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CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

CONFIRMATION HEARINGS ON APPOINTMENTS
TO THE FEDERAL JUDICIARY

MAY 14, JUNE 4, 18, AND JULY 1, 1992

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CONTENTS

Hearings Held

	Page
Thursday, May 14, 1992	1
Thursday, June 4, 1992	195
Thursday, June 18, 1992	397
Wednesday, July 1, 1992	597

THURSDAY, MAY 14, 1992

Statements

DeConcini, Hon. Dennis	1
Exon, Hon. J. James	1
Hoagland, Hon. Peter, Representative from Nebraska	2
Barrett, Hon. Bill, Representative from Nebraska	4
Kerrey, Hon. J. Robert	5
Bradley, Hon. Bill	5
Lautenberg, Hon. Frank R	6
Bumpers, Hon. Dale	7, 9
Pryor, Hon. David	12, 13
Mack, Hon. Connie	15
Hammerschmidt, Hon. John Paul, Representative from Arkansas	15
Thornton, Hon. Ray, Representative from Arkansas	16
Kennedy, Hon. Edward M	28
Kerry, Hon. John	29

Testimony of Nominees

Arnold, Judge Morris S., to be a U.S. circuit judge for the eighth circuit	17
Boudin, Judge Michael, to be a U.S. circuit judge for the first circuit	30
Simandle, Judge Jerome B., to be a U.S. district judge for the District of New Jersey	31
Kopf, Judge Richard G., to be a U.S. district judge for the District of Nebraska	35

Questionnaires and Other Submissions

Arnold, Judge Morris S.:	
Testimony	17
Letter to Senator Thurmond in answer to question about sentencing guidelines	23
Letter to Chairman Biden from Richard L. Gill, in support of nominee	26
Questionnaire	38
Boudin, Judge Michael:	
Testimony	30
Questionnaire	69
Kopf, Judge Richard G.:	
Testimony	35
Questionnaire	163
Simandle, Judge Jerome B.:	
Testimony	31
Questionnaire	130

THURSDAY, JUNE 4, 1992

Statements

Page

Kennedy, Hon. Edward M 195
Graham, Hon. Bob 196
Mack, Hon. Connie 197
Moynihan, Hon. Daniel Patrick 198
Rockefeller, Hon. John D., IV 209, 224
D'Amato, Hon. Alfonse M 213, 215

Testimony of Nominees

Black, Judge Susan H., to be a U.S. circuit judge for the eleventh circuit 199
Sotomayor, Sonia, to be a U.S. district judge for the Southern District of New York 202
Preska, Loretta A., to be a U.S. district judge for the Southern District of New York 204
Keeley, Irene M., to be a U.S. district judge for the Northern District of West Virginia 207

Questionnaires and Other Submissions

Black, Judge Susan H.:
Testimony 199
Questionnaire 226
Keeley, Irene M.:
Testimony 207
Questionnaire 354
Preska, Loretta A.:
Testimony 204
Questionnaire 317
Sotomayor, Sonia:
Testimony 202
Questionnaire 281

THURSDAY, JUNE 18, 1992

Statements

Metzenbaum, Hon. Howard M 397
Levin, Hon. Carl 398
Riegle, Hon. Donald W., Jr 399
Henry, Hon. Paul B., Representative from Michigan 407
Upton, Hon. Frederick S., Representative from Michigan 407
Rudman, Hon. Warren 408
Dole, Hon. Robert 409
Smith, Hon. Bob 411
Specter, Hon. Arlen 412
Wofford, Hon. Harris 413
Warner, Hon. John W 414, 415
de Lugo, Hon. Ron 417
Hodge, Hon. Derek, Lt. Gov., U.S. Virgin Islands 418

Testimony of Nominees

Stahl, Judge Norman H., to be a U.S. circuit judge for the first circuit 422
Robreno, Eduardo C., to be a U.S. district judge for the Eastern District of Pennsylvania 426
Quist, Gordon J., to be a U.S. district judge for the Western District of Michigan 428
Moore, Thomas K., to be a U.S. district judge for the District of the Virgin Islands 432

Questionnaires and Other Submissions

	Page
Moore, Thomas K.:	
Testimony	432
Responses to written questions	440
Questionnaire	563
Quist, Gordon J.:	
Testimony	428
Letters supporting the nominee	402
Responses to written questions	443
Questionnaire	521
Robreno, Eduardo C.:	
Testimony	426
Questionnaire	485
Stahl, Judge Norman H.:	
Testimony	422
Biography	420
Responses to written questions	437
Questionnaire	446

WEDNESDAY, JULY 1, 1992

Statements

Kohl, Hon. Herbert	597
Nickles, Hon. Don	598
Boren, Hon. David L.	598
Bond, Hon. Christopher	599
Kasten, Hon. Robert W., Jr.	600
Seymour, Hon. John	602
DeConcini, Hon. Dennis	604

Testimony of Nominees

Leonard, Timothy D., to be a U.S. district judge for the Western District of Oklahoma	610
Baird, Lourdes G., to be a U.S. district judge for the Central District of California	614
Gonzalez, Irma E., to be a U.S. district judge for the Southern District of California	618
Randa, Rudolph T., to be a U.S. district judge for the Eastern District of Wisconsin	622

Questionnaires and Other Submissions

Baird, Lordes G.:	
Testimony	614
Questionnaire	661
DeConcini, Hon. Dennis:	
Letters in support of nominee, Judge Irma Gonzalez	604
Gonzalez, Irma E.:	
Testimony	618
Questionnaire	696
Leonard, Timothy D.:	
Testimony	610
Questionnaire	627
Randa, Rudolph T.:	
Testimony	622
Questionnaire	727

ALPHABETICAL LISTING OF NOMINEES FOR FEDERAL APPOINTMENTS

Page

Arnold, Judge Morris S., to be a U.S. circuit judge for the eighth circuit 17
Baird, Lourdes G., to be a U.S. district judge for the Central District of California 614
Black, Judge Susan H., to be a U.S. circuit judge for the eleventh circuit 199
Boudin, Judge Michael, to be a U.S. circuit judge for the first circuit 30
Gonzalez, Irma E., to be a U.S. district judge for the Southern District of California 618
Keeley, Irene M., to be a U.S. district judge for the Northern District of West Virginia 207
Kopf, Judge Richard G., to be a U.S. district judge for the District of Nebraska 35
Leonard, Timothy D., to be a U.S. district judge for the Western District of Oklahoma 610
Moore, Thomas K., to be a U.S. district judge for the District of the Virgin Islands 432
Preska, Loretta A., to be a U.S. district judge for the Southern District of New York 204
Quist, Gordon J., to be a U.S. district judge for the Western District of Michigan 428
Randa, Rudolph T., to be a U.S. district judge for the Eastern District of Wisconsin 622
Robreno, Eduardo C., to be a U.S. district judge for the Eastern District of Pennsylvania 426
Simandle, Judge Jerome B., to be a U.S. district judge for the District of New Jersey 31
Sotomayor, Sonia, to be a U.S. district judge for the Southern District of New York 202
Stahl, Judge Norman H., to be a U.S. circuit judge for the first circuit 422

CONFIRMATION HEARING ON MORRIS S. ARNOLD, MICHAEL BOUDIN, JEROME B. SIMANDLE, AND RICHARD G. KOPF

THURSDAY, MAY 14, 1992

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

The committee met, pursuant to notice, at 10:10 a.m., in room SD-G50, Dirksen Senate Office Building, Hon. Dennis DeConcini, presiding.

Present: Senators DeConcini and Thurmond.

OPENING STATEMENT OF SENATOR DeCONCINI

Senator DECONCINI. The Senate Judiciary Committee will come to order, and my apologies for the tardiness. I was upstairs in another room with other things.

We will have the nominations today of various judgeships, and because of the number of Members that are here, we will take them first on each.

Please sit down, Senator Bradley. You may sit there. Every Senator, if there is enough room, may come up and sit down.

Let me do the Senators' statements first, and then we will have the nominees. We have so many. Senator Mack, come on up here.

Are there any other Members of Congress?

Senator Exon.

Senator EXON. Mr. Chairman, Senator Pryor is on his way.

Senator DECONCINI. We will do all the Members, so they can get on with their duties. Please sit down, Mr. Hammerschmidt. Mr. Hoagland is also here. Would you like to bring a chair, and we will start right in.

We are just going to start with Senator Exon on behalf of Richard Kopf. Senator Exon, you may proceed with your introductory remarks.

STATEMENT OF HON. J. JAMES EXON, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator EXON. Mr. Chairman, thank you very, very much. We have many Members of the U.S. Senate here, so I will be very, very brief.

We are here today because we are all very much concerned about the quality of the Federal bench, and I am here today to give a very strong recommendation for Mr. Richard Kopf, a very, very

well-known, highly qualified attorney with a varying background and various places of residence in my State of Nebraska.

As has been my custom now for 13 years, I believe I have come before the Judiciary Committee on each and every judgeship that has gone through the selection process, the nominating process. I have been here for 13 years. Two years I was here under President Jimmy Carter, and the rest of the time I have been here under the Presidencies of President Reagan and now President Bush. In each and every instance when the nominating process has been gone through, whether it has been the Democratic process of nomination or the Republican process of nomination, I have agreed that the process has worked well and that highly qualified individuals have been recommended to the Judiciary Committee. Therefore, I have never blue-slipped anyone that has come before the committee, which, as the chairman knows, can be done.

Certainly of all of the individuals that I have recommended previously that I think have gone on to serve with great distinction on the Federal bench, I believe that Judge Kopf fits that mold exactly. In fact, I would rate him very, very high of all of the people that I think would be highly qualified for this very, very important position.

When Judge Kopf comes before the committee today, I hope that I can be here with him. It so happens that this has been a very, very busy, unusual day in the U.S. Senate, and that might not be possible. But I just want you to know that this Senator from Nebraska—and I also can speak for my colleague, Senator Kerrey, who I think will try and be here today also, we both have the highest regard for and highly recommend Judge Kopf to be confirmed as quickly as possible by this committee and then by the U.S. Senate.

Mr. Chairman, I thank you very much.

Senator DECONCINI. Thank you, Senator Exon.

We are going to take Mr. Hoagland now, who is also here for the nominee, Mr. Kopf. Mr. Hoagland, we are pleased to have you here. My apologies for having you wait.

STATEMENT OF HON. PETER HOAGLAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. HOAGLAND. Well, thank you, Senator. It is certainly a pleasure to see you again this morning and to have this opportunity to appear before this distinguished committee in support of the nomination of Richard Kopf for the U.S. District Court for the district of Nebraska.

Mr. Chairman, my knowledge of Mr. Kopf dates back to 1983 when we first met. I was a member of the Nebraska unicameral legislature then, and Magistrate Kopf was retained as special counsel to investigate the collapse of a State-chartered, State-regulated State bank, and a special commonwealth committee was formed. Mr. Kopf was special counsel for that, and that ultimately led the legislature to vote to impeach our sitting attorney general. Mr. Kopf then, because of his excellent work as a special counsel for the legislature on the commonwealth matter, was chosen to prosecute the case for the unicameral legislature and the Nebraska Su-

preme Court. I attended those proceedings from time to time as a representative of the legislature, and I observed that trial. He did a very good job, and not just technically but in pursuing the public interest in that case.

Mr. Kopf in recent years has been a U.S. magistrate in Omaha. While I have never appeared before him in that capacity, I am generally familiar with his performance. He has received very high retention ratings in polls conducted among Nebraska attorneys and has done very well in that capacity as well.

As a litigator off and on for 19 years myself, I have often reflected on the qualities that are needed in a sound judge. I have always thought temperament and disposition were the No. 1 qualities; second, fairness and openmindedness; third, a capacity for hard work; and, fourth, intellectual ability. Those are the four things that I have looked for in thinking about and evaluating dozens and dozens of judges I have appeared before as a litigator, and generally thinking on this subject through the years.

I would have to say that Mr. Kopf rates very highly in all four of those capacities. He has a very even disposition, a very even temperament, and I think that, ahead of anything else, really is critical for a good judgeship. He is very fair and openminded.

If you review his résumés, he clearly has the capacity for hard work, having prepared papers and presented papers annually on developments in Nebraska law before members of the Nebraska Bar Association. And I think his intellectual ability is also very high. He has high native intelligence and is very capable.

Let me just underscore two final points, Mr. Chairman, and then I will end this presentation.

There are two particularly good things about Mr. Kopf's nomination, I think, from the point of view of the sort of person the Justice Department has presented us with. First of all, he has had at least three public jobs: As a law clerk, as counsel to the unicameral, and then many years on the bench as a magistrate, which has given Nebraskans and others an opportunity to observe him. And the fact that he has held previous employment involving the exercise of judicial powers is very, very helpful. I would certainly encourage the Justice Department to present us with these kinds of candidates, people that have held judicial positions before, so we have some basis on which we can judge. In Mr. Kopf's case, he has done very, very well in those capacities.

Second, Mr. Kopf has had substantial litigation experience in his lifetime, beginning shortly after he graduated from law school, first as a law clerk to a U.S. Court of Appeals judge for the eighth circuit; and then he worked principally as a litigator through his legal practice, and that kind of extensive litigation experience is extremely important if one is to be a good judge, in my view. And I would urge the Justice Department to present us with candidates with litigation experience as well.

Now, I have talked too long, Mr. Chairman. Let me just give my unqualified endorsement of his nomination.

Thank you.

Senator DECONCINI. Thank you, Representative Hoagland.

We will now hear from Representative Barrett.

STATEMENT OF HON. BILL BARRETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. BARRETT. Thank you, Mr. Chairman. It is a pleasure for me to accompany this morning a jurist of the highest qualifications and character as he appears before this committee to seek your approval for his nomination to the U.S. district court. It is, in fact, a very special privilege because I happen to admire this distinguished fellow Nebraskan very much, and I am pleased to call him my very good personal friend.

Mr. Chairman, I am new on the other side of the Hill, and I have no desire to shift my allegiance to your side of the Hill, except to say that this was one time when I truly wish that I had a chance to vote for this gentleman. This is one of the finest jurists I have known in my lifetime. He has served as my family attorney. He has served as an attorney for my business.

The magistrate has a very, very impressive trial record, as has been suggested already. He has tried a significant number of cases as a magistrate, which reflects, I think, the confidence that the district judges have in his ability.

He received an extremely high retention ranking on the Nebraska bar polls in both 1988 and 1989. I won't go into any great detail because I know this committee has substantial material and evidence which has been prepared for the committee for this confirmation hearing.

Of note, however, I do want to mention, I believe, that all of the active and the senior Federal judges, both on the circuit court of appeals and on the district court, are enthusiastically in support of his nomination. As a matter of fact, a former colleague of yours, Senator Roman Hruska, a former Member of this body, is also enthusiastically in support of Richard Kopf. I think Mr. Hruska has knowledge of and experience in judicial selections, certainly during his service in the U.S. Senate. In fact, it might be considered almost encyclopedic.

I came to the Congress from the Nebraska Legislature where I served as speaker for the 4 years immediately preceding my 1990 election. I will not go into any great detail because Representative Hoagland has touched on Mr. Kopf's experience in a very serious case involving an impeachment of a sitting attorney general, among other things. I helped select Richard Kopf to serve as special counsel to the legislature, and he fulfilled that obligation in an especially distinguished and professional manner.

As a matter of fact, the lawyer that he opposed, the lawyer for the former attorney general, has nothing but the highest praise for Rich Kopf, despite what became a very, very bitter and heart-wrenching impeachment proceeding.

I have never known Rich to be anything less than dedicated to the job at hand, diligent, and extremely thorough.

In conclusion, Mr. Chairman, let me offer just a personal note, if I might. Rich was just married a couple of weeks ago. He has just returned from his honeymoon. This committee and the vote by the Senate will certainly launch him into a new stage of his legal career at the same time that he undertakes a new challenge in his

personal life. How apropos that he will need his substantial judicial talents and his wisdom in both of these endeavors.

I wish him all the luck and success in both endeavors, as I know you do, Mr. Chairman, and I thank you very much for this opportunity to speak on his behalf.

Senator DECONCINI. Thank you, Representative Barrett.

I see that Senator Kerrey is here on behalf of Mr. Kopf.

STATEMENT OF HON. J. ROBERT KERREY, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator KERREY. Mr. Chairman, I, as well as Senator Exon and Congressman Barrett and Congressman Hoagland, am pleased to be here to introduce Federal Magistrate Richard Kopf to the committee. Magistrate Kopf has been nominated by the President to be U.S. district judge for the district of Nebraska, and I both personally and professionally enthusiastically support this nomination.

[illegible] ate as both a practicing attorney and as a [illegible] a consequence, he has sound and broad- [illegible] h an advocacy as well as a judicial role. He [illegible] cted by the legal community and is respect- [illegible] l public.

[illegible] e legal scholar who well understands the [illegible] leral and State law. Magistrate Kopf has a [illegible] He as well has a very calm demeanor and a [illegible] f the thoughts and needs of litigants, wit- [illegible] ns who come into contact with the courts. [illegible] he is an individual of the highest personal [illegible] es effectively qualify Magistrate Kopf to be [illegible] al judge, and I respectfully submit that he [illegible] judiciary with genuine distinction.

Thank you.

Senator DECONCINI. Thank you, Senator Kerrey.

Thank you, gentlemen, who have been here for Mr. Kopf.

We will now proceed to Mr. Simandle—Jerome Simandle—and we will hear from Senator Bradley and Senator Lautenberg.

STATEMENT OF HON. BILL BRADLEY, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator BRADLEY. Thank you very much, Mr. Chairman. It is a privilege to be here today to introduce Jerome Simandle who has been nominated for district judge for the district of New Jersey.

Jerry Simandle is respected by the lawyers who practice before him and by the judges who see his work every day. His legal career has been one of public service, first in the U.S. attorney's office and then as a Federal magistrate. He has tried both civil and criminal cases and has presided over both extremely well. He has a distinguished academic career as a writer and as a teacher.

Following his graduation from law school, Jerry Simandle clerked for Judge John Gerry, now chief judge of the U.S. District Court for New Jersey. He went from John Gerry's chambers to serving as assistant U.S. attorney in New Jersey in both Newark and Trenton. He was appointed U.S. magistrate in 1983 and was unanimously reappointed in 1991 for a second 8-year term. I be-

lieve that Judge Simandle is an extremely qualified nominee for district judge, and I believe the committee will agree with me after the hearing process concludes.

It gives me great pleasure to introduce and recommend him to this committee. Do not mistake the brevity of my statement for anything other than very strong support for his confirmation.

Senator DECONCINI. Thank you, Senator Bradley.

Senator Lautenberg.

STATEMENT OF HON. FRANK R. LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you very much, Mr. Chairman. I join with my colleague, Senator Bradley, in supporting the nomination of Magistrate Judge Jerome Simandle to become U.S. District Court Judge for the District of New Jersey. I know that Senator Bradley, objective as he is, had no bias at all in favor of Judge Simandle because they both went to Princeton. Senator Bradley handed me that note to make comments on.

Judge Simandle has had a distinguished career. He has demonstrated a lasting commitment to public service, and I am sure that he is going to serve his community with great distinction on the district court bench. And I enthusiastically recommend him to you.

As you have heard, he received a law degree, after graduating from Princeton, from the University of Pennsylvania where he was an editor of the Law Review. He then became an assistant U.S. attorney, first in Newark, then in Trenton where he became the attorney-in-charge in 1983. In the same year, he became a magistrate judge in the district court and was reappointed unanimously for another 8-year term in 1991. In each of these positions, Mr. Chairman, Judge Simandle has served with distinction.

His primary areas of activity as an assistant U.S. attorney were toward civil rights, labor law, environmental law, and administrative law. He has developed experience in a wide variety of legal matters that come before the court, including criminal law. He has, by all accounts, demonstrated the judicial temperament he is going to need in his new position.

Particularly interesting to me, as a member of the Senate Environment and Public Works Committee, he has extensive involvement representing the Government in environmental cases, including Superfund. As the Federal courts increasingly hear cases involving important environmental issues, Judge Simandle's experience should prove especially helpful.

He also is filling a position that has been open too long. The Camden Federal District Court has labored under a crushing workload with a depleted roster of judges available to conduct the court's business. Judge Gerry, the chief judge, and his colleagues as well as citizens of south New Jersey, who look to the court to resolve disputes and secure justice, need and deserve swift action on this nomination.

I am pleased, Mr. Chairman, to make this recommendation because Judge Simandle will make an excellent addition to the court. He has received the highest rating from the American Bar Associa-

tion, and I am certain that the committee will give this nomination a positive recommendation. I hope so.

I thank you very much.

Senator DECONCINI. Thank you, Senator Lautenberg. I can assure you we will do just that.

The next nominee is Morris S. Arnold for U.S. circuit judge of the eighth circuit.

Senator Bumpers.

STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BUMPERS. Mr. Chairman, thank you very much. I will submit my formal statement for the record and just summarize it very briefly for you.

Senator DECONCINI. It will appear in the record.

Senator BUMPERS. I am very pleased to introduce Morris Sheppard Arnold to this committee. Morris Sheppard was a U.S. Senator from Texas, and our nominee this morning is a grandson of Senator Sheppard. He was born in Texarkana, TX, but had the good judgment to spend most of his life on the correct side of State Line Avenue in Texarkana, AR.

He would need no introduction whatever in Arkansas. The Arnold family, as jurists and lawyers, is extremely well known and respected. He started at Yale University but came back to the University of Arkansas where he got his undergraduate degree and his law degree; later went back to Harvard and got a master's and a doctorate at Harvard Law School.

Before he became a Federal judge in 1985 for the Western District of Arkansas, he taught as a teaching fellow at Harvard. He taught at the University of Indiana, the University of Texas, the University of Pennsylvania, the University of Michigan, and the Stanford University. He was the Altheimer distinguished professor of law at the University of Arkansas and later, immediately prior to his becoming a district judge, was dean at the University of Indiana Law School in Bloomington.

He is the author of many books, including one which he just presented me on colonial Arkansas. He has written nine books and an awful lot of articles and book reviews. He is a very popular speaker.

He started his law practice in his father's firm in Texarkana, and he remained active in another way. While he was teaching at the University of Arkansas at Little Rock and the Legal Services Corp. was taking these huge cuts in the early 1980's, Judge Arnold started what was called Volunteers of Central Arkansas Legal Services. VOCALS was the acronym, and it was simply recruiting lawyers all over Arkansas, and especially in central Arkansas, to do pro bono work to try to take up some of the slack.

One of his greatest claims to fame, of course, is that he is the brother of another Judge Arnold, Judge Richard Arnold. You may find this interesting, Mr. Chairman, that Morris Arnold, once confirmed, and Richard Arnold will be the first two brothers ever to sit on a court of appeals, the same court of appeals. One is a Re-

publican; one is a Democrat. So I don't know how this is going to wash out.

I personally don't like Morris Arnold's resume as well as I do Richard's because Richard can put on his resume that he was a legislative assistant to the very distinguished senior Senator from Arkansas when I first came to the Senate.

I enthusiastically endorse him for your consideration and confirmation, but, Mr. Chairman, I also beg your indulgence in leaving. We are having a hearing on my own bill up in the Energy Committee.

Thank you very much.

[The prepared statement of Senator Bumpers follows:]

It is my privilege to introduce Morris Sheppard Arnold to the members of the Senate Judiciary Committee today. Judge Arnold needs little introduction to this Committee since he is already serving with distinction as the United States District Judge for the Western District of Arkansas. He needs even less introduction in Arkansas where he is very well known. If the distinguished members of this Committee were all Arkansans, I would only have to say, "This is Morris S. "Buzz" Arnold of the Texarkana Arnolds," and you would not only know who he was, you would also know his entire family.

Judge Arnold was born in Texarkana, Texas, but he spent most of his life on the other side of State Line Avenue, the street that divides Texarkana, Texas, from Texarkana, Arkansas. He attended Yale University and graduated from the University of Arkansas at Fayetteville after earning both a bachelors and a law degree. He continued his education at Harvard Law School where he completed masters and doctorate degrees in law.

Before assuming the position of United States District Judge in December, 1985, Judge Arnold taught in several law schools for almost fifteen years. He was a teaching fellow at Harvard Law School, and served on the faculty at the University of Indiana at Bloomington, the University of Texas, the University of Pennsylvania, the University of Michigan, and Stanford University. In addition, he was the Altheimer Distinguished Professor of Law at the University of Arkansas at Little Rock and the Dean of the Law School at the University of Indiana at Bloomington.

Judge Arnold is the author of nine books and numerous articles and book reviews. He is also a popular speaker and lecturer because of his well prepared, carefully researched presentations.

Judge Arnold's first law-related job was in Texarkana where he worked in his father's and brother's law firm. During his years of law teaching, Judge Arnold continued his association with that firm by serving in an "of counsel" position.

Judge Arnold also remained active in law practice in another way. During the time that he taught at the University of Arkansas at Little Rock School of Law, Legal Services Corporation suffered major budget cuts. As a result, the local program that delivers legal services to the poor also had its budget cut. The attorneys in Little Rock banded together to form a group called "Volunteers of Central Arkansas Legal Services" or "VOCALS." The members of VOCALS agreed to handle several cases a year or contribute a certain sum of money to Central Arkansas Legal Services in order to belong to the organization. Some people might think that the Altheimer Distinguished Professor of Law was too distinguished to actually represent someone who couldn't afford to hire a lawyer, but Judge Arnold didn't. He accepted the required number of cases during each of the years that he lived in Little Rock.

One of Judge Arnold's greatest claims to fame is that he is the brother of another Judge Arnold, Judge Richard Arnold, the Chief Judge of the United States Court of Appeals for the Eighth Circuit. Judge Richard Arnold's resume is even more impressive than Judge Morris Arnold's resume --- Richard served as my legislative director during my first years in the Senate.

Senator DECONCINI. I understand, Senator, and I regret keeping you here as long as we have had to do that.

Senator Pryor.

STATEMENT OF HON. DAVID PRYOR, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman.

Mr. Chairman, I have a statement I would like to submit for the record on behalf of Judge Arnold.

Senator DECONCINI. It will appear in the record.

Senator PRYOR. I am very honored this morning to be here, and also I am very honored to appear with my senior colleague, Senator Bumpers, and also my two very good friends and colleagues from the House of Representatives, Congressman John Paul Hammerschmidt and Congressman Ray Thornton, who are here also to voice their support for Judge Arnold.

Mr. Chairman, I had an opportunity to review a letter that was written about Judge Arnold. It was submitted to Senator Joseph Biden, the chairman of the committee, March 18 by an attorney, Richard L. Gill, in Minneapolis. Mr. Chairman, I ask unanimous consent that this letter be made an official part of the record. I would like, if I could Mr. Chairman, to read one paragraph from this letter.

> Judge Arnold conducts his courtroom in a fair, even-handed manner. Although he exercises firm control over the course of the proceedings, he is at all times polite and courteous to counsel, witnesses, court personnel and members of the jury. From the onset of the trial, it was evident that he had carefully reviewed the pre-trial written submissions by the parties and that he was aware both of the factual context of events pertinent to the lawsuit and the controlling elements of products liability law. Although I disagreed with several of his evidentiary rulings during the trial, I was afforded adequate opportunity to present my position and I never felt that his rulings were based on bias or preconceptions.

Mr. Chairman, I think that this in itself indicates the degree of commitment that Judge Arnold has had and still has and will continue through the remainder of his life to have to law.

I can recommend him highly. He has been a superb attorney. He has been an outstanding judge. He is very qualified, and it is a real pleasure to be here today on his behalf.

Thank you, Mr. Chairman.

[The prepared statement of Senator Pryor follows:]

Nomination of Judge Morris S. Arnold

Mr. Chairman, [members of the committee,] it is indeed a plessure for me to be here today joining my collesgues from Arkansas to introduce this fine nominee to the Eighth Circuit Court of Appesls, Judge Morris Arnold. I believe Judge Arnold's intelligence, erudition, and good chsracter insure that he will perform admirably on the Eighth Circuit, and I wholeheartedly support his nomination. Moreover, I sm delighted that Judge Morris Arniod's elevation to the court will give Arkansas the distinction of having two brothers on the same circuit court, since Judge Richard S. Arnold currently serves on the Eighth Circuit and will soon be its chief judge.

To say that Judge Arnold is brilliant man is without question, an understatement. I will not belabor Judge Arnold's educational and teaching career, but suffice it to say that the Judge is imminently qusilfied to draw up s list of top ten law schools, because he has spent time at all of them. Judge Arnold's extensive writings on sncient English legsl history, Arkansas history, and other topics, sre further testament to the depth and breadth of his intellect.

Judge Arnold's vast sbilities insure us that he will conduct his courtroom well and deliver sound opinions. More importantly, though, with men as intelligent snd knowledgeable as Judge Arnold sitting on the bench, the pubilc will have confidence thst our legsl system can wisely and fsirly judge complex disputes, protect the rights of the people, and deliver justice. At a time when

the courts of our country are increasingly forced to consider such explosive and complex issues as abortion, desegregation, and taxation, and at a time when government institutions in general are held in such low esteem by the public, it is very important for the people to believe these controversial matters are in the hands of capable and honorable men like Judge Arnold.

We have all reviewed Judge Arnold's educational career, his writings, and his personal history, and we all agree what a fine candidate he is. What truly matters, though, is how Judge Arnold performs on the bench, and I have with me a letter from an attorney who appeared before Judge Arnold's district court and found the experience to be strong testimony to his qualification for the Eighth Circuit Court of Appeals. I do not know this attorney, Mr. Richard L. Gill of Minneapolis, and moreover, Mr. Gill claims that prior to his appearance in Judge Arnold's court in March of this year he had never met the judge. I must assume that Mr. Gill's letter is sincere and unsolicited. If I may, I would like to read a portion of this letter.

This letter paints the picture of the type of judge we all want serving on the bench: conscientious, courteous, impartial, and effective. I think that says it all Mr. Chairman. I am happy to support Judge Arnold, and I hope your committee and the full Senate give his nomination speedy approval.

Senator DECONCINI. Senator Pryor, thank you for that strong, strong recommendation of Mr. Arnold.

We will now hear from Senator Mack of Florida.

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

Senator MACK. Thank you, Mr. Chairman. First of all, let me thank you for holding this hearing. Many may be wondering what a Florida Senator is doing here. You have heard Democrat and Republican; you have heard Arkansas and Texas. But what in the world does Florida have to do with this nomination?

The interesting thing is that Buzz Arnold and I are cousins. As Senator Bumpers indicated a moment ago, our grandfather, Morris Sheppard served in the U.S. Senate and was the dean of the U.S. Senate when he died in 1941. When I have the occasion to go by the office of the Senate Democratic whip, I have the opportunity to see my grandfather's picture hanging in the office. So I have a very special reason to be here to recommend my cousin, Buzz Arnold to *this* committee.

Frankly, Buzz and I did not meet until I became involved in politics. We knew about each other but didn't have the opportunity to meet until we were introduced by Buzz's brother and my cousin, Richard Arnold, who currently sits on the eighth circuit court.

I strongly urge and recommend Buzz's confirmation. He is an outstanding scholar, has a distinguished career and a clear commitment to the law.

Again, I just appreciate the opportunity to come by and say a few words on his behalf. As you can imagine, this is a unique and yet very special moment for me to have an opportunity to introduce my cousin to the committee.

I thank the Chair.

Senator DECONCINI. Thank you, Senator Mack.

Representative Hammerschmidt, we are very pleased to have you here.

STATEMENT OF HON. JOHN PAUL HAMMERSCHMIDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. HAMMERSCHMIDT. Thank you very much, Mr. Chairman and Senator Thurmond. It is a distinct pleasure for me to join my colleagues and friends, Senator Bumpers and Senator Pryor and Congressman Ray Thornton, to support the nomination to the distinguished members of this committee of Judge Morris "Buzz" Arnold, a U.S. district judge, a fellow Arkansan and a close personal friend, who, of course, has been nominated by President Bush to fill a vacancy on the U.S. Court of Appeals for the Eighth Circuit.

While recognizing the committee has carefully reviewed Judge Arnold's credentials and most of the things about his life have already been said here, I would like to just reiterate a few of the highlights of his distinguished career.

He holds a bachelor of science degree in electrical engineering and a bachelor of law from the University of Arkansas where he was editor-in-chief of the Law Review. He also has a master's and a doctorate in law from Harvard University, where he won the covet-

ed Frank Knox Memorial Fellow Award to study at the University of London. Judge Arnold has also taught law at several prominent universities and was dean of Indiana University's Bloomington School of Law immediately prior to being appointed to the Federal bench, where he has served with great distinction.

I will mention again, as the others have, that he comes from a very distinguished family of Arkansas lawyers, his grandfather having founded a well-known law firm in Texarkana, and his brother Richard now serves as chief judge of the eighth circuit. Also, his maternal grandfather was a U.S. Senator from Texas, and you just heard from his first cousin, one of your colleagues, Connie Mack of Florida.

Again, I appreciate this opportunity, Mr. Chairman and Senator Thurmond, to support the nomination of Judge Arnold to this distinguished committee.

Thank you very much.

Senator DECONCINI. Representative Hammerschmidt, thank you very much.

We will now hear from Representative Thornton.

STATEMENT OF HON. RAY THORNTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. THORNTON. Mr. Chairman, Senator Thurmond, it is a privilege to be here before this distinguished panel to recommend Judge Morris Arnold for confirmation to the circuit court of appeals.

Judge Arnold was a constituent of mine in the 1970's when I represented the Fourth Congressional District in Washington, and I have had the privilege over the years of getting to know him well. He is truly an outstanding intellect, but he combines with that a sense of justice which is rare in today's world. And adding to that sense of justice, he brings a concern for individuals upon which our system of government is grounded.

I think that his appointment and confirmation to the circuit court of appeals will put that circuit court in shape as one of the best appellate courts in our Nation. He will join there his brother, Richard Arnold, with whom I have had a long history of friendship and respect. And my enthusiasm for his confirmation is complete, sir. He is a man of great intellect, of great character, wisdom, and fairness, and will do credit to our Federal judiciary.

Senator DECONCINI. Thank you, Representative. Thank you very much for joining us here.

We will now take the nomination of Mr. Arnold, if he would please come forward.

Mr. Arnold, would you please raise your right hand? Do you swear that the testimony you are about to give the committee is the truth, so help you God?

Judge ARNOLD. I do.

Senator DECONCINI. Please be seated, and any introductory remarks you care to make, Mr. Arnold. You have heard so much from your friends and colleagues here, I don't know what you could add. But you have an opportunity to do so if you would like.

TESTIMONY OF MORRIS S. ARNOLD, FORT SMITH, AR, TO BE U.S. CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT

Judge ARNOLD. I wonder if I might introduce some guests I have, Mr. Chairman.

Senator DECONCINI. I wish you would, sir.

Judge ARNOLD. I have my distinguished brother, Richard S. Arnold, chief judge of the U.S. Court of Appeals for the Eighth Circuit; my aunt, Dr. Lucille Keyes, now of Washington; and my friends, Phil and Bessie Anderson, George and Judy Proctor, and Judge Bob Faulkner, who have come along with me as well today.

Thank you very much, Mr. Chairman.

Senator DECONCINI. Do you have any other statement you care to make?

Judge ARNOLD. I do not. Thank you.

Senator DECONCINI. Mr. Arnold, I think we will get to the questions now. You have an outstanding career behind you, a great future ahead of you. The bar has recommended you well qualified. Your representatives here speak highly of you, and I know you have discussed at some length with the committee your membership in certain clubs that discriminate or at least allegedly discriminate based on race, religion, and gender. And I know that you have answered a multitude of questions, and in your questionnaire, you state that you currently are a member of the Country Club of Little Rock, AR.

It is my understanding—and please correct me if I am wrong—that this club, although it has women, Asians, and Jewish members, has never had an African-American member. Can you give us some background on the club, when you joined it and prior to joining it, and did you inquire and did you know that it did not take African-Americans? And when you joined the club or at any time shortly thereafter, when did you find out regarding this, and what actions have you taken, if any?

Judge ARNOLD. Thank you, Senator. When I joined the Country Club of Little Rock in 1988, I knew, as you said, that it had Asian, Jewish, and, of course, women members but had no black members. I think it is not accurate that they have a record of discriminating against black persons. If that had been the case, I would not have joined the club.

It is accurate that they have never had a black American, a black African-American member, but none had ever applied for membership. And my reading of the current social arrangement in Little Rock, AR, and the environs is that there would be no difficulty whatever in the admission of a black person if such a person should apply to the club. So I joined the club knowing those things.

Since I joined the club knowing those things, I have made an effort to recruit black members to the club, and, in fact, an effort of which I was a part has recently succeeded in having a black gentleman sponsored for membership. His application has been received as an application and approved as an application, and he is presently involved in the process of becoming a member.

I predict that this effort will succeed.

Senator DECONCINI. When you say you "predict," I realize you don't run the club, but what is going on now? Is there a qualified

member pending before the admissions committee, before the board of directors? Is it necessary to change the rules or the bylaws of the club?

Judge ARNOLD. Oh, no. There is no racially relevant bylaw. There is no bylaw that excludes persons on the basis of race. And, in fact, when I joined the club, I got a written assurance to that effect and also that there has never been a policy or practice of excluding black persons from membership.

Senator DECONCINI. How many are pending now for membership?

Judge ARNOLD. Black Americans?

Senator DECONCINI. Yes.

Judge ARNOLD. One.

Senator DECONCINI. One?

Judge ARNOLD. Yes, sir.

Senator DECONCINI. And when do you think they will make a determination on that application?

Judge ARNOLD. I think that is a difficult thing to predict. I would think that within a year or perhaps less. It usually takes quite a while to get into the club. In fact, I think it took me 6 or 7 years, but I hope that this doesn't happen to this gentleman.

Senator DECONCINI. Is that based on not having memberships available?

Judge ARNOLD. That is correct.

Senator DECONCINI. Is that what takes so long?

Judge ARNOLD. The procedure from this point, as I understand it, is that a screening committee will report back to the board and then the gentleman's name will be posted for members' comments. After a 30-day posting period, the board will vote on the application, and then if, as I very much hope and expect, the application is successful, he will be placed on a waiting list.

Senator DECONCINI. So none of that has happened yet?

Judge ARNOLD. It has not. The screening committee currently has him under consideration.

I would like to say, Senator, if I may that I took an active part in this process and wrote several letters and called several people and talked to numerous influential members of the Country Club of Little Rock to assure that this application was, in fact, accepted. And I am trying at the moment to make sure that the application is being speedily processed.

Senator DECONCINI. Mr. Arnold, the newspapers, which are not, indeed, accurate often, they have made reports and characterized and actually used the words "segregated" and "discriminatory" relating to this club. What is your reaction to those?

Judge ARNOLD. I think those characterizations are inaccurate for the reasons that I have given. Moreover, it is certainly not segregated in this sense: There have been numerous occasions on which black guests have been entertained at the club throughout the entire facility.

Senator DECONCINI. Judge, if this is going to take maybe 6 years, maybe 2 years, some period of time that is certainly not in the immediate future, foreseeable future even, maybe, what kind of a message do you think it delivers to the public when our circuit court judges remain even though they support membership of

black Americans in the club and yet there are none? Are you concerned about that?

Judge ARNOLD. I am concerned about it, and if it takes an unreasonable amount of time, I will resign from the club. I think at the moment I am clearly in compliance with the Senate's policy of August 2, 1990, because I am making bona fide and continuing efforts to have this gentleman admitted to the club.

Senator DECONCINI. Do you think the club would make any special considerations regarding this member to try to find a balance within its membership and perhaps authorize an additional membership? Is that under consideration?

Judge ARNOLD. I am urging them to do that, Mr. Chairman, but I don't know that I could truthfully tell you whether that would happen or not. I just don't know. I consider it personally a matter of some urgency, but——

Senator DECONCINI. I do, too, Judge. I am sorry, in a way, that these questions or issues have become as prominent as they are. I have always felt that they are important. But they really have become prominent, and I think in light of today's race relations and the issues on the front page, it is very important for judges to understand and recognize that and also to take demonstrative steps. You appear to have done that, but if, in fact, we are talking about a long wait here, it seems to me that confirming a judge in such a position, having them continue to sit on a court, certainly poses an image problem, not as to the ability of the judge but the fairness of what our judicial system is.

That is just one Senator's opinion. I am not sure that is the collective opinion of this committee even.

Turning to some other clubs that you belong to, the Racquet Club of Philadelphia, the Union League of Philadelphia, the Athenaeum Club of London, and the Noon Civics Club of Fort Smith, AR, it is my understanding—and please correct me, Mr. Arnold—that during your membership in these organizations, women, either by express prohibitions or by customs, were not permitted as members of those clubs.

How long were you a member of those clubs? I think that is in the record, and you don't have to be explicit right now. And when did you first realize that women were not admitted to any of these organizations?

Judge ARNOLD. All but the Noon Civics Club I was a member of from about 1977 to 1980; that is, the clubs in Philadelphia. I was aware at that time that women were not admitted, but I voted in each instance to change the bylaws. The bylaws have been successfully changed in those clubs to admit women, and that has been 10 or 15 years ago that that has happened.

Senator DECONCINI. Did you play a role in that other than voting?

Judge ARNOLD. I did not because I was not a particularly prominent person, was not a member of any committee, had no particular influence. I did talk to some of the people that I knew who were members, and——

Senator DECONCINI. So all of those clubs for the last 10 years have accepted women?

Judge ARNOLD. At least, yes, sir.

Senator DECONCINI. And do they accept blacks and other minorities?

Judge ARNOLD. Oh, yes, sir. Now, the Noon Civics Club I resigned from about a year ago, a little over a year ago. That is the club in Fort Smith. When I first moved to Fort Smith, AR, where I presently reside, I was asked to join the Rotarians Club, and I refused because they had a bylaw that excluded women.

I was then asked to join the Noon Civics Club, and they had no bylaw excluding women; and though they had no women members, they assured me there would be no difficulty in a woman applying and being accepted as a member. When, however, I sponsored a woman for membership, there was some apparent difficulty raised by a number of the members. I resigned from the club.

Senator DECONCINI. Is that the only club you have resigned from? The other clubs you are still a member of?

Judge ARNOLD. Oh, no, sir.

Senator DECONCINI. You have resigned from all those clubs?

Judge ARNOLD. I have. No, I haven't been a member of any of those Philadelphia clubs since 1980. That is ancient history. The Athenaeum Club I resigned from in 1986. That is the London club. I do not presently belong to any all-male clubs.

Senator DECONCINI. Do you belong to any club besides the Country Club that does not—or, to your knowledge, has a policy of nonacceptance of minority members?

Judge ARNOLD. I do not.

Senator DECONCINI. Judge Arnold, as you are already aware, a petition opposing your nomination has been circulated to members of the committee. This petition was submitted by followers of the Reverend Tony Alamo. The petition alleges, in part, that you made erroneous rulings in cases involving Mr. Alamo or his organization. This is a matter that you have discussed with the committee staff, I know. However, I would like again to give you the opportunity on the record to discuss the matter here.

Can you give us your reaction to that?

Judge ARNOLD. I think it is very difficult in a small space, in the length of time that I can conscionably ask the committee to listen to me on this subject, to give a totally accurate picture of my difficulties with the Reverend Tony Alamo. Let me simply say two or three things, if I may.

First of all, Mr. Alamo has asserted, I think, in his petition that I lacked jurisdiction in one of his cases and apparently rushed to judgment either out of ignorance or in an effort to do something to him that was motivated by personal concerns.

As to whether or not I had jurisdiction in his case, I think I would like to refer the committee to the opinion of the court of appeals, which held that, in fact, I did have jurisdiction on two or three alternate grounds.

As far as any prejudice against Mr. Alamo is concerned, I would like to call the committee's attention to the fact that I was recently reversed in one of Mr. Alamo's cases because I believed the testimony that he and his followers provided. The court of appeals said I was clearly erroneous in believing his testimony and those of his followers because Mr. Alamo quite plainly had an attitude about litigation that caused him to be a kind of practiced perjurer. So I

think that it would be difficult for anyone to claim successfully that I have exhibited any prejudice against Mr. Alamo.

I would like to say, too, Mr. Chairman, if I might, that Mr. Alamo threatened to kidnap me, claimed before his court that the Christian militia would come and arrest me and yank me out of my house, and that if anyone died as a result of my actions, that I would be killed. He was indicted for that and tried.

Senator DECONCINI. What was the outcome?

Judge ARNOLD. He was acquitted.

Senator DECONCINI. When is the last contact you had with Mr. Alamo or the last time he was before you?

Judge ARNOLD. The day of that trial, though I have had reports that he is still following me around, that he has me under surveillance.

Senator DECONCINI. Has that necessitated you to take any security measures?

Judge ARNOLD. For 4 months I did have 24-hour protection from the U.S. Marshals Service.

Senator DECONCINI. Judge Arnold, let me pursue another matter with you. If you are confirmed and you are sitting on the circuit court and there is a case before you that has no clear Supreme Court precedence on the point before you, but which was clearly governed by the eighth circuit past decisions with which you did not agree, because you weren't there nor did you agree, what do you believe your obligation is in such a situation? How would you approach such a situation?

Judge ARNOLD. My obligation would be to follow the precedent of the eighth circuit unless I thought it was wrong and I could convince a sufficient number of the members of the court to overrule it.

Senator DECONCINI. As you know, in many circumstances a case is heard by the entire membership of the court of appeals rather than the three-judge panel. In some courts, like the District of Columbia here, more and more cases are going before the full court, causing many judges and some litigants to complain that the orderly consideration of cases and circuit precedence is at risk. When do you think it is appropriate for the full court to appeal to hear a case? And do you have any concerns about excessive resort to such reviews?

