer all of my open files to other lawyers. I do not expect to receive any remuneration for legal services that are unpaid as of the date I am sworn in as a Federal District Judge. I will either rent or sell the building where my law practice is presently situated. Otherwise, I do not anticipate receipt of any deferred income, stock options, uncompleted contracts, and other future 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 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.

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 sales, 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 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 treasurer for the judicial campaigns of Robert Howerton for Appellate Court Judge (1991), Terrence Hopkins for Appellate Court Judge (1994) and Ronald Eckiss for Circuit Court Judge (1994).

III. GENERAL (PUBLIC)

- I. 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 devote approximately 20 percent of my time to pro-bono work. For instance, I am the court appointed guardian for Amanda Missine, a disabled minor. I have served in this capacity since 1990. I have not taken a fee for my services since 1990. I manage her estate and approve all expenditures. Each week, I make decisions as to what services she needs and what she should pay for those services. I regularly provide services to members of the Veterans of Foreign wars and their spouses without fee. Typically, this includes the preparation of a will and a durable power of attorney. My staff, from time to time, is required to make visits to the V.A. hospital. To my knowledge, we have never charged a veteran or his spouse for these services. I am an active member of the VFW Post 1301 Ritual Team and as such I participate in approximately 25 funerals a year for veterans. Also, I regularly assist indigent or disadvantaged persons in obtaining divorces without charge. I recently tried a tort case for a young indigent black man who was sued for property damage arising out of a two car vehicular accident. This case was prosecuted as an insurance subrogation matter, my client, Jason Isaacs, was uninsured. I tried the case to verdict without any fee. He was completely exonerated. I have never tried to keep a record of the pro bono work that I do because I provide it on an as-needed basis.

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).

I was recommended by a selection committee. I completed a substantial application and was interviewed by the entire committee. I was interviewed by Senators Moseley-Braun and Durbin and recommended by them. I also completed lengthy questionnaires and was interviewed by representatives of the ABA, Department of Justice and FBI.

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 courts are courts of limited jurisdiction. A federal court should not accept jurisdiction of a case unless the requirements of the particular statute or the Constitution are clearly met. The function of a trial judge is to adjudicate actual disputes between real parties in accordance with the law and the evidence. It is not the function of a judge to attempt to solve larger social problems when deciding a case. It is not proper for courts to function as legislators or administrators. A district judge is bound by precedent. It is not the function of a district judge to attempt to establish precedent in an area where there is applicable precedent.

10-10 (w)
rev. 8/96

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

Person Reporting <i>(Last name, first, middle initial)</i> Murphy, George P.		2. Court or Organization U.S. Dist. Ct. So. Dist. of IL	3. Date of Report 08/02/1997
Title <i>(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</i> J.S. District Judge Nominee		5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date <u>07/31/1997</u> ___ Initial ___ Annual ___ Final	6. Reporting Period 01/01/1996 to 06/30/1997
Chambers or Office Address 104 W. Calvert P.O. Box 907 Marion, IL 62959		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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 the last page.

POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions)*

POSITION	NAME OF ORGANIZATION / ENTITY
<input checked="" type="checkbox"/> NONE (No reportable positions.)	
1 _____	_____
2 _____	_____
3 _____	_____

I. AGREEMENTS *(Reporting individual only; see pp. 14-17 of Instructions.)*

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1 _____	_____
2 _____	_____
3 _____	_____

II. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 18-25 of Instructions.)*

DATE	PARTIES AND TERMS	GROSS INCOME <i>(yours, not spouse's)</i>
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1997	Law practice	\$ 159,697.35
2 1996	Law Practice	\$ 199,099.00
3 1994-97	G. Patrick Murphy, Attorney (S)	
4 1995	Law practice	\$ 284,736.00
5 _____	_____	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Murphy, George P.	08/02/1997

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. 26-29 of Instructions.)

SOURCE	DESCRIPTION
<input type="checkbox"/> NONE (No such reportable reimbursements or gifts)	
<input type="checkbox"/> exempt	

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. 30-33 of Instructions.)

SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/> NONE (No such reportable gifts)		
<input type="checkbox"/> exempt		

LIABILITIES

Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate ability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/> NONE (No reportable liabilities)		
Bank of Herrin, Herrin, IL	Office Building Mortgage	M

* VAL. CODES: J = \$15,000 or less K = \$15,001-\$50,000 L = \$50,001 to \$100,000 M = \$100,001-\$250,000 N = \$250,001-\$500,000
 O = \$500,001-\$1,000,000 P1 = \$1,000,001-\$5,000,000 P2 = \$5,000,001-\$25,000,000 P3 = \$25,000,001-\$50,000,000 P4 = \$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Murphy, George P.	Date of Report 08/02/1997
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II. Page 1 INVESTMENTS and TRUSTS - income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets <i>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)" or ownership by dependent child.</i> <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
					If not exempt from disclosure				
	(1) Amt. Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (no reportable income, assets, or transactions)									
1 Heartland Bancshares - common	A	Dividend	J	T	exempt				
2 Charter Financial Incorporated - common	B	Dividend	M	T	exempt				
3 Heritage Cash Trust Money Market	D	Interest	K	W	exempt				
4 Kemper High Yield Fund	A	Dividend	K	W	exempt				
5 Aim Value Class Mutual Fund	A	Dividend	J	W	exempt				
6 Van Kampen Agressive Growth Fund		None	J	W	exempt				
7 Modern Woodmen of Am. Annuity	A	Interest	J	T	exempt				
8 SIT Mutual Fund Group		None	J	T	exempt				
9 Mercantile Bank money market	A	Interest	J	T	exempt				
10 Bank of Herrin NOW acct	A	Interest	J	T	exempt				
11 Chemed Corporation - common	A	Dividend			exempt				
12 Compaq Computer Corp - common		None			exempt				
13 GTE Corp - common	A	Dividend			exempt				
14 Southern Company - common	A	Dividend			exempt				
15 Monterey Pasta Co. - common		None			exempt				
16 Pacific Teleasia Group - common	A	Dividend			exempt				
17 Pepsico Inc. - common	A	Dividend			exempt				
1 Ino/Gain Codes: A=\$1,000 or less; B=\$1,001-\$2,500; C=\$2,501-\$5,000; D=\$5,001-\$15,000; E=\$15,001-\$50,000 (Col B1, D4) F=\$50,001-\$100,000; G=\$100,001-\$1,000,000; H1=\$1,000,001-\$5,000,000; H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less; K=\$15,001-\$50,000; L=\$50,001-\$100,000; M=\$100,001-\$250,000; N=\$250,001-\$500,000 (Col C1, D3) O=\$500,001-\$1,000,000; P1=\$1,000,001-\$5,000,000; P2=\$5,000,001-\$25,000,000; P3=\$25,000,001-\$50,000,000; P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market (Col C2) U=Book Value; V=Other; W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Murphy, George P.	08/02/1997

X. 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. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature *G. P. Murphy* Date 8/02/97

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. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
 Administrative Office of the United States Courts
 One Columbus Circle, N.E.
 Suite 2-301
 Washington, D.C. 20544

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	35	000	00	Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule	322	434	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		130	006 00
Real estate owned—add schedule	370	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—liabilities:			
Automobiles and other personal property	147	000	00				
Cash value—life insurance	2	000	00				
Other assets—liabilities:							
Woodmen World Annuity	4	850	00				
Ill. St. College Savings Bond	10	000	00				
Equity in law office	175	000	00	Total Liabilities		130	006 00
				Net Worth		936	278 00
Total Assets	1066	284	00	Total Liabilities and net worth		1066	284 00
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner 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	Paid						
Other special debt	None						

G. Patrick Murphy**REAL ESTATE OWNED**

Real Estate	Address	Value
Law office of G. Patrick Murphy	104 W. Calvert Marion, IL 62959	\$215,000.00
Personal Residence	3006 W. Woodlawn Place Marion, IL 62959	\$140,000.00
Undeveloped real estate (4 1/2 acres)	6936 Markley Lane Marion, IL 62959	\$15,000.00
		\$370,000.00

LISTED SECURITIES

Name of Security	Shares Owned	Price Per Share	Value
Heartland Bancshares	700	\$16.75	\$11,375.00
Charter Financial Inc.	11249	\$21.50	\$241,853.00
Kemper High Yield Fund	3984	\$8.45	\$33,665.00
Kemper High Return Fund	15	\$31.90	\$478.00
VanKamp, An Aggressive Growth Fund	989	\$11.00	\$10,879.00
Aim Value Class Mutual Fund	310	\$35.93	\$11,138.00
SIT Mutual Fund	971	\$13.43	\$13,046.00
			\$322,434.00

Property Mortgage:

Law Office of G. Patrick Murphy
104 W. Calvert Street
Marion, IL 62959

Bank of Herrin
101 S. Park Avenue
Herrin, IL 62948

Note # 57032
Amount: \$130,006.00

August 1, 1997

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Frederica A. Massiah-Jackson
(Frederica A. Massiah)

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

Office: 506 City Hall
Philadelphia, PA 19107

Home: Philadelphia, PA

3. Date and Place of birth.

November 10, 1950
Philadelphia, Pennsylvania

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

Spouse: Thomas H. Jackson, III
Project Assistant
Philadelphia Housing Authority
2021 Chestnut Street
Philadelphia, PA

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

Chestnut Hill College
Philadelphia, PA
1967-1971
A.B., Political Science

University of Pennsylvania
School of Law
Philadelphia, PA
1971-1974
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.

Hon. Robert N.C. Nix, Jr.
 Supreme Court of Pennsylvania
 Philadelphia, PA 19107
 Judicial Law Clerk
 1974-1976

Blank Rome Comisky & McCauley
 Four Penn Center Plaza
 Philadelphia, PA 19103
 Associate Attorney
 1976-1979; 1981-1984

Senate of Pennsylvania
 Hon. Freeman Hankins (deceased)
 Main Capitol Building
 Harrisburg, PA
 Chief Counsel
 Senate Insurance and Business Committee; and
 Special Senate Committee to Investigate
 Significant Business Closings
 1979-1981

Court of Common Pleas
 First Judicial District
 Philadelphia, PA 19107
 Trial Judge
 1984 to present

Wharton School
 University of Pennsylvania
 Philadelphia, PA 19104
 Lecturer
 1992-1995

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.

Gateway Black History Recognition, 1997

Punchey's Community Service Award
Walking the Extra Mile, 1996

Alpha Kappa Alpha, Iota Tau Omega Community Service, 1995

Sadie T.M. Alexander Award, University of Pennsylvania
Law School, 1995

Alpha Kappa Alpha Sorority, Women in Leadership, 1993

National Catholic Educational Association,
Presidential Award, 1990

Naval Base of Philadelphia
Martin Luther King Humanitarian Service Award, 1989

We The People, Freedom Medal, 1988

498 Hardworking Women,
A Directory for Pennsylvania, 1987
compiled by Kathryn Larson

Woman of the Year, 1987, Zeta Phi Beta Sorority, Inc.

School District of Philadelphia, 1986-1987
Law-Related Educational Program,
"Impact of Law on Minorities and Females"

School District of Philadelphia
Women in Education Award, 1986

Willing Workers Association of Southwest Philadelphia, 1986

Nicetown Boys and Girls Club, Community Service Award, 1985

Julia Reynolds Masterman School, Distinguished Alumna
of 1985

Rafters Charities, Inc., Appreciation Award, 1984

Italian-American Press Award, 1984

Philadelphia Jaycees, Outstanding Young Leader of Philadelphia, 1983

**American Federation of Government Employees,
Local 1793, V.A.M.C., Community Service Award, 1983**

**One of the 81 People to Watch in 1981,
Philadelphia Magazine**

**Downingtown Industrial and Agricultural School,
Distinguished Service Award, 1979**

**Leadership, Inc., Class of 1979-1980
(formerly Community Leadership Seminars)**

**Philadelphia Jaycees, Finalist,
Outstanding Young Leader, 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.

**Conference of Pennsylvania State Trial Judges
Legislative Committee, 1986; 1993-present**

**Court of Common Pleas, Philadelphia, Pennsylvania
Elected, Secretary of the Board of Judges, 1995-present
Chair, Corporate Sureties and Fiduciaries Committee,
1995 - present
Judicial Study Committee, 1989-present
Staffing Committee, 1991
Joint Bench/Bar Planning Committee, 1991-1992
District Attorney Screening Committee, 1991**

**American Bar Association
Special Committee on Youth Education for Citizenship,
1988-1991**

Philadelphia Bar Association

Chair, Fidelity Award, 1994

Board of Governors, 1980-1983

Executive Committee,

Young Lawyers Division, 1978-1980

Barristers Association of Philadelphia,

affiliate of the National Bar Association

First Vice-President, 1977-1978

Supreme Court of Pennsylvania

Hearing Committee, Disciplinary Board, 1979-1982

Judicial Council, 1982

Minor Court Civil Procedure Rules Committee,

1978-1980

American Inns of Court

Master of the Bench, 1993-1996

University of Pennsylvania Law School

Board of Managers, 1982-1985

Chair, Nominating Committee, 1991, 1992

Temple University Law School

Law-Related Education Advisory Board

(LEAP) 1988-present

American Arbitration Association

Philadelphia Personal Injury

Advisory Board, 1992-present

Lawyers Club of Philadelphia, 1975-1985**Continuing Legal Education Faculty:****How to Avoid Legal Malpractice, December, 1996****Trial Advocacy, September, 1996****Fee Dispute Resolution, December, 1995****Advocacy for Women Litigators, April, 1995****Court of Common Pleas, Mediation Training, January,****February, 1995**

Litigation Medical Malpractice Claims, ALI-ABA, October, 1994

Civil Bench Bar Conference, September, 1994

A View From The Bench/Opening and Closing Statements, September, 1994

Effective Advocacy, July, 1994

Alternative Dispute Resolution/Judicial Settlement

Conferences, June, 1994

Trial Techniques: Guide to Civil Trial Advocacy, April, 1994

Fee Disputes, Ethical Considerations, December, 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.

I do not participate in organizations which are active in lobbying before public bodies.

Other organizations to which I currently belong are:

Friends of The University of Natal Durbin, South Africa,
1995 - present

Jack and Jill, Inc. - 1981 - present

Links, Inc.

Chair, International Trends, 1985-1995

Corresponding Secretary, 1995 -

National Catholic Educational Association

Board of Directors, 1987-1990, 1994-1997

Vice Chair, Board, 1994 - 1997

Convener, 1995 Presidential Search

Philadelphia Heart Institute of Presbyterian Hospital

Foundation Board, 1991 - present

Scribe Video Center

Board of Directors, 1987 - 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.

United States District Court for the Eastern District of Pennsylvania. Admitted 1974.

United States District Court for the Middle District of Pennsylvania. Admitted 1976 to 1979, for one case.

Supreme Court of Pennsylvania. Admitted 1974.

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. "Education and Delinquency, a Judge's Four-Point Plan for At-Risk Kids." Update on Law-Related Education, American Bar Association Spring, 1989
 - b. "In Search of Full Vision"
Momentum
September, 1990

OTHER PROFESSIONAL REPRESENTATIONS

"African Americans and Civil Rights: A Reappraisal"
Black History Month Committee of the U.S. Dept. of Labor
and U.S. Dept. of Health and Human Services, February, 1997.

"The Economic Impact of Justice"
Jobs With Income Summit, January, 1997

"Sisterhood Across America"
Panel Discussion, Themes & Books, October, 1996

North Philadelphia Spiritual Center
Gesu Church, 1996

**“Women in Judging: Transforming The Image of Justice”
University of Pennsylvania Law School, March, 1995**

**“Race, Justice and Peace”
Presenter Pennsylvania Legislative Black Caucus Summit,
1995, 1994**

**“Legal Concerns of Senior Citizens”
Southwest Community Center, April, 1993**

**Alumna Speaker; Black Law Student Association
University of Pennsylvania, March, 1993**

**“North Philadelphia, Then and Now”
A.M.E. Union Church, February, 1993**

**“Women Celebrating Women”
St. Charles Borromeo Church, October, 1992**

**“We Have Come This Far By Faith - Women’s Strengths”
St. Ignatius Church, June, 1992**

**Alumna Speaker; African American Awareness Society
Chestnut Hill College, March, 1992**

**“Victim’s Rights” Keynote, Victim/Witness Advocacy Program
Tri-County Prosecutor’s office, Gloucester County, New Jersey,
April, 1991**

**“Black Youth, We are The Future, Reaching for Our Dream”
Luncheon - Keynote, Church of the Gesu, February, 1991**

**Dinner Speaker, Conclave
Twigs, Inc., Wilmington, Delaware, June, 1990**

**“Women-God’s Gift of the Universe”
Union Baptist Church, June, 1990**

**“Women and the Constitution”
Mt. Sinai Tabernacle Church, 1990**

**Black History Celebration, LaMott Community
Cheltenham Township, February, 1990; February, 1989**

**Martin Luther King Observance; Philadelphia Naval Base;
Keynote Address, January, 1989**

**"Women at the Crossroads-From the Kitchen to the Pulpit"
Holy Cross Lutheran Church, May, 1989**

**"Equal Opportunities for Women and Minorities," EEO Luncheon
Speaker, Naval Aviation Engineering Service Unit,
March, 1988**

**"The Role of Paralegals in the Office"
American Institute for Paralegal Studies, May, 1988**

**Conference for Women
West Chester University, October, 1988**

**National Law-Related Education, Leadership Seminar/Keynote
Address - American Bar Association, November, 1988**

**"Continuing the Dream," Message, Martin Luther King Service
Cardinal's Commission on Human Relations and Urban
Ministry, January, 1987**

**Naturalization Proceedings, United States Courthouse,
March, 1987**

**"Women in the Law - 200 Years After the Constitution,"
Women's Law Caucus/Student-Alumnae Diner, Temple Law
School, April, 1987**

"Women Going Forward," Olivet Baptist Church, May, 1987

**"Women-Your Rights in the Workplace," Katherine Gibbs
School, June, 1987**

**"Salute to the Young, Gifted and Black," Miller Memorial
Baptist Church, June, 1987**

**"How to Become a Judge," League of Women Voters and NBA
Women Lawyers, January, 1986**

**"Sugar and Spice," Black Business and Professional Women,
April, 1986**

“Women in Education,” Keynote Speaker, School District of Philadelphia, April, 1986

“Challenges to our Youth,” Boys and Girls Clubs of Metropolitan Philadelphia, Nicetown Branch, Annual Meeting, 1985

“Developing Character in a Technical Age: A Challenge to Education,” American Association of University Women, May, 1985

“We, Women of the 80’s,” with Hon. Lisa Richette, National Women’s Political Caucus, Community College of Philadelphia Forum, October, 1985

“The Right Women for the Job,” Black Women Education Alliance, School District of Philadelphia, October, 1984

In addition to the above, I have participated in numerous panel discussions, conferences, seminars, symposia, with formal and informal presentations on behalf of the Pennsylvania Bar Association, the Philadelphia Bar Association (including but not limited to several Bench-Bar Conferences), the Barristers Association and Penn Law Student programs, over the past 20 years. Finally, I have participated as a “judge” in many moot court competitions and mock trial programs over the years.

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

Excellent
March, 1997

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 was elected to the Court of Common Pleas in November, 1983, for a 10-year term. In November, 1993, I won a retention election for my second 10-year term.

The Court of Common Pleas is Pennsylvania’s trial court, with unlimited jurisdiction. I sat for 8 years in our Criminal Division, hearing Major Felony cases. Since 1991, I have presided in our Civil Division, hearing medical malpractice, products liability and commercial 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 listed were not officially reported, please provide copies of the opinions.

PART 1

1. Clark v. Philadelphia College of Osteopathic Medicine
June Term, 1990, No. 5674
2. Maerten v. Philadelphia Marine Services, Inc.
32 Phila. 174 (1995)
3. Meehan v. Volvo White GMC
30 Phila. 225 (1995)
4. Congregation Ner Zedek Ezrath-Israel and Church Mutual Insurance Co. v. Union Roofing and Sheet Metal Contractors
29 Phila. 209 (1994)
5. Pavoni, et al. v. Magee, M.D.
29 Phila. 28 (1994)
6. Shaw, et al. v. Kirschbaum, D.O.
27 Phila. 595 (1993)
7. Williams v. Supermarkets General Corp.
27 Phila. 518 (1994)
8. Frye v. Kanner, D.P.M., Balderston, M.D. and Ellis, M.D.
27 Phila. 170 (1993)

9. Commonwealth v. Johnson
18 Phila. 418 (1988)
Aff'd, 566 A.2d 1197 (Superior Ct. 1989)
10. Commonwealth v. Mita
14 Phila. 636 (1986)

PART 2

Since January, 1984, I have presided over thousands of jury and non-jury trials in criminal and civil matters, guilty pleas, nolo-contendere pleas, pre-trial suppression motions, Rule 1100 (speedy trial) motions, and civil motions (i.e., summary judgment).

According to Court Administration Criminal Division records, I disposed of 551 cases in 1984; 736 cases in 1985; 653 cases in 1986; 591 cases in 1987; 241 cases in 1988; 354 cases in 1989; and 447 cases in 1990. In 1991, I spent eight months in the Criminal Division and four months in the Civil Division. In 1992, 1993, 1994 and 1995, I disposed of 60 to 100 civil cases per year (averaging more than 1 trial per week). In 1996, as a Civil Team Leader, my records indicate 200 Civil dispositions. Civil dispositions include trials to verdict, settlements before or during trial, and/or dispositive rulings.

According to my records, from January, 1984, to March, 1997, 95 appeals were filed with the Superior Court of Pennsylvania. Of these, the Superior Court reversed, in whole or in part, 14 times.

To the best of my knowledge, 4 Superior Court Opinions, which reversed in whole or in part, have been published. These were all civil cases. Two Superior Court cases which affirmed the Trial Court (1 civil and 1 criminal) have been published. Thus, all other Superior Court decisions, approximately 89, for affirmance or reversal or remand, were non-published Memoranda. The Memorandum Opinions are sent to the parties and the Trial Court. By Superior Court Rule, they may not be referred to or relied on in any other litigation as precedent.

1. Commonwealth v. Ernest Pleasant
January Term, 1986, No. 0144

Defendant appealed alleging ineffective trial counsel. FMJ denied Motions. Superior Court affirmed trial, remanded for new sentence.

2. Commonwealth v. Victor Colon
June Term, 1986, No. 2585

Defendant appealed sufficiency of evidence. FMJ denied Motions. Superior Court reversed rape charges, holding that expert witness should not have testified about child sexual abuse. New trial ordered.

3. Commonwealth v. Robert Hicks
October Term, 1986

FMJ discharged defendant and Commonwealth appealed. Superior Court ordered a trial.

4. Commonwealth v. Mayberry and Jenkins
January Term, 1987, No. 1792

FMJ granted Suppression Motion; Commonwealth appealed. Superior Court reversed and ordered a trial.

5. Commonwealth v. Dwayne Garman
January Term, 1987, No. 0397

FMJ held Rule 1100 (speedy trial Rule) violated. Superior Court reversed and ordered trial.

6. Commonwealth v. Larry Crew
February Term, 1988, No. 5148

FMJ held that Commonwealth failed to sustain prima facie burden to hold defendant for trial. Superior Court reversed.

7. Commonwealth v. Martin Malloy
February Term, 1988, No. 1974

FMJ granted Suppression Motion - reversed on appeal.

8. Commonwealth v. Willie Wyche
December Term, 1988, No. 3709

FMJ held that this juvenile defendant required an expanded certification hearing. Superior Court held it was premature for Trial Court to consider the issue.

9. Commonwealth v. Wesley Smith
October Term, 1990, No. 3502
- FMJ granted certain pre-trial Motions precluding evidence. Reversed on appeal. Defendant subsequently found not guilty.
10. Commonwealth v. Linda Scott
Details unknown. My records indicate only that defendant appealed in 1990. Superior Court reversed in October 1991.
11. Halpin and Courtney v. LaSalle University
May Term, 1990, No. 1109
- Two college professors challenged employment termination due to age. FMJ sustained their allegations. Superior Court held there was no contract to permit the challenge.
12. Shaw v. Kirschbaum, D.O.
27 Phila. 597 (1993)
___ Pa. Superior Ct. ___, 653 A.2d 12 (1994)
- Superior Court vacated the judgment holding that referral physician could not be liable under theory of informed consent.
13. Clark v. Philadelphia College of Osteopathic Medicine
June Term, 1990, No. 5674
___ Pa. Superior Ct. ___, 693 A.2d 202 (1997)
- The Superior Court affirmed the Trial Court's evidentiary rulings, then vacated the judgment after holding that the plaintiff's joint tortfeasor settlement with certain defendants "capped" the recovery. Appellate Opinion, dated March 12, 1997, will be published. Both sides have petitioned for re-argument.
14. Florentino v. Rapaport, et al.
March Term, 1989, No. 4395
___ Pa. Superior Ct. ___, 693 A.2d 208 (1997)
- FMJ was not the trial court, but sat as post-trial court en banc for a trial judge pro tem. Superior Court reversed non-suit determination, remanding for new trial.

PART 3

None at this time.

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 served as an elected committee person for the 22nd Ward Democratic Executive Committee for approximately 8 years prior to 1983.

I was appointed to serve as a Delegate to the 1980 Democratic National Convention in New York.

In the Spring of 1981, I was an unsuccessful candidate for the Court of Common Pleas.

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;
 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 have never practiced alone.

**1974 to 1976 Judicial Law Clerk
 Hon. Robert N.C. Nix, Jr.
 Pennsylvania Supreme Court
 (Retired as Chief Justice in 1996)
 6640 Lincoln Drive
 Philadelphia, PA 19119**

- 1976 to 1979 Associate Attorney
Blank Rome Comisky & McCauley
Four Penn Center Plaza
16th and J.F.K. Boulevard
Philadelphia, PA 19103
- 1979 to 1981 Senate of Pennsylvania
Hon. Freeman Hankins (deceased)
Senate Insurance and Business Committee; and
Special Senate Committee to Investigate
Significant Business Closings
- 1981 to 1984 Associate Attorney
Blank Rome Comisky & McCauley
Four Penn Center Plaza
Philadelphia, PA 19103
- 1984 to present Judge, Court of Common Pleas
First Judicial District
506 City Hall
Philadelphia, PA 19107
- 1992 to 1995 Lecturer, Wharton School
University of Pennsylvania
Legal Studies 101
(Business Law to undergraduate
college students)

- 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 the years before I was elected to the Court of Common Pleas, the general character of my practice was corporate and commercial litigation. During 1976 through 1979, I worked as an associate attorney in the area of antitrust, securities and multi-district litigation. As a young attorney, my responsibilities required me to work with others in the representation of clients in civil and criminal matters involving the United States Attorney's Office, as well as private, treble damage litigation. I handled discovery issues at all stages of pre-trial, trial and settlement proceedings in Federal Court.

I was engaged in general civil and commercial litigation for three years, 1981 through 1984. Additionally, during 1981 and 1982, I represented a taxi company before the Public Utility Commission Hearings as we transferred ownership to individual driver/owners of taxis.

From 1979 through 1980, while on a leave of absence from the firm, I used my legal talents much differently. While working with our State Senate, I was the chief administrator charged with interviewing literally hundreds of people to attempt to learn why three major supermarket chains closed within a six-month time period, leaving more than 10,000 people out of work in Pennsylvania. Our Special Senate Committee had subpoena power and I was invited to serve as Counsel because of my antitrust experience. I was responsible for scheduling public hearings in Philadelphia, Harrisburg and Pittsburgh. Subsequently, I prepared a report and recommendation from our bipartisan committee to the full Senate.

Later, from 1980 through 1981, as Counsel to the Senate Insurance Committee, I was responsible to lead our Senator's staff in drafting legislation and reports for the full Senate Committee.

My work as a judicial law clerk, from 1974 to 1976, provided me with the significant learning experience of viewing cases from the appellate perspective of our Commonwealth's highest court. I honed my skills in legal research, analysis and writing. Much of this early perspective, I use today as a trial judge.

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

The typical clients at Blank Rome Comisky & McCauley were medium and large corporations. During my first "stint" at the firm, my projects involved major, multi-district private antitrust and anti-dumping litigation. Class action litigation was developing in the early 1970's, as well as complex commercial matters. The clients were companies selling products in the United States and abroad. As plaintiffs, we sued a group of Japanese electronic product manufacturers. As defendants, we represented individuals and the companies accused of price fixing. I coordinated the defense of a multi-district class action which was consolidated in the Middle District Court of Pennsylvania.

When I returned to the law firm in 1981, the Litigation Department was no longer subdivided. I worked on state and federal court matters in more general commercial litigation, as well as Public Utility Commission administrative hearings.

- 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 occasionally.

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

Approximately 80%-85% was in federal courts; other appearances were before state courts or private dispute resolution.

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

One hundred percent of my experience was in civil litigation.

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.

As an associate attorney at a 200-person law firm, I worked with other, more senior, attorneys. To the best of my knowledge, all of the cases I worked on eventually settled.

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

Eighty-five percent jury; 15% 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.

The following are litigation matters that I personally handled:

- (a) Ruli Corporation v. The School District of Philadelphia
October Term, 1981, No. 3362, Court of Common Pleas

Ashbourne Transportation Co. v. The School District of Philadelphia

October Term, 1981, No. 3363, Court of Common Pleas

Ronald H. Surkin, Esquire
25 W. Second Street
P.O. Box 900
Media, PA 19063
(610) 565-4600
I was co-counsel
for Plaintiff

Martin Horowitz, Esquire
923 E. Darby Road
Havertown, PA 19083
(610) 449-2088
Defendant

- (b) Roy Jackson v. Mirick Pearson Batcheler Henry
American Arbitration Association; private ADR

Sheldon Albert, Esquire
3300 Two Commerce Square
Philadelphia, PA 19103
(215) 963-0600
I was co-counsel
for Plaintiff

Bruce Lombardo, Esquire
11 Penn Center
1835 Market Street
Philadelphia, PA 19103
(215) 563-4470
Defendant

- (c) Pizzeria Trio, Inc. v. CSMI, Inc.
Civil Action No. 81-4312, Eastern District of Pennsylvania

Jeffrey Less, Esquire
1515 Market Street
Philadelphia, PA 19102
(215) 568-1155
Plaintiff

Ronald H. Surkin, Esquire
25 W. Second Street
P.O. Box 900
Media, PA 19063
(610) 565-4600
I was co-counsel
for Defendant

- (d) Teamsters Local 169 and Northern Shipping Co.
Ron Easley Discharge
 Case No. 1-30-0230-82H

American Arbitration Association
 Charles Mullen, Arbitrator

Richard Sigmond, Esquire
 11th Floor
 Public Ledger Building
 Independence Square
 Philadelphia, PA 19106
 (215) 351-0609
 Plaintiff

Sheldon Albert, Esquire
 3300 Two Commerce Square
 Philadelphia, PA 19102
 (215) 963-0600
 I was co-counsel
 for Defendants

- (e) Bethlehem Furniture Co. v. Richard I. Rubin, Inc.
 Eastern District Court of Pennsylvania

- (f) Mayer Pollock Steel Corporation v. Arvedi Steel Co.
 Eastern District Court of Pennsylvania

As co-counsel to plaintiff, the issue was a dispute over the price of a large shipment of Italian steel. My supervising attorney was Morris Dean, Esquire, Blank Rome Comisky & McCauley, Four Penn Center Plaza, Philadelphia, PA 19103, (215) 569-5500.

- (g) In re: Metro Transportation Company

Honorable Charles Hoffman
 Administrative Law Judge
 Pennsylvania Public Utility Commission

Lawrence Beaser, Esquire
 Kathleen Herzog Larkin, Esquire
 Blank Rome Comisky & McCauley
 Four Penn Center Plaza
 Philadelphia, PA 19103
 (215) 569-5500
 I was co-counsel for Sellers

Jay Bomze, Esquire
 1401 Arch Street
 Philadelphia, PA 19102
 (215) 569-0110
 Buyers

- (h) In re Anthracite Coal Antitrust Litigation
79 F.R.D. 707 (1978)

Honorable Malcolm Muir (M.D. Pa.)

This multi-district, class action was consolidated in the Middle District of Pennsylvania from 1976 through 1978. I served as one of the lead defense attorneys in coordinating document productions, discovery, notice to the class, and preparation of settlement details in the price fixing litigation.

Counsel for plaintiffs included Arnold Levin, Esquire, Levin, Fishbein, Sedran and Berman, 320 Walnut Street, Philadelphia, PA, (215) 592-1500; H. Laddie Montague, Berger & Montague, P.C., 1622 Locust Street, Philadelphia, PA (215) 875-3010.

Counsel for defendants included co-counsel Richard McElroy, Esquire, Blank Rome Comisky & McCauley, Four Penn Center Plaza, Philadelphia, PA, (215) 569-5500; Edward F. Mannino, Esquire, Wolf Block Schorr & Solis-Cohen, 15th and Chestnut Streets, Philadelphia, PA, (215) 977-2492.

- (i) Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd., et al.

481 U.S. 1029 (1987); 807 F.2d 44 (3rd Cir. 1986);
423 F.2d 238, 723 F.2d 319 (3rd Cir. 1983);
513 F.Supp. 1100 (E.D. Pa. 1981);
494 F.Supp. 1190 (E.D. Pa. 1980)

The Japanese Electronic Products Antitrust Litigation was a major lawsuit involving allegations of international price fixing, dumping, economic cartels and trade violations. After many years of pre-trial discovery, commencing in the early 1970's, summary judgment was granted in favor of all defendants in the 1980's and affirmed by the United States Supreme Court. Several judges in the Eastern District Court of Pennsylvania, including the Honorables A. Leon Higgenbotham and Edward R. Becker, presided at different periods. My role as one of several co-counsel for plaintiffs involved document reviews (in Japanese and English), research and writing of discovery related motions and memoranda between 1976 through 1978.