Judge ARNOLD. I don't have any experience, of course, as yet with the number of occasions on which such reviews are, in fact, exercised. I think under the rule a case may be taken en banc in the event the case is conflict with some other precedent of the eighth circuit or if it is conflict with some case of the Supreme Court of the United States or if it is a case of extraordinary importance. I believe that is what the rule says. What a case of extraordinary important is, of course, is a matter for individual judgment, but I would assume that that would mean at a minimum that cases that involved private rights and probably only State law matters would not very frequently qualify for review under that criterion.

Senator DECONCINI. Thank you. I will yield to the Senator from South Carolina. He has another engagement, and he can pursue his questions.

Senator THURMOND. Thank you very much.

We are glad to have you with us and congratulate you on your appointment.

Judge ARNOLD. Thank you, Senator.

Senator THURMOND. And I hope you have a productive and happy career on the bench.

Judge ARNOLD. Thank you.

Senator THURMOND. I just have three real quick question and then I need to leave. I will be back a little later.

As an appellate judge, you will be reviewing decisions of district court judges. What criteria do you intend to use in reviewing these decisions and trial records?

Judge ARNOLD. Well, if the person appealing has asserted that the trial court has made an error in finding a particular fact, then, of course, my duty would be to review that decision on the so-called—on a basis of standard of review of clearly erroneous. That is, a question that an appellate judge would ask himself or herself would be whether this finding was clearly erroneous on the record. If the matter that is appealed is a matter of law, then, of course, it is a question that is reviewed by the court of appeals de novo, as we say; that is, we examine the record for the purpose of determining whether the judge got the law right or wrong.

Senator THURMOND. Judge Arnold, as a Federal trial court judge, did you find the uniformity provided by the U.S. sentencing guidelines to be beneficial, and do you support the guidelines?

Judge ARNOLD. I think it has been beneficial. I think, on the other hand, the guidelines are a mixed blessing. I think there are some aspects of the guidelines that probably need some attention, and if I might just mention two of those briefly, Senator. One is——

Senator THURMOND. Would you mind just placing those in the record to save time?

Judge ARNOLD. Yes, sir, I will be delighted to do that.

Senator THURMOND. And if you would write the chairman of the committee and also write me as ranking member, I would appreciate it.

Judge ARNOLD. All right, sir. I will be glad to.

[The information of Judge Arnold follows:]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
POST OFFICE BOX 1908
FORT SMITH, ARKANSAS 72902

MORRIS S. ARNOLD
JUDGE

May 14, 1992

Senator Strom Thurmond
218 Russell Senate Office Bldg.
Washington, D.C. 20510-4001

Dear Senator Thurmond:

Thank you for all your courtesies today at my confirmation hearing. I appreciate the opportunity to answer briefly your question about the sentencing guidelines.

I think that the sentencing guidelines have proved to be a significant contribution to the criminal process. The provision in the guidelines that makes it impossible for the judge to change his or her mind after sentencing is pronounced is, in my mind, too restrictive. It is the only matter that I know of that a district judge is forbidden to reconsider. Perhaps the Judiciary Committee would like to review this provision.

Many thanks again for all your good help.

Sincerely,

Morris S. Arnold
Morris S. Arnold
U. S. District Judge

MSA/ab

Senator THURMOND. Judge Arnold, what problems areas, if any, have you been able to identify in the criminal justice system at the Federal level?

Judge ARNOLD. In the criminal justice system, other than the sentencing guidelines, which I have indicated already perhaps have some difficulties associated with them, I think I have really identified nothing of particular difficulty. I think that the criminal justice system works reasonably well—in fact, quite well.

Senator THURMOND. Thank you very much.

Judge ARNOLD. Yes, sir.

Senator THURMOND. I will be back in a little bit.

Senator DECONCINI. Thank you, Senator Thurmond.

Judge Arnold, just to finish up, judicial temperament is always a term used, I think, rather loosely and very hard to define. And you have served on a court and as a distinguished lawyer. I am sure you have seen what you might consider judicial temperament that wasn't to your standards or at least was irritant.

What is your definition of proper temperament for a judge that has been confirmed under the laws and Constitution of our country for lifetime appointment? And as the office grows on the person, human nature, it is only natural you do change. There is no question about it.

How do you address that, having been on a court and now seeking to a higher court with a lifetime appointment? Do you think about that?

Judge ARNOLD. I do quite a lot. It seems to me that a judge owes his or her best to every case that comes before the court, to listen courteously, to take everyone's argument seriously, and to devote the time and effort necessary to come up with a judgment which, though clearly will disappoint one side or another, will at least leave both sides with the correct impression that the judge did his or her best to do the just and legal thing.

I think that my judicial temperament has probably improved a little over the years. I know there are some judges perhaps whose temperament gets worse simply out of perhaps having become jaded after the passage of time. I think in my own case, as the job has gotten a little easier because of the experience I have acquired in the last almost 7 years, I think I have probably been a little bit better about making sure that everybody had an opportunity to say what he or she wanted.

It is obviously the case that, as judges, we must get things right, but I have learned that we must do two other things, too: We must get them done, and we must allow people to have their say. In other words, the purpose of a court, perhaps the main purpose, is to get a dispute settled correctly. But it must also be done in the context where people think that they have had their full day in court, that they have had an attentive and sentient being in front of them, and that they have had an opportunity to say everything of relevance.

Senator DECONCINI. Thank you, Judge Arnold, for your testimony and your frankness in addressing a very sensitive question. I can assure you the committee will give the utmost consideration to the fine recommendations you have here and your answers to questions, and this hearing will play a major role in our determination.

I wish you well. You have a fine legacy of judicial experience and success, as your whole family does, and we welcome this type of nominee being presented before us. Thank you.

Judge ARNOLD. Thank you, Mr. Chairman.

[The following letter was subsequently supplied for the record:]

ROBINS, KAPLAN, MILLER & CIRESI
ATTORNEYS AT LAW

ATLANTA
BOSTON
CHICAGO
DALLAS
MINNEAPOLIS
NEWPORT BEACH
SAINT PAUL
SAN FRANCISCO
WASHINGTON

2800 LASALLE PLAZA
800 LASALLE AVENUE
MINNEAPOLIS, MINNESOTA 55402-2015
TELEPHONE (612) 349-8500
FACSIMILE (612) 339-4181

RICHARD L. GILL
(612) 349-8430

March 18, 1992

Hon. Joseph Biden
Chairman, Senate Judiciary Committee
United States Senata
Washington, DC 20510

Re: Nomination of Judge Morris Arnold to Eighth Circuit Court of Appeals

Dear Sanator Biden:

I am a trial attorney from Minnesota who was admitted to practica in 1971. During the last 10 years, I have tried law suits in aeveral fedaral courts throughout the country. Last week, I repreaented a client in a products liability trial before Judge Morris Arnold of tha United Statea District Court for the Westarn District of Arkansas. Prior to this casa, I had never met Judge Arnold and was unfamiliar with him. It is my understanding that Judga Arnold has baan nominated for appointment to tha Eighth Circuit and ia presently awaiting his confirmation hearings. My purpoae in writing is to ancourage your committae to recommend that Judga Arnold'a nomination be approved.

I realize that Judge Arnold'a nomination hardly requires letters of racommandation from membars of the trial bar and this letter is certainly unaolicited. Nevertheless, given the importance of Circuit Court appointments, I feel obliged to share my impression of Judge Arnold's judicial qualifications with you and your committee.

Judge Arnold conducts his courtroom in a fair, aven-handed manner. Although he exercises firm control over the course of the proceedings, he is at all timaa polite and courteous to counsel, witneaaea, court personnel and mambers of the jury. From the onset of the trial, it was evident that he had carefully reviewed the pre-trial writtan submiasions by the parties and that he was aware both of tha factual context of eventa pertinent to the lawsuit and tha controlling alements of products liability law. Although I

March 18, 1992
Page 2

disagreed with several of his evidentiary rulings during the trial, I was afforded adequate opportunity to present my position and I never felt that his rulings were based on bias or preconceptions. Finally, although Judge Arnold may very well have reached his own views regarding the merits of the parties' claims, he never communicated any indication of his sentiments to the jury.

If my one trial in Judge Arnold's courtroom is an accurate indication of his judicial qualifications and temperament, and I strongly suspect that it is, the Eighth Circuit would be very fortunate to have him as a member.

Very truly yours,

ROBINS, KAPLAN, MILLER & CIRESI

Richard L. Gill

Richard L. Gill

RLG:da

cc: Hon. David Pryor
Hon. Dale Bumpers

Senator DECONCINI. We will now go to the nomination of Michael Boudin for the Circuit Court of the First Circuit. Senator Kennedy is here. You may join Judge Boudin, if you would like to come up at this time. We will go directly to your questioning.

Senator Kennedy, we are pleased to have you here, and you may proceed, sir.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thanks very much, Mr. Chairman. I want to express our appreciation to the chairman of the committee, Senator Biden, for his willingness to move expeditiously on this really superb nomination by the President for the U.S. Court of Appeals for the First Circuit.

Judge Michael Boudin's life has been associated with excellence in every sense: he was an outstanding student at Harvard Law School, where he was the president of the Harvard Law Review; a clerk for Judge Henry Friendly on the Second Circuit Court of Appeals; and then clerk for Justice John Marshall Harlan. And for more than 20 years, he worked at the highly regarded law firm of Covington and Burling here in Washington, DC, primarily focused on appellate litigation. He became one of the very best in his field.

Through his pro bono efforts, which I found particularly compelling, Mr. Boudin has made an important contribution to the protection of the rights of indigent persons. He represented the tenant in *Pernell* v. *Southall Realty,* in which the Supreme Court ruled in 1974 that the seventh amendment guarantees tenants the right to a jury trial in eviction proceedings. He also played an important role in convincing the Supreme Court to protect the interests of indigent parents when the Government seeks to terminate their parental rights.

In 1987, Mr. Boudin left private practice to serve in the Justice Department as Deputy Assistant Attorney General in the Antitrust Division. His intelligence and conciliatory qualities impressed all of his colleagues in the administration.

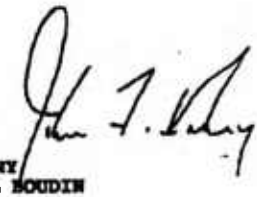
In 1990, President Bush appointed him to the Federal district court here in Washington, where he gained a reputation for ability and fairness and thoughtfulness on the bench.

Earlier this year, Mr. Boudin resigned from the District Court of Washington in order to spend more time with his family in Massachusetts. He is currently a lecturer at the law school at Harvard and is also working on a scholarly analysis of Judge Friendly's career on the bench.

The Bush administration was justifiably reluctant to see the judicial branch lose his judicial talents. Based on all that he has accomplished during his career in the law, I am confident that Mr. Boudin will be an excellent member of the First Circuit Court of Appeals. I urge the committee to approve his nomination.

Senator DECONCINI. Senator Kennedy, thank you very much. I understand that Senator Kerry, also of Massachusetts, has a statement which will appear in the record at this time. Thank you for being here.

[The prepared statement of Senator Kerry follows:]



STATEMENT OF SENATOR JOHN KERRY
IN SUPPORT OF NOMINATION OF MICHAEL BOUDIN
TO THE U.S. FIRST CIRCUIT

Mr. Chairman: It is with great pleasure to advise you of my strong support for the nomination of Michael Boudin to the position of federal appellate judge in the First Circuit.

Nearly thirty years ago, Judge Boudin had the opportunity to serve as a clerk for two of the great jurists of the mid-century, Henry Friendly and John Harlan, whose virtues of integrity, intellect, and judgment have by all accounts not merely been noted by Judge Boudin, but emulated.

Following those clerkships, Judge Boudin served 21 years at Covington and Burling, where he specialized in appellate work on complex cases, before entering government service in the Justice Department in 1987, handling important antitrust issues in three major positions, and then spending a year as a federal trial judge in the District of Columbia.

As the New York Times recently wrote, "news of Mr. Boudin's nomination has pleased his wide circle of admirers, who span the political and intellectual spectrum. They describe him as brilliant and conscientious, with an eloquence and breadth of interests almost unheard of among lawyers."

A federal judge quoted by the Times described Judge Boudin's intellect as "amazing" and "serious," and containing "the most rare kind of intellectual honesty." As the Times noted, while his friends speak of Mr. Boudin reverentially, they also do so a bit reluctantly, fearing that his intelligence, independence and open-mindedness might actually hurt his chances of being confirmed by the Senate.

Earlier this year, Judge Boudin resigned from his position as trial judge, in order to spend more time in Boston with his wife and family. Thus, this appointment rescues for the judiciary a fine mind for the right job -- that of appellate judge -- in the right location -- close to home.

As the American Lawyer noted in an article in November, 1991, titled "First Rate Centrists," Judge Boudin is "brilliant and extraordinarily erudite" and may someday be nominated for the Supreme Court as a constitutionalist who believes also in individual responsibility and personal discipline.

The First Circuit, already one of the jewels of the federal appellate system, will be brightened further with this appointment. I urge the Committee to confirm Michael Boudin and congratulate President Bush on this fine choice for the First Circuit.

Senator DECONCINI. Judge Boudin, would you please stand and raise your right hand? Do you swear the testimony you are about to give today is the truth, so help you God?

Judge BOUDIN. I do.

Senator DECONCINI. Judge Boudin, please, you may make any statement or introductions that you would care to at this time.

TESTIMONY OF MICHAEL BOUDIN, CAMBRIDGE, MA, TO BE U.S. CIRCUIT JUDGE FOR THE FIRST CIRCUIT

Judge BOUDIN. I would merely like to introduce my wife, Martha Field, who was kind enough to come here.

Senator DECONCINI. Welcome, Ms. Field. We are very pleased to have you.

Judge you served for 14 months, as was pointed out by Senator Kennedy, on the U.S. District Court for the District of Columbia, resigning in January. Can you give us the reasons you resigned? And do you believe that these reasons and circumstances will affect your ability to serve if you are confirmed on the circuit court?

Judge BOUDIN. I found it was not compatible to try to be a trial judge in the District of Columbia and have a family in Cambridge. I had been managing a commute and arrangements previously when I could go on teaching at Harvard. A trial judge's life in the District of Columbia does not make that possible. And so the relations with the family had dwindled.

I also found on the district court that the trial work, which was a remarkable education, was less to my taste and training than the appellate part of being a trial judge. And when the administration advised me in December that I would be considered for the first circuit, it seemed like a very attractive choice.

Senator DECONCINI. Thank you, Judge. There have been recent proposals that losers in litigation be forced to pay legal fees or that a presumption be created in favor of that to be overcome and the court to make the final decision in certain types of lawsuits. This is a system that is used in Great Britain today, as you probably know. Some lawyers have commented that the proposal would reward wealthy litigants and make it too risky for the average citizen to bring suit.

Have you ever commented on or do you have any knowledge on this? Or just your opinion would be helpful.

Judge BOUDIN. I have never written on the subject. I have two brief reactions. One is that any arrangement which creates an encouragement to people to settle disputes short of trial, which the English rule does in some situations, deserves some consideration. And there are some variations on it that look promising, but one would have to be very careful in tailoring it to deal with the situation of people who can barely afford a lawyer and who certainly can't afford to pay large legal fees on the other side. So it seems to me not a proposal which one can adopt without qualifications. It is worth studying.

Senator DECONCINI. Judge, perhaps you have done some articles that I am unaware of or some research or at least thought about our country's litigation problems, the clogged court. Having served on the court here, you are aware of it, I am sure. Have you pro-

posed any suggestions or ideas of how to reduce the litigation in this society of ours without fundamentally altering the rights of individuals?

Judge BOUDIN. I think my reactions deal with smaller parts of the problem, but at least from the perspective of a new district judge, I was struck by the sense that the job is now as much a job of management as of scholarship—you need both—and that the training and the facilities for trial judges—I am sure it is not limited to Federal courts—are going to have to be oriented increasingly toward mechanisms that let judges move cases through efficiently. I am thinking everything from the materials which the Federal Judicial Center now prepares on a very practice level, items like the Bench Book, to alternate dispute resolution regimes which the district court in this district has been working with. But it is no longer going to be a matter of just taking cases and letting them take their time. Judges are now going to have to be taught to be managers.

My sense is it is much less true at the appellate level, although it is true there to some degree.

Senator DECONCINI. What about the lawyer's responsibility? Is there any way to enforce a more prudent action on lawyers not to file so much litigation, or is that just part of the system?

Judge BOUDIN. My sense is that rules like rule 11 and similar constraints work in discouraging outlandish cases. But the state of the law is such that in an awful lot of situations, people can bring suits in good faith without much chance of winning. And I don't see those kinds of sanctions as significantly denting the problem.

My guess is in the end it is going to be a series of small reforms and not any single solution that will help bring the problem under control.

Senator DECONCINI. Judge Boudin, thank you for those observations. You have had a distinguished career, as pointed out by the answers to your questions in your dossier that is in the file. And you served certainly outstandingly in the district court here. We welcome you here and look forward to pursuing your nomination. Thank you, sir.

Judge BOUDIN. Thank you very much.

Senator DECONCINI. We will now take the nomination of Mr. Simandle, if you will come forward, please. Would you please raise your right hand? Do you swear the testimony you are about to give the committee is the truth, so help you God?

Judge SIMANDLE. Yes, I do.

Senator DECONCINI. You may make any introductions you would care to make, please.

TESTIMONY OF JEROME B. SIMANDLE, CAMDEN, NJ, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Judge SIMANDLE. Thank you, Mr. Chairman. I would like to, if I may, introduce my wife, Jane Darton.

Senator DECONCINI. Welcome, Jane.

Judge SIMANDLE. And my children, Roy Heck and Liza Heck.

Senator DECONCINI. Welcome.

Judge SIMANDLE. Mr. Chairman, I am also pleased to say that I am accompanied by my law clerk, Tim Holman, and by Joseph Irenas, who appeared before this very committee recently and awaits his confirmation—rather, he awaits his swearing-in with the U.S. District Court in New Jersey.

Senator DECONCINI. Very good.

Judge SIMANDLE. I am also accompanied by John Rother, who is a dear friend from law school days.

Senator DECONCINI. Thank you.

Judge SIMANDLE. And may I also add, Mr. Chairman, my sister has arrived, Patrician Hepner, and her daughter, my niece, Janelle Hepner.

Senator DECONCINI. Thank you. You are all welcome here.

Mr. Simandle, you have been a magistrate for 9 years, I understand, and in many respects you have performed duties similar to those of a Federal district court judge. If you are confirmed, how will your responsibilities change, as you see them from day to day, from the U.S. magistrate's that you have so well conducted yourself as?

Judge SIMANDLE. Mr. Chairman, as a magistrate in New Jersey, I was responsible for the management of cases all the way up through the time of the final pre-trial order. Then we would turn the civil cases over to the district judge for trial and for disposition. So if I am confirmed by the Senate, I would look forward to the flip side of that, which is the trials of many more cases, handling of more dispositive motions, injunctions, class actions on a dispositive basis. And so my authorities, of course, would enlarge in the event that I am confirmed.

I have also tried cases by consent of the parties, both jury and nonjury, and so it is not unfamiliar territory for me.

Senator DECONCINI. I was just going to ask you, you have done that on a number of occasions?

Judge SIMANDLE. Yes, I have, consistent with my other duties. I hold about a thousand case-management type conferences per year and also dispose——

Senator DECONCINI. A thousand?

Judge SIMANDLE. Yes, sir, and also dispose of over a thousand nondispositive motions, and some dispositive ones along the way on a report and recommendation basis.

Senator DECONCINI. As well as conducting some trials?

Judge SIMANDLE. Some trials, as long as they are not too long, but, yes, sir.

Senator DECONCINI. How many trials have you had?

Judge SIMANDLE. To a verdict, jury and nonjury, approximately 20.

Senator DECONCINI. From your experience as a magistrate, can you offer us any suggestions how to improve the magistrate system?

Judge SIMANDLE. Yes, I can. Magistrates are fully utilized in a number of districts in the country and not so in others. By full utilization, I would propose magistrates should be more fully involved in the management of cases. They should be involved from the beginning to the end of the case in efforts to resolve it. They may

help the parties to choose alternative dispute resolution mechanisms.

I know in New Jersey it is the magistrates who supervise the Court of Next Arbitration Program, and I have been told it is one of the most successful in the country in terms of the disposition of cases and in terms of the satisfaction of the litigants. So expanding the magistrate's duties in those areas I think would serve the district judges well. It helps to keep the district judges' desks a little bit clean of the everyday interruptions that come up when there is an emergency, in the discovery phase of cases, for instance. We are much better able, I believe, to monitor the cases, to enforce our orders, to deal with the attorneys on the day-to-day basis while the district judge is busy themselves, increasingly so, with the criminal side of the docket.

Senator DECONCINI. Should it be the responsibility more of the district judges to use and encourage the magistrates to do more in areas of settlement and managing the litigation?

Judge SIMANDLE. Yes, sir, but that is from my perspective and privilege of having served in New Jersey. We have had that tradition for over 20 years now——

Senator DECONCINI. Excuse me. And that tradition comes from the district court wanting it that way and encouraging it; is that what you are saying?

Judge SIMANDLE. Yes, it does, and it results in it being a very attractive job. I doubt that I would have applied for this job in 1983 if it didn't have meaningful responsibilities attached to it.

Senator DECONCINI. And in your course of dealing with other magistrates throughout the country in other district courts, you find that there is a big variance between how active and how much participation they actually take in the management, and particularly the settlement of cases?

Judge SIMANDLE. There is a variance ranging from no participation all the way up to full participation. But I do think, thanks to the Civil Justice Reform Act, that there may be a trend in many of the districts of the country, as they implement their plans, to use magistrates more to enforce the district plans.

Senator DECONCINI. What do you do to try to reach settlement? What is the mode? Do you have a settlement conference, or do you just suggest subtly that the two sides ought to sit down before you proceed to the next motion or whatever it is you are going to hear? Maybe it is never the same, but can you give us a little background?

Judge SIMANDLE. Every case is different, and every case is the same. We start at the very initial conference, which is usually within 2 to 3 months after the case being filed, sitting down with the attorneys, inviting their clients to attend or to be available by telephone, and at least touching on the area of settlement.

I listen to the attorneys. If the attorneys say that this is a case that can be settled if we just get a limited amount of additional information, then that is what I will do. I will carve out a period. We will get that information, bring them back in for a follow-up settlement conference, and hopefully the case will be done.

In more elaborate cases, it is a continuing process. It would be a big mistake to approach settlement too soon in some cases. We

need more information; there may be important dispositive motions that have to be decided at the threshold. And I believe that the mark of a good settling judge is one who is able to listen, one who refrains from offering his or her views unless they are requested by the parties and the judge feels informed enough to offer them.

I have worked with the parties in designing some very elaborate settlement processes. There is one ongoing now that involves over 300 parties in one case, which is a Superfund site case. And with judicial supervision, even a complicated settlement process can save the parties a great deal of attorneys' fees, a lot of time, and give them a result that everybody can live with, or at least, I suppose, a good settlement is a result where everybody is equally unhappy.

Senator DECONCINI. Do you apply the same standard or involvement with a district judge as you would a magistrate on settlement?

Judge SIMANDLE. I would rely on my magistrate to do a lot of the work that has been done in this area. I would probably tend to be a little more hands-on in the larger cases, especially as they approach the time of trial. So many of our civil cases, when they do have to be tried, are consuming 2, 3, 4 weeks of civil jury trial time, and I would be happy to devote a couple of hours to the final effort to get it settled. But I would refrain from trying to settle a non-jury case. I don't believe that it is appropriate for the finder of fact—that is, the trial judge in a non-jury case—to be involved in settlement.

Senator DECONCINI. To be involved in settlement. Thank you.

Senator Thurmond.

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

Judge, we are glad to have you here and congratulate you on your appointment.

Judge SIMANDLE. Thank you very much, Senator Thurmond.

Senator THURMOND. I think you are well qualified, and I will be glad to support you.

You have already answered two questions I had in mind, and I want to ask you this question: The phrase "judicial activism" is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority. For instance, some Federal judges have taken over hospitals or have taken over prisons or have taken over school, and their job is to interpret the law, not execute the law. The legislative bodies make the law, and the executive branch enforces the law.

And your job, as I construe the Constitution, is to interpret the law. Is that the way you construe it?

Judge SIMANDLE. Yes, Senator, it is the judge's job to interpret the law, to follow precedent, and to observe stare decisis.

Senator THURMOND. And if we can get these judges to stay within their scope of authority, it will save a lot of trouble and misunderstanding among the different branches of Government. So I just want to point that out to you.

Judge SIMANDLE. Yes, and I agree with you, Senator.

Senator THURMOND. Thank you very much.

That is all, Mr. Chairman.

Senator DECONCINI. Thank you, Judge. I have no further questions.

Judge SIMANDLE. Thank you, Mr. Chairman.

Senator DECONCINI. Now we will have Richard Kopf to be U.S. district judge in the district of Nebraska. Mr. Kopf, would you please raise your right hand? Do you swear the testimony you are about to give the committee is the truth, so help you God?

Judge KOPF. I do.

Senator DECONCINI. You may make any introductions you care to make, sir.

TESTIMONY OF RICHARD G. KOPF, OMAHA, NE, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA

Judge KOPF. Mr. Chairman, here with me this morning is my wife, Joan Kopf; her sister, June Edwards, and her husband, Bob Tucker.

Senator DECONCINI. Welcome.

Judge KOPF. I might add that Mr. Tucker and Ms. Edwards are with NASA, and they had some small part to play in NASA's very successful recovery effort yesterday. It is a nice day for them as well.

Senator DECONCINI. Well, that is good. We welcome them and congratulate them on that effort that many of us watched on television this morning.

Mr. Kopf, you have been a magistrate, I understand, for 5 years. You have heard the previous witness. Do you operate somewhat in the same vein? Are you involved in the settlement of these cases?

Judge KOPF. I am, Senator. In the district of Nebraska, we are fortunate in that our district judges have a history of utilizing the magistrates to the fullest extent of the statute, and they do.

Senator DECONCINI. And do you feel a district judge should also be involved in promoting settlements of cases?

Judge KOPF. I do. Once again, a district judge—any trial judge, as a matter of fact—must be fairly careful about involvement, but quite oftentimes it has been my experience, inasmuch as I have had opportunities to try cases, that the ultimate trial judge sometimes can bring the parties to settlement where another mediator, so to speak, might not be able to.

Senator DECONCINI. Your response to the committee questionnaire reflects that before you became a U.S. magistrate, you engaged in pro bono work on behalf of the disadvantaged. Do you believe the current voluntary system of providing pro bono services works well enough and provides enough competent, capable lawyers for the problems of those who are indigent and cannot hire a lawyer?

Judge KOPF. Senator, to be candid with you, I am not sure. I worked fairly closely with attorney general Bob Spire, who is now with Senator Kerrey, when Bob was the president of the Nebraska Bar Association. And Bob believed very strongly in pro bono work, but also believed that it must be voluntary. It is my sense, limited to Nebraska, that our lawyers in Nebraska truly are devoted to pro bono work. Whether that experience could be extrapolated outside of Nebraska, I am not certain.

Senator DECONCINI. Do you believe that perhaps there should be some mandatory requirements for lawyers to provide pro bono work?

Judge KOPF. I think as an ethical matter, one is ethically obligated to engage in pro bono work now. In any event, I certainly would have no personal opposition to mandatory pro bono work.

Senator DECONCINI. You would have no opposition?

Judge KOPF. No, sir, I would not.

Senator DECONCINI. Judge, you have been involved with a number of, I see—you probably have been involved, and I think your record shows a number of habeas corpus petitions every year. As we know, this is a growing problem that the Congress is attempting to resolve and limit, to some extent. The right to file, of course, is fundamental in our system of justice. There are also concurrent efforts to ensure that defendants in capital cases have competent legal counsel from the initial trial through all subsequent appeals.

Given your firsthand experience in the Federal court system, how important do you believe it is for capital defendants to have competent legal representatives? And do you think the system should be improved, having seen what you have seen as a magistrate?

Judge KOPF. Senator, I obviously believe that it is absolutely critical that in capital cases, at either the Federal or the State level, that the defendant be represented by first-class counsel. As you know, under the Criminal Justice Act, we now appoint two lawyers in every capital case that is brought in Federal court. I think that is a system, along with the compensation that is attendant thereto, is a system that the States might do well to consider.

Senator DECONCINI. In determining that, do you think it is necessary to statutorily point out or require so many trials or so many cases? Or do you think it is safe to leave it with the judgment of the court to not only make the appointment, but to make the judgment whether or not the lawyers who are appointed are truly competent?

Judge KOPF. Senator, as a lawyer, I think my answer would have been different. As a judge in a capital case, I am personally persuaded that there should be some minimum criteria applied.

Senator DECONCINI. Thank you.

Senator Thurmond.

Senator THURMOND. Thank you.

Judge, what, in your opinion, is needed to speed up the disposition of Federal cases? You have been a Federal magistrate, and I imagine you have some ideas on that.

Judge KOPF. Senator, in our district, I think the thing that we can do to speed up the disposition of civil cases is to try criminal cases in an expeditious fashion, thereby giving the trial judges an opportunity to set firm trial dates for the civil cases. My experience is that when you have firm trial dates on both the civil and criminal side, cases will move faster.

Senator THURMOND. In order to keep your docket up to date, you don't mind working a little bit overtime if necessary, do you?

Judge KOPF. No, Senator, I do not.

Senator THURMOND. We all work here about 12 hours a day, and I imagine that judges wouldn't mind working a little bit overtime to do that.

Judge KOPF. No, Senator, I would not.

Senator THURMOND. Now, judicial temperament I think is important. I have seen some judges yell out at witnesses and jurors and lawyers, and it is just inexcusable, I think. The more power you have, the more humble you ought to be. Do you agree with that?

Judge KOPF. I do.

Senator THURMOND. Did you hear what I said about judicial activism a few minutes ago?

Judge KOPF. I did.

Senator THURMOND. Under our Constitution, the Congress makes the law, the executive branch administers and enforces the law, and the judicial branch interprets the law. Do you agree with that?

Judge KOPF. I do.

Senator THURMOND. Those are all the questions I have, Mr. Chairman.

Senator DECONCINI. Thank you very much, Mr. Kopf. We have no further questions.

Judge KOPF. Thank you.

Senator THURMOND. I wish you well on the bench.

Judge KOPF. Thank you.

Senator DECONCINI. The committee will stand in recess subject to the call of the Chair.

[Whereupon, at 11:25 a.m., the committee adjourned subject to the call of the Chair.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name

   Morris Sheppard Arnold

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

   115 North 10th
   Fort Smith, AR 72902

   U. S. District Court
   P. O. Box 1606
   Fort Smith, AR 72902

3. Date and place of birth.

   October 8, 1941. Texarkana, Texas.

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

   Divorced. Formerly married to Jennelle Soderquist (Arnold).

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

   Yale University, 1959-61.

   University of Arkansas, 1962-68. B.S.E.E. 1965; LL.B. 1968.

   Harvard Law School, 1968-71. LL.M. 1969; S.J.D. 1971.

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

FROM/TO	NAME OF EMPLOYER AND SUPERVISOR	ADDRESS	TYPE OF WORK
6/66-9/66	KRLD-TV (Wittenburg)	Dallas, TX	engineer
5/68-9/68	Arnold & Arnold, Attorneys (Richard L. Arnold)	Texarkana, AR	lawyer

9/69-6/70	Harvard Law School (Derek Bok)	Cambridge, MA	teaching fellow
9/71-7/77	Indiana University (Doug Boshkoff)	Bloomington, IN	prof. of law
summer, 1977	U. of Texas (Dean Smith)	Austin, TX	prof. of law
9/77-1/81	U. of Penn. (Lou Pollak, James Freedman, Martin Meyerson)	Philadelphia, PA	prof. of law, assoc. dean, vice pres.
6/81-1/84	U. of Ar (Larry Averill)	Little Rock, AR	prof. of law
summer, 1981	U. of Michigan (Terry Sandalow)	Ann Arbor, MI	prof. of law
summer, 1982	U. of Texas (John Sutton)	Austin, TX	prof. of law
1/84-1/85	U. of Penn. (Robert Mundheim)	Philadelphia, PA	prof. of law
1/85-7/85	Stanford Law School (John Hart Ely)	Stanford, CA	vis. prof. of law
7/85-12/85	Indiana U. (Ken Gros Louis)	Bloomington, IN	dean of law school
12/85-present	U.S. District Judge	Ft. Smith, AR	federal 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.

Awarded Knox Fellowship by Harvard University in 1970 to study at the University of London. Hon. M.A., University of Pennsylvania, 1978. Hon. J.D., University of Pennsylvania, 1986. Honorary Fellow, American Society for Legal History. Member of: Tau Beta Pi, Eta Kappa Nu, Omicron Delta Kappa. Honorary Member of Order of the Coif.

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.

Arkansas Bar Association
Pulaski County Bar Association (Arkansas)
Tri-County Bar Association (Indiana)
President, American Society for Legal History, 1981-85
Federal-State Relations Committee, Judicial Conference of the United States
State-Federal Judicial Council

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 lobbying organizations. I belong to the Town Club of Ft. Smith, the Country Club of Little Rock, Sons of the American Revolution, the Noon Civics Club of Ft. Smith, the Art Museum of Ft. Smith, and the Selden Society.

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 Arkansas, 1968. Admitted to the federal courts for the Eastern and Western Districts of Arkansas and the Northern District of Texas, 1968. Admitted to the bar of Pennsylvania, 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.

See attached.

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

Excellent. Last examined in 1991.

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

Special Chief Justice, Supreme Court of Arkansas, 1982. Appointed. This is the highest court of the State of Arkansas. It hears and determines appeals in all matters. I was appointed to sit on one case.

Special Master, Pulaski County Chancery Court, 1983. Appointed. This is a trial court with a general equitable jurisdiction. It also has jurisdiction over probate matters.

United States District Judge, Western District of Arkansas, 1985-1991. Appointed.

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.

See 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.

State Chairman, Republican Party of Arkansas, 1983 (Elected by Republican State Committee).

17. Legal Career:

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

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

No.

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

   Sole practitioner, Little Rock, AR 1981-84.

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

   Associate, Arnold & Arnold, Texarkana, AR, 1968; of counsel 1974-1985. Tom Arnold, P. O. Box 1858, Texarkana, AR, 75504, (501) 773-8491.

   General Counsel, Republican Party of Arkansas, 1981-82. Asa Hutchinson, 505 First National Bank Bldg., Fort Smith, AR, 72901, (501) 782-4028.

   Member of Volunteers of Central Arkansas Legal Services, 1983-84.

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?

   1968: Full-time practice of law.

   1971-81: Only an occasional case. Was engaged in teaching.

   1981-84: More active practice as General Counsel of the Republican Party and sole practitioner. Also did extensive law-oriented work as Vice President of the University of Pennsylvania.

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

   My clients were often lawyers, but not by any means always. Very frequently I specialized in mineral or land cases. I also specialized in political cases -- election contests, etc. -- when I was General Counsel of the Republican Party.

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.

   Occasionally.

2. What percentage of these appearances was in:

   (a) federal courts. 10%
   (b) state courts of record. 90%
   (c) other courts.

3. What percentage of your litigation was:

   (a) civil. 90%
   (b) criminal. 10%

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.

   One. Associate Counsel.

5. What percentage of these trials was:

   (a) Jury.
   (b) Non-jury. 100%

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

(1) Wolford v. Midwest Stone Co., 1981. Independence County, AR, Circuit Court, The Hon. Keith Rutledge, Judge; Independence County, AR, Chancery Court, The Hon. Carl McSpadden, Judge. Co-counsel: William Wilson, Esq., P. O. Box 71, Little Rock, AR 72203. (501) 375-6453. Opposing counsel: John Norman Harkey, Esq., P. O. Box 2535, Batesville, AR 72501. (501) 793-6818. I represented the plaintiff-landlord in an attempt to exercise a right of entry in a lease for a large marble quarry. The case was settled.

(2) Fawcett & Co. v. IP Inc. & William N. Carter. 1982-83. Pulaski County, AR, Chancery Court, the Hon. Lee Munson, Judge. Opposing counsel: Friday, Eldredge & Clark, First National Bank Bldg., Little Rock, AR 72201.

(501) 376-2011. I represented one of the defendants in an interpleader case brought by a stakeholder in a sale of an office building. The case was settled.

(3) Huchingson v. Liberty Mutual Ins. Co., 1983. Pulaski County, AR., Circuit Court, The Hon. Perry Whitmore, Judge. Co-counsel: Charles Hicks, Esq., Suite 1105, Union National Bank Bldg., Little Rock, AR 72201. (501) 371-0068. Opposing counsel: Winslow Drummond, Esq., 711 W. 3d, Little Rock, AR 72201. (501) 376-3021. I represented the plaintiff in an effort to recover a penalty for failing to settle an insurance claim promptly. Judgment was entered against us.

(4) George Smith v. Bill Clinton, Governor of the State of Arkansas. 1983. United States District Court for the Western District of Arkansas, The Hon. G. Thomas Eisele, Judge. Co-counsel: Chuck Banks, Esq., U.S. Attorney, P. O. Box 1229, Little Rock, AR. 72203 (501) 378-5342. Opposing counsel: Mike Gaines, Esq., Governor's Office, Capitol Bldg., Little Rock, AR 72201. (501) 371-2345. I supervised the effort by the plaintiff in this § 1983 action in federal court for deprivation of civil rights, specifically being fired because he was a Republican. The case was settled.

(5) Eisele et al. v. the City of Little Rock, et al., 1983-85. Pulaski County Circuit Court, the Hon. Perry Whitmore, Judge. Co-counsel, Doug O. Smith, Esq., P. O. Box 1626, Ft. Smith, AR 72902. (501) 782-6041. Opposing counsel: Jim Guy Tucker, Esq., 1000 Savers Federal Bldg., Little Rock, AR 72201. (501) 688-8800; Hugh Brown, Esq., Esq., Assistant City Attorney, Room 104, City Hall, Markham & Broadway, Little Rock, AR 72201. (501) 371-4527. I represented the plaintiffs in this § 1983 action in state court. We alleged that the defendants conspired with the City of Little Rock to deprive us of our property without due process. Specifically, we alleged that they filled their land and changed the course of a creek, thereby increasing the cost of developing our land. The case was settled.

(6) State of Arkansas v. Kenneth Ray Blanton. 1969-71. Supreme Court of Arkansas and United States Supreme Court. Represented convicted murderer on appeal to Arkansas Supreme Court. The case is reported in 249 Ark. 181 (1970). Also represented same defendant in the Supreme Court of the United States. I wrote the brief in support of the petition for Writ of Certiorari. Cert. was denied. See 401 U.S. 1003 (1971). The case raised several interesting constitutional issues, including the

right of indigent defendants to investigative and other services, and the standing of a white defendant to raise an objection to the systematic exclusion of black people from his venire. Opposing counsel: Joe Purcell, deceased.

(7) Birmingham v. Birmingham. 1968. Miller County, AR, Chancery Court, The Hon. Royce Weisenberger, Chancellor. Opposing counsel: Sherman A. Kusin, 406 Texas Blvd., Texarkana, TX 75501. (214) 794-2561. Child custody matter which challenged the mother's presumptive right to custody at a time when that right was virtually set in concrete.

(8) Mitchell Young, et al. v. City of Texarkana, Texas. 1968. District Court of Bowie County, TX, The Hon. Morris Sheppard Rolston, Judge. Opposing counsel: Leon F. Pesek, Sr., 420 Main, Texarkana, TX 75501. (214) 792-8891. An interesting election connected with a Model Cities project. Judgment was rendered against my client after a trial to the judge.

(9) State of Arkansas v. Thomas Powell. 1968. Circuit Court of Miller County, AR, The Hon. William H. Arnold, III, Judge. Opposing counsel: William F. Denman, Jr., Prosecuting Attorney (present whereabouts unknown). I defended a little league coach accused of sexually molesting several of his players. He pleaded guilty to a reduced charge.

(10) I participated in a number of other trials in 1968 in Arkansas and Texas state courts. They included personal injury, criminal, and domestic relations matters. Unfortunately, these files have been destroyed and I cannot recall the particulars.

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 for fifteen years at numerous law schools including the University of Pennsylvania, Stanford, Indiana, and the University of Arkansas at Little Rock.

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MORRIS S. ARNOLD

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THE YEAR BOOK OF 2 RICHARD II (1378-79) (Ames Foundation, Harvard Law School: 1975)

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Donald W. Sutherland, THE ASSIZE OF NOVEL DISSEISIN, 18 AM. J. LEGAL HISTORY 364 (1974)

Samuel E. Thorne's translation of Bracton, DE LEGIBUS ET CONSUETUDINIBUS ANGLIAE, 91 HARVARD L. REV. 517 (1977)

Leonard W. Levy, A HISTORY OF THE OFFENSE OF BLASPHEMY, 80 MICH. L. REV. 772 (1982)

Robert C. Palmer, THE COUNTY COURTS OF MEDIEVAL ENGLAND, 1150-1350, HARV. L. REV. (1982)

Thomas A. Green, VERDICT ACCORDING TO CONSCIENCE, 38 STANF. L. REV. 265 (1985)

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Remarks at Federalist Society Conference at Stanford Law School, 13 Sept., 1986.

"A Common Lawyer Looks at Administrative Law," Heritage Foundation, Washington, D.C., 9 December, 1986.

"The Civil Jury in Historical Perspective," ATLA Conference on the Jury at Harvard Law School, summer, 1986 (?)

Remarks at Georgia Legal History Foundation meeting, Atlanta, GA., 6 Jan., 1987.

Synopsis of the History of Arkansas, delivered to a bar group at Little Rock in 1987.

Birkett Williams Lecture, Ouachita Baptist University, Arkadelphia, AR., September 17, 1987.

"English Inns of Court," delivered to the William Overton American Inn of Court dinner in Little Rock in 1990.

MOST SIGNIFICANT OPINIONS

Modern American Life Insurance Co. v. Commissioner of Internal Revenue Service, 830 F.2d 110 (8th Cir. 1987)
-- quoted with approval, Colonial American Life Insurance Co. v. Commissioner of Internal Revenue, 491 U.S. 244, 259, 109 S. Ct. 2408, 2417, 105 L. Ed. 2d 199 (1989)

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United States v. Burks, Crim. No. 89-40008-01 (W.D. Ark. Feb. 14, 1990), conviction aff'd, sentence vacated and remanded, 934 F.2d 148 (8th Cir. 1991)

Robertson Oil Company, Inc. v. Phillips Petroleum Co., No. 86-2120 (W.D. Ark. Jan. 23, 1990), aff'd in part, remanded in part, 930 F.2d 1342 (8th Cir. 1991)

Lewis v. Windsor Door Co., No. 89-2112 (W.D. Ark. Feb. 7, 1990), rev'd, 926 F.2d 729 (8th Cir. 1991)

United States v. Drummond, Crim. No. 82-20016-01/Civil No. 88-2107 (W.D. Ark. Mar. 6, 1989), rev'd, 903 F.2d 1171 (8th Cir. 1990)

(continued)

REVERSALS; REMANDS OR AFFIRMANCES
WITH CRITICISM (continued)

Henderson v. Worthy, No. 89-4127 (W.D. Ark. June 4, 1990), remanded in unpublished opinion, No. 90-2034 (8th Cir. Jan. 4, 1991) (attached)

Layton v. United States, No. 89-4062 (W.D. Ark. Oct. 23, 1989); Richardson v. United States, No. 89-4064 (W.D. Ark. Oct. 30, 1989); rev'd, 919 F.2d 1333 (8th Cir. 1990)

United States v. Oliver, Crim. No. 89-20005-02 (W.D. Ark. Oct. 11, 1989), conviction aff'd, sentence vacated and remanded, 908 F.2d 260 (8th Cir. 1990)

Chaney v. Falling Creek Metal Products, No. 88-2024 (W.D. Ark. Jan. 13, 1989), rev'd, 906 F.2d 1304 (8th Cir. 1990)

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(continued)

REVERSALS; REMANDS OR AFFIRMANCES
WITH CRITICISM (continued)

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Dole v. Tony and Susan Alamo Foundation, No. 77-2183 (W.D. Ark. Nov. 26, 1986), aff'd in part, rev'd in part, 842 F.2d 1018 (8th Cir. 1988)

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangement, 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 keep a list of my stocks, and my clerks and I make sure that I do not get involved in any cases in which I have a financial interest. This is the only likely conflict of interest that I can think of, though I would no doubt recuse in any case involving the Republican Party of Arkansas since I am a former chairman.

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 might engage in law teaching to a limited extent.

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.

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

   See attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the

campaign, including the candidate, dates of the campaign, your title and responsibilities.

Yes. I helped Richard S. Arnold (my brother) in his congressional campaigns of 1966 and 1972. I also helped in the gubernatorial campaign of Woody Freeman in 1984. All three of these campaigns were in Arkansas. I had no exact title in either.

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

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

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Arnold, Morris S.	8th U.S. Circuit Court of Appeals	Nov 12, 1991
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	**5. Report Type** (check appropriate type)	**6. Reporting Period**
8th U.S. Circuit Court of Appeals Judge-active	X Nomination, Date Nov 5, 1991 __ Initial __ Annual __ Final	January 1, 1991 thru October 31, 1991
7. Chambers or Office Address		
P. O. Box 1606, Ft. Smith, Arkansas 72902		

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. See the last page for filing locations.

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

POSITION	NAME OF ORGANIZATION/ENTITY
[ ] NONE (No reportable positions)	
Trustee	Thomas S. Arnold Trust under the will of William H. Arnold
Member	Dean's Council, George Mason Univ., Arlington, VA

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

DATE	PARTIES AND TERMS
[X] NONE (No reportable agreements)	

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

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
[ ] NONE (No reportable non-investment income)		
1 7/20/91	Teaching at Law and Economics Center at Hanover, New Hampshire	$ 9,000
2		$
3		$
4		$
5		$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Morris S. Arnold	Nov 12, 1991

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

	SOURCE	DESCRIPTION
[ ]	NONE (No such reportable reimbursements or gifts)	
1	Law and Economics Center Hanover, New Hampshire	Travel to and from Hanover, NH, meals
2	July 7 thru July 20, 1991	and lodging for 5 days-value code "J"
3	Law and Economics Center Hanover, New Hampshire	Airline fare-Hanover, NH-value code "J"
4	July 7 thru July 20, 1991	
5	NCAA Meeting	Travel to and from Atlanta, GA-value code "J"
6	May 29 thru June 1, 1991	
7		
8		

V. OTHER GIFTS.

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

	SOURCE	DESCRIPTION	VALUE
[X]	NONE (No such reportable gifts)		
1			$
2			$
3			$
4			$

VI. LIABILITIES.

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

	CREDITOR	DESCRIPTION	VALUE CODE*
[X]	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-$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 = More than $25,000,000

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Morris S. Arnold	Nov 12, 1991

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

A. Description of Assets (Including trust assets)	B. Income during reporting period (1) Amount Code (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	Transactions during reporting period (1) Type (e.g., buy, sell, or exchange)	(2) Date Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(1) Date (Mo., Yr.) (2) Type (sale, partial sale, partial exchange) (3) Identity of other parties to transaction, if not exempt from disclosure
NONE (No reportable income, assets, or transactions)									
1 Ft National Bank of Ft Smith	A	Int	J	T					
2 Stephens, Inc Cash Account	A	Int	J	T					
3 Southwestern Electric Power	A	Div	J	T					
4 Shell Western	A	Roy	J	W					
5 Keystone Garrett	A	Roy	J	W					
6 Southland Champion	C	Roy	J	W					
7 Union Exploration	A	Roy	J	W					
8 Exxon Corporation	A	Roy	J	W					
9 Account Receivable Susan Mann	A	Int	J	T					
10 Acct Rec., Lilly Libr Bloomington, IN	A	A/R	K	T	Sale	3/22	K	E	Lilly Library, Bloomington, IN
11									
12 Stocks Held by									
13 Stephens, Inc.	C	Div							
14 3,000 sh Artagraphs Reproductions			J	T					
15 800 sh Dillard's Dept Store			L	T					
16 300 sh Entergy Corp			J	T					
17 123 sh IBM			J	T					
18 200 sh Minn Min & Mfg			K	T					
19 750 sh Norfolk Southern			K	T					
20 252 sh Riggs Natl Corp			J	T					

1 Income/Code Codes: (See Col. B1 & D4) A=$1,000 or less; B=$1,001 to $2,500; C=$2,501 to $5,000; D=$5,001 to $15,000; E=$15,001 to $50,000; F=$50,001 to $100,000; G=$100,001 to $1,000,000; H=More than $1,000,000
2 Value Codes: (See Col. C1 & D3) J=$15,000 or less; K=$15,001 to $50,000; L=$50,001 to $100,000; M=$100,001 to $250,000; N=$250,001 to $500,000; O=$500,001 to $1,000,000; P=More than $1,000,000
3 Value Method Codes: (See Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Morris S. Arnold	Nov 12, 1991

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

A. Description of Assets (Including trust assets) Indicate, where applicable, owner of the asset by using the parent letter (J) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (DC) for ownership by dependent child. Please "(Z)" after each asset exempt from prior disclosure.	B. Income during reporting period (1) Amt. Code (A-H)	(2) Type (Int., Div., Rent or Int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, exchange, redemption)	(2) Date Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) If not exempt from disclosure, identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
1 1,400 sh TLM Corp			J	T					
2 167 sh Texas Utilities			J	T					
3 600 sh Tyson Foods, Class A			J	T	Stock Div	4/16	J		
4 1,600 sh Walmart			L	T					
5									
6 Tax Exempt Bonds									
7 Held by Stephens, Inc	D	Int							
8 5,000 Atlanta, GA			J	T					
9 50,000 Benton, AR School Dist			K	T	Bot	5/7			
10 5,000 Florida St Bd of Education			J	T					
11 5,000 Manatee County Florida			J	T					
12 2,000 New York City Housing Authority			J	T					
13 5,000 Oakland City MI Moxley Drainage			J	T					
14 20,000 Osceola AR Elec Water/Sewer			K	T	Bot	8/12			
15 5,000 Pennsylvania St Genl Obligation			J	T					
16 5,000 Pennsylvania St Genl Obligation			J	T					
17 10,000 SE Pennsylvania Transit Authority			J	T					
18 40,000 U of AR Little Rock Campus			K	T	Bot	3/22			
19 5,000 Washington Sub Sanitation District			J	T					
20									

I Income/Gain Codes: (See Col. B1 & D4)	A-$1,000 or less B-$1,001 to $2,500 C-$2,501 to $5,000 D-$5,001 to $15,000	E-$15,001 to $50,000 F-$50,001 to $100,000 G-$100,001 to $1,000,000 H-More than $1,000,000	
J Value Codes: (See Col. C1 & D3)	J-$15,000 or less K-$15,001 to $50,000 L-$50,001 to $100,000 M-$100,001 to $250,000	N-$250,001 to $500,000 O-$500,001 to $1,000,000 P-More than $1,000,000	
K Value Method Codes: (See Col. C2)	Q-Appraisal R-Cost (real estate only) S-Assessment T-Cash/Market	U-Book Value V-Other W-Estimated	

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Morris S. Arnold	Nov 12, 1991

VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 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 (1) Amt. Code (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period (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-U)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions)									
1	Stephens, Inc Individ Retirement Acct	A	IRA	K	T					
2	Teachers Ins & Annuit/ College Ret Equity Fd	E	Ret/ Ann	N	T					
3										
4	Prudential Securities Futures Account	A	Fut/ Opt	J	T	Bot	4/12			
5	Prudential Securities Securities Account	B	Int	K	T	Bot	4/12			
6										
7										
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20										

1 Income/Gain Codes: (See Col. B1 & B4)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to 5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=More than $1,000,000
2 Value Codes: (See Col. C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $250,000
	N=$250,001 to $500,000	O=$500,001 to $1,000,000	P=More than $1,000,000	
3 Value Method Codes: (See Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market
	U=Book Value	V=Other	W=Estimated	

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Morris S. Arnold	Nov 12, 1991

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

Part VII Sale of books to Lilly Library, Bloomington, IN was completed on March 22, 1991.

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 Nov. 12, 1991

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	6	000	00	Notes payable to banks—secured	0		
U.S. Government securities—add schedule	25	000	00	Notes payable to banks—unsecured	0		
Listed securities—add schedule	457	814	56	Notes payable to relatives	0		
Unlisted securities—add schedule				Notes payable to others	0		
Accounts and notes receivable:				Accounts and bills due	4	000	00
Due from relatives and friends	10	000	00	Unpaid income tax	0		
Due from others	0			Other unpaid tax and interest	0		
Doubtful	0			Real estate mortgages payable—add schedule	0		
Real estate owned—add schedule	45	000	00	Chattel mortgages and other liens payable	0		
Real estate mortgages receivable				Other debts—itemize:	0		
Autos and other personal property	150	000	00				
Cash value—life insurance	0						
Other assets—itemize:	0						
Teacher Retirement Fund	275	564	93				
Commodity contracts	1	188	00				
				Total liabilities	4	000	00
				Net worth	966	567	49
Total assets	970	567	49	Total liabilities and net worth	970	567	49

CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	0			Are any assets pledged? (Add schedule.) No.			
On leases or contracts	0			Are you defendent 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						

MORRIS S. ARNOLD
SCHEDULE OF STOCKS ON HAND
OCTOBER 1, 1991

NO. OF SHARES	DESCRIPTION	VALUE
3,000	Artagraph Reproductions	$2,157.00
5,000	Atlanta GA 5.5% 12/1/99	4,957.35
50,000	Benton School District Bonds	47,227.50
800	Dillards Class A	105,000.00
300	Entergy	7,725.00
5,000	Florida St. Bd Ed 5.5% 1/1/93	5,034.15
123	IBM	12,576.75
5,000	Manatee Cty Fla 5.75% 9/1/06	4,745.85
200	Minn Mining & Mfg	19,025.00
2,000	NY City Hsng Auth 2.8% 9/1/94	1,841.22
700	Norfolk Southern	40,405.00
5,000	Oakland City MoxLey DR 5.5%	4,517.30
20,000	Osceola Electric Water Bonds	20,114.00
5,000	Penn State G O 6.4% 3/1/97	5,075.00
5,000	Penn State G O 5.5% 10/15/99	4,687.10
252	Riggs National Corp	1,543.50
10,000	S E Pa Tran Auth 5.125% 9/1/02	7,975.00
1,400	Telemation	251.80
167	Texas Utilities	6,408.02
600	Tyson Foods	11,850.00
40,000	Univ. of Ark. Rev. 7% 8/01/10	40,277.80
1,600	Walmart	76,400.00
5,000	Wash Sub San Dis 5.25% 4/1/07	4,412.60

NO. OF SHARES	DESCRIPTION	VALUE
100	Dillards Class A	13,125.00
100	J.B. Hunt Svsc Inc.	2,325.00
337	TCBY Enterprises Inc.	2,232.62
150	Tyson	5,925.00
	TOTAL	$457,814.56

MORRIS S. ARNOLD

Schedule of Real Estate

One-sixth undivided interest in farm in Morris County, Texas. Co-owned with brother and two aunts - $30,000.00.

Various royalty interests paid by Exxon, Keystone Garrett, Shell Western, Southland Champion, and Union Exploration - $15,000.00

MORRIS S. ARNOLD

Schedule of U.S. Government Securities

United States Treasury Bills - $25,000.00

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.

   I was a member of Volunteers of Central Arkansas Legal Services (VOCALS) from 1982 to 1984. I took two or three cases a year for indigent persons to help make up for the budget cuts that Legal Services experienced.

   When I was a law professor I sometimes helped community groups free of charge. For instance, in 1974 I gave legal advice to a citizens group engaged in a petition drive relevant to an airport expansion.

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 do not currently belong to any organization that discriminates on the basis of race, sex, or religion. I previously belonged to the Racquet Club of Philadelphia, the Union League Club of Philadelphia, and the Athenaeum of London. All of these were men's clubs. I voted to change the rules of all of these clubs to allow for the admission of women.

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

   There is no selection commission in my jurisdiction. I have been interviewed by Justice Department and White House personnel for possible nomination to vacancies on both the D.C. and Eighth Circuit Court of Appeals. Discussions focused on general judicial philosophy. About a year ago, I was informed by the Justice Department that I was going to be

nominated to the Eighth Circuit, and the F.B.I. and A.B.A. background investigations were done at that time. I did not receive that nomination, but President Bush called me on 5 November and informed me that he was nominating me for the present vacancy.

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 proposition that courts do not make law is an ancient one that predates our eighteenth-century constitution with its carefully crafted separation of powers. For example, Lord Coke, writing in the early seventeenth century, remarked that the function of judges was <u>jus dicere et non jus dare</u> - to speak the law, not to give it. In our own

time this maxim is even easier to apply than in Lord Coke's, for most important areas of the law are regulated by statute or by judicial precedent which must be given effect by the courts. And modern ideas about the separation of powers made it plain that a court's function is limited to interpretation and execution of the law.

It is certainly true that in the past courts have been encouraged in many law schools to be creative and to break deliberately with the past in order to correct certain kinds of injustice. Everyone concedes that a court has the power to overrule its previous decisions, and almost everyone thinks that there are occasions on which they ought to exercise that power. The real difficulty for a court comes in identifying when it has such an occasion before it. About all that can be usefully said on this subject is that a court needs to consult a number of matters in deciding this kind of question, including the egregiousness of the error sought to be corrected, the possibility that other political institutions can correct it, the amount of reliance on the previous state of the law, the length of time that the error has persisted, as well as other things. While this list of considerations hardly presents a hard-and-fast rule, it ought to come as no surprise that the exercise of judgment should be expected of judges.

It may well be that some judges tend overmuch to cure social ills rather than decide cases. Part of this tendency, however, is attributable to the fact that much litigation these days involves large numbers of people and large institutions like schools, prisons, and even the national guard. Since these cases drag on, and since they sometimes require a lot of hands-on supervision of the remedy, it is no wonder that they cease to look less like cases than like a mini-government with the judge as autocrat. After five years on the bench, however, my feeling is that presently most judges are intensely aware of their duty to restrict their activities to traditional judicial ones and are anxious to do no more than is necessary to decide the case before them.

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Michael Boudin

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

Home Address: 81 Irving Street, Cambridge, MA 02138; 2814 Dumbarton Avenue, N.W., Washington, DC 20007

Office Address: Langdell Hall 158, Harvard Law School, Cambridge, MA 02138

3. Date and Place of Birth:

November 29, 1939. New York City.

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 Martha Amanda Field, who is a professor of law at Harvard Law School, Langdell Hall, Cambridge, Massachusetts 02138.

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

Harvard College; Sept. 1957-June 1961; B.A. degree, *magna cum laude*.

Harvard Law School; Sept. 1961-June 1964; LL.B degree, *magna cum laude*.

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.

1964-65	Clerk, Judge Henry J. Friendly, U.S. Court of Appeals for the Second Circuit, New York City.
1965-66	Clerk, Justice John M. Harlan U.S. Supreme Court, Washington, D.C.

1966-87	Associate (1966-72) and then partner (1972-87), Covington & Burling, Washington, D.C.
1982-90	Visiting Professor from Law Practice (1982-83) and then Henry J. Friendly Lecturer on Law (1984 to 1990), Harvard Law School, Cambridge, Massachusetts.
1984-85	Lecturer on Law, University of Pennsylvania Law School, Philadelphia, Pennsylvania.
1987-90	Deputy Assistant Attorney General for Regulatory Affairs (10/87-9/89), Acting Assistant Attorney General (5-6/89), and Deputy Assistant Attorney General for Policy and Legislation (10/89-12/90), Antitrust Division, Department of Justice, Washington, D.C.
1990-92	U.S. District Judge, U.S. District Court, Washington, D.C.
1992-	Lecturer on Law, Harvard Law School, Cambridge, Mass.

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.

President, Volume 77, Harvard Law Review, Harvard Law School; John Harvard scholarship award, Harvard College; Phi Beta Kappa, Harvard College.

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 a member of the District of Columbia and New York Bars. I am also a member of the American Bar Association and the American Law Institute. In the ALI, I am a member of the Council and currently chair its committee for awarding the Henry J. Friendly Medal.

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 Harvard Clubs of Boston and New York; the Century Association in New York; and the Metropolitan and University Clubs in Washington, D.C. So far as I am aware, none of these organizations is active in lobbying.

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

New York Court of Appeals, before the Appellate Division of the Supreme Court held at New York City on	Dec. 22, 1964
United States District Court for the District of Columbia	May 19, 1967
United States District Court for the Southern District of New York . . .	Dec. 24, 1974
Supreme Court of the United States . . .	Jan. 25, 1968
United States Court of Appeals for the	
D.C. Circuit	June 30, 1970
First Circuit	Oct. 6, 1982
Second Circuit	July 16, 1973
Third Circuit	June 27, 1974
Fourth Circuit	March 23, 1976
Old Fifth Circuit	Jan. 24, 1975
New Fifth Circuit	Oct. 1, 1981
Sixth Circuit	Aug. 31, 1987
Seventh Circuit	Jan. 15, 1982
Eighth Circuit	Jan. 3, 1978
Ninth Circuit	Sept. 8, 1987
Tenth Circuit	Oct. 4, 1984
Eleventh Circuit	Oct. 1, 1981
ICC	Dec. 4, 1978

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.

Writings

(1) "Justice Brandeis: The Confirmation Struggle and the Zionist Movement," book review of Letters of Louis D. Brandeis - Volume IV (1916-1921) (edited by Melvin I. Urofsky and David W. Levy), 85 Yale Law Journal 591 (1976).

(2) "Private Standing and Public Values," book review of Joseph Vining, Legal Identity: The Coming of Age of Public Law, 77 Michigan Law Review 503 (1979).

(3) Book review of John Hart Ely, Democracy and Distrust A Theory of Judicial Review, and Jesse H. Choper, Judicial Review and the National political Process: A Functional Reconsideration of the Role of the Supreme Court, 67 Virginia Law Review 1251 (1981).

(4) "Regulation and Competition," book review of Stephen Breyer, Regulation and Its Reform, 49 University of Chicago Law Review 1098 (1982).

(5) "The Best Defense," book review of Alan M. Dershowitz, - The Best Defense, 35 Stanford Law Review 621 (1983).

(6) Common Sense in Law Practice, 34 Harvard Law School Bulletin, Spring 1983.

(7) "Regulatory Versus Antitrust Rules, How Coherent a Mix?," the Conference Board Research Bulletin, 1984.

(8) "Forensic Economics," book review of Franklin M. Fisher, John J. McGowan, and Joen E. Greenwood, Folded, Spindled, and Mutilated: Economic Analysis and U.S. v. IBM, 77 Harvard Law Review 835 (1984).

(9) "Memoirs in a Classical Style," tribute to Henry J. Friendly, 133 University of Pennsylvania Law Review 1 (1984).

(10) "Truth and Consequences," book review of Franklin S. Haiman, Speech and Law in a Free Society, Raritan, Winter 1985.

(11) "Federal/State Jurisdiction Over Telecommunications After Louisiana," American Bar Association Sixth National Institute on Ratemaking Fundamentals, October 1986.

(12) "Antitrust Doctrine and the Sway of Metaphor," article, 75 Georgetown Law Journal 395 (1987).

(13) Book review of William Twining, Theories of Evidence: Bentham and Wigmore, Raritan, Summer 1987.

Speeches

None of my speeches concerns constitutional law. As for legal policy, the only formal, published speeches I have given for the Antitrust Division concern (1) its amicus program and (2) foreign private restraints on U.S. exports; and copies are attached. The other talks I have given at bar associations and like groups over my past three years at the Antitrust Division were done from notes, outlines, or drafts; all related to relatively technical antitrust or regulatory topics; and none of them was released by the Division as a published speech. However, one set of these brief remarks was subsequently reprinted by the organization involved (The Sherman Act: The First Century -- Observations, 59 Antitrust L.J. 131 (1990)) and a copy is attached.

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

The state of my health is excellent. On January 8, 1992, I had a general physical examination by my regular doctor.

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.

12/14/90-1/31/92	U.S. District Judge, U.S. District Court for the District of Columbia; the position is appointed subject to Senate confirmation; the jurisdiction of the court is as provided by Federal statute.

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) Copies of ten such opinions are attached with citations where reported. The opinions are as follows:

Washington Hospital Center Corporation v. Group Hospitalization and Medical Services, Inc., 758 F. Supp. 750 (D.D.C. 1991)

Smith v. Ford Motor Co., C.A. No. 89-2289, D.D.C., March 12, 1991

Hood v. Prudential Ins. Co., 758 F. Supp. 764 (D.D.C. 1991)

Food Chemical News v. Advisory Committee on the Food and Drug Administration, 760 F. Supp. 220 (D.D.C. 1991)

Sea Watch International v. Mosbacher, 762 F. Supp. 370 (D.D.C. 1991)

Reuben v. FDIC, 760 F. Supp. 934 (D.D.C. 1991)

European American Corp. v. SEC, C.A. No. 89-2333, D.D.C., July 12, 1991

West Branch Valley Flood Protection Ass'n v. Stone, C.A. No. 91-0558, D.D.C. July 16, 1991

Fund for Animals v. Turner, C.A. No. 91-2201, D.D.C., Sept. 27, 1991

Kaiser v. Ramada Hotel Operating Co., C.A. No. 90-462, Dec. 19, 1991

(2) Not applicable.

(3) 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, other than as described in answer to question 6.

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 served as law clerk to Judge Henry J. Friendly, U.S. Court of Appeals for the Second Circuit, from September 1964 to July 1965. I then served as law clerk to Justice John M. Harlan, U.S. Supreme Court, from July 1965 to July 1966.

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.

Following my second clerkship and a vacation, I joined the law firm of Covington & Burling, now located at 1201 Pennsylvania Avenue, N.W., Washington, D.C., where I worked as an associate from November 1966 to July 1972 when I became a partner. I continued as a partner until October 1987 when I left the firm to join the Department of Justice, as described immediately below.

I joined the Antitrust Division of the Department of Justice on October 26, 1987 as Deputy Assistant Attorney General for Regulatory Affairs and continued in that position until September 1, 1989. From May 1, 1989 to June 26, 1989, I also served as Acting Assistant Attorney General in charge of the Antitrust Division. On October 1, 1989, after a one-month leave, I returned to the Antitrust Division as Deputy Assistant Attorney General for Policy and Legislation and continued in that post until December 13, 1990. I was a career member of the Senior Executive Service.

I served as U.S. District Judge for the U.S. District Court for the District of Columbia from December 14, 1990 through January 31, 1992. From 1982 onward, I have in most years taught antitrust law, evidence or regulated industries on a part-time basis, primarily at Harvard Law School. I am planning to do research at Harvard this spring and am scheduled to teach antitrust law there in the fall semester 1992.

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

Covington & Burling (November 1966 to October 1987): My work at the firm was primarily litigation. It included: (1) continuous appellate litigation in the courts of appeals and in the Supreme Court throughout the 20 year period; (2) preparation of several large multi-year cases, including two antitrust cases and one securities case, for trial in district court including extensive discovery and motion practice (two of the three were settled on the eve of trial); (3) three-judge district court cases defending or assailing ICC orders during the period before such orders became reviewable in the courts of appeals; (4) miscellaneous other district court cases; (5) intermittent participation in regulatory proceedings at the ICC and FCC. As an adjunct to litigation, I also provided extensive antitrust and regulatory advice to one client (Norfolk Southern) and substantial regulatory advice to another (AT&T). Although much of my litigation involved railroad and telephone company regulation, over the years I was involved in litigation or related advice involving an array of other civil and administrative matters.

Department of Justice (October 1987 to December 1990): From October 1987 to September 1989, I was responsible for supervising three of the five Washington trial sections in the Antitrust Division. Each section conducted investigations, grand juries, merger reviews, and civil and criminal antitrust trials relating to the numerous industries for which those sections were responsible. As the supervising deputy, I reviewed recommendations for new cases, indictments, proposed merger cases, and major discovery efforts; worked with the section heads and staff on issues of strategy and policy; met with outside attorneys on major cases; and advised the Assistant Attorney General. From May 1, 1989, to June 26, 1989, I was also Acting Assistant Attorney General responsible for decisions on major litigation and policy matters within the Division. From October 1, 1989, to December 13, 1990, I supervised the Appellate, Foreign Commerce and Legal Policy sections of the Division, spending about equal amounts of time supervising appeals, reviewing foreign antitrust and trade matters, and handling antitrust legislation and policy issues within the Division.

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

During my period of law practice, I worked on cases for numerous clients but much of the work fell into three broad categories.

First, for AT&T my activities fell into three categories: (1) for over 15 years I represented AT&T and/or the Bell System Operating Companies in a large number of appellate cases usually involving review of FCC orders determining rate or competition issues; (2) I participated in extensive discovery and other pretrial activities over the course of several years in two AT&T antitrust cases each of which was settled on the eve of trial; and (3) I provided regulatory advice incident to litigation or potential litigation.

Second, for the railroad industry, I represented the railroads for over 15 years in extensive regulatory litigation at the ICC, in district court cases, and in the federal appellate courts on a range of matters. The clients were usually the principal railroads in the United States; on some occasions I represented groups of railroads in individual geographic regions and/or the Association of American Railroads.

Third, for Southern Railway -- later Norfolk Southern -- I provided over many years a wide range of litigation and advice services, including representation in miscellaneous district court proceedings, appellate litigation involving review of ICC orders, antitrust advice on marketing and inter-railroad relationships, and regulatory advice in ICC proceedings and occasional participation in those proceedings.

The substantive areas in which I specialized in my litigation and advice were regulated industries, administrative law, and antitrust law.

During my period of government service in the Antitrust Division, much of the work was supervising criminal and civil antitrust enforcement matters in pending or prospective district court cases. I also supervised filings by the Antitrust Division with federal agencies as part of the Division's "competitive advocacy" program. From October 1989 to December 1990, I supervised the appellate litigation within the Antitrust Division including the Division's own cases, those in which the Division represents certain regulatory agencies as statutory co-respondents, and those in which it files amicus briefs in the courts of appeals or Supreme Court.

During my government service, I have recused myself from matters involving AT&T or other former Bell System companies, the railroads, Harvard University, and Covington & Burling.

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.

During my 20 years in private practice (1966-87), my principal work was litigation and I appeared in court regularly, especially after my first several years as a young associate. Most of the appearances were in district courts and the courts of appeals. While serving in the Justice Department (1987-90), I supervised litigation on a regular basis and signed briefs and indictments and complaints; the practice in the Antitrust Division is that deputies ordinarily do not appear in court, although I argued one case in March 1990.

2. What percentage of these appearances was in:

(a) federal courts;
(b) state courts of record;
(c) other courts.

Virtually 100% of my litigation appearances have been in federal courts (or federal agencies).

3. What percentage of your litigation was

1) civil.
2) criminal.

In my private law practice, practically all of my litigation was civil; in the Antitrust Division, a significant number of the trial and appellate matters I supervised were criminal (perhaps 25%), as opposed to civil matters (perhaps 75%).

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

Most of the cases that I handled in private practice were predominantly regulatory, involving challenges to or defense of administrative orders in three-judge district courts or courts of appeals. Over the 20 year period, I have been involved -- as brief writer, oral advocate or both -- in dozens of such cases. I have been involved in

various conventional district court cases, including three large, multi-year cases (two antitrust and one securities law); of these cases, a couple were tried and a couple were settled after discovery and a couple were resolved on the pleadings. In private practice, I would normally have been junior counsel in the earlier years and lead counsel in the later years. In the Justice Department, I supervised numerous criminal and civil cases but, in accordance with Antitrust Division practice, I argued in court only once.

5. What percentage of these trials was

1) jury;
2) non-jury.

Almost all of the litigation was non-jury, although one of the three multi-year cases which I helped to prepare -- extensively but in a very junior capacity -- was tried to a jury; and a second one, settled on the eve of the trial, was prepared as a jury trial.

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.

Set forth below is the information requested for ten of the most significant litigated matters which I personally handled. Although the question asks for the name, address and telephone numbers of "co-counsel and of counsel for each of the other parties," the typical case which I handled had a service list at least several pages long and often I had numerous co-counsel. Accordingly, I have listed three lawyers for every case including at least one co-counsel and one opposing counsel. It may also be useful to note that four of the individual lawyers listed below appeared as my opponents (and occasionally as allies) in a number of cases: John Ingle representing the FCC; William Byrnes representing MCI; Roger Wollenberg representing IBM; and Edward Merrigan representing National Association of Recycling Industries.

1. Chastain v. AT&T, 351 F.Supp 1320 (D.D.C. 1972), 401 F. Supp. 151 (D.D.C. 1975), and AT&T v. FCC, 551 F.2d 1287 (D.C.Cir. 1977). Chastain was an antitrust suit brought against AT&T by distributors of portable mobile telephones who claimed that certain of ATT's practices resulted in their inability to connect their telephones with the network and resulted in failure of the companies. The case included the development of evidence, including depositions and preparation of expert witnesses, and briefing on legal issues; but it also gave rise to unusual litigation involving district court reference of certain issues to the FCC (351 F. Supp 1320), litigation of the issues before the FCC (43 F.C.C. 2d 1079), summary judgment litigation after an adverse decision by the FCC (401 F. Supp. 151), and an appeal of the FCC orders to the D.C. Circuit (551 F.2d 1287). The significance of the case, in addition to being one of the first of a string of major antitrust cases against ATT, was the attempt to litigate and integrate into antitrust litigation agency findings on pertinent questions and to review those findings in a different court. In the district court, I was the second lawyer on the case for AT&T but was primarily responsible for managing preparation of the district court litigation on a day to day basis; in the court of appeals, I was the principal author of ATT's briefs and I argued the appeal from the FCC orders. AT&T defeated the motion for summary judgment in the district court and, after discovery was essentially completed, the district court case was settled on eve of trial. In the case of the appeal from the FCC orders, which had independent adverse consequences for ATT, review in the court of appeals continued after the district court settlement and resulted in reversal of the FCC orders. The dates of the two district court decisions were December 18, 1972, and September 30, 1975. The decision in the court of appeals was rendered on February 1, 1977. The trial judge was District Judge Oliver Gasch. The opinion in the court of appeals was written by Circuit Judge Robb.

Alfred Partoll, Senior Vice president, ATT, 295 North Maple Avenue, Basking Ridge, New Jersey 07920 (201) 221-5544 was one of the co-counsel for AT&T.

Jerry S. Cohen, Cohen, Milstein & Hausfeld, 1401 New York Avenue, N.W., Suite 600, Washington, D.C. 20005 (202) 628-3500 was the opposing counsel in the district court.

John Ingle, Deputy Associate General Counsel, Federal Communications Commission, 1919 M Street, N.W. , Washington, D. C. 20554 (202) 632-7112 was the opposing counsel in the court of appeals.

2. Western Coal Traffic League v. United States, 694 F.2d 378 (5th Cir. 1982), vacated, 719 F.2d 772 (5th Cir. 1983) (en banc), cert. denied, 466 U.S. 953 (1984). In this case shippers challenged new regulations of the ICC defining the "market dominant" concept, the key statutory element in the 1986 railroad deregulation legislation. Importantly, the ICC concluded that, in determining market dominance, evidence of product and the geographical competition -- in addition to "direct" competition -- could be considered. The case was significant because the new regulations govern all future ICC proceedings involving challenges to rail rates. The parties whom I represented as lead counsel were the railroad industry. In the initial Fifth Circuit panel opinion, the key regulations defended by the ICC and the railroads were held invalid. On rehearing en banc, the full Fifth Circuit sustained the ICC regulations and the Supreme Court denied certiorari. My role was to act as lead railroad counsel; to write the briefs for the railroads with help from other lawyers both for the panel hearing and rehearing en banc; to write the petition for rehearing en banc; and to present oral argument before the panel and before the en banc court in defense of the ICC regulations. The panel opinion was issued in December 8, 1982, and the en banc opinion was issued November 14, 1983. Circuit Judge Alvin Rubin wrote the panel opinion and Circuit Judge Johnson wrote the en banc opinion.

James Howe, Norfolk Southern, 3 Commercial Place, Norfolk, Virginia 23510 (804) 629-2752 was one of my co-counsel among the railroad lawyers.

Timm M. Abendroth, Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D. C. 20426 (202) 357-8174 was the principal counsel for the ICC.

C. Michael Loftus, Slover Loftus, 1224 17th Street, N.W., Washington, D. C. 20036 (202) 347-7170 was the principal counsel who argued for the shippers.

3. Virginia State Corp. Commission v. FCC, 737 F.2d 388 (4th Cir. 1984), rev. sub nom. Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986). This case involved a determination by the FCC that its authority to determine depreciation rates for telephone plant, and the methodology used in setting such depreciation rates, preempted inconsistent state regulation even with respect to the portion of telephone plant included in the intrastate rate base. The issue turned on the interpretation of the Communications Act of 1934 and the application of pertinent Supreme Court preemption decisions. In the Fourth Circuit, the FCC determination was sustained; but the Supreme Court reversed the court of appeals and held that the FCC lacked the preemptive authority it claimed. The matter was significant not only because of the economic consequences of FCC depreciation decisions but because the case then became an important precedent in the continuing struggle between the FCC and the state commissions for ultimate authority over the numerous aspects of telephone service that affect both interstate and intrastate services. The parties whom I represented as lead counsel were AT&T and most of the Bell Operating Companies. I did most of the drafting of the briefs and argued the cases in the Fourth Circuit and the Supreme Court. The date of the court of appeals decision was June 18, 1984, and the opinion was written by Circuit Judge Murnaghan; the date of the Supreme Court decision was May 27, 1986, and the opinion was written by Justice Brennan.

Raymond Scully, Metzger, Gordon & Scully, 1275 K Street, N.W., Washington, D.C. 20005 (202) 842-1600 was one of the co-counsel for AT&T.

John Ingle, Deputy Associate General Counsel, Federal Communications Commission, 1919 M Street, N.W., Washington, D. C. 20554 (202) 632-7112 was lead counsel in the court of appeals for the government.

Then Solicitor General Charles Fried, Harvard Law School, Cambridge, Massachusetts 02138 (617) 495-4636 was the government counsel in the Supreme Court.

Russell Cunningham, State Corporation Commission, Room 1100, P.O. Box 1197, Richmond, Virginia 23209 (804) 786-0150 was the opposing counsel who presented the oral argument in the court of appeals.

Lawrence Malone, New York Public Service Commission, Office of the General Counsel, 17th Floor, 3 Empire State Plaza, Albany, New York 12223 (518) 474-8572 was the opposing counsel who presented the oral argument in the Supreme Court.

4. LO Shippers Action Committee v. Aberdeen & Rockfish R.R., 4 I.C.C.2d 1 (1987), aff'd sub nom. LO Shippers Action Committee v. ICC, 857 F.2d 802 (D.C. Cir. 1988), cert. denied, 109 S.Ct. 2429 (1989). This case involved claims by owners of covered hopper cars, who "rent" those cars to the railroads, that the ICC should establish new and higher rates for the use of the cars and should award hundreds of millions of dollars in reparations to shippers for past use. The railroad industry argued that the ICC should not set such rates nor award reparations but should allow the rates to be set by market forces. The case involved construction of provisions in the Interstate Commerce Act and issues of regulatory policy and economics. The case proceeded at the ICC through the submission of written factual and expert testimony and briefing of legal issues, and it was then argued before the full ICC. The significance of the case was that it established that the governing statute permitted, and regulatory policy supported, the use of market based rates for rental of railroad cars owned by private companies and shippers. My clients were the railroad industry and my role was to act as their lead counsel. With two of my partners and with help from younger lawyers, I helped to formulate the railroads' legal position, to prepare witnesses to provide written testimony, and to brief the legal issues at the ICC. I then presented oral argument before the ICC. Ultimately the ICC decided in favor of the railroads and, after I left the firm, the ICC decision was affirmed by the D.C. Circuit. The ICC decision was served on August 31, 1987, and the court of appeals decision was issued on September 23, 1988. The opinion for the ICC was "by the Commission" and Circuit Judge Sentelle wrote the court of appeals decision (argued after I left the firm).

Paul Cunningham (202) 828-1406) and Richard Herzog (202) 828-1413) both of Pepper Hamilton, Scheetz, 1300 19th Street, N.W., Washington, D. C. 20036 were the principal co-counsel for the railroads.

Harold E. Spencer, Belnap, Spencer, McFarland, Genrich & Herman, 20 North Wacker Drive, Chicago, Illinois 60606 (312) 236-0204 was the principal opposing counsel representing the car owners.

5. National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985). This proceeding involved review of the FCC's orders broadly restructuring interstate telephone rates and charges for the telephone industry. In substance, the FCC designed a new method of allocating the cost of providing interstate telephone service between the local telephone companies, long distance companies, residential users and different classes of business users. Review in the D. C. Circuit was sought by numerous businesses and organizations. In an opinion of almost 50 pages, the court of appeals sustained practically all the FCC determinations, remanding on two minor issues and deferring a decision on one other. The case established the basic pattern of allocating interstate costs that continues today. I originally represented AT&T and the Bell System Operating Companies who largely supported the FCC decision; in connection with the breakup of AT&T, which occurred during the progress of the case, disagreement developed on a single issue between AT&T and the newly independent Bell Operating Companies and by agreement I continued to represent AT&T and other counsel represented Bell Operating Companies on the issue that divided those parties. My role was to act as lead counsel for the parties I represented, writing various briefs for AT&T/BOCs and motion papers in the court of appeals. I also presented oral argument opposing a stay request and on the merits. The case was decided June 12, 1984, in a per curiam opinion apparently co-authored by all three judges: Circuit Judges Wilkey, Ruth Ginsburg, and MacKinnon.

Judith Maynes, AT&T, 295 North Maple Avenue, Basking Ridge, New Jersey 07920 (201) 221-8227 was one of my co-counsel at AT&T.

John Ingle, Deputy Associate General Counsel, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554 (202) 632-7112 was lead counsel for the FCC.

William J. Byrnes, Haley, Bader & Potts, 2000 M Street, N.W., Suite 600, Washington, D.C. 20036 (202) 331-0606 was AT&T's principal adversary in the case.

6. Alameda Oil Co. v. Ideal Basic Industries, Inc. 313 F.Supp 164 (W.D. MO. 1970), 326 F.Supp 98 (D. Colo. 1971), 337 F.Supp 194 (D. Colo. 1972). This case, which was the first large-scale District Court litigation on which I worked, involved claims under the federal

securities laws and fiduciary duty claims under state law growing out of a corporate merger between Ideal Cement Company and Potash Company of America. In the course of the merger, a supposed "better deal" was allegedly rejected by one of the merging companies; and stockholders of that company brought suit in the district court in Missouri which transferred the case to the district court in Colorado. The case involved class action, substantive law and evidentiary issues and extended over a period of almost four years. After extensive discovery, the case was tried to a jury and then, after all the evidence had been submitted but before the jury was charged, the district court granted defendants' motion for a directed verdict. My firm represented the defendants, including Ideal Basic Industries, the surviving company in the merger. My role was to serve as the young associate on the case: I did not present the case in court but drafted pleadings and briefs in advance of the trial, participated in discovery and class action matters, organized documents, prepared evidentiary memoranda, and handled miscellaneous tasks in the courtroom during the trial. The written decision of the District Court granting defendants motion for directed verdict was dated January 24, 1972. The judge who presided was then-District Judge (later Circuit Judge) William E. Doyle of the district court in Colorado.

William C. McClearn, Holland Hart, P.O. Box 8749, Denver, Colorado 80201 (303) 295-8238 was co-counsel for the defendants.

Charles Renfrew, Vice President, Chevron, 225 Bush Street, San Francisco, California 94104 (415) 894-7700 was co-counsel for Ideal Basic Industries.

William E. Ris, Wood, Ris Hames, 1775 Sherman Street, Denver, Colorado 80203, (303) 863-7700 was one of the opposing counsel.

7. Pernell v. Southall Realty, 416 U.S. 360 (1974). This case involved review by the U.S. Supreme Court of a decision of the D.C. Court of Appeals holding that a tenant in an eviction proceeding had no right to a jury trial because Congress had repealed the statutory guarantee of a jury trial in eviction cases. The issue presented to the Supreme Court was whether the Seventh Amendment guaranteed a right of jury trial in an eviction proceeding. The issue turned on prior Supreme Court precedent, the history of comparable proceedings at common law, and federal policy relating to jury trial.

At the request of the Neighborhood Legal Services ("NLSP") attorney who represented the tenant in the District of Columbia courts, I represented the tenant as lead counsel in the Supreme Court on a pro bono basis. My role was to plan strategy, draft the certiorari petition and reply and, after certiorari was granted, draft the merits brief and the reply; these steps were taken with the assistance of a younger lawyer and in consultation with the NLSP lawyer. With my encouragement, the NLSP lawyer argued the case in the Supreme Court. The Supreme Court sustained our position, holding that the Seventh Amendment where it applies secures a right to a jury trial in an eviction case. The date of the Supreme Court decision was April 24, 1974. The opinion was written by Justice Marshall.

Norman C. Barnett, who is no longer listed in the Washington, D. C. Martindale was my NLSP co-counsel.

Michael Schlanger, Piper Marbury, 1200 19th Street, N.W., Washington, D.C. 20036 (202) 861-3900 was the lawyer who assisted me at my firm.

Herman Miller, who is no longer listed in Washington, D.C. Martindale was the opposing counsel.

8. Computer and Communications Industries Ass'n. v. FCC, 693 F.2d 198 (D.C. Cir 1982), cert. denied, 461 U.S. 938 (1983). This case involved FCC orders establishing a new regulatory regime addressing the provision of computer related telecommunications services. The case resolved a number of major legal issues including the status of computer-related services under the Communications Act, the FCC's authority over such activity, and the precise protective restrictions to be imposed on the Bell System in providing such services. The case was significant, apart from the legal issues noted above, because it reflected a new approach by the FCC in the face of the coalescence of two technologies; in place of a rigid mechanical separation, the FCC sought to obtain the benefits of Bell System participation while safeguarding competitors against possible abuse. I represented AT&T as lead counsel in the litigation and was the principal draftsman of ATT's brief in defense of the FCC's new regime, and I presented oral argument in the D.C. Circuit. The final disposition in the case was an affirmance of the FCC's orders. The decision was rendered on November 12, 1982 by Circuit Judge Tamm.

Alfred A. Green, 25 Saratoga Way, Short Hills, New Jersey 07078 (201) 376-0950 was one of my co-counsel for AT&T.

John Ingle, Deputy Associate General Counsel, Federal Communications Commission, 1919 M Street, N. W. , Washington, D. C. 20554 (202) 632-7112 represented the FCC.

Roger Wollenberg, Wilmer, Cutler Pickering, 2445 M Street, N.W., Washington, D. C. 20037 (202) 663-6220 was counsel for IBM, a major intervenor.

9. Norfolk Western Railway Co. v. United States, 768 F.2d 373 (D.C. Cir. 1985). For about 15 years the railroad industry, the Interstate Commerce Commission, and various representatives of recycling interests including shippers of recyclable commodities litigated before the District Court of the District of Columbia, the D. C. Circuit, and the U.S. Supreme Court in a succession of related "recyclables" cases. The cases concerned rate level and discrimination claims, reparation claims and numerous other substantive and remedial issues pertaining to railroad rates on recyclable commodities. The litigation in the earlier years was before three-judge district courts with direct review in the Supreme Court. The litigation in later years was before the D.C. Circuit. Litigation produced at least two full scale Supreme Court decisions (412 U.S. 669 and 422 U.S. 289) as well as numerous lower court decisions. In the cited N&W case, the railroad industry challenged an ICC order granting reparations on the ground that the order involved double recovery for shippers and exceeded the ICC's statutory authority. The case is significant primarily because it represents one chapter in a saga of litigation in which the rules governing railroad recyclable rates were resolved. The parties whom I represented in this particular case were the railroad industry; but I was directly involved in most phases of this 15 year litigation, representing either the railroad industry or territorial groups of railroads. Together with younger lawyers I wrote the railroads' briefs in this case in the court of appeals; and I presented oral argument for the railroads in the Court of Appeals obtaining reversal of the ICC reparations order. (I also wrote many -- probably most -- of the railroad industry briefs during the 15 years of litigation and I argued the cases on a number of occasions.) In the new case, the date of the decision was July 19, 1985, and the author of the opinion was then Circuit Judge Bork.

James Howe, Norfolk Southern, 3 Commercial Place, Norfolk, Virginia 23510 (804) 629-2752 was the principal co-counsel in the case for the railroads.

Craig Keats, who is no longer listed in the Washington, D.C. Martindale was the opposing counsel at the ICC.

Edward L. Merrigan, 6000 Connecticut Avenue, N. W., Chevy Chase, Maryland 20815 (301) 656-0210 was the principal opposing counsel for the shippers.

10. AT&T v. FCC, 836 F.2d 1386 (D.C. Cir. 1988). This case involved a challenge by the telephone industry to an FCC order adopting a new set of rules effectively requiring refunds by the telephone companies whenever they earned awards significantly in excess of their designated rates of return. This was a major public-utility law controversy involving claims by the telephone companies that the new regime was unconstitutional, was in excess of statutory authority, and was arbitrary and capricious because it would result in telephone companies earning less than their authorized rate of return. The parties whom I represented as lead counsel were the Nynex Bell Operating Companies. However, I also acted as principal draftsman for a brief signed by most of the Bell Operating Companies. I then presented oral argument in the D. C. Circuit for the Bell Operating Companies who signed the brief. The court of appeals set aside the FCC's order although the decision may be more significant for its guarded treatment of the telephone companies' constitutional argument. The date of the decision was January 22, 1988, and the per curiam opinion was apparently authored by either Circuit Judge Mikva or then Circuit Judge Bork; a third member of the panel wrote separately.

Saul Fisher, Nynex Service Co., 120 Bloomingdale Road, White Plains, New York 10605 (914) 683-2266 was the principal co-counsel for Nynex.

William Malone, Murphy & Malone, 1901 L Street, N.W., Washington, D. C. 20036 (202) 223-5062 was co-counsel representing another petitioning telephone system.

John Ingle, Deputy Associate General Counsel, Federal Communications Commission, 1919 M Street, N.W., Washington, D. C. 20554 (202) 632-7112 was principal opposing counsel.

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.)

Practically all of my work in private practice related to litigation. That has also been true during most of my tenure in the Justice Department. The most significant non-litigation aspect of my work in private practice was the provision over many years to Southern Railway -- later Norfolk Southern -- of advice on antitrust and regulatory matters concerning marketing, inter-railroad relationships, and like subjects. In the Justice Department the most significant non-litigation aspect of my work involved foreign antitrust and trade matters involving the European Community nations and Japan.

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 participant in the retirement plan established by my former law firm, Covington & Burling, where I have a fully funded account to which no further contributions are made by the firm. Documents reflecting the character of the plan's investments and the components of my account are attached as Attachment A.

I also expect to be reimbursed by the firm (Covington & Burling) for my inter-city travel expenses incurred in participating in a moot court exercise in February 1992 (around $500).

I am also a participant, based on my one-year term at Harvard as Visiting Professor from Law Practice, in the TIAA-CREF retirement plan used by many universities. Documents reflecting my account are attached as Attachment B. I am also a participant in the federal government's Thrift Savings Plan. A document reflecting my account is attached as Attachment 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.