Counsel for plaintiffs were Edwin P. Rome, Esquire (deceased), Richard McElroy, Esquire, and William H. Roberts, Esquire, of Blank Rome Comisky & McCauley, Four Penn Center Plaza, Philadelphia, PA 19103, (215) 569-5500.

Local defense counsel included: Patrick T. Ryan, Esquire, Drinker, Biddle & Reath, 1345 Chestnut Street, Philadelphia, PA, (215) 988-2865; Raymond T. Cullen, Esquire, Morgan, Lewis & Bockius, 2000 One Logan Square, Philadelphia, PA, (215) 963-5650; Harry A. Short, Jr., Esquire, Marshall, Dennehey, Warner, Coleman & Goggin, 1845 Walnut Street, Philadelphia, PA, (215) 575-2690; Walter R. Milbourne, Esquire, Saul, Ewing, Remick & Saul, 3800 Centre Square, Philadelphia, PA, (215) 972-1975; Henry T. Reath, Esquire, Duane, Morris & Heckscher, One Liberty Place, Philadelphia, PA, (215) 979-1340.

Because the cases I have located are so old, I do not believe that these adequately reflect my qualifications, experience, temperament, character or integrity as a trial court judge. I will provide the names of members of the legal community who have had recent contact with me in my service as a judge:

1. Edward F. Chacker, Esquire
Gay and Chacker, P.C.
1731 Spring Garden Street
Philadelphia, PA 19130
(215) 567-7955
2. Charles A. Cunningham, Esquire
First Assistant Defender
Defender Association of Philadelphia
Public Defender's Office
70 North 17th Street
Philadelphia, PA
(215) 568-3190
3. Eileen Giordano Katz, Esquire
Southeastern Pennsylvania Transportation Authority
Office of the General Counsel
1234 Market Street
Philadelphia, PA
(215) 580-7445
4. John Konchak, Esquire
Defender Association of Philadelphia
Public Defender's Office
70 North 17th Street
Philadelphia, PA
(215) 568-3190

5. **Donald F. Ladd, Esquire**
While and Williams
One Liberty Place, Suite 1800
Philadelphia, PA 19103
(215) 864-7118
6. **Sayde Joy Ladov, Esquire**
One Penn Center, Suite 640
Philadelphia, PA 19103
(215) 564-0600
7. **Dante Mattioni, Esquire**
Mattioni, Mattioni, Mattioni, Ltd.
399 Market Street
Philadelphia, PA 19106
(215) 629-1600
8. **Robert Pasquale, Esquire**
Doroshow, Pasquale and Linarducci
1202 Kingwood Highway
Wilmington, DE 19805
(302) 998-0100
9. **William H. Roberts, Esquire**
Blank Rome Comisky & McCauley
Four Penn Center Plaza
Philadelphia, PA 19103
(215) 569-5632
10. **Alan Schwartz, Esquire**
Anapol, Schwartz, Weiss & Schwartz
1900 Delancey Place
Philadelphia, PA 19103
(215) 735-0330
11. **Carol Sweeney, Esquire**
District Attorney's Office
1421 Arch Street
Philadelphia, PA 19102
(215) 686-8700

12. **William F. Sutton, Esquire**
Post & Schell, P.C.
1800 J.F.K. Boulevard
Philadelphia, PA 19103
(215) 587-1059
13. **Rhonda Hill Wilson, Esquire**
1500 Market Street
East Tower, 12th Floor
Philadelphia, PA 19102
(215) 972-0400
14. **Charles G. Young, III, Esquire**
Litvin, Blumberg, Matusow & Young
1339 Chestnut Street, 18th Floor
Philadelphia, PA 19107
(215) 557-3304
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 found that participating as a “faculty” member making presentations for Continuing Legal Education Programs, as well as attending professional enrichment programs, has helped me in my work as a trial judge. Much of my day-to-day activity is goal oriented; that is, dispose of a motion, complete a trial, settle a case. The course participation, whether as a presenter or as a student, enables me to exchange ideas and learn new concepts in a broader context.

Continuing Legal Education Faculty:

How to Avoid Legal Malpractice, December, 1996
 Trial Advocacy, September, 1996
 Fee Dispute Resolution, December, 1995
 Advocacy for Women Litigators, April, 1995
 Court of Common Pleas, Mediation Training, January,
 February, 1995
 Litigation Medical Malpractice Claims, ALI-ABA, October,
 1994
 Civil Bench Bar Conference, September, 1994

A View From The Bench/Opening and Closing Statements,
September, 1994
Effective Advocacy, July, 1994
Alternative Dispute Resolution/Judicial Settlement
Conferences, June, 1994
Trial Techniques: Guide to Civil Trial Advocacy, April, 1994
Fee Disputes, Ethical Considerations, December, 1993

Continuing Legal Education Courses Attended:

Toxic Torts/Chemical Sensitivity Litigation, February, 1997
Pulse of Justice
National Center for State Courts, April, 1995
Effective Legal Negotiations and Settlement, Penn Law
School, November, 1994
Products Liability Law Series
Philadelphia Civil Trial Judges, Fall, 1994
Managing Trials Effectively
National Judicial College, February, 1992
Toxic Torts for Trial Judges
National Judicial College, November, 1990

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.

Pennsylvania State Employees Retirement System Pension.

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.

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

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.).

Financial Disclosure Report is attached.

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.

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 interest in community service is reflected in time spent as a classroom speaker and resource person. Over the years, I have visited many of Philadelphia's public and parochial schools. When schedules permit, I have invited classes to visit my courtroom for discussion.

Additionally, as my interest and knowledge in Law-Related Education has expanded, I frequently work with law students who teach in school classes. Through Temple Law School's LRE program, I was introduced to the American Bar Association's Special Committee on Youth, Education and Citizenship, when I served from 1988-1991.

I fully accept my responsibility to work with young people, to share my courtroom experiences, to provide guidance in citizenship, review the Bill of Rights, and as a role model and native Philadelphian.

Although my time varies from month-to-month or year-to-year, a sample of the schools where I have been a presenter are as follows:

- 1984 - Gillespie Middle School; John L. Kinsey Elementary School; Strawberry Mansion Elementary and Middle School; Shoemaker Jr. High School.
- 1985 - Kennedy-Crossen Elementary School; Julia R. Masterman School; St. Vincent's Elementary School; Rhoads Elementary School; Franklin Learning Center; Lankenau-Saul High School.
- 1986 - Rhoads Elementary School; Kennedy-Crossen Elementary School; West Philadelphia High School; Germantown High School.
- 1987 - Grover Cleveland Elementary School; Friends Select School; Hall Stanton Public School; Mary McCloud Bethune Elementary School; Kennedy-Crossen School; James Rhoads School.

- 1988 - Bok High School; Bartram High School; Steel Middle School; Y.M.C.A. classes in Chester, PA.
- 1989 - Ludlow Elementary School; West Catholic Girls High School.
- 1992 - Cheyney University; Friends Select School; Powelton Elementary School, where in March, 1992, after much planning and coordination with teachers and parents, two classes visited my courtroom. The teachers prepared their lesson plans based on my cases and the students spent two days.
- 1993 - Wagner Middle School; Abington Friends School; Temple LEAP/Penn's Discovery Moot Court for Junior High.
- 1994 - Gesu School; Philadelphia Inquirer High School Workshop; Philadelphia High School for Girls; Fidler Academic Plus Elementary; Mary McLeod Bethune Elementary School; Springside School; City-Wide Summer Non-Violence Mock Trial.
- 1995 - Prince Hall Elementary School; Jay Cooke Middle School.
- 1996 - Philadelphia High School for Girls visited the courtroom for Mock Trial presented by real lawyers, followed by extensive discussions and questions about an actual case.
- 1997 - Greene Street Friends School; Elverson Middle School.
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 do not belong to organizations which discriminate through 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).

Yes, there have been three selection committees in the Eastern District of Pennsylvania which have recommended my nomination to the Federal Court in 1993, 1996 and 1997.

In 1993, former U.S. Senator Harris Wofford named a 15 person committee chaired by Dr. Mary Patterson McPherson, President of Bryn Mawr College, to conduct a search for nominees for one vacancy on the Third Circuit Court of Appeals and one vacancy on the Eastern District Court of Pennsylvania. Over 90 candidates submitted completed questionnaires which were similar to the ABA's Personal Data Questionnaire.

Panels of the committee met with about 25 of the candidates. The full committee met and interviewed a smaller group of semi-finalists. I was one of 4 or 5 individuals who met with Senator Wofford for consideration for both of the vacancies. Although I was not appointed to the federal bench at that time, I remain very interested in the opportunity.

In the Spring of 1996, Senator Arlen Specter, the Senior Senator in Pennsylvania, convened a new judicial nomination committee. Again, after going through the process of interviews, I was strongly recommended. No nominations were made that year.

In July, 1996, Congressman Thomas M. Foglietta submitted my credentials to the Honorable William J. Clinton for consideration. I have support for my goals from educational leaders, elected officials, clergy, union leaders and leaders of the bench and bar in Philadelphia. Many of these individuals did submit letters of support to Senator Wofford, to Congressman Foglietta and to former White House counsel Peter C. Erickson, Esquire.

In June, 1997, after two interviews, I was recommended by a judicial nomination committee convened by Senators Specter and Santorum. I have been investigated and interviewed by the American Bar Association, the Federal Bureau of Investigation and the 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.

The legislature makes the laws, the executive carries out the laws, and the courts apply the laws.

This is the first lesson in my class on separation of powers. The courts are an integral part of our system of democracy. Our constitutional government has remained strong for 200 years because we have adhered to the formula of the framers.

Courts have a special role, a well defined role, not to re-write laws, nor to initiate processes where the legislatures have not ventured, but rather to determine whether existing laws are fair, just and constitutional.

The Federal judiciary is not a place for judicial creativity. It is an arena for scholarly and objective consideration. It is up to a judge to know the precedent, to be learned of the legislative intent where necessary, and then to decide each case based on the facts presented. The judge is not on a soapbox, nor is she a policy maker. Judicial responsibility is a stabilizing force of restraint.

NOMINATIONS OF BARRY G. SILVERMAN (U.S. CIRCUIT JUDGE); CARLOS R. MORENO AND RICHARD W. STORY (U.S. DISTRICT JUDGES); AND CHRISTINE O.C. MILLER, JUDGE OF THE U.S. COURT OF FEDERAL CLAIMS

WEDNESDAY, NOVEMBER 12, 1997

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

The committee met, pursuant to notice, at 2:13 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Grassley and Feinstein.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, COMMITTEE ON THE JUDICIARY

The CHAIRMAN. I apologize for being a little bit late. I apologize particularly to my colleagues as well as the nominees. I got held up with the media, please forgive me.

Today we have four excellent nominees for various courts: Barry G. Silverman, of Arizona, to be U.S. circuit judge for the Ninth Circuit Court of Appeals; Carlos R. Moreno, of California, to be U.S. district judge for the Central District of California; Richard W. Story, of Georgia, to be U.S. district judge for the Northern District of Georgia; and Christine O.C. Miller, of the District of Columbia, to be a judge of the U.S. Court of Federal Claims.

We are happy to have all of you here. We are happy to welcome you here, and we are pleased that we have Senator Cleland here to introduce Judge Story. We have Senator Feinstein, but shall we start with our colleague first?

Why don't we turn the time over to you and allow you to introduce your nominee here today. Before you do, though, I would put a statement of Senator Kyl in the record at this time.

[The prepared statement of Senator Kyl follows:]

PREPARED STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Mr. Chairman, fellow members of the Judiciary Committee, I wish to express my enthusiastic support for the nomination of Magistrate Judge Barry G. Silverman to the Ninth Circuit Court of Appeals. I regret that I cannot deliver these remarks per-

sonally, but I would like to take this opportunity to briefly comment on Judge Silverman's qualifications.

I have had the pleasure of meeting with Judge Silverman, and I have discussed his nomination and background with other judges, lawyers, and professionals who have worked with Judge Silverman over the years. By all accounts, he is a man of honor, intelligence, and integrity—and good humor. For example, fellow Arizona Judge Ronald Reinstein has commented on Judge Silverman's "professionalism and total commitment to the litigants who appear before him."

Judge Silverman brings a proven judicial track record to today's hearing. For the past two-and-a-half years, he has served as a Magistrate Judge on the United States District Court for the District of Arizona, my home state. For over 10 years prior to that, he was a Superior Court Judge in Maricopa County, Arizona. While on the Superior Court bench, Judge Silverman rendered superior service in all aspects of his civil, criminal, juvenile, and domestic relations assignments. In addition to his time on the bench, Judge Silverman spent five years as Court Commissioner for the Superior Court of Arizona, Maricopa County.

Throughout his distinguished judicial career, Judge Silverman has earned the respect and admiration of fellow judges and the advocates appearing in his courtroom. For example, in 1991 Judge Silverman received the "Henry Stevens Award," which is given annually by the Maricopa County Bar Association to the current or former Arizona trial judge "who reflects the finest qualities of the judiciary." Similarly, in 1994, the Maricopa County Committee on Judicial Performance indicated that Judge Silverman received the highest percentage of superior ratings from lawyers, litigant, witnesses, and court staff in all categories of performance reviewed. Also in 1994, Judge Silverman's court division was honored as the "Judicial Division of the Year" by the Maricopa County Superior Court Recognition Committee.

In addition to his regular judicial duties, Judge Silverman has advanced the legal profession through service on the Supreme Court of Arizona Judicial Ethics and Advisory Committee; the Committee on Judicial Education and Training; and the Committee on Professionalism. He also chaired the Committee to Study the Criminal Justice System in the Arizona Superior Court in 1993, and the Governor's Committee on Child Support Guidelines.

Judge Silverman has shown his commitment to the United States Constitution and the rule of law by co-founding the Sandra Day O'Connor Prize for Excellence in Constitutional Law at the Arizona State University College of Law.

Judge Silverman's academic credentials are equally impressive. He graduated *summa cum laude* from the Arizona State University College of Law in 1976, and was subsequently honored by his alma mater twice: once in 1994, when the College of Law presented him with its "Outstanding Alumnus Award," and again in 1997, when he received the prestigious "Dean's Award."

In short, I believe Judge Silverman meets the high standards required of our federal judges. Indeed, his legal knowledge and judicial temperament show him to be an exemplary nominee.

I urge a swift and resounding vote in Judge Silverman's favor, so that he may be considered by the full Senate as soon as possible.

STATEMENT OF HON. MAX CLELAND, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator CLELAND. Thank you very much, Mr. Chairman, members of the committee. I would just like to say I am pleased to appear before you today to introduce Richard Wayne Story, the President's nominee to fill the vacancy on the U.S. District Court for the Northern District of Georgia.

As a country boy from a small town in Georgia, I feel particularly pleased to introduce Judge Story because he is also from a small town, having been raised in Harlem, GA. Indeed, as much as my small-town upbringing has been so much a part of my life, being a small-town guy has meant a lot to Rick and has shaped him into the determined, principled man that he is today.

Mr. Chairman, I can confidently say that, as you review his qualifications, I am sure that you will come to agree, as I have, that he is a very qualified trial judge and attorney who will make an excellent district court judge.

This nominee comes to us having been a trial judge in the Georgia superior courts for almost 11 years. It has been said that Judge Story has a special way of handling his courtroom such that people get a different, unique feeling after having appeared in front of him. Now, this special feeling has nothing to do with the substantive outcome of the case; rather, it has everything to do with how Judge Story handles people. Whether or not the person has been successful, time and again they report feeling that they have been treated with courtesy, respect, with fairness, and a good dose of common sense.

Judge Story believes that litigants feel good about being in his courtroom because of his ways that he learned growing up in Harlem, GA. Harlem is indeed a small country town. For those of you unfamiliar with these types of town, you can kind of think of Mayberry, R.F.D., the classic setting of "The Andy Griffith Show." Rick likes to say that he grew up in Mayberry. From this small-town community and from his parents, Rick learned the value of hard work. His father, Buck Story, a native of Columbia County, was living in Augusta, GA, when he met and married Earline Helmey, a native of Richmond County. They settled in Harlem to raise a family. Buck ran his own service station while Earline was a florist, and together they raised their three children, Bob, Rick, and Angela. Rick worked in his father's gas station while growing up, and working in a gas station, he constantly interacted with the people of Harlem and the surrounding small towns.

He attended LaGrange College in LaGrange, GA, from 1971 to 1975, gaining a bachelor of arts degree in 1975. At LaGrange, he was named the outstanding male freshman and was an officer in the Student Government Association. Additionally, Rick was the president of both his fraternity, Delta Tau Delta, and the college's Inter-Fraternity Council. Though he was active, Rick still maintained a stellar academic record, making the dean's list and Who's Who for College Students.

Our nominee moved directly to the University of Georgia Law School, earning his J.D. in 1978. While in law school, he remained active as a member of the Student Bar Association and the International Moot Court Team, while also working throughout his second and third years.

Our nominee has had an exceptional professional career, most of all, that could be considered good training to be a trial judge. Two years into his private practice, private litigation practice in 1980, Rick was appointed a special assistant attorney general representing the State of Georgia in child support and custody cases. He moved on to become a Hall County juvenile court judge in 1985 and was appointed a judge of the Superior Court for the Northeastern Judicial Circuit of Georgia in 1986. He has been the chief judge for the northeastern circuit since May 1993 and has been a ninth district administrative judge since 1996. In addition, Judge Story completed the general jurisdiction school of the National Judicial College in 1987.

Judge Story is extremely active in the legal community and his community as a whole. His affiliations and activities are too numerous to list, but as a small-town boy, I would just like to note

that he has chaired and co-chaired more councils and commissions than you could shake a stick at, as we say in my State.

Indeed, he has given of his time to many activities within the legal community at all levels, the Methodist Church, and the Gainesville-Hall County area. More importantly, our nominee is a Sunday school teacher who always manages to find time for his lovely wife, Nancy, and their three children: Laura, who is 17; Elizabeth, 13, and Will, 7.

Mr. Chairman and colleagues, I would like to wrap up and say that I am confident that you could search the end of the earth and the end of this country, and you would not find a man more devoted to the ideals of family and community or more dedicated to the professional pursuit of human decency and justice than Judge Rick Story.

I am very proud to know him and call him a friend. I am genuinely elated at the opportunity as part of my job to recommend this good old country boy for this judgeship. I know of no finer candidate for this bench than the President's nominee, Richard Wayne Story.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Well, thank you, Senator. I tell you, Judge, I have heard a lot of these introductions of judges. I do not know that I have ever heard a better one than that. He is a great colleague of ours, and we appreciate you, and that is high praise, indeed. So we are honored that you would come, Senator Cleland.

I think I will turn to Senator Feinstein to introduce her judge at this time. Are there any other Senators here or Members of Congress who want to testify? OK. We will go to Senator Feinstein.

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

Senator FEINSTEIN. Thank you, Mr. Chairman. I am happy to introduce to you Judge Moreno and his family. He is accompanied by his wife Chris, his daughter Keiko, and his son Nicholas. They are sitting right in the first row on your left.

Judge Moreno obtained his B.A. from Yale in 1970 and his J.D. from Stanford in 1975. He served on the Yale Alumni Board of Governors for 3 years, from 1991 to 1994, the Stanford Law School Board of Visitors, and he was honored as outstanding alumnus of the Chicano Alumni of Yale in 1991. He began his legal career in the city attorney's office in Los Angeles. He worked there from 1975 to 1979, prosecuting jury trials, misdemeanor prosecutions, and criminal and civil consumer protection cases.

From 1979 to 1986, he worked as a litigation attorney for the law firm of Kelley, Dryer & Warren. He handled commercial litigation in State and Federal courts. His caseload included bankruptcy, wrongful termination, banking, real estate, and antitrust litigation.

In 1986, he was appointed by then-California Governor George Deukmejian to be a municipal court judge, where he served for 7 years. As a municipal court judge, Carlos Moreno handled 40 civil jury trials in addition to a regular criminal trial workload.

In 1993, Governor Wilson elevated Carlos Moreno to the California Superior Court, where he has served for the past 4 years. He has averaged approximately two dozen jury trials a year, at least

a third of which have been homicides. The remainder have consisted of a broad range of felonies. At the same time, Judge Moreno has presided over a dozen bench trials per year.

This year, he was elected the Superior Court Judge of the Year by the criminal law section of the Los Angeles County Bar Association. Upon receiving this award, Judge Moreno was described as someone who "earns praise from both prosecutors and defense attorneys for his fair, even-tempered handling of a high volume calendar of criminal cases. The large number of court trials he handles in which both sides waive jury and try the case before him is an indicator of the trust that counsel places in him."

Governor Deukmejian wrote in a letter sent to you last month, Mr. Chairman, that I ask be made part of the record—

The CHAIRMAN. Without objection.

[The letter follows:]

GEORGE DEUKMEJIAN,
Los Angeles, CA, October 6, 1997.

Hon. ORRIN HATCH,
Chairman, Senate Committee on Judiciary, U.S. Senate, Washington, DC
Re: Judge Carlos R. Moreno

DEAR SENATOR HATCH: It has come to my attention that Judge Carlos Moreno has been nominated for an appointment to the U.S. District Court, Central District of California.

In 1986, it was my pleasure to appoint him to the Compton Municipal Court and in 1993 he was appointed by Governor Pete Wilson to the Los Angeles Superior Court.

It is my understanding that he has performed in an exemplary manner as a Municipal and Superior Court Judge and has a clear perception of the importance of maintaining a judicial system that insures fairness and social order.

Judge Moreno is well suited for this position. I am confident that he has the appropriate judicial skills and in light of his qualifications, I hope you will give him every consideration for appointment to the U.S. District Court.

Most cordially,

GEORGE DEUKMEJIAN,
35th Governor of California.

Senator FEINSTEIN. Governor Deukmejian wrote:

It is my understanding that Judge Moreno has performed in an exemplary manner as a Municipal and Superior Court Judge and has a clear perception of the importance of maintaining a judicial system that ensures fairness and social order. Judge Moreno is well suited for this position. I am confident that he has the appropriate judicial skills, and in light of his qualifications, I hope you will give him every consideration for appointment to the U.S. District Court.

It is a great pleasure for me, Mr. Chairman, to have recommended him to the President, and I might say that he was the No. 1 person proposed by the screening panel of attorneys and others who work on these nominations for me, and he was the No. 1 choice of the California Narcotics Officers Association.

The CHAIRMAN. Well, thank you, Senator. I think we had two very good statements by Senators for their respective nominees, and I think, Judge Moreno, that is very high praise indeed. I happen to have a high regard for both of these Senators, and Senator Feinstein in particular serves very well on this committee. So I think it is wonderful that she could be here today with you when so many Senators are out of town. We are happy to have you here.

Are there any other Members of Congress to testify? If not, then if the four of you will come to the dais, I think I will have all four

of you come up at once. If you will just stand and take the oath, I think we can get you all sworn at once.

Do you swear the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge SILVERMAN. I do.

Judge MORENO. I do.

Judge STORY. I do.

Judge MILLER. I do.

The CHAIRMAN. Thank you very much.

Let's start with you first, Mr. Silverman. What I would like you to do is introduce your family, friends, anybody else you would care to introduce. We are honored to have members of the family here, and then if you would care to make any statement, we would love to have that at this time as well.

TESTIMONY OF BARRY G. SILVERMAN, OF ARIZONA, TO BE U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Judge SILVERMAN. Good afternoon, Mr. Chairman, Senator Feinstein. My name is Barry Silverman. I am presently a magistrate judge in the U.S. District Court in Arizona. I regret that my family isn't able to be with me today here in person, but my wife Georgia and my parents, Rita and Sol Silverman, from Phoenix, are with me here in spirit. I am very grateful to be here today.

The CHAIRMAN. Glad to have you here.

We will go to you, Judge Moreno.

TESTIMONY OF CARLOS R. MORENO, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Judge MORENO. Mr. Chairman, my wife Christine, my daughter Keiko, and my son Nicholas. It is a pleasure for all of us to be here.

The CHAIRMAN. We are glad to have you all here. What a nice family. We are pleased to have you here.

Judge Story.

TESTIMONY OF RICHARD W. STORY, OF GEORGIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

Judge STORY. Thank you, Senator. It is a pleasure for me to be here and thank you for the opportunity for this hearing. I guess following the theme of Senator Cleland, we brought a lot of folks from the country, I guess, a chance to come to Washington. We have a number of folks here, and I have my wife Nancy, my daughters Laura and Elizabeth, and my son Will.

The CHAIRMAN. Great.

Judge STORY. Also, my father, Buck Story, and my sister, Angela Brown, and brother, Bob Story, her children, Justin and Victoria. It just keeps going. My secretary, Joyce Carruth; my law clerk, Wylencia Hood Monroe; and some friends from Richmond, who had moved to Richmond and were able to drive up today: Judy Powell, as well as her daughters, Susannah and Lydia.

Thank you.

The CHAIRMAN. We better treat you pretty well with all these people. [Laughter.]

What a nice family. It is wonderful to have all of you here. We welcome you.

Judge Miller.

TESTIMONY OF CHRISTINE O.C. MILLER, OF THE DISTRICT OF COLUMBIA, TO BE A JUDGE OF THE U.S. COURT OF FEDERAL CLAIMS

Judge MILLER. It is a pleasure to be here and an honor, indeed, Mr. Chairman. Regrettably, my husband Dennis is in Bangkok, and I really miss him today.

The CHAIRMAN. We understand.

Judge MILLER. But I am here with my loyal staff and friends, my former law partner and some clerks.

Thank you.

The CHAIRMAN. Thank you.

QUESTIONING BY CHAIRMAN HATCH

The CHAIRMAN. Does anyone care to make any additional statement? All right. Then I think what we will do is ask some questions, and we will go from there. We will just come across, and each of you can answer these questions.

Are you committed to following Supreme Court precedent and the rulings of the Federal Circuit Court of Appeals for your district faithfully and giving them full force and effect even if you personally disagree with such precedents or rulings?

Judge MORENO. Yes, and I don't think the personal predilections of a judge should have any bearing on how they apply and interpret the law, and I would faithfully do so.

The CHAIRMAN. OK.

Judge SILVERMAN. Yes.

Judge MILLER. Yes.

Judge STORY. Yes, I would.

The CHAIRMAN. All right. What would you do if you believed the Supreme Court or the court of appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? You could take, for example, the Supreme Court's recent decision in the *Adarand* case involving affirmative action since that seems to be on everybody's mind.

Judge MORENO. I think I would be obligated to follow the controlling law in my circuit, unless there was some intervening U.S. Supreme Court case that shed some further light on that issue. But, otherwise, I believe I would be bound by *stare decisis* in the Ninth Circuit in my case.

The CHAIRMAN. OK.

Judge SILVERMAN. I am clearly bound by the Supreme Court decisions and would follow them, of course.

The CHAIRMAN. All right.

Judge MILLER. We don't have actions like *Adarand* in our court, but I would always follow Supreme Court precedent.

The CHAIRMAN. Whatever does apply to your court.

Judge MILLER. Yes.

Judge STORY. And I also would follow those precedents and not attempt to substitute my view for that of the appellate courts.

The CHAIRMAN. Under what circumstances do you believe it would be appropriate to declare an act of Congress unconstitutional? Maybe I will shift this around. Let's start with you, Judge Story.

Judge STORY. It was going well there. [Laughter.]

The CHAIRMAN. You like being last? All you have to say is me, too.

Judge STORY. I believe, obviously, it would require reviewing the legislation and reviewing it in light of the Constitution. You would have to look at the document, look at the specific language of the Constitution, and consider that along with any Supreme Court pronouncements interpreting the Constitution that may be applicable to make that decision. It would be something that you would have to weigh very heavily because there would be a presumption of validity for any legislation that may have been passed by the Congress, and so you would have to look at it from that perspective.

The CHAIRMAN. OK. Judge Miller.

Judge MILLER. In the cases that have come before me involving challenges to statutes on constitutional grounds, the first thing I'd do is try to determine if I can decide the case on another basis. If that cannot be the case, then I proceed to examine the statute, giving due regard to its presumption of validity and consulting Supreme Court precedents.

The CHAIRMAN. OK. Judge Silverman.

Judge SILVERMAN. I likewise would indulge the presumption of constitutionality whenever possible. Then I would look to whatever Supreme Court precedent there may be. If there's no binding Supreme Court precedent, I would try to find analogous precedent. I would look to the legislative history, even though that is not definitive or the be-all and end-all, but it may be of some help in resolving it.

The CHAIRMAN. OK. Judge Moreno.

Judge MORENO. I would simply incorporate the remarks of the other nominees. I would add, however, that I would grant appropriate deference to the legislative branch, and any ruling that I did ultimately make I think would have to be very narrowly tailored and decide the issue as narrowly as I possibly could. I think this type of situation calls for very incremental movement.

The CHAIRMAN. OK. Now, you have stated that as a circuit or district court judge, respectively, or as a judge on the Court of Federal Claims, that you would be bound by Supreme Court precedent and the rulings of the Federal circuit court of appeals for your district. There may be times, of course, when you are faced with cases of first impression.

Now, what principles will guide you and what methods will you employ in deciding cases of first impression? Let's start with you, Judge Silverman.

Judge SILVERMAN. Well, again, first, the presumption of constitutionality. Then when it comes time to try to interpret, to try to go from there, we would look first to the intent of the Framers of the Constitution. If there are not binding cases on point, I would look to see if there are analogous cases that may be of some help. And then when all is said and done, as I would look back on a proposed decision that I would make, I would ask myself if it makes common

sense and is it fair. But the starting point is the presumption of constitutionality and the intent of the Framers as the point of departure in an analysis of constitutionality.

The CHAIRMAN. Judge Moreno.

Judge MORENO. I think I would do the same thing. I'd also look for analogous statutes that might shed some light on a particular statute in question.

The CHAIRMAN. Judge Miller.

Judge MILLER. Well, almost every base has been covered, but there is one more. Even though they're just persuasive, they're often helpful. If there were no other source, I would also look at the work of my colleagues to see if the same factual situation had arisen and the same law had been applied and see if the approach offered was a reasonable one.

The CHAIRMAN. Judge Story.

Judge STORY. I would adopt the same approach as stated by the other nominees.

The CHAIRMAN. Let me direct some questions to you, Judge Silverman. Please state in detail your best independent legal judgment, irrespective of existing judicial precedent, on the lawfulness under the equal protection clause of the 14th amendment and Federal civil rights laws of the use of race-, gender-, or national origin-based preferences in such areas as employment decisions as hiring, promotion, or layoffs, college admissions and scholarship awards, and the awarding of government contracts.

Judge SILVERMAN. In my opinion, race-based classifications are inherently suspect. They are subject to the strictest scrutiny, and I agree with *Adarand* that even when they are—when they pass constitutional muster, they must be carefully, narrowly tailored to redress the compelling interest at issue.

The CHAIRMAN. What would it take to pass constitutional muster?

Judge SILVERMAN. Careful tailoring is the first thing that comes to mind; compelling interest is another. Off the top, I cannot—I can't think of a circumstance right now that I could cite to you as one that would pass muster.

The CHAIRMAN. So it's extremely rare for things to pass muster?

Judge SILVERMAN. Yes; it's not impossible, but it's very rare.

The CHAIRMAN. Judge Miller, under the takings clause of the fifth amendment, private property may not be taken by the government for public use without the payment of just compensation to the owner. Could you give us in detail your best independent legal judgment, irrespective of existing judicial precedent, on whether a property owner is entitled to just compensation under the takings clause when the government—I can't help but ask this—through a national monument or wetlands designation or through other land-use or environmental regulations prohibits or substantially limits an owner's otherwise lawful use or development of his or her private property, or the otherwise lawful development or use of public land by the individual or company pursuant to government contract or permit?

Judge MILLER. My own view, apart from Supreme Court precedents, is that a land owner's use of his property is paramount and one of the sacred rights that is guaranteed under the Constitution.

A keystone of this court's jurisdiction is our being able to award compensation for uncompensated takings of property.

At present, there is a permitting process, and if the permit is denied or its issuance is unreasonably delayed, that is a basis for redress by monetary compensation in our court, and it's a jurisdiction that we treat most gravely.

The CHAIRMAN. Thank you. My time is up.
Senator Feinstein.

QUESTIONING BY SENATOR FEINSTEIN

Senator FEINSTEIN. Thank you, Mr. Chairman.

In the last Congress, the number of Federal death penalty acts were increased from about a half a dozen to more than 50. I would like to ask each one of you how you would handle death penalty cases and what your view on the death penalty is. Mr. Story, do you want to begin?

Judge STORY. I would handle them very seriously. As a trial judge in a State which has a death penalty, I have had six cases that involved the death penalty in my court. Two of those actually went to trial, and in one case the death penalty was imposed. So it is a very serious matter. I would handle it with utmost care and would follow the law, as I have done in the cases before me as a superior court judge and would continue to follow and would have no difficulty in following the law.

Senator FEINSTEIN. And do you believe the Constitution permits the imposition of a death penalty sentence?

Judge STORY. Yes; I do.

Senator FEINSTEIN. Ms. Miller.

Judge MILLER. Our court does not have criminal jurisdiction. However, as an officer of the United States, I would apply the laws of the Congress, and the death penalty has been declared constitutional, and that comports with my own belief.

Judge SILVERMAN. I agree. The Supreme Court has ruled that it's constitutional. I agree that it is constitutional, and I would affirm death penalty cases in the appropriate case.

Judge MORENO. I have no reservation about being able to apply the death penalty in an appropriate case. I believe it is constitutional.

Senator FEINSTEIN. I notice that many of you are judges, and one of the things that I have found in talking with some of the people that have gone from either a superior bench or another bench to the Federal district court is that very often the docket they encounter is very heavy. I would like to ask this question: How would you handle your docket?