   In government service, I have recused myself in matters involving my former major clients -- AT&T or other former Bell System companies and the nation's railroads -- and in matters involving Harvard University or Covington & Burling. If confirmed, I would maintain these recusals as to my listed former major clients in force for 10 additional years and would then reexamine the issue in light of prevailing standards of recusal. As to Harvard University and Covington & Burling, I would expect to continue the recusals in force indefinitely. In other matters, I will follow prevailing statutory and guideline requirements governing 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.

   I may teach courses from time to time as a lecturer at Harvard Law School to the extent consistent with judicial responsibilities. At present, I intend to teach a course in antitrust law at Harvard in the fall semester 1992.

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).

   The financial disclosure report is attached as Attachment D.

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

   The financial net worth statement is attached as Attachment 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 have been personally responsible for two pro bono test cases in the Supreme Court. One, described in my answer to question 18, succeeded in establishing the constitutional right to jury trial for tenants in the District of Columbia threatened with eviction. Pernell v. Southall Realty, 416 U.S. 360 (1974). The other, Doe v. Delaware, 450 U.S. 382 (1981), sought to protect the right of indigent parents protesting attempts by the state to terminate parental rights; although the cited case was dismissed on procedural grounds after full briefing and oral argument, one of the issues was relitigated and resolved in another case with different parties not long afterwards. Each of these cases probably involved several hundred hours of my time and the time of one or more younger lawyers at my firm.

   In addition I have from time to time assisted other lawyers, inside my firm and out of it, in Supreme Court test cases involving the disadvantaged; I do not have a complete record of such efforts but recall two examples. One involved protection of refugees from alleged unfair immigration procedures and the other involved obtaining an emergency stay in a case involving school aid. I have no recollection of the number of hours in such cases and the number would vary widely from case to case.

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 so discriminates. I am a member of three social clubs that did in the past limit their membership to men: the University and Metropolitan Clubs in Washington (joined, respectively, in 1978 and 1983) and the Century Association in New York (joined 1984). Each has ceased to discriminate and has admitted women. In each case, by appropriate letters and/or questionnaire answers

60-251 O - 93 — 4

and/or appearances at meetings, I supported the admission of women. None of these clubs discriminates now, or did during my period of membership, based on race 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 do not know whether there is a selection committee or, if so, what it said about me. In February 1990 I was interviewed by the Justice Department as a potential candidate for a federal judgeship in the District of Columbia including the U.S. Court of Appeals for the District of Columbia Circuit and ultimately was offered and accepted appointment to the District Court bench. In December 1991, I was advised by the Attorney General's office that I was being considered for possible nomination to the U.S. Court of Appeals for the First Circuit and later I was asked to submit the various forms incident to such possible nomination. Subsequently, I had the customary interviews with 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.

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 descriptive matter, I think it is probably true that the last thirty years have seen an increase (and perhaps recently a diminution) in the attitudes or characteristics described in paragraphs a-e. This is at best an impressionistic judgment and, to put it in perspective, it is worth remembering that "judicial activism" has waxed and waned -- and appeared in different forms -- over the course of American judicial history.

Given the doctrine of judicial review on constitutional questions, interaction between the judicial branch and the executive and legislative branches is inevitable. Nevertheless, in interpreting the Constitution the judiciary does pronounce upon its own authority vis-a-vis the other branches of government. Accordingly, the judiciary has a special responsibility to safeguard the constitutional principle of separation of powers and to exercise self-discipline in defining and exercising judicial authority.

Ultimately, I believe that different attitudes toward judicial intervention are called for by different circumstances. Merely as examples, I would expect a judge to be highly deferential toward legislative language and intent in construing a statute and to be deliberately protective of constitutional rights when applying the First Amendment.

The lower federal-court judges who to me have represented the ideal -- such as Judges L. Hand, Friendly, Weinfeld, and Gignoux -- have varied in their philosophies but all of them possessed a devotion to craftsmanship, a desire to derive order from complexity, and a great deal of common sense. It is these qualities, rather than any general predisposition on standing questions or remedies involving continuing judicial oversight, that seem to me to produce fine judges.

ATTACHMENT A

March 1992

My interest in the Covington & Burling retirement plan is reflected in three sets of investments. One portion is invested in contracts with Northwestern National Life Ins. Co. and Transamerica Life & Annuity Co. that guarantee annual fixed interest payments; a second portion is invested in federal government securities managed by the Vanguard Group, Inc., through its Vanguard Money Market Reserve-U.S. Treasury portfolio; and the remaining portion is invested in four funds managed by four managers: Dietche & Field Advisors, Eagle Asset Management, Gulf Investment Management, and Hudson Capital Advisors. I have no information regarding specific investments made by the separately managed funds, but I am advised that the plan is widely diversified within the meaning of Mr. Nebeker's letter of June 23, 1988, to Ms. Sposato. This advice is premised on the understanding that the holdings of the four funds are aggregated for purposes of applying the percentage limitations to the portfolio. The latest currently available statement is dated February 1, 1992, and is attached.

SAVINGS PLAN STATEMENT

MICHAEL BOUDIN FEB

	EQUITY	STOCK INDEX	MONEY MARKET	GOVERI SECUR
FIRM FUND	222,143.36	.00	.00	19,759.
PRE 1987				
VOL FUND	304,350.30	.00	.00	27,579.
POST 1986				
VOL FUND	.00	.00	.00	.
DED FUND	8,642.21	.00	.00	2,758.
TAX DEF FUND	28,556.65	.00	.00	.
TOTALS	563,692.52	.00	.00	50,096.

	1990A	1990B	1989A	1989B
	08.61%	09.22%	9.70%	8.98%
	12-31-92	06-30-95	12-31-93	12-31-93
FIRM FUND	147,744.60	.00	17,246.00	.
PRE 1987				
VOL FUND	29,971.47	.00	10,347.63	.
POST 1986				
VOL FUND	.00	.00	.00	.
DED FUND	2,062.86	.00	1,724.62	.
TAX DEF FUND	3,588.36	.00	8,623.02	.
TOTALS	183,367.29	.00	37,941.27	.

ACCUM CONTRIBUTION

FIRM FUND	146,223.12
PRE 1987 VOLUNTARY FUND	118,500.00
POST 1986 VOLUNTARY FUND	.00
DEDUCTIBLE FUND	6,000.00
TAX DEFERRED FUND	31,456.32
TOTAL-CONTRIBUTION	306,209.44

92

T S	SHORT TERM BOND FUND	BALANCED FUND	1991A 8.40% 12-31-94	1991B 8.17% 12-31-94
	.00	.00	49,072.20	.00
	.00	.00	58,276.20	.00
	.00	.00	.00	.00
	.00	.00	5,720.91	.00
	.00	.00	9,439.80	.00
	.00	.00	122,509.11	.00

1989B 8.97% 12-31-93	1985B 11.84% 12-31-93	NOT USED	NOT USED
.00	.00	.00	.00
.00	.00	.00	.00
.00	.00	.00	.00
.00	.00	.00	.00
.00	.00	.00	.00
.00	.00	.00	.00

OTAL VALUE	
IRM-FUND	455,965.32
PRE 1987 VOLUNTARY FUND	430,525.30
POST 1986 VOLUNTARY FUND	.00
DEDUCTIBLE FUND	20,908.69
TAX DEFERRED FUND	50,207.83
OTAL VALUE	957,607.14

CREF
College Retirement Equities Fund
730 Third Avenue
New York, NY 10017

Annuity Benefits Report

ATTACHMENT B

MICHAEL BOUDIN
2814 DUMBARTON AVE N W
WASHINGTON DC 20007-3335

For year ending December 31, 1991
Retirement Annuity

V01000

TIAA contract number	8296391-2
CREF certificate number	Q296391-0
Social Security number	102-30-5816

If you have questions, call 1 800 842-2776, or write to us.

Total accumulation

	As of Dec. 31, 1990	As of Dec. 31, 1991
TIAA	$8, 975. 99	$9, 799. 78
CREF		
STOCK	10, 987. 27	14, 293. 07
CREF TOTAL	$10, 987. 27	$14, 293. 07
TOTAL TIAA+CREF	$19, 963. 26	$24, 092. 85

Illustration of your first year's annuity income, assuming 6% rate of return until retirement

If no additional premiums are paid:

TIAA Income	
Standard Method	$2, 274
Graded Method	1, 465
Total CREF Income	$2, 155
Total TIAA+CREF Income *Using TIAA Standard Method*	$4, 429
or Total TIAA+CREF Income *Using TIAA Graded Method*	$3, 620

Illustration profile

This illustration is hypothetical and is not guaranteed. It is based on your 1991 year-end accumulation, on an assumed 6% rate of return, and on the following assumptions:

Your annuity starting age:	65 Years
Annuity starting date:	December 1, 2004
Income option:	One-life annuity with 10-year guaranteed period
Dividend scale for TIAA Standard Method:	1992 dividend scale for payout annuities

See reverse side for more information.

TIAA

Standard Method - your TIAA income includes a contractually guaranteed amount and the entire TIAA dividend as declared for the current year. Income will remain the same as long as the TIAA payout dividend scale doesn't change. Income will change, however, if the dividends increase or decrease. Please note, dividends are not guaranteed.

Graded Method - your TIAA income includes the contractually guaranteed amount but only a portion of the dividend. The rest of the dividend is reinvested--in effect, buying additional future income. As a result, payments under this method start out lower but are designed to increase as the years go by.

CREF

Initial CREF annuity income is based on the assumption that CREF will earn 4% a year from the time you begin to receive payments. If CREF earns more than 4%, your next year's income will be higher than the previous year's; if CREF earns less than 4%, your next year's income will be lower than the previous year's.

Premium Assumption:

Our records indicate that periodic premiums to these annuities were suspended or discontinued in 1991 or earlier. Accordingly, no yearly premiums are assumed for future years.

Illustration of your first year's annuity income using alternate rates of return

In calculating your first year's annuity income on page 1, we have assumed a 6% annual rate of return on your accumulations and future premiums. This assumption covers the period from now until your annuity income begins. The table below shows the results if other rates of return were used instead. All other assumptions remain the same. **These illustrations are not guaranteed.**

TIAA annuities contractually guarantee to credit a 3% interest rate (on most contracts), so no estimates are shown in the 0% column.

If no additional premiums are paid, your first year's estimated income is:

	Annual rate of return			
	0%	*3%*	*9%*	*12%*
TIAA Income				
Standard Method	n/a	$1, 635	$3, 170	$4, 412
Graded Method	n/a	1, 014	2, 098	2, 975
Total CREF Income	$1, 015	$1, 487	$3, 090	$4, 388
Total TIAA+CREF Income *Using TIAA Standard Method*		**$3, 122**	**$6, 260**	**$8, 800**
or **Total TIAA+CREF Income** *Using TIAA Graded Method*		**$2, 501**	**$5, 188**	**$7, 363**

For your information

- You will receive one Annuity Benefits Report for each set of TIAA-CREF annuities you own.
- Your accumulations may be paid as preretirement death benefits. If you die before converting your accumulations to lifetime retirement income (or other benefits permitted by your employer's plan), the accumulations would be payable to your beneficiary under the options available.
- We have the right to correct any clerical errors in this report.
- These annuities do not provide for loans and cannot be assigned.

ATTACHMENT E

THRIFT SAVINGS PLAN
PARTICIPANT STATEMENT

For the period:
05/01/91 through 10/31/91

TSP-8-A

Your Thrift Savings Plan (TSP) account statement is issued every six months by the National Finance Center for the Federal Retirement Thrift Investment Board. For additional information or to correct your address or any of the following items, please contact your agency employing office.

Name: MICHAEL BOUDIN

Retirement Coverage: ART III (A)

Social Security Number: 102-30-6816

Separation Status: N-Not separated

Date of Birth: 11/29/39

Total Service Required for Vesting: 0 Years from 00/00/00 (TSP Service Computation Date)

Personal Identification Number (PIN): 6416 for the TSP Inquiry Line (504) 256-8777

		Source of Contributions: Employee	Agency Automatic (1%)	Agency Matching	Total
G FUND Government Securities Investment Fund	Beginning Balance	0.00	1,906.83	0.00	1,906.8
	Transactions This Period	0.00	0.00	0.00	0.0
	Earnings This Period	0.00	77.12	0.00	77.1
	Ending Balance	0.00	1,983.85	0.00	1,983.8
F FUND Fixed Income Index Investment Fund	Beginning Balance				
	Transactions This Period				
	Earnings This Period				
	Ending Balance				
C FUND Common Stock Index Investment Fund	Beginning Balance				
	Transactions This Period				
	Earnings This Period				
	Ending Balance				
TOTAL ACCOUNT BALANCE	Beginning Balance	0.00	1,906.83	0.00	1,906.8
	Transactions This Period	0.00	0.00	0.00	0.0
	Earnings This Period	0.00	77.12	0.00	77.1
	Ending Balance	0.00	1,983.85	0.00	1,983.8

Rates of Return* (Numbers in parentheses are negative)		1991 May	June	July	August	September	October	Last 12 Month Nov '90-Oct
	G Fund	.68%	.66%	.69%	.69%	.64%	.62%	8.34%
	F Fund	.67%	(.01%)	1.40%	2.12%	1.99%	1.09%	15.50%
	C Fund	4.30%	(4.49%)	4.63%	2.37%	(1.63%)	1.39%	33.53%

* Actual rates of return after administrative expenses. The monthly rates of return are the rates used to compute the actual earnings on your account each month, as described on the back of this statement. The 12-month rates of return show the investment performance only that portion of your account th was invested for the entire 12-month period. Because of the timing and amount of your contributions, interfund transfers, and other transactions, you cannot use the 12-month rates of return shown above to calculate your actual earnings for the November '90 - October '91 period. There is a risk of investment loss in both the F and the C Funds. There is no assurance that past rates of return will be repeated in the future.

FORM TSP-8-A Revised 11/9

Is your address incorrect? See instructions at top of statement.

Left Government service? If so, ask your former agency to submit a Separation Code a Form TSP-18. Also ask for the package, "Withdrawing Your TSP Account Balance."

8487894183 JL 01 1463 10005887

MICHAEL BOUDIN
2814 DUMBARTON AVE
N W
WASHINGTON DC 20007-3335

ATTACHMENT D

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C.A. App. 8, §§101-112)

1. Person Reporting (Last name, first, middle initial) Boudin, Michael [NMI]	2. Court or Organization U.S. Court of Appeals for the First Circuit	3. Date of Report March 23, 199
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 appropriate type) X Nomination, Date 3/27/92 X Initial __ Annual __ Final	6. Reporting Period Jan. 1, 1991-Mar. 1, 1992
7. Chambers or Office Address Langdell Hall 158 Harvard Law School Cambridge, MA 02138	[NOTE: Please address correspondence to me at: 81 Irving Street Cambridge, MA 02138	

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

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

☐ NONE (No reportable positions)

POSITION	NAME OF ORGANIZATION/ENTITY
Lecturer on Law	Harvard Law School
Member of the Council	American Law Institute
Co-executor and co-trustee	~~Estate of Leonard B. Boudin and trust~~ established under his will

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

☐ NONE (No reportable agreements)

DATE	PARTIES AND TERMS
Lecturer on Law	- Tentative agreement to teach antitrust course at Harvard Law School -- Fall 1992
Beneficiary	- Vested pension plan account at former law firm - Covington & Burling

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

☐ NONE (No reportable non-investment income)

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	Lectureship at Harvard Law School	$ 19,450
2	Final severence payments from former law firm Covington & Burling	$ 97,500
3	Harvard Law School and University of Arizona law teaching salaries (S)	$ --
3	Harvard University Press book royalties (S)	$ --
3	Honoraria (S) - see attached list	$ --

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Boudin, Michael	3/23/92

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals '(S)' and '(DC)' to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements or gifts)	
1	Exempt	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

(Includes those to spouse and dependent children; use the parentheticals '(S)' and '(DC)' to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of instructions.)

	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 spouse, '(J)' for joint liability of reporting individual and spouse, and '(DC)' for liability of a dependent child. See pp.16-18 of instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities)		
1	Plymouth Mortgage Co., Hyannis, MA	Blanket mortgage on summer home and separate rental property, Wellfleet, Mass. (S)	N
2			
3			
4			
5			
6			
7			

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

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Boudin, Michael	3/23/92

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

A. Description of Assets (including trust assets) [illegible] Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period (1) Amt. Code (A-H)	B. (2) Type (Int., Div., Rent or Int.)	C. Gross Value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (Sale, Purch., Exchange, Redemption)	If not exempt from disclosure (2) Date Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of trustee/filer (if private transaction)
☐ NONE (No reportable income, assets, or transactions)					Exempt				Exempt
1 Covington & Burling Pension Plan:see note 1	F	int.	O	T					
2 TIAA-CREF Retirement Plan	B	int.	K	T					
3 1st American Bank (Checking)	B	int.	K	T					
4 1st American Bank (Savings)	A	int.	J	T					
5 Bay Bank (Savings)	A	int.	J	T					
6 Prudential Bache Nat. Mut. Fund	E	div.	N	T					
7 Prudential Bache Tax Free Bond Fund	B	div.	L	T					
8 Duluth, MN New Pub. Hsg. Auth. Bonds	B	int.	K	T					
9 New York New Pub. Hsg. Auth. Bonds	A	int.	J	T					
10 Oakland, Calif. New Public Hsg. Auth Bonds	A	int.	K	T					
11 Ohio State Bonds (redeemed)	A	int.	N/A	N/A					
12 Oregon State Bonds	A	int.	K	T					
13 Philadelphia, PA New Public Hsg. Bonds	B	int.	K	T					
14 Virginia State Bonds	A	int.	J	T					
15 Youngstown, Ohio New Public Hsg. Auth Bonds	A	int.	J	T					
16 Merrill Lynch Cash Mgt. Acct. Tax Exempt	D	div.	K	T					
17 Merrill Lynch Mun. Bond Investment Trusts	E	div.	M	T					
18 Fairfax Cty, Virginia Bonds	C	int.	K	T					
19 Interest in Trust: see attach. Note 2	N/A	N/A	M	E					
20 Wisconsin State Bonds	C	int.	K	T					

1 Income/Gain Codes: (See Col. B1 & D4)
A=$1,000 or less
B=$1,001 to $2,500
C=$2,501 to $5,000
D=$5,001 to $15,000
E=$15,001 to $50,000
F=$50,001 to $100,000
G=$100,001 to $1,000,000
H=Over $1,000,000

2 Value Codes: (See Col. C1 & D3)
J=$15,000 or less
K=$15,001 to $50,000
L=$50,001 to $100,000
M=$100,001 to $250,000
N=$250,001 to $500,000
O=$500,001 to $1,000,000
P=Over $1,000,000

3 Value Method Codes: (See Col. C2)
Q=Appraisal
R=Cost (real estate only)
S=Assessment
T=Cash/Market
U=Book Value
V=Other
W=Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Boudin, Michael	3/23/92

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

A. Description of Assets (including trust assets)	B. Income during reporting period (1) Amt. Code (A-H)	B. (2) Type (Int., Div., Rent or Int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., Buy, Sell, Exchange, 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 TIAA-CREF Retirement Plan (S)	D	int.	N	T					
2 Wellfleet, MA Rental House: see note 3 (S)	E	rent	O	E					
3 Personal residence (part rental)									
X 81 Irving Street Cambridge, MA (S)	D	rent	O	E					
5 Wellfleet, MA summer residence (occasional									
X rental): see note 4 (S)	C	rent	O	E					
7 Cape Cod Bank, Wellfleet MA (savings) (S)	A	int.	J	T					
8 Provident Savings Bk Boston, MA (savings)(S)	C	int.	N	T					
9 Coolidge Bank, Cambridge MA (Savings &									
10 Checking) (S & DCS)	A	int.	J	T					
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less B=$1,001 to $2,500 C=$2,501 to $5,000 D=$5,001 to $15,000 E=$15,001 to $50,000 F=$50,001 to $100,000 G=$100,001 to $1,000,000 H=more than $1,000,000		
2 Value Codes: (See Col. C1 & D3)	J=$15,000 or less K=$15,001 to $50,000 L=$50,001 to $100,000 M=$100,001 to $250,000 N=$250,001 to $500,000 O=$500,001 to $1,000,000 P=more than $1,000,000		
3 Value Method Codes: (See Col. C2)	Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market U=Book Value V=Other W=Estimated		

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Boudin, Michael	3/23/92

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 Michael Boudin Date March 24, 1992

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

AO-10

ATTACHMENT TO PART III

MICHAEL BOUDIN

REPORT DATED MARCH 23, 1992

Spouse's honoraria

1991

Washburn Law School
NYU Law School
Columbia Law School

1992

Creighton University

AO-10

ATTACHMENT TO PART VII

MICHAEL BOUDIN

REPORT DATED MARCH 23, 1992

Note 1: My interest in the Covington & Burling retirement plan is reflected in three sets of investments. One portion is invested in contracts with Northwestern National Life Ins. Co. and Transamerica Life & Annuity Co. that guarantee annual fixed interest payments; a second portion is invested in federal government securities managed by the Vanguard Group, Inc., through its Vanguard Money Market Reserve -- U.S. Treasury portfolio; and the remaining portion is invested by four managers: Dietche & Field Advisors, Gagle Asset Management, Gulf Investments Management, and Hudson Capital Advisors. I have no information regarding specific investments made by the separately arranged funds, but I am advised that the plan is widely diversified within the meaning of Mr. Nebeker's letter of June 23, 1988, to Ms. Sposato. This advise is premised on the understanding that the holdings of the four funds are aggregated for purposes of applying the percentage limitations to the portfolio.

AO-10

ATTACHMENT TO PART VII

MICHAEL BOUDIN

REPORT DATED MARCH 23, 1992

Note 2: I am co-executor for the estate of my late father, Leonard B. Boudin, and co-trustee of the trust established under his will. My father died on November 24, 1989, the will was admitted to probate on March 1, 1990, and the court issued letters of trusteeship on March 9, 1990. The trust has not yet been funded but is to be funded out of the estate pursuant to a formula set forth in the will. I am advised that the trust is to be funded in an amount between $550,000 and $600,000. The assets of the estate, other than cash or cash receivables, are: 200 shares of common stock of Biogin, Inc.; 50 shares of common stock of Automatic Data Processing; 400 shares of stock of Codicorp; and one--half tenant-in-common interests in two pieces of residential property, one located on Long Island and the other in New York City. In addition to being a co-trustee of the trust, I have a one-third remainder interest in the trust, contingent upon my surviving my mother, and the trustees have discretion to pay income and principal to any of several beneficiaries, including me.

AO-10

ATTACHMENT TO PART VII

MICHAEL BOUDIN

REPORT DATED MARCH 23, 1992

Note 3: The Wellfleet, Mass. rental house is 11 Ocean View Drive; and it is located on Ocean View Drive at Cahoon Hollow Road and is the only house whose driveway is at this intersection.

Note 4: The Wellfleet, Mass. summer residence is 2 Cliff Road; and it is reached by proceeding from Ocean View Drive down Priscilla Road, turning right at the dead end onto Cliff Road, and proceeding to the last house on that road.

ATTACHMENT E

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		326	874	Notes payable to banks – secured			
U.S. Government securities – add schedule				Notes payable to banks – unsecured			
Listed securities – add schedule		974	303	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		(341	000)
Real estate owned – add schedule	2	200	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts – itemize:			
Autos and other personal property		182	000				
Cash value – life insurance							
Other assets – itemize:	1	437	684				
				Total liabilities		(341	000)
				Net worth [Total assets]	5	120	861
Total assets	5	120	861	Total liabilities and net worth	4	779	861
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cornaker or guarantor				Are any assets pledged? (Add schedule.)	No		
On leases or contracts							
Legal Claims				Are you defendant in any suites or legal actions?	No		
Provision for Federal Income Tax							
Other special debt				Have you ever taken bankruptcy?	No		

1. Cash on Hand and in Banks

Michael Boudin		
First American Bank		
Savings	$ 5,432	3/17/92 MB estim.
Checking	16,973	2/25/92 statement
Bay Bank	669	3/9/92 statement
Cash on hand	500	est. per MB 1/6/92
Martha Field		
Cape Cod Bank	500	est. per MF 3/10/92
Coolidge Bank & Trust Co.	500	est. per MF 3/10/92
Provident Savings	302,000	est. per MF 3/10/92
Gabriel Field		
Coolidge Bank & Trust Co.	150	est. per MF 3/10/92
Lucas Field		
Coolidge Bank & Trust Co.	150	est. per MF 3/10/92
TOTAL	$326,874	

2. Listed and Unlisted Securities

Michael Boudin

The attached Merrill Lynch (as of 2/28/92) and Prudential Bache (2/29/92) statements list my bonds, bond funds, and money market accounts. For purposes of the main form I have treated bonds, bond funds, money market accounts, and any cash balances as listed securities.

For the Period: Feb 1 - Feb 29, 1992

Account Number: 045-607044-98

Net Worth

	OPENING	CLOSING
PRICED SECURITIES VALUE	$411,367.06	$410,826.67
MONEY MARKET FUNDS	$73,120.67	$74,619.67
CASH BALANCE	$.25	$.25
TOTAL NET WORTH	$484,477.98	$485,446.59

Your Financial Advisor:
RONALD FITZGERALD
VICE PRESIDENT INVESTMENTS
1130 CONNECTICUT AVENUE N. W.
ELEVENTH FLOOR
WASHINGTON, DC 20036
202-861-4400

Your Federal ID Number: 102-30-5016

Income

	THIS PERIOD	YEAR TO DATE
DIVIDENDS	$383.81	$383.81
MUNICIPAL INTEREST	$2,647.09	$4,421.96
NON-TAXABLE MONEY FUND INTEREST	$179.00	$413.00
TOTAL INCOME	$3,209.90	$5,218.77

MR MICHAEL BOUDIN
2814 DUMBARTON AVENUE NW
WASHINGTON DC 20007-3335

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DATE	TRANSACTION	QUANTITY	DESCRIPTION	PRICE/ENTRY	AMOUNT CHARGED	AMOUNT CREDITED
02/03	Interest		INT RECEIVED ON 15,000 BONDS OF VA COMMWLTH CP FA 4.90 8/01/1997	Municipal Income		$367.50
02/03	Interest		INT RECEIVED ON 20,000 BONDS OF MISC ST IC FA 5.70 02/01/2001	Municipal Income		$570.00
02/05	Purchased	957	PRUDENTIAL TAX FREE MONEY FUND	1.00	$957.00	
02/10	Interest		INT RECEIVED ON 15,000 BONDS OF ORE ST CP FA 5.10 02/15/1993	Municipal Income		$382.50
02/26	Dividend	24.323	PRU NAT MUNI FD B DIV REINV VALUE $383.81 REINV AT 15.78 LONG-TERM CAPITAL GAIN DISTRIBUTION	Capital Gains		
02/26	Interest	84.099	PRU NAT MUNI FD B DIV REINV VALUE $1,327.09 REINV AT 15.78	Municipal Income		
02/26	Interest	179	PRU TAX FREE MM INT REINV 01/27 - 02/25	Non-Taxable Money Fnd		
02/27	Purchased	383	PRUDENTIAL TAX FREE MONEY FUND	1.00	$383.00	
02/27	Purchased	383	PRUDENTIAL TAX FREE MONEY FUND	1.00	$383.00	
02/28	Sold	-383	PRUDENTIAL TAX FREE MONEY FUND AUTO REDEMPTION	1.00		$383.00

Client Statement — Prudential Securities

Securities Account

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

MR MICHAEL BOUDIN — Feb 1 - Feb 29, 1992 — Account Number: 045-607844-90 — Page 2 of 2

Portfolio Summary

DESCRIPTION	QUANTITY	PRICE	VALUE	ESTIMATED ANNUAL INCOME	COMMENTS
PRUDENTIAL NATIONAL MUNICIPAL FUND: CLASS B	18,388.043	15.850	$291,402.93		
DULUTH MINN MEM PUB HSG AUTH CP JD 5 1/8 12/01/2009 DTD 12/01/72 CALL 06/01/1992 104.00	30,000	87.926E	$26,378.07	$1,537.50	5.83 % CURRENT YIELD
NEW YORK CITY MEM PUB HSG AUTH NEW PUBLIC HOUSING AUTHORITY IC JJ 3 7/8 01/01/1996 DTD 01/01/59 CALL 07/01/1992 101.00	5,000	93.536E	$4,676.82	$193.75	4.14 % CURRENT YIELD
OAKLAND CALIF MEM PUB HSG AUTH CP MN 3 5/8 05/01/1993 DTD 05/01/65 CALL 05/01/1992 102.00	10,000	100.207E	$10,020.77	$362.50	3.62 % CURRENT YIELD
OREGON ST CP FA 5.10 02/15/1993 DTD 02/15/77	15,000	101.445E	$15,216.75	$765.00	5.03 % CURRENT YIELD
PHILADELPHIA PA MEM PUB HSG AUTH CP AO 5% 04/01/2000 DTD 04/01/71 CALL 04/01/1992 103.00	20,000	97.592E	$19,518.40	$1,000.00	5.12 % CURRENT YIELD
VIRGINIA ST CP FA 4.90 8/01/1997 DTD 01/01/78 CALL 08/01/1992 102.50	15,000	99.151E	$14,872.77	$735.00	4.94 % CURRENT YIELD
WISC STATE IC FA 5.70 02/01/2001 DTD 02/01/79 CALL 08/01/1992 101.00	20,000	98.350E	$19,670.10	$1,140.00	5.80 % CURRENT YIELD
YOUNGSTOWN OHIO MEM PUB HSG AUTH CP JJ 5 1/4 07/01/2000 DTD 07/01/72 CALL 07/01/1992 103.00	10,000	90.693E	$9,069.30	$525.00	5.79 % CURRENT YIELD
PRICED SECURITIES VALUE			$410,826.67	$6,258.75	
PRUDENTIAL TAX FREE MONEY FUND	74,619.670	1.000	$74,619.67	$2,014.71	2.70 % YIELD
MONEY MARKET FUNDS			$74,619.67	$2,014.71	

PLEASE BE SURE TO READ THE ENCLOSED NOTICE ON INDIVIDUAL RETIREMENT ACCOUNTS. IF THIS TAX-ADVANTAGED BENEFIT IS IMPORTANT TO YOU, WE URGE YOU TO MAKE YOUR VIEWS KNOWN TO YOUR CONGRESSIONAL REPRESENTATIVES.

Merrill Lynch

CMA Cash Management Account® Monthly Statement

Summary Page			February 1992
Account No. 705-46880	Taxpayer No. 102-30-5816	Page 1 OF 9	Statement Period 02/01/92 TO 02/28/92
Your Financial Consultant PAUL P MEHLER FC#0153 (703) 683-6012	Office Serving Your Account 699 PRINCE STREET ALEXANDRIA VA 22314		Questions? Call Your Financial Consultant OR 1-800-CMA-INFO

NR MICHAEL BOUDIN
2814 DUMBARTON AVE NW
WASHINGTON DC 20007-3335

Account Status

	As of 02/01/92	As of 02/28/92
CMA MONEY ACCOUNTS	$15,409.00	$18,438.00
CASH	$0.90	$1.28
SUBTOTAL	$15,409.90	$18,439.28
PRICED INVESTMENTS	$468,621.00	$465,360.00
ESTIMATED ACCRUED INTEREST	$5,230.00	$5,057.00
Priced Portfolio	$489,260.90	$488,856.28
BORROWING POWER	$77,178.00	$77,177.00
PURCHASING POWER	$92,580.00	$95,610.00

Dividend and Interest Income

	This Statement	Year to Date
DIVIDENDS (NOT REPORTABLE)	$34.41	$50.13
INTEREST (NOT REPORTABLE)	$2,782.65	$5,978.17
Total Dividend and Interest Income	$2,817.06	$6,028.30

EFFECTIVE YIELD FOR THE PERIOD 01/31/92 TO 02/27/92
CMA TAX-EXEMPT FD: 2.73%

Account Activity

Credits	This Statement	Year to Date
INVESTMENTS SOLD	$0.00	$0.00
DIVIDEND/INTEREST INCOME	$2,817.06	$6,028.30
FUNDS RECEIVED	$0.00	$0.00
OTHER CREDITS	$212.32	$7,590.31
TOTAL CREDITS	$3,029.38	$13,618.61
Debits		
INVESTMENTS BOUGHT	$0.00	$0.00
CMA CHECKS	$0.00	$0.00
VISA CARD TRANSACTIONS	$0.00	$0.00
INTEREST CHARGED	$0.00	$0.00
OTHER DEBITS	$0.00	$0.00
TOTAL DEBITS	$0.00	$0.00
Net Activity	+$3,029.38	+$13,618.61

CMA NEWS

SEE THE ARTICLE IN THIS MONTH'S NEWSLETTER FOR INFORMATION ABOUT THE CMA VISA GOLD PROGRAM SPECIAL OFFER.

HELP MAKE PERSONAL SAVING EASIER AND MORE REWARDING FOR AMERICANS OF ALL INCOME LEVELS. URGE YOUR ELECTED REPRESENTATIVES TO SUPPORT THE SUPER IRA.

February 1992

Please advise your Financial Consultant immediately of any discrepancies in securities transactions or investment activity on your statement of account or if you contemplate ongoing your address. Send all correspondence relating to these matters to the office serving your account. For all other questions about your statement, direct inquiries by options to 1-800-CMA-INFO (1-800-262-4636) or in writing to Merrill Lynch CMA Operations, New Brunswick, NJ 08989-0986. When making inquiries, please give your account number. See back of page for definitions of key terms.

Merrill Lynch, Pierce, Fenner & Smith Inc.
Member, Securities Investor Protection Corporation (SIPC)
We urge you to keep this statement with your investment records.
Code 7097 (R6/91)

Merrill Lynch

CMA Cash Management Account® Monthly Statement

Account No.	Taxpayer No.	Page	Statement Period
705-46880	102-30-5816	2 OF 9	02/01/92 TO 02/28/92

MR MICHAEL BOUDIN
2814 DUMBARTON AVE NW

Investments

Investment Description		Equity Symbol	Quantity	Estimated Current Price	Estimated Current Market Value	Estimated Current Yield %	Estimated Annualized Income	Estimated Accrued Interest
UTUAL FUNDS & UNIT INVEST TRUSTS								
MUNICIPAL INVEST TRUST SERIES 2 MBIA INSURED	CASH		30	483.300	$14,499	7.74	$1,122	
MUNICIPAL INVEST TRUST SR 207 MONTHLY PAYMENT	CASH		25	201.110	$5,027	9.28	$467	
MUNICIPAL INVEST TRUST SR 224 MONTHLY PAYMENT	CASH		25	738.970	$18,474	10.63	$1,964	
MUNICIPAL INVEST TRUST SR 225 MONTHLY PAYMENT	CASH		10	517.450	$5,174	10.57	$547	
MUNICIPAL INVEST TRUST SR 257 MONTHLY PAYMENT	CASH		20	840.460	$16,809	10.15	$1,706	
MUNICIPAL INVEST TRUST SR 273 MONTHLY PAYMENT	CASH		4	1042.990	$4,171	8.92	$372	
MUNICIPAL INVEST TRUST SR 281 MONTHLY PAYMENT	CASH		6	896.860	$5,381	8.61	$463	
MUNICIPAL INVEST TRUST SR 292 MONTHLY PAYMENT	CASH		2	859.760	$1,719	8.95	$154	
MUNICIPAL INVEST TRUST SR 87 INTERMEDIATE TERM			25	887.470	$22,186	7.46	$1,655	
MUNICIPAL INVEST TRUST SERIES 45 INSURED	CASH		25	959.840	$23,996	7.54	$1,809	
MUNICIPAL INVEST TRUST SERIES 51 INSURED	CASH		20	917.220	$18,344	7.65	$1,403	
MUNICIPAL INVEST TRUST SERIES 58 INSURED	CASH		25	972.340	$24,308	7.82	$1,901	
MUNICIPAL INVEST TRUST SERIES 3 INSURED	CASH		2	987.930	$1,975	8.52	$168	
SUBTOTAL					$162,063		$13,731	
UNICIPAL BONDS								
CONNECTICUT ST SER B	CASH		20000	105.131	$21,026	5.99	$1,259	$151

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February 1992

Merrill Lynch, Pierce, Fenner & Smith Inc.
Member, Securities Investor Protection Corporation (SIPC)

Account No.	Taxpayer No.	Page	Statement Period
T05-46880	102-30-5816	3 OF 9	02/01/92 TO 02/28/92

MR MICHAEL BOUDIN
2814 DUMBARTON AVE NW

nvestments/Continued

Investment Description	Equity Symbol	Quantity	Estimated Current Price	Estimated Current Market Value	Estimated Current Yield %	Estimated Annualized Income	Estimated Accrued Interest
UNICIPAL BONDS							
JUL90 06.300%JUL15 96 VIRGINIA ST	CASH	20000	98.918	$19,783	4.95	$979	$74
JAN78 04.900%AUG01 97 WISCONSIN ST	CASH	20000	98.180	$19,636	5.09	$999	$36
FEB77 05.000%FEB15 98 OREGON ST SEN E AMT	CASH	20000	105.024	$21,004	6.56	$1,378	$219
OCT90 06.900%JAN01 99 CALIFORNIA ST		20000	104.360	$20,872	6.13	$1,279	$96
FEB90 06.400%FEB01 99 RHODE ISLAND ST SER B	CASH	20000	105.497	$21,099	6.25	$1,319	$488
AUG90 06.600%OCT15 99 FAIRFAX CNTY VA PRF92	CASH	25000	105.208	$26,302	8.31	$2,186	$711
NOV82 08.750%NOV01 00 CALIFORNIA ST VAR PURP UT		30000	101.424	$30,427	6.16	$1,874	$453
JUN89 06.250%JUN01 02 MARYLAND ST FIRST SEN	CASH	20000	104.827	$20,965	8.39	$1,340	$659
MAR90 06.700%MAR01 03 MARYLAND ST FIRST SEN	CASH	20000	105.060	$21,016	6.47	$1,360	$669
MAR89 06.800%MAR01 04 NEW JERSEY ST NFOO SER C	CASH	20000	100.750	$20,150	6.45	$1,300	$155
JUL89 06.500%JAN15 07 WISCONSIN ST SER C	CASH	20000	102.187	$20,437	6.85	$1,400	$455
MAY89 07.000%MAY01 08 FAIRFAX CNTY VA SER A UT		20000	103.573	$20,714	6.75	$1,398	$572

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Merrill Lynch, Pierce, Fenner & Smith Inc.
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Account No.	Taxpayer No.	Page	Statement Period
705-46880	102-30-5816	4 OF 9	02/01/92 TO 02/28/92

MR MICHAEL BOUDIN
2814 OUMBARTON AVE NW

Investments/Continued

Investment Description	Equity Symbol	Quantity	Estimated Current Price	Estimated Current Market Value	Estimated Current Yield %	Estimated Annualized Income	Estimated Accrued Interest
MUNICIPAL BONDS							
APN90 07.000%APN01 09 ILLINOIS ST - DEC86 06.600%DEC01 11		20000	99.332	$19,866	6.64	$1,319	$319
SUBTOTAL				$303,297		$19,390	$5,057
TOTALS FOR PRICED INVESTMENTS				$465,360.00		$33,121	$5,057
CASH				$1.28			
ESTIMATED ACCRUED INTEREST				$5,057.00			
MONEY ACCOUNTS: CMA TAX-EXEMPT FUND				$18,438.08			
Priced Portfolio				$488,856.28			

Investment Activity Details

	Date	Transaction	Security Description	Quantity	Price	Debit	Credit
DIVIDENDS & INTEREST	02/03	BOND INTEREST	VIRGINIA ST JAN78 04.900%AUG01 97				$490.00
	02/03	BOND INTEREST	CALIFORNIA ST FEB90 06.400%FEB01 99				$640.00
	02/18	BOND INTEREST	WISCONSIN ST FEB77 05.000%FEB15 98				$500.00
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SERIES 2 MBIA INSURED HOLDING 30.0000				$94.20

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Merrill Lynch, Pierce, Fenner & Smith Inc.
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We urge you to keep this statement with your broadcast records.

Code 7007 (10/91)

Merrill Lynch

CMA® Cash Management Account® Monthly Statement

Account No.	Taxpayer No.	Page	Statement Period
7D5-46880	1D2-30-5816	5 OF 9	02/01/92 TO 02/28/92

MR MICHAEL BOUDIN
2814 DUMBARTON AVE NW

Investment Activity Details/Continued

	Date	Transaction	Security Description	Quantity	Price	Debit	Credit
DIVIDENDS & INTEREST	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SN 207 MONTHLY PAYMENT HOLDING 25.0000				$39.25
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SN 224 MONTHLY PAYMENT HOLDING 25.0000				$163.50
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SR 225 MONTHLY PAYMENT HOLDING 10.0000				$45.50
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SN 257 MONTHLY PAYMENT HOLDING 20.0000				$142.20
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SN 273 MONTHLY PAYMENT HOLDING 4.0000				$31.00
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SN 281 MONTHLY PAYMENT HOLDING 6.0000				$38.70
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SR 292 MONTHLY PAYMENT HOLDING 2.0000				$12.84
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SR 87 INTERMEDIATE TERM HOLDING 25.0000				$138.00
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SERIES 45 INSURED HOLDING 25.0000				$155.50
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SERIES 51 INSURED HOLDING 20.0000				$120.00
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SERIES 58 INSURED HOLDING 25.0000				$158.00
	02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SERIES 3 INSURED HOLDING 2.0000				$13.96

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Notify your Financial Consultant immediately of any discrepancies in securities transactions or investment activity on your statement of account or if you contemplate moving your address. Send all correspondence relating to lost owners to the office serving your account. For all other questions about your statement, direct inquiries by mail to 1-800-CMA-INFO (1-800-262-4636) or in writing to Merrill Lynch CMA Operations, New Brunswick, N.J. 08903-5083. When making inquiries, please give your account number. See back of page for definitions of key terms.

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Code 7097 (R6/91)

Merrill Lynch

CMA Cash Management Account® Monthly Statement

Account No.	Taxpayer No.	Page	Statement Period
705-46880	102-30-5816	6 OF 9	02/01/92 TO 02/28/92

MR RICHAEL BOUDIR
2814 DUMBARTON AVE NW

Investment Activity Details/Continued

	Date	Transaction	Security Description	Quantity	Price	Debit	Credit
Total							$2,782.65

Special Monthly and Year-to-Date Information

Description			This Statement	Year to Date
:EPORTABLE -	MISC. ITEMS:	GROSS PROCEEDS	$212.32	$7,590.31
ION REPORTABLE -	DIVIDENDS:	CMA TAX-EXEMPT FUND	$34.41	$50.13
	INTEREST:	INVESTMENTS	$2,782.65	$5,978.17
UNICIPAL INTEREST INCLUDED IN THE INVESTMENT INTEREST REPORTED ABOVE:			$1,630.00	$3,600.00

Daily Account Activity

ate	Transaction	Description	Quantity	Price	Amount	Cash and CMA Money Accounts
2/01		*Opening Balance*				$15,409.90
2/03	BOND INTEREST	VIRGINIA ST JAN78 04.900%AUG01 9T			$490.00	
2/03	BOND INTEREST	CALIFORNIA ST			$640.00	

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Merrill Lynch

CMA® Cash Management Account® Monthly Statement

Account No.	Taxpayer No.	Page	Statement Period
705-46580	102-30-5816	1 OF 9	02/01/92 TO 02/28/92

MR MICHAEL BOUDIN
2814 DUMBARTON AVE NW

Daily Account Activity/Continued

Date	Transaction	Description	Quantity	Price	Amount	Cash and CMA Money Accounts
		FEB90 06.400%FEB01 99				$16,539.90
2/18	BOND INTEREST	WISCONSIN ST			$500.00	
		FEB77 05.000%FEB15 98				$17,039.90
2/25	BOND INTEREST	MUNICIPAL INVEST TRUST SERIES 2 MBIA INSURED HOLDING 30.0000			$94.20	
2/25	: PRIN PAYMENT	MUNICIPAL INVEST TRUST SERIES 2 MBIA INSURED HOLDING 30.0000 FORM 1099-B SUBSTITUTE			$201.90	
2/25	BOND INTEREST	MUNICIPAL INVEST TRUST SR 207 MONTHLY PAYMENT HOLDING 25.0000			$39.25	
2/25	BOND INTEREST	MUNICIPAL INVEST TRUST SR 224 MONTHLY PAYMENT HOLDING 25.0000			$163.50	
2/25	BOND INTEREST	MUNICIPAL INVEST TRUST SR 225 MONTHLY PAYMENT HOLDING 10.0000			$45.50	
2/25	BOND INTEREST	MUNICIPAL INVEST TRUST SR 257 MONTHLY PAYMENT HOLDING 20.0000			$142.20	
2/25	BOND INTEREST	MUNICIPAL INVEST TRUST SR 273 MONTHLY PAYMENT HOLDING 4.0000			$31.00	
2/25	BOND INTEREST	MUNICIPAL INVEST TRUST SR 281 MONTHLY PAYMENT HOLDING 6.0000			$38.70	
2/25	BOND INTEREST	MUNICIPAL INVEST TRUST SR 292 MONTHLY PAYMENT HOLDING 2.0000			$12.84	
2/25	: PRIN PAYMENT	MUNICIPAL INVEST TRUST SR 292 MONTHLY PAYMENT HOLDING 2.0000 FORM 1099-B SUBSTITUTE			$10.42	

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Code 7697 (10/91)

Merrill Lynch

CMA Cash Management Account* Monthly Statement

Account No.	Taxpayer No.	Page	Statement Period
7D5-46880	1D2-30-5818	8 OF 9	02/01/92 TO 02/28/92

MR MICHAEL BOUDIN
2814 DUMBARTON AVE NW

Daily Account Activity/Continued

Date	Transaction	Description	Quantity	Price	Amount	Cash and CMA Money Accounts
02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SN 87 INTERMEDIATE TERM HOLDING 25.0000			$138.00	
02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SERIES 45 INSURED HOLDING 25.0000			$155.50	
02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SERIES 51 INSURED HOLDING 20.0000			$120.00	
02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SERIES 58 INSURED HOLDING 25.0000			$158.00	
02/25	BOND INTEREST	MUNICIPAL INVEST TRUST SERIES 3 INSURED HOLDING 2.0000			$13.96	$18,404.87
02/28	SHARE DIVIDEND	CMA TAX-EXEMPT FUND	34			
02/28	CASH DIVIDEND	CMA TAX-EXEMPT FUND FROM 1-31 THRU 2-27			$.41	$18,439.28
02/28		*Closing Balance*				$18,439.28

CMA Tax-Exempt Fund Activity Details

Date of Balance Change	Transaction	Number of Fund Shares @ $1.00/Share	Balance @ $1.00/Share
02/01	*Opening*		$15,409.00
02/04	BOUGHT	$1,130	$18,539.00
02/24	BOUGHT	$500	$17,039.00

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February 1992

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Code 7007 (R8/91)

Merrill Lynch

CMA Cash Management Account® Monthly Statement

Account No.	Taxpayer No.	Page	Statement Period
705-46880	102-30-5816	9 OF 9	02/01/92 TO 02/28/92

MR MICHAEL BOUDIN
2814 DUMBARTON AVE NW

CMA Tax-Exempt Fund Activity Details/Continued

Date of Balance Change	Transaction	Number of Fund Shares @ $1.00/Share	Balance @ $1.00/Share
02/26	BOUGHT	$1,365	$18,404.00
02/28	SHARE DIVIDEND	$34	$18,438.00
02/28	Closing		$18,438.00

To report lost/stolen Visa card or checks call the toll-free-number 1-800-CMA-LOST (1-800-262-5678). When the CMA Service Office is closed call 1-800-262-3366.