Judge Moreno.

Judge MORENO. Well, I think it is very important, first of all, to know your docket, to be able to sort out the cases that you think can be expedited, to give those cases special attention, to seek early disposition, that is, early settlements. It's also important that courts set firm trial dates. In my experience doing both criminal and jury trials and civil jury trials for the last 11 years, there is nothing—no greater incentive for a settlement than an open trial court. So I think offering the parties, if a matter does not settle, a firm trial date is one way to expedite cases.

Senator FEINSTEIN. Judge Silverman.

Judge SILVERMAN. Well, I'm from Maricopa County, AZ, the home of civil delay reduction, and I can tell you what we've done, and I think it's been successful. The key is, first, early case management by the judge, which includes, as Judge Moreno says, setting deadlines, setting next events in the case, and sticking to it; firm trial dates and holding counsel to the trial dates and not granting continuances unless there's really genuine, genuine good cause.

Second, implementation as soon as possible of alternative dispute resolution mechanisms; either settlement conferences or diverting cases out for arbitration or mediation has also been helpful.

And, finally, when push comes to shove and the case gets tried, the judge has a duty to decide the case promptly and move on to the next one.

Senator FEINSTEIN. Judge Miller.

Judge MILLER. For 15 years, I managed a civil trial docket, and we don't have juries, so we do all the managing. And I think case management was certainly the seam of the 1980's and has been part of the 1990's, but it's a two-pronged approach, both the willingness of the judge to work with the litigants to fashion the best way to handle their case speedily and economically, and that includes alternative dispute resolution, if appropriate, but also the corresponding obligation of the judge to make sure that the judge renders decisions promptly and in a manner that's clear and fully informs the parties of their rights so they can determine what the next step should be.

Senator FEINSTEIN. Thank you.

Judge Story.

Judge STORY. I'm on a very active trial court that handles all types of cases, both civil and criminal. It is the general jurisdiction court in our State, and I would agree with all of the things that have been stated.

I might add that in terms of making decisions, I think it's important for judges to make decisions early in the process as well, when discovery disputes arise to help the litigants get those matters resolved so that they can move on with their litigation.

ADR has been particularly helpful in our circuit. We established one of the first ADR programs in the State, beginning in domestic relations cases, and it has expanded. We even do mediation in criminal cases, and it's been very successful in resolving some of those cases.

So there are a number of things that we do in the State court that I think translate over very well.

Senator FEINSTEIN. Thank you very much.

Thanks, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Feinstein.

Senator Grassley.

QUESTIONING BY SENATOR GRASSLEY

Senator GRASSLEY. Congratulations to all of you. I wasn't here when you were sworn in and when you gave your opening statement, but congratulations, anyway. I just have a few questions.

Judge Moreno, what is your experience or what has it been with California's "three strike" law? Have you ever dealt with it in any of your cases? What are your fellow judges saying about it? Are there any problems with it?

Judge MORENO. Yes; I have been dealing with it. Four months after being appointed to the superior court in March 1994 is when "three strikes" was enacted, first by the legislature, by the way, and then that November by the people by way of initiative.

There were dire predictions that we were going to be inundated in cases. I was part of a superior court committee that devised fast-track rules for the handling of these cases. I'm happy to report that the backlog that we initially experienced is there no longer. We treat "three strike" cases—they do go to trial a little bit more often. But they haven't posed the problem that most people thought they would initially.

I have handled—I'd say 30 percent of my cases are "third-strike" cases. Some of them are serious felonies, and some of them are—the instant case is not a serious felony, but they're all deserving of great consideration.

Senator GRASSLEY. So you have really had a lot of experience with it. What about some other people that are on the bench with you and deal with it? Do they seem to express problems with it, if you can speak for other people?

Judge MORENO. I don't know if I can speak for others, but as I said, I think most of us on the California Superior Court are handling the problem quite well. We were given discretion last year, 1996, judges were given further discretion to have some input into the ultimate sentence, but I don't think that it's the problem that it was initially thought it was going to be.

Senator GRASSLEY. I am going to ask all of you—well, let me ask—I think except for Judge Miller. I don't know whether you would be involved with this issue or not, but for the others of you that will be on the district court or courts of appeal—by the way, first of all, let me tell you I have got very much an interest in the judicial process and prosecuting process that is called *qui tam*. It is when an individual can go into court when the U.S. attorneys don't or where the U.S. attorneys use some of their information, *qui tam*. And I was involved with that legislation, so I kind of—and I probably wouldn't ask this except just last week, after about three courts of appeals and I think several district courts had always upheld the constitutionality of it, there was a district court judge in Texas that ruled that these statutes were unconstitutional.

Do any of you have views as to the constitutionality or unconstitutionality of the statute?

Judge MORENO. I have no particular views, one way or the other. I am just vaguely familiar with the notion of the—

Senator GRASSLEY. Is there anything about the process that you find obnoxious?

Judge MORENO. No; not at all.

Senator GRASSLEY. Judge Silverman.

Judge SILVERMAN. No.

Senator GRASSLEY. Judge Story.

Judge STORY. No, sir.

Senator GRASSLEY. OK. And I think I am right. You will not be dealing—

Judge MILLER. We do have the suits insofar as sometimes the individual involved—

Senator GRASSLEY. Oh, you will—well, give me your opinion, then.

Judge MILLER. My opinion is the law does not pose constitutional difficulty.

Senator GRASSLEY. OK. Well, thank you.

We will move onto another question. I would like to have Judge Silverman and Judge Moreno think about this. I think you have both agreed in your discussion with Senator Hatch that laws passed by Congress must be given deference in the presumption that they are valid and constitutional. What about citizen initiatives?

We have this situation. I suppose you could cite several from California and the ninth circuit, but the one that in *Jones v. Bates* where the three-judge panel has set up a dual standard as a result of that case, should citizen initiatives be given a presumption that they are constitutional?

Judge MORENO. Go ahead.

Judge SILVERMAN. Yes. Yes; of course.

We in Arizona have an initiative, a referendum procedure. They are presumptively constitutional. They are the grassroots will of the electorate, and the electorate ought to be presumed to have known what it has done, and are entitled to great deference just as any other law would be.

Senator GRASSLEY. Judge Moreno.

Judge MORENO. I am in favor of initiatives. I have—I believe they are also entitled to the same presumption of constitutional validity and in deference by any reviewing court.

I am proud of the fact that California has the initiative process. Sometimes the people simply have to speak when the legislature is not able to.

Senator GRASSLEY. Could I ask each of you, then, if you disagree with the decision in the *Jones* case?

Judge MORENO. I have read a synopsis of it. The only part that concerns me is a reference to the electorate being the electorate, being ignorant, and the court somehow substituting its will of what an overwhelming amount of voters decided should be the law.

Senator GRASSLEY. Judge Silverman?

Judge SILVERMAN. I disagree with the decision and agree with the dissent.

Senator GRASSLEY. Judge Silverman, many people believe that the ninth circuit is just too big and unwieldy to function effectively. Do you believe that courts can get too big, and, specifically, do you believe that the ninth circuit is too big or at least should not get any bigger?

Judge SILVERMAN. Well, there are pros and cons to dividing the circuit up. I do not think it would be advantageous to have the circuit get any bigger. There are economies of scale. In some respects, having large circuits, there is less administration and that sort of thing. We have less divisions amongst circuits, the fewer circuits there are, but, by the same token, sometimes the circuit can get so

big that it gets out of touch with the districts that comprise it. So there is something to be said for both sides of that. I am not really sure how I would resolve it.

Senator GRASSLEY. OK. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

I have a lot of other questions, but I am satisfied, listening to the four of you, that you are excellent nominees.

As you know, I am death on judicial activism. Five years ago—
Senator GRASSLEY. Oh.

The CHAIRMAN. You did not know that?

Senator FEINSTEIN. No kidding.

The CHAIRMAN. Do not tell me none of you knew that.

But, you know, 5 years ago, people did not really understand what that was. I think everybody understands today. It is important.

Let me just make this case. As people can easily see around here, if they really know what is going on, I have worked very hard to fill these judgeships. The Ninth Circuit Court of Appeals, in particular, has been very, very difficult to fill, and one of the reasons is—and you are going on that, Judge Moreno—one of the reasons it is so difficult is because of the activism of that court, and these judges think that they are standing up for liberal principles when, in fact, they are undermining the judiciary across the board, and even members of the judiciary from the left to the right are very critical of what they are doing.

If you go on that court and you become one of those, you are doing the judiciary a great deal of harm. It is very difficult knowing that that court is the most reversed circuit court in the country. It is very difficult to get the nominees through the committee, and it is a tribute to you that you are going to go through the committee and hopefully onto the court as quickly as possible.

Now, just so everybody knows, I intend to have Margaret McKeown—I want my colleagues to know this—who will also come up for the Ninth Circuit Court of Appeals and Susan Mollway from Hawaii on the next hearing. She is for the district court, but Margaret McKeown will be for the ninth circuit, but I am counting on you when you get there to just be a great judge.

I do not really care if you are liberal or conservative. Naturally, I think I would prefer you to be conservative, but the fact is, it is not that important if you observe the rule of judging. Judges are not—they are the closest thing to God in this world, but the fact of the matter is, they are—you are nominated and confirmed for life for these positions, to interpret the laws, not make them.

Now, sure, you have cases of first impression where you have got to decide what the law really is. Sure, you have to split the baby sometimes, so to speak, to decide any particular—some of these particular cases, but I think you know what I am talking about when I talk about judicial activism, and I do not mean to lecture you, but I am telling you that it is a big problem to us on the Judiciary Committee and it should be because some of the judges in this country really are activists who just substitute their own policy preferences for what the clear law is, and that is not right.

You said today that if the death penalty came before you, you would have no problems at all with sustaining it because that is

the law of the land. There are three judges in the Ninth Circuit Court of Appeals who have never voted in their whole tenure on that bench to sustain a death penalty.

Now, I have to admit, I do not like the death penalty personally, but it is the law, and I believe it is something that needs to be the law because I do believe that it is a deterrent, if only for those who have committed murder so they do not do it again in prison or elsewhere. And we have plenty of illustrations to show that they do.

So it is very important for you to set examples as members of the Federal judiciary. I love the Federal judiciary. I fight for you. I fought for the pay increase. I wanted it separated for more pay. I got that through the Senate, could not hold it in conference. I think the judiciary is the reason this country is great. I think it is the reason the Constitution is observed in this country, but if judges start doing whatever they want to rather than observing what the law is and following it the way it is, then it will not take long until the judicial system will undermine this very country that you now are sustaining.

So this is very important. I think all four of you are excellent nominees. I commend the President for sending you here, and we are going to do everything we can to get you through.

I believe they will be on tomorrow's markup. We are going to put you on the markup tomorrow. Now, whether we can get you through in this timeframe or not, we only have tomorrow, I think. It will be probably the last day. I am not sure, but do not worry. It will carry over, and we will do the best we can.

I also do not think it is fair to have you standing in limbo when you have to—and each of your cases, it is not so bad because you are already either a magistrate or judges, but where a person is practicing law and has to wind down that practice, it is a big problem, and I would like to have more cooperation in resolving some of these very serious problems.

I, for one, do believe that the President, whoever the President may be, is the President, and that President has a constitutional right to make these nominations. We have a constitutional obligation that unless there are really significant reasons for rejecting a judicial nominee, to confirm, not with a blank check, but to confirm those that the President has nominated.

So understand that you can help others by your actions when you get there. It is really important. In fact, I get it mixed up. It is you, Mr. Silverman, that is going on the ninth circuit, but that you are going to be within the ninth circuit.

Judge SILVERMAN. I thought you knew something I did not know.

The CHAIRMAN. You would not want to be on there with the type of judges they have there right now. We are counting on—

Senator Feinstein. Oh, oh.

The CHAIRMAN. I am just kidding. I thought I would just throw a little here—we are kind of counting on you, Judge Silverman, to make a difference.

Judge SILVERMAN. Mr. Chairman, I commit to you that I will do that.

The CHAIRMAN. Well, I commit to you that I will be watching.

Senator FEINSTEIN. Mr. Chairman, I think Judge Silverman probably wins an award for the quickest processed nominee, at least since I have been on this committee.

The CHAIRMAN. You know, when you put up the nominees, we—

Senator FEINSTEIN. I have been trying to figure out what your magic is.

Judge SILVERMAN. Well, I am a magician.

The CHAIRMAN. Do not tell us that.

Let me just say this, that when we get good nominees, we try to put them through. Now, I have to admit, I wish we could do better. The committee is not totally without some fault, too, but we have worked hard, and we have tried to move nominations as quickly as we can.

We have 35 confirmed judges this year, 8 are pending, 4 today. That would be 12 more. If we can, that would be 47 total possible judges. That is far better than our colleagues on the other side did during a number of years during the Bush and Reagan administrations, when there were actually more vacancies.

By the way, we have about 40 vacancies that have not gotten any nominees, and as hard as I try, I have never quite been able to get nominees confirmed who are not nominated. So, you know, I get a little tired of all the screaming and shouting, but the point I am making is each of you can make a difference for people who follow you here before the committee by being good judges and observing the Constitution and doing what really is expected of you, and if you will do that, you will help the Federal judiciary immensely, regardless of who the chairman is or who is in charge of this committee. I think you will find that all of us will work harder to make sure that these positions are filled, and we will do our very best for you.

I will do my very best to get you through before the end of this session, which means probably tomorrow, but that means that we will put you on the markup for tomorrow, and, hopefully, all four of you will pass that, but, if something happens that you do not get through this session, we will do our very best to get you through as soon as we come back after the 20th of January.

Judge SILVERMAN. Thank you very much.

The CHAIRMAN. I want to thank each of you. I want to thank your families for being with you, and your friends. I think it is a real tribute to all of you to have all of these folks with you, and we wish you the very best, and I hope you will not forget us on the Judiciary Committee.

We believe once you get there, you can observe things that this committee needs to do, and we would love to receive correspondence. I know there is a fine line, but we would love to receive correspondence from you. We would love to have your suggestions. We would love to be able to do a better job here.

And believe it or not, with all of the wide diversity of beliefs on this committee, we do get a lot done, and I think you find that there are many times when we get together as Democrats and Republicans and do what is right for this country, as well as some of the fiascos that occasionally occur as well.

We want to thank each of you for being here, and with that, we will recess until further notice.

[Whereupon, at 2:56 p.m., the committee was adjourned.]

[Submissions for the record follows:]

SUBMISSIONS FOR THE RECORD

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)
Barry G. Silverman

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

Place of residence
Phoenix, AZ

Office address
*U.S. Courthouse
230 N. 1st Ave., Rm. 5011
Phoenix, AZ 85025
602-514-7022*

3. Date and place of birth:

October 11, 1951, New York, NY

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 George-Ann Silverman (maiden name: Middleton);
self-employed court reporter, works from home*

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

Phoenix College, summer, 1969 (immediately after high school graduation in June, 1969, I attended Phoenix College in the summer to earn credits for transfer to Arizona State University in fall, 1969)

*Arizona State University, August, 1969-
January, 1973. Degree: B.A. summa cum laude*

*Arizona State University College of Law,
August, 1973-May, 1976, Degree: 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.

After college graduation and during law school (Jan., 1973-May, 1976)

1973: KXIV Radio (no longer in existence), Phoenix, AZ. Part-time job selling advertising and as board operator

1974: Jones, Hunter & Lerch (firm no longer in existence), Phoenix, AZ. Law clerk

1975-76: Streich, Lang, Weeks Cardon & French, (now Streich Lang) 2 N. Central, Phoenix, AZ 85004, 602-229-5200). Law clerk/summer associate

1975-76: Treon, Warnicke, Dann & Roush (now Treon Strick Lucia & Aguire PA) 2700 N. Central Ave., Phoenix, AZ 85004, 602-285-4400. Law clerk

After law school

10/25/76 - 11/30/77: Phoenix City Prosecutor's Office, 455 N. 5th St, Suite 400, Phoenix, AZ 85004, 602-262-6461: Assistant City Prosecutor.

12/1/77 - 12/7/79: Maricopa County Attorney's Office, 301 W. Jefferson, Phoenix, AZ 85003, 602-506-3411: Deputy County Attorney

12/7/79 - 9/4/84: Superior Court of Arizona for Maricopa County, 201 W. Jefferson, Phoenix, AZ 85003, 602-506-3204: Superior Court Commissioner

9/4/84 - 1/25/95: Superior Court of Arizona, 201 W. Jefferson, Phoenix, AZ 85003, 602-506-3204: Judge of Superior Court

1/25/95 - present: U.S. District Court for the District of Arizona, 230 N. 1st Ave., Phoenix, AZ 85025, 602-514-7022: U.S. Magistrate 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.

"Outstanding Alumnus Award," Arizona State University College of Law Alumni Association, 1995

"Judicial Division of the Year," Superior Court Employee Recognition Committee, May, 1994

Family Law Committee of the Maricopa County Bar Association Award for "Excellence as a Jurist," 1994

"1991 Henry Stevens Award" by the Maricopa County Bar Association to a sitting or former trial judge "who reflects the finest qualities of the judiciary"

Highest scorer among all Maricopa County Superior Court judges in the 1994 Arizona Judicial Performance Review survey; highest scorer among all Maricopa County Superior Court judges in the 1992 Arizona Judicial Evaluation Poll; highest or second-to-the-highest scorer in the 1990, 1988, and 1986 Arizona Judicial Evaluation Polls.

"1992 First Place Excel Award for an Editorial or Column (Category: Magazine-Ad Revenues of \$100,000 or Less)" from the Society of National Association Publications for my article, "A Judge's Mailbox," that appeared in Litigation, Fall, 1991, published by the American Bar Association

Nominated for a 1992 "Maggie Award" given by a magazine industry group for "Best Regularly Featured Department, Section or Column in a Trade Publication" for a series of columns I wrote for Arizona Attorney in 1991, published by the State Bar of Arizona

Member, Arizona State Law Journal, 1974-75 .

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 Arizona (1976-present)

American Bar Association (1976-present)

Maricopa County Bar Association (1976-present)

Federal Bar Association (1995-present)

American Association of Law Libraries (1989-1994)
Ninth Circuit Historical Society (1996-1997)
Federal Magistrate Judges Association (1995-present)
Arizona Judges Association (1979- 1995; secretary 1993
94)
Law Society of Arizona State University (1995-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.

A. No organizations that are active in lobbying

B. Other organizations:

International Brotherhood of Magicians (1986-present)

Society of American Magicians (1992-present)

Psychic Entertainers Association (1989-present) – The PEA is an organization of magicians with an interest in magic tricks that create an illusion of mind-reading.

B'nai Brith (1976-present)

Temple Solel (1996-present)

Temple Beth Israel (1978-1996)

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.

Arizona Supreme Court, October 23, 1976

U.S. District Court (D.Ariz.), November 1, 1976

U.S. Court of Appeals (9th Cir.), November 4, 1976

U.S. Supreme Court, July 14, 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.

Copies of the following writings are supplied at Tab A of the accompanying supporting documents:

Author, "A Judge's Mailbox," 18 *Litigation* 43 (Fall, 1991). It was reprinted in *Iowa Lawyer*, January, 1993, and in *The Federal Lawyer*, March/April, 1997 and first appeared in *Arizona Attorney* "Out of Order" series.

Author, "Out of Order," a series of eight monthly humor columns in *Arizona Attorney*, the monthly magazine of the State Bar of Arizona, April - December, 1991. Three of the columns were reprinted in *The Phoenix Gazette* (August 31, 1991, January 14, 1992 and March 3, 1992.)

Author, Book Review, Death of a "Jewish American Princess," *Arizona Attorney*, October, 1988.

Principal author, "A System in Crisis: The Report of the Committee to Study the Criminal Justice System in the Arizona Superior Court," *Supreme Court of Arizona*, July 20, 1993.

Copies of the following speeches and notes of speeches are supplied at Tab B:

1. Convocation Address, Arizona State University College of Law, May 15, 1997.
2. "Annual Dinner Pays Witty Tribute to Departing Dean," reprint of remarks published in the *Arizona State University Law Forum*, Spring, 1990.
3. Notes of speech given to Society of Boutiques (May 7, 1996), Arizona State University Law School Alumni Association (January 10, 1996), and Scottsdale Bar Association (April 9, 1996).
4. Notes of speech to entering law students at Orientation, College of Law, Arizona State University, August 18, 1994.
5. Notes of speech to new members of the District Court bar, 1996, exact date unknown.
6. Notes of speech at Maricopa County Bar Association seminar on "Juvenile Dependency Cases in a Nutshell," December 3, 1990.

7. Notes of remarks at the dinner in honor of the retirement of Chris C. Tountas from Superior Court, May 11, 1990.

8. Notes of speech to Focus Phoenix, June 9, 1987.

9. Notes of speech to Young Lawyers Section of Maricopa County Bar Association, May 21, 1987.

10. Notes of speech at the Arizona Judicial Conference, December 9, 1986.

11. Notes of speech to the Scottsdale Bar Association, January 8, 1985.

12. Notes of speech on a juvenile law topic, audience and date unknown.

13. Notes of speech at State Bar of Arizona seminar called "Collecting Child Support Judgments Without Contempt," March 27, April 3, April 10, and April 24, 1987.

14. Notes of speech on a domestic relations topic, audience and date unknown.

15. Notes of speech on a domestic relations topic, audience and date unknown.

16. Notes of speech on "observations from the bench" to a group of summer law clerks, date unknown.

17. Notes of speech at Maricopa County Bar Association seminar called "D.R. Bench on Trial," estimated date: 1987.

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

Excellent. May 7, 1997

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 (since January 21, 1995)
U.S. Magistrate Judge, U.S. District Court for the District of Arizona. I was appointed by the judges of

the District Court in accordance with the statutory merit-selection process. The District Court is an Article III court of limited jurisdiction.

January 21, 1995-September 4, 1984

Judge, Superior Court of Arizona for Maricopa County. I was appointed by Gov. Bruce Babbitt in accordance with the Arizona judicial merit selection process and retained in office by vote of the people in the 1986, 1990 and 1994 retention elections. The Superior Court is the court of general jurisdiction in Arizona.

September 4, 1984 - December 10, 1979

Superior Court Commissioner/Judge Pro Tem, Superior Court of Arizona for Maricopa County. I was appointed by then-Presiding Superior Court Judge Robert C. Broomfield in accordance with a merit-selection process analogous to the Arizona judicial merit selection procedure. A Superior Court Commissioner is a judicial officer similar to a U.S. Magistrate 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 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) OPINIONS I HAVE WRITTEN (Copies of the following opinions are supplied at Tab C.)

1. Ayala v. Olaziz, 161 Ariz. 129, 776 P.2d 807 (App.) review denied (1989).
2. In the Matter of Ashley [confidential surname], Maricopa County Superior Court No. JD-6113 (1991)
3. Marriage of McGivern, Maricopa County Superior Court No. DR 92-13343 (1994)
4. In the Matter of Baby Girl [names confidential], Maricopa County Superior Court No. JS-8287 (1990)
5. Suwapol v. Looney, United States District Court for the District of Arizona No. CIV 97-1489 PHX RCB

(BGS) (1997)

6. Wolfe v. McDougall, et al., United States District Court for the District of Arizona No. CIV 95-2246 PHX PGR (BGS) (1996)

7. Zions First National Bank v. Johnson, United States District Court for the District of Arizona No. CIV 94-2032 PHX ROS (BGS) (1997)

8. Casey v. Lewis, United States District Court for the District of Arizona No. CIV 90-0054 PHX RGS (BGS) (1997)

9. United States v. Horner, United States District Court for the District of Arizona No. CR 90-464 PHX RCB (BGS) (1996)

10. Price v. Arpaio, United States District Court for the District of Arizona No. CIV 94-1596 PHX BGS (1996)

(B) SUMMARY OF REVERSALS & AFFIRMANCES-WITH-CRITICISM

Published opinions

1. In the Matter of Maricopa County Juvenile Action No. JD-05401, 173 Ariz. 634, 845 P.2d 1129 (App.1993). Court of Appeals held that juvenile court cannot award long-term custody of a minor to grandparents without a finding that the child is "dependent."

2. State v. Buggs, 167 Ariz. 333, 806 P.2d 1381 (App.1990). Affirmed, Court of Appeals holding that erroneous self-defense jury instruction was harmless error.

3. Romley v. Superior Court, 163 Ariz. 278, 787 P.2d 1074 (App.1989). Court of Appeals held that the juvenile court psychologist's report is not hearsay and is admissible in evidence without foundation even if the psychologist does not testify.

4. State v. Bouchier, 159 Ariz. 346, 767 P.2d 233 (App.1989). The Court of Appeals affirmed the conviction but modified the term of probation to comport with statutory maximum probation term.

5. Mardian Construction Co. v. Superior Court, 157 Ariz. 103, 754 P.2d 1378 (App.1988). Court of Appeals held that Worker's Compensation statutes barred not only worker's personal injury claims but his spouse's loss of consortium claim as well.

6. Ziggy's Opportunities, Inc. v. I-10 Industrial Park Developers, 152 Ariz. 104, 730 P.2d 281 (App.1986). Court of Appeals held that in post-eminent domain proceedings, evidence did not establish all the requisite elements of adverse possession.

7. Walter O. Boswell Memorial Hospital v. Yavapai County, 148 Ariz. 385, 714 P.2d 878 (App.1986). Court of Appeals affirmed in part and reversed in part. Court affirmed method of calculating reimbursement of indigent medical care, but remanded for a determination of the proper reimbursement amount based on medicaid rates in effect at relevant time.

8. Bryant v. Silverman, 146 Ariz. 41, 703 P.2d 1190 (1985). Supreme Court held that in airline crash case, law of the forum state, Arizona, rather than law of the situs of the crash, Colorado, should be applied because Arizona had the greatest interest in the determination of the wrongful death action.

9. Mervyn's v. Superior Court, 144 Ariz. 297, 697 P.2d 690 (1985). Arizona Supreme Court held that in garnishment proceedings that are in rem or quasi in rem, service by publication is not an unconstitutional deprivation of due process. [Note: Less than a month after this decision was rendered, in an unrelated case, the Arizona garnishment statutes were declared unconstitutional by the federal court in Neely v. Century Finance Co. of Ariz., 606 F.Supp. 1453 (D.Ariz. 1985)]

10. State v. Goodwin, 160 Ariz. 366, 773 P.2d 471 (App.) review denied (1989). Court of Appeals held that previous case requiring a written waiver of the preservation of a second breath sample does not apply if defendant is actually furnished the sample. Written receipt for sample is not required.

Unpublished decisions (Copies of the following unpublished decisions are supplied at Tab D.)

1. Czerwinski v. Sonenberg, 1 CA-CR 92-0354 (1994). Affirmed on appeal, reversed and remanded on cross-appeal. Court of Appeals reversed portion of case dealing with child support award due to lack of sufficient findings to deviate from child support guidelines. Case remanded for additional findings and legal description of property.

2. Frost v. Frost, 1 CA-CV 93-0040A (1993). Reversed in

part; affirmed in part. Court of Appeals reversed order retroactively granting to wife a portion of husband's military retirement. Held, change in law after original divorce was not prospective and did not apply to this case.

3. State v. Gonzales, 1 CA-CR 11800 (1988). Court of Appeals remanded for resentencing because aggravated sentence called for in plea agreement was imposed without the court stating aggravating factors on the record.

4. Marriage of Khamre, 1 CA-CIV 9073 (1987). Court of Appeals found that appellee's failure to file an answering brief was a confession of error when appellant raises a debatable issue.

5. Sutherland v. Arizona Indoor Soccer, Inc., 1 CA-CIV 8523 (1986). Cross-motions for summary judgment. Court of Appeals held that grant of summary judgment against corporation and sole shareholder in breach of employment contract case was error. Held, facts did not warrant piercing corporate veil and disputed facts existed requiring parol evidence to resolve.

6. Ricrex Development, Inc. v. Tash, 1 CA-CIV 8686 (1986). Court of Appeals held summary judgment was erroneous in an action for breach of an option in a contract. Appellant's withdrawal of money from an escrow account did not constitute rescission as a matter of law.

7. Whitton v. Vanderwey, 1 CA-CIV 8198, (1986). Court of Appeals reversed summary judgment in favor of the seller in case arising out of a sale of a residence. Acceptance of late payments constitutes waiver of right to invoke acceleration provision of note.

8. State v. Wolkoff, 1 CA-CR 88-237 (1988). Affirmed in part, reversed in part. Imposition of \$100 statutory assessment when probation was revoked in 1988 was erroneous because assessment was not in effect in 1983 when crime was committed.

(C) OPINIONS ON CONSTITUTIONAL ISSUES (The first three of the following citations are to appellate opinions on constitutional rulings I made as a trial judge. The fourth citation is to an appellate opinion in which I joined, as an appellate judge pro tem, concerning a constitutional issue.)

1. Dept. of Revenue v. Arthur, 153 Ariz. 1, 734 P.2d 98 (App. 1986).

2. Nalbandian v. Superior Court, 163 Ariz. 126, 786 P.2d 977 (App. 1989), reconsideration denied (1990), cert. denied, 489 U.S. 997 (1990).

3. Mervyn's v. Superior Court, 144 Ariz. 297, 697 P.2d 690 (1985).

4. Olson v. Walker, 162 Ariz. 174, 781 P.2d 1015 (App.), review denied (1989), 12 A.L.R. 5th 1020.

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;

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;

After law school

10/25/76 - 11/30/77: Phoenix City Prosecutor's Office, 455 N. 5th St, Suite 400, Phoenix, AZ 85004, 602-262-6461: Assistant City Prosecutor.

12/1/77 - 12/7/79: Maricopa County Attorney's Office, 301 W. Jefferson, Phoenix, AZ 85003, 602-506-3411: Deputy County

Attorney

12/7/79 - 9/4/84: Superior Court of Arizona for Maricopa County, 201 W. Jefferson, Phoenix, AZ 85003, 602-506-3204: Superior Court Commissioner

9/4/84 - 1/25/95: Superior Court of Arizona, 201 W. Jefferson, Phoenix, AZ 85003, 602-506-3204: Judge of Superior Court

1989 - present: BAR/BRI Bar Review, 20 E. University, Tempe, AZ 85281, 602-929-0190: Lecturer, Arizona Community Property, and since 1997 Idaho and Nevada Community Property

1/25/95 - present: U.S. District Court for the District of Arizona, 230 N. 1st Ave., Phoenix, AZ 85025, 602-514-7022: U.S. Magistrate Judge

- 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?

1976-1979: Criminal prosecution - 1 year of misdemeanors, 2 years of felonies

1979-present: Judicial - As a Superior Court judge, I served rotations in the Civil, Domestic Relations, Criminal, Juvenile, and Special Assignment departments of the court. As a Superior Court Commissioner, I served in those departments and also in the Probate/Mental Health department.

As a U.S. Magistrate Judge since 1995, my workload is half civil, half criminal. It includes civil trials by consent, settlement conferences, pretrial motions, petitions for writs of habeas corpus, issuance of search and arrest warrants, and various hearings and other proceedings in criminal cases including misdemeanor trials by consent.

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

I have a special interest in domestic relations, juvenile and criminal 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;
- 0%
- (b) state courts of record;
- 67%
- (c) other courts.
- 33% (Phoenix City Court)
3. What percentage of your litigation was:
- (a) civil;
- 1%
- (b) criminal.
- 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.

In courts of record, I tried 5 cases as sole counsel and 2 as chief counsel. In the Phoenix City Court, which is classified as a "court on the record" but not a "court of record," I tried over 25 jury trials and several hundred bench trials.

5. What percentage of these trials was:
- (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 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.

PLEASE NOTE: Three, rather than 10, cases are recounted here because although I have been a lawyer for 21 years, the last 18 of those years I have held judicial office. I have presided over thousands of jury trials, bench trials, hearings and other proceedings, but my experience as a trial lawyer is limited to my first three years of practice (1976-79). A list of recent contacts I have had with members of the legal community follows the case descriptions.

State v. Paul O. Valenzuela

Maricopa County Superior Court, No. CR 99701

Judge: Hon. Sandra Day O'Connor, 202-479-3000

Opposing counsel: Trial: Lionel C. Estrada, 602-254-6661;

Appeal: Paul Prato, 602-506-8219 & John Rood 602-506-7965

Trial: May, 1978

Appeal: Aff'd in part, rev'd in part by Memorandum Decision of the Court of Appeals, 1 CA-CR 3570, 1 CA-CR 3731 (consolidated) September 18, 1979

Prosecution for first-degree rape and sodomy with prior convictions. The victim's name and phone number had been furnished to the defendant by a dating service of which both the victim and the defendant were members. On their date, the defendant drove the victim to a remote location in the desert and sexually assaulted her. Consent was the defense. The jury found the defendant guilty of all counts; he was sentenced by then-Judge (now Justice) O'Connor to 30-50 years imprisonment. In post-trial proceedings, Judge O'Connor vacated the conviction and granted a new trial because of some irregularities that occurred at the trial including attempted jury tampering by the defendant's mother. The prosecution appealed the grant of the new trial; the defendant cross-appealed the underlying conviction. The Arizona Court of Appeals affirmed the conviction and reversed the granting of a new trial.

Significance: (1) Conviction obtained despite a consent defense in the dating context; (2) the order for a new trial was reversed on appeal even though new trial motions are usually left to the discretion of the trial judge. I tried the case and handled the appeal.