END OF STATEMENT

February 1992

Code 7997 (R6/91)

Merrill Lynch, Pierce, Fenner & Smith Inc.
Member, Securities Investor Protection Corporation (SIPC)

We urge you to keep this statement with your investment records.

3. Real Estate Owned

Michael Boudin		
2814 Dumbarton Avenue, N.W.	$ 400,000	MB est. 3/17/92
Martha Field		
81 Irving Street, Cambridge, MA (residence; partly rented)	800,000	MF est. 3/10/92
2 Cliff Road, Wellfleet, MA (summer residence; rented sometimes)	500,000	MF est. 3/10/92
11 Ocean View Drive, Wellfleet, MA (rental property)	500,000	MF est. 3/10/92
TOTAL	$2,200,000	

4. Autos and Other Personal Property

Michael Boudin		
VW Cabriolet	$ 8,000	MB est. 3/17/92
Household effects and other personal property	50,000	MB est. 3/17/92
Martha Field		
Toyota Van	26,000	MF est. 3/10/92
VW Golf	8,000	MF est. 3/10/92
Household effects and other personal property	100,000	MF est. 3/10/92
TOTAL	$182,000	

5. Other Assets

Michael Boudin		
Covington & Burling pension plan account	$ 957,607	2/1/92 statement
TIAA-CREF pension plan account	24,093	12/31/91 statement
Government TSP pension plan account	1,984	10/31/91 statement
Share of trust as described on following page	200,000	
Martha Field		
TIAA-CREF pension plan account	254,000	MF est. 1/6/92
TOTAL	$1,437,684	

March 1992

I am a co-executor for the estate of my late father, Leonard B. Boudin, and co-trustee of the trust established under his will. My father died on November 24, 1989, the will was admitted to probate on March 1, 1990, and the court issued letters of trusteeship on March 9, 1990. The trust has not yet been funded but is to be funded out of the estate pursuant to a formula set forth in the will. I am advised that the trust is likely to be funded in an amount between $550,000 and $600,000.

The assets of the estate, other than cash or cash receivables, are: 200 shares of common stock of Biogin, Inc.; 50 shares of common stock of Automatic Data Processing; 400 shares of stock of Codicorp; and one-half tenant-in-common interests in two pieces of residential property, one located on Long Island and the other in New York City.

6. Real Estate Mortgages Payable

Martha Field

Mortgage on 81 Irving Street payable to Harvard University	$ 97,000	MF est. 3/10/92
Mortgage covering both Wellfleet houses payable to Plymouth Mortgage Co.	244,000	MF est. 3/10/92
TOTAL	$341,000	

81 Irving Street
Cambridge, Mass. 02138

April 10, 1992

Judicial Ethics Committee
Administrative Office of the U.S. Courts
Washington, D.C. 20544

Dear Sir:

In reviewing my financial records, I have just discovered that some municipal bonds were inadvertently omitted from my initial AO-10 filed March 24, 1992, when I was nominated as Circuit Judge for the First Circuit.

The omitted bonds are of the same character as my other, reported municipal bonds and were in fact disclosed in other public filings including my final 1990 Executive Branch public financial disclosure report which I filed with your office on February 14, 1991, for information purposes.

In accordance with the amendments instruction, I am enclosing an original and three copies of an additional part VII page to be associated with my March 24, 1992, page as an amendment; a copy of this letter accompanies each copy of the new page.

There are four other minor corrections on the first part VII page of the previously filed report: the B(1) "income" codes for items 7, 13 and 20 are C, A and B respectively (instead of B, B and C); and the Prudential Bache Tax Free Bond Fund in item 7 is properly named Prudential Bache Tax Free Money Fund. Finally, the nomination date of the first page should be 3/20/92 instead of 3/27/92 -- a typographical error.

Sincerely yours,

Michael Boudin

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Boudin, Michael	3/23/92 amended 4/10/92

VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 15-27 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 (1) Amt.[1] Code (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value[2] Code (J-P)	(2) Value Method[3] Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, exchange, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value[2] Code (J-P)	(4) Gain[1] Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)					EXEMPT				EXEMPT
1 Connecticut State Bonds (96)	B	Int.	K	T					
2 Virginia State Bonds (01)	B	Int.	K	T					
3 Wisconsin State Bonds (98)	B	Int.	K	T					
4 Oregon State Bonds (99)	B	Int.	K	T					
5 California State Bonds (03)	B	Int.	K	T					
6 Rhode Island State Bonds (99)	B	Int.	K	T					
7 Fairfax, Va. Bonds (06)	B	Int.	K	T					
8 California State Bonds (07)	B	Int.	K	T					
9 Maryland State Bonds (03)	B	Int.	K	T					
10 Maryland State Bonds (04)	B	Int.	K	T					
11 New Jersey State Bonds (07)	B	Int.	K	T					
12 Wisconsin State Bonds (08)	B	Int.	K	T					
13 Fairfax, Va. Bonds (09)	B	Int.	K	T					
14 Illinois State Bonds (11)	B	Int.	K	T					
15									
16									
17									
18									
19									
20									

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 M=$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	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

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   ANSWER: Jerome B. Simandle

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

   ANSWER: Home: 320 Westover Road
   Moorestown, NJ 08057

   Office: Room 320
   U. S. Post Office & Courthouse
   401 Market Street
   Camden, NJ 08101-0888

3. Date and place of birth.

   ANSWER: April 29, 1949 at Binghamton, 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).

   ANSWER: Married to Jane Darton, who is self-employed as a Licensed Psychologist in private practice as sole proprietor of Jane Darton, M.Ed., 1627 Waverly St., Philadelphia, PA 19146

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

   ANSWER: Princeton University
   Princeton, NJ
   Attended: Sept. 1967 to June 1971
   Degree: B.S. in Engineering, magna cum laude (1971)

   International Graduate School
   University of Stockholm, Sweden
   Attended: August 1974 to June 1975
   Diploma: Dip. Soc. Sci. (1975)

   University of Pennsylvania Law School
   Philadelphia, PA
   Attended: Aug. 1972 to May 1976
   (except one year leave of absence for 1974-75 fellowship at University of Stockholm, Sweden)
   Degree: J.D. (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.

ANSWER: 1971-1972 - Management Trainee
U. S. General Services Administration
Regional Office
McCormack Post Office & Courthouse
Boston, MA 02109
[Temporarily assigned to:
Economic Stabilization Program
Internal Revenue Service
JFK Federal Building
Boston, MA 02203]

Summer 1973- Summer Legal Intern
University of Pennsylvania Law School
Government Policy Research Unit
3400 Chestnut Street
Philadelphia, PA 19104

Summer 1974- Summer Associate
Sullivan & Cromwell
125 Broad Street
New York, NY 10005

Summer 1975- Summer Legal Intern
Public Citizen Litigation Group
2000 P Street, N.W.
Washington, D.C. 20036

1976-1978 - Law Clerk to Honorable John F. Gerry
U. S. District Judge (now Chief Judge)
U. S. District Court for the District of New Jersey
Camden, New Jersey 08101

1978-1983 - Assistant United States Attorney for the District of New Jersey
U. S. Attorney's Office, Newark ('78-'79)
U. S. Attorney's Office, Trenton ('79-'83)

1983-Present - United States Magistrate Judge
U. S. District Court for the District of New Jersey
Camden, New Jersey 08101

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

ANSWER: None.

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

ANSWER: (1) Graduated from Princeton University magna cum laude in 1971.

(2) Selected to University of Pennsylvania Law Review in 1973; served as an associate editor in 1973-74 and as an editor in 1975-76.

(3) Selected by Rotary Foundation as a Rotary International Fellow for one year graduate study abroad, University of Stockholm, Sweden, 1974-75.

(4) Received Edwin R. Keedy Award at graduation from University of Pennsylvania Law School, 1976, for "most scholarly contribution to the Law Review"

(5) Received Department of Justice Special Achievement Award for "sustained superior performance," as an Assistant U. S. Attorney in 1982-83.

(6) Selected as an original judicial member of Lawyers Advisory Committee for the District of New Jersey, 1983, by former Chief Judge Clarkson S. Fisher, and continuing to the present.

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

ANSWER: American Bar Association
Federal Magistrate Judges Association
New Jersey State Bar Association
Camden County Bar Association
Camden American Inn of Court
-- A founding member, 1987
-- Master, 1987 to present
-- Program Chairman, 1990 to present
Judicial Conference of the United States, Committee on Court Administration and Case Management
-- Member, 1991 to present
Lawyers Advisory Committee for the District of New Jersey
-- Judicial Member, 1983 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.

ANSWER: ABA and Federal Magistrate Judges Association have been active in lobbying, but I have played no lobbying role.
Other organization memberships:
Philadelphia Orchestra Association
Moorestown (N.J.) Historical Society

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

ANSWER: Supreme Court of New Jersey (December, 1978) [continuous active status]
Supreme Court of Pennsylvania (May, 1977) [active status through 1983, then inactive status due to full time judicial position]

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

reports about the speech, and they are readily available to you, please supply them.

ANSWER: Published Writings

(1) Comment, "The EPA's Power to Establish National Effluent Limitations for Existing Water Pollution Sources," 125 U.Pa.L.Rev. 120 (1976) [attached at Tab 12(1)]

(2) Jerome B. Simandle, "Judicial Management of Multi-Party Hazardous Waste Cases," reprinted in ALI-ABA, Minimizing Liability for Hazardous Waste Management at 135-150 (Washington, D.C., 1987) [attached at Tab 12(2)]

(3) Stanley S. Brotman & Jerome B. Simandle, "Superfund Case Management and Settlement Processes," reprinted in ALI-ABA, Hazardous Wastes, Superfund, and Toxic Substances, 175-192 (Washington, D.C., 1988) [attached at Tab 12(3)]

(4) Jerome B. Simandle, "Common Discovery Problems and How to Solve Them," reprinted in New Jersey Institute for Continuing Legal Education, Seminar: Federal Court Practice at 207-236 (New Brunswick, N.J., 1989) [attached at Tab 12(4)]

(5) Jerome B. Simandle, "Elements of Title 42, United States Code, Section 1983," in New Jersey Institute for Continuing Legal Education, Seminar: Section 1983: Litigation Against Public Entities (New Brunswick, NJ, June, 1991) [attached at Tab 12(5)]

(6) Jerome B. Simandle, "Resolving Multi-Party Hazardous Waste Litigation," 2 Villanova Env. L.J. 111-141 (1991) [attached at Tab 12(6)]

(7) Jerome B. Simandle, "Chapter 10: Pretrial Management and Arbitration," in New Jersey Institute for Continuing Legal Education, New Jersey Federal Practice Handbook (New Brunswick, N.J., January, 1992) [attached at Tab 12(7)]

Texts of Speeches:

(8) "A View from the Bench: Roles of Counsel and Court in Resolving Superfund Litigation," National Conference of the Information Network for Superfund Settlements (Philadelphia, Pa., April 1991) [attached at Tab 12(8)]

(9) Symposium Panelist: "Alternative Methods of Resolving Environmental Disputes," reported in 2 Villanova Env. L.J. 1-55 (1991) [attached at Tab 12(9)]

Note: I am aware of no press reports about these speeches.

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

ANSWER: Excellent. January 7, 1992 and April 2, 1992.

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

ANSWER: United States Magistrate Judge
United States District Court for the District of New Jersey
August 11, 1983 to present date.
Appointed by the Court, 1983 for eight-year term.
Unanimously reappointed by the Court, 1991, for a second eight-year term.
Limitations on Magistrate Judge's jurisdiction are contained in 28 U.S.C. § 636. Magistrates in District of New Jersey are used to the full extent permitted by the Constitution and laws, see General Rule 40A (D.N.J.), including conducting trials (jury and non-jury) in civil cases and criminal cases by consent of the parties. Magistrates conduct virtually all pretrial case management and determination of non-dispositive matters in this District Court.

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

ANSWER: (1) Citations of ten cases:

(1) Robbins v. Camden City Board of Education, 105 F.R.D. 49 (D.N.J. 1985) (proportionality of discovery in Title VII employment discrimination case)

(2) Lukas v. Nasco International, Inc., 128 F.R.D. 619 (D.N.J. 1989) (imposing Rule 11 sanctions for frivolous motion)

(3) Johnston Development Group, Inc. v. Carpenters Local Union No. 1578, 130 F.R.D. 348 (D.N.J. 1990) (availability of deposition of opposing attorney)

(4) Public Service Enterprise Group, Inc. v. Philadelphia Electric Co., 130 F.R.D. 543 (D.N.J. 1990) (discovery in complex litigation concerning management of nuclear generating station)

(5) Harrison Beverage Co. v. Dribeck Importers, Inc., 133 F.R.D. 465 (D.N.J. 1990), aff'd, 133 F.R.D. 463 (D.N.J. 1990) (amending pleadings; delay)

(6) In re: Request from L. Kasper-Ansermet, Examining Magistrate for the Republic and Canton of Geneva, etc., 132 F.R.D. 622 (D.N.J. 1990) (international judicial assistance)

(7) Curley v. Cumberland Farms, Inc., 134 F.R.D. 83 (D.N.J. 1990), aff'd, 134 F.R.D. 77 (D.N.J. 1991) (attorney ethics interpreting Rule 4.2 of the Rules of Professional Conduct regarding contact between attorney and corporate adversary's former employees) [later adopted by the American Bar Association's Formal Opinion 91-359 (March 22, 1991), entitled, "Contact With Former Employee of Adverse Corporate Party," resolving split of authorities]

(8) State of New Jersey Department of Environmental Protection v. GEMS, Inc.,
138 F.R.D. 421 (D.N.J. 1991) (liaison counsel fees in complex litigation; power of court to manage multiple-party litigation through designated liaison counsel)

(9) United States v. King, ____ F. Supp. ___, 1991 WL 273884, 1991 U.S. Dist. Lexis 18601
(D.N.J. 1991) (federal criminal jurisdiction under Assimilated Crimes Act); no appeal;

(10) Menatsagan Melikian v. Anthony Corradetti, et al.,
Civil No. 84-3480(SSB) (Report and Recommendation filed June 1, 1989); adopted as Opinion of the Court by Order of June 23, 1989) (J. Brotman); aff'd, 893 F.2d 1330 (3d Cir. 1990) (Judgment Order) [example of imposing dispositive sanction for litigation abuse] [attached at Tab 15(1)]

(2) Opinions reversed or criticized on appeal:

No opinion has been reversed or criticized on appeal by a District Judge or by the U. S. Court of Appeals for the Third Circuit.

(3) Citations for significant opinions on federal or state constitutional issues

(1) In re Matter of Extradition of Bertrand, 1986 Westlaw 8845 (D.N.J. 1986); no appeal.

(2) G-69 v. Degnan, 130 F.R.D. 326 & 339 (D.N.J. 1990); case settled.

(3) Brock v. Gerace, 110 F.R.D. 58 (D.N.J. 1986); case settled.

(4) Request from L. Kasper-Ansermet, Examining Magistrate for the Republic and Canton of Geneva, etc.,
132 F.R.D. 624 (D.N.J. 1990), aff'd, 132 F.R.D. 622 (D.N.J. 1990).

(5) United States v. Gloria Lee Day, Mag. No. 89-1089J-01 (unpublished opinion filed July 11, 1990) [attached at Tab 15(2)]; no appeal after conviction.

(6) Jola Bronstein v. Harbor Linen Services, Civil No. 88-5074(G) (unpublished opinion filed Oct. 1, 1991) [attached at Tab 15(3)]; no appeal.

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

ANSWER: None.

17. Legal Career:

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

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

ANSWER: Law Clerk to Honorable John F. Gerry
U. S. District Judge (now Chief Judge)
U. S. District Court for the District of New Jersey
Sept. 1976 to Sept. 1978

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

ANSWER: None.

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: Assistant U. S. Attorney
United States Attorney's Office for the District of New Jersey
September 1978 to August 1983:
Newark, NJ (1978-79);
Trenton, NJ (1979-83);

[was also Attorney in Charge,
April 1982 to August 1983]

United States Magistrate Judge
U. S. District Court for the
District of New Jersey
Camden, New Jersey
August 1983 to 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?

ANSWER: As an Assistant U. S. Attorney, I represented the United States, its agencies, officers and employees in affirmative and defensive civil litigation in the federal courts.

My experience covered a broad spectrum of torts (with particular emphasis on medical malpractice, swine flu immunization, products liability, radiation exposure), civil rights, labor law, commercial (contracts, bankruptcy, tax), constitutional torts (Bivens-type actions), environmental, judicial review of federal administrative action (Social Security Act, Freedom of Information Act, National Housing Act and many other major federal programs) condemnations and forfeitures. My work encompassed class actions, multi-district litigation, and representation of multiple plaintiffs and defendants in non-jury and jury matters.

I also prepared and argued all appeals from my cases, in addition to other appeals occasionally assigned to me, before the U. S. Court of Appeals for the Third Circuit.

I also prosecuted several criminal cases and appeared regularly on criminal pretrial and post-conviction matters.

I began in the Newark Office in 1978, and was transferred to the Trenton Office in 1979 where I remained until becoming a U. S. Magistrate in Camden in August 1983. In April, 1982, I became the Attorney-in-Charge supervising the other attorneys and staff in Trenton.

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

ANSWER: My clients were the United States, its agencies, officers and employees. Areas of specialization and typical clients included personal injury (U. S. Postal Service), judicial review of administrative action (Department of Health and Human Services, Department of the Interior, Department of Transportation), medical malpractice (Veterans Administration), employment discrimination (Department of the Army), constitutional torts (Federal Bureau of Investigation), and commercial/tax/bankruptcy matters (Internal Revenue Service, Small Busines Administration).

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.

ANSWER: Frequently, I believe I appeared before every active Judge of the Third Circuit, and each District Judge, Magistrate and Bankruptcy Judge in the District of New Jersey.

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

ANSWER:

1) Federal courts - Trial and Appellate - 95%
2) State Courts of record - 5%
3) Other Courts - None

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

ANSWER:

1) Civil - Trial and Appellate - 95%
2) Criminal - 5%

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

ANSWER: Approximately 12. Sole counsel or lead counsel in all.

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

ANSWER: a) Jury - 8%
b) Non-jury - 92%

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

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

ANSWER:

(1) Stich v. United States, 565 F. Supp. 1096 (D.N.J. 1983), aff'd, 730 F.2d 115 (3d Cir. 1984), cert. denied, 469 U. S. 917 (1984).

The national swine flu immunization program gave rise to 44 cases in New Jersey alone, and more than 1,000 cases nationally, brought by persons allegedly injured by receiving the vaccination. Of these, the Stich case was one of the most important because it tested the nationwide defensive policy and position of the Public Health Service and Department of Justice in such matters, namely, that only one disease or condition, called Guillain-Barre Syndrome (GBS) could have been caused by the vaccine in some persons. The plaintiff, Miriam Stich, developed a devastating neurological disease soon after being immunized, losing almost all mental and physical faculties. Her doctors and experts attempted to identify it as GBS. We took the position that the

condition was caused instead by a viral encephalitis. After 40-plus days of trial, mostly consisting of expert testimony, in which I was the trial attorney, the court largely adopted my proposed findings of fact and conclusions of law in a lengthy opinion, finding that plaintiff's disease was not GBS and that the immunization did not cause her illness. My proposed findings of fact and conclusions of law were about 200 pages long. I did not handle the appeal because I had been selected as U. S. Magistrate by that time.

The significance of this trial is three-fold: (1) it was probably the longest non-jury trial in this court in recent memory; (2) the complex issues and the sophisticated tactics of plaintiff's trial team required mastery of experts' views at the outer limits of neurological and epidemiological research; and (3) the result had national significance to the United States' defense of post-immunization cases.

a) Dates of Trial - Intermittent through 1981 - 1982.
b) United States District Court for the District of New Jersey, before the Honorable Harold A. Ackerman, U.S.D.J. at Trenton.
c) Opposing Counsel:
Louis Drazin, Esquire (deceased)
Dennis Drazin, Esquire
Drazin & Warshaw
25 Reckless Place
Red Bank, NJ 07701
(908) 747-3730

Supervisory Counsel:
Jeffrey Axelrad, Esquire
Director, Torts Branch
Civil Division
U. S. Department of Justice
Washington, D.C. 20530
(202) 724-9875

(2) Hovsons, Inc. v. Secretary of the Interior, 519 F. Supp. 434 (D.N.J. 1981), aff'd, 711 F.2d 1208 (3d Cir. 1983).

In 1980, Congress passed the Pinelands Protection Act creating a million-acre national preserve in southern New Jersey. This case challenged the constitutionality of the Act and the Secretary's decisions made under the Act. My role as the sole trial counsel was to assemble the

extensive administrative record and to advocate the defendant's position in complex motion practice and at the hearing. The District Court upheld the Secretary's decisions. I also briefed and argued the successful appeal before the Third Circuit.

The significance of the Hovsons case lies in the upholding of a federal statute for comprehensive land management through state-determined regulation, controls and compensation for landowners, in a unique and fragile environment.

a) Dates of hearing - 1981
b) U. S. District Court for the District of New Jersey, before the Honorable Anne E. Thompson, U.S.D.J., at Trenton.
c) Opposing Counsel:
Robert V. Paschon, Esquire
Paschon & Feurey
1005 Hooper Avenue
Toms River, NJ 08753
(908) 341-3900

Counsel for Co-Defendant
State of New Jersey:
Richard Hluchan, Esquire
(formerly Deputy Attorney General for State of New Jersey)
Levin & Hluchan
1200 Laurel Oak Road
Voorhees, NJ 08043
(609) 627-8555

(3) Gloucester County Concerned Citizens v. Goldschmidt, 533 F. Supp. 1222 (D.N.J. 1982)

This case under the National Environmental Policy Act (NEPA) challenged federal approval for design and construction of Route 55, a major new superhighway in southern New Jersey. As the sole attorney representing the Secretary of Transportation, my function was to assemble the lengthy administrative record, including the augmentation of the record of the agency's environmental impact statement (EIS). I prepared all briefs and arguments. This EIS was prepared on a voluntary remand to take new developments into account. Upon review of the voluminous record, the court affirmed the Secretary and the highway's construction was completed.

a) Date of Hearing - 1982

b) U. S. District Court for the District of New Jersey, before the Honorable John F. Gerry, U.S.D.J., at Camden.
c) Opposing Counsel:
Wayne Partenheimer, Esquire
498 North Kings Highway
Cherry Hill, NJ 08034
(609) 795-2485

(4) U. S. Postal Service v. DiCorcia, 605 F.2d 1199 (3d Cir. 1979) [judgment order]

In August of 1978, a national postal strike began in northern New Jersey mail facilities. Several weeks before I joined the U. S. Attorney's office, my predecessors obtained a preliminary injunction against dozens of striking postal workers before the Honorable Frederick B. Lacey, in Newark, and the postal strike was blocked. Judge Lacey's oral opinion was unreported. I was assigned to handle the briefing and argument upon the appeal before the Third Circuit. The issues included the constitutionality of the provisions of federal law precluding strikes by postal workers, as well as the sufficiency of procedures leading to the injunction and the scope of the injunction. After argument, the Third Circuit upheld the anti-strike injunction by entry of a judgment order, affirming that employees of the federal government do not have a right to strike.

a) Date of Hearing - 1979
b) U. S. Court of Appeals for the Third Circuit.
c) Adversary Counsel:
David Kairys, Esquire
Kairys & Rudofsky
924 Chestnut Street
Philadelphia, PA 19107
(215) 925-4400

Supervising co-counsel:
Susan P. Engelman, Esquire
(former Deputy Chief, Civil Division)
Vice President, Environmental Health and Safety Affairs
Hoechst Celanese Corp.
Bridgewater, NJ
(908) 231-4479

(5) Jersey Arms Works v. Higgins, and Bureau of Alcohol, Tobacco & Firearms, Civil No. 83-1130 (SSB) [unpublished]

Manufacturers of weapons are precluded from selling guns capable of automatic fire (machine-guns) without a special license. In this case, I was the trial counsel defending the decision of the Bureau of Alcohol, Tobacco and Firearms to preclude the plaintiff from the manufacture and sale of a firearm capable of automatic fire with a slight modification. After the trial, the court agreed that a weapon readily convertible to automatic fire is the equivalent of a machine-gun, banned by the statute. The court upheld the administrative injunction against further manufacture and sale of the weapon.

a) Date of trial - 1983
b) U. S. District Court of the District of New Jersey, before the Honorable Stanley S. Brotman, U.S.D.J., in Camden.
c) Opposing Counsel:
Glenn P. Callahan, Esquire
Callahan, Delaney & O'Brien
Suite 210 Lake Drive East
Cherry Hill, NJ 08002
(609) 482-2900
[Note: Mr. Callahan is currently President of the Camden County Bar Ass'n]

(6) Possessky v. National Flood Insurers Ass'n, 507 F. Supp. 913 (D.N.J. 1981)

The claimant sought coverage and payment under a policy of flood insurance underwritten by the defendant National Flood Insurers Association. I removed the case from the state court, obtained substitution of the proper federal defendant, and moved to dismiss for lack of jurisdiction. Although the program is federally funded, there was a split of authority whether it is a function of the sovereign and whether Congress waived sovereign immunity to permit the courts to have jurisdiction in such suits.

The court found that the federal court has exclusive jurisdiction in such matters under 42 U.S.C. §4072, granting my motion for dismissal since the original complaint had been filed in the state court and the federal court derived no jurisdiction upon removal.

The case's significance lies in establishing the principle that the sovereign has waived its immunity in flood insurance claims only where the claimant complies with the claims requirements of the regulations and statute and files suit in a timely manner in the federal court having exclusive jurisdiction.

a) Date of hearing - 1981
b) U. S. District Court for the District of New Jersey, before the Honorable Dickinson R. Debevoise, U.S.D.J., in Trenton.
c) Opposing Counsel:
George B. Esposito, Esquire
147 West End Avenue
Box 697
Somerville, NJ 08876
(809) 725-5404

(7) Robert W. Sullivan v. United States, Civil No. 78-0314(GSB) [unpublished]

Personal injury cases under the Federal Tort Claims Act constituted a significant portion of the caseload. I defended the U. S. Postal Service against a slip-and-fall claim. Through the client's investigative efforts, eyewitness testimony demonstrated that the accident could not have happened where the plaintiff claimed. Plaintiff fell on the street, and not on postal property. The credibility of the plaintiff was undermined, and the non-jury trial resulted in judgment in favor of my client.

Although the case is rather ordinary, its significance lies in confirming the decision to offer no settlement in a non-meritorious case. Of such "no-pay" cases, each one that I tried resulted in a verdict of no cause for action.

a) Trial Date: July 10, 1979
b) U. S. District Court for the District of New Jersey, before Honorable Robert E. Cowen, U. S. Magistrate (by consent) [Judge Cowen now sits on the Third Circuit Court of Appeals], in Trenton.
c) Opposing Counsel:
Dennis Drazin, Esquire
Drazin & Warshaw
25 Reckless Place
Red Bank, NJ 07701
(908) 747-3730

(8) United States v. One 1980 Chevrolet Corvette, 564 F. Supp. 347 (D.N.J. 1983)

On behalf of the U. S. Bureau of Alcohol, Tobacco and Firearms, I sought and won forfeiture of a vehicle used to transport illegal firearms to an undercover deal, notwithstanding the innocent owner defense claimed by the vehicle's lienholder. Summary judgment of forfeiture was granted despite strenuous opposition. The court held that the claimant had failed to perfect his lien upon the automobile, which was ordered forfeited to the United States. I was trial counsel who prepared and argued the government's case, but there was no trial.

The result may be significant because it confirmed the availability of summary judgment in forfeiture cases, even when opposition is presented, when issues of title and ownership are raised.

a) Date of hearing - 1983
b) U. S. District Court for the District of New Jersey, before the Honorable John W. Bissell, U.S.D.J., in Trenton.
c) Opponent: (for Claimant Szostek)
Milton Diamond, Esquire
1 Kettle Creek Road
Freehold, NJ 07728
(908) 432-3979

(9) Gloria Cordiano v. United States, Civil No. 81-1369(AET) [unpublished]

The plaintiff in this personal injury case claimed that my client, the Postal Service, was negligent when a postal driver hit plaintiff and her vehicle as she was emerging from her parked car. The reconstruction of the accident was inconclusive, and the case was tried by me before the court sitting without a jury.

From the real evidence, including the vehicle's door itself, the court found in my client's favor, noting that the postal driver was not traveling too close to the line of parked cars and that the plaintiff's negligence barred recovery.

The case demonstrates that a moving vehicle can have an accident with a parked car (opening its door) yet not have the preponderance of negligence, and also that the real evidence (the

angle of impact of the crumpled door) can be a powerful tool for impeachment.

a) Date of trial - 1983
b) U. S. District Court for the District of New Jersey, before the Honorable Anne E. Thompson, U.S.D.J., at Trenton.
c) Opponent:
Robert J. Foley, Esquire
1124 Route 202
Raritan, NJ 08869
(908) 722-5992

(10) Delores Steinke v. United States, Civil No. 81-2348(JFG) [unpublished]

This case arose from an accident at Fort Dix, New Jersey, in which the plaintiff claimed that the defendant failed to properly maintain a floor, causing plaintiff to fall and injure herself rather severely.

I was the trial attorney in this two-day non-jury case, representing the defendant. The case turned on testimony of plaintiff's expert witness, as well as plaintiff's own credibility. The court found in favor of defendant, no cause for action, in Findings of Fact and Conclusions of Law filed May 16, 1983. No appeal was taken.

a) Date of trial - March 8-9, 1983
b) United States District Court for the District of New Jersey, before the Honorable John F. Gerry, U.S.D.J., at Camden.
c) Opposing Counsel:
Frederick S. Schofield, 3rd, Esquire
4276 Harbor Beach Blvd.
Brigantine, NJ 08230
(609) 266-4700

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

ANSWER: The most significant challenge I have faced arises from my experiences as the case management and settlement judge of four complex multi-party cases involving remediation of Superfund sites. The U. S. District Court for the District of New Jersey probably has as many Superfund sites in litigation as any federal court in this nation. Four such

cases before me in Camden involve sites that are among the top twelve (12) on the EPA's National Priorities List. These Superfund cases have been my responsibility to manage as the Magistrate Judge in Camden, under the authority assigned by the District Judges.

My task has been to manage these cases that involve hundreds of potentially responsible parties from which the Government demands a remedy or the funding of a remedial plan to clean up the landfills. These Superfund cases challenge the objectives of speedy, just and efficient resolution of disputes. I have attempted to apply creativity and orderliness to streamline the litigation and settlement processes, recognizing that the standard procedures for federal litigation would poorly serve the interests of the litigants and the public.

This type of case was new during the past decade, and little prior guidance exists. The concept of a megatrial involving hundreds of attorneys grew unthinkable, and new methods emerged for managing the litigation toward a negotiated resolution. I have developed a model for managing multi-party complex cases, about which I have written and lectured. These four cases are described briefly:

(1) United States v. Price, Civil No. 80-4104
A settlement was achieved among all 50 parties creating a fund of $17,150,000 in 1987 to pay for the Government's remedial plan for Price's Pit in Atlantic County, New Jersey. This was the first major settlement under the 1986 Superfund amendments, and the case is closed.

(2) State of New Jersey Dept. of Environmental Protection v. GEMS, Inc., Civil No. 84-0152
This case has about 500 parties who are alleged to be potentially responsible for the disposal of hazardous substances at the GEMS Landfill in Gloucester Township. A significant number of the parties engaged in a court- supervised settlement process, resulting in (a) the design and acceptance of the remedy for the landfill, and (b) the funding of a $32 million trust in 1989 to design and construct the major phase of the remedy, which is nearing completion. The case remains open as final phase negotiations

begin and litigation is continuing. The management of this case is described by Judge Brotman in State v. GEMS, Inc., 719 F. Supp. 325 (D.N.J. 1989).

(3) United States v. Rohm & Haas Company, Civil No. 85-4386

The Lipari Landfill, in Mantua Township, is the top-ranked Superfund site on the National Priorities List. Intensive court-supervised efforts to resolve the presently outstanding issues in this case among the major participants are nearing completion. In 1989, the achievement of a settlement ending the case for the ten (10) so-called de minimis parties, creating a $3 million fund, was the first such settlement negotiated under the current Superfund statute. The de minimis settlement was approved by Chief Judge Gerry in United States v. Rohm & Haas Company, 721 F. Supp. 666 (D.N.J. 1989).

(4) United States v. Helen Kramer, Civil Nos. 89-4340 & 89-4380

The most ambitious settlement effort, among more than 200 parties, is governed by a settlement protocol drafted by the parties' representatives defining the court-supervised alternate dispute resolution process. These parties are collecting and analyzing the data necessary to achieve an allocation of potential liability with the aid of outside technical consultants. This process that can speed a fair resolution and markedly cut transaction costs when compared with standard litigation of a complex case. Litigation continues on a parallel track among the relatively few parties choosing not to participate in the settlement process.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   ANSWER: Refund of past contributions to Civil Service Retirement System, totaling approximately $18,769.27, upon resignation from position of U. S. Magistrate Judge upon taking oath as U. S. District Judge.

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

   ANSWER: If any future circumstances should present a potential conflict of interest, I would resolve it as in the past during my tenure as United States Magistrate Judge by rigorous application of the Ethics in Government Act and the Canons of Judicial Conduct, and by consulting the interpretive guidance provided by the Judicial Conference of the United States. There have been no categories of cases presenting potential conflicts during my eight years as a federal officer, and I would anticipate no change. In rare instances when immediate family members are personally acquainted with parties to litigation, I have recused myself 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.

   ANSWER: No.

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

ANSWER: Financial Disclosure Report for period January 1, 1991 to March 31, 1992 (dated April 3, 1992) is attached.

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

ANSWER: Financial Net Worth Statement and Schedules are attached.

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

ANSWER: No. I have been precluded from political activity as a federal employee since 1976 under applicable law.

III. GENERAL (PUBLIC)

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

ANSWER: I have participated extensively in continuing legal education activities for the benefit of bench, bar and law students.

For example, I have instructed other judges in seminars by the Federal Judicial Center and the New Jersey State Judicial College.

I have been a frequent speaker at seminars sponsored by the American Bar Association, New Jersey State Bar Association and New Jersey Institute for Continuing Legal Education. These lectures and panels for lawyers have examined topics such as environmental law, complex case management, civil rights litigation, and pretrial discovery.

I have taught as a guest speaker at various colleges and law schools and have annually served as a judge in moot court competitions of law schools. Such teaching of young lawyers also occurs at the monthly meetings of the Camden American Inn of Court, for which I am program chairman, teaching young lawyers about trial techniques, ethics and professionalism.

Also, I served as the Equal Employment Opportunity Coordinator, U. S. Bankruptcy Court for the District of New Jersey, from 1983-1988. I collected data and forwarded our District's annual compliance review report to the Administrative Office of the U. S. Courts in Washington. I would have been the hearing officer in the event of complaints, but no complaint was received during my tenure.

Also, to assist pro se litigants and less experienced attorneys in federal civil practice, I authored a practical handbook in 1983, revised biannually and distributed free of charge, entitled "Basic Elements of Civil Practice in Camden Vicinage" (rev. ed. 1991, with Hon. Joel B. Rosen) [attached at Tab III(1)].

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

ANSWER: I have not 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).

ANSWER: There is no such selection commission in the District of New Jersey. My experience in the judicial selection process began in 1990 when several attorneys, federal judges and persons active in political life encouraged me to seek appointment as the successor to the Honorable Stanley S. Brotman, in Camden, when Judge Brotman assumed senior status effective in April, 1990. I was interviewed at the U. S. Justice Department for the first time in late April of 1990. I learned that the interviews went well, but that I had not been selected by August of 1990. Renewed efforts on my behalf started when three new judgeships were created for the District of New Jersey under the 1990 legislation. I participated in interviews with four Members of Congress from New Jersey in the Fall of 1991, and a second round of interviews at the Department of Justice in December of 1991. On December 20, 1991, the Department of Justice informed me that I was the candidate for nomination to the unfilled judgeship.

Thereafter, I participated in the interview incident to the routine FBI background investigation with the Special Agent assigned to coordinate the investigation on December 27, 1991, and in the interview incident to the American Bar Association investigation with the Circuit Representative on February 14, 1992.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be

interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

ANSWER: No.

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

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

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

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

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

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

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

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

ANSWER: Federal courts have the constitutional responsibility to decide cases and controversies, that is, to adjudicate disputes that are properly within the limited jurisdiction of the courts. Judges must be restrained in their exercise of this authority and resist any tendency toward broadening jurisdiction beyond that fixed by Congress. This restraint upon judicial power springs from constitutional underpinnings and from the self-restraint of judges, whose mission is to interpret the law and to apply it to the facts developed in the adversarial process. Courts should, for example, avoid reaching issues of constitutional dimension if not necessary to the decision of the pending matter.

Judicial restraint also serves to protect the independence of the judicial branch. Judges do not make the laws, nor do they execute the popular will. Judicial independence, constitutionally promoted by life tenure, is best served and protected by judges who strive to address the matters framed within the case before them rather than the problems of society at large. Indeed, the acceptance of judicial decisions rests upon the litigants' assured knowledge that the court is impartial and not motivated by causes beyond the courtroom.

Judicial adherence to precedent and interpretation of the plain meaning of statutory commands also builds confidence in the integrity of judicial decisionmaking. Judicial interpretation of a body of law should not change according to the personalities or philosophies of the judicial officers, nor of the parties before them.

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

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

1. Person Reporting (Last name, first, middle initial) SIMANDLE, JEROME B.	2. Court or Organization U. S. District Court District of New Jersey	3. Date of Report April 3, 1992
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U. S. District Judge	5. Report Type (check appropriate type) _X_ Nomination, Date 4/1/92 ___ Initial ___ Annual ___ Final	6. Reporting Period 1/1/91 to 3/31/92
7. Chambers or Office Address U. S. Post Office & Courthouse P. O. Box 888 Camden, NJ 08101-0888		

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
[X]	NONE (No reportable positions)	

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

DATE	PARTIES AND TERMS
[X] NONE (No reportable agreements)	

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

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
[ ] NONE (No reportable non-investment income)		
1		
2	Soouse, Licensed Psychologist (Self-Employed)	$
3		$
4		$
5		$
		$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Jerome B. Simandle	4/3/92

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements or gifts)	
1	Exempt	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

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

	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 spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities)		
1	Farmers & Mechanics S & L	Mortgage on former residence	K
2	Moorestown, NJ	now held for rental (J)	
3	Source One Mortgage (formerly	Mortgage on spouse's business	L
4	Firemans Fund Mortgage	property acquired in 1986 (J)	
5	Services), Pittsburgh, PA		
6			
7			

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

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Jerome B. Simandle	4/3/92

VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 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. Please "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period (1) Amt.; Code (A-E)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value; Code (J-P)	(2) Value Method; Code (Q-W)	D. Transactions during reporting period (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-E)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
1 Former residence as	D	Rent	M	W					
2 rental property (J): 322 West Main St.									
3 Moorestown, NJ									
4 Working Assets Money Fund:									
5 Indianapolis, Ind:									
6 (a) Money Market Acct	B	Int.	K	T					
7 (J) (b) Keough Retirement	B	Int.	K	T					–
8 Accts (S) Spouse's Professional									–
9 Office (J): 1627 Waverly St.	None	None	M	W					
10 Philadelphia, PA									
11 Commerce Bank,									
12 Moorestown, NJ Checking Acct (S)	A	Int.	J	T					
13 Rental Escrow Acct	A	Int.	J	T					
14 [Deposited escrow in June '90 for tenant's									
15 security deposit]									
16 Dreyfus Trust - Third	A	Int.	J	T	Transfer/ Rollover	3-16 92	J	–	Previously Work-Assets IRA
17 Century Fund									
18 Providence, RI (a) IRA's (Self & Spouse)									
19									
20									

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 K=$250,001 to $500,000	K=$15,001 to $50,000 O=$500,001 to $1,000,000	L=$50,001 to $100,000 P=More than $1,000,000	M=$100,001 to $250,000
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Jerome B. Simandle	4/3/92

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 Jerome B. Simandle Date April 3, 1992

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

NET WORTH

JEROME B. SIMANDLE & JANE DARTON

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	19	200	00	Notes payable to banks—secured	4	600	00
U.S. Government securities—add schedule		0	00	Notes payable to banks—unsecured		0	00
Listed securities—add schedule		0	00	Notes payable to relatives		0	00
Unlisted securities—add schedule		0	00	Notes payable to others		0	00
Accounts and notes receivable:				Accounts and bills due (current)	5	000	00
Due from relatives and friends		0	00	Unpaid income tax		0	00
Due from others		0	00	Other unpaid tax and interest		0	00
Doubtful		0	00	Real estate mortgages payable—add schedule	182	011	00
Real estate owned—add schedule	553	000	00	Chattel mortgages and other liens payable		0	00
Real estate mortgages receivable		0	00	Other debts—itemize:			
Autos and other personal property		19	00	Lease escrow held as landlords	1	390	00
Cash value—life insurance		6200	00				
Other assets—itemize:							
J. Darton Keough Accts	78	000	00				
IRA Accts - JD & JBS	11	200	00				
JBS CSRS Retirement	18	211	00	Total liabilities	194	001	00
Furnishings, Pers. prop	60	000	00	Net worth	530	832	00
Total assets	724	831	00	Total liabilities and net worth	724	831	00

CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		0	00	Are any assets pledged? (Add schedule.) No.		0	00
On leases or contracts		0	00	Are you defendant in any suits or legal actions? No.			
Legal Claims		0	00	Have you ever taken bankruptcy? No.			
Provision for Federal Income Tax		0	00				
Other special debt		0	00				

(Continued)

FINANCIAL STATEMENT

Schedules

Real Estate Owned

(1) Residence:	320 Westover Road Moorestown, NJ 08057	$300,000.00
(2) Rental Property:	322 West Main Street Moorestown, NJ 08057	125,000.00
(3) J. Darton Office (Rowhouse):	1627 Waverly Street Philadelphia, PA 19146	128,000.00
	Total	$533,000.00

Real Estate Mortgages Payable

(1) above:	Meritor Mortgage 3001 Market Street -- 1 West Philadelphia, PA 19104-2818	$104,811.44
(2) above:	Farmers & Mechanics Savings Sunset & Salem Roads Burlington, NJ 08016	24,200.00
(3) above:	Source One Mtge. Serv. Corp. (formerly Fireman's Fund Mtge. Corp.) 27555 Farmington Road Farmington Hills, MI 48334-3357	53,000.00
	Total	$182,011.44

Other Liabilities Owed

In addition to the Real Estate Mortgages, above, the following automobile loan is outstanding, on which payments are current:

First Fidelity Bank, N.A., Seth Jersey Installment Loan Dept. P. O. Box 1349 Burlington, NJ 08016	$4,600.00
Total	$4,600.00

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Richard George Kopf

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

   Residence:
   9455 Pauline St.
   Omaha, NE 68124

   Office:
   215 N. 17th St.
   P. O. Box 457
   Omaha, NE 68101

3. Date and place of birth.

   Toledo, Ohio
   December 1, 1946

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

   Widower. My wife, whose maiden name was Verdella (NMI) Blank, died December 26, 1986.

   I am engaged to marry Ms. Joan K. Stofferson, nee Wagoner. She is not presently employed full time. She works part-time for Hillis & Company, 230 N. 7th, Lincoln, NE 68508, and Coy Marketing, 380 Bruce Dr., Lincoln, NE 68510.

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

   University of Nebraska at Kearney, then known as Kearney State College, 1965-1969, B.A. (May, 1969); University of Nebraska College of Law, 1969-1972, J.D. (May, 1972) (with distinction).

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.

The Honorable Donald R. Ross, Senior United States Circuit Judge, Eighth Circuit Court of Appeals, May, 1972, through January, 1974.

From February, 1974, until my appointment as a United States magistrate judge in February, 1987, I practiced with the firm of Cook, Kopf & Doyle, P. O. Box 100, Lexington, NE 68850, now known as Cook, Wightman & Doyle.

From February 1987, until the present, I have been a full-time United States magistrate judge for the District of Nebraska.

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.

While at Kearney State College, now known as the University of Nebraska at Kearney, I was elected president of the student body, voted outstanding senior man by the faculty, and voted a member of Who's Who in American Colleges and Universities by the faculty.

While at the University of Nebraska College of Law, I was awarded a three-year, full-tuition scholarship by the Nebraska Board of Regents. I was selected by the faculty as a member of the Order of the Coif and the Order of the Barristers. I was a member and editor of the Nebraska Law Review. I graduated in the top 5.5 percent of my class at the University of Nebraska College of Law, and received my degree "with distinction." I was a member of the winning team in the Allen Moot Court Competition and coauthor of the best brief therein. I was a member of the winning team in the Regional National Moot Court Competition of the Association of the Bar of the City of New York. Our team won the best brief award, and I won the best oral argument award from the American College of Trial Lawyers. I competed in the National Moot Court competition of the Association of the Bar of the City of New York.

I received a commendation in the form of a resolution of the 88th Legislature, Second Session, of the State of Nebraska, in appreciation for legal service to the Special Commonwealth Committee and the Legislature of the State of Nebraska.

Every two years the Nebraska State Bar Association surveys members of the Bar Association who must be members in order to practice law in the State of Nabraska. Tha purpoae of this survay is to datermina whather or not judges should be retained in office. In 1988 my retention parcantage was 95.7 percent, and in 1990 my retantion percentage was 96.0 percent. (See tab 11.)

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, Nebraska State Bar Foundation in 1989. President, Dawson County Bar Association. Mamber, House of Delegates, Nebraaka State Bar Asaociation, 1983-1987. President, University of Nebraska College of Law Alumni Aasociation. Vica chairman, Nebraska Supreme Court Subcommittaa on all forms of appeal. Member, American Bar Asaociation.

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.

Groups which lobby:

National Council of United States Magistrate Judges
Nebraska State Bar Association
American Bar Association

Other groups:

University of Nebraska College of Law Alumni Association
Order of tha Coif Legal Honorary Sociaty
Order of the Barristers Legal Honorary Society
Nebraaka State Bar Foundation

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

United States District Court for the Diatrict of Nebraska (1972); United States Court of Appeals for the Eighth Circuit (1973); United Stataa Claims Court (1983); Supreme Court of the Stata of Nabraska (1972).

12. Published Writings: List the titles, publishera, and dates of books, articles, reports, or other published material you have writtan or edited. Plaase supply ona copy of all

published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

The following is a list of my legal writings, other than opinions, which have been published:

1. Author, **Nebraska Supreme Court Review - Criminal Law**, 50 Neb. L. Rev. 468 (1971).

2. Co-Editor, **Nebraska Supreme Court Review**, 51 Neb. L. Rev. 552 (1972).

3. Nebraska Continuing Legal Education, Inc. (hereinafter NCLE), INSTITUTE ON DEVELOPMENTS IN NEBRASKA LAW: LEGISLATION, CASES, RULES AND PRACTICE, **Corporations, Banking, Real and Personal Property, Retirement & Probate** (1975).

4. NCLE, INSTITUTE ON DEVELOPMENTS IN NEBRASKA LAW: LEGISLATION, CASES, RULES AND PRACTICE, **Corporations, Banking, Real and Personal Property, Retirement & Probate** (1976).

5. NCLE, THE SECOND ANNUAL INSTITUTE ON ESTATE PLANNING, **Trusts for Children (Living and Testamentary Trusts, Including Separate Share and Sprinkling Trusts and Custodianships)** (1976).

6. NCLE, INSTITUTE ON DEVELOPMENTS IN NEBRASKA LAW: LEGISLATION, CASES, RULES AND PRACTICE, **Corporations, Banking, Real and Personal Property, Retirement & Probate** (1977).

7. Creighton University School of Law, ESTATE PLANNING AFTER THE 1976 TAX REFORM ACT, **Income Tax Factors to be Considered** (1977).

8. NCLE, INSTITUTE ON DEVELOPMENTS IN NEBRASKA LAW: LEGISLATION, CASES, RULES AND PRACTICE, **Corporations, Banking, Real & Personal Property & Retirement** (1978).

9. NCLE, FOURTH ANNUAL INSTITUTE ON ESTATE PLANNING, **Renunciation and Disclaimers** (1978).

10. NCLE, INSTITUTE ON DEVELOPMENTS IN NEBRASKA LAW: LEGISLATION, CASES, RULES AND PRACTICE, **Corporations, Banking, Real & Personal Property & Probate** (1979).

11. NCLE, INSTITUTE ON DEVELOPMENTS IN NEBRASKA LAW: LEGISLATION, CASES, RULES AND PRACTICE, **Corporations, Banking and Real & Personal Property** (1980).

12. NCLE, INSTITUTE ON DEVELOPMENTS IN NEBRASKA LAW: LEGISLATION, CASES, RULES AND PRACTICE, **Corporations, Banking and Real & Personal Property** (1981).

13. NCLE, INSTITUTE ON DEVELOPMENTS IN NEBRASKA LAW: LEGISLATION, CASES, RULES AND PRACTICE, **Corporations, Banking and Real & Personal Property** (1982).

14. NCLE, NEBRASKA PROBATE SYSTEM III, **Delayed Probate to Establish Title** (1982).

15. NCLE, TENTH ANNUAL INSTITUTE ON ESTATE PLANNING, **Effective Planning and Drafting of Agreements Concerning Living Arrangements** (1984).

16. Richard G. Kopf, as Special Counsel, authored for the majority of the Special Commonwealth Committee of the 88th Legislature, Second Session, of the State of Nebraska, **Final Report of the Special Commonwealth Committee of the 88th Legislature, Second Session, of the State of Nebraska**, 1-490 (1984).

17. NCLE, BANKING LAW, **Bankers Blanket Bonds** (1985).

18. NCLE, ELEVENTH ANNUAL INSTITUTE ON ESTATE PLANNING, **Renunciation: "Pickup" Clauses and Renounced Interests** (1985).

19. NCLE, DEVELOPMENTS IN REAL ESTATE, **Obtaining Possession either through Receivership or Immediate Possession** (1986).

20. Creighton University School of Law, Practice in the Federal Court, **Pretrial Conferences and Settlement Conferences in the United States District Court for the District of Nebraska --, Fed. R. Civ. P. 16 --A Tool to be Used** (1988).

21. NCLE, University of Nebraska College of Law, and the Young Lawyers Section of the Nebraska State Bar Association, 1990 How to Practice Seminar, **Practice Pointers About Criminal Practice Before United States Magistrates in the District of Nebraska** (1990).

22. Nebraska Criminal Defense Attorneys Association (hereinafter NCDAA), **Practice Pointers About Criminal Practice Before United States Magistrate Judges in the District of Nebraska** (1991).

23. NCDAA, **Common Pretrial Issues in Federal Drug Conspiracy Cases** (1992).

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

Good.
August 15, 1991.

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

Since February 2, 1987, I have been a full-time United States magistrate judge in Omaha, Nebraska, for the United States District Court for the District of Nebraska. The duties of a full-time United States magistrate judge in Omaha, Nebraska, cover the entire range of activities contemplated by Congress in 28 U.S.C. § 636. Among other things, a United States magistrate judge in Omaha, Nebraska, is responsible for handling dispositive and nondispositive motions in criminal cases for one district judge. In the civil context, a United States magistrate judge in Omaha, Nebraska, handles for one district judge all pretrial conferences, most of the difficult discovery motions, and most of the difficult motions requiring presentation of evidence, such as class-action certification questions. In addition, a United States magistrate judge in Omaha, Nebraska, is encouraged to try civil cases. There are three full-time magistrate judges in the District of Nebraska.

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.

Question 15(1):

It is difficult to select the ten most significant opinions I have written. What I have endeavored to do is choose ten opinions which address difficult legal issues and thus show the approach I have taken in complex cases. Copies of the opinions are attached. The docket sheets for each of these cases, providing the names, addresses, and telephone numbers of the lawyers involved, have been attached to the copies of the opinions.

(1) **United States v. Nachman**, CR 90-0-141 (Report and Recommendation of Magistrate Judge Kopf) (D. Neb. May 30, 1991). (See tab 1.)

(2) **United States v. Nejdl**, 773 F. Supp. 1288 (D. Neb. 1991) (consolidated with **United States v. Koory**, 773 F. Supp. 1308 (D. Neb. 1991)). (See tab 2.)

(3) **French v. Omaha Pub. Schools**, 766 F. Supp. 765 (D. Neb. 1991). (See tab 3.)

(4) **United States v. Moran**, 757 F. Supp. 1046 (D. Neb. 1991). (See tab 4.)

(5) **Nolte v. Pearson**, 133 F.R.D. 585 (D. Neb. 1990). (See tab 5.)

(6) **United States v. Feiste**, CR 89-0-115 (Report and Recommendation of Magistrate Judge Kopf) (D. Neb. Nov. 14, 1990). (See tab 6.)

(7) **Rust v. State of Nebraska**, CV 87-L-340 (Report and Recommendation of Magistrate Judge Kopf) (D. Neb. Feb. 14, 1990). (See tab 7.)

(8) **Sorich v. Terry**, 1989 WL 87386, 1989 U.S. Dist. LEXIS 9115 (D. Neb. June 29, 1989). (See tab 8.)

(9) **K & S Partnership v. Continental Bank**, 127 F.R.D. 664 (D. Neb. 1989). (See tab 9.)

(10) **People for Responsible Omaha Urban Dev. & Nat'l Trust for Historic Preservation in the United States v. Interstate Commerce Commission**, CV 88-0-247 (Report and Recommendation of Magistrate Judge Kopf) (D. Neb. July 28, 1988, and Jan. 20, 1989). (See tab 10.)

Question 15(2):

In **K & S Partnership v. Continental Bank**, 952 F.2d 971 (8th Cir. 1991), the Court of Appeals reversed in part and affirmed in part. The court reversed the judgment after jury verdict imposing secondary liability on defendant, and affirmed the judgment notwithstanding the verdict on plaintiffs' RICO claim.

Question 15(3):

United States v. Apker, CR 90-127 (Report and Recommendation of Magistrate Judge Kopf) (D. Neb. Jan. 23, 1992). (See tab 12.)

United States v. Moore, CR 89-0-156 (Report and Recommendation of Magistrate Judge Kopf) (D.Neb. May 21, 1990) (See tab 13.). (After district judge's decision, case reversed 1992 WL 23161 (8th Cir. 1992).

United States v. Feiste, CR 89-0-115 (Report and Recommendation of Magistrate Judge Kopf) (D. Neb. Nov. 14, 1990). (See tab 6.)

Rust v. State of Nebraska, CV 87-L-340 (Report and Recommendation of Magistrate Judge Kopf) (D. Neb. Feb. 14, 1990). (See tab 7.) (After district judge's decision, case remanded for further proceedings, 1992 WL 57645 (8th Cir. 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.

I was appointed by the district judges of the Thirteenth Judicial District of the State of Nebraska to serve as a member of the Dawson County Mental Health Board as Law Chairperson. This meant that I served in a quasi-judicial capacity as a hearing officer in proceedings regarding mental health commitments. I served in this capacity for approximately four years during the early 1980's. I do not have specific information as to precise dates at this time.

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;

The Honorable Donald R. Ross, Senior United States Circuit Judge, Eighth Circuit Court of Appeals, May, 1972, through January, 1974.

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

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:

From February, 1974, until my appointment as a United States magistrate judge in February, 1987, I practiced with the firm of Cook, Kopf & Doyle, P. O. Box 100, Lexington, NE 68850, now known as Cook, Wightman & Doyle. I was an associate for the first three years and a principal the remainder of the time.

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 character of my practice was general practice, with emphasis in civil litigation. When I began private practice, I took a fair number of criminal appointments, particularly before Dawson County, Nebraska, had a public defender.

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

My typical former clients would be financial institutions and a political subdivision. For example, I regularly represented the Farm Credit Banks of Omaha, particularly the Federal Land Bank of Omaha. Representation of financial institutions involved a wide variety of civil litigation matters from prosecuting mortgage foreclosures to defending stockholder suits. As another example, I represented the Central Platte Natural Resources District, a political subdivision, in complex water rights and environmental litigation having to do with development of the Platte River.

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

I appeared in court regularly.

2. What percentage of these appearances was in:

(a) federal courts;

20 percent (including the United States Bankruptcy Court for the District of Nebraska).

(b) state courts of record;

80 percent (including hearings before the Nebraska Department of Water Resources where the rules of evidence applied and which had original jurisdiction over certain water rights matters).

(c) other courts.

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

   95 percent.

   (b) criminal.

   5 percent.

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.

   I estimate that I tried to verdict or judgment, rather than settled, over 70 cases. In most of those cases I served as either sole counsel or chief counsel.

5. What percentage of these trials was:
   (a) jury;

   Approximately 10 percent of the cases were jury cases.

   (b) non-jury.

   Approximately 90 percent of the cases were non-jury cases.

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 Name: **Dugdale of Nebraska, Inc. v. First State Bank of Gothenburg**, 227 Neb. 729, 420 N.W.2d 273, 6 U.C.C. Rep. Serv. 2d 111 (1988) (I believe this case is significant because it clarified conflicting provisions of Nebraska auto title certificate law and the Uniform Commercial Code regarding how banks perfect security interests in "floor-planned" autos. Reversed trial judge's decision in favor of my client, the bank.)

Year Tried: 1986.

Jury/Non-Jury: Non-Jury.

Name and telephone number of Judge: The Honorable John P. Murphy, District Judge, District Court, 301 N. Jeffers, North Platte, NE 69101 (Telephone No. 308-534-4350).

Role: Trial and appellate counsel.

Opposing Counsel: Scott H. Trusdale, P. O. Box 540, Cozad, NE 69130 (Telephone No. 308-784-2212).

Case Name: **In re: Hitchcock and Red Willow Irrigation District**, 226 Neb. 146, 410 N.W.2d 101 (1987) (I believe this case is significant because, after more than 30 days of trial, 400 technical exhibits, and 5,600 pages of testimony, the court affirmed the objectors' position that for "unappropriated water" to exist for purposes of diversion it is not enough that there be some unused water, but rather there must be shown a "dependable water supply." Affirmed hearing officer's decision in favor of client.)

Year Tried: Various dates between December, 1980, and November 4, 1985.

Jury/Non-Jury: Non-Jury.

Judge: The Honorable Michael Jess, Director of the Nebraska Department of Water Resources, Box 94676, Lincoln, NE 68509 (Telephone No. 402-471-2363). (This case involved a hearing

before the director where the Nebraska Rules of Evidence applied and the director had original jurisdiction.)

Role: Sole counsel for the Central Platte Natural Resources District as opponent and informally designated coordinating counsel for all opponents.

Opposing Counsel:[1]

Robert Crosby &
Steven Seglin
400 Lincoln Benefit Bldg.
Lincoln, NE 68508
(402) 475-5131

Patrick A. Parenteau
Route 1, P. O. Box 251
Banks, OR 97106
(503) 324-8481

Lyle B. Gill
P. O. Box 642
Fremont, NE 68025
(402) 721-7550

Jess C. Nielsen
410 North Ash
North Platte, NE 69103
(308) 532-3150

Thomas A. Wurtz
Metropolitan Utilities Dist.
1723 Harney Street
Omaha, NE 68102
(402) 449-8207

George Svoboda
Sidner, Svoboda, Schilke,
Wiseman & Thomsen
Military Colonial Bldg.
340 E. Military Ave.
Fremont, NE 68025
(402) 721-7111

Michael E. Kelley
City Attorney
18 East 22nd St.
P. O. Box 1180
Kearney, NE 68848
(308) 237-5133

Christopher H. Meyer
National Wildlife Federation
c/o Givens, Pursley, Webb
& Huntley
Suite 200, Park Place
277 No. 6th Street
Box 2720
Boise, ID 83701
(208) 342-6571

LeRoy Sievers
Assistant Attorney General
State of Nebraska
2115 State Capitol

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[1]I have listed certain lawyers as "opposing counsel" even though a particular lawyer's position might have been consistent with the position I advanced for my client. Due to the varied interests in water rights litigation, designations such as "applicant's counsel" or "opponent's counsel" can be quite misleading. Furthermore, I have listed only those lawyers who actively participated in the trial. There are numerous other lawyers who made appearances but did not participate at trial.

Lincoln, NE 68509-4906
(402) 471-4794

Case Name: In re: Application 15145, 15146, 15147 and 15148 of Little Blue Natural Resourcee Dietrict, 219 Neb. 372, 363 N.W.2d 500 (1985) (I believe this case is significant because it held that power cooperative's petition for intervention in complex litigation regarding whooping crane habitat, which had gone on for approximately two years, was untimely, thereby impoeing a requirement that intereeted parties to complex environmental litigation must act promptly to intervene. Affirmed hearing officer's decision in favor of client.)

Year Tried: Various dates.

Jury or Non-Jury: Non-Jury.

Judge: The Honorable Michael Jess, Director of the Nebraska Department of Water Resources, whose addrese and telephone number are listed above. (This case involved a hearing before the director where the Nebraska Rules of Evidence applied and the director had original jurisdiction.)

Role: Sole counsel for Central Platte Natural Resources District. My client's interests were similar to the interests of Mr. Crosby and Mr. Seglin's client (Little Blue NRD) in opposing the petition for intervention of Basin Electric Power Cooperative. The undersigned played a significant role in successfully opposing the intervention.

Opposing Counsel: The lawyers identified in regard to In re: Hitchcock and Red Willow Irrigation District should also be contacted in regard to this case. Additional counsel were:

Lyman L. Larsen
Thomas R. Litjen
Kennedy, Holland, DeLacy
& Svoboda
10306 Regency Parkway Drive
Omaha, NE 68114
(402) 397-0203

Claire Olson
Assistant General Counsel
Basin Electric Cooperative
1717 East Interstate Avenue
Bismarck, ND 58501
(701) 223-0441

Case Name: State v. Steve Sohmidt, Case No. 18-226, in the District Court of Dawson County, Nebraska (While this case may not be significant in terms of the development of the law, it was very significant to the teacher-defendant, who was acquitted of all charges in a multicount felony child abuse case.)

Year Tried: 1985.

Jury/Non-Jury: Jury (5 days).

Judge: The Honorable John P. Murphy, District Judge, District Court, 301 N. Jeffers, North Platte, NE 69101 (Telephone No. 308-534-4350).

Role: Co-counsel for the defense with law partner James E. Doyle, IV. The undersigned was responsible for all medical, psychiatric, and psychological expert testimony on direct and cross-examination, including complex issue of hypnotically refreshed recollection of prosecution witness claiming to suffer from a "split personality."

Opposing Counsel: The prosecutor has since died.

Case Name: Agristor Credit Corp. v. Radtke, 218 Neb. 386, 356 N.W.2d 856, 39 U.C.C. Rep. Serv. 1122 (1984) (I believe this case is significant because it clarified Nebraska's third-party-practice statute. The court adopted client's position, and reversed trial judge's decision.)

Year Tried: 1983.

Jury or Non-Jury: Jury (15 days).

Judge: The Honorable Jack H. Hendrix, District Judge, 502 Norris Ave., McCook, NE 69001 (Telephone No. 308-345-4539).

Role: Co-counsel with Jeffrey Jacobsen for defendant Platte Valley Harvestore, Inc. Mr. Jacobsen had the insurance defense on the negligence claim, and the undersigned had the breach-of-warranty defense which was not covered by insurance. Mr. Jacobsen was chief trial counsel, but the undersigned took an active part in trial (convincing the trial court to dismiss the warranty claim upon completion of the evidence), drafted the motion to dismiss, and wrote the brief on appeal regarding the third-party-practice issue which set forth the position adopted by the Nebraska Supreme Court.

Opposing Counsel and Related Counsel:

William H. Sherwood
Sherwood & Cuypers
P. O. Box 64
Oxford, NE 68967
(308) 824-3231

Patricia E. Dodson
Dodson & Dodson
P. O. Box 27
Beaver City, NE 68926
(308) 268-7415

William D. Sutter
Barlow, Johnson, DeMars & Flodman
1227 Lincoln Mall
P. O. Box 81686
Lincoln, NE 68501
(402) 475-4240

Thomas W. Tye
Tye, Worlock, Tye, Taylor & Hopkins
1419 Central Avenue
P. O. Box 636
Kearney, NE 68847
(308) 237-3155

Jeffrey H. Jacobsen
Jacobsen, Orr & Nelson
322 W. 39th St.
P. O. Box 1060
Kearney, NE 68848
(308) 234-5579

Case Name: **State v. Douglas**, 217 Neb. 199, 349 N.W.2d 870 (1984) (I believe this case is significant because it was an original action in the Nebraska Supreme Court regarding the impeachment of the Attorney General of the State of Nebraska. By a split decision, the court acquitted defendant.)

Year Tried: March, 1984.

Jury/Non-Jury: Non-Jury.

Judges:

Hon. William C. Hastings
2214 State Capitol
P. O. Box 98910
Lincoln, NE 68509
(402) 471-3736

Hon. Leslie Boslaugh
2210 State Capitol
Lincoln, NE 68509
(402) 471-3733

Hon. Thomas M. Shanahan
2207 State Capitol
Lincoln, NE 68509
(402) 471-3735

Hon. John T. Grant
2211 State Capitol
Lincoln, NE 68509
(402) 471-3737

Hon. Robert R. Moran
P. O. Box 638
Alliance, NE 69301
(308) 762-5354

Hon. Keith Howard
1701 Farnam Street
Omaha, NE 68183
(402) 444-7007

Hon. William F. Colwell
P. O. Box 31
Pawnee City, NE 68420
(402) 852-3114

Role: Chief counsel for the prosecution, employed by the Nebraska Legislature and appointed as Special Assistant Attorney General by the Supreme Court.

Opposing Counsel: William E. Morrow, Jr., One Merrill Lynch Plaza, 10330 Regency Parkway Drive, Omaha, NE 68114 (Telephone No. 402-390-7137).

Case Name: **The Federal Land Bank of Omaha v. Michael R. Kurt**, Case No. 2293, in the District Court of Custer County, Nebraska, and **The Federal Land Bank of Omaha v. Reuben R.**

Squier, Case No. 2466, in the District Court of Custer County, Nebraska (I believe these cases are significant, taken together, because the decision in each case awarded client immediate possession of the mortgaged premises during the redemption period. These rulings led to presentation of a speech and paper to trial counsel for the Federal Land Bank of Omaha in Nebraska and Wyoming, and subsequent publication of the paper by the Nebraska Continuing Legal Education Corporation.)

Year Tried: 1985 and 1986.

Jury/Non-Jury: Non-Jury.

Judge: The Honorable Ronald D. Olberding, District Judge, P. O. Box 280, Burwell, NE 68823 (Telephone No. 308-346-5277).

Role: Sole counsel for the Federal Land Bank of Omaha, securing the appointment of a receiver to take control of the subject premises.

Opposing Counsel:

Mark L. Eurek
611 O St.
P. O. Box 202
Loup City, NE 68853
(308) 745-0720

Paul W. Madgett
Assistant U.S. Attorney
P. O. Box 1228, DTS
Omaha, NE 68101
(402) 221-4774

Steven O. Stumpff
544 South 10th Avenue
Broken Bow, NE 68822
(308) 872-6833

Allan J. Eurek
Pierson, Ackerman, Fitchett,
Akin & Hunzeker
530 S. 13th St., Suite B
P. O. Box 95109
Lincoln, NE 68509
(402) 476-7621

Carlos E. Schaper
P. O. Box 586
Broken Bow, NE 68822
(308) 872-6481

Robert R. Gibson
P. O. Box 80826
Lincoln, NE 68501
(402) 474-1440

John Sennett
Black, Sennett & Roth
Box 326
1040 S. E Street
Broken Bow, NE 68822
(308) 872-6868

Wallace W. Angle
Angle, Murphy, Lang &
Valentino, P.C.
Suite 200, York State Bank Bldg.
York, NE 68467
(402) 362-7725

Case Name: **State of Nebraska v. Prosser**, 209 Neb. 766, 311 N.W.2d 525 (1981) (I believe this case is significant because, although the court held that the trial judge did not abuse his

discretion in failing to award credit for time served by client in a mental institution, Nebraska law permitted the trial judge to grant credit for time served in a mental institution prior to trial.)

Year Tried: 1982.

Jury/Non-Jury: Non-Jury.

Judge: The Honorable Keith Windrum, District Judge (now retired), 1220 S. Emory St., North Platte, NE 69101 (Telephone No. 308-534-9528).

Role: Chief defense counsel.

Opposing Counsel: Michael L. Bacon, 424 10th St., P. O. Box 208, Gothenburg, NE 69138 (Telephone No. 308-537-7161).

Case Name: **Roth Boneless Beef, Inc. v. Cornland Dressed Beef, Inc.**, Case No. 77-0-121, in the United States District Court for the District of Nebraska (While this case may not be significant to the development of the law, it was important to the client because it absolved client of significant liability resulting from the chemical contamination of a truckload of beef where the contaminated beef entered the stream of commerce.)

Year Tried: 1979 (nine days).

Jury/Non-Jury: Jury.

Judge: The Honorable Robert Denney, United States District Judge, deceased.

Role: Co-counsel with Harold Kay. This was a case in which there were substantial excess liability insurance questions. Mr. Kay was chief trial counsel for the insurance company, and the undersigned represented the personal interests of the insured, actively participating in trial and trial preparation.

Opposing Counsel and Related Counsel:

R. Murray Ogborn
500 The Atrium
1200 N Street
Box 82028
Lincoln, NE 68501
(402) 475-6761

Robert L. Anderson
Suite 600, Gold's Galleria
1033 O Street
Lincoln, NE 68508-3621
(402) 474-1507

Harold W. Kay
P. O. Box 1009

Roger M. Beverage
643 N.E. 41st St.

North Platte, NE 69103
(308) 534-7676

Oklahoma City, OK 73105
(405) 424-5252

Neil B. Danberg, Jr.
10306 Regency Parkway Dr.
Omaha, NE 68114
(402) 397-0203

Case Name: **State v. Suggett**, 200 Neb. 693, 264 N.W.2d 876 (1978) (I believe this case is significant because it held that a trial judge should take into consideration defendant's rehabilitation, arising after first sentence, when the judge resentences. This was a post-conviction case involving a defendant convicted of murder where the court affirmed the trial court's vacation of defendant's sentence for murder, but favorably modified the decision of the district judge upon resentencing such that defendant's sentence was reduced by one-half.)

Year Tried: 1975.

Jury/Non-Jury: Non-Jury.

Judge: The Honorable Hugh Stuart, District Judge (retired, but now administrative law judge for the Department of Health and Human Services), 7400 Ct., Room 210, 808 S. 74th Plaza, Omaha, NE 68114 (Telephone No. 402-221-3401).

Role: Sole appointed counsel on post-conviction matter.

Opposing Counsel: Willard Winehold, 705 N. Washington, Box 190, Lexington, NE 68850 (Telephone No. 308-324-6626).

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 1984 I was employed as special counsel to represent the Special Commonwealth Committee of the Nebraska Legislature. As special counsel, I was responsible for directing the legal activities of the Committee. The Special Commonwealth Committee was created after the failure of Commonwealth Savings Company of Lincoln, Nebraska, on November 1, 1983. The failure of Commonwealth Savings Company had far-reaching, significant implications for the citizens of the State of Nebraska. The work of the Committee is described in the **Final Report of the Special Commonwealth Committee of the 88th Legislature, Second Session, of the State of Nebraska**, 1-490

(1984). I authored the final report on behalf of the Committee. Moreover, I was charged by the Committee, and later the Nebraska Legislature, to rspresent the State in the impeachment trial of the attorney general of the State of Nebraska before the Supreme Court of the State of Nebraska. **State v. Douglas**, 217 Neb. 199, 349 N.W.2d 870 (1984).

A second area of special legal significance in which I was involved was as counsel for the Central Platte Natural Resources District (CPNRD), a political subdivision of the State of Nebraska. CPNRD was extensively involved in litigation and related matters regarding the development of the Platte Valley of Nebraska.

The third significant area of my practice was representing the Farm Credit Banks of Omaha. In this connection, I served as trial counsel for the Federal Land Bank during the farm crisis of the 1980's. This work involved both litigated and nonlitigated matters. Litigated matters included the prosecution of actions to recover indebtedness owed the banks and defending the banks in actions brought against them or constituent organizations. Nonlitigated matters included work-out arrangements with debtors and other creditors. My work in this area led to the presentation of a paper to trial counsel for the Federal Land Bank of Omaha in Nebraska and Wyoming and subsequent publication of that paper by the Nebraska Continuing Legal Education Corporation. **See**, NCLE, DEVELOPMENTS IN REAL ESTATE, **Obtaining Possession either through Receivership** or **Immediate Possession** (1986).

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   When I terminated my association with the law firm of Cook, Kopf, and Doyle, I executed a covenant not to compete with the law firm which covered a period of six years. In exchange for that covenant not to compete, I was to receive $2,400 per year for six years which was to be credited against notes owed the law firm. These payments ended in 1992. No cash was to change hands. I have disclosed such income on all tax returns and ethics reports. I performed no actual services for the law firm, other than that I have not competed with the law firm. I have received no other compensation for services.

   I am presently enrolled under the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (the Act). I have elected a straight annuity. As I understand the program, because I have not served eight years as a United States magistrate judge, I am not yet eligible for an annuity. If I am confirmed as an Article III judge, and presumably no longer eligible to participate under the Act, I might be due a small refund of the contributions I have made (approximately 1 percent of my salary from the date I elected to participate in the program).

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

   I would follow 28 U.S.C. § 144 and 28 U.S.C. § 455. My courtroom deputy, my law clerk, and my secretary are instructed to bring any potential conflict of interest to my attention immediately. All materials submitted in regard to my nomination have been, and will continue to be, available to my courtroom deputy, my law clerk, and my secretary to aid in identifying any possible conflict of interest. My financial disclosure reports will also be available to these staff members. Furthermore, I have an understanding with my former law firm that the members of the firm will immediately

advise me and opposing counsel of any potential conflict of interest.

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

No.

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

See copy of financial disclosure report attached.

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

See attached financial statement with notes.

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.

During the late 1970's and early 1980's, I was chairperson of the Dawson County, Nebraska, Republican Party.

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

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

Person Reporting (Last Name, First, Middle Initial)	2. Court or Organization	3. Date of Report
HOPF, Richard G.	United States District Court District of Nebraska	04/08/92
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
Article III Judge (Active)	X Nomination, Date 04/07/92 ___ Initial ___ Annual ___ Final	Calendar year '91 & within 30 days of nomination
7. Chambers or Office Address		
P.O. Box 457 Omaha, Nebraska 68101		

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
[X] NONE (No reportable positions)		

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

DATE	PARTIES AND TERMS
[ ] NONE (No reportable agreements)	
12/86	Cook & Doyle, P.C. Noncompetition agreement with former law firm; I receive $2,400.00 per year for six (6) years.

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

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
[ ] NONE (No reportable non-investment income)		
	Noncompetition agreement, Cook & Doyle, P.C., former	$ 2,400.00
	law firm, regarding agreement prior to appointment.	$
	W-2 income, United States Courts	$112,907.00
	Taxable refund, State of Nebraska	$ 497.00
		$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
KOPF, Richard G.	04/08/92

IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children: use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

	SOURCE	DESCRIPTION
[X] NONE (No such reportable reimbursements or gifts)		
1		
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

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

	SOURCE	DESCRIPTION	VALUE
[X] NONE (No such reportable gifts)			
1			$
2			$
3			$
4			$

VI. LIABILITIES.

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

	CREDITOR	DESCRIPTION	VALUE CODE*
[ ] NONE (No reportable liabilities)			
1	Cook & Doyle, P.C.	Loan	J
2			
3			
4			
5			
6			

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

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
KOPF, Richard G.	04/08/92

VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 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, "(X)" 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 (1) Amt. Code (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Savings Account Lexington State Bank	A	Int.	J	T	None				
2 First National Bank Omaha, Nebraska	A	Int.	J	T	None				
3 New York Life Insurance Co. cash value life insurance	A	Int.	J	T	None				
4 or policy loan not exceeding cash value									
5									
6 Principal Life Insurance Co cash value life insurance	A	Int.	J	T	None				
7 or policy loan not exceeding cash value									
8									
9 Lincoln National Life Insurance Co., cash value	A	Int.	J	T	None				
10 life insurance or policy loan not exceeding cash value									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to $5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=More than $1,000,000
2 Value Codes: (See Col. C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $250,000
	N=$250,001 to $500,000	O=$500,001 to $1,000,000	P=More than $1,000,000	
3 Value Method Codes: (See Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market
	U=Book Value	V=Other	W=Estimated	

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
		04/08/92

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

My children receive social security benefits arising out of the death of their mother.

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 April 8, 1992

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

RICHARD C. KOPF
04/01/92

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	7,310 —	Notes payable to banks—secured	—
U.S. Government securities—add schedule	—	Notes payable to banks—unsecured	—
Listed securities—add schedule	—	Notes payable to relatives	—
Unlisted securities—add schedule	—	Notes payable to others	—
Accounts and notes receivable:		Accounts and bills due	5,315 —
Due from relatives and friends	—	Unpaid income tax	—
Due from others	—	Other unpaid tax and interest	—
Doubtful	—	Real estate mortgages payable—add schedule	149,047 —
Real estate owned—add schedule	160,000 —	Chattel mortgages and other liens payable	—
Real estate mortgages receivable	—	Other debts—itemize:	—
Autos and other personal property	60,000 —		
Cash value—life insurance			
Other assets—itemize:			
U.S. Thrift Savings	1,600 —		
		Total liabilities	154,362 —
		Net worth	74,548 —
Total assets	228,910 —	Total liabilities and net worth	228,910 —

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-		

See attached Notes to Financial Statement.

NOTES TO FINANCIAL STATEMENT FOR RICHARD G. KOPF

1. The cash on hand represents estimate of monthly net salary check and Social Security payments received for my children as a result of the death of their mother.

2. I own the residential real property at 9455 Pauline, Omaha, Nebraska 68124. I have estimated the fair market value of the real estate at $160,000. My tax basis (purchase price plus new roof, painting, and other improvements) is approximately $150,000. This structure, excluding the value of the real estate, is valued for insurance purposes at $128,400.

3. Automobiles and other personal property include three vehicles and the contents of my home. Personal property contents are insured for $89,880.

4. Accounts and bills due represents estimate of obligations which are paid monthly, including one daughter's parochial school tuition, payments to housekeeper, one daughter's college tuition and room and board amortized monthly, credit card charges, household expenses, and other regularly recurring expenses of the family.

5. Real estate mortgage payable consists of the following principal amounts, to wit: $96,415 owed to Provident Federal Savings Bank, Box 400, Waverly, Nebraska 68462-0400, with a due date of 2017, bearing interest at the rate of 9% per annum with a monthly payment of approximately $1,079.00 per month (including escrow for taxes), and a principal sum of $52,632 owed to the First State Bank of Gothenburg, 914 Lake Avenue, Box 79, Gothenburg, Nebraska 69138-0079, bearing interest at the rate of 10 percent per annum, due 2001, with approximate monthly payments of $486.00 (25-year amortization/balloon payment/interest only through 2/25/93).

6. The line for accounts and bills due includes monthly mortgage payments due.

7. I have accorded no value to Covenant Not To Compete executed in favor of my previous law firm, Cook, Kopf & Doyle, P.C., which will expire in 1992, and which provides me $2,400 per year. Pursuant to the agreement with my law firm, the payments on the covenant not to compete are offset against any existing indebtedness I owed the law firm at the time of my termination. In essence, the covenant not to compete has extinguished the indebtedness to the law firm. If I were to show the indebtedness it would not exceed $2,400, and the asset side of the balance sheet would be increased by $2,400.

8. I may have very small cash values in insurance policies issued by the New York Life Insurance Company, the Principle Life Insurance Company, or the Lincoln National Life Insurance Company, but virtually all the cash has been depleted by policy loans which of course did not exceed the cash value. Accordingly, I have accorded no value to insurance policies held by me.

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.

Prior to my appointment as a United States magistrate judge, I took appointments in criminal and quasi-criminal cases which resulted in no fees or low fees. **See, e.g., State v. Suggett**, 200 Neb. 693, 264 N.W.2d 876 (1978) (appointment as counsel in post-conviction case involving a challenge to a second-degree murder conviction); **In re: Interest of Wood and Linden**, 209 Neb. 18, 306 N.W.2d 151 (1981) (appointment as counsel for mother in a juvenile proceeding regarding termination of parental rights). I also accepted appointments by Western Nebraska Legal Services, Inc., and the Nebraska Bar Association's legal referral program which resulted in no-fee or low-fee cases in civil matters. In addition, I agreed to accept appointment as counsel for persons who were the subject of mental health commitment proceedings, and these appointments generated no fees or low fees. Our firm recognized the value of pro bono work to indigents and encouraged the firm's lawyers to take cases without regard to the ability of the client to pay.

I also engaged in various civic activities that were not specifically legal in nature. For example, I served as a member of the Kearney State College (now known as the University of Nebraska at Kearney) Foundation. Among other things, the Foundation raised money for such things as scholarships.

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 do not presently belong to any organization which discriminates on an invidious basis. In college I belonged to a social fraternity which admitted only men. During the 1970's I was a member of the Lexington, Nebraska, chapter

of the Jaycees. At that time, the national organization permitted only men to join. I recall stating on a number of occasions that if a woman were to request membership in the organization, I would feel compelled to vote in favor of her application. In May, 1987, after I was appointed a United States magistrate, my predecessor, Judge Richard C. Peck, invited me to join the Kiwanis Club of Omaha, Inc., 407 Professional Tower, 105 South 17th St., Omaha, NE 68102. At the time I was invited to join the Kiwanis Club, the chief judge of our court was also a member. I became a member of the club but attended very few meetings. At the time I joined, I knew the local club had voted to accept women members but that the national organization had refused. Due to the pressures of work and my becoming uncomfortable with the idea that no women were admitted to the Kiwanis Club of Omaha, Inc., notwithstanding the vote of the local chapter, I decided to terminate my association with the club. I did so on January 31, 1988.

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. Congressman William E. Barrett of Nebraska indicated that he wished to propose my name to the Administration as a possible nominee for one of the two vacant judgeships in Nebraska. I have known Congressman Barrett for about 17 years, having practiced law in his hometown of Lexington, Nebraska, from 1974 through 1986. I consented to my name being submitted, and Congressman Barrett proposed my name thereafter. Subsequently, I was interviewed by officials of the United States Department of Justice in Washington, D.C. These interviews took place one morning and entailed a general discussion of my training, experience, and background, both as a practicing attorney and as a United States magistrate judge for the District of Nebraska. I also had two brief meetings with various Nebraskans prominent in the state Republican Party. These meetings were short (totaling no more than two hours), and I simply expressed my interest in the position. After being informed that I was the tentative nominee for one of the vacant judgeships, I was interviewed by an agent of 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? 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.

Questions regarding "judicial activism" raise difficult and complex issues regarding the proper role of judges in a democratic society, particularly one which is founded upon a written constitution.

Realizing that questions regarding "judicial activism" profoundly implicate the proper role of the judiciary, and also realizing that an intellectually coherent theory may be beyond my present ability, I am comforted by superior court precedent. Precedent is the tool by which trial practitioners and trial judges understand and apply the law. Precedent may provide at least a partial way out. In this sense, the question for the trial judge is not so much whether "judicial activism" is or is not a proper role for the judiciary, but

rather whether the precedents of a superior court, fairly applied, support a particular role in a given case.

The great difficulty for trial judges arises at the margins, when superior court precedent is lacking or unclear. I have no easy answer to this problem. Without superior court precedent, my inclination would be, as it has been in the past, to be skeptical of an activist role. By "activist role" I mean a role which alters the status quo. For myself, I think it proper when confronted with what could fairly be called a "proactive" position advanced by a litigant, without clear precedent as support, to respond in an intellectually skeptical manner.

Stated differently, the need for judicial review is clear, but the proper limits of judicial power are not clear. Perhaps the skepticism of which I write means nothing more than this: in the absence of a clear role definition set forth in the precedents, a trial judge ought to be slow to act since such action may be illegitimate in a democratic society.

In summary, the question of judicial activism admits no easy answers. My view of "judicial activism" is essentially this: (a) in the absence of a coherent idealogy about the proper role of judges in a democratic society, a judge of an inferior court can rely upon precedent to supply an appropriate role definition, and (b) in the absence of precedent, a judge of an inferior court should react in an intellectually skeptical fashion when confronted with a request to adopt a change from the status quo.

CONFIRMATION HEARING ON HON. SUSAN H. BLACK, SONIA SOTOMAYOR, LORETTA A. PRESKA, AND IRENE M. KEELEY

THURSDAY, JUNE 4, 1992

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

The committee met, pursuant to notice, at 10:02 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Edward M. Kennedy presiding.

Present: Senators Kennedy and Thurmond.

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. The committee will come to order.

The Constitution gives the President and the Senate a shared responsibility to ensure that qualified men and women serve on the Federal bench. As Senators, we have few more important responsibilities than our role in the confirmation process. The judges and Justices whom we approve will serve for life, and their decisions will determine, in large measure, the quality of justice in America.

I am please to note that today, for the first time, the Judiciary Committee has scheduled a nominations hearing in which all of the nominees are women. This is a welcome development and underscores our commitment to increasing the representation of women on the Federal bench.

In the past 12 years, the proportion of women in the legal profession has almost doubled, from 13 percent during the last year of the Carter administration to 23 percent today. Yet, only 16 percent of President Bush's judicial nominees are women, about the same as the 15-percent rate President Carter achieved during a time when there were far fewer women lawyers. Less than 9 percent of the sitting Federal judges are women. There is ample room for improvement and improvement in the number of blacks and other racial minorities, as well.

Today's nominees are fortunate to have distinguished Members of the Senate here to introduce them, and I look forward to their testimony and to the testimony of the nominees.

Senator Thurmond.

Senator THURMOND. Mr. Chairman, I welcome the nominees today and their witnesses, and I hope we can get expeditious decisions on these nominees.

I want to thank you for your hasty consideration.

Senator KENNEDY. Fine. We will move to the first nominee, Justice Susan Black, Jacksonville, FL. Both Florida Senators are here.

Judge Black, we are glad to have you back. I remember you very well. I was chairman of the Judiciary Committee the last time you were approved, and your hearing was chaired by a very good friend of mine, Senator Culver.

We are delighted to welcome our two friends and colleagues from Florida. We are glad to hear from them at this time.

Senator Graham.

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

Senator GRAHAM. Thank you, Mr. Chairman.

Mr. Chairman, it is a special honor to be here today to introduce Susan Black, of Jacksonville, FL, who has been nominated to be a member of the eleventh circuit.

I congratulate the President on recommending such a fine individual for the Eleventh Circuit Court of Appeals, and this committee to move this nomination in such timely fashion.

Judge Black has a long list of impressive legal credentials, including study at some of Florida's finer institutions of higher education. She earned her bachelor's degree at Florida State University, in Tallahassee, and a law degree from the University of Florida.

After a short stint as a public school teacher, Ms. Black became an assistant general counsel for the U.S. Government with the Army Corps of Engineers. The Jacksonville State Attorneys Office recognized her skills and recruited her to join its staff as an assistant State attorney.

In 1972, she went to work representing the city of Jacksonville, as assistant general counsel. Soon thereafter, she was elected county court judge in Duval County, where she served until 1975, when the citizens of Duval, Clay, and Nassau Counties voted to elevate her to the bench of the Fourth Judicial Circuit of Florida.

In 1979, Judge Black was tapped by the Carter administration to join the Federal judiciary as a judge in the Middle District of Florida. In 1990, she became chief judge of the district, a position that she holds today.

The committee is aware of the numerous honors which have been bestowed upon Judge Black for her academic and legal achievements. I would just like to mention a few items the committee may find of interest.

Judge Black has been involved for some time in efforts to improve court management, an initiative which I know this committee has strongly endorsed. As chief judge of the middle district, Judge Black has been an advocate for the judiciary and helped sensitize policymakers on issues important to the Federal courts.

She has a solid background on the corrections issue, having lectured and prepared articles on the subject. While I was Governor, Judge Black oversaw a major case which led to the development of significant corrections policies for the State. I was impressed with her handling of this complex issue.

She has also been a leader in legal education, particularly in the training of judges. In the 1970's, she served as dean of the Florida

school established for the purpose of training new State trial judges.

Mr. Chairman, Senator Thurmond, I am confident that the committee will find Judge Black a qualified nominee for the eleventh circuit, and I look forward to supporting her nomination in the full Senate at the earliest possible date.

Thank you.

Senator KENNEDY. Thank you very much.

Senator Mack.

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

Senator MACK. Thank you, Mr. Chairman.

First of all, let me commend you for holding this hearing. It is important for Florida and for the eleventh circuit that this hearing go forward.

I wonder if it is appropriate at this time that Judge Black introduce her husband and daughter.

Senator KENNEDY. We are delighted to have them presented.

Judge BLACK. Thank you.

My husband, Lou Black, my daughter, Lee Elizabeth Black, and also my mother, Elizabeth Harrell, are here with me, and I have cousins and my Uncle Bill, my mother's brother, William Phillips is also here.

Senator KENNEDY. We are delighted to welcome them. I know how proud they must be, and we are privileged to have their presence here this morning.

Senator MACK. Thank you, Mr. Chairman.

I am pleased to be here today, as the Senate Judiciary Committee considers the nomination of the Honorable Susan H. Black to the Eleventh Circuit Court of Appeals. Judge Susan Black, who currently serves as Chief Judge of the Middle District of Florida, is a person of exceptional capability and integrity, recognized for her accomplishments, both as an attorney and as a judge.