State v. John A. Trebil

Maricopa County Superior Court, No. CR 102919
 Judge: Hon. William P. French, 602-212-8516 (now in private practice)
 Opposing counsel: Ron Kent Hooper, 602-953-5267
 Trial: May, 1979
 Appeal: Rev'd by Memorandum Decision of the Arizona Court of Appeals, January 29, 1981, No. 1 CA-CR 4234

Prosecution for vehicular homicide. The defendant was parked at the pick-up window of a drive-thru restaurant chatting with the waitress. Upon overhearing co-defendant Martin speak obscenities over the order-taking intercom, Defendant gave chase of Martin. Both were driving in excess of 80 MPH. Martin crashed his car into a home killing an elderly couple asleep in bed. Martin pled guilty. I prosecuted defendant Trebil for vehicular homicide even though his vehicle did not collide with anything. The jury found the defendant guilty. The case was reversed on appeal due to an error in the judge's answer to a juror's note during the deliberations.

Significance: This was the first vehicular homicide prosecution in Arizona of a person who caused a fatal collision but was not in the collision himself. I tried the case.

State v. James McNett and Jesus Rodriguez

Phoenix City Court, case number unavailable (records destroyed after 7 years)
 Judge: Hon. John T. Zastrow, 602-514-7356 (now a U.S. Immigration Judge)
 Opposing counsel: Charles I. Robson (whereabouts unknown, believed deceased)
 Trial: May, 1977
 Appeal: Aff'd on appeal to Superior Court Judge Marilyn Riddel (retired), case number unavailable (Superior Court "Lower Court Appeal" cases are not indexed by name of defendant prior to 1986.)

Prosecution for soliciting prostitution. Two undercover police narcotics agents from a neighboring town, while on duty, solicited acts of prostitution from a woman who.

unbeknownst to them, was an undercover Phoenix police detective. Their defense was that they were attempting to develop narcotics information and practicing their street rap. The prosecution had evidence to rebut those contentions. After a week long jury trial, both defendants were found guilty and fined \$120.00. The convictions were affirmed on appeal to the Superior Court.

Significance: The case was front-page news in Phoenix for a week and attracted national media attention. The Phoenix Police Department viewed the case as a make-it-or-break-it test of its undercover vice enforcement program. I tried the case and received a formal commendation from the Chief of the Phoenix Police Department.

The following is a list of members of the legal community with whom I have had recent contact:

Mark I. Harrison
Bryan Cave
2800 N. Central Ave.,
Phoenix, AZ 85004
602-280-8405

Janet Napolitano
U.S. Attorney for Arizona
230 N. 1st Ave.
Phoenix, AZ 85025
602-514-7583

Jon M. Sands
Federal Public Defender
222 N. Central Ave., Suite 810
Phoenix, AZ 85004
602-379-3290

Irwin Harris
111 W. Monroe, Suite 1107
Phoenix, AZ 85003
602-258-6904

Richard J. Morgan, Dean
Boyd School of Law
University of Nevada at Las Vegas
4505 Maryland Parkway
Las Vegas, NV 89154
702-895-3671

Hon. Frederick J. Martone
 Arizona Supreme Court
 1501 W. Washington
 Phoenix, AZ 85007
 602-542-4535

Ann E. Harwood
 Assistant U.S. Attorney
 230 N. 1st Ave
 Phoenix, AZ 85025
 602-514-7737

Jane E. Reddin
 Lewis & Roca
 40 N. Central Ave.
 Phoenix, AZ 85004
 602-262-5311

Michael L. Gallagher
 Gallagher & Kennedy
 2600 N. Central Ave.
 Phoenix, AZ 85004
 602-530-8000

William M. Demlong
 Bess & Dysart PC
 7210 N. 16th St.
 Phoenix, AZ 85020-5201
 602-331-4600

Robert K. Jones
 Streich Lang PA
 Two N. Central Ave.
 Phoenix, AZ 85004-2391
 602-229-5496

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.)

1. As a U.S. Magistrate Judge in 1995, I issued about a dozen search warrants concerning the Oklahoma City bombing case. In addition, I was called upon to consider motions to unseal the warrants brought on behalf of the

news media.

2. In July, 1996, I presided over the week-long detention hearing of the "Arizona Vipers," twelve defendants who were alleged to be members of an anti-government militia group suspected of planning to blow up federal buildings in Phoenix. The arrest of the Vipers and their detention hearings were the biggest local news stories of the year. The news media covered the detention hearings intensely. At the conclusion of the hearings, I ruled that six of the twelve defendants would be released pending trial, but that the other six would be held without bond as dangers to the community. The assigned District Judge and the Ninth Circuit Court of Appeals affirmed all of the detention orders. The U.S. Attorney did not appeal the release orders. The defendants who were released appeared for all their court appearances and fully complied with all other pretrial release conditions.

Supplement to
Senate Judiciary Committee Questionnaire of
Barry G. Silverman

Part I, Question 12:

Add the following to original answer:

On March 21, 1996, I testified at the Arizona House of Representatives Government Operations Committee in favor of a pay raise for state judges. No record of testimony available.

Nov. 10, 1997
DATE



BARRY G. SILVERMAN

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 receive a \$25.00 per year payout from the City of Phoenix Deferred Compensation Plan. The payout is received in February of each year and started in 1980.

In 2001, I will begin receiving benefits from the Arizona Elected Officials Retirement Plan in the approximate amount of \$2,000 per month.

In 2002, I will begin receiving a payout from the State of Arizona Deferred Compensation Plan in the approximate amount of \$357 per month.

In 2009, I will begin receiving a payout from the Maricopa County Deferred Compensation Plan in the approximate amount of \$1,575 per month.

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 resolve all potential conflicts in accordance with the Code of Conduct for United States Judges and all applicable statutes. Specifically, I will recuse myself in any matter in which my wife and I have a financial interest. I will maintain a list of companies in which I own stock (presently, we own only one stock) and I will recuse myself in cases involving those companies.

I will recuse myself in any matter in which I may have been the prosecutor or judge in state court. I will instruct my staff to screen for my possible involvement all criminal cases that originated in Arizona state court between 1976 and 1995.

My wife is a court reporter. Her clients are lawyers. I will maintain a current list of her clients and recuse myself in any case in which one her clients is appearing.

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.

To the extent permitted by, and in full compliance with, the Ethics Reform Act, I plan to continue giving, for compensation, my community property bar review lectures for BAR/BRI Bar Review, 20 E. University Dr., Tempe, AZ 85281, 602-929-0190. The lecture is about three hours long. I give it three times a year in Arizona, and once a year in Idaho and Nevada. BAR/BRI is owned by Harcourt Brace Legal and Professional Publications, Inc., Chicago, IL.

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.)

1997:	U.S. Government salary:	\$122,912
	BAR/BRI Bar Review:	\$5,250
1996:	U.S. Government salary:	\$122,912
	BAR/BRI Bar Review:	\$2,250

My Financial Disclosure Report is supplied at Tab E.

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

My Net Worth Statement is supplied at Tab F.

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.

As a high school student in 1968, I volunteered for the Hubert Humphrey for President campaign in Arizona and was a page for the Arizona Delegation to the 1968 Democratic National Convention in Chicago.

AG-10 (W)
Rev. 8/96

FINANCIAL DISCLOSURE REPORT

Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting <i>(Last name, first, middle initial)</i> Silverman, Barry G.	2. Court or Organization US Court of Appeals, 9th Cir.	3. Date of Report 11/09/1997
4. Title <i>(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</i> Nominee for Judge	5. Report Type (check type) X Nomination. Date 11/08/1997 _____ Initial _____ Annual _____ Final	6. Reporting Period 01/01/1996 to 12/31/1996
7. Chambers or Office Address: U.S. Courthouse 230 N. 1st Ave. Phoenix, AZ 85025	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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 the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions)*

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 U.S. Magistrate Judge	U.S. District Court, District of Ariz.
2 Lecturer	BAR/BRI Bar Review
3 _____	_____

II. AGREEMENTS *(Reporting individual only; see pp. 14-17 of Instructions.)*

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 1976	City of Phoenix Deferred Compensation Plan
2 1984	Ariz. Elected Officials Retirement Plan
3 1984	Maricopa County Deferred Compensation Plan

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 18-25 of Instructions.)*

DATE	PARTIES AND TERMS	GROSS INCOME <small>(yours, not spouse's)</small>
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1996	Self-employed court reporter (S)	
2 1996	BAR/BRI Bar Review (lecture fees)	\$ 2,250.00
3 1996	City of Phoenix Deferred Compensation Plan	\$ 25.00
4 1996	U.S. Government (magistrate judge salary)	\$ 122,912.00
5 1995	U.S. Government (magistrate judge salary)	\$ 119,544.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Silverman, Barry G.	11/09/199

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. 26-29 of Instructions.)

	SOURCE	DESCRIPTION
<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. 30-33 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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

* VAL CODES: J = \$15,000 or less K = \$15,001-\$50,000 L = \$50,001 to \$100,000 M = \$100,001-\$250,000 N = \$250,001-\$500,000
 O = \$500,001-\$1,000,000 P1 = \$1,000,001-\$5,000,000 P2 = \$5,000,001-\$25,000,000 P3 = \$25,000,001-\$50,000,000 P4 = \$50,000,001 or more

VII. Page 1 INVESTMENTS and TRUSTS - Income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets <i>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.</i> <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-F)	(5) Identity of buyer/seller (if private transaction)
NONE (no reportable income, assets, or transactions)									
1 Wells Fargo Bank checking (J)	A	Interest	J	T	Opened	10/11	J		
2 Wells Fargo money market (J)	A	Interest	J	T	Opened	10/11	J		
3 First Interstate Bank checking (J)	A	Interest	J	T	Closed	10/11	J		
4 First Interstate Bank money market (J)	A	Interest	J	T	Closed	10/11	J		
5 Bank of America cert of deposit (J)	A	Interest	J	T					
6 Bank of America checking (J)	A	Interest	J	T					
7 US Savings Bonds (J)	A	None	K	T					
8 Fidelity Asset Mgr mutual fund (S)	A	Dividend	K	T					
9 Fidelity Equity Inc II mutual fund IRA	A	Dividend	J	T					
10 Fidelity equity Inc II mutual fund spouse IRA (S)	A	Dividend	J	T					
11 Fidelity Equity Inc II mutual fund spouse Keogh (S)	C	Dividend	L	T					
12 Fidelity Cash Reserves mutual funds (S)	A	Dividend			Sold	03/08	J	A	
13 Nuveen Municipal Bond Fund mutual fund (J)	A	Dividend	J	T					
14 Nuveen Tax Exempt Unit Investment Trust AZ-191 (J)	A	Interest	J	T					
15 Tax Free Trust of AZ mutual fund (J)	B	Dividend	K	T					
16 Tucson Electric Power common stock (J)	A	None			Sold	03/01	J	A	
17 Israel Bond due 10/1/2003 (J)	A	Interest	J	T					
<p>1 Inc/Own Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 III=\$1,000,001-\$5,000,000 HD=\$5,000,001 or more</p> <p>2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more</p> <p>3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated</p>									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Silverman, Barry G.	Date of Report 11/09/1997
	- Income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions.)	

VII. Page 2 INVESTMENTS and TRUSTS

A. Description of Assets 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. Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (no reportable income, assets, or transactions)									
18 Israel Bond due 10/1/2005 (J)	A	Interest	J	T					
19 Israel Bond due 10/1/2008 (J)	A	Interest	J	T					
20 Israel Bond due 10/1/1999 (J)	A	Interest	J	T					
21 Israel Bond due 11/1/2004 (J)	A	Interest	J	T					
22 Israel Bond due 3/1/2004 (J)	A	Interest	J	T					
23 Israel Bond due 5/1/1996 (J)	A	Interest			Redeem	05/24	J	A	
24 Israel Bond due 5/1/2011 (J)	A	Interest	J	T	Bought	05/01	J		
25 Israel Bond due 9/1/2000 (J)	A	Interest	J	T					
26 Israel Bond due 9/1/2001 (J)	A	Interest	J	T					
27 Israel Bond due 9/1/2002 (J)	A	Interest	J	T					
28 Israel Bond due 9/1/1998 (J)	A	Interest	J	T					
29 Israel Bond zero coupon due 10/31/2003 (J)	A	Interest	J	T					
30 Israel Bond zero coupon due 3/31/2000 #1 (J)	A	Interest	J	T					
31 Israel Bond zero coupon due 3/31/2000 #2 (J)	A	Interest	J	T					
32 Israel Bond zero coupon due 10/31/2003 (J)	A	Interest	J	T					
33 Israel Bond zero coupon due 12/31/2001 #1 (J)	A	Interest	J	T					
34 Israel Bond zero coupon due 12/31/2001 #2 (J)	A	Interest	J	T					
1 Incl. Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000		B-\$1,001-\$2,500 G=\$100,001-\$1,000,000		C-\$2,501-\$5,000 H=\$1,000,001-\$5,000,000		D-\$5,001-\$15,000 H2=\$5,000,001 or more		E-\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val Meth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of report.)

NONE (No additional information or explanations.)

SECTION I -- POSITIONS

BAR/BRI Bar Review is owned by HB Legal & Professional Publications, Inc., Chicago, IL.

SECTION II -- AGREEMENTS

The listed agreements are employee benefit plans offered by my previous employers. The years indicated are the years that I started in the plans. My contributions to these plans remain on deposit in the plans. As required by law, I have made arrangements to begin receiving payments from the plans at various times in the future. I have the right to choose from among several investment options offered to all participants in the State of Arizona and Maricopa County plans, but otherwise have no control over any of the plans.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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SECTION HEADING. (Indicate part of report.)

SECTION 2. AGREEMENTS (cont'd.)

Li. Date Parties and Terms

4 1984 State of Ariz. Deferred Compensation Plan

SECTION 3. NON-INVESTMENT INCOME (cont'd.)

Li. Date	Parties and Terms	Gross Income
6 1995	Self-employed court reporter (S)	\$ 0.00
7 1995	Maricopa County/State of Arizona (judicial salary)	\$ 4,122.00
8 1995	BAR/BRI Bar Review (lecture fees)	\$ 2,250.00
9 1995	City of Phoenix Deferred Compensation Plan	\$ 25.00
10 1994	Self-employed court reporter (S)	\$ 0.00
11 1994	Maricopa County/State of Arizona (judicial salary)	\$ 87,360.00
12 1994	BAR/BRI Bar Review (lecture fees)	\$ 2,250.00
13 1994	City of Phoenix Deferred Compensation Plan	\$ 25.00

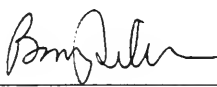
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Silverman, Barry G.	11/09/1997

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. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature  Date 11/9/97

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. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
 Administrative Office of the United States Courts
 One Columbus Circle, N.E.
 Suite 2-301
 Washington, D.C. 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	59 768	Notes payable to banks—secured	
U.S. Government securities—add schedule	284 014	Notes payable to banks—unsecured	
Listed securities—add schedule	425 791	Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	4 000
Due from relatives and friends		Unpaid income tax	
Due from others <i>spouse's business</i>	11 728	Other unpaid tax and interest	
Doubtful <i>receivables</i>		Real estate mortgages payable—add schedule	
Real estate owned—add schedule	140 263	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Aunts and other personal property	39 754		
Cash value—life insurance	10 376		
Other assets—itemize:			
<i>Personal property</i>	27 992		
<i>Employee benefit plans</i>	271 270		
		Total Liabilities	4 000
		Net Worth	1 266 946
Total Assets	1 270 946	Total liabilities and net worth	1 270 946
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor		Are any assets pledged? (Add schedule.)	
On leases or contracts		Are you defendant in any suits or legal actions?	
Legal Claims		Have you ever taken bankruptcy?	
Provision for Federal Income Tax			
Other special debt			

EYIMATE
9/97

Barry G & George-Ann Silverman

NET WORTH REPORT
SUMMARYA S S E T S
=====

Cash in bank accounts	47,976
Certificates of deposit	11,792
Securities and commodities	709,805
Real estate	140,263
Receivables	11,728
Vehicles	39,754
Personal property	27,982
Life insurance	10,376
Other assets	271,270
	=====
TOTAL ASSETS:	1,270,946

L I A B I L I T I E S
=====

Installment debts	4,000
	=====
TOTAL LIABILITIES:	4,000

N E T W O R T H
=====

Total assets	1,270,946
Total liabilities	4,000
	=====
NET WORTH:	1,266,946

NET WORTH REPORT
DETAILA S S E T S
=====

Cash in bank accounts	
Wells Fargo Bank	6,824
Bank of America	4,453
Wells Fargo Bank	10,563
First Fed Crdt Un	-4 27
First Fed Crdt Un	-4 A 25,100
First Fed Crdt Un	-4 9 9

total cash in bank accounts:	47,976

Certificates of deposit

Bank of America	11,792
90 days	
Total certificates of deposit:	----- 11,792

Securities and commodities

\$10,000 US Savings Bond Issued 9/92 1 units @ 6,456.000 ea	6,456
\$10,000 US Savings Bond 9/92 1 units @ 6,456.000 ea	6,456
1987 US Savings Bonds \$100 face value 18 units @ 87.740 ea	1,579
1988 US Savings Bonds \$100 face value 24 units @ 82.700 ea	1,985
1989 US Savings Bonds \$100 face value 24 units @ 77.940 ea	1,871
1990 US Savings Bonds \$100 face value 24 units @ 73.480 ea	1,764
1991 US Savings Bonds \$100 face value 24 units @ 69.260 ea	1,662
1992 US Savings Bonds \$100 face value 24 units @ 64.660 ea	1,552
1993 US Savings Bonds \$100 face value 24 units @ 59.700 ea	1,433
1994 US Savings Bonds \$100 face value 16 units @ 56.060 ea	897
1994 US Savings Bonds \$200 face value 10 units @ 112.120 ea	1,121

1995 US Savings Bonds \$500 face value 6 units @ 265.000 ea	1,590
1995 US Savings Bonds \$200 face value 3 units @ 109.170 ea	328
1996 US Savings Bonds \$500 face value 12 units @ 255.800 ea	3,070
1997 US Savings Bonds \$500 face value 9 units @ 250.000 ea	2,250
Fid Asset Manager GAS SEP IRA 1,235 units @ 18.960 ea	23,416
Fid Equity Income II BGS IRA 540 units @ 28.470 ea	15,374
Fid Equity Income II GAS IRA 540 units @ 28.470 ea	15,374
Fid Equity Income II Keogh MP 4,973 units @ 28.470 ea	141,581
Israel Bond due 10/1/05 7th Development Iss 1 units @ 1,000.000 ea	1,000
Israel Bond due 10/1/2003 7th Development Iss 1 units @ 1,000.000 ea	1,000
Israel Bond due 10/1/2008 7th Development Iss 1 units @ 1,000.000 ea	1,000
Israel Bond due 10/1/99 6th Development Iss 1 units @ 1,000.000 ea	1,000
Israel Bond due 11/1/04 7th Development Iss 1 units @ 1,000.000 ea	1,000
Israel Bond due 3/1/04 7th Development Iss 1 units @ 500.000 ea	500

Israel Bond due 5/1/2011 7th Development Iss 1 units @ 500.000 ea	500
Israel Bond due 9/1/00 7th Development Iss 1 units @ 1,000.000 ea	1,000
Israel Bond due 9/1/01 7th Development Iss 1 units @ 1,000.000 ea	1,000
Israel Bond due 9/1/02 7th Development Iss 1 units @ 1,000.000 ea	1,000
Israel Bond due 9/1/98 6th Development Issu 1 units @ 500.000 ea	500
Israel ZCB due 10/31/2003 1 units @ 6,000.000 ea	6,000
Israel ZCB due 10/31/2003 1 units @ 6,000.000 ea	6,000
Israel ZCB P-4 due 03/31/2000 1 units @ 6,000.000 ea	6,000
Israel ZCB P-7 due 03/31/2000 1 units @ 6,000.000 ea	6,000
Israel ZCB P-D due 12/31/2001 1 units @ 6,000.000 ea	6,000
Israel ZCB P-E due 12/31/2001 1 units @ 6,000.000 ea	6,000
Israel Zero Cpn Bnd 01/31/2006 1 units @ 6,000.000 ea	6,000
Nuveen Flgshp AZ Mun A shares 69 units @ 11.290 ea	775
Nuveen Flgshp AZ Muni Bond Fnd Class R shares 857 units @ 11.290 ea	9,676
PanaVision (PVI) 200 units @ 21.250 ea	4,250
Tax-Free Trust of AZ (AZTFX)	60,665

1410

5,638 units @ 10.760 ea	
US Treasury Bill due 03/05/98	65,000
1 units @ 65,000.000 ea	
US Treasury Bill due 01/02/98	10,000
1 units @ 10,000.000 ea	
US Treasury Bill due 01/08/98	20,000
1 units @ 20,000.000 ea	
US Treasury Bill due 02/05/98	10,000
1 units @ 10,000.000 ea	
US Treasury Bill due 03/12/98	20,000
1 units @ 20,000.000 ea	
US Treasury Bill due 04/09/98	25,000
1 units @ 25,000.000 ea	
US Treasury Bill due 04/30/98	15,000
1 units @ 15,000.000 ea	
US Treasury Bill due 11/20/97	20,000
1 units @ 20,000.000 ea	
US Treasury Bill due 12/04/97	55,000
1 units @ 55,000.000 ea	
US Treasury Bill due 12/11/97	10,000
1 units @ 10,000.000 ea	
Vangrd 500 Portfolio Indx Trst	50,203
GAS IRA (VFINX)	
562 units @ 89.330 ea	
Vangrd 500 Portfolio Indx Trst	52,973
BGS IRA (VFINX)	
593 units @ 89.330 ea	
Total securities & commodities:	709,805
Real estate	
Residence, Phoenix AZ	140,000
Lease on storage locker	263
Phoenix, AZ	
Total real estate:	140,263
Receivables	

George-Ann Silverman Ct Rptr Receivables	11,728

Total receivables:	11,728
Vehicles	
96 Oldsmobile Cutlass Supreme	19,390
97 Toyota Camry 4-DR LE Sedan	20,364

Total vehicles:	39,754
Personal property	
Business equipment	27,982

Total personal property:	27,982
Life insurance (cash value)	
Horace Mann BGS	5,573
Minn Mutual BGS	1,337
Prudential GAS	3,466

Total life insurance:	10,376
Other assets	
City of Phoenix Deferred Comp Plan	6,066
Elected Officials Retirement Plan	54,178
Fed Employes Retirement System	2,731
Maricopa County Deferred Comp Plan (Nationwide Fixed)	123,421
State of AZ Deferred Comp Plan (PGA & SPI)	50,550
US Govt Thrift Savings Plan	34,324

Total other assets:	271,270

TOTAL ASSETS:	-----	1,270,946
L I A B I L I T I E S	-----	

Installment debts		
Bank of America Visa		4,000

Total installment debts:		4,000

TOTAL LIABILITIES:		4,000

N E T W O R T H		

Total assets		1,270,946
Total liabilities		4,000

NET WORTH:		1,266,946

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.

Canon 4(G) of the Arizona Code of Judicial Conduct prohibits judges from practicing law on a pro bono basis or otherwise. I have attempted to fulfil my responsibilities to the disadvantaged in other ways:

First, I actively recruited minority lawyers to apply for judicial positions and brought together a group of lawyers and judges for this purpose. I have assisted and mentored minority lawyers through the state judicial merit selection process and after they became judges.

Second, as a judge, I have had a special interest in the enforcement of child support obligations. The disadvantaged are particularly harmed by the inability to collect child support. I chaired a committee to revise the Arizona Child Support Guidelines. In addition, several years ago, I donated my time to organize and put on a seminar on how to collect past due child support. The seminar was offered in four locations around the state.

Third, my wife and I contribute financially to scholarship funds for minority law students and donate food to a local food bank.

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 such organization and never have.

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).

On June 28, 1997, I met Senator Kyl at his office in Phoenix where he informed me that I had been suggested for the Ninth Circuit by several members of the local legal community. In September, 1997, I received a call from Jon Yarowsky, of the Office of Counsel to the President, advising me that I was under consideration. On October 3, 1997, I was interviewed in Washington by Mr. Yarowsky and three other representatives of the Administration. At their request, I completed an ABA Personal Data Questionnaire and an FBI Background Investigation form. About 10 days later, I was interviewed by the FBI, and on October 23, 1997, I was interviewed by Charles B. Renfrew, a member of the ABA 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.

I believe that some of the criticism involving judicial activism is justified. The power of the federal judiciary is not unlimited. The constitutional doctrines of the separation of powers, respect for state sovereignty, standing, ripeness and the requirement of a case or controversy all are designed to act as constraints on the judicial branch of government. There are at least three aspects of judicial activism that are of special concern to me.

First, I have noticed the tendency of some appellate courts to engage in "appellate fact finding." In my experience, this phenomenon usually occurs when a reviewing court disagrees with a particular result in a given case. In my view, appellate courts should defer to the factual findings of the trial judge -- the "judge on the scene" -- unless those findings are clearly erroneous or unsupported. Although it is obviously appropriate for appellate courts to review questions of law on a de novo basis, a healthy respect for the doctrine of judicial restraint requires appellate deference to lower courts' factual and discretionary calls whenever possible.

In my view, some trial judges have been guilty of the same thing -- substituting their opinions and discretionary judgments for those of, for example, prison officials and school administrators. Although the federal courts have an indisputably vital role to play in assuring compliance with the constitution, I think that some judges have unwisely, sometimes unwittingly, appointed themselves the de facto Director of the Department of Corrections or Superintendent of Schools. Judges do not have the time or expertise, much less the authority, to micro-manage schools and prisons. When they do, it damages the public's confidence in the judiciary, an unfortunate result of which is that such judges are not taken seriously when genuine constitutional issues come along that truly require judicial intervention.

Third, until the recent passage of the Prison Litigation

Reform Act, several appellate decisions made it unnecessarily difficult to quickly get rid of frivolous litigation, difficulties well beyond what the Rules of Civil Procedure require. For example, case law in some circuits prohibited federal trial judges from dismissing, *sua sponte*, civil complaints that fail to state a claim. In addition, although frivolous litigation could be dismissed on the court's own motion, some appellate courts have construed "frivolous" so narrowly as to be of little help.

I try never to forget that being a judge is not the equivalent of being the king, and that in a constitutional democracy it is the judge's job to fairly, impartially, and intelligently follow the law whether he or she agrees with it or not.

CARLOS ROBERTO MORENO

RESPONSES TO SENATE JUDICIARY COMMITTEE
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Carlos Roberto Moreno

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

Residence:

Los Angeles, California 90041

Office:

210 West Temple Street
Department 131
Los Angeles, California 90012

3. Date and place of birth.

November 4, 1948; 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).

Christine (Donahue) Moreno, Artist/ Teacher

East Los Angeles City College
1301 Avenida Cesar Chavez
Monterey Park, California 91754-6099California State University
5151 State University Drive
Los Angeles, California 90032

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

<u>Colleges & Law School</u>	<u>Dates Attended</u>	<u>Degree & Date</u>
California State University at Los Angeles	02/66-06/66	None
Yale College	09/66-06/70	Bachelor of Arts, 6/70
Harvard Business School	09/70-10/70	None
Stanford Law School	09/72-06/75	Juris Doctorate, 06/75

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.

<u>Year</u>	<u>Employer</u>	<u>Position</u>
10/93-present	Los Angeles Superior Court	Judge
11/86-10/93	Compton Municipal Court,	Judge
02/92-05/92	California State University at Dominguez Hills	Adjunct Instructor
02/90-05/90	California State University at Dominguez Hills	Adjunct Instructor
05/79-11/86	Kelley Drye & Warren, Los Angeles (formerly Mori & Ota)	Associate
09/75-05/79	Los Angeles City Attorney	Deputy City Attorney
11/70-06/72	Los Angeles County Department of Public Social Service	Personnel Representative

In addition, since March 1997 to the present, I have served as an unpaid board member of the Arroyo Vista Family Health Center, a non-profit community health center established pursuant to Section 330 of the Public Health Service Act.

From 1976 through 1978, I also served on the boards of two additional non-profit organizations, the Narcotics Prevention Project (a drug rehabilitation program in the Boyle Heights section of Los Angeles) and the Public Inebriate Program (an alcohol rehabilitation program in the skid row section of Los Angeles).

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.

1997 Criminal Justice Award, Superior Court Judge of the Year, Criminal Law Section, Los Angeles County 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.

California Judges Association (Criminal Law and Procedure Committee)

Los Angeles Superior Court (bail, investigators, trial delay reduction, new judge orientation, and jury committees) (1993-1997)

Municipal Court Judges Association (Legislative and Bail Committees) (1987-1992)

Presiding Judges Association (Municipal Court) (1989-1990)

Mexican-American Bar Association (President) (1981)

Los Angeles County Bar Association (1979-1986) Immigration and Business Law Sections

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:

California Judges Association

Los Angeles Superior Court

Arroyo Vista Family Health Center

b. Non-lobbying:

Yale Club of Southern California

Yale Chicano Alumni Association

Stanford Alumni Association

Stanford Chicano/Latino Association of Los Angeles County

11. Court Admissions: 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 for the Central and Northern Districts of California, admitted 1979. (Membership inactive due to appointment to the bench in 1986).

California Supreme Court and all state courts of California, admitted in December 1975. (Membership inactive due to appointment to the bench in 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.

Over the years I have spoken to various school classes, service organizations, and senior citizen groups concerning my job as a judge. None of these talks involved constitutional issues or legal policy and none were reported by the press. I have not retained any notes used in connection with these speeches, nor have I written any published articles or speeches.

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

Excellent, May 22, 1997

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 of the Superior Court, Los Angeles Superior Court, October 1993 to present, with general civil and criminal jurisdiction throughout the County of Los Angeles; presently assigned to a direct calendar criminal department, handling arraignments, pretrial conferences, trials, sentencing, and probation violations; appointed October 1993 by Governor Pete Wilson, elected without opposition June 1994.

Judge of the Municipal Court, Compton Municipal Court, November 1986 to October 1993, with jurisdiction over criminal misdemeanor cases, felony preliminary hearings, and civil disputes not exceeding \$25,000 in controversy; appointed October 1986 by Governor George Deukmejian, elected without opposition June 1988.

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.
- (1) Municipal and Superior Court trial judges generally do not issue written opinions, and, if written, none are published. I have not written any published or unpublished opinions in my career as a trial court judge.
- (2) The Appellate Department of the Los Angeles Superior Court has jurisdiction over appeals from the Municipal Courts of the County of Los Angeles. Their opinions are generally unpublished. I have attached the only opinions of the Appellate Department, of which I have personal knowledge, which reversed convictions in trials I handled as a Municipal Court judge.

In the first case, *People v. Crespín*, (Superior Court No. CRA27965, Compton Municipal Court No. 88M03642), a school teacher convicted of multiple counts of annoying female students, had his judgment reversed for prosecutorial error due to improper closing argument.

In the second case, *People v. Crescentini*, (Superior Court No. BR28452, Compton Municipal Court No. 89M00J12), the defendant's conviction for resisting arrest was reversed for prosecutorial misconduct in improperly cross-examining a character witness for the defendant.

As a Superior Court judge I have not had any of my decisions reversed on appeal or criticized significantly.

- (3) No claim of constitutional error was made in the two Municipal Court cases in which the judgment was reversed.

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 a clerk:

I have never served as a law clerk to a judge.

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

I have never practiced law as a solo 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:

(September 1975 - April 1979)
 Los Angeles City Attorney's Office
 200 North Main Street
 Los Angeles, California 90012
 Deputy City Attorney - Criminal Division

(May 1979 - October 1986)
 Kelley Drye & Warren
 (formerly Mori & Ota)
 515 South Flower Street, #1100
 Los Angeles, California 90071
 Litigation Associate

(November 1986 - October 1993)
Compton Municipal Court
200 West Compton Boulevard
Compton, California 90220
Judge of the Municipal Court

(November 1993 - present)
Los Angeles Superior Court
210 West Temple Street
Los Angeles, California 90012
Judge of the Superior Court

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

September 1975 to April 1979 - Deputy City Attorney handling misdemeanor prosecutions for Los Angeles City Attorney's Office, downtown criminal trial courts; handled all phases of criminal prosecution, special assignments to public disorder prosecution team and Special Counsel to City Attorney; civil consumer protection prosecutions for unlawful business trials practice.

May 1979 to October 1986 - Litigation attorney with the Los Angeles office of Kelley Drye & Warren, a national, New York-based law firm, handling commercial litigation in state and federal courts, including bankruptcy, employment (wrongful termination, EEO, and labor negotiations for management), banking, real estate and antitrust litigation for predominantly corporate clients.

November 1986 to October 1993 - Judge of the Municipal Court, Compton Municipal Court, handling felony preliminary hearings, misdemeanor trials and civil trials.

November 1993 to Present - Judge of the Superior Court, Los Angeles Superior Court, presiding over a direct calendar court, handling felony trials, including special circumstance homicides and a broad array of violent felonies in addition to daily pretrial conferences, sentencings, case settlements and probation violations.

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

As a prosecutor with the Los Angeles City Attorney's Office, I represented the People of the State of California in both criminal and civil prosecutions. Typical witnesses consisted of police officers employed by the Los Angeles Police Department or other local law enforcement agencies, as well as members of the public who were victims of crime.

Typical clients with the law firm of Kelley Drye & Warren (Los Angeles office), and its predecessor, Mori & Ota, consisted of multinational corporations with a heavy concentration of corporations which were subsidiaries of Japanese corporations. Many of these firms were the local distribution arm of the parent corporation (e.g. Yamaha Motor Corporation.)

- 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 of your appearances in court varied, describe each such variance, giving dates.

As a Deputy City Attorney I appeared in trial courts every day. As a civil litigator I appeared weekly with an emphasis on law and motion practice.

2. What percentage of these appearances was in:
- (a) federal courts: 10%
 - (b) state courts: 70% (All prosecutions were in State Court)
 - (c) bankruptcy courts: 20%
3. What percentage of your litigation was:
- (a) civil 100% (Kelley Drye & Warren)
20% (L.A. City Attorney's Office)
 - (b) criminal: 0% (Kelley Drye & Warren)
80% (L.A. City Attorney's Office)

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 75 trials (70 criminal, 5 civil); I was sole counsel on all criminal trials and sole or chief counsel on all civil trials.