Susan has earned many honors and awards, including the University of Florida's distinguished alumnus award and the Florida Publishing Co. Eve Award. She is also a member of Florida Blue Key and the University of Florida President's Council.

As well as being an excellent example for all lawyers, Judge Black is a special role model for women in the legal profession. She was Jacksonville's first female prosecutor, assistant city general counsel and county judge. In 1979, she became Florida's first female Federal judge.

Judge Black has given generously to the legal community. Literally dozens of committees have benefited from her experience and insight, including both the Florida Civil and Criminal Procedures Rules Committee, the committee on court administration and case management, and the committee on judicial improvements. She has been a strong presence in the area of continuing legal education and is a member of the judicial administration division of the American Bar Association and of the eleventh circuit and the Florida State-Federal Judicial Councils.

In closing, I believe that Susan's 20 years of service to the State and Federal judiciary, the respect and admiration she has earned from her colleagues and community, and her commitment to judicial restraint indicate that she is well qualified to fill this vacancy on the eleventh circuit.

I am confident that she will continue to be an asset to the Federal judiciary, and I urge the committee to vote favorably on her nomination.

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much.

I see our colleague Senator Moynihan here. Judge Black, with your patience, we will hear from Senator Moynihan and other Senators that are here to make presentations, and then come back and consider your nomination.

Judge BLACK. Thank you, Mr. Chairman.

Senator KENNEDY. We thank our colleagues for their presence here.

Senator GRAHAM. Thank you, Mr. Chairman.

Senator MACK. Thank you, Mr. Chairman.

Senator KENNEDY. Senator Moynihan.

STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator MOYNIHAN. Mr. Chairman, Senator D'Amato cannot be here at the moment, but both of his nominees are here, so we have two, if I might ask to indulge your patience and bring them both forward.

Senator KENNEDY. Please do.

Senator MOYNIHAN. Ms. Sotomayor and Ms. Preska.

Now, this is a happy moment for a New York Senator to have two judges before this committee. Senator D'Amato will be here later, Mr. Chairman and Senator Thurmond, but if I can, I would simply like to introduce these distinguished nominees.

I think in terms of rank order of nomination, Ms. Sotomayor is first. As you know from the papers you have, she is a graduate of Princeton University, where she received the M. Taylor Pyne Honor Prize for the graduating senior who best demonstrated the qualities of scholarship and concern for the community. If you are Princeton, it is the last thing that can happen to anyone that matters.

She went on to do other things. She went to Yale Law School and was an editor of the Yale Law Journal. After graduating from law school she worked as an assistant district attorney in Manhattan. Since then she has continued to practiced in the city of New York and has been active in a whole range of activities. She is a member of the board of directors of the New York State Mortgage Agency, and also of the Puerto Rican Legal Defense and Education Fund and the New York City Campaign Finance Board, and she comes highly recommended by a bipartisan group that has for 15 years now been choosing nominees that I have brought to this committee.

Ms. Preska is a graduate of the College of St. Rose, in Albany. She is an Albanyan. She went to Fordham Law School and then to

New York University Law School, where she studied international trade and took an advanced degree. She practiced in the city of New York and has been active in community affairs there.

I would like to say that she is accompanied here this morning, just as a form of fellowship, by Lloyd Abrams, one of the most distinguished first amendment lawyers in our generation, and he is happy to be associated with this very able nominee.

I commend them to you, sir, and to Senator Thurmond, and I think I had best stop talking there, because I do not think I have made any major mistakes yet.

Senator THURMOND. We thank you very much for your presence.

Is Senator D'Amato going to be here, do you know?

Senator MOYNIHAN. He will be here and it will be a bit later, sir.

Senator THURMOND. At least he endorses them highly, I understand. He spoke to me about it.

Senator MOYNIHAN. Most assuredly. He knows them personally and, in the case of Ms. Preska, he——

Senator THURMOND. Thank you for your presence.

Senator KENNEDY. Thank you very much, Senator Moynihan.

Senator MOYNIHAN. Thank you, Mr. Chairman.

Senator KENNEDY. We are delighted to welcome you to the committee and we certainly appreciate your good words of endorsement and support of the nominees.

We will move along with the nominees. If our colleagues come in, with the patience of the nominees, after we conclude the questioning, we will recognize them for whatever brief comments that they might have to make.

We will go back to Judge Black. Would you rise and raise your hand, and we will swear you in: Do you swear that the testimony you give is the truth, the whole truth, and nothing but the truth, so help you, God?

Judge BLACK. I do.

TESTIMONY OF HON. SUSAN H. BLACK, OF FLORIDA, TO BE A U.S. CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

Senator KENNEDY. I noted with interest, Judge Black, your opinion in the *DeBailey* v. *Lynch-Davidson Motors* case, involving section 1981. That law bans race discrimination in the making and enforcement of contracts.

In the *Patterson* case in 1989, the Supreme Court cut back on the scope of section 1981, holding that it did not prohibit race discrimination in the terms and conditions of a contract, once it was made. And you found in the *DeBailey* case that the plaintiff, who had been denied a promotion because she claimed that she had been the victim of racial and sexual harassment, could maintain her suit, in spite of Patterson.

As you know, the Civil Rights Act of 1991 overruled the *Patterson* case. Would you share with us your views on the *Patterson* decision and on Congress' response to it, based on your experience in the *DeBailey* case?

Judge BLACK. Mr. Chairman, the *Patterson* case, in my reading of the case, cut out a very narrow exception, and that is——

Senator THURMOND. Speak into the microphone, if you would, please.

Judge BLACK. During the course of employment, if an employee was offered a new position that was as completely different position than previously held, there would be a cause of action under 1981, even after the *Patterson case.* The facts in the *DeBailey* case supported that narrow exception, and so in that case, the employee was permitted to maintain the cause of action. The reasoning in *Patterson* was that it created a new contractual relationship between the employee and the employer.

Senator KENNEDY. Many of us found the *Patterson* decision to be an erroneous interpretation of the law. As a circuit court judge, would you consider yourself bound by the Supreme Court decisions, even though you might personally believe some of those decisions were incorrect?

Judge BLACK. Yes, sir.

Senator KENNEDY. What were the most important lessons you learned from your tenure as a district court judge, and how do you think that experience would help you in the court of appeals?

Judge BLACK. I think I understand what happens when a record is made. I can read a record and it comes alive to me, and I think that probably will be the greatest assistance to me.

Senator KENNEDY. Senator Thurmond and I were very active in fashioning and shaping the Sentencing Commission, in an attempt to try to get some consistency and predictability in sentencing. It was not the desire to require greatly additional sentences. We were trying to at least get some consistency in their application.

In recent times, there have been a number of additions to the sentencing laws, in terms of mandatory minimums. I have serious reservations about those, in terms of what it does, in terms of skewing the court docket, as well as what happens in terms of who is actually sentenced. Nonetheless, that is an issue for another time.

The Commission itself, in its report last year, found that many of the mandatory minimum sentence statutes under the criminal sentencing guidelines have never been used by the prosecutors. Further, the report found that many people charged and convicted under mandatory minimum sentencing provisions avoid the required prison terms through plea bargaining.

Have you formed any opinion, generally, about mandatory minimums and the impact that it does have?

Judge BLACK. I have a general sense. I do not know if I have an opinion. I believe that the mandatory minimums, that sentence has been given by me often in the court I preside in, and I have a sense that the prison population, if what is happening before me is happening before the rest of the judges in the country, the prison population will be growing quite a bit, because with no parole, the mandatory minimums are mandatory.

Senator KENNEDY. Well, we would be interested, if you had suggestions for us on that, as you serve. I think you were on the Administrative Conference, were you?

Judge BLACK. Yes.

Senator KENNEDY. I noticed in your background that you worked with your parish's outreach assessment committee. I am interested

in what people are doing in the pro bono work or work within their community. I think it helps one's understanding of what is happening in the real world.

This group, as I understand it, identifies the needs of children and the elderly in the community and, in response to a report by the committee of the local church, established summer programs. Could you tell us a little bit about it?

Judge BLACK. The church is a very old church and it is in a changing neighborhood. We have had a difficult time bringing the neighborhood into the church, and so we decided that one way to do that would be to establish outreach programs for the children in the neighborhood. Many single parents live in the neighborhood, and so we started programs on the weekend and fashioned them as arts programs, not baby-sitting or day care, but substantive programs. It has been very successful and has brought children into the church.

Senator KENNEDY. You also, as a State court judge, had concern that there were no alternatives to sentencing available for women, even though men could be placed in a probation residence program. You were involved in developing a program for women like that?

Judge BLACK. Yes, sir.

Senator KENNEDY. Could you tell us a little bit about that?

Judge BLACK. This was many years ago. We had alternatives to incarceration in the State of Florida, and available to us were halfway houses for men. We had a female defendant and we had no place to put the individual, except institutionalize in prison or on probation, and so I worked with the probation department in establishing that program.

Senator KENNEDY. Has it worked pretty well?

Judge BLACK. Yes, sir.

Senator KENNEDY. That is very commendable.

I also notice that you are an active member of the advisory board of trustees at the Jacksonville Health Education Program, to provide interns and nurses for large northeast Florida hospitals serving the indigent.

Judge BLACK. Yes, sir.

Senator KENNEDY. You have a very solid recommendation, not only from our friends and colleagues from Florida, but also from all of the local organizations whom you have been working with over a period of years, and I think your involvement in the community is certainly something that I find personally very impressive, and I would be delighted to support your nomination for the circuit.

Thank you very much.

Judge BLACK. Thank you, Mr. Chairman.

Senator KENNEDY. We will go to Ms. Sotomayor.

While you are standing, do you swear that the testimony that you will give is the truth, the whole truth, and nothing but the truth?

Ms. SOTOMAYOR. I do, Senator.

TESTIMONY OF SONIA SOTOMAYOR, OF NEW YORK, TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Senator KENNEDY. We welcome you to the committee.

Your commitment to pro bono activities has really been very impressive. Could you tell us a little bit about those activities? Then we are going to ask you how you can convince lawyers of the need to make real commitments to public services. But tell us about your activities.

Ms. SOTOMAYOR. Senator, I have been a member of the board of directors of the Puerto Rican Legal Defense and Education Fund for about 12 years now. I have served in various capacities on that board, including its first chairperson and the head of its litigation and education committees.

I am sure you know of PRLDEF and its important work in promoting the civil and human rights of Hispanics, particularly of Puerto Rican background. PRLDEF was instrumental in establishing the Espira Board of Education case, which promoted bilingual education in the public school system. I personally, in my work for the fund, have been involved in not selecting cases, because, board of directors or not, but in directing its policies.

In particular, in recent years, we have been turning our attention to housing issues, which segues into my other involvement with the State of New York Mortgage Agency. That agency provides lower than market rate mortgages for first-time homeowners. Those homeowners are governed by certain Federal income limitations, and the mortgages we attempt to target to blighted areas throughout the State of New York.

The second component of that program involved providing mortgage insurance for development projects where private banking will not step in. The board, during my 4- or 5-year tenure, has developed a low-income mortgage availability project. A key component recently has been to assist families with closing costs, which is one of the greatest difficulties in purchasing homes today.

I have also been involved in the foundation and development of the New York City campaign fund, which is modeled partially, but somewhat significantly differently than the Federal campaign fund.

I have been involved in the Stanley Heckman Scholarship Committee and the Maternity Center Association of the State of New York.

In answer to your second question, I as an individual believe that those of us who have opportunities in this life must give them back to those who have less. It is never easy to encourage others to do the same, but I do think it is important for public figures, for legal educators, for the bar to constantly and repeatedly encourage public service. As you know, the ABA has made it part of its professional code, and almost all of the State codes have done the same.

Senator KENNEDY. I should have asked you, do you have any family here?

Ms. SOTOMAYOR. I do, Senator.

Senator KENNEDY. We would be delighted, if you would introduce them, and if they would stand, we would appreciate it.

Ms. SOTOMAYOR. There is my mother, Salina Sotomayor, our friend, Domar Lopez, my Princetonian college roommate, Mary Cadette, two of my dearest friends, Don Cardi and Ken Kinser. And just in back of them, my brother, Juan Juiso Sotomayor, my sister-in-law, Tracy Sotomayor, and my somewhat shy niece, Kia Sotomayor.

Senator KENNEDY. Very nice. Well, we are glad to have them here.

Do you have intentions of continuing your activities?

Ms. SOTOMAYOR. Well, we are restricted by the Judicial Code from doing that. We are permitted to serve in charitable institutions, and I would presume, given my inclination, that I would.

We are also permitted to serve in judicial professional organizations or legal organizations, and I will continue in that way.

Senator KENNEDY. A good deal of your recent practice has been devoted to enforcing the trademarks of products against counterfeiters. These laws are in this committee's jurisdiction. Do you have any comments about the adequacy of those laws, or any suggestions?

Ms. SOTOMAYOR. I answer that on two levels. There are some strengthening of the laws that could be made. In fact, the International Anti-Counterfeiting Coalition has made many suggestions to this committee that I endorse, as well.

I think, on a more practical basis, the greater problem is not the law, although it does need some changes, but the fact that there are not enough resources for prosecutors to bring very important cases against violators of the law, and so it is one of those unfortunate situations, as many others, where more pressing problems of our society are not permitting the effective use of existing laws.

Senator KENNEDY. Is that both, do you think, on the trademarks and also with regard to prosecuting counterfeiters, as well?

Ms. SOTOMAYOR. Yes, sir. The numbers are just terribly small.

Senator KENNEDY. I note that you are on a selection committee for a trust that awards scholarships to minorities and first-generation immigrants. We have been working in the Congress for the past 2 years on a bill to overhaul the laws on Federal aid to college students. I am chairman of the Human Resources Committee, and we are in conference now on the higher ed bill. Do you have any suggestions for us about changes in the law?

Ms. SOTOMAYOR. No, Senator. It is not an area that I, unfortunately, have studied with any extensive attention. I served on this committee, because I thought its work was important.

Senator KENNEDY. Do you find that there is great need out there for that kind of scholarship program?

Ms. SOTOMAYOR. Increasingly, and particularly for minorities and low-income families. With many higher education institutions suffering tremendous financial losses, one of the first areas, unfortunately, that they cut is scholarships and that does affect the already disaffected portions of our society.

Senator KENNEDY. Well, I see that you have written the statehood and the equal footing doctrine in the case for Puerto Rico seabed rights. The issue of the Seabed Treaty was always something that was kind of interesting personally to me. Elliot Richardson was very much involved in working on that issue. It never

reached fruition, but it is interesting that you have been interested in that program, as well.

I want to say that we are enormously impressed with your qualifications and the very positive reaction that all the members of the bar have had in support for your candidacy, and I look forward to supporting it in the committee and on the floor. Congratulations.

Ms. SOTOMAYOR. Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much.

Ms. Preska, we are delighted to have you here.

I want to tell Ms. Keeley that we have not forgotten about you.

Ms. PRESKA. Thank you, Mr. Chairman.

Senator KENNEDY. Would you stand, please: Do you swear that the testimony that you give this committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. PRESKA. I do, Senator.

TESTIMONY OF LORETTA A. PRESKA, OF NEW YORK, TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Senator KENNEDY. Perhaps you would introduce any of your guests or family.

Ms. PRESKA. Thank you, Senator.

I would like to introduce my husband, Thomas Kavaler, my children, Matthew and Kathryn.

Senator KENNEDY. Do they want to stand up? Are they missing school today? [Laughter.]

Ms. PRESKA. It is a great treat for them to be here.

Senator KENNEDY. We are delighted.

Ms. PRESKA. My friend and mentor, Floyd Abrams, my father, Victor Preska, my friends, Peggy Brown and her husband Jim Brown. My friends, Lawrence Houseman and Joyce Ozenberg. My friend David Rigney is in the back of the room, and my cousins Mary Louise and Fred Barnes are here, as well.

Senator KENNEDY. Very fine. You are all very, very welcome.

Ms. PRESKA. Thank you, Senator.

Senator KENNEDY. Ms. Preska, community service is a fundamentally important activity for all Americans, particularly for attorneys, and I notice that you recently received the Lefkowitz Public Service Alumni Award of the Fordham University School of Law Public Interest Resource Center. Would you tell us how you came to receive the award and about your pro bono activities, generally?

Ms. PRESKA. I would be happy to, Mr. Chairman.

Fordham has just begun a public interest resource center and a group of approximately a dozen alumni provided the initial funding of over $1 million for that center. My husband and I were two of those alumni, and the funding has gone for and will go for activities from legal services to soup kitchens, the whole range of activities.

It has also been supported very heavily by the students, who just this past spring raised $37,000 themselves, through a goods and services auction at the law school. But it is the feeling of the Fordham Law School, and particularly Prof. Constantine Cartores, who is running the public service interest group, that, as Ms. Sotomayor

said, it is time for people in the legal profession to give something back and are very committed to doing so.

Senator KENNEDY. I notice that you have served over the last 20 months, on a pro bono basis, you served as a special trial counsel for the departmental disciplinary committee in the New York Appellate Division. Could you tell us a little bit about that?

Ms. PRESKA. I would be happy to, Mr. Chairman.

The departmental disciplinary committee is in New York in the first judicial department, the body which disciplines lawyers. The committee staff is essentially the prosecuting staff for a lawyer about whom a complaint has been received.

What I did was I volunteered to essentially take one of the cases on which the staff was working. As it turned out, it was a rather complicated case, it required quite a bit of briefing. I did the briefing, I presented the evidence to the panel, the hearing panel of the committee on behalf of the staff, so essentially I acted as the prosecutor on behalf of the disciplinary committee with respect to a complaint received by a lawyer. It did take some time, but I must say that it was very satisfying work.

Senator KENNEDY. Do you have ideas about how to increase public service among the members of the bar?

Ms. PRESKA. I think, first of all, that the bar associations, and particularly the association of the bar of the city of New York, of which the new incoming president is Dean John Farek of the Fordham Law School, Dean Farek has made it part of his agenda to encourage more lawyers to bring public service into the front of lawyers' minds, to encourage them to do it, to provide the resources to permit them to do it, and also to provide, if you will, matching services, to provide a lawyer with particular qualifications with a project to work on that is appropriate to those qualifications.

Senator KENNEDY. That is certainly encouraging to hear.

I see you have written about alternatives to trial available for litigants. I also see that you have broad experience with one such alternative, arbitration. How do you plan on using alternatives to trial to help resolve lawsuits pending in your courtroom?

Ms. PRESKA. The Southern District of New York has adopted a plan pursuant to the Judicial Improvements Act, which, among other things, encourages and requires judges to make available and to advise litigants of the availability of various alternative dispute resolutions.

One of the planks of that plan is that, in cases designated as expedited in the southern district, there will be a mandatory alternative dispute resolution program provided for those cases, to see how it works. But it certainly should be mentioned the southern district has required its judges to mention it early and often.

Senator KENNEDY. Are you a supporter of that kind of resolution?

Ms. PRESKA. I certainly think it is very useful, Senator, particularly in these days where litigation has become so expensive for the parties.

Senator KENNEDY. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Ms. Preska, I congratulate you upon your selection by the President to fill this position and in having the endorsement of your Senators from your State.

Ms. PRESKA. Thank you, Senator.

Senator THURMOND. You have been a practicing attorney, I believe, since 1974.

Ms. PRESKA. That is correct.

Senator THURMOND. I noted, in reviewing your file, that your experience has been primarily civil in nature, is that correct?

Ms. PRESKA. That is correct, Senator.

Senator THURMOND. Have you taken some steps to prepare yourself for the criminal caseload that awaits you at the Federal district level?

Ms. PRESKA. Indeed. If I am fortunate enough to be confirmed by the Senate, I have already begun studying the materials made available by the Federal Judicial Center relating to criminal matters. I have also registered for the next judges course offered by the Federal Judicial Center, and a good deal of that is devoted to criminal matters.

In addition, I have been very happy to accept the offers of some of the judges sitting on the southern district today who are experienced in criminal matters, of their experience, of learning some of their tips as to how to begin. But I certainly have undertaken the study.

Senator THURMOND. Ms. Preska, the phrase "judicial activism" is one of interest to me. It is often used to describe the tendency of judges to make decisions on issues that are not properly within their scope of authority. Some judges have taken over school district, have taken over prisons, and have taken over other institutions of the State. I just wonder what this phrase "judicial activism" means to you.

Ms. PRESKA. Senator, I think judicial activism occurs when a member of the judicial branch appropriates to himself or herself powers which are properly those of another branch, of the executive branch or the legislative branch, or when a member of the judiciary decides an issue which is not before that particular judge.

I do not think I could do better than recalling the Supreme Court's warnings in *Askwon* v. *Tennessee,* where the courts were warned that Federal courts are courts of limited jurisdiction and should endeavor on all occasions to decide issues, decide cases on the narrowest possible grounds.

As, of course, members of this body are particularly aware, one of the reasons for that is that the Federal judiciary is the least well-equipped branch to investigate facts and to make policy, and, thus, I would hope to always have those exhortations in mind, if I am fortunate enough to be confirmed.

Senator THURMOND. In our tripartite system of government, the Congress, under the Constitution, makes the law. The President, as the Chief Executive, enforces the law. The judiciary interprets the law. The judiciary has no authority to make law, but some of the judges seem to think so and have taken some steps along that line, to which I am bitterly opposed. Do you agree with my interpretation?

Ms. PRESKA. I certainly do, Senator. Indeed, I do think the cornerstone of our system of government is that each of the three branches has its powers, duties, and responsibilities and they need to respect them.

Senator THURMOND. Ms. Preska, there is frequently a conflict between the deeply felt views of a Federal judge and the constraints of judicial precedent. Would you tell the committee how you would resolve the tension between your personal views and precedent?

Ms. PRESKA. Senator, I think that it is the job of a Federal judge, particularly a district court judge, to apply the law as set out by the Supreme Court and, in this instance, the second circuit. I believe that the judge's personal views should not play a part in that. The job of the judge is to apply the law as set out.

Senator THURMOND. Thank you very much. I will be very pleased to support you, and I hope you enjoy your career on the bench.

Ms. PRESKA. Thank you, Senator.

Senator THURMOND. Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much. I look forward to supporting your nomination.

Mr. PRESKA. Thank you, Mr. Chairman.

Senator KENNEDY. We will have Ms. Keeley of Clarksburg, WV.

Would you rise: Do you swear that the testimony you will give is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. KEELEY. I do.

TESTIMONY OF IRENE M. KEELEY, OF WEST VIRGINIA, TO BE A U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

Senator KENNEDY. Both Senator Rockefeller and Senator Byrd had hoped to be here, but are unable to do so. I have a brief statement of Senator Byrd in support of your nominations, and I will take a moment to—do you want to introduce the members of your family?

Ms. KEELEY. I will, Senator Kennedy. But I must warn you, I am from a large Irish family and many of them are here.

Senator KENNEDY. I am used to that. [Laughter.]

Ms. KEELEY. My husband Jack, my daughters Megan, Irene, and Kathryn, my parents John and Irene Murphy, and my father served under Attorney General Kennedy in the Justice Department.

Senator KENNEDY. I knew the President had good judgment when he nominated you. [Laughter.]

Ms. KEELEY. My husband's father and mother, John and Evelyn Keeley. I am just taking up room here. My brother Thomas Murphy and his wife Mary. My brother is a lawyer in Maryland. My sister Kathleen Callender and her daughter Holly. My nephew Colin Harrington, my niece Joanne Altmeyer. My husband's brother, Tom Altmeyer. My sister-in-law, Dorothy Keeley and Martha Beckler and her husband Richard Beckler. My sister-in-law and brother-in-law, John Warren Harrington, and my very close friend and neighbor, Althea Drosland.

Senator KENNEDY. Fine. We welcome all of you.

Ms. KEELEY. If I have forgot any of them, I know they will tell me.

Senator KENNEDY. That is very nice. It is a special day, I know, for all of them, as well as yourself.

This is the statement of Senator Byrd:

I am pleased today to offer my support of the nomination of Irene Patrick Murphy Keeley of Clarksburg, West Virginia, for the new judgeship on the bench of the Federal Court of the Northern District of West Virginia.

Ms. Keeley is a native of New York City—Brooklyn, to be more specific.

She earned her B.A. degree from the College of Notre Dame of Maryland in the City of Baltimore. Subsequently, Ms. Keeley taught in the secondary public schools of Prince George's County, Maryland, and Harrison County, West Virginia, and was a substitute teacher in the Catholic School System of Harrison County.

In 1977, Ms. Keeley earned her Master of Arts degree from West Virginia University, and in 1980, her Juris Doctor degree from the West Virginia University College of Law.

In May 1980, Ms. Keeley joined the distinguished law firm of Steptoe & Johnson as an associate in its litigation group, and became a partner in that firm in January 1985.

In her nearly dozen years as an attorney, Irene Keeley has practiced throughout a number of counties comprised by the Northern District of West Virginia and has won both the admiration and respect of her colleagues and clients in that area, as well as the recognition of members of the bar throughout West Virginia as a distinguished jurist.

To her added distinction, Ms. Keeley has served as an Adjunct Professor in the College of Law at West Virginia University, and has published scholarly legal papers in the West Virginia Law Review.

Further, Ms. Keeley has earned an enviable reputation in the field of medical malpractice and health-care law, and is recognized as an authority in those areas of the law.

Ms. Chairman, Ms. Keeley comes before this committee with recommendations for confirmation from several respected legal colleagues and citizens in the area that she would serve, and I am confident that she would bring to the bench judicial intellect, solid legal scholarship, a warm and mature personality, a deep sense of integrity, and a seasoned practical judgment.

I urge the committee to expedite Ms. Keeley's nomination, and I look forward to witnessing the exemplary career that I know that she will carve out for herself in the years ahead.

And we will include a statement from our friend and colleague, Senator Rockefeller, as well.

[The prepared statement of Senator Rockefeller follows:]

The Honorable JOhn D. Rockefeller IV
Introduction of Irene Keeley
Judiciary Committee
United States Senate
June 4, 1992

-- Mr. Chairman, Members of the Committee, I thank you for the opportunity to introduce Irene Keeley for confirmation to the United States District Court for the Northern District of West Virginia, and I commend the President on this appointment. I have known Irene for several years, and am proud to call this bright, energetic, and unique individual a friend.

-- But Irene is more than a friend. She's an outstanding West Virginian, a caring wife and mother, and someone who isn't satisfied watching from the sidelines. She is involved in her community and is a leader in our state. She's a problem solver, a conciliator, and a fighter against injustice.

-- I came to know Irene through a mutual concern over the need for meaningful health care reform ---- a topic about which she feels passionately. She cares about people and she understands the role of public policy in making their lives better.

-- I think the proof of the kind of judge Irene Keeley will make lies in the kind of experiences she has had throughout her life. She has taught elementary school children, as well as law students. As an active member of the West Virginia State Bar, she has chaired the Committee on Law and Medicine and an ad hoc committee to reform state court procedures involving child abuse cases. Currently she serves on her community's United Way organization and Chamber of Commerce. In short, her life represents a series of decisions that reflect a sincere commitment to the public good and a compassion for others.

-- She brings the perspective of a woman to a federal bench that is in notably short supply of such. But more than that, she will be a fair, capable jurist ---- one who will make me and other West Virginians proud.

-- Again, Mr. Chairman, I thank you for the opportunity to speak on behalf of a fine person whom I know will make an excellent judge.

Senator KENNEDY. I note, Ms. Keeley you have been active in the area of health care law. You have chaired a committee that drafted legislation that was ultimately adopted in West Virginia regarding health care powers of attorney and living wills. You have been involved in speaking to local organizations to educate members of the general public about the use of these provisions.

Working with your own Senator Rockefeller and many others, I have been very actively involved in trying to address the health care crisis at the national level. Would you share your thoughts with us on whether Congress ought to consider proposals addressing the issues of health care powers of attorney and living wills?

Ms. KEELEY. Well, Senator Kennedy, in 1991, as part of OBRA, the Congress, as you are aware, did pass what we call the Patient Self-Determination Act, which has, in my opinion, moved the use of advanced directives dramatically to the forefront in all health care facilities throughout this country, and that is all to the good, because, as the Supreme Court has said in *Cruzan* versus *Missouri*, each of us has the right to determine the manner of health care that we will receive, and only through advanced directives can we be assured of that right being exercised appropriately.

Senator KENNEDY. We have the Danforth amendment, which requires hospitals to advise patients of their rights in this area that you are referring to.

Ms. KEELEY. Yes, and hospitals that I advise have moved aggressively not only to advise patients of their right, but also to make available to them the counseling that is necessary, should they wish to execute those documents, and I believe that physicians are now encouraging patients, as part of their office practices, to look into these documents, because it assists physicians in knowing what care the patients wish to receive.

Senator KENNEDY. Well, is there more that we ought to be doing on this in Congress, do you think?

Ms. KEELEY. I believe that, as part of the Medicare Program, Congress has in place the oversight necessary to assure that hospitals and other health care providers are in compliance with these activities. I believe now it is up to the public to become educated and, as part of the Danforth amendment, that education package is in place. Funding is probably the critical issue.

Senator KENNEDY. For what; developing the programs?

Ms. KEELEY. Developing the educational programs at the local level. Many States, such as my own, which are very well-intentioned in that area, can only do a limited amount.

Senator KENNEDY. Well, that is interesting to know.

Since 1987, you have served as a member of the West Virginia Bar Special Committee on Professionalism. You wrote in your response to the committee's questionnaire that the committee was organized to address the bar's concern that lawyers have grown increasingly dissatisfied with their profession. While active, the committee did develop a voluntary code of professional courtesy which was adopted by the bar and disseminated to the membership. Would you tell us about the code of professional courtesy and give us your impression of how well it has worked?

Ms. KEELEY. I believe it has made a difference, Senator Kennedy, and I believe it was a very timely and important document. As a

litigator, I am aware of the pressures that each of us feels in the course of long and sometimes protracted discovery, and, as trial dates move around and do not always hold, sometimes our courtesy to our fellow attorneys may slip.

The code of professional courtesy stands as a reminder both to attorneys and judges, that we are professional and that we should deal with each other in that fashion, even when the pressures of our jobs may, in fact, threaten to overtake that courtesy.

Senator KENNEDY. You have had a limited background in dealing with the criminal laws issues. How do you propose to sort of get up to speed to deal with complex criminal matters that you might face?

Ms. KEELEY. Senator Kennedy, that is correct. I dealt with criminal matters on an appointed basis on the State level, but I have very little criminal experience in the Federal arena. However, should I be fortunate enough to be confirmed, I have already initiated a process of education, including the application for videos and tapes from the Federal Judicial Center.

My chief judge, Judge Robert Maxwell, has very graciously asked me to meet with him and his staff, has forwarded the sentencing guidelines to me. I have been fortunate enough to sit in on sentencings and pleas with him in recent weeks since my nomination, and I am moving aggressively to become more completely educated about the criminal law matters.

Senator KENNEDY. That is certainly very encouraging.

I noticed your very impressive work for the disadvantaged. The committee staff report states that, since 1989, you have served as a member of a Guardian Task Force of West Virginia, spending between 500 and 600 hours working on a legislative agenda and public education programs of the task force, those working with citizens groups and individuals are referred by the State bar on the issue of advanced directives. What is the advanced directives?

Ms. KEELEY. Well, the advanced directives are the living will and the medical power of attorney.

Senator KENNEDY. Fine. Then you have served on the United Way of Harrison County, worked to increase funding for agencies serving women in crisis, the homeless and addicted, and have volunteered and spent a good deal of time on United Way, as well, all of which I think is enormously impressive and very positive.

I do not know whether you have ideas about how we can encourage that kind of voluntary service by members of the bar.

Ms. KEELEY. Mr. Chairman, I believe that with the ABA emphasis on pro bono activity, that more and more members of the bar will return to the community the advantages that we in the legal profession have. Certainly, the bar is aware of the Congress' strong emphasis in this area, and I believe and I hope that my fellow attorneys will respond appropriately.

Senator KENNEDY. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

From 1965 to 1976, I guess you were rearing your children at that time, were you?

Ms. KEELEY. Senator Thurmond, I was rearing my oldest child Irene. I had to await law school for other children to come. I had a child in law school and one immediately following graduation.

Senator THURMOND. I notice that you graduated from the College of Notre Dame of Maryland.

Ms. KEELEY. That is correct.

Senator THURMOND. That is another Notre Dame. I did not know there was but one Notre Dame. [Laughter.]

Ms. KEELEY. Senator Thurmond, my husband Jack thinks there is only one Notre Dame, because he is a graduate of that Notre Dame, but we all know where the real one is.

Senator THURMOND. Those 11 years from 1965 to 1976, you were in the home at that time, or did you do any teaching or anything?

Ms. KEELEY. I was at home and teaching, yes.

Senator THURMOND. And teaching schoolchildren?

Ms. KEELEY. And teaching school, also.

Senator THURMOND. You have not got that down. That is a very fine thing, too.

Ms. KEELEY. Thank you. I agree.

Senator THURMOND. I taught school myself for 6 years and so I appreciate the teacher.

Do you see any difficulty in transition from an advocate to an impartial jurist?

Ms. KEELEY. No, Senator Thurmond, I do not. I take very seriously the honor it would be to become a Federal judge and would strive enormously to be impartial in all of my dealings with counsel and the parties that would come before me.

Senator THURMOND. Ms. Keeley, how would you handle an incident, say, in which counsel for one of the parties of your court was obviously not a skilled litigator or was not prepared to adequately represent the interests or his or her client?

Ms. KEELEY. Senator Thurmond, that question involves a balancing of the interests of both as a jurist not to interfere with the rights of the parties and counsel to determine the course of their litigation and develop their own theory of the case. But I believe that, as I wrote in the article I published in law school, that ineffective assistance of counsel is an important issue for a court to address and to prevent, before it deprives a criminal defendant, particularly, of his or her right to due process.

Were the counsel's activities of such a level as to deprive the defendant of his or her right to counsel, I believe it would be incumbent upon me, in my position as the court, to intervene and to try to prevent that from occurring.

Senator THURMOND. I do not think I have any other questions. I want to congratulate you on your selection by the President and having the endorsement of your Senators from your State, also. I would be glad to support you and I wish you well on the bench.

Ms. KEELEY. Thank you very much, Senator Thurmond.

Senator KENNEDY. Let me just ask you, I notice that you have done a great deal of work in the medical area. What is your own impression about the malpractice situation in West Virginia? We have seen increases in malpractice insurance over the last decade.

In the most recent time, I know in my State, most of the premiums have actually gone down somewhat, the ones with the highest premium have been the physician-anesthesiologist and the obstetrician, the ones that are generally the more active members of the medical profession. We have not seen great instances where the

medical profession has been willing to police itself in terms of malpractice. What is generally the condition in West Virginia, in terms of the medical profession policing itself in cases?

Ms. KEELEY. Mr. Chairman, as part of my practice, I have been very involved with physicians and hospitals that undertake peer review. I believe that part of the development of peer review has been a recognition on the part of physicians, particularly those emerging from the medical schools today, of their responsibility to police themselves, otherwise it results in the policing by the courts through the medical malpractice litigation, in which I have been involved.

I think it is very important, however, to recognize that, as you request physicians and hospitals to police themselves, there has to be some protection in terms of confidentiality for the process, because, otherwise, it could become a vehicle to an increasing amount of medical malpractice litigation.

In West Virginia, as you are aware, Mr. Chairman, Senator Rockefeller and others have addressed the crisis in rural health care that we are experiencing there, and in order to encourage physicians to both remain there and to relocate to West Virginia, balancing is important.

Senator KENNEDY. Well, it is an enormously complicated issue, because you have the rights of privacy and then whether doctors have rights in various hospitals, whether excluded, whether there is monopolistic kind of activity in excluding some of them, and then you have the whole question of privacy in medical records. It is very, very complicated and a matter of enormous importance, in terms of maintaining quality health care, and so it is an interesting experience you have, and I am sure that, as well as your other past experience, as a teacher and your many other activities in the community, you certainly bring broad understanding to the law.

Well, we want to congratulate you. We certainly look forward to supporting your nomination, and we are delighted to see your extended family.

Ms. KEELEY. Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much.

Senator D'Amato, we would be delighted to hear from you. We have listened to two very outstanding nominees. They are on the fast track, so we are glad to hear whatever additional information that you might want to give us.

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Let me say this, if they are on the fast track, I do not intend to say anything that might slow that down.

I am delighted to be here, Mr. Chairman, and I ask to incorporate in the record, as read in their entirety, the statements I have on behalf of Loretta Preska and Sonia Sotomayor. Both are outstanding nominees.

I might mention that, in the 11 years that both Senator Moynihan and I have been making recommendations to the White House, with the confirmation of Loretta and Sonia, this will bring seven women who will have been appointed to the Federal bench from

our State. Five have already been and are presently serving, and these two will bring that total up to seven, so I think we can be quite proud of that accomplishment, and we have at least one other who I believe is pending in the Justice Department at the present time.

I might say that I think both candidates bring something that we can be terribly proud of. They are children of immigrants, they bring esprit de corps, striving for excellence which they have achieved academically, professionally, and, in the very real sense, a great deal of credit has to go to their families.

I am not going to go further, but I have had occasion to speak to both Sonia last evening, a great, great story of what America can and is about, and the same thing with Loretta and her magnificent and wonderful family.

So in addition to their great backgrounds that they bring in terms of scholarship and their achievements before the bar, as practicing attorneys, I think they epitomize the best of America and I am delighted to be able to recommend both for speedy consideration and approval.

And I might say that the court certainly needs their talent as quickly as possible. The loads are increasing, and I thank the Chair for your consideration.

[The prepared statements of Senator D'Amato follow:]

Sonia Sotomayor

Mr. Chairman,

I am pleased to join my good friend and colleague Senator Moynihan in introducing Sonia Marie Sotomayor as a nominee by the President to be a United States District Judge in the Southern District of New York.

Presently a partner at the firm of Pavia and Harcourt, Ms. Sotomayor

is a Summa Cum Laude graduate of Princeton University and a graduate of Yale Law School, where she served as editor of the law school journal. Subsequent to law school, Sonia was an Assistant District Attorney for New York County for a period of five years prior to joining her present law firm in 1984.

I am pleased that Sonia has received the nomination of the

President and the recommendation of the Justice Department for this nomination and I am confident that your assessment will agree that she will be a fine addition to the Federal Bench.

Thank you, once again, Mr. Chairman, for moving so quickly on this nominee after the designation was made.

Loretta A. Preska

Mr. Chairman,

I am pleased to present for consideration by the committee Loretta A. Preska, who was nominated by the President for the District Bench, Southern District of New York. Loretta is a partner in the firm of Hertzog, Calamari & Gleason.

A native of Albany New York, Loretta is a graduate of the

College of St. Rose in Albany and of Fordham University School of Law in New York City. She is a noted litigator with a strong practice in commercial law, as well as securities and banking law. In her almost twenty years of practice she has refined that specialized training to a recognized expertise which will be a significant aspect to the court's capacities.

I ask the panel also to welcome

her father, Victor Preska, who joins her husband, Thomas Kavaler, and their two children, Matthew and Katherin, aged three and six respectively. They are as proud as I am that Loretta has been nominated by the President and that she is here in the Senate today. Proud because she is "family" and proud, too, that she is the first person of Lithuanian decent to be nominated to the Federal Bench in New York.

As an example of the sensitivity

which Loretta will bring to her duties, I want to quote from her letter to me on the occasion of her being called by the President.

"In contrast to the usual sterile office surroundings in which such calls are received, I took the President's call advising that he had followed through on your recommendation to nominate me to the Southern District in my Lithuanian father's home standing

next to the flag presented to us following the burial a year ago of my sister, a major in the Air Force. As you can well understand, it was particularly moving."

That is a measure of this nominee, Mr. Chairman: A proud American, an accomplished daughter, a successful wife and mother.

Mr. Chairman, I am confident that your committee will find that Loretta Preska has the professional stature and

personal qualities that will make her an outstanding Federal Jurist.

Thank you, Mr. Chairman, for the quick action taken by the committee on behalf of this nominee. The chief judge has impressed on me the desperate emergency in the courts and I am grateful for your speedy action.

Senator KENNEDY. Thank you very much, Senator D'Amato.

We know that you have gone out of your way to be here, as Senator Moynihan indicated that you would be coming later in the morning, and we are delighted to have you here, as well as our other colleagues, and we certainly agree with your assessment. We appreciate very much your willingness to be here with us.

Senator THURMOND. Senator, I want to congratulate you on recommending such outstanding ladies.

Senator D'AMATO. Thank you very much.

Senator THURMOND. I have always known you were a ladies' man, anyway. [Laughter.]

Senator KENNEDY. I am going to leave that alone. [Laughter.]

Senator D'AMATO. That is not in the record, I hope. [Laughter.]

Thank you very much, Mr. Chairman.

Senator KENNEDY. Thank you very much.

Senator Rockefeller, we are glad to have you here. We have had a very impressive response by the nominee and we have read into the record the excellent statement of endorsement of your colleague, Senator Byrd. We know that you want to make a comment and we are delighted to have you here.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator ROCKEFELLER. Mr. Chairman, I apologize. I was downstairs giving testimony in front of Senator Dodd's Subcommittee on Children, and Irene Keeley understood that. I apologize very much to the chairman.

I will make a two-sentence statement about Irene Keeley, to show the depth of my feeling for her and respect for her. I think she is one of the most impressive people I have ever met.

I have been in the Attorney Generals office twice in my life. The second time was to go on behalf of Irene Keeley, to talk to Attorney General Dick Thornburgh, because—and I have never done that before about anybody or anything, but I felt so strongly that she is so good and it was so important for her to be a Federal judge, that I wanted to do that.

The first and the only other time that I have ever been there, Mr. Chairman, was when I went to see your brother, the late Robert Kennedy, to discuss going to West Virginia as a VISTA volunteer, which he encouraged me to do.

So those are two pretty big visits, as far as I am concerned, and I hope that expresses in some measure my feeling about Irene Keeley.

Thank you.

Senator KENNEDY. Very fine. As I mentioned, we are very much impressed with her legal background and her extraordinary background and the variety of her pro bono work. It is certainly something that we are very interested in trying to encourage among those who are going to serve on the bench—being involved in pro bono work. It is interesting that virtually all of the nominees today have extraordinarily, impressive records in that area, and it is an excellent example for all the members of the bar.

Senator Thurmond.

Senator THURMOND. We are glad to have you here, Senator, and glad to get your high opinion of the nominee.

Senator ROCKEFELLER. Thank you.

Senator KENNEDY. Thank you very much.

Again, we appreciate all of our colleagues being here and we are delighted with the nominees, impressed by their qualifications, and I personally look forward to supporting all of them and urge our committee to act swiftly and do everything we can to move them along on the Senate floor.

Senator THURMOND. Mr. Chairman, I might just say that, in looking through the records of these fine ladies, I have been deeply impressed and I am glad to see the President choose some ladies for these positions.

Senator KENNEDY. The committee stands in recess.

[Whereupon, at 11:10 a.m., the committee adjourned.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Susan Harrell Black
Susan Sims Harrell

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

Home: 3530 St. Johns Avenue
Jacksonville, FL 32205

Work: United States Courthouse
311 West Monroe Street, Room 511
Jacksonville, FL 32202

P.O. Box 53135
Jacksonville, FL 32201

3. **Date and place of birth.**

October 20, 1943
Valdosta, 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 Louis E. Black, III

On November 19, 1989, my spouse sold Avondale Travel Bureau to United States Travel Service and signed a five-year contract to remain as President of Florida operations.

His office address is: 3651 St. Johns Avenue
Jacksonville, FL 32205

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

Ohio Wesleyan University, September 1961 - June 1962. Left to transfer to Florida State University.

Spring Hill College, Summer of 1962.

Florida State University, September 1962 - March 1965. Bachelor of Arts Degree, April 22, 1965.

University of Florida College of Law, April 1965 - August 1967. Degree of Juris Doctor, August 12, 1967.

University of Virginia School of Law, Summer 1982 - May 1984. LL.M Degree, May 20, 1984.