5. What percentage of these trials was:
- | | |
|--------------|-----|
| (a) jury: | 95% |
| (b) non-jury | 5% |

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) Hines v. Sumitomo Bank, Orange County Superior Court, Case No. 405225 (1985)

In this action, I defended a bank client alleged to have committed fraud in obtaining third-party owned collateral to secure several loans to the principal borrower, who was also a family relative of the guarantors. The case involved numerous parties, including the loan officers who arranged the loans. The principal issues involved the validity of the loan guarantees and the alleged false representations of the loan officers in obtaining the collateral securing the guarantees. I prepared all the motions and took most of the depositions and would have been second chair to Paul Bressan of Kelley Drye & Warren had the case proceeded to trial. The case was settled on the eve of trial. Judge: Orange County Superior Court; no judge assigned; Co-Counsel, Paul Bressan, 515 South Flower Street, #1100, Los Angeles, California 90071, (213) 689-1300; Opposing Counsel: Steven Weston, 444 South Flower Street, 43rd Floor, Los Angeles, California 90071;(213) 623-2322.

- (2) JSD, Inc v. Sumitomo Bank, Siskiyou County Superior Court, Case No.35883 (1985)

In this action, I defended a bank client alleged to have committed fraud in extending construction loan financing to a developer who alleged that the bank failed to release collateral as promised. The principal issues involved the application of the parol evidence rule and the statute of frauds and whether any alleged verbal representations by the loan officer were admissible. I was chief counsel for the bank and took all depositions and wrote all motions, including a successful partial summary judgment motion. Ultimately, the case was resolved through a settlement agreement. Judge: Siskiyou County Superior Court, handled by various judges through granting of defendant's summary judgment motion. Opposing Counsel: Peter Racobs, 6670 Alessandro Boulevard, #B, Riverside, California 92506; (909) 789-8100

- (3) Yasutake v. Real Estate Securities Service, Orange County Superior Court, Case No. 380266 (1985)

In this case, I represented a husband and wife who owned an apartment four-plex and who sought to set aside a wrongful foreclosure sale by a creditor. The foreclosure sale was set aside after a contested two-day court trial. The principal issue involved the nature of the alleged breach and the adequacy of the notice of default. Judge: Leonard H. McBride, Orange County Superior Court. Opposing Counsel: Robert Lewin, 105 Crescent Bay, #F, Laguna Beach, CA. 92651:(714) 497-8897

- (4) Pehota v. Sanyo E & E Corporation, U.S. District Court for the Southern District of California, Case No. 85-0907-JLI(IEG); San Diego Superior Court, Case No. N25608 (1984)

In this litigation, I defended a major manufacturer of electronic components being sued by a former employee and union member who alleged wrongful termination and employer harassment. After successfully demurring to the complaint in the Superior Court on federal preemption grounds, the case was removed to federal court where the case was dismissed for failure to exhaust administrative remedies. I was chief counsel and prepared all motions and handled all court appearances. Judge: J. Lawrence Irving, United States District Court for Southern District of California. Opposing Counsel: Diane Tufts, 969 Vale Terrace, #10, Vista, California 92084; no telephone listing.

- (5) San Jose Cash Register v. Tec America Inc., Santa Clara County Superior Court, Case No. 453646 (1984)

In this case, I defended a major franchisor charged with unfair trade practices and interference with prospective business advantage by a former franchisee. The nature of the dispute involved the validity of territorial restrictions and infringement by adjoining franchisees and the duty of the franchisor to ensure that only one franchisee operated in a particular territory. In an eight-day jury trial, I was chief trial counsel and handled all pretrial motions and depositions. A substantial money judgment entered against our client was reversed on appeal on account of erroneous jury instructions on damages. Judge: David W. Leahy, deceased, Santa Clara County Superior Court; Co-Counsel David Maurer; 9130 West 25th Street, Los Angeles, California 90034-1904; (310) 839-1524 Opposing Counsel: Anthony Trepel, 50 West San Fernando Street, San Jose, California 95113; (408) 275-0501.

- (6) Thornell v. Coleman, Los Angeles Superior Court, Case No. C280523 (1983)

In this case, I successfully defended a company executive charged with civil negligence during a weekend excursion for allegedly providing excessive amounts of alcoholic beverages to the plaintiff, who subsequently injured herself by falling off a resort balcony. This four-day jury trial involved disputed issues of fact and the liability of individual hosts who furnish alcoholic beverages to an injured party. I was sole trial counsel for all aspects of this case. Judge: Arthur Baldonado, retired, Los Angeles Superior Court. Opposing Counsel: Ed Barker (per State Bar, deceased July 30, 1991); Eugene Bennett, 17592 17th Street, 3rd Floor, Tustin, California 92680, (714) 544-7200.)

- (7) Sumitomo Bank v. Escobar, U.S. Bankruptcy Court for the Central District of California, Case No. BK-SB8203164 (WH); Adv. No. SB-821541 (1982)

In this case, I obtained automatic stay relief for a bank client to foreclose on a mini-mall shopping center. The half-day trial centered on conflicting expert testimony on the value of the property and the nature of the default in state foreclosure proceedings. Judge: William Hyer, United States Bankruptcy Court for the Central District of California. Opposing Counsel: William Baker, 550 North Golden Circle Drive, Santa Ana, California 92705; (714) 558-9432.

- (8) Nagao v. Community Redevelopment Agency, Los Angeles Superior Court, Case No. C323138 (1981)

In this case, I represented on a pro bono basis low-income, long-term commercial tenants in the Little Tokyo section of Los Angeles. The clients were defending against eviction actions initiated by the city redevelopment agency, which wanted to construct a new parking garage on the site of our clients' auto mechanic and body shop repair businesses. The principal issues involved the adequacy of notice and the duty of the agency to provide relocation assistance to displaced businesses. I was chief counsel for all court appearances and coordinated the work of junior associates. Ultimately, after a year of delaying the eviction action, we obtained a favorable settlement on behalf of our clients. Judge: No judge assigned. Co-Counsel, David Maurer, 9130 West 25th Street, Los Angeles, California 90034-1904; (310) 839-1524 Opposing Counsel: James O. Foster, 4929 Wilshire Boulevard, #915, Los Angeles, California 90010; (213) 936-2110.

- (9) People v. John Doe, Los Angeles Municipal Court, Case No. unknown. (1978)

As a Deputy City Attorney, I prosecuted a union member charged with assault with a deadly weapon for throwing a brick through the window of a delivery truck crossing a Teamsters strike picket line. After an eight-day jury trial with numerous witnesses, evidentiary issues, and substantial injuries, the defendant was acquitted. Judge: Marion Obera, retired, Los Angeles Municipal Court. Opposing Counsel: Jewell Jones, retired, Superior Court Commissioner, 7281 East Quill Avenue, Downey, California 90242; (310) 940-8846.

- (10) People v. Cristobal Beltran, Los Angeles Municipal Court, Case No. 31107463 (1978)

As a Deputy City Attorney, I prosecuted a Hispanic defendant charged with assault with a deadly weapon (knife) against several black victims where defense counsel attempted to exclude all blacks from the jury panel during jury selection. The principal issue involved restrictions on the defense exercise of peremptory challenges in a discriminatory manner, a prohibition thought to apply to the prosecution only at that time. A writ of mandate was obtained staying the trial and discharging the panel. The defendant was later convicted by a new jury. Judge: James Nelson, retired, Los Angeles Municipal Court; Opposing Counsel: Ray Tabet, 5900 Indian School, N.E., Albuquerque, New Mexico, 87110; (505) 265-3451.

ADDITIONAL REFERENCES:

- (1) Honorable Richard Paez
United States District Court
255 East Temple Street
Los Angeles, California 90012
(213) 894-0764
- (2) Honorable Edward Ferns
Los Angeles Superior Court
210 West Temple Street
Los Angeles, California 90012
(213) 974-5781
- (3) Michael Villalobos
Office of the District Attorney
210 West Temple Street
Los Angeles, California 90012
(213) 974-3611
- (4) James Dabney
Office of the District Attorney
210 West Temple Street
Los Angeles, California 90012
(213) 974-3611
- (5) George Castello
Office of the District Attorney
210 West Temple Street
Los Angeles, California 90012
(213) 974-3611
- (6) Pat Dixon
Office of the District Attorney
210 West Temple Street
Los Angeles, California 90012
(213) 974-3611

- (7) Michael Miller
Alternate Public Defender
320 West Temple Street
Los Angeles, California 90012
(213) 974-8163
- (8) Steve Urias
Alternate Public Defender
320 West Temple Street
Los Angeles, California 90012
(213) 974-8163
- (9) Leonard Levine
1901 Avenue of the Stars #1708
Los Angeles, California 90067
(310) 553-6510
- (10) Joel Isaacson
8484 Wilshire Boulevard, #850
Beverly Hills, California 90211
(213) 782-7722

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.)

Member, Los Angeles Superior Court Trial Delay Reduction Committee (1996); established and enforced court policies which successfully reduced trial backlogs due to Third Strike cases; policies were implemented county-wide and drastically reduced the number of aged cases; fewer criminal cases are now tried by civil courts, and, in fact, the criminal courts have accepted civil cases for trial for the first time in several years.

I have also taught Business Law (Spring 1990) and Administrative Law (Spring 1992) to undergraduates at California State University at Dominguez Hills.

CARLOS ROBERTO MORENO
RESPONSES TO SENATE JUDICIARY COMMITTEE QUESTIONNAIRE
PART 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.

- a.) California Judges Retirement Systems
Current Amount: approximately \$79,000
(monthly contributions)

Upon leaving office this fund will be withdrawn and placed in an annuity or other retirement instrument.

- b.) County of Los Angeles 401(K) Savings Plan
Current Amount: approximately \$85,000
(monthly contributions)

I plan to leave this sum in its mutual fund market account or place it in another retirement instrument.

- c.) Kelley Drye & Warren Restated Retirement Plan
Current Amount: \$412 monthly, commencing in the year 2013 (Annuity)

I have no control over this plan and cannot withdraw my vested interest prior to attaining the age of 60 in the year 2008. I intend to disqualify myself from any case involving my former firm.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas or 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 foresee no categories of cases or issues that are likely to present a conflict of interest for me. In the event of a potential conflict of interest, I would abide by the Code of Judicial Conduct for federal 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.

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 (AO-10).

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

See attached Financial 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.

No.

Report Required by the Ethics
Reform Act of 1989, P.D. 1, No.
15-134, November 30, 1989
15 U.S.C. App. 4, 101-112

AO-10
Rev. 1/97

**FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1996**

1 Person Reporting (Last name, first, middle initial) MORENO, CARLOS R.	2 Court or Organization District Court Central District of California	3 Date of Report 07/31/97
4 Title (Article III judges indicate active or senior status; Magistrate Judges indicate full- or part-time) U.S. District Court Judge	5 Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 7/31/97 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6 Reporting Period 1/1/96-7/31/97
7 Chambers or Office Address Los Angeles Superior Court 210 West Temple Street, Dpt. #131 Los Angeles California 90012	8 On the basis of the information contained in this Report and any modifications pertaining thereto, at 19, in my opinion, in compliance with applicable laws and regulations Reviewing Officer _____ Date _____	

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. 9-13 of Instructions.)

<input type="checkbox"/> <u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
<input type="checkbox"/> NONE (No reportable positions)	
Board Member	Arrovo Vista Family Health Center
_____	_____
_____	_____

II. AGREEMENTS. (Reporting individual only; see pp. 14-17 of Instructions.)

<input type="checkbox"/> <u>DATE</u>	<u>PARTIES AND TERMS</u>
<input type="checkbox"/> NONE (No reportable agreements)	
_____	Kelley Drye & Warren Retirement Plan (No Control)
_____	County Of Los Angeles 401(K) Retirement Plan, (Mutual Fund)
_____	California Judges Retirement System

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

<input type="checkbox"/> <u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>GROSS INCOME</u> <small>(Spouse, not spouse's)</small>
<input type="checkbox"/> NONE (No reportable non-investment income)		
1 1996	Los Angeles Superior Court	\$ 133,659
2 1997(7 months)	Los Angeles Superior Court	\$ 77,510
3 1996	Title House (Spouse)	\$ _____
4 1997	East Los Angeles City College (Spouse)	\$ _____
5 _____	_____	\$ _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

CARLOS R. MORENO

Date of Report

07 / 31 / 97

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. 26-29 of instructions.)

	SOURCE	DESCRIPTION
<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. 30-33 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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities)		
1			
(J)	MBNA America	Revolving Credit	V
2			
(S)	Student Loan Corporation (Citibank)	Student Loan	K
3			
(J)	Wells Fargo Bank	Credit Line	J
4			
(J)	Leonard & Dolores Fenton	Family Loan	I
5			
(J)	Citibank	Credit Card	I
6			

*Value Codes: J=\$10,000 or less K=\$10,001-\$20,000 L=\$20,001-\$50,000 M=\$50,001-\$250,000 N=\$250,001-\$500,000
 O=\$500,001-\$1,000,000 P=\$1,000,001-\$5,000,000 Q=\$5,000,001-\$25,000,000 R=\$25,000,001-\$50,000,000 S=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
CARLOS R. MORENO

Date of Report
07 / 31 / 97

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A Description of Assets (including trust assets) <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. Place "(X)" after each asset exempt from prior disclosure.</small>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	AG-1 Code (A-M)	Type of div. or int. (I)	Value Code (J-P)	Value Method Code (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date-Month-Day	(3) Value Code (J-P)	(4) Gain/Loss Code (A-M)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 (J) L.A. County 401 (K) Plan	C	Div	L	T					
2									
3 (J) California Judges Retirement Plan	None		L	T					
4									
5 (J) Kelley Drive & Warren Retirement Plan	None		J	T					
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
1 Val/Quan Cds: A=\$1,000 or less (Col. B1-D4) F=\$20,001-\$500,000	B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000		G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I=\$5,000,001-\$100,000,000 J=\$100,000,001 or more						
2 Val Cds: J=\$15,000 or less (Col. C1-D3) D=\$15,001-\$1,000,000 F=\$1,000,001-\$5,000,000 H=\$5,000,001-\$10,000,000	K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001 or more								
3 Val Meth Cds: D-Appraisal (Col. C7) U-Book Value	E-Appraisal (Col. C7) V-Book Value		W-Cost (real estate only) X-Other		Y-Subsequent Rec'd/Insd		Z-Open/Market		

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	CARLOS R. MORENO	07/31/97

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part VII

L.A. County 401(K) Savings Plan is invested in Pacific Mutual investment fund pursuant to a guaranteed investment contract with the County of Los Angeles.

Upon leaving the State Court System, I have a right to withdraw only my contributions to the California Judges retirement fund and roll them over into an alternate retirement instrument. I have no right to withdraw or control any vested interest in the Kelley Drive & Warren retirement plan until the year 2008, when I attain the age of 60.

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. 4, § 901 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Carlos R Moreno

Date July 31, 1997

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. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.,
Washington, D.C. 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.

CARLOS R. AND CHRISTINE MORENO (MAY 23, 1997)

ASSETS		LIABILITIES	
Cash on hand and in banks	2,000	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	
Listed securities—add schedule		Notes payable to relatives	15,000
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 (1st & 2nd Trust Deeds)	320,000
Real estate owned—add schedule	450,000	Chattel mortgages and other liens payable	
Personal Residence		Other debts—itemize:	
Real estate mortgages receivable		Credit Lines	21,000
Autos and other personal property	25,000	Revolving Credit	45,000
Cash value—Life Insurance		Auto Loans	20,000
Other assets—itemize:		School Loans	45,000
Personal Property	30,000		
401 (K) Savings Plan	85,000		
Judges Retirement Fund	79,000	Total Liabilities	466,000
		Net Worth	205,000
Total Assets	671,000	Total liabilities and net worth	671,000
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner 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		

* 1st Trust Deed.....Sumitomo Bank \$172,000
 2nd Trust Deed.....Small Business
 Administration 148,000

CARLOS ROBERTO MORENO
RESPONSES TO SENATE JUDICIARY COMMITTEE QUESTIONNAIRE
PART 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.

Since March of 1997 to the present, I have served as a Board Member for the Arroyo Vista Family Health Center, a non-profit community health center that contracts with the County of Los Angeles to provide a wide array of free and low-cost health care to the medically under-served population of Northeast Los Angeles. Although I was just recently asked to serve on the Board by its executive director (a high school friend), I have come to learn about its extensive community outreach program in our area. The Board's mandate is to insure that the Center provides high-quality health care at affordable prices to its patients. (Approximately 4 hours a month.)

Previously, between 1976 and 1978, I served as a Board Member for the Narcotics Prevention Project (a drug rehabilitation program in Boyle Heights) and the Public Inebriate Program (an alcohol rehabilitation program) for alcoholics living on skid row in downtown Los Angeles. (Approximately 4 hours a month.)

In 1981, as a litigator with Mori & Ota (the predecessor firm of Kelley Dye & Warren), I provided pro bono legal services to two elderly businessmen (an auto body repairman and auto mechanic) in Little Tokyo who were being evicted by the City of Los Angeles after more than twenty years in business on the same site. I managed the entire litigation in various courts and ultimately reached a very satisfactory settlement for our clients, who were able to continue in business. (Approximately 200 hours.)

Sometime later, I was responsible for coordinating the eviction of numerous tenants from two adjoining residential hotels in the same area. I believe I was especially sensitive to the needs of these mostly elderly and long-term tenants and persuaded the firm's client to provide relocation assistance despite having no obligation to do so under California law.

Finally, my work with the Yale Club's Alumni Schools Committee (Central Los Angeles) for over twenty years, exposes me to talented, but often under-privileged, youth who have applied for admission to Yale College. I meet with these students and their parents and give them guidance and encouragement in pursuing college opportunities. I have later mentored a number of students who I have met in the course of these alumni interviews. (Approximately four hours a month.)

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 supported efforts by the California Judges Association and the Los Angeles County Bar Association to discourage memberships in 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).

On January 31, 1997 I submitted my Personal Data Questionnaire (Judicial Appointments) to the Office of Senator Dianne Feinstein. A few weeks later, I was one of ten candidates interviewed by a Selection Committee appointed by Senator Feinstein. I do not know the number of candidates who were pre-screened and not interviewed. The Selection Committee consisted of ten distinguished attorneys and judges from Southern California who represented a wide diversity of views and experiences. Three finalists were selected by the Committee, all of whom were interviewed personally by Senator Feinstein on May 10, 1997. A day after my interview, I was advised by Senator Feinstein that she was recommending my appointment to the federal district court by President Clinton.

Subsequently, I completed several questionnaires and forms which were sent to me by the White House. After completing these documents, on June 2, 1997, I met with representatives of the Office of Policy Development at the Department of Justice. Following this meeting, I was investigated by the Federal Bureau of Investigation and evaluated by the American Bar Association. I met personally with a special agent of the FBI and later with a representative of the ABA's Standing Committee on the Federal Judiciary. On July 31, 1997, I was advised by a White House representative that I had been nominated that day by President Clinton for an appointment to the federal district court.

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.

One of the principal strengths of our form of government is found in the doctrine of separation of powers. Each branch has been structured by the Constitution so that it may function relatively independently of the other branches, yet appropriate restraints are imposed on the work of each branch by the Constitution.

At the risk of over-simplification, it goes without saying that the legislative branch is best equipped and structured to enact and create law on behalf of the people, while the executive branch has a separate independent mandate to implement and enforce the law.

The judicial branch, in the first instance, must exercise restraint with respect to intruding into the work of the other branches. The acts of these branches carry a presumption of Constitutional validity and therefore are entitled to a degree of deference. The judicial branch is ill-equipped to perform anything more than its Constitutional mandate to apply the law.

The courts, and individual judges, must also exercise restraint to insure that they decide only the issues in controversy which have been tendered in a specific case and that decisions are based solely upon the record created by the parties. A court should not go beyond the established record or issue in controversy to resolve what is perceived by the court to be a broader social issue in need of resolution by society.

At all times, whether deciding an issue of fact or an issue of law, a judge should be guided solely by sound principles of law and not individual predilection. Findings of fact should be based on common sense and the trial record, while findings of law should be based upon established case precedent and sound statutory interpretation.

Of course, there will be a few instances where novel issues will be presented which may implicate significant Constitutional principles with ramifications across broad sections of society, or which question the acts of a particular branch of government. In all matters, but especially in these, the judicial branch must proceed cautiously and incrementally, search for precedent in analogous situations, and be guided by principles of judicial restraint. Ultimately, however, the decision of the court must be based upon objective and established principles of law, unswayed by sympathy, prejudice, or public opinion, and impelled by the courage to do what is just and fair in light of all the circumstances.

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

RICHARD W. STORY
FOR JUDGE OF UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Richard Wayne Story

In 1977, I legally changed my first name from Ricky to Richard.

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

Residence address: Gainesville, Georgia 30506

**Office addresses: Mailing:
P. O. Box 1778
Gainesville, Georgia 30503**

**Street:
116 Spring Street
Gainesville, Georgia 30501**

3. Date and place of birth.

Date of birth: May 3, 1953

Place of birth: Augusta, 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 to Nancy Gail Duffey Story. She is employed by the Hall County Board of Education as a teacher at North Hall High School, 4885 Mount Vernon Road, Gainesville, Georgia 30505.

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

LaGrange College, LaGrange, Georgia

Attended: 1971 - 1975

Degree: Bachelor of Arts with a major in English in March, 1975

University of Georgia, School of Law, Athens, Georgia

Attended: 1975 - 1978

Degree: Juris Doctor in June, 1978

6. Employment Record: (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) Georgia Department of Labor

Contingency Clerk

LaGrange, Georgia - March, 1975 - June, 1975

Athens, Georgia - September, 1975 - January, 1977

b) Diversified Wood Products, Inc.

Harlem, Georgia

Sawmill Laborer

June, 1976 - August, 1976

c) University of Georgia Law Library

Athens, Georgia

Student Assistant

September, 1976 - December, 1976

d) Stanley R. Durden, Attorney

Athens, Georgia

Law Clerk

January, 1977 - June, 1978

- e) Kenyon, Hulsey & Oliver
(Now: Hulsey, Oliver & Mahar)
Gainesville, Georgia
Partner
July, 1978 - July, 1986
- f) Gainesville Jaycees (nonprofit)
Gainesville, Georgia
Director / Officer, 1978 - 1984; President, 1982-83
- g) State of Georgia
Gainesville, Georgia
Special Assistant Attorney General, 1980 - 1985
- h) Gainesville-Hall County Girls Club (nonprofit)
Gainesville, Georgia
Director, 1981-88; President, 1985
- i) Gainesville-Hall County Chamber of Commerce (nonprofit)
Gainesville, Georgia
Associate Director, 1984
- j) Hall County United Way (nonprofit)
Gainesville, Georgia
Director, 1985-88, 1994-96
- k) Northeast Georgia Alcohol and Drug Abuse Council (nonprofit)
Gainesville, Georgia
Director, 1985-88
- l) Hall County Juvenile Court
Hall County Courthouse
Gainesville, Georgia
Judge of Juvenile Court
January, 1985 - July, 1986
- m) State of Georgia
Hall County Courthouse
Gainesville, Georgia
Judge of Superior Court
July, 1986 - Present

- n) North Georgia College
Dahlonega, Georgia
Taught Business Law course at Gainesville College Campus
March, 1995 - June, 1995
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.

Named one of Five Outstanding Young Georgians by the Georgia Jaycees in 1987; Gainesville-Hall County Young Man of the Year in 1985; Silver Shovel Award in 1984 for service to Gainesville-Hall County Chamber of Commerce; Honorary Lifetime Member of Gainesville Jaycees; T. Malone Sharpe Award for 1982-83 (given to top 12 local Jaycee presidents in the state); Outstanding State Jaycee Chairman of the Year 1983-84; ARCH Award from University of Georgia Alumni Society for service to the community in 1986; Leadership Hall County, Class of 1983; Leadership Georgia, Class of 1992.

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.

Judicial Council of Georgia: 1996- Present;

Georgia Courts Automation Commission: 1995 - Present;

Council of Superior Court Judges: Ninth District Administrative Judge and member of Executive Committee, 1996- Present; Benchbook Committee, Chair, 1991-96; Automation Committee, 1995 - Present; Legislative Committee, Chair, 1996 - Present;

Council of Juvenile Court Judges: 1985 - 1994; Served on Permanency Planning Committee, Legislative Committee, Purchase of Services Committee, DFACS Liaison Committee, and committee which drafted permanency planning legislation in 1989.

National Council of Juvenile and Family Court Judges: 1985 - 1994;

American Bar Association: 1991 - Present;

State Bar of Georgia: Member of Intrastate Moot Court Competition Committee of Younger Lawyers Section, 1980-81;

Gainesville-Northeastern Bar Association: Law Day Chairman, 1980;

Pro Bono Committee, 1983-84;

Court Liaison Committee, 1990 - Present, Chair, 1990-91;

Alternative Dispute Resolution Committee, Co-Chair, 1991-92.

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:

I am a member of the Georgia Council of Superior Court Judges which lobbies the Georgia Legislature on issues of importance to the Superior Courts.

Other:

I am a member of the Gainesville Rotary Club, Gridiron (a University of Georgia fraternal organization) and Delta Tau Delta (a national fraternity). A copy of the Gainesville Rotary Club bylaws is attached as Attachment "V."

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, admitted July 10, 1978;

Court of Appeals of Georgia, admitted September 12, 1978;

Supreme Court of Georgia, admitted October 2, 1978;

United States District Court, Northern District of Georgia, admitted October 2, 1978;

United States District Court, Middle District of Georgia, admitted February 20, 1985;

United States Court of Appeals, 11th Circuit, admitted October 7, 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 served as the editor of the Georgia Superior Court Benchbook published in 1995. I also wrote the sections on Alternative Dispute Resolution and Trial Procedures. A copy of these sections is attached as Attachments "A" and "B", respectively.

"Ethics and the Moral High Road in the World of Litigation", Verdict, Winter, 1996. This article is a speech which I delivered at a seminar and a copy is attached as Attachment "C".

I do not have copies of any speeches on 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 excellent. My last physical examination was May, 1996.

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 Judge of Superior Courts for the Northeastern Circuit, consisting of Dawson and Hall Counties. I was initially appointed by Governor Joe Frank Harris and began my first term on July 8, 1986. I was elected to four year terms in 1988, 1992, and 1996. The Superior Court is the trial court of general jurisdiction in the State of Georgia.

In 1985, I was appointed Judge of the Juvenile Court of Hall County by Chief Superior Court Judge A. Richard Kenyon. I served from January 1, 1985, until July 7, 1986, when I resigned to become Superior Court judge. The juvenile court's jurisdiction is limited to delinquency, abuse, neglect, and unruly 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 and 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) Willie V. Harwell, Jr. vs. The Continental Insurance Company, Civil Action Number 86-CV-1079-B, Superior Court of Hall County.
Copy of opinion is attached as Attachment "D".

State of Georgia vs. Rudi Lee Bromley, Case Number 87-CR-1393-B, Superior Court of Hall County.

Copy of opinion dated May 24, 1988, regarding motions to suppress evidence seized pursuant to nine search warrants is attached as Attachment "E".

State of Georgia vs. Rudi Lee Bromley, Case Number 87-CR-1393-B, Superior Court of Hall County.

Copy of opinion dated May 25, 1988, regarding a motion to suppress evidence seized in a warrantless search of the defendant's trash is attached as Attachment "F".

State of Georgia vs. Crawford L. Gober, Case Number 90-CR-587-A, Superior Court of Hall County.

Copy of opinion is attached as Attachment "G".

Hardy G. Bagley, et al., vs. Sidney William Shortt, et al., Case Number 88-CV-5648-B, Superior Court of White County.

Copy of opinion is attached as Attachment "H".

State of Georgia vs. Stephen A. Mobley, Case Number 91-CR-243-A, Superior Court of Hall County.

Copy of opinion dated January 11, 1994, denying the defendant's motion for a continuance and for funds to conduct genetic testing of the defendant is attached as Attachment "I".

State of Georgia vs. Stephen A. Mobley, Case Number 91-CR-243-A, Superior Court of Hall County.

Copy of opinion dated January 14, 1994, denying a challenge to the composition of the grand jury is attached as Attachment "J".

State of Georgia vs. Frank Allen Kessler, Case Number 95-CR-448-B, Superior Court of Hall County.

Copy of opinion is attached as Attachment “K”.

Mrs. Jimmy H. Smith vs. The Winder News and Robert W. Adamson, Case Number 93-CV-823-M, Superior Court of Barrow County.

Copy of opinion is attached as Attachment “L”.

George Wangemann, et al. vs. Joyce W. Shubert, Case Number 96-CV-2925-B, Superior Court of Hall County.

Copy of opinion is attached as Attachment “M”.

- (2) Thompson vs. State, 218 Ga. App. 444 (1995).

The defendant entered a plea of guilty and sentencing was deferred. He waived his right to withdraw his plea. Prior to sentencing, the defendant filed a motion to withdraw the plea, and the motion was denied. The Court of Appeals reversed, holding that a defendant has an unqualified right to withdraw a plea at any time before judgment is pronounced.

American Transport, Inc. vs. Thompson, 218 Ga. App. 54 (1995).

Plaintiff filed suit against American Transport, Inc., a Michigan corporation. After the statute of limitations had run, Plaintiff learned that she had made a mistake and should have sued American Transport, Inc., a Pennsylvania corporation. Plaintiff amended her complaint to add the Pennsylvania corporation as a party. The corporation moved to dismiss and the motion was denied. The Court of Appeals held that all the requirements for relation back of the amendment had not been met and reversed based on the statute of limitations. The trial court opinion is attached as Attachment “N”.

Bagley vs. Shortt, 261 Ga. 762 (1991).

In this wrongful death action, Plaintiff was awarded \$14,000,000.00 in punitive damages. Pursuant to a motion filed by defendants, the trial court upheld the punitive damage cap in the Tort Reform Act and reduced punitive damages to \$1,000,000.00, \$250,000.00 for each plaintiff against each defendant. The Supreme Court affirmed the constitutional ruling but held that the cap was \$250,000.00 per plaintiff regardless of the number of defendants and reduced the punitive damages to \$500,000.00. The trial court opinion is attached as Attachment “H”.

Hackel vs. Bartell, 207 Ga. App. 563 (1993).

Defendant's motion for summary judgment in this personal injury case was denied. The Court of Appeals reversed, holding that the intervening negligence of the plaintiff was the sole proximate cause of her injury. The trial court opinion is attached as Attachment "O".

Kinsey vs. Elrod, 206 Ga. App. 375 (1992).

Summary Judgment was granted to the defendant in this personal injury case based on a release plaintiff had signed releasing another driver involved in the collision. The Court of Appeals held that the defendant had not proven the release was intended to cover her and reversed the decision. The trial court opinion is attached as attachment "P".

Addley vs. Beizer, 205 Ga. App. 714 (1992).

In a case of first impression, the Court of Appeals held that the attorney for a corporation does not, by virtue of that fact, serve as attorney for the officers of the corporation in their individual capacities. The jury verdict for the plaintiff was reversed.

State vs. Watson, 205 Ga. App. 313 (1992).

The Court of Appeals reversed a decision granting the defendant's motion to suppress. The Court held that under the "totality of the circumstances," there was a sufficient basis for a stop of the defendant. The trial court's opinion is attached as Attachment "Q".

Papp vs. Hall County, 262 Ga. 72 (1992).

Summary judgment was granted to the defendant based on sovereign immunity under a 1991 Amendment to the Georgia Constitution. The Supreme Court held that the 1991 Amendment was not to be retroactively applied and reversed. The trial court's opinion is attached as Attachment "R".

Babb vs. Cook, 203 Ga. App. 437 (1992).

Plaintiffs filed an action for loss of consortium and personal injuries. The trial court granted a summary judgment based on the statute of limitations. The Court of Appeals affirmed as to the personal injury claim (2 year statute of limitations) but reversed as to the loss of consortium (4 year statute of limitations). The trial court's opinion is attached as Attachment "S".

Williams vs. State, 261 Ga. 640 (1991).

The defendant's conviction for possession of cocaine with intent to distribute was reversed based on the improper admission of evidence of a similar

transaction. Evidence was admitted at trial by introduction of a certified copy of a previous conviction of defendant. The Court established three affirmative showings required of the State before such evidence should be admitted.

Titan Indemnity Company vs. Hall County, 202 Ga. App. 38 (1991).
The Court of Appeals affirmed the denial of the plaintiff's motion for summary judgment. However, the Court held that the trial court erred in its interpretation of the insurance contract and reversed the summary judgment of defendant. The trial court opinion is attached as Attachment "T".

Womack Industries, Inc. vs. B & A Equipment Company, 199 Ga. App 660 (1991).
The Court of Appeals reversed a jury verdict finding the plaintiff's lien valid. The Court held that the facts demanded a contrary conclusion and that a verdict should have been directed in favor of defendant.

Buffington vs. Sigler, 259 Ga. 478 (1989).
The Supreme Court reversed a jury verdict which had required specific performance of a sale of property. The Court held that the plaintiff failed to comply with the terms of the sale and was not entitled to specific performance.

Georgia Real Estate Commission vs. Syfan, 192 Ga. App. 3 (1989).
This case went to the Superior Court on appeal from the Georgia Real Estate Commission which had revoked Syfan's license for including false information on his license application. However, Syfan had provided the correct information to the Staff of the Commission but pursuant to their direction did not include it on his application. The Superior Court reversed the Commission's decision to revoke the license. The Court of Appeals reversed the Superior Court holding that the Commission had the discretion to revoke the license even in light of the mitigating circumstances. The trial court's opinion is attached as Attachment "U".

Van Huynh vs. State, 258 Ga. 663 (1988).
A motion for new trial was granted to defendant after he was convicted of malice murder and other offenses. At the new trial, the defendant was again convicted of malice murder and other offenses. However, he was also convicted of felony murder. Because the defendant had not been convicted of felony murder in his first trial, the Supreme Court reversed the conviction on that charge. The malice murder and other convictions were affirmed.

- (3) State vs. Bromley, Case Number 87-CR-1393-B, Superior Court of Hall County. A copy of opinion is attached as Attachment "F".
Appellate decision: Bromley vs. State, 259 Ga. 377 (1989).

Bagley vs. Shortt, Case Number 88-CV-5648-B, Superior Court of White County. A copy of opinion is attached as Attachment "H".
Appellate decision: Bagley vs. Shortt, 261 Ga. 762 (1991).

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.

In 1980, Attorney General Arthur K. Bolton appointed me as a Special Assistant Attorney General for the State of Georgia. I also served under Mr. Bolton's successor, Michael J. Bowers, until December 31, 1984. I have never been an unsuccessful candidate 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 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;

After graduation from law school, I became a partner in the law firm of Kenyon, Hulsey and Oliver in July, 1978.

The present name of the firm is Hulsey, Oliver & Mahar and the address is 200 E.E. Butler Parkway, Gainesville, Georgia 30501.

I remained with the firm until I went on the Superior Court bench in July, 1986. In 1980, I was appointed a special assistant attorney general for the State of Georgia, but remained a member of the law firm. I handled child support enforcement cases and abuse and neglect cases. Effective January 1, 1985, I was appointed Juvenile Court Judge of Hall County, Hall County Courthouse, Gainesville, Georgia. This was a part-time position. Effective July 8, 1986, I was appointed Judge of Superior Court for the Northeastern Circuit. I have served in this position full-time since then.

- 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?

Our firm had a general civil practice which included insurance defense, business law, governmental law, and a limited plaintiff's practice. I worked primarily in litigation, concentrating on insurance defense, zoning, and civil rights. In 1980, I was appointed a Special Assistant Attorney General for the State of Georgia representing offices of the Department of Family and Children Services in Northeast Georgia. I also handled child support enforcement cases for the state. I resigned my position as a Special Assistant Attorney General at the end of 1984 before becoming a part-time juvenile court judge, January 1, 1985. I remained a member of the law firm until I went on the Superior Court bench in July, 1986.

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

My typical former clients included insurance companies, small businesses, Hall County government, and the State of Georgia.

- 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 - 20%
 (b) state courts of record - 70%
 (c) other courts - 10%
3. What percentage of your litigation was:
 (a) civil - 95%
 (b) criminal - 5%
4. State the number of cases in court of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
- 95 - 80 as sole counsel, 15 as associate.
5. What percentage of these trials was:
 (a) jury - 10%
 (b) non-jury - 90%

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-

Rex Armour, et al. vs. E.L. England, et al., Civil Action CV-79-32-C, (1979) U.S.D.C., N.D. Ga., Judge William C. O'Kelley presiding. Voluntary dismissal by plaintiffs was filed January 5, 1981.

Plaintiff's counsel: Michael A. Mogill, 150 South College Street, Carlisle, Pennsylvania. 17013, (717) 240-5283 and Eric G. Kocher, 161 Spring Street, S.W., Atlanta, Georgia 30303, (404) 681-0680

Defendants' counsel: I represented the defendants along with Julius M. Hulsey, 200 E.E. Butler Parkway, Gainesville, GA 30501, (770) 532-6312

Inmates at the Hall County Jail brought a class action suit against the sheriff and jailer. We represented all of the defendants. The suit complained about conditions which existed in the Hall County Jail. Specifically, the plaintiffs alleged that the jail was unsafe and unsanitary, that inmates were denied recreation, access to legal materials, and access to medical care, and that inmates were subjected to arbitrary discipline. I engaged in lengthy negotiations to settle all of the issues in the case. The settlement included the development of operating rules for the jail, construction of an exercise yard and creation of a law library for inmates. The case was voluntarily dismissed by the plaintiffs.

-2-

John Alfred Davis vs. INA, Edward L. England, et al., Civil Action Number C80-1796A and C81-01G, (1980), U.S.D.C. N.D. Ga., Judge William C. O'Kelley, presiding. The trial began November 2, 1981.

Plaintiff's counsel: Richard A. Gordon, Suite 520, 400 Interstate North Parkway, Atlanta, Georgia 30339, (770) 952-2900

Defendants' counsel: I represented the individual defendants along with Julius M. Hulsey, 200 E.E. Butler Parkway, Gainesville, Georgia 30501, (770) 532-6312 and the insurance company was represented by Sewell K. Loggins, 5605 Glenridge Drive N.E., Suite 900, Atlanta, Georgia 30342, (404) 256-0700.

Plaintiff sought damages for injuries which he alleged he received during an arrest by defendants. After he was stopped by two sheriff's deputies, the plaintiff fled. He alleged that when the deputies caught him, they committed an assault and battery upon him and inflicted injuries, including a ruptured bladder. In a jury trial, a verdict was rendered in favor of the defendants.

-3-

American Booksellers Association, Inc., et al. vs. Hinson McAuliffe, et al., Civil Action Number C81-1193A, (1981), U.S.D.C., N.D. Ga., Judge Horace T. Ward, presiding. The motion for summary judgment was granted October 23, 1981.

Plaintiffs' counsel: J. Kirk Quillian and William N. Withrow, Jr. Nationsbank Plaza, Suite 5200, 600 Peachtree Street, N.E., Atlanta, Georgia 30308, (404) 885-3204; Michael A. Bamberger, 425 Park Avenue, New York, New York 10022, (212) 371-5900.

Defendants' counsel: I represented the Sheriff and Solicitor of Hall County along with Julius M. Hulse, 200 E.E. Butler Parkway, Gainesville, Georgia 30501, (770) 532-6312; other defendants were represented by Roy Mays, 170 Mitchell Street, S.W., Atlanta, Georgia 30303, (404) 614-4570, Gail C. Flake, 556 North McDonough Street, Room 504, Decatur, Georgia 30030, (404) 371-2909; Thomas O. Davis, Suite 201, 545 North McDonough Street, Decatur, Georgia 30030, (404) 378-3633; Roy E. Barnes, 166 Anderson Street, Suite 225, Marietta, Georgia 30060, (770) 424-1500; John H. Smith, 301 Green Street, Suite 200, Gainesville, Georgia 30501, (770) 536-3381; Paul C. McCommon, III, P. O. Box U, Macon, Georgia 31202, (912) 752-3511; Tony L. Axam, 1280 West Peachtree Street, Suite 310, Atlanta, Georgia 30309, (404) 524-2233; Jerry Gentry, 100 Cherokee Street, Suite 595, Marietta, Georgia 30090, (770) 528-4000; James A. Henderson, P. O. Box 223, Lawrenceville, Georgia 30246, (770) 822-8609.

A suit to declare Act 785, Ga. Code Ch. 26-35 unconstitutional and to enjoin its enforcement was brought by a number of publishers and booksellers. The act sought to restrict distribution or display to minors of materials containing descriptions or depictions of "illicit sex or

sexual immorality.” Along with Julius Hulsey, I represented the Sheriff and Solicitor of Hall County. The Court enjoined the enforcement of the act and ultimately declared it unconstitutional.

-4-

Clyde Adams vs. Danny Bishop, et al., Civil Action Number C81-144G, (1981), U.S.D.C., N.D. Ga., Judge William C. O’Kelley, presiding. Summary judgment was granted to two defendants on December 6, 1982. A judgment was entered on a jury verdict in favor of the remaining defendant on April 4, 1983.

Plaintiff’s counsel: Jane Kent-Plaginos, 111 Dahlonega Street, Cumming, Georgia 30130, (770) 887-2321.

Defendants’ counsel: I represented the two sheriff’s deputies along with Julius M. Hulsey, 200 E.E. Butler Parkway, Gainesville, Georgia 30501, (770) 532-6312 and Edward L. Hartness, 620 Spring Street, Gainesville, Georgia 30501, (770) 535-7000; the District Attorney was represented by Daryl A. Robinson, 132 State Judicial Building, Atlanta, Georgia 30334, (404) 651-6194.

The Plaintiff filed this action alleging that his motorcycle had been unlawfully seized by the defendants. The motorcycle was seized by Hall County Sheriff’s deputies during a routine traffic stop of a truck which had the motorcycle in the cargo area. The identification numbers on the motorcycle had been altered. The motorcycle was seized and subsequently released to a third party who submitted proof of ownership to the district attorney. Summary judgment was granted to the defendants on all claims except one against Deputy Bishop who was the officer who released the motorcycle to the third party. That claim went to trial before a jury which found in favor of Deputy Bishop.

-5-

Hall County vs. Agri-Bio Corporation, 249 Ga. 112 (1982). Judge James E. Palmour, III, presiding trial judge. The case was decided by the trial court on July 17, 1981 and by the Supreme Court on March 2, 1982.

Plaintiff's counsel: I represented Hall County along with Julius M. Hulsey, 200 E. E. Butler Parkway, Gainesville, Georgia 30501, (770) 532-6312.

Defendant's counsel: Frank W. Armstrong, III, 200 Main Street, S.W., 6th Floor, Hunt Tower, Gainesville, Georgia 30501, (770) 536-0101.

Agri-Bio sought to rezone a tract of land to planned industrial development. The tract was located in the center of a residential subdivision. The Board of Commissioners denied the rezoning application. However, the trial court held that the zoning of the property was unconstitutional and directed the county commissioners to rezone the property. On appeal, the County contended that the applicant had failed to properly raise the issue of constitutionality before the county commissioners and that the evidence did not support the findings of the trial court. The Supreme Court reversed the trial court holding that the applicant had failed to make a proper constitutional challenge before the commissioners.

-6-

Eddie Howington vs. Hall County Planning Commission, Civil Action Number K-81-23,885, (1981), Superior Court of Hall County, Judge A. R. Kenyon, presiding. The case was heard on April 12, 1982, and decided on August 26, 1982.

Plaintiff's counsel: James M. Walters, 311 Green Street, N.W., Gainesville, Georgia 30501, (770) 536-3264.

Defendant's counsel: I represented the defendant.

The plaintiff appealed a ruling by the Planning Commission which had denied his request to locate a go-cart track on a parcel of land. The Court affirmed the Planning Commission decision holding that the plaintiff had not properly raised constitutional questions before the Commission and that the Commission did not abuse its discretion.

-7-

William G. Harden vs. E. L. England, et al., Civil Action Number C82-25G, (1982), U.S.D.C., N.D. Ga., Judge William C. O'Kelley, presiding. A partial summary judgment was granted to the defendants on February 7, 1983. The bench trial was held May 26, 1983. The plaintiff's application to the Eleventh Circuit for leave to appeal in forma pauperis was denied by the Eleventh Circuit on December 7, 1983.

Plaintiff's counsel: F. Robert Raley, 743 Walnut Street, Macon, Georgia 31208, (912) 745-1174

Defendants' counsel: I represented the sheriff, the jailer and the county commissioners.

Plaintiff brought suit against the Hall County Sheriff and others complaining about conditions at the Hall County Jail. Plaintiff contended that he had been placed in solitary confinement by jailers without the benefit of a disciplinary proceeding. He contended that the cell in which he was placed was unheated, had no natural light, and was infested with roaches. The plaintiff further contended that when he was moved from solitary to the general jail population, that he was subjected to violence from other inmates and that jail personnel were not complying with the jail's operating rules. Motions to dismiss and for summary judgment were granted to some defendants. The case was tried before the Court without a jury and a judgment was rendered in favor of the remaining defendants.

-8-

Jerry Smallwood vs. Billy Mooney, et al., Civil Action Number C82-59G, (1982) U.S.D.C., N.D. Ga., Judge William C. O'Kelley, presiding. Judgment was entered for the defendants on a directed verdict on April 5, 1983.

Plaintiff's counsel: Charles W. Smith, Jr., 210 Washington Street, N.W., Gainesville, Georgia 30501, (770) 532-7888.

Defendants' counsel: I represented the individual defendants along with Julius M. Hulsey, 200 E.E. Butler Parkway, Gainesville, Georgia 30501, (770) 532-6312; the insurance carrier was represented by James A. Dunlap, 405 Washington Street, N.E., Gainesville, Georgia 30501, (770) 532-7211.

Plaintiff filed suit seeking damages for injuries which he alleged he sustained when a Hall County jailer intentionally closed a cell door on his hand. The plaintiff asserted causes of action under 42 USC §1983 and under a state law claim of battery. Plaintiff sought to recover against the jailer who injured him as well as against supervisory personnel, including the sheriff. The federal claims against the supervisory personnel were dismissed on pretrial motions. The plaintiff then sought to voluntarily dismiss his state court claims against those defendants so that he could refile his case in state court. We opposed the motion and the motion was denied. The case went to trial and the defendants were granted a directed verdict in their favor.

-9-

Jasper Johnson vs. Richard Mecum, et al., Civil Action Number C84-030G, (1984) U.S.D.C., N.D. Ga., Judge William C. O'Kelley, presiding. The case was tried before a jury beginning March 14, 1985.

Plaintiff's counsel: Robert Remar, 2600 The Grand, 75 Fourteenth Street, Atlanta, Georgia 30309, (404) 873-8000.

Defendants' counsel: I represented all of the defendants along with Julius M. Hulsey, 200 E.E. Butler Parkway, Gainesville, Georgia 30501, (770) 532-6312.

Plaintiff brought this action alleging that he had been subjected to cruel treatment by the staff of the Hall County Jail when he was stripped and placed in restraints in a padded cell. The case was tried before a jury and verdicts were rendered against each of the defendants in the amount of \$1.00 each.

-10-

Randall Long vs. Richard V. Mecum, et al., Civil Action Number MD84-13885, (1984), Hall County Superior Court, Judge Robert L. Scoggin, presiding. The case was heard on September 8, 1984 and decided November 16, 1984. An application for discretionary appeal was denied by the Georgia Court of Appeals on January 9, 1985.

Plaintiff's counsel: Edward L. Hartness, 620 Spring Street, Gainesville, Georgia 30501, (770) 535-7000.

Defendants' counsel: I represented the defendants who were the sheriff and members of the civil service board and county commissioners.

The case came to Superior Court on a writ of certiorari issued to the Hall County Civil Service Board. The plaintiff was discharged from the sheriff's department for engaging in sexual relations with a young woman who was a member of the department's Explorer Post. He challenged his discharge on constitutional and procedural grounds. The decision of the civil service board was affirmed. The plaintiff's application to the Court of Appeals for a discretionary appeal was denied.

Because all of the foregoing cases are more than ten years old, I am providing the following list of attorneys who have had more recent contact with me in my capacity as a judge:

William M. Brownell, Jr.
410 Bradford Street, N.W.
Gainesville, Georgia 30501
(770) 534-7700

R. Thomas Jarrard
410 Bradford Street, N. W.
Gainesville, Georgia 30501
(770) 534-7700

J. David Burroughs
P. O. Box 324
Gainesville, Georgia 30503
(770) 531-0446

James E. Mahar, Jr.
200 E. E. Butler Parkway
Gainesville, Georgia 30501
(770) 532-6312

John A. Dickerson
 P. O. Drawer 1408
 Toccoa, Georgia 30577
 (706) 886-3178

Mr. David A. Fox
 210 Washington Street, N. W.
 Gainesville, Georgia 30501
 (770) 534-7386

Steven P. Gilliam
 301 Green Street, N. W.
 Gainesville, Georgia 30501
 (770) 536-3381

Henry D. Green, Jr.
 1 Midtown Plaza, Suite 800
 1360 Peachtree Street, N.E.
 Atlanta, Georgia 30309
 (404) 870-8000

Kelly Miles
 301 Green Street, N.W.
 Gainesville, Georgia 30501
 (770) 536-3381

Bonnie Oliver
 220 E. E. Butler Parkway
 Gainesville, Georgia 30501
 (770) 532-6300

Charles W. Stephens
 210 Washington Street, N.W.
 Gainesville, Georgia 30501
 (770) 536-7619

J. Douglas Stewart
 Hunt Tower
 Gainesville, Georgia 30501
 (770) 536-0101

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 experience on the Superior Court bench has given me the opportunity to play a role in several innovations in the administration of justice in our circuit. I am particularly proud of the following programs for which I had primary responsibility.

In 1991, in conjunction with the local bar, we designed a mediation program for domestic relations cases in the superior courts of our circuit. Because of the success of the program, we obtained a grant which allowed us to expand the program to other cases in other courts in our circuit. This program has now expanded to the entire Ninth Judicial District.

Prior to July, 1992, our circuit consisted of four counties, three of which were rural and had small caseloads. Because of the limited caseloads in the smaller counties, the judges of the circuit did not hold court in those counties very often. We learned

that this situation was causing delays in appointing counsel for indigent defendants. I developed a plan which required that persons booked into custody be interviewed for counsel at booking and that these applications be immediately forwarded to a judge. This system assured early appointment of counsel to eligible persons.

The increase in criminal cases over the past few years caused our criminal docket to fall behind. In an effort to expedite the entry of pleas as well as to operate more efficiently for lawyers, litigants, and the courts, I developed a new calendaring system that assured a timely opportunity for entry of pleas and ended the necessity of the lawyer and defendant in every criminal case having to come to every week of 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 arrangements you have made to be compensated in the future for any financial or business interest.

I am a member of the Superior Court Judges Retirement System and will be eligible to begin receiving benefits when I reach the age of sixty years.

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 financial or business relationships which will cause a conflict of interest. Should any future conflicts develop, I would recuse myself in any case involving a conflict of interest in accordance with the Code of 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.

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, Attachment "W".

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

See attached financial worth statement, Attachment "X".

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.

While I was in high school and college, I worked on several campaigns for my father, Lawrence Farr Story, for county commissioner in Columbia County, Georgia. I canvassed neighborhoods, attended political functions, and passed out literature in shopping centers and at approaches to polling places. His campaigns were in 1968, 1972, and 1976.

In 1976, I worked as a volunteer in the presidential campaign of Jimmy Carter by distributing campaign literature in Athens, Georgia.

In 1982, I served as Hall County coordinator for the campaign of Max Cleland for Secretary of State for the State of Georgia. I hosted a fund raiser, helped distribute campaign information in the community, and directly solicited votes.

AD-10
Rev. 1/97

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1996

Report Required by the Ethics
Reform Act of 1989, Pub. L. No.
101-194, November 30, 1989
(5 U.S.C. App. 4, 101-117)

1. Person Reporting (Last name, first, middle initial) Story, Richard W.	2. Court or Organization U.S. District Court Northern District of Georgia	3. Date of Report 9/18/97
4. Title (Article III judges indicate active or senior status. Magistrate judges indicate full- or part-time) U.S. District Judge - Active Status	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 9/15/97 ___ Initial ___ Annual ___ Final	6. Reporting Period 1/1/96 - 8/20/97
7. Chambers or Office Address Hall County Courthouse 116 Spring Street Gainesville, Georgia 30501	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions)	
Executor	Erline H. Story Estate
Partner	Green Street Club
Director	United Way of Hall County

II. AGREEMENTS. (Reporting individual only; see pp. 14-17 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements)	
1996-97	Superior Court Judges Retirement Plan (no control)
_____	_____
_____	_____

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (Yours, Not Spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		
1 1996-97	State of Georgia	\$ 13,372
2 1996-97	Hall County	\$ 20,475
3 1996-97	Dawson County	\$ 2,212
4 1996-97	Hall County Board of Education (S)	\$ _____
5 _____	_____	\$ _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Richard W. Story	Date of Report 9 /18 /97
--	-----------------------------

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. 26-29 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. 30-33 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. 34-36 of Instructions.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE*</u>
<input type="checkbox"/>	NONE (No reportable liabilities)		
1	Gainesville Bank & Trust (J)	Personal Loan	K
2			
3			
4			
5			
6			

*Value Codes: J-\$15,000 or less F=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000
 G=\$50,001-\$1,000,000 P=\$1,000,001-\$5,000,000 R=\$5,000,001-\$25,000,000
 Q=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Richard W. Story

Date of Report
9 /18 /97

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets (including trust assets) Indicate where applicable, owner of the asset by using the parenthetical "(H)" for joint ownership of reporting individual and spouse "(S)" for separate ownership or spouse "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Am 1 Code A-P	Type (A-S), div, rent or int	Value1 Code (A-W)	Value Method3 Code (A-W)	(1) Type (e.g. buy, sell, merge, redep-tion)	(2) Date Month-Day	(3) Value2 Code (A-W)	(4) Gain1 Code (A-W)	(5) Identity of Buyer/Seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
Residence - Harlem, Columbia Co., GA-Erlene Story Estate	None	None	L	W	None				
Common - Gainesville Bank and Trust	A	Div.	J	W	None				
Common - Wal-Mart Store	None	None	J	W	None				
Common-Regions Financial Co	A	Div	J	W	None				
Rental Prop.-Dean Street	D	Rent	K	W	None				
Rental Prop.-Richardson St.	D	Rent	K	W	None				
Note - Barnes	D	Int	L	T	None				
Account-Edward D. Jones	C	Int	K	T	None				
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
1 Inc/Div Cds (Col: B1-D4)	A=01,000 or less F=999,001-999,000	B=01,001-99,500 G=999,001-99,000,000	D=01,001-99,000 E=99,001-99,000,000	H=01,001-99,000,000 I=99,001-99,000,000 or more					
2 Val Cds (Col: C1-D3)	J=\$25,000 or less K=\$25,001-\$1,000,000 L=\$25,001,001-999,000,000	M=\$100,001-\$50,000,000 N=\$50,000,001-\$99,000,000 O=\$99,000,001 or more	P=\$100,001-\$50,000,000 Q=\$50,000,001-\$99,000,000 R=\$99,000,001 or more	S=\$100,001-\$50,000,000 T=\$50,000,001-\$99,000,000 U=\$99,000,001-\$99,000,000,000 V=\$99,000,001-\$99,000,000,000 or more					
3 Val Mth Cds (Col: C1)	S=Appraisal T=Other Value		R=Cost real estate only W=Other						
							S=Assessment W=Estimated		T=Cash/Market

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Richard W. Story	9 /18 /97

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part VII, 2-8 are all held in the name of the Green Street Club, an investment club of which I was a member during the reporting period, but from which I am withdrawing.

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. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Richard W. Story

Date

9/18/97

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. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.,
Washington, D.C. 20544

FINANCIAL STATEMENT

RICHARD W. STORY
NET WORTH
June 1, 1997

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 00	Notes payable to banks—secured		
U.S. Government securities—add schedule		0	Notes payable to banks—unsecured	8 900	00
Listed securities—add schedule		0	Notes payable to relatives		
Unlisted securities—add schedule		0	Notes payable to others		
Accounts and notes receivable:		0	Accounts and bills due		
Due from relatives and friends		0	Unpaid income tax		
Due from others		0	Other unpaid tax and interest		
Doubtful		0	Real estate mortgages payable—add schedule	265 30	00
Real estate owned—add schedule	300	000 00	Chattel mortgages and other liens payable	12 00	00
Real estate mortgages receivable			Other debts—itemize:		
Autom and other personal property	75	000 00	Credit cards - consumer	18 750	00
Cash value—life insurance					
Other assets—itemize:					
Green St. Club—investment club (Balance sheet attached)	6	233 00			
			Total Liabilities	304 970	00
			Net Worth	81 263	00
Total Assets	386	233 00	Total liabilities and net worth	386 233	00
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	--		Are any assets pledged? (Add schedule.)	Yes	
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	--				

Attachment "X"

GREEN STREET CLUB
BALANCE SHEET
AT FAIR MARKET VALUE
MARCH 31, 1997

	Balance at March 31, 1997	Write Up (Down)	Fair Market Value at March 31, 1997
ASSETS			
Current Assets:			
Edward D. Jones	\$ 36,031.63	-	36,031.63
Gainesville Bank & Trust	2,263.27	-	2,263.27
Stock - Gainesville Bank & Trust	2,000.00	2,500.00	4,500.00
Stock - Wal-Mart Stores	3,195.70	(295.70)	2,900.00
Stock - Regions Financial Co.	2,168.95	2,277.05	4,446.00
Total Current Assets	<u>45,659.55</u>	<u>4,481.35</u>	<u>50,140.90</u>
Property & Equipment:			
Dean Street Land	5,000.00	-	5,000.00
Dean Street House	24,836.50	-	24,836.50
Dean Street Equipment	560.00	-	560.00
Richardson Street Land	2,000.00	-	2,000.00
Richardson Street House	36,366.00	-	36,366.00
Accumulated Depreciation	(19,079.15)	19,079.15	-
Total Rental Property	<u>49,683.35</u>	<u>19,079.15</u>	<u>68,762.50</u>
Other Assets:			
N/R - Chicopee House	59,857.43		59,857.43
Total Other Assets	<u>59,857.43</u>	-	<u>59,857.43</u>
TOTAL ASSETS	<u>155,200.33</u>	<u>23,560.50</u>	<u>178,760.83</u>
LIABILITIES:			
Deferred Gain on Sale of Home	21,719.39		21,719.39
N/P - Gainesville Bank & Trust	85,553.50		85,553.50
Total Liabilities	<u>107,272.89</u>	-	<u>107,272.89</u>
PARTNERS' EQUITY:			
Partners' Capital	47,927.44	4,564.00	52,491.44
TOTAL LIABILITIES & PARTNERS' EQUITY	<u>155,200.33</u>	<u>4,564.00</u>	<u>159,764.33</u>
EACH PARTNER'S 1/8 SHARE OF CAPITAL			<u>6,561.43</u>
95% OF EACH PARTNER'S 1/8 SHARE OF CAPITAL			<u>6,233.36</u>

REAL ESTATE SCHEDULE

Residence in Hall County, Georgia

REAL ESTATE MORTGAGE SCHEDULE

SunTrust Bank	\$178,329.00	Balance
SunTrust Bank	\$67,991.00	Balance
Gainesville Bank & Trust	\$19,000.00	Balance

PLEDGED ASSETS SCHEDULE

Residence -- Hall County, GA

1995 Ford Windstar

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 practicing law, I was a volunteer attorney for the Hall County Pro Bono Program and served on the Pro Bono Committee for the local bar. I also did volunteer legal work for various local civic organizations including the Girls Club, Pro Musica and Jaycees. I have participated in numerous community service projects through the Jaycees and United Way. I helped lead the efforts which resulted in the acquisition of a new facility for the Gainesville-Hall County Girls Club. This work included a substantial capital fund drive and design and renovation of the New Holland Recreation Center for the club. I have been an active member of Gainesville First United Methodist church since 1978 and have worked in the various programs and ministries of the church. Since 1990, I have coached youth girls' basketball. The last two years I have also coached boys' clinic basketball and T-ball.

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 a member of Delta Tau Delta and Gridiron which are social fraternal organizations at LaGrange College and the University of Georgia, respectively. I was a member of the Jaycees from 1978 until 1988. In 1985, when serving as state legal counsel for the Georgia Jaycees, I drafted and proposed amendments to the bylaws of that organization which opened membership to women. Those bylaw amendments were adopted and women were admitted to the organization. I am a member of the Gainesville Rotary Club. I was first invited to join the club in the late 1980's. At that time, the club admitted only men into its membership, and I declined the invitation because of this policy. Less than a year later, the club amended its bylaws and admitted women. Shortly thereafter, I was invited to join Rotary and accepted the invitation.

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. Yes. Senator Max Cleland named a fourteen member committee to review applicants for this position and to recommend up to five qualified applicants to him. I submitted an application and writing sample to that committee. I appeared before the committee for a personal interview and was one of five persons recommended by the committee to Senator Cleland. I had a personal interview with Senator Cleland and was selected by him for recommendation to the President. Since the recommendation, I have been interviewed by attorneys with the Justice Department, Agent Wayne Martin of the Federal Bureau of Investigation and Sylvia Walbolt of the American Bar Association's Standing Committee on 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 government 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 judiciary is to resolve the disputes of litigants properly before the Court. A judge must make decisions based on the facts as they are proved and the applicable law. Judges are bound by judicial precedent and legislative enactments controlling the issues before them. The separation of powers doctrine contemplates separate and distinct roles for each branch of government.

**UNITED STATES SENATE
QUESTIONNAIRE FOR JUDICIAL NOMINEES**

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used):
Christine Odell Cook Miller; Christine Cook Nettesheim; Christine Odell Cook.
2. Address: List current place of residence and office address.

Washington, DC 20007; U.S. Court of Federal
Claims, 717 Madison Place, N.W., Washington, DC 20005.
3. Date and place of birth: August 26, 1944; Oakland, CA.
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business addresses).

Married. Dennis F. Miller, self-employed, President, Science and Technology International, Inc., 1535 28th Street, N.W., Washington, DC 20007; Lt. Col., U.S. Army Reserves.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Undergraduate: Stanford University, Stanford, California
1962-1966; B.A. Political Science, June 12, 1966;

Law School: University of Utah College of Law, Salt Lake City, Utah, 1966-1969; J.D, June 6, 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, or, proprietor, or employee since graduation from college.

- 1) Summer 1967 – Law Clerk to Leo M. Cook, Esq. (father)
P.O. Box 418
Ukiah, CA 95482
- 2) June 1969-June 1970 -- Clerk to Honorable David T. Lewis
(later Chief Judge)
United States Court of Appeals for the Tenth Circuit
4201 Federal Building
Salt Lake City, UT 84111
- 3) August 1970-May 1971 -- Trial Attorney
U.S. Department of Justice
Foreign Litigation Unit
Civil Division
10th & Constitution Ave., N.W.
Washington, DC 20530
- 4) May 1971-April 1972 -- Trial Attorney
U.S. Department of Justice
Court of Claims Section
Civil Division
10th & Constitution Ave., N.W.
Washington, DC 20530
- 5) April 1972-February 1974 -- Trial Attorney
Federal Trade Commission
Bureau of Consumer Protection
Division of National Advertising
6th & Pennsylvania Ave., N.W.
Washington, DC 20580
- 6) February 1974-March 1976 -- Associate, Litigation
Hogan & Hartson
555 13th St., N.W.
Washington, DC 20005
- 7) March 1976-November 1978 -- Special Counsel
Pension Benefit Guaranty Corp.
1200 K St., N.W.
Washington, DC 20005

- 8) November 1978-March 1980 -- Assistant General Counsel
U.S. Railway Association
955 L'Enfant Plaza North, S.W.
Washington, DC 20595
- 9) March 1980-January 1983 -- Associate (Partner Jan. 1983)
Shack & Kimball, P.C.
1129 20th St., N.W.
Washington, DC 20036 (firm dissolved; current address)
Thomas G. Shack, Jr., P.C.
1150 Connecticut Ave., N.W., Suite 900
Washington, DC 20036
- 10) January 1983-present -- Judge
United States Court of Federal Claims
717 Madison Place, N.W.
Washington, DC 20005
- 11) March 1996-Present -- Board of Governors
March 1997-Present -- Assistant Secretary
University Club of Washington, DC
1135 16th Street, N.W.
Washington, DC 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 never 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.
- Comment Editor and member of the Board of Editors of the Utah Law Review; Order of the Coif; Reginald Heber Smith Fellowship (full scholarship 1968 and 1969); Co-founder and Vice-President, George Washington American Inn of Court.

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.

I am currently a member of the California State Bar Association and the Bar Association of the District of Columbia. I was a member of the Utah State Bar Association and the American Bar Association. I have been a member of the ABA's International and Litigation Sections and participated in symposia for the International Section in connection with the Iranian representation.

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 lobby. I belong to the University Club of Washington, DC.

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 the State of California, June 10, 1982;
 District of Columbia Court of Appeals, Apr. 17, 1972;
 Utah Supreme Court, Sept. 30, 1969;
 United States Supreme Court, Aug. 8, 1980;
 United States Court of Claims, May 6, 1971;
 United States Court of Appeals for the Third Circuit, Feb. 16, 1982;
 United States Court of Appeals for the Fifth Circuit, Oct. 1, 1981;
 United States Court of Appeals for the Tenth Circuit, Dec. 8, 1969;
 United States Court of Appeals for the Eleventh Circuit, Oct. 1, 1981;
 United States Court of Appeals for the District of Columbia Circuit, Dec. 12, 1980.

I have also been admitted to other federal courts of appeal and various federal district courts throughout the United States, the records of which I do not have readily available.

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.

Note, Warrant Procedure Applicable to Municipal Code-Enforcement Inspections of Private Dwellings and Commercial Structures, 1967 UTAH L. REV. 589. I have no copies of speeches. Please see attached list of cases.

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

My health is excellent. I had a physical examination on October 13, 1997.

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 a judge on the United States Court of Federal Claims. The court's jurisdiction encompasses Fifth Amendment takings, patent and copyright claims, government contracts, suits for tax refunds, National Childhood Vaccine Injury Act appeals, Native American claims, and military and civilian pay 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 listed were not officially reported, please provide copies of the opinions.

(1) Citations for ten most significant opinions:

International Business Machines Corp. v. United States, 1997 WL 456656 (Fed. Cl., Aug. 8, 1997);

Inslaw, Inc. v. United States, 1997 WL 433804 (Fed. Cl., July 31, 1997);

GraphicData, LLC v. United States, 37 Fed. Cl. 771 (1997);

Tyger Const. Co., Inc. v. United States, 31 Fed. Cl. 177 (1994);
ITT Corp. v. United States, 17 Cl. Ct. 199 (1989);
Universal Life Church, Inc. v. United States, 13 Cl. Ct. 567 (1987);
Neptune Mut. Ass'n. Ltd. v. United States, 13 Cl. Ct. 309 (1987);
Johns-Manville Corp. v. United States, 13 Cl. Ct. 72 (1987);
White Mountain Apache Tribe v. United States, 11 Cl. Ct. 614 (1987);
Missouri Pacific Truck Lines, Inc. v. United States, 3 Cl. Ct. 14 (1983);

(2) Reversals and criticisms

Baker v. United States, No. 96-5134, 1997 WL 632044 (Fed. Cir. Oct. 15, 1997). Air Force lieutenant colonels claimed that their selection for retirement by Selective Early Retirement Board violated their constitutional right to equal protection because the charge to the board amounted to a racial classification favoring women and minorities. The United States Court of Federal Claims ruled that the charge used was not a racial classification. The Federal Circuit vacated the judgment because the Air Force affiant, who had averred that an offensive charge was not used, recanted his affidavit while the matter was on appeal.

Preseault v. United States, 100 F.3d 1525 (Fed. Cir. 1996). Owners of property, subject to the Rails-to-Trails Act, sought compensation from the United States under the Fifth Amendment for alleged taking of their land, based on conversion of railroad right-of-way into public recreational trail. The Court of Federal Claims found in favor of the Government and held that plaintiffs' reversionary interest in former railroad right-of-way did not constitute a compensable property interest, precluding relief on their claim that the Government took their property without just compensation. On rehearing *en banc*, the Federal Circuit reversed and remanded, holding, *inter alia*, that the Government engaged in a taking of owners' property by approving the state's lease of former railroad easement to a city for conversion to trail.

Lake Pleasant Group v. United States, 79 F.3d 1166 (Fed. Cir. 1996) (Table). Lake Pleasant Group (LPG) sought compensation for an alleged taking of its property in violation of the Takings Clause of the Fifth Amendment. The Bureau of Reclamation denied LPG's application for a right-of-way to connect its land-locked parcel to the public road. LPG then brought suit in the Court of Federal Claims, claiming that the Bureau's action deprived it of its property without just compensation. The Court of Federal Claims granted summary judgment for the United States, after concluding on three separate grounds that LPG's claim to an easement failed to assert a compensable property interest. Each ground was based on the factual issue of whether adequate compensation under the New Mexico-Arizona Enabling Act was paid for LPG's easement property interest. The

Federal Circuit held that LPG must be given the opportunity to prove at trial that it possessed a common law easement by necessity and that it was not adequately paid for the easement property interest.

Branch v. United States, 69 F.3d 1571 (Fed. Cir. 1995). Chapter 7 trustee of debtor-bank holding company, on behalf of one of the holding company's banks, brought suit against the Government asserting that the cross-guaranty assessment provisions of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) had resulted in a taking without just compensation in violation of Fifth Amendment. The Court of Federal Claims denied cross-motions for summary judgment, but ruled for plaintiff on liability to the effect that the cross-guaranty provision of FIRREA could constitute a taking. The Federal Circuit held that the application of the cross-guaranty provision of FIRREA did not result in a prohibited taking of property under Fifth Amendment, even though the assessment resulted in the bank's insolvency and seizure by the Government.

Creppel v. United States, 41 F.3d 627 (Fed. Cir. 1994). The Federal Circuit reversed that portion of the Court of Federal Claims' grant of summary judgment in a Fifth Amendment takings claim, which barred plaintiffs' permanent takings claim. The gravamen of the appellate decision was that the trial court had erred in its interpretation of certain factual events fixing the date on which the permanent takings claim accrued.

Applegate v. United States, 25 F.3d 1579 (Fed. Cir. 1994). The Federal Circuit held that a decision dismissing plaintiffs' Fifth Amendment takings claim because the statute of limitations had expired was erroneous. In cases of alleged taking by continuous process, the statute of limitations is tolled until the owner can ascertain the extent of damage. In the instant litigation, the Government's promise of a sand transfer to prevent beach erosion caused sufficient uncertainty to toll the statute of limitations.

Wilner v. United States, 24 F.3d 1397 (Fed. Cir. 1994) (*en banc*). The Federal Circuit vacated the Court of Federal Claims' opinion awarding damages on a government contractor's claim for government-induced delay compensation brought pursuant to the Contract Disputes Act. It was reversible error for the trial court to have accepted the contracting officer's adoption at trial of his reasons in his decision letter, rather than reviewing the contracting officer's factual findings *de novo*, as mandated by the Contract Disputes Act.

Transamerica Ins. Corp. v. United States, 973 F.2d 1572 (Fed. Cir. 1992). The Federal Circuit reversed a decision dismissing a government contractor's complaint for lack of subject matter jurisdiction. The trial court had stated in a bench ruling that the contractor's alleged claim was insufficient because no request had been made for a final decision by the contracting officer, as required by the Contract Disputes Act. In the

alternative, the trial court ruled that the alleged claim was improperly certified. In its *de novo* review, the appellate court found that while the contractor had not requested explicitly a final decision, it had submitted sufficient material to indicate that it was seeking implicitly a final decision. Additionally, the appellate court ruled that, even though the certification may not have complied precisely with the Contract Dispute Act's requirements, it complied substantially.

Sawyer v. United States, 930 F.2d 1577 (Fed. Cir. 1991). The Federal Circuit reversed a grant of summary judgment awarding plaintiff disability benefits and correcting his military records to indicate a medical discharge. This decision was based on a determination that the United States Claims Court had restricted the authority of the civilian correction board to reweigh the evidence before a disability panel.

Craft Machine Works, Inc. v. United States, 926 F.2d 1110 (Fed. Cir. 1991). In a *de novo* review of the Claims Court's interpretation of a contract preference clause, the Federal Circuit determined that the trial court had misinterpreted the meaning of the word "supplies."

Johns-Manville Corp. v. United States, 893 F.2d 324 (Fed. Cir. 1989). The Claims Court ruled that it had the authority to award costs in a case that had been dismissed for lack of subject matter jurisdiction. The Federal Circuit reversed on the ground that the Claims Court was not included in a statute authorizing certain other courts to award costs in cases dismissed for lack of subject matter jurisdiction. Consequently, the common law rule -- prohibiting an award of costs in cases dismissed for lack of subject matter jurisdiction -- applied.

Neptune Mut. Ass'n, Ltd. v. United States, 862 F.2d 1546 (Fed. Cir. 1988). The Federal Circuit affirmed the majority of the Claims Court's opinion granting summary judgment where the court construed overlapping portions of the Internal Revenue Code and held that a foreign insurer was liable for federal excise tax. The appellate court vacated that portion of the opinion holding that certain government claims were barred by the statute of limitations.

Voge v. United States, 844 F.2d 776 (Fed. Cir. 1988). In an opinion affirming that portion of an order awarding a military doctor additional pay based on a confession of judgment and vacating that portion denying plaintiff's claim to amend her military records, the Federal Circuit ruled that the trial court had exceeded its jurisdiction to consider the latter. The appellate court held that the Claims Court may only review the military's administrative decisions for potential procedural violations, which had occurred.

Watstein v. United States, 837 F.2d 1096 (Fed. Cir. 1987) (unpub.). Plaintiff applied for relief to a civilian correction board, claiming that he was commissioned as a second lieutenant after attending officer's training school, but was thereafter unlawfully decommissioned. After the board denied relief, plaintiff sought review of that administrative decision in the Claims Court, five and one-half years after he was discharged and approximately six and one-half years after he became aware of the facts which were the basis for his claim. On cross-motions for summary judgment, the Claims Court rejected the Government's defense of laches because the affidavits supporting it were submitted with defendant's reply brief, but held that the board had not erred. The Federal Circuit determined that, regardless of the merits of the case, the Claims Court misapplied the initial defense of laches, because a delay of six or more years is presumptively injurious and therefore prejudicial. The Federal Circuit remanded the case to reconsider the defense of laches.

Haber v. United States, 831 F.2d 1051 (Fed. Cir. 1987). The Claims Court dismissed a foreign taxpayer's suit seeking a refund based on having paid already certain foreign taxes. The Federal Circuit held that the taxpayer could have reasonably believed in a statement by an IRS agent orally withdrawing a notice of disallowance. Consequently, the subsequent issuance of a notice of disallowance five years later served to set the date upon which the two-year statute of limitations began to run. The case was remanded.

Hilo Coast Processing Co. v. United States, 816 F.2d 629 (Fed. Cir. 1987). Hawaiian sugar processors and their cooperative refining and marketing association challenged the Department of Agriculture (DOA) denial of coverage to part of their 1977 sugar crop under a price support payment program. On cross-motions for summary judgment, the Claims Court held that DOA's refusal to amend regulations providing for price support payments to growers of cane and beet sugar was rational. The Federal Circuit reversed and remanded for appropriate instructions to the Secretary of DOA, holding: (1) internal transfer of raw sugar to refinery operations constituted "marketing," so that plaintiffs were eligible for the payment program, and (2) plaintiffs had been singled out for special and seemingly unfair treatment.

Kirchdorfer v. United States, 795 F.2d 1010 (Fed. Cir. 1986) (Table). Contractor brought action on contract to maintain Air Force family housing units. The Claims Court held for defendant on cross-motions for partial summary judgment. The Federal Circuit summarily reversed, finding that defendant had not disputed plaintiff's factual issues, and remanded for determination of amount of damages.

White Mountain Apache Tribe v. United States, 776 F.2d 1063 (Fed. Cir. 1985) (Table). Indian tribe brought action against the Government alleging claims for

mismanagement of water resources, grazing land, and timber. The Claims Court held that (1) tribe's action was subject to dismissal with prejudice due to its disobedience of court's orders, and (2) nevertheless, judgment would be entered in tribe's favor for \$10 million, which was approximately three fourths of the amount originally offered by the Government in settlement. After the tribe agreed to comply with the trial court's order, the Federal Circuit summarily vacated and remanded.

City of Alexandria v. United States, 737 F.2d 1022 (Fed. Cir. 1984). In a breach of contract action, the appellate court reversed the Claims Court's decision holding that a statute authorizing the Government to enter into land sale deals for the disposal of surplus land with a state or subdivision of a state was either facially unconstitutional or unconstitutional as applied because Congress' prior approval before the agency made its decision violated the separation of powers doctrine. Having found the statute at issue constitutional, the appellate court held that no implied-in-fact contract existed and that the Government was not estopped from raising the defense of nonexistence of contract.

(3) Cases on significant constitutional issues:

Inslaw, Inc. v. United States, 1997 WL 433804 (Fed. Cl., Jul 31, 1997);
Pleasant Country, Ltd. v. United States, 37 Fed. Cl. 321 (1997);
J & E Salvage Co. v. United States, 36 Fed. Cl. 192 (1996);
Seldovia Native Ass'n, Inc. v. United States, 35 Fed. Cl. 761 (1996);
Baker v. United States, 35 Fed. Cl. 749 (1996);
Applegate v. United States, 35 Fed. Cl. 406 (1996);
Davis v. United States, 35 Fed. Cl. 592 (1996);
Avenal v. United States, 33 Fed. Cl. 778 (1995), aff'd, 100 F.3d 933 (Fed. Cir. 1996).
Creppel v. United States, 33 Fed. Cl. 590 (1995);
Scogin v. United States, 33 Fed. Cl. 568 (1995);
Scogin v. United States, 33 Fed. Cl. 285 (1995);
City Nat. Bank of Miami v. United States, 33 Fed. Cl. 224 (1995);
Lake Pleasant Group v. United States, 32 Fed. Cl. 429 (1994);
Branch on Behalf of Maine Nat. Bank v. United States, 31 Fed. Cl. 626 (1994),
rev'd, 69 F.3d 1571 (Fed. Cir. 1996);
Creppel v. United States, 30 Fed. Cl. 323, aff'd in part and rev'd in part, 41 F.3d 627 (Fed. Cir. 1994);
Uintah Ute Indians of Utah v. United States, 28 Fed. Cl. 768 (1993);
Applegate v. United States, 28 Fed. Cl. 554 (1993), rev'd, 25 F.3d 1579 (Fed. Cir. 1994);
Perry v. United States, 28 Fed. Cl. 82 (1993);
Alde, S.A. v. United States, 28 Fed. Cl. 26 (1993);

Richmond, Fredericksburg and Potomac R.R. Co. v. United States, 27 Fed. Cl. 275 (1992), aff'd, 75 F.3d 648 (Fed. Cir. 1996);
Preseault v. United States, 27 Fed. Cl. 69 (1992), rev'd, 100 F.3d 1525 (Fed. Cir. 1996);
Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet v. United States, 27 Fed. Cl. 173 (1992);
Tabb Lakes, Inc. v. United States, 26 Cl. Ct. 1334 (1992), aff'd, 10 F.3d 796 (Fed. Cir. 1993);
Marrero Land & Imp. Ass'n, Ltd. v. United States, 26 Cl. Ct. 193 (1992);
Preseault v. United States, 24 Cl. Ct. 818 (1992);
Scope Enterprises, Ltd. v. United States, 18 Cl. Ct. 875 (1989);
ITT Corp. v. United States, 17 Cl. Ct. 199 (1989);
Keene Corp. v. United States, 17 Cl. Ct. 146 (1989), aff'd sub nom. UNR Indus., Inc. v. United States, 962 F.2d 1013 (Fed. Cir. 1992), cert. granted sub nom. Keene Corp. v. United States, 506 U.S. 939 (1992), aff'd, 508 U.S. 200 (1993);
Murray v. United States, 15 Cl. Ct. 17, aff'd, 864 F.2d 148 (Fed. Cir. 1988);
O'Connell v. United States, 14 Cl. Ct. 309 (1988);
Keene Corp. v. United States, 12 Cl. Ct. 197 (1987), aff'd sub nom. Johns-Manville Corp. v. United States, 855 F.2d 1556 (Fed. Cir. 1988);
Johns-Manville Corp. v. United States, 12 Cl. Ct. 1 (1987);
Dwyer v. United States, 7 Cl. Ct. 565 (1985);
Anderson v. United States, 7 Cl. Ct. 341 (1985);
Jarboe-Lackey Feedlots, Inc. v. United States, 7 Cl. Ct. 329 (1985);
Augusta Towing Co., Inc. v. United States, 5 Cl. Ct. 160 (1984);
Bertini v. United States, 4 Cl. Ct. 755 (1984);
Morton Thiokol, Inc. v. United States, 4 Cl. Ct. 625 (1984); and
City of Alexandria v. United States, 3 Cl. Ct. 667 (1983), rev'd, 737 F.2d 1022 (Fed. Cir. 1984).

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 public office, nor run 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 the dates of the period you were a clerk;

June 1969-June 1970 -- Clerk to Honorable David T. Lewis (later Chief Judge), United States Court of Appeals for the Tenth Circuit, 4201 Federal Building, Salt Lake City, UT 84111.

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;

August 1970-May 1971 -- Trial Attorney
U.S. Department of Justice
Foreign Litigation Unit
Civil Division
10th & Constitution Ave., N.W.
Washington, DC 20530

Worked under Unit Chief processing requests for international judicial assistance.

May 1971-April 1972 -- Trial Attorney
U.S. Department of Justice
Court of Claims Section
Civil Division
10th & Constitution Ave., N.W.
Washington, DC 20530

Worked alone.

- o Primary responsibility for defending at trial and on appeal 17 cases in the Court of Claims Section of the Civil Division. These cases were military and civilian procurement building and service contracts disputes; federal back-pay claims; and Congressional reference cases.
- o Argued successfully all appeals before that full Court of Claims.

- Won Congressional reference trial that produced the most significant federal laches law in decades.
- Won summary judgment on \$25 M back-pay case involving Immigration and Naturalization Service. Representation extended to preparation for trial, including depositions and discovery of records relating to 160 plaintiffs over six years, who were located in various jurisdictions.

April 1972-February 1974 -- Trial Attorney
 Federal Trade Commission
 Bureau of Consumer Protection
 Division of National Advertising
 6th & Pennsylvania Ave., N.W.
 Washington, DC 20580

Worked as second in command or supervised up to two other attorneys.

- Primary responsibility for investigating, briefing and trying only case brought during my tenure that the Commission prevailed on at the appellate level. This was also the first case brought under the "ad substantiation program," whereby advertisers were required to maintain documented substantiation for their claims.
- Primary responsibility for the Commission's investigation into cosmetics advertising, which involved close liaison with dermatologists, other physicians, medical schools, and the Federal Drug Administration.
- Primary responsibility for settling the Hawaiian Punch case. The settlement resulted in the first so-called "corrective advertising" agreed to by a respondent.
- Secondary responsibility for investigating, briefing and trying the Commission's analgesics case against Sterling Laboratories (Bayer, Cope, Midol & Vanquish). I also prepared for trial and assisted in settling the case against Sterling involving claims for Lysol. Both cases required development of expert witness testimony in medicine, biochemistry, microbiology, hospital science, psychology and psychiatry.
- Primary responsibility for bringing case to halt children's vitamin advertising, which resulted, before discovery, in advertisers' voluntary withdrawal of all advertising.

February 1974-March 1976 -- Associate, Litigation
 Hogan & Hartson
 555 13th St., N.W.
 Washington, DC 20005

Worked under partners or alone.

- Primary responsibility for prosecuting stockholders' derivative suit that involved many M.D. investors in Washington Medical Center, Inc., which held parcels of valuable commercial real estate in downtown, D.C. I drafted complaint; arranged for service of all process; drafted all pleadings relating to discovery, including interrogatories and answers; conducted depositions of Price Waterhouse partner and other accountants; chaired all plaintiffs' documentary examination; drafted a successful opposition to motion to dismiss; argued motions in federal district court; and worked on settlement favorable to plaintiffs.
- Primary and secondary responsibility for defense work of New York Insurance Co., Home Insurance Co., and Prudential Insurance Co., including all phases of trial work and post-trial relief. I assisted in defending a jury trial brought by a plaintiff claiming injury due to birth control pills; I drafted a motion for new trial after the firm was retained to upset an \$8 M verdict (at the time, the largest personal injury verdict); I drafted and argued summary judgment motions in coverage cases.
- Secondary responsibility for bringing partnership dissolutions.
- Primary responsibility for supervising private auditors conducting audits of AMTRAK.
- Secondary responsibility for motions practice generated by Chrysler Corporation.

March 1976-November 1978 -- Special Counsel
 Pension Benefit Guaranty Corp.
 1200 K Street, N.W.
 Washington, DC 20005

Supervised up to seven other attorneys at any one time.

- Initial responsibility for establishing litigation capability at the then new PBGC. Directed defense of all cases (after I joined) brought against the agency in federal district courts throughout the United States. Initially, these cases involved the constitutionality of PBGC's enabling legislation, the Employee Retirement Income Security Act of 1974. I drafted and argued motions and briefs at the federal trial and appellate levels.
- Responsibility for bringing and defending cases in district and bankruptcy courts involving the PBGC's plan termination insurance coverage. I drafted or reviewed all papers filed in the 12-15 cases I handled at any given time. I appeared in federal district courts in support or defense of complaints and discovery requests, as well as pretrials and trials. I argued a case in lower court and briefed a case before the Seventh Circuit that resulted in the first trial and appellate decisions favorable to the PBGC.

- Represented the PBGC in all EEO claims brought against the agency.

November 1978-March 1980 -- Assistant General Counsel
U.S. Railway Association
955 L'Enfant Plaza North, S.W.
Washington, DC 20595

Supervised up to five other attorneys and up to ten paralegals at any one time.

- Primary responsibility for defending \$450 M claims brought by four bankrupt railroads (the Reading, Lehigh Valley, North Pennsylvania, and Peoria & Eastern) under the Regional Rail Reorganization Act of 1973. The cases were tried before the Special Court (Friendly, Wisdom, Thomsen, J.J.), created by the Act. The cases were companions to seven others, including Penn Central, aggregating over \$8 B in claims.

The Special Court has adopted rules patterned on the Rules for Multi-district Litigation, because the cases together constituted the largest civil suit in the United States, designation of nine depositories was required to implement documentary discovery, and the litigation spans the Northeast. The U.S.R.A. alone had 500,000 documents computerized on LEXIS and maintained in its depository a much greater number of documents.

The rules provided for trial by written testimony of the value of claimants' properties for continued rail use. My team completed discovery and cross-examination of over 20 expert and other witnesses proffered on behalf of those claimants against which we defended. We also prepared and submitted expert rebuttal testimony.

March 1980-January 1983 -- Associate (Partner Jan. 1983)
Shack & Kimball, P.C.
1129 20th Street, N.W.
Washington, D.C. 20036 (firm dissolved; current address)
Thomas G. Shack, Jr., P.C.
1150 Connecticut Ave., N.W., Suite 900
Washington, DC 20036

Supervised up to three attorneys and paralegals in office and 20 local counsel throughout the United States.

- Primary responsibility for two plaintiffs' cases in federal court in the District of Columbia seeking recovery of Iranian financial assets and real property.
- Primary responsibility under Thomas G. Shack, Jr., for defending the Government of Iran in litigation involving Iranian assets in all jurisdictions other

than New York and Massachusetts. Over 40 cases were pending in the District of Columbia alone, which required oral argument at least once a week for over a year.

- o Responsibility for coordinating defenses in my jurisdictions. I drafted pleadings for litigation throughout the U.S. in district courts involving sovereign immunity and other defenses under the Foreign Sovereign Immunities Act. I argued these matters—predominantly in the District of Columbia.
 - o Responsibility for monitoring over 200 cases. I acted as liaison with U.S. Government representatives.
- 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 general character of my law practice was civil litigation since May 1971, when I began working as a trial attorney in the Court of Claims section of the Civil Division of the Department of Justice.

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

While I worked for the U.S. Government and its agencies, my clients were the U.S. Government and its agencies. In private practice with Hogan & Hartson, I worked for major corporations, as well as private individuals. While practicing with Shack & Kimball, my principal client was the Islamic Republic of Iran and its governmental entities. I did not specialize within the general area of civil litigation.

- 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 before becoming a judge.

2. What percentage of these appearances was in:

- | | | |
|----------------------------|---|-----|
| (a) federal courts | - | 85% |
| (b) state courts of record | - | 5% |
| (c) other courts | - | 10% |

3. What percentage of your litigation was:

- | | | |
|--------------|---|-----|
| (a) civil | - | 99% |
| (b) criminal | - | 1% |

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.

Before becoming a judge, I did not try any case to judgment. However, this is not indicative of my trial experience, as I have tried many cases up to the point of judgment and accomplished highly favorable settlements in the trial process. Moreover, I handled a number of appellate matters (not having been involved in the trial phase) and participated through judgment in many cases not tried, but, rather, determined on dispositive motions.

5. What percentage of these trials was:

(a) jury	-	0%
(b) non-jury	-	100%

18. **Litigation:** Describe the ten most significant litigation 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.

In listing the ten cases, I did not have some of the particulars called for, because they are not available to me at this time. I held litigation positions with five other offices and have not been able to remove case files I worked on in these successive positions. The following are listed in reverse chronological order:

- Tom Acuna, et al. v. United States, Nos. 259-70; 292-70; 349-70; 458-70 (Ct. Cl.), 202 Ct. Cl. 206, 479 F.2d 1356 (1973), cert. denied, 416 U.S. 905 (1974).

This was the major case I handled alone in the Court of Claims Section of the Civil Division of the Department of Justice, which was a \$25 M suit for back-pay under various federal statutes involving the Immigration and Naturalization Service and the United States Customs Service, principally, 19 U.S.C. § 9267. The significance of this case is that it was a unique back-pay case, not decided under the usual statutes and regulations for federal employees, and required a legal and factual analysis of first impression as to whether the work of INS inspectors began on Sundays and whether

they were, therefore, entitled to double pay for that work. I developed the theory of the case, conducted pre-trial, and left the Department after drafting the dispositive motion, which was eventually decided in the United States' favor.

- a) 1971-1972;
- b) United States Court of Claims;
- c) Robert C. Baxley, Esq., 1059-10th Ave., San Diego, CA 92101, 714/236-1144.

2) McQuown v. United States, Cong. Ref. Case No. 2-70 (1972).

This was a Congressional reference back-pay case which was significant insofar as it established a new standard of laches claimed by the U.S. Government. I tried the case alone and won a defense verdict.

- a) 1971 - 2 days;
- b) Trial Judge David Schwartz;
- c) Thurman Bishop, Esq., Mays & Richey, 212 Oak Ave., Greenwood, SC 29646, 803/223-8511.

3) In the Matter of Fedders Corp. v. F.T.C., FTC Docket No. 9932; 529 F.2d 1398 (2d Cir.), cert. denied, 429 U.S. 818 (1976).

This was a case noteworthy in that it was the first case brought against a U.S. corporation to test the "ad substantiation program" of the FTC. As chief counsel, I handled the case development from investigation through trial. Although the Commission's decision on remedy was modified on review, liability was upheld.

- a) 1972- 2 days;
- b) No record of name of judge;
- c) Sydney B. Wertheim, Esq., Weisman, Celler, Spett, Modlin & Wertheim, 150 East 58th St., New York, NY 10155, 212/371-1492.

4) In re Sterling Analgesics, FTC Docket No. 8919.

This was the major analgesics investigation concerning Bayer, Cope, Midol, and Vanquish, commenced against Sterling Drug Company. The matter was litigated, but I did not participate in the trial, which postdated my employment with the Commission. I list the case because the matter represents a massive amount of investigative work in which I participated as associate counsel. I was involved in this investigation from approximately late 1972 through February 1974, when I left the

Commission. With respect to other litigation involving Sterling Drug Company, and its product Lysol, I developed expert testimony with many medical witnesses in preparation for trial. This case was ultimately settled very favorably to the Commission, and advertising of Lysol was radically altered as a result of settlement.

- a) 1972-1974;
- b) Not before judge in investigative phase; name of judge in trial phase in 1973-1974 unknown;
- c) General counsel for Sterling Drug Company; no record of name.

Another matter which did not go beyond the development of expert testimony was the children's Vitamin T.V. Advertising case, which I was hired to try in 1972. This involvement was significant, because the Commission put great emphasis on this case. After my team presented its initial evidence, the manufacturers of children's vitamins voluntarily withdrew their advertising from television because of the FTC's novel theory of unfairness, i.e., T.V. advertising unfair to an audience because of its particular susceptibility.

- a) early 1972;
- b) no judge assigned;
- c) opposing counsel: no record of name.

- 5) In re Hawaiian Punch, FTC Docket No. unknown.

As of the date of this settlement and for sometime thereafter, this was the only successful corrective advertising case brought on behalf of the Federal Trade Commission. The case had been prepared for trial by other attorneys, and it was assigned to me for sole trial responsibility. After negotiation, a settlement highly favorable to the Commission was obtained and approved.

- a) 1973;
- b) no record of name of judge;
- c) Eugene I. Lambert, Esq., Covington & Burling, 1201 Pennsylvania Ave., N.W., Washington, DC 20004, 202/622-5518.

- 6) James W. Bernhard et al. v. Washington Medical Center, Inc., et al., Civ. Act. No. 74-440 (D.D.C.).

I had primary trial responsibility under a Hogan & Hartson partner for a complex stockholders' derivative lawsuit brought by doctors/investors of Washington Medical Center (which owned Doctor's Hospital and 1801 K Street, among other properties) against WMC. Although the case was ultimately settled favorably to plaintiffs, this

represented one of the most intense discovery and trial development cases in my practice.

- a) 1974;
 - b) Hon. June L. Greenc;
 - c) George H. Clark, Esq., Clark & Constable, 1300 19th St., N.W., Washington, DC 20036, 202/466-7171.
- 7) Nachman Corp. v. Pension Benefit Guaranty Corp., 436 F. Supp. 1334 (N.D. Ill.) (1977), rev'd, 592 F.2d 947 (7th Cir. 1979), aff'd, 446 U.S. 359 (1980).

This is the first case upholding the validity of the Employment Retirement Income Security Act of 1974, insofar as it created the PBGC and authorized the PBGC to assess employer liability for deficiencies in certain terminating plans. I left the PBGC when the matter was pending before the Seventh Circuit, having participated in writing the brief. I had sole trial responsibility for defending the PBGC. This is one of the few cases that I have lost at the trial level, and I mention it because I was informed through a law clerk to the Supreme Court Justice who authored the opinion that most persuasive to the Supreme Court were the arguments in the motion to dismiss the complaint which I had authored several years previously.

- a) 1976 - 1 day;
 - b) Hon. Abraham Marovitz;
 - c) Robert W. Gittleman, Esq., D'Ancona, Pflavm, Wyatt & Riskind, 30 N. LaSalle St., Chicago, IL 60602, 312/580-2000.
- 8) In the Matter of the Valuation Proceedings Under SS 303(c) and Regional Rail Reorganization Act of 1973, Misc. No. 79- (special Court).

I had full trial and supervisory responsibility for three major rail estates--the Reading Railroad, the Lehigh Valley Railroad, and the Peoria & Eastern Railroad. The aggregate value of the claims against these railroads was over \$450 M. I was hired to try these cases beginning in November 1978, after previous attorneys worked for over two years on trial preparation. Therefore, this litigation represents my "quickest study." The case was tried entirely on deposition and involved almost all expert witnesses, with only several lay witnesses. Complex accounting, financial, economic, and valuation analysis was required, not only for defending against the claims of rail estates, but also with respect to development of expert and lay testimony in rebuttal to the estates' cases.

- a) Dec. 1979 - Mar. 1980 - full trial;
- b) Special Court (Wisdom, Friendly, Thomsen, J.J.):

- c) Howard H. Lewis, Esq., Obermayer, Rebmann, Maxwell & Hippel, 14th Floor, Packard Building, Philadelphia, PA 19102, 215/665-3000 (Reading); David C. Toomey, Esq., Duane, Morris & Heckscher, One Franklin Plaza, Philadelphia PA 19102, 215/854-6300 (Lehigh Valley); no record of counsel for Peoria & Eastern.

- 9) Dames & Moore v. Regan, 453 U.S. 654 (1981).

This was the case brought to test the authority of the President of the United States to settle claims of U.S. nationals against the Government of Iran under the Algiers Declarations. The case was not tried. However, according to U.S. Supreme Court personnel, it was one of the fastest cases briefed, argued, and decided by the U.S. Supreme Court in history. I was responsible for the brief before the Supreme Court filed on behalf of the Government of Iran. My senior partner argued the case, and I was responsible for assisting him. The Supreme Court's decision is the leading case on issues of international and domestic law concerning the enforceability of treaties and executive agreements as of the date of decision.

- a) June-July 1981;
 b) Supreme Court;
 c) C. Stephen Howard, Esq., Tuttle & Taylor, 609 S. Grand Ave., Los Angeles, CA 90017, 213/683-0600.

- 10) Islamic Republic of Iran et al. v. Cyrus Ansary, Civ. Act. No. 81-1817 (D.D.C.).

I list this case because I had trial responsibility for problems unique in bringing a claim by a foreign government against a U.S. citizen in courts of the United States. These problems related to difficulties of proof, client communication, and proof of foreign law and records. Iran sued for return of \$5 M entrusted to its former international investment advisor in 1975, who, in turn, counterclaimed for approximately \$21 M, representing various contract and other claims. The case underwent aggressive discovery and dispositive motions, and I settled it favorably.

- a) Aug. 1981 to Jan. 1983;
 b) Hon. Harold H. Greene;
 c) Paul Martin Wolff, Esq., F. Whitten Peters, Esq., Williams & Connolly, 939 17th St., N.W., Washington, DC 20006, 202/331-5000.

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 all information protected by the attorney-client privilege (unless the privilege has been waived.)

The most significant legal activities that I pursued prior to serving as a judge are listed in response to question 18. Also, in response to question 17, I listed significant cases or matters in connection with my employment prior to being appointed to the United States Claims Court (now the Court of Federal Claims). As a sitting trial judge, I consider managing and deciding my cases as significant legal activities.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List source, 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.

This question is not applicable, as I have been a sitting judge for 15 years.

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 have never faced a conflict of interest in 15 years. In the past I have tried to anticipate such matters and present counsel with the option of my transferring a case. Transfer has never been requested.

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 attached copy of Financial Disclosure Report for calendar year 1996. The sources and amounts of income and other information are the same for 1997 to date.

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

Please see attached copy with statement from Smith Barney dated September 26, 1997, and list of assets for Dennis F. Miller.

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.

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

AO-10 (rev)
Rev. 6/95

1. Person Reporting (Last name, first, middle initial) Miller, Christine O.C. .	2. Court or Organization U.S. COURT OF FEDERAL CLAIMS	3. Date of Report 11/07/1997
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) JUDGE	5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date 11/06/1997 Initial ___ Annual ___ Final ___	6. Reporting Period 01/01/1996 to 10/31/1997
7. Chambers or Office Address 717 MADISON PLACE, N.W., #709 WASHINGTON, DC 20005	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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 the last page.

I. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Member, Board of Governors	University Club of Washington, DC
2 _____	
3 _____	

II. AGREEMENTS (Reporting individual only; see pp. 14-17 of Instructions.)

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1 _____	
2 _____	
3 _____	

III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 18-25 of Instructions.)

DATE	PARTIES AND TERMS	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 annual	Dennis F. Miller (spouse) self-employed - Science	
2 _____	and Technology, Inc.	
3 _____		
4 _____		
5 _____		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Miller, Christine O.C.

Date of Report
11/07/1997

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. 26-29 of Instructions.)

	SOURCE NONE (No such reportable reimbursements or gifts)	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. 30-33 of Instructions.)

	SOURCE NONE (No such reportable gifts)	DESCRIPTION	VALUE
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 the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	CREDITOR NONE (No reportable liabilities)	DESCRIPTION	VALUE CODE
1	X		
2			
3			
4			
5			
6			
7			

* VAL CODES: J = \$15,000 or less K = \$15,001-\$50,000 L = \$50,001 to \$100,000 M = \$100,001-\$250,000 N = \$250,001-\$500,000
 O = \$500,001-\$1,000,000 P1 = \$1,000,001-\$5,000,000 P2 = \$5,000,001-\$25,000,000 P3 = \$25,000,001-\$50,000,000 P4 = \$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Miller, Christine O.C.	Date of Report 11/07/1997
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VI. Page 1 INVESTMENTS and TRUSTS — income, value, transactions (includes those of spouse and dependent children. See pp. 37-38 of instructions.)

A. Description of Assets <i>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.</i> <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Am. Code (A-H)	(2) Type (e.g., dividend, real or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month/Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (no reportable income, assets, or transactions)									
1 Airtouch Comm. Inc. Common	A	Dividend	J	T					
2 Allstate Corp.	A	Interest	J	T					
3 Alumax, Inc.	A	Dividend	J	T					
4 AmBee Corp.	A	Dividend	J	T					
5 Ameritech Corp. Common	A	Dividend	J	T					
6 Amer. Tele. & Teleg. Common	A	Dividend	J	T					
7 Bell Atlantic Corp. Common	A	Dividend	J	T					
8 Bell South Corp. Common	A	Dividend	J	T					
9 Beckley, CA Tax Free Bond	E	Interest	K	T					
10 (S) Calvert Mut. Fund	A	Interest	J	T	liquida	1/2	J	A	
11 Chevron Corp. Common	B	Dividend	K	T					
12 Clenergy Corp. Common	D	Dividend	J	T					
13 Crestar Bank	R	Interest	L	T	pt. inlt	11/13	K		
14 (S) Dominion Resources Common	A	Dividend	J	W					
15 (S) EGG Saver Plan	A	Interest	J	T					
16 (S) EGG Stock Common	B	Interest	K	T					
17 Fidelity Investments Mutual Fund	B	Interest	L	T					
1 Inst/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Meth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

= Income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

VII. Page 2 INVESTMENTS and TRUSTS

A. Description of Assets <small>Indicate where applicable, owner of the asset by using the parenthetical "(I)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(Q)" after each asset except from prior disclosure.</small>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amt. Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure				
						(2) Date: Month-Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (no reportable income, assets, or transactions)										
18 Fort Bragg, CA, 2 lots, 1/4 Inter. (see explain.)	E			Q						
19 Franklin, CA Tax-free Income Fund	C	Interest	J	T						
20 Freeport McMoran Inc. Common	A	Dividend	J	T						
21 Freeport McMoran Copper & Gold Inc. Common	A	Dividend	K	T						
22 Hbec J. Grant Common	B	Dividend	J	W						
23 (S) House Credit Union	A	Interest	J	T						
24 (S) INEL Retirement Plan	B	Dividend	K	T						
25 Louisiana Pacific Corp. Common	O	Dividend	J	T						
26 Lucent Technologies Common (spinoff from AT&T)	A	Dividend	J	T						
27 Madison Gas & Elec. Common	A	Dividend	J	T						
28 Mass. Inv. Trust Common	A	Dividend	J	T						
29 McMoran Oil & Gas Co.	A	Dividend	J	T						
30 (S) Municipal Invest. Trust Fund	A	Interest	J	W						
31 Molco Chemical Co. Common	O	Dividend	J	T						
32 Nation's Bank	A	Interest	K	T						
33 Navistar Int'l. Common	A	Dividend	J	T						
34 Neurenex Corp. Common	A	Dividend	J	T						
1 Int/Gen Codes: A=\$1,000 or less (Col. B1, D4)	F=\$50,001-\$100,000	B=\$1,001-\$2,500	G=\$100,001-\$1,000,000	C=\$2,501-\$5,000	H1=\$1,000,001-\$5,000,000	D=\$1,001-\$15,000	H2=\$5,000,001 or more	E=\$15,001-\$50,000		
2 Val Codes: (Col. C1, D3)	J-\$15,000 or less	K=\$15,001-\$50,000	L=\$50,001-\$100,000	M=\$100,001-\$250,000	N=\$250,001-\$500,000	P1=\$1,000,001-\$5,000,000	P2=\$5,000,001-\$25,000,000	P3=\$25,000,001-\$50,000,000	P4=\$50,000,001 or more	
3 Val Mth Codes: (Col. C2)	Q=Appraisal U=Book Value	R=Con (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market						

FINANCIAL DISCLOSURE REPORT Name of Person Reporting
Miller, Christine O.C. 11/07/1997

VII. Page 3 INVESTMENTS and TRUSTS - Income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets <i>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.</i> <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (no reportable income, assets, or transactions)									
35 Hynex Corp. Common	A	Dividend	J	T					
36 Pacific Telesis Group Common	A	Dividend	J	T					
37 Pigeon Ridge Subdiv. lots, Covelo, CA 1/8 inter. (see nsp1)	B	Interest	J	O					
38 Proctor & Gamble Common	A	Dividend	K	T					
39 Reynolds Metals Co.	A	Dividend	J	T					
40 (J) Riggs MVA	A	Interest	J	T					
41 SBC Com. Inc. Common (former Southwestern Bell)	A	Dividend	J	T					
42 Safeway Inc. Common	A	Dividend	J	T					
43 Sears & Roebuck Common	A	Dividend	J	T					
44 (S) Senate Credit Union	A	Interest	J	T					
45 Smith-Barney Inc. App. Fund	B	Interest	K	T					
46 Smith-Barney Premium Total Return Fund (IRA)	B	Interest	L	T					
47 (J) Smith-Barney Managed Municipal Fund	C	Interest	L	T					
48 (J) Smith-Barney Div Equity Fund	A	Interest	J	T					
49 (J) Smith-Barney HGT Equity Fund	A	Interest	J	T	buy	9/17	J		
50 (S) Teacher's Inst. & Annuity Assoc. Common	B	Interest	L	T					
51 (S) Teacher's Inst. & Annuity Assoc. Money Market	B	Interest	M	T					
1 Ino/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Call/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Miller, Christine O.C. .	11/07/1997

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of report.)

NONE (No additional information or explanations.)

Cont'd from Section VII. Investments & Trusts

18. Two lots in Fort Bragg, CA, 1/4 interest; unimproved property, appraised 4/21/90.
36. Pigeon Ridge subdivision, Covelo, CA: 1/8 interest, unimproved lots in subdivision, appraised 4/2/94, interest from promissory notes.

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Miller, Christine O.C.

Date of Report

11/07/1997

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. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature

Christine O.C. Miller

Date

November 7, 1997

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. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 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	138	455	00	Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule (S) (**)	891	206	00	Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others			
Accounts and notes receivable	3	000	00	Accounts and bills due listed under			
Due from relatives and friends				Unpaid income tax debts below			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable—add schedule	87	000	00
Real estate owned—add schedule				Norwest Mortgage personal residence			
Ridge subdivision, Pigeon Ridge, Covelo, CA	15	000	00	Chase mortgages and other liens payable			
1/8 interest, personal residence	1850	000	00	Other debts—liabilities:			
Real estate owned—add schedule				VISA (W)	4	000	00
Auto and other personal property	100	000	00	VISA (H)	2	000	00
Cash value—life insurance							
Other assets—liabilities:							
Fidelity Fund (W)	88	000	00				
Thrift Plan (W) **	80	000	00				
				Total Liabilities	93	000	00
				Net Worth	2,072	661	00
Total Assets	2,165	661	00	Total liabilities and net worth			
CONTINGENT LIABILITIES			GENERAL INFORMATION				
As endorser, guarantor or provider	None			Are any assets pledged? (Add schedule)	No.		
On leases or contracts	None			Are you defendant in any civil or legal actions?	No.		
Legal claims	None			Have you ever taken bankruptcy?	No.		
Provision for Federal Income Tax	None						
Other special debt	None						

(S) See attached Smith Barney statement 9/26 for W, J, and IRA (W); see attached statement for H.

(**) Include deferred income not yet taxed.

Preferred Client Statement
September 1 - September 28, 1997

HON CHRISTINE O.C. MILLER

	This period	Year-to-date
	9/1 to 9/28/97	9/1 to 9/28/97
Cash and money funds balance		
Opening balance	\$ 1,104.83	\$ 1,104.83
Securities bought and other additions	-384.68	-384.68
Securities sold and other additions	0.00	0.00
Deposits	0.00	0.00
Withdrawals	-500.00	-500.00
Interest credited	145.00	145.00
Dividends credited	837.45	837.45
Money funds earnings reinvested	4.60	4.60
Closing balance	\$ 1,307.00	\$ 1,307.00

Note: Securities deposited/withdrawn net = The value of securities on the day they were deposited or credited to the account as reflected in the "Other security" column.
Capital deposited/withdrawn net = Cash withdrawals and deposits, Gold Card payments, FMA Money Card activity, checks written, and Money Funds/Insured cash deposit transfers.

Portfolio summary

	This period	Year-to-date
	9/1 to 9/28/97	9/1 to 9/28/97
Opening value of securities	417,825.50	375,074.84
+ Opening cash balance	11.05	18.86
= Opening portfolio balance	417,836.55	375,093.70
Securities deposited/withdrawn net	0.00	50,186.14
Capital deposited/withdrawn net	-500.00	-40,452.90
Adjusted opening value	417,336.55	384,826.94
Closing value of securities	439,144.95	438,144.85
+ Closing cash balance	0.00	0.00
= Closing portfolio value	439,144.95	438,144.85

Portfolio details - The values of your holdings are as of 09/28/97. Please note, unrealized gain/loss is being prepared for informational purposes only and should not be used for tax preparation without the assistance of your tax advisor.

Number of shares	Description	Current value	Accrued dividends	Annualized % dividend income (annualized)
1,307.00	SB MONEY FUNDS GOVT PORT CL A	\$ 1,307.00	\$ 2.86	£ 0.87
	Total money funds	\$ 1,307.00	\$ 2.86	\$ 0.87

Please refer to the back of page 1 for definitions of Research ratings.

Quantity	Description	Date acquired	Share cost	Current share price	Current value	Unrealized gain/loss	Average % Yield/Anticipated Income (annualized)
225	AT&T CORP SYMBOL: TRATING; B + Research rating:3/M		Please provide	\$ 45.438	\$ 10,223.55	Not available	2.805%
200	AIRTOUCH COMMUNICATIONS INC CALIF SYMBOL: ATI Research rating:3/M		Please provide	36.563	7,312.80	Not available	
84	ALLSTATE CORP SYMBOL: ALL Research rating:2/M		Please provide	77.875	7,320.25	Not available	

Money funds

Common stocks & options

Preferred Client Statement

September 1 - September 28, 1997

HON CHRISTINE O.C. MILLER

**Common
stocks &
options**
continued

Quantity	Description	Date acquired	Cost	Share cost - share price	Current value	Unrealized gain/(loss)	Average % unrealized income (annualized)
6	ALUMAX INC SYMBOL: AMX Research rating: 3/H		Please provide	1,32,815	1,29,225	Not available	
193	AMBASE CORP SYMBOL: ABCP Research rating: 3/H		Please provide	2,89	529.97	Not available	3,453
149	AMERITECH CORP NEW SYMBOL: AIT/RATING: A- Research rating: 1/L		Please provide	65,439	8,790.26	Not available	339.74
113	BELL ATLANTIC CORP SYMBOL: BEL/RATING: A- Research rating: 1/M		Please provide	79,138	8,976.49	Not available	3,977 349.04
224	BELLSOUTH CORP SYMBOL: BLS/RATING: B+ Research rating: 1/M		Please provide	47,713	10,598.11	Not available	3,043 322.56
814	CHEVRON CORP SYMBOL: CHV/RATING: B Research rating: 2/L		Please provide	83,063	51,000.69	Not available	2,793 1,424.48
10	FREPORT MCMORAN COPPER & GOLD INC CL A		Please provide	26,688	266.88	Not available	
10	SYMBOL: FCM/RATING: B+ Research rating: 1/H	03/01/95	209.38	20.937	286.64	57.50 LT	
20			209.38	20.938	532.76	57.60**	3,372 18.00
561	FREPORT MCMORAN COPPER & GOLD CL B SYMBOL: FCM/RATING: B+ Research rating: 2/H		Please provide	28.00	15,708.00	Not available	2,214 604.90
72	LUCENT TECHNOLOGIES INC SYMBOL: LU Research rating: 3/M		Please provide	80,875	5,923.00	Not available	.37 21.00
100	MCMORAN OIL & GAS CO SYMBOL: MOXY Research rating: 3/H		Please provide	5,375	537.50	Not available	
14	NCR CORP NEW SYMBOL: NCR Research rating: 3/H		Please provide	33,063	490.88	Not available	
3	NAVSTAR INTL CORP NEW SYMBOL: NAV/RATING: B- Research rating: 3/L		Please provide	26,813	80.44	Not available	
100	NEUROGEN CORP SYMBOL: NRGN Research rating: 3/L	06/18/96	2,616.50	25,125	2,500.00	(16.50) LT	
528	PROCTER & GAMBLE CO SYMBOL: PGR/RATING: A Research rating: 3/L		Please provide	68,375	38,630.00	Not available	1,485 532.28



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Preferred Client Statement
September 1 - September 28, 1997

HON CHRISTINE O.C. MILLER

Mutual funds
continued

Number of shares	Description	Date acquired	Cost	Share cost	Current share price	Current value	Unrealized gain/(loss)	Yield/deferred income (annualized)
945.846	MASSACHUSETTS INV TRUST SBI CL A		\$ 86.71	\$ 19.081		\$ 17,072.61	\$ 10.50**	1.08 % \$ 184.33
	Fund Performance		0.00			17,072.51	Not available	
404.683	T ROME PRICE CALIF TAX FREE BOND FUND		Please provide	10.70	4,323.15	Not available	Not available	5.742 226.97
93.808	SMITH BARNEY APPRECIATION FUND CL A	05/06/92	1,000.00	10.66	15.80	1,482.18	402.18	LT
93.264		06/01/92	1,000.00	10.72	15.80	1,473.69	473.69	LT
94.867		07/02/92	1,000.00	10.53	15.80	1,500.48	500.48	LT
93.545		08/06/92	1,000.00	10.69	15.80	1,476.01	476.01	LT
93.697		09/01/92	1,000.00	10.65	15.80	1,483.57	483.57	LT
93.545		10/01/92	1,000.00	10.69	15.80	1,478.01	478.01	LT
91.324		11/02/92	1,000.00	10.95	15.80	1,442.92	442.92	LT
91.324		12/01/92	1,000.00	10.95	15.80	1,442.92	442.92	LT
92.489		01/07/93	1,011.83	10.94	15.80	1,461.33	449.50	LT
88.415		02/01/93	1,000.55	11.19	15.80	1,412.76	412.21	LT
82.569	Total Purchases		10,012.39	10.70	16.60	14,856.07	4,843.68	
365.988	Reinvestments to date		4,280.01	11.703	15.80	5,777.69	1,497.68	LT
1,283.288	Total Value (Tax based)		14,292.39	11.951		20,423.06	6,141.57	
	Fund Performance		10,012.39			20,423.06		10,221.58*
1,075.448	SMITH BARNEY MANAGED MUNICIPALS FUND CL A	02/24/92	17,400.75	16.18	16.17	17,269.99	(107.76)	LT
1,455.416		04/03/92	25,000.00	17.06	16.17	23,695.78	(1,304.22)	LT
2,640.864	Total Purchases		42,400.75	16.89	16.17	41,085.77	(1,314.98)	
2,864.027	Reinvestments to date		42,857.20	15.892	16.17	43,400.72	743.52	LT



A Member of *InvestorGroup*

Preferred Client Statement
September 1 - September 28, 1997

HON CHRISTINE D.C. MILLER

Number of shares	Description	Cash acquired	Cost	Share cost	Current share price	Current value	Unrealized gain/loss	Yield/participated income (annualized)
6,274.891	SMITH BARNEY MANAGED MUNICIPAL FUND CL A		\$ 85,057.55	\$ 16.278		\$ 84,486.49	(\$ 571.46)	5.48
	Fund Performance		42,400.76			84,486.49	42,085.74 ¹	\$ 4,839.21
	Total Mutual Funds (Tax based)		86,458.31			170,227.17	\$ 10,544.57	3.00
						\$ 5,876,114.17		\$ 5,069.71

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.

Municipal bonds

Amount	Description	Date acquired	Cost/Adjusted cost	Share cost/Adjusted share cost	Current share price	Current value	Unrealized Gain/(loss)	Current % Yield/Annu. Income (annualized)	Ordinary Income/Capital Gain/loss
25,000	BERKELEY CALIF CTFB PARTN								
	AMBAC INSD BOOK ENTRY								
	DTD 2/1/89 FC 6/1/89								
	INT: 07.200% MATY: 09/01/2001								
	Rating: AAA/AAA								
	Next call on 06/01/98 @ 102.00								
5,000	FONTANA CALIF REDEV AGY TAX								
	ALDOC SOUTHWEST INCL PK P J								
	B/E FGIC D1/183FCM193 OID								
	INT: 05.800% MATY: 09/01/2007								
	Rating: AAA/AAA								
	Next call on 09/01/00 @ 102.00								
	Total Municipal Bonds								
						\$ 21,443.30	\$ 0,000.00	6.84	\$ 0.00
						\$ 0.00	\$ 0.00	LT	\$ 2,000.00
	Total Portfolio Value					\$ 429,742.09	\$ 16,600.57	3.17	\$ 0.00
						\$ 5,911,154.17	\$ 5,911,154.17	LT	\$ 13,626.67
									\$ 0.00
									\$ 0.00

¹Unrealized Gain/Loss is only calculated when an original cost basis is available.

Preferred Client Statement
September 1 - September 28, 1997

HON CHRISTINE O.C. MILLER

Transaction details

Date	Activity	Description	Quantity	Price	Amount
09/25/97	Relinvest	SMITH BARNEY MANAGED MUNICIPAL FUND CL A	23.802	16.17	-384.86
09/25/97	Stk split	PROCTER & GAMBLE CO STK SPLIT ON 284 SHS	264		\$ 0.00
Total securities bought and other subtractions					\$ -384.86
Total securities sold and other additions					\$ 0.00

Investment activity

Withdrawals

Date	Description	Reference no	Amount
09/23/97	CHECK 0017829089 BY WASHINGTON DC		\$ 500.00

Money funds activity

Date	Activity	Description	Amount	Description	Amount
			\$ 1,063.78	All transactions are traded at \$1.00 per share.	
09/08/97	Autoinvest	SB MONEY FUNDS GOVT PORT CL A	180.37	Autoinvest	SB MONEY FUNDS GOVT PORT CL A
09/15/97	Autoinvest	SB MONEY FUNDS GOVT PORT CL A	356.12	Redemption	SB MONEY FUNDS GOVT PORT CL A
MONEY FUNDS EARNINGS REINVESTED					-500.00
(SEE DETAILS UNDER EARNINGS DETAILS)					4.60
Closing balance					\$ 1,307.00

Interest credited

Date	Description	Comment	Taxable	Non-taxable	Amount
08/02/97	FORTANA CALIF REDEV AGY TAX ALLOC SOUTHWEST INDL PK PJ B/E FGIC DIV/53F/39/US3 OH DUE 09/01/2007 RATE 5.800	REG INT ON 5000 BOND PAYABLE 09/01/97		\$ 145.00	\$ 145.00
Total interest credited					\$ 145.00

The tax status of earnings is reliable to the best of our knowledge. Taxable and non-taxable designations refer to the federal income tax status of your securities; not of your account.

Dividends

Date	Description	Comment	Taxable	Non-taxable	Amount
08/02/97	LUCCENT TECHNOLOGIES INC	CASH DIV ON 72,000 SHS	\$ 5.40		\$ 5.40
06/02/97	T ROWE PRICE CALIF TAX FREE BOND FUND	CASH DIV ON 404,530 SHS RECORD 07/31/97 PAY 08/28/97		16.57	16.57
09/10/97	CHEVRON CORP	CASH DIV ON 611,000 SHS	356.12		356.12
09/15/97	UST INC	CASH DIV ON 425,000 SHS	172.13		172.13
08/26/97	SMITH BARNEY MANAGED MUNICIPAL FUND CL A	CASH DIV RECORD 09/23/97 PAY 09/26/97		384.86	384.86
Total dividends received					\$ 933.65
Total dividends payable					\$ 403.00

Preferred Client Statement
 September 1 - September 28, 1997

HON CHRISTINE O.C. MILLER

Money funds earnings

Date	Description	Comment	Taxable	Non-taxable	Amount
09/12/97	SB MONEY FUNDS GOVT PORT CL A	REINVESTED FOR PERIOD 08/11/97-09/14/97 35 DAYS AVERAGE YIELD 4.98 %	\$ 4.80		\$ 4.80
Total earnings from money funds			\$ 4.80	\$ 0.00	\$ 4.80

Message: The recently enacted Taxpayer Relief Act of 1997 changes the definition and tax treatment of long-term capital gains. Your Gain/Loss Statement does not yet reflect these changes. We are working to make the appropriate modifications. To learn more about potential saving and investment opportunities created by this new legislation, ask your Financial Consultant for a copy of our special report, "The Taxpayer Relief Act of 1997: 12 Strategies to Consider Now."



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Preferred Client IRA Statement
 June 30 - September 28, 1997

Page 2 of 3

*** CHRISTINE O.C. MILLER

IRA activity summary

For your convenience the Smith Barney statement tracks your deductible and non-deductible IRA contributions based upon information you provided to your Financial Consultant. However, Smith Barney reports to the IRS only the total amount you contribute to your IRA this year.

Primary Beneficiaries

Contact your Financial Consultant for the appropriate documentation to change or update your beneficiary information.

	1997	1996
Contributions		
Unspecified	\$ 0.00	\$ 2,000.00
Total contributions	\$ 0.00	\$ 2,000.00

Rollovers and Transfers

Total amount rolled over	20,158.86	0.00
Transfers into your IRA (Does not include value of direct investments)	55,194.67	0.00

Portfolio details The values of your holdings are as of 09/30/97.

Stocks

Common stocks	Exchange	No. of shares	Price	Yield	Anticipated income (annualized)	Market value	Comment
WESTINGHOUSE ELECTRIC CORP	NYSE	400	\$ 27.00	7.4%	\$ 80.00	\$ 10,800.00	Symbol: WXR:lect B
					\$ 80.00	\$ 10,800.00	

mutual funds

Description	Number of shares	Price	Divided yield (annualized)	Anticipated income (annualized)	Market value	Comment
SMITH BARNEY PREMIUM TOTAL RETURN FUND CL A	3,241,929	\$ 22.15			\$ 71,806.73	
Total mutual funds				\$ 0.00	\$ 71,806.73	

Anticipated annual income

This value is a grand total of all the anticipated annual income amounts that are shown on the statement.

Total anticipated income (annualized)	\$ 80.00
---------------------------------------	----------

Preferred Client IRA Statement
June 30 - September 28, 1997

*** CHRISTINE O.C. MILLER

Transaction details

Date	Activity	Description	Quantity	Price	Amount
07/25/97	Reinvest	SMITH BARNEY PREMIUM TOTAL RETURN FUND CL A	15.904	\$ 21.57	\$ -343.05
08/28/97	Reinvest	SMITH BARNEY PREMIUM TOTAL RETURN FUND CL A	16.285	21.17	-344.75
09/28/97	Reinvest	SMITH BARNEY PREMIUM TOTAL RETURN FUND CL A	15.643	22.15	-346.50
Total securities bought and other additions					\$ -1,034.30
Total securities sold and other additions					\$ 0.00

Investment activity

Earnings details

Date	Description	Comment	Taxable	Non-taxable	Amount
07/25/97	SMITH BARNEY PREMIUM TOTAL RETURN FUND CL A	CASH DIV RECORD 07/22/97 PAY 07/25/97	\$ 343.05		\$ 343.05
08/29/97	SMITH BARNEY PREMIUM TOTAL RETURN FUND CL A	CASH DIV RECORD 08/26/97 PAY 08/29/97	344.75		344.75
09/02/97	WESTINGHOUSE ELECTRIC CORP	CASH DIV DN 400 0000 SHS	20.00		20.00
09/26/97	SMITH BARNEY PREMIUM TOTAL RETURN FUND CL A	CASH DIV RECORD 09/23/97 PAY 09/26/97	346.50		346.50
Total dividends earned			\$ 1,054.30	\$ 0.00	\$ 1,054.30

Dividends

The tax status of earnings is reliable to the best of our knowledge. Taxable and non-taxable designations refer to the federal income tax status of your securities, not of your account.

Preferred Client FMA Statement
September 1 - September 28, 1997

HON CHRISTINE O.C. MILLER AND Thomas F.

Cash and money funds balance

	This year	Year-to-date as of 09/28/97
Opening balance	\$ 4,078.71	14,355.39
Securities bought and other subtractions	-8,970.28	.97
Securities sold and other additions	9,843.57	14,356.36
Deposits	500.00	500.00
Dividends credited	27.55	18,856.36
Money funds earnings reinvested	20.26	22,251.39
Closing balance	\$ 4,587.81	22,252.23

Portfolio summary

	This period	Year-to-date as of 09/28/97
Opening value of securities	20,977.36	14,355.39
+ Opening cash balance	.35	.97
= Opening portfolio balance	20,977.71	14,356.36
Securities deposited/withdrawn net	0.00	0.00
Capital deposited/withdrawn net	500.00	4,500.00
Adjusted opening value	21,477.71	18,856.36
Closing value of securities	22,251.39	22,251.39
+ Closing cash balance	.84	.84
= Closing portfolio value	22,252.23	22,252.23

Note: Securities deposited/withdrawn net = The value of securities on the day they were debited from or credited to the account as reflected in the "Other security activity" section.
Capital deposited/withdrawn net = Cash withdrawals and deposits, Gold Card payments, FMA Money Card activity, checks written, and Money In/Advanced cash deposit transfers.

Portfolio details

The values of your holdings are as of 09/28/97. Please note, unrealized gains/losses are being prepared for informational purposes only and should not be used for tax preparation without the assistance of your tax advisor.

Money funds	Number of shares	Description	Current value	Accrued dividends	Annualized % dividend Yield/Annualized Income (Annualized)
4,588.87	SB MONEY FUNDS GOVT PORT CL A	\$ 4,586.87	\$ 8.79	5.09 %	
				\$ 233.89	
				\$ 233.89	
				\$ 233.89	

Unit Investment trusts

Number of units	Description	Date acquired	Cost	Share cost	Current share price	Current value	Unrealized gain/loss	Average % Yield/Annualized Income (Annualized)
3,558	UTS EIF SELECT TEN DOW 97-J-Q	01/02/97	\$ 3,556.00	\$ 1.00	\$ 1.171	\$ 4,164.06	\$ 608.06	5T
59	In cash account		63.80	1.043	1.171	68.09	5.16	5T
3,815	Reinvestments to date		3,619.83	1.001		4,333.17	613.24	

Preferred Client FMA Statement
September 1 - September 28, 1997

A Member of *Thrifters Group*

HON CHRISTINE O.C. MILLER AND *Benefit*

Unit Investment Trusts
 continued

Number of units	Description	Date acquired	Cost	Share cost	Current share price	Current value	Unrealized gain/loss	Average % Yield/Participated Income (Annualized)
3,225	UTS EQUITY INC FD DOW #87-BQ 1897 SELECT 10 DJIA In cash receipt	05/27/97	\$ 3,192.75	\$.89	\$ 1.054	\$ 3,398.15	\$ 206.40	ST
0	Reinvestments to date		9.42	1.046	1.054	8.49	.07	ST
3,234			3,202.17	.89	3,408.64	206.47		1.138 38.81
16,044	UTS EQUITY INC FD DOW 87-C Q 1897 SELECT 10 DJIA In cash receipt	05/22/87	6,643.56	.39	.596	10,003.82	60.28	ST
	Total unit investment trusts		\$ 10,795.66		\$ 17,645.63	\$ 6,797.97	\$ 1.21	
	Total portfolio value		\$ 21,262.83		\$ 22,442.66	\$ 879.87	\$ 1.22	
					\$ 0.00	\$ 0.00	\$ 0.00	\$ 272.78

Transaction details

Date	Activity	Description	Quantity	Price	Amount
09/25/97	Sold	UTS EIF SELECT TEN DOW 86-C Q 1898 SELECT TEN SERIES FULL PRICE IS 1.89727000 TRADE AS OF 08/22/97	-7,605	\$ 1.287	\$ 9,843.57
09/25/97	Reinvest	UTS EIF SELECT TEN DOW 87-J Q 1897 SELECT TEN SERIES UIT DIVIDT REINVESTMENT FULL PRICE IS 1.16173000	23	1.161	-26.72
09/25/97	Bought	UTS EQUITY INC FD DOW 87-C Q 1897 SELECT 10 DJIA TRADE AS OF 09/22/97	10,044	.89	-9,943.56
		Total securities bought and other subtractions			\$ -9,970.28
		Total securities sold and other additions			\$ 9,843.57

Deposits

Date	Description	Amount
09/02/87	AUTOMATIC FUNDS TRANSFER RIGGS NATL BK WA DC	\$ 500.00

Preferred Client FMA Statement
September 1 - September 28, 1997

HON CHRISTINE D. C. MILLER AND

Money funds activity		Date	Description	Amount	Date	Activity	Description	Amount	
Opening money funds balance				\$ 4,076.36	All transactions are traded at \$1.00 per share				
09/01/97	Autoinvest	SB MONEY FUNDS GOVT PORT CL A	500.35				MONEY FUNDS EARNINGS REINVESTED (SEE DETAILS UNDER EARNINGS DETAILS)	20.26	
								Closing balance	\$ 4,596.97

Pending Automatic Funds Transfers

Pursuant to your instructions, the following Automatic Funds Transfers have been scheduled through next month for your account. If you have any changes, please contact us at 1-800-634-9855.

Pending Date	Amount	To/From	Institution	Account Number
10/01/97	\$ 500.00	TRANSFER FROM	RIGGS NATL BK WA DC	15391436

Earnings details

The tax status of earnings is reliable to the best of our knowledge. Taxable and non-taxable designations refer to the federal income tax status of your securities, not of your account.

Date	Description	Comment	Taxable	Non-taxable	Amount
09/25/97	UTS EIF SELECT TEN DOW 97-J Q 1997 SELECT TEN SERIES	REG INT ON 3597 UNITS	\$ 27.55		\$ 27.55
Total dividends earned					\$ 27.55

Money funds earnings

Date	Description	Comment	Taxable	Non-taxable	Amount
05/12/97	SB MONEY FUNDS GOVT PORT CL A	REINVESTED FOR PERIOD 08/1/97-08/14/97 35 DAYS AVERAGE YIELD 4.98 %	\$ 20.26		\$ 20.26
Total earnings from money funds					\$ 20.26

Realized gain/loss details

Please note this material is being prepared for informational purposes only and should not be used for tax preparation without the assistance of your tax advisor.

Description	Original trade date	Closing trade date	Quantity	Purchase price	Sale price	Cost basis	Proceeds	Realized gain or (loss)
UTS EIF SELECT TEN DOW 96-C Q	08/17/96	09/22/97	7,515	\$.99	\$ 1.297	\$ 7,439.85	\$ 8,748.98	\$ 1,309.13 LT
1998 SELECT TEN SERIES		Sold						
FULL PRICE IS 1.29727000	12/20/98	09/22/97	27	1.077	1.297	28.98	35.03	5.94 ST
TRADE AS OF 09/22/97	09/25/97	Sold					68.78	8.75 ST
	09/22/97	Sold	53	1.132	1.297	60.01		

Preferred Client FMA Statement
September 1 - September 28, 1997

HON CHRISTINE D.C. MILLER AND *Demetrius W.*

Description	Original trade date	Closing trade date	Quantity	Purchase price	Sale price	Cost basis	Proceeds	Realized gain or (loss)
UTS EIF SELECT TEN DOW 96-C Q	05/07/97	09/22/97	29	\$ 1,165	\$ 1,287	\$ 34,360	\$ 37,620	\$ 3,260 ST
1889 SELECT TEN SERIES		Sold						
FULL PRICE IS 1,267,710.00	07/05/97	09/22/97	41	1,364	1,297	51,820	53,160	1,340 ST
TRADE AS OF 09/22/97		Sold						
Total			7,655			\$ 7,915.10	\$ 9,043.57	\$ 2,328.41
Total Long Term this period								
Total Short Term this period								
Total realized gain or (loss) this period								
Total Long Term - year-to-date								
Total Short Term - year-to-date								
Total realized gain or (loss) year-to-date								
							\$ 13,196.42	\$ 2,840.69

Message: The recently enacted Taxpayer Relief Act of 1997 changes the definition and tax treatment of long-term capital gains. Your Gain/Loss Statement does not yet reflect these changes. We are working to make the appropriate modifications. To learn more about potential saving and investment opportunities created by this new legislation, ask your Financial Consultant for a copy of our special report, "The Taxpayer Relief Act of 1997: 12 Strategies to Consider Now."

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.

Since becoming a judge in 1983, I worked as a volunteer gemologist for 4 hours per week at the Christ Child Society Opportunity Shop from Sept. 1986-Aug. 1994. I also worked as a volunteer for 3 hours per week at the Information Desk at the Columbia Hospital for Women during calendar year 1990-1991. Before becoming a judge, I worked on a variety of pro bono assignments, but have no records of these matters as of this date.

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 never belonged to such an organization.

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 judicial selection commission in my jurisdiction. I sought reappointment to the United States Court of Federal Claims by writing the President. Thereafter, the White House and the Department of Justice processed my request for reappointment.

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 has discussed these matters with me.

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 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.

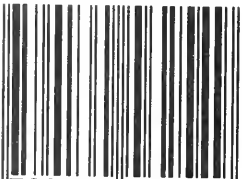
As a trial judge, I am mindful that my responsibility is to find the facts in dispute between the parties and apply the law to those facts. If I encounter difficulty in applying a federal law, I explain the problem in an opinion so that Congress can consider remedying it. I uphold the principles of *stare decisis* and separation of powers and regard their importance as paramount.

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