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.**

Assistant General Counsel, City of Jacksonville, 1300 City Hall, 200 East Bay Street, Jacksonville, FL 32202. 1972 - 1973

Assistant State Attorney, Fourth Judicial Circuit of Florida, 600 Duval County Courthouse, 300 East Bay Street, Jacksonville, FL 32202. 1969 - 1972

Assistant General Counsel, United States Government, Army Corps of Engineers, Federal Building, 400 West Bay Street, Jacksonville, FL 32202. 1968 - 1969

Civics Teacher, Ribault Senior High School, Jacksonville, Florida. September 1967 until December 1967

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.**

University of Florida Distinguished Alumnus Award
October 15, 1982

Kappa Kappa Gamma, National Alumnae Achievement Award (1980)

Outstanding Alumna Award, University of Florida Alumni Club of Jacksonville, 1977 - 1978 (February 28, 1978)

Florida Blue Key, University of Florida, Gainesville, Florida (1976)

Honorary Member, University of Florida Law Review Association (October 15, 1979)

Member, University of Florida President's Council (1982 - present)

Governor's Commission on the Status of Women (1973 - 1979)

Governor's Conference on Energy Supply and Use (appointed February 1973)

Florida Publishing Company "Eve Award" (1988)

Recipient of "Book" award (highest grade) in Constitutional Law, University of Florida College of Law, Gainesville, Florida (1965)

Honor List (academics), Florida State University, Tallahassee, Florida (1962 - 1964)

Delta Sigma Rho - Tau Kappa Alpha, National Scholastic
Debate Honorary (1963 - 1965)
Vice President (1964)

Pi Sigma Alpha
National Scholastic Political Science Honorary
(1964 - 1965)

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, Judicial Administration Division (1975 – present)
Member, National Conference of State Trial Judges (1975 - 1979)
Delegate to 1977 and 1978 ABA Convention (appointed by Chief Justice, Florida Supreme Court)
National Conference of Special Court Judges (1973 - 1975)
Florida Membership Chairman of the National Conference of Special Court Judges (1974)

The Judicial Conference of the United States

Committee on Court Administration and Case Management (1990 - present)

Case Management Subcommittee Member (1990 - Present)

Chair, PC/CHASER Subcommittee (computer assisted case management (1991 - Present)

Chair, Telephone Interpreting Project (1990 - Present)

Committee on Judicial Improvements (1987 - 1990)

The Eleventh Circuit Judicial Council

(1991 - present)

Florida State-Federal Judicial Council

(1990 - present)

The United States District Judges Association of the Eleventh Circuit

Member (1979 - present)

President (May 1987 - 1988)

President-Elect (May 1986 - 1987)

Vice President (May 1985 - 1986)

Secretary-Treasurer (May 1984 - 1985)

The Florida Bar

Member, Civil Procedure Rules Committee (1979 - 1982)

Member, Criminal Law Section (1976 - 1979)

Chairman, Criminal Jury Instructions Committee (1978 - 1979)

Member, Continuing Legal Education Committee - Manual on Evidence (1976 - 1978)

Chairman, Continuing Legal Education Steering Committee -Manual on Florida Criminal Rules and Practice (1976 - 1978)

Member, Criminal Procedure Rules Committee (1976 - 1979)

Chairman, Continuing Legal Education Steering Committee for Criminal Law Course (1976)

Chairman, Legislation Subcommittee of the Criminal Law Committee (1975)

Member, Criminal Law Committee (now the Criminal Law Section) (1972 - 1976)

Member, Special Committee on Liaison with Judiciary and Trial Lawyers (1977 - 1978)

American Inns of Court

Board of Trustees (1985 - 1991)

Chairman, A. Sherman Christensen Award Judging Panel (1991 - Present)

Chester Bedell Inn of Court
President (1985 - 1988, 1991 - present)
Executive Committee (1988 - present)

University of Florida Law Center Association, Inc.
Vice Chairman, Board of Trustees (1981 - 1988)
Member, Board of Trustees (1978 - 1988)
Member, Award and Scholarship Committee (1981 - 1988)
Member, Nominating Committee (1980)
Chairman, Nominating Committee (1981 - 1985)
Trustee Emeritus (1988 - present)
Law Center Council (1972 – 1978)

University of Florida College of Law
Visiting Alumni Committee (for accreditation review) (1981 – 1982)

The Jacksonville Bar Association
Co-Editor of Bar Bulletin (1972)

The Maritime Law Association of the United States
(1980 - Present)

National District Attorneys Association
(1969 - 1972)

Florida Prosecuting Attorneys Association
(1969 - 1972)

Council of State Governments
(1969 - 1972)

National Institute of Municipal Law Officers
(1968 - 1969)

Workshop for Judges of the United States Fifth and Eleventh Circuits
Member, Program Committee (1983)

Workshop for Judges of the United States Eleventh Circuit
Chairman, Program Committee (1982)

Supreme Court Committee on Standard Civil Jury Instructions
Appointed by Chief Justice, Florida Supreme Court (1978 – 1979)

State Parole & Probation Qualifications Committee

Appointed Chairman by Governor, State of Florida, to select three candidates for Governor's consideration to fill vacancies on Parole and Probation Commission (1977 - 1979)

Jacksonville Probation and Restitution Center Citizens Advisory Committee

Board of Directors (1977 - 1979)

Department of Offender Rehabilitation Advisory Council

Appointed by Governor, State of Florida - created by law to assist the Department of Rehabilitation with parole and correction problems (1976 - 1979)

Florida Conference of Circuit Judges

Chairman, Education Committee (1976 - 1979)

Spring 1978 Educational Seminar - Conducted under my direction and supervision (March 19-22, 1978)

Spring 1977 Evidence Seminar - Florida had adopted a new Evidence Code based primarily on the Federal Evidence Code, and I was completely responsible for this training seminar attended by approximately 200 Circuit Judges (March 20-23, 1977)

Spring 1976 Educational Seminar - Conducted under my direction and supervision (March 9-12, 1976)

Dean of College for New Judges - A one-week mandatory seminar conducted for all new Circuit and County Court judges for the purposes of orienting them as to their new positions and responsibilities

Vice-Chairman, Education Committee (1975 – 1976)

Holland Law Center, University of Florida (January 1978 and March 1979)

Florida Court Education Council

Appointed by Chief Justice, Florida Supreme Court (1978 - 1979)

National Judicial College

Faculty Member (1977 - 1979)

Offender Assistance Through Community Colleges Project Advisory Committee

Board of Directors (1975 - 1978)

Governor's Metropolitan Criminal Justice Advisory Council

Member (1973 - 1979)

Judiciary Education Advisory Committee of Supreme Court of Florida
(1976)

Governor's Task Force on Florida's Correction System
Appointed December 1975 (Task Force presented its findings and disbanded July 1976)

Probationers Residence Program, Inc.
Executive Board of Directors (1973 - 1975)

Conference of County Court Judges
Criminal Law Committee (1973 - 1975)

Criminal Justice Information System Steering Committee
Supervised the use and allocation of computer system for courts, corrections, sheriff, state attorney, and public defender (1970 - 1979)

Assistant Project Director for Court Management Systems
(1969 - 1972)

Florida Institute for Judiciary
County Court Judges Seminar (December 4-8, 1972)

Chief Judges and Court Administrators Conference
Sponsored by National College of State Trial Judges at Williamsburg, Virginia (February 14-19, 1971)

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

None.

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

All and singular the Courts of Florida, November 10, 1967. United States District Court for the Middle District of Florida, June 21, 1968. Supreme Court of the United States, November 9, 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.

I have been very involved in continuing education, as reflected by the following:

Chapter: *"Judicial Notice; Presumptions; Burden of Proof"*

The Florida Bar - Continuing Legal Education Manual, *Evidence in Florida,* Third Edition, Published 1989. See Addendum I-A.

Lecture and Materials: *"Bail and Detention Under 1984 Act"*
Federal Judicial Center Seminar for:

United States Magistrates
Minneapolis, Minnesota - August 8, 1985
Albuquerque, New Mexico - February 27 - March 1, 1985

Article: *"A New Look at Preliminary Injunctions: Can Principles from the Past Offer Any Guidelines to Decisionmakers in the Future?"*

Alabama Law Review, Vol. 36, No. 1, Fall 1984. See Addendum I-B.

Lecture and Materials: *"From the Judge's Perspective"*

Civil Practice in Federal Courts, The Florida Bar Continuing Legal Education Program
Tampa, Florida, September 23, 1983 & September 21, 1984
Miami, Florida, September 22, 1983 & September 20, 1984

Lecture and Materials: *"Judicial Techniques to Expedite Trials"* - Federal Judicial Center Seminar for:

Full-Time United States Magistrates
Phoenix, Arizona, February 23-25, 1983

United States Bankruptcy Judges
Albuquerque, New Mexico - March 16-18, 1983
Nashville, Tennessee - November 17-19, 1982

Lecture and Dialogue: *"Sentencing"*

College for New Judges
University of Florida, College of Law
Gainesville, Florida
March 18-23, 1979

Chapter: *"Judicial Notice; Presumptions; Burden of Proof"*

The Florida Bar - Continuing Legal Education Manual, *Evidence in Florida*, Second Edition, Published 1978. See Addendum I-C.

Chapter: *"Extradition"*

The Florida Bar - Continuing Legal Education Manual, *Florida Criminal Rules and Practice*, Second Edition, Published 1978. See Addendum I-D.

Lecture: *"Redesign of an Existing Information System," "Installing a Better System"*

National Judicial College, University of Nevada
Reno, Nevada
November 12-17, 1978

Lectures and Materials: *"Redesign of Existing Information System," "Installing a Better System," "Critique of Workshop Problem"*

National Judicial College, University of Nevada
Reno, Nevada
March 15-17, 1978

Lecture and Materials: *"Sentencing"*

College for New Judges
University of Florida, College of Law
Gainesville, Florida
January 22-25, 1978

Lectures: *"Technology and Court Management Systems Development," "Organizing and Conducting a Court Improvement Plan for Your Jurisdiction," "Your Role in Initiating and Preparing Your Court for Change"*

National College for the State Judiciary, University of Nevada
Reno, Nevada
April 20-22, 1977

Lecture: *"Commitment and Confidence in Corrections"*

Basic Training Seminar on Planning and Implementation in Corrections,
Henry Chauncey Conference Center
Princeton, New Jersey
January 30, 1977

Lecture and Materials: *"Role of the Bar and the Judiciary in Corrections"*

National Conference on Community Corrections and Positive Educational Programming, Wingspread Conference Center
Racine, Wisconsin
April 13-15, 1976

Lecture and Materials: *"Court Management Using Information Systems"*

The Institute for Court Management, Court Information Systems Workshop
Denver, Colorado
June 9, 1975

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

Excellent.

July 8, 1991.

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

I was appointed United States District Judge for the Middle District of Florida, and have been serving in such capacity since July 24, 1979. On January 26, 1990, I became Chief Judge for the Middle District of Florida, and at this time still hold that designation.

I was elected Circuit Judge, Fourth Judicial Circuit of Florida, in 1974, without opposition. The Circuit Court is a court of general jurisdiction.

I was elected County Court Judge, Duval County, Florida, in 1972, with opposition, and served continuously until January 1975. The County Court is a court of limited jurisdiction with civil jurisdiction up to $2,500 and criminal misdemeanor 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) *Port of Jacksonville Maritime, Etc. v. Hayes*, 485 F. Supp. 741, *aff'd* 620 F.2d 567 (1980)

United States v. Helmich, 521 F. Supp. 1246, *aff'd* 704 F.2d 547, *cert. denied* 464 U.S. 939 (1983)

Blue Cross and Blue Shield of Florida, Inc. v. Department of Banking and Finance, 613 F. Supp. 188, *aff'd* 791 F.2d 1501 (1986)

Florida Steel Corp. v. Whiting Corp., 677 F. Supp. 1140 (1988) — no appellate history

Juror 157 v. Corporate Defendant, 710 F. Supp. 324 (1989) — no appellate history

Kennan v. Dow Chemical Co., 717 F. Supp. 799 (1989) — no appellate history

DeBailey v. Lynch-Davidson Motors, Inc., 734 F. Supp. 974 (1990) — no appellate history

King Provision Corp. v. Burger King Corp., 750 F. Supp. 501 (1990) — no appellate history

Florida East Coast Ry. Co. v. Martinez, 761 F. Supp. 782 (1991) — no appellate history

Sweatt v. Florida Bd. of Pilot Commissioners, 1991 U.S.Dist. LEXIS 16263 (1991) — no appellate history

(2) I have not kept records of my decisions which were either reversed or affirmed. The following are cases that are listed by the LEXIS service as vacated or reversed.

United States v. Harari, 940 F.2d 614 (11th Cir. 1991). The circuit court vacated that portion of the criminal sentence dealing with a special parole term. The question was whether the Sentencing Reform Act of

1984, which became effective on November 1, 1987, applied to violations of the Anti-Drug Abuse Act of 1986 (ADAA) committed prior to November 1, 1987.

Elrod v. Sears, Roebuck & Co., 939 F.2d 1466 (11th Cir. 1991). The circuit court reversed a jury verdict for the plaintiff and the denial of a motion for judgment n.o.v. in an age discrimination suit, pursuant to the Age Discrimination in Employment Act of 1967. The circuit court reviewed the denial of the motion de novo, and held that the plaintiff had failed to show that the employer's proffered reason for termination was pretextual.

Blanchard v. State Farm Mutual Automobile Ins. Co., 931 F.2d 789 (11th Cir. 1991). The circuit court certified a question of state insurance law to the Florida Supreme Court. Based on the state court's answer to the certified question, the circuit court reversed this Court's interpretation of the state law question.

Royal Ins. Co. of America, Inc. v. M/V Manaure V, 790 F.2d 77 (11th Cir. 1986). The circuit court reversed the dismissal of a series of cases brought as direct actions against maritime insurers. The circuit court had held in another case, decided subsequent to the rulings in these cases, that, under Florida law, a direct action was permitted against a maritime insurer.

I know of no cases where my judgment was affirmed with significant criticism of my substantive or procedural rulings. A search of the LEXIS research service using the keywords "affirmed" and "critici!" found no such cases.

(3) No record has been kept of significant constitutional opinions. A search of the LEXIS research service, using the keyword "constitution," identified 28 cases that I have published concerning constitutional issues.

Although in many respects I do not feel that any of those cases were significant, of the 28 cases, the following are probably the most significant:

(A) *Shabazz v. Barnauskas*, 600 F. Supp. 712 (M.D. Fla.), *aff'd* 790 F.2d 1536 (11th Cir.), *cert. denied* 479 U.S. 1011 (1986)

(B) *Kennan v. Dow Chemical Co.*, 717 F. Supp. 799 (M.D. Fla. 1989)

(C) *United States v. Beckman*, 545 F. Supp. 1284 (M.D. Fla. 1982)

(D) *San Juan Liquors, Inc. v. Consolidated City of Jacksonville, Fla.*, 480 F. Supp. 151 (M.D. Fla. 1979)

A search of Shepard's citations shows that only two of these opinions received treatment in appellate opinions. First, the *Shabazz* case was affirmed as cited above. Second, in the appeal of another of my decisions, *Papas v. The Upjohn Co.*, Case No. 88-116-Civ-J-14, *aff'd* 926 F.2d 1019, 1021 n. 1 (11th Cir. 1991), the Eleventh Circuit endorsed the holding of the *Kennan* case.

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;**

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;**

Assistant General Counsel, City of Jacksonville, 1972 - 1973

Assistant State Attorney, Fourth Judicial Circuit of Florida, 1969 - 1972

Attorney for United States Government, Army Corps of Engineers, Jacksonville District, 1968 - 1969

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?

Assistant General Counsel, City of Jacksonville, 1972 - 1973

As the Chief Legal Advisor in all financial matters to the City of Jacksonville, my clients were the Council Auditor of the City Council, the Finance Committee of the City Council, and the Finance Department of the City of Jacksonville. Their representation related to areas of municipal taxation, bond validation, pertinent ordinance drafting, legal opinions requested at all City Council Finance Committee meetings and providing the Council Auditor with opinions concerning the scope of his duties with relationship to his Charter powers. I was consulted on a day-to-day basis regarding legal opinions which would permit the Mayor, through the Finance Department, and Council, through its Finance Committee, to implement policy decisions.

My other duties included providing legal representation to the Data Processing Division of the General Services Department of the City, primarily concerning computer procurement contracts for hardware and software, as well as drafting and formulating licensing agreements between the City and various governmental entities.

I served as the attorney for the Water Quality Control Board, the Air Pollution Control Board, and prosecuted before the Civil Service Board and the Duval County School Board. Aside from writing memoranda and giving opinions concerning the particular and diverse substantive legal issues that arose, my service to the various Boards was primarily of an advisory nature on procedural and due process matters.

Assistant State Attorney, Fourth Judicial Circuit of Florida, 1969 - 1972

As an active courtroom attorney, I exercised individual discretion in the filing of criminal cases at the intake level; prepared over two hundred cases for trial; actually had the sole responsibility for the prosecution of over twenty felony cases which were tried before a jury, including several capital cases; tried numerous misdemeanor cases; and provided assistance to the Attorney General, State of Florida, in preparing appellate briefs and oral arguments. In performing the above functions, I appeared before

and advised the Grand Jury, requiring the drafting of indictments and presentments.

My other duties involved representing the State in civil litigation, including bond validation cases, Uniform Reciprocal Enforcement of Support Act cases, extradition cases, and habeas corpus proceedings in State and Federal courts.

Attorney for United States Government, Army Corps of Engineers, Jacksonville District, 1968 - 1969

As a real estate specialist, I negotiated, purchased for the Government, and prepared all legal instruments required to purchase parcels of land for various government projects from private owners (including the Cape Canaveral Project, the Cross-Florida Barge Canal Project, and structural facilities for national emergencies, which required secret classification).

My other duties included preparing condemnation suits for trial and serving as trial assistant and substantive legal advisor to the United States Attorney in the actual trial of the condemnation suit.

I was responsible for the drafting of contracts concerning governmental procurement and lease agreements.

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

Description of typical former clients incorporated in answer to Question 17.b.1. above.

If the Florida Bar Designation Plan had been in effect from 1967 to 1972, I would have qualified in the following areas of practice:

Trial Practice
Administrative and Governmental Law
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.**

I appeared in court regularly throughout my entire practice.

2. **What percentage of these appearances was in:**

   (a) **federal courts;**

   Less than 10%

   (b) **state courts of record;**

   More than 85%

   (c) **other courts.**

   5%

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.**

   Over 300 cases, with most being as sole counsel (1968 - 1973)

5. **What percentage of these trials was:**

   (a) **jury;**

   35%

   (b) **non-jury.**

   65%

18. **<u>Litigation</u>: 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.

Edward Ball, J.C. Belin, T.S. Coldewey, Alfred duPont Dent, William B. Mills, W. L. Thornton and The Florida National Bank of Jacksonville, as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, Deceased, and The Nemours Foundation, a corporation not for profit under the laws of Florida vs. A. J. O'Donnell, District Director of Internal Revenue Service, and T. Edward Austin, Jr., State Attorney in and for the Fourth Judicial Circuit of the State of Florida, Civil Action No. 71-7001, In the Circuit Court, Fourth Judicial Circuit, In and For Duval County, Florida. The case was heard by the Honorable Marion W. Gooding, Circuit Judge (deceased).

The above was a hearing on a petition to construe the will and to instruct the trustees of Alfred I. duPont, Deceased, and The Nemours Foundation, a corporation not for profit under the laws of Florida. As an Assistant State Attorney, I represented the State Attorney who was the defendant in the case and was sued pursuant to the provisions of Section 737.251, Florida Statutes, since the proceeding involved a charitable trust with unknown or unascertainable beneficiaries, and pursuant to the provisions of the Florida Charitable Trust Act of 1971. The purpose of this suit was to obtain a judicial determination of (a) the intent and purpose of Alfred I. duPont in devising "for the purpose of maintaining the said Estate of 'Nemours' as a charitable institution for the care and treatment of crippled children, but not of incurables or the care of old men or old women, and particularly old couples," and (b) to construe the intent of Alfred I. duPont in using the term "for the care and treatment of crippled children." I prepared the answer to the petition to construe the will and instruct trustees. The answer was reviewed and signed, as prepared, by the State Attorney, T. Edward Austin. I, solely, represented the State of Florida at the hearing on the petition held on December 17, 1971. My participation in the litigation was from August 6, 1971, to January 3, 1972.

The significance of the case is that the trust is the second largest philanthropic trust in the United States. All subsequent litigation hinged on the petition to construe the will. The Final Judgment established a very broad definition of the phrase "crippled children" and "hospital." The phrase "crippled children" was defined to mean "persons under twenty-one years of age who, by reason of a physical defect or infirmity, whether congenital or acquired by

accident, injury or disease, have been deprived of strength, activity or capability for service or use, in any part of the human body." The phrase "hospital" was defined to include "any property or facility which is used predominantly or primarily for a purpose which is incidental to and reasonably necessary for the accomplishment of hospital purposes or which is reasonably necessary for the fulfillment of a generally recognized function of a complete, modern hospital." As a result of this litigation, a sixty million dollar ($60,000,000) hospital was constructed in Delaware to provide medical services for children. The decree entered during my participation was not appealed, but subsequent litigation, in which I was not involved, resulted in several appeals.

Opposing counsel were William L. Durden, Esquire, Florida National Bank Building, Jacksonville, Florida 32202, (904) 359-5053; Fred H. Kent, Esquire, 900 First Union Tower, Jacksonville, Florida 32202, (904) 358-1000; and Charles T. Akre, Esquire, 1700 Pennsylvania Avenue, N.W., Washington, DC 20006 (last known address).

State Attorney T. Edward Austin (now Mayor of the City of Jacksonville), 14th Floor, City Hall, Jacksonville, FL 32202, (904) 630-1776.

State of Florida v. Walter Green, Case No. 70-112-C, In the Circuit Court, Fourth Judicial Circuit, In and For Duval County, Florida. The case was tried before the Honorable Sam Goodfriend, Circuit Judge (retired).

The above was a criminal case in which the defendant, Walter Green, was charged with the capital crime of Murder in the First Degree. As Assistant State Attorney, I was totally responsible for the preparation and trial of the case from December 23, 1970, until June 29, 1971. The jury, in returning its verdict, found the defendant guilty of Attempt to Commit Murder in the First Degree. The case was tried on March 1 and 2, 1971.

The significance of the case was that it was a capital case tried before a twelve-man jury, and the death penalty was potentially involved. The primary significance was the jury instruction given by the court. There was no factual question that a death had occurred, yet the verdict was for an attempt to commit the crime of murder. The defendant argued on appeal that the jury should not have been instructed on the "attempt" since the death had been proven. The District Court supported the trial judge's instruction on the "attempt," which further defined the jury instructions which courts in Florida must give in a capital case. See *Green v. State*, 252 So. 2d 375 (1st D.C.A. 1971).

Opposing counsel was originally Assistant Public Defender Barry S. Sinoff, whose current address is 6960 Bonneval Road, Suite 202, Jacksonville,

FL 32216, (904) 296-2299; and later Walter Green was represented by Ernest Jackson, Esquire (deceased).

In the matter of: The Extradition of Tommy Paschal, Civil Action No. 70-9424, In the Circuit Court, Fourth Judicial Circuit, In and For Duval County, Florida. The case was heard by the Honorable Marion W. Gooding, Circuit Judge (deceased).

The above was originally an extradition proceeding, which was contested. As an Assistant State Attorney, I represented the State of Florida in the extradition proceeding, including the final hearing held on November 20, 1970. The defendant contested the extradition on several grounds, including that he was not in Georgia at the time of the alleged offense. At the final hearing, the victim identified the defendant as having been in Georgia. The trial court granted the extradition. The defendant appealed the trial court's order. Pending appeal, the defendant was released on a supersedeas bond. The trial court was affirmed in granting the extradition [See *Paschal*, 247 So. 2d 493 (1st DCA 1971)], and the order of forfeiture of bond was entered. I also personally handled the hearing on the forfeiture of the bond. An appeal was taken of the forfeiture by Resolute Insurance Company by American Prudential Bonding Agency. The appeal was dismissed for lack of prosecution.

The significance of this case is that the field of extradition is a highly specialized and technical area of the law with limited case law reported. The case represented one of over fifty such extradition cases that I personally handled while an Assistant State Attorney. By affirming the lower court, the District Court again supported the limited scope and purpose of extradition proceedings.

Opposing Counsel was Joseph A. St. Ana, Esquire, 817 North Main Street, Jacksonville, Florida 32202, (904) 355-7831 (current address unknown).

State of Florida v. Dennis Leonard Albert, Case No. 70-2525, In the Criminal Court of Record, Duval County, Florida. The case was tried before the Honorable Charles Cook Howell, Jr., Circuit Judge (retired).

The above was a criminal case in which the defendant was charged with the crime of Assault to Murder and Attempted Escape. As Assistant State Attorney, I was totally responsible for the preparation and trial of the case. The jury returned a verdict of Guilty of Assault With Intent to Commit Murder in the Second Degree and Attempted Escape. The case was tried July 29, 1970.

This case was representative of the cases I prosecuted in the Criminal Court of Record, Duval County. The significance of the case was that the verdict returned in the first count was for Assault with Intent to Commit Murder in the Second Degree, and defense counsel urged that the defendant was convicted for intending to commit a crime that did not require intent. The First District Court of Appeal affirmed the court which, in effect, defined the crime of Assault With Intent to Commit Second Degree Murder. See *Albert v. State*, 247 So. 2d 724 (1st DCA 1971).

Opposing Counsel was Assistant Public Defender Joseph S. Farley, Jr., whose current address is 350 East Adams Street, Jacksonville, FL 32202, (904) 354-4300.

State of Florida v. Betty Walker Stewart, Case No. 70-75-C, In the Circuit Court, Fourth Judicial Circuit, In and For Duval County, Florida. The case was tried before the Honorable Lamar Winegeart, Circuit Judge (retired).

The above was a criminal case in which the defendant, Betty Walker Stewart, was charged with the capital crime of First Degree Murder. As Assistant State Attorney, I was responsible for the prosecution of the case, preparing all pleadings, drafting all proposed orders for the court, and representing the State at all but one hearing from September 2, 1970, through November 9, 1971. The case was never presented to a petit jury. The hearings in which I represented the State before the court were held on September 23, 1970, October 13, 1970, January 25, 1971, and November 9, 1971.

The significance of this case was the defense of insanity raised by the defendant and the subsequent hearings on the question of insanity. This was not the usual insanity defense raised on behalf of defendants in similar proceedings. *State v. Stewart* was a "textbook" case in that it was proven that the only time the defendant was legally insane was during the commission of the alleged crime. There was no question from either lay or psychiatric testimony that the defendant was an intelligent, articulate woman who had always been a reputable citizen and that she was capable of assisting counsel in her defense. Yet, the testimony from at least four psychiatrists and one psychologist was that on the day of the alleged offense, she was legally incompetent. The physicians, who regularly examined hundreds of criminals alleging insanity as a defense, stated that this was one of the most unique and unusual cases they had ever seen. After the Defendant's commitment to the state hospital and several hearings regarding the defendant's insanity, I, representing the State, entered a nolle prosequi in the case.

Opposing counsel was Giles P. Lewis, Esquire, who is currently a Circuit Judge for the Fourth Judicial Circuit, Duval County, Room 227, Duval County Courthouse, Jacksonville, Florida 32202, (904) 630-2539.

Oscar Gene Felder and Frederick Ross v. Duval County School Board and Cecil Hardesty, Superintendent of Schools, Administrative Hearing held before Yardley Buckman, Esquire, Hearing Examiner for the Duval County School Board.

The above was an administrative hearing. As an Assistant General Counsel, City of Jacksonville, I represented the Duval County School Board and the Superintendent of Schools before the Hearing Examiner for the Duval County School Board. Oscar Gene Felder and Frederick Ross, high school seniors attending Ribault Senior High School, had been expelled from school, principally for fighting with a teacher and inciting other students to fight on the school grounds. They and their parents both contested, to the Duval County School Board, their expulsions. A hearing was held in late February or March 1972, before Yardley Buckman, Esquire, Hearing Examiner for the Duval County School Board. The students were jointly represented by Bill Gibbons, Esquire, and Deitra Micks, Esquire.

I was totally responsible for the presentation and preparation of the case to be heard before the Hearing Examiner. At the conclusion of this two-day evidentiary hearing, Mr. Buckman, as Hearing Examiner, recommended that both students be expelled for the reasons presented at the hearing. The School Board supported the recommendation, after which both students brought suit against William E. Carter, as Chairman of the School Board, all other School Board members, and Cecil Hardesty, Superintendent of Schools. The action was brought under 42 U.S.C. § 1983 (1976) in the Middle District of Florida (72-275-Civ-J-S). The suit was subsequently dismissed by the plaintiffs.

The significance of this case was that a desegregation order of the Duval County Schools had been entered by the Federal Court in 1971, and Ribault Senior High School was one of the principle schools affected by the desegregation order. During the period of 1971-1972, there was a great deal of student unrest and even rioting in Jacksonville's local schools. After this proceeding and the results thereof, substantial order returned to Ribault Senior High School, and a compromise, which defused a very volatile situation, was reached in the case.

Opposing counsel were Bill Gibbons (formerly with the Jacksonville Area Legal Aid, Inc.), whose present address is unknown; and Deitra Micks, Esquire, 5411 Soutel Drive, Jacksonville, FL 32202, (904) 764-5411 (last known address).

State of Florida v. William T. Harvey, Case No. 70-1194, In the Criminal Court of Record, Duval County, Florida. The case was tried before the Honorable Victor O. Wehle, Circuit Judge (deceased).

The above was a public corruption case in which the defendant, William T. Harvey, who had been a Criminal Court of Record Judge, Duval County, for over fifteen years, was charged with malpractice. The charges were filed on August 15, 1969, and a plea of guilty was entered on April 6, 1970. I was co-counsel with the State Attorney, T. Edward Austin, who is now the Mayor of the City of Jacksonville, and the Assistant State Attorney, Everett R. Richardson, who is now deceased. In this position, my responsibilities included trial preparation and legal research. Some of the points I researched were the use of collateral crimes, the use of voice-print identification, and the introduction into evidence of taped conversations. I, solely, represented the State at depositions in the case and was responsible for witness preparation for trial. Witness preparation included working at length with the key witnesses and assisting in the continued investigation, including Grand Jury appearances of other witnesses who might testify as to collateral crimes.

The significance of the case was the prosecution of a sitting judge for corruption and the legal questions surrounding the various taped conversations.

Opposing counsel were Albert Datz, Esquire, 2902 Independent Life Building, 1 Independent Square, Jacksonville, Florida 32202, (904) 355-5467; and Walter G. Arnold, Esquire, 2508 Gulf Life Tower, Jacksonville, Florida 32207, (904) 396-5231.

Co-counsel were State Attorney T. Edward Austin (now Mayor of the City of Jacksonville), 14th Floor, City Hall, Jacksonville, FL 32202, (904) 630-1776; and the Honorable Everett R. Richardson (deceased).

Norma Faye Stone v. Billie Wayne Morris, Civil Action No. 69-5077, In the Circuit Court, Fourth Judicial Circuit, In and For Duval County, Florida. The case was tried before the Honorable A. W. Graessle, Jr., Circuit Judge (deceased).

The above was a Complaint for Support, filed under the Uniform Reciprocal Enforcement of Support Act, on behalf of three minor children residing in the State of California. As an Assistant State Attorney, I represented the mother who was seeking support for her children. I was totally responsible for the preparation and presentation of the case. The father of the children had permanently committed them to a licensed child-placing agency, which

subsequently placed the children with the mother. The case was tried on July 23, 1969.

The significance of the case was that it was a landmark case in the State of Florida. The children had been permanently committed to the care of a licensed child-placing agency. In the past, permanent commitment to a licensed child-placing agency was viewed in the State in the same posture as adoption. The father had been permanently deprived of his parental rights. The trial court ruled that the father must support the children, even though deprived of his parental rights. The case was appealed to the First District Court of Appeal, and the trial court was affirmed. See *Morris v. Stone*, 236 So. 2d 455 (1st DCA 1970).

Opposing counsel was Lacy Mahon, Jr., Esquire, 1120 Blackstone Building, Jacksonville, Florida 32202, (904) 354-3526.

State of Florida v. Bernice Lucas, Case No. 70-61, In the Criminal Court of Record, Duval County, Florida. The case was tried before the Honorable Charles Cook Howell, Jr., Circuit Judge (retired).

The above was a criminal case in which the defendant, Bernice Lucas, was charged with the crime of Abortion. As Assistant State Attorney, I was totally responsible for the preparation and trial of the case. The jury returned a verdict finding the defendant guilty of Abortion as charged. The case was tried June 22 and 23, 1970.

The significance of this case was the crime charged and the point on appeal. The crime charged was abortion. The trial is the only abortion case ever tried in Duval County in recent memory. The point on appeal was the use of collateral crimes. Evidence was presented at trial relating to similar facts tending to prove that the defendant, in performing this abortion, committed separate crimes in order to show common scheme or design, guilty knowledge, intent, motive or pattern and to show a system of general pattern of criminality. The First District Court of Appeal reversed the trial court, finding that the evidence as to the collateral crimes was not relevant, in light of the defendant's written confession admitting performance of the charged abortion. The case, in my opinion, further limited the use of collateral crime evidence in the trial of criminal cases throughout the First District, State of Florida. See *Lucas v. State*, 257 So. 2d 261 (1st DCA 1971). *Cert. denied*, Fla. 256 So. 2d 514.

Opposing counsel was Ernest Jackson, Esquire (now deceased.)

Army Directive No. 19, Issued December 8, 1962, Tracts 6703-C, 6707-C, 6744-C, United States Army Corps of Engineers, Jacksonville Division, Florida.

The above was a condemnation action which involved cemeteries in Brevard County, Florida. As an attorney representing the United States Army Corps of Engineers, Jacksonville, Florida, it was my responsibility, after attempting to negotiate a settlement on behalf of the government, to totally prepare for trial by the United States Attorney the condemnation of any real property deemed necessary for the use by the Corps of Engineers in its military or civil projects.

The significance of the above condemnation was that the majority of the land for the John F. Kennedy Space Center, Cape Canaveral, Florida, had already been acquired and, in order to complete the space center, it was necessary to acquire these three remaining tracts. The preparation of the Complaint was unusual, in view of the fact that these cemeteries had no known ownership, little traceable grave identification, and they were of historical significance because they helped to document the early pioneer settlers of the region.

In 1968, upon my completion of the Complaint and supporting documents, the file was transmitted for trial to the United States Attorney.

I am unable to furnish case citation due to the destruction and removal of the government files.

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.)**

Significant legal activities that I have pursued have been described in answers to previous questions.

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 those 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.**

   None.

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 the Financial Disclosure Statement, which is attached as Addendum II-A.

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

   See the financial net worth statement, which is attached as Addendum II-B.

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.**

This is my 20th year on the bench, so I have not had the opportunity to recently serve in my professional capacity as an attorney. I have had the opportunity to serve the disadvantaged in my personal life.

A recent example was my active involvement in a parish outreach assessment committee. The committee spent approximately nine months, meeting up to four times a month, identifying the needs of the underprivileged in the community and the neighborhood. Our report, which I gave to the church leadership, identified children's needs and the needs of the elderly. Programs were established to assist both. The first program was a summer arts camp, which was held in the summer of 1990. The program served the underprivileged children in the parish neighborhood. It was a success and, based on its success, the Jessie Ball duPont Religious, Charitable, and Educational Fund made a planning grant for the Children's Enrichment Workshops of Riverside. Planning was completed in early 1991, and we have been able to establish a children's enrichment program on Saturday mornings for the underprivileged children of the neighborhood. During the one and a half to two years involved, I spent an average of eight hours per month on these projects.

I have always worked to assist in the education of attorneys and other judges. As an example, I have been actively involved in teaching at the National Institute for Trial Advocacy, and the Advocacy Institute of the Justice Department. I taught at and was Dean of the College of Circuit Judges, State of Florida, and, as a United States District Judge, I have taught for the Federal Judicial Center.

As a County and then Circuit Judge in the State of Florida, I observed that in sentencing men there were alternatives to incarceration not available to me in sentencing women. As an alternative to the state prison system, there was a probationers' residence program for men. It provided a very structured environment for young men who would be returning to the community after incarceration. I did not have this option in sentencing women. Therefore, I developed the concept and eventually, with the use of federal grant funds, created a probationers' residence program for women, which was housed at the YWCA. The state and local community eventually took over the responsibilities for the program. I also worked with the community college in developing a program entitled "Offender Assistance Through Community Colleges Project," for the education of offenders who were primarily youthful offenders planning to remain in the community.

60-251 O - 93 — 9

In addition, I served on the Department of Offender Rehabilitation Advisory Council, which was created by the Governor of the State of Florida to assist the Department of Rehabilitation with parole and correction problems.

I have been actively involved in the Jacksonville Council on Citizen Involvement (JCCI). JCCI is a group that studies community problems, takes testimony, and, with the assistance of community leadership, attempts to address and correct problems through the study. From 1978 through 1979, I was chairman the Citizen Participation in the Schools Committee. From 1977 through 1978, I was a member of the Youth and the Family Study Committee. During the study, the time requirements were significant, in that a group met approximately once a week and could spend several hours taking testimony, discussing the issues and developing the report.

For seven years, I participated as an active member of the Advisory Board and Board of Trustees of the Jacksonville Health Education Programs, Inc. The programs' main purpose was to have an effective working relationship with the University of Florida College of Medicine in the area of providing interns and nurses for University Hospital, which is a large regional hospital in Northeast Florida serving the indigent. The Advisory Board and the Board of Trustees met at least monthly.

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).**

There is a selection commission, however, I did not take part in that process. I was interviewed by officials in the Department of Justice. In addition, I have completed questionnaires for and was interviewed by representatives of the American Bar Association and the 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 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.**

If those who criticize the judiciary and "judicial activism" are referring to judges who step outside the role given to the judiciary under the constitution, then I believe the criticism would be valid. A cornerstone of our form of constitutional democracy is the balance of power established by the constitution. Each branch of government must fulfill the role given to it by the constitution, but should not usurp the function of another branch of government.

The goal of a United States District Judge should be to fully perform the function of the judiciary, which, in turn, means refraining from performing the function of the legislative or executive branches of government. In addition, a United States District Judge, should be bound by the decisions of the United States Supreme Court and the United States Courts of Appeals. A judge of the United

States Court of Appeals should also fully perform the function of the judiciary, which, in turn, means refraining from performing the function of the legislative or executive branches of government. It is important that a judge of the United States Court of Appeals be bound by the decisions of the United States Supreme Court.

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.

AS OF 01/23/92

ASSETS		LIABILITIES	
Cash on hand and in banks	58286	Notes payable to banks—secured	15524
U.S. Government securities—add schedule		Notes payable to banks—unsecured	
Listed securities—add schedule A	97500	Notes payable to relatives	
Unlisted securities—add schedule B	56000	Notes payable to others D	152650
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others	101,209	Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule C	2412240
Real estate owned—add schedule C	4842600	Chattel mortgages and other liens payable	
Real estate mortgages receivable	83598	Other debts—itemize:	
Autos and other personal property	70324		
Cash value—life insurance			
Other assets—itemize:			
Limited Partnerships D	647000		
IRA's	29130		
401K	98396	Total liabilities	2580414
Thrift Plan	17398	Net worth	3444960
Total assets	6025374	Total liabilities and net worth	6025374

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	352507	Are any assets pledged? (Add schedule.) E	Yes
On leases or contracts		Are you defendant in any suits or legal actions? See Schedule D	Yes
Legal Claims D	144000	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	460233		
Other special debt			

NET WORTH STATEMENT

SCHEDULE A

Listed Securities

Both of the following are in the Prudential Securities Command Account:

MFS Municipal Income Trust	$	26,625.00
Putnam Managed Municipal Income Trust		70,875.00
Total	**$**	**97,500.00**

NET WORTH STATEMENT

SCHEDULE B

Unlisted Securities

Orange Park Travel Agency, Inc.	$	50,000.00
Avondale Limousine	$	6,000.00
Total	**$**	**56,000.00**

NET WORTH STATEMENT

SCHEDULE C

Real Estate Owned

Address	Value	Mortgage Balance
3530 St. Johns Ave., Jacksonville, FL (J)	$ 190,600	$ 28,500
5128 Indian Lakes Ct., Jacksonville, FL (J)	153,000	117,836
3669-71 St. Johns Ave., Jacksonville, FL (J)	89,000	52,872
3673-77 St. Johns Ave., Jacksonville, FL (J)	85,000	68,257
Amelia Island Planation, Pool Villa 3115, Amelia Island, FL (J)	80,000	91,865
Ship Watch Villa 1331, Amelia Island, FL (J)	5,000	0
4626 River Point Road, Jacksonville, FL (J)	750,000	344,557
Unit 201, Eagles Nest Villas, Mars Hill, NC (J)	98,000	77,000
10039 Atlantic Blvd., Jacksonville, FL (L)	559,200	48,990
4561 San Juan Ave., Jacksonville, FL (L)	114,000	81,275
2736 University Blvd. W., Jacksonville, FL (L)	144,500	84,281
9471 Baymeadows Way, Units 401 & 402, Jacksonville, FL (L)	99,500	70,719
4427-37 Emerson, Jacksonville, FL (L)	1,050,000	923,166
7365 103rd Street, Jacksonville, FL (S)	204,400	104,800
5701 Merrill Road, Jacksonville, FL (S)	89,000	50,196
3651 St. Johns Ave., Jacksonville, FL (S)	310,000	55,607
2107-08 Sawgrass Village, Ponte Vedra Beach, FL (S)	155,000	81,275
3854 Valencia, Jacksonville, FL (S)	35,000	0
2309 Costa Verde Blvd., Ponte Vedra Beach, FL (S)	130,000	0
9471 Baymeadows Way, Jacksonville, FL (S)	85,000	54,178
3654 Riverside Ave., Jacksonville, FL (S)	98,300	44,964
1810 Dancy Street, Jacksonville, FL (S)	88,000	0
5315 Jammes Road, Jacksonville, FL (S)	75,100	0
Amelia Island Plantation, Pool Villa 3111, Amelia Island, FL (S)	80,000	0
3648 Riverside Ave., Jacksonville, FL (S)	75,000	31,902
TOTAL	$4,842,600	$2,412,240

(J) = Joint
(L) = Louis E. Black
(S) = Susan H. Black

NET WORTH STATEMENT

SCHEDULE D

Limited Partnerships

	Value	Owed on Notes
Windsor on the River Assoc.	$ 10,000	0
Great American Films	0	0
San Diego Century Assoc.	20,000	0
Synthetic Industries	50,000	0
Public Storage Prop. VI	5,000	0
Rittenhouse Square Assoc.	40,000	0
Southern Inns Associates	30,000	20,500
Research Triangle Assoc.	15,000	0
MAJCO Bldg. Specialties	200,000	26,200
Mid-Atlantic Residential Investors	50,000	47,400
Levenshon Gazebo Partners	50,000	0
Consolidated Capitol Properties	12,000	0
Century Properties Fund 15	0	0
American Cable TV	15,000	0
MAJCO Building Specialties	100,000	13,300
Fillmore Pacific Assoc.	0	0
Lenox Towers, Assoc.	50,000	45,250
Total	$ 647,000	$ 152,650

These limited partnerships are assets solely of Louis E. Black.

My husband is plaintiff in a class action suit concerning the Fillmore Pacific Partnership. He is also the defendant in their action for payment of the loan in the amount of $144,000.

NET WORTH STATEMENT

SCHEDULE E

Assets Pledged

See Schedules C & D.

	Value	Liability
1988 Americruiser (listed in "Autos and other personal property")	$ 15,524	$ 15,524

FINANCIAL DISCLOSURE REPORT

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

Person Reporting (Last, first, middle initial)	2. Court or Organization	3. Date of Report
BLACK SUSAN H	U.S. DISTRICT COURT	01/24/92

4. Title (Registrates indicate full or part time) (Circuit and District Judges indicate active or Senior Status)	5. Report Type	6. Reporting Period
U.S. DISTRICT JUDGE - ACTIVE	Nomination / /	1991

7. Chambers or Office Address

311 WEST MONROE STREET, RM 511
JACKSONVILLE, FL 32202

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.

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

POSITIONS. (Reporting individual only; see pages 7-8 of instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
☐ NONE (No reportable positions)	
Trustee Emeritus	University of Florida College of Law
Board of Trustees	American Inns of Court Foundation
President	Chester Bedell Inn of Court

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

. **AGREEMENTS.** (Reporting individual only; see pages 8-9 of Instructions.)

DATE	PARTIES AND TERMS
☐	NONE (No reportable agreements)
02/05/91	Irrevocable Trust Agreement, William H. Harrell, Jr., Grantor, and Susan H. Black, Trustee (this is an irrevocable insurance trust, which has not been funded)

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

I. **NON-INVESTMENT INCOME.** (Reporting individual and spouse; see pages 9-12 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME
☐	NONE (No reportable non-investment income)	
	President of Orange Park Travel Agency, Inc. ($)	0.00
	President of Avondale Limousine, Inc. ($)	0.00
	Real Estate Broker ($)	0.00
	President of USTS/Avondale Travel ($)	0.00

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

. **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 pages 13-15 of instructions.)

SOURCE	DESCRIPTION
☐ NONE (No such reportable reimbursements or gifts)	
American Inns of Court Foundation	Lodging and meal in connection with Annual Meeting, New Orleans, LA (6/26-30/91)

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

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 pages 15-16 of instructions.)

SOURCE	DESCRIPTION	VALUE
X	NONE (No such reportable gifts)	
** NOTHING TO REPORT **		0.00

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

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

CREDITOR	DESCRIPTION	VALUE CODE
☐ NONE (No reportable liabilities)		
First Union Mortgage Co. (J)	Mortgage	K
Independent Life & Acc. Ins. Co.(J)	Mortgage	L
Lumberman's Investment Co. (J)	Mortgage	M
Margaret Kenney (J)	Mortgage	L
Barnett Bank (J)	Mortgage	L
Barnett Mortgage Co. (J)	Mortgage	M
Asheville Federal Savings & Loan(J)	Mortgage	L
Sears Mortgage Co. (J)	Mortgage	L
Sears Mortgage Co. (J)	Mortgage	M
Sears Mortgage Co. (J)	Mortgage	L
Sears Mortgage Co. (J)	Mortgage	K
Alliance Mortgage Co. (S)	Mortgage	K
First Union Bank (S) (formerly Northeast Mortgage Co.)	Mortgage	L
Barnett Bank (S)	Mortgage	K
IR Rajco Credit Corp. (S)	Promissory Note	K
IR Southern Inns Credit Corp. (S)	Promissory Note	K
Mid-Atlantic Res. Invest. L.P. (S)	Promissory Note	K
IR Rajco Credit Corp. (S)	Promissory Note	J
Fillmore Pacific Assoc. L.P. (S)	Promissory Note	P
IR Lenox Credit Corp. (S)	Promissory Note	K

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

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

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

CREDITOR	DESCRIPTION	VALUE CODE
☐ NONE (No reportable liabilities)		
N. F. Green (S)	Mortgage	L
Estate of Joseph Tindel (S)	Mortgage	O
First Union Mortgage Co. (S)	Mortgage	L
(formerly Sears Mortgage Co.)		
Thomas Barket* (S)	Mortgage	L

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

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

I. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pages 18-27 of instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
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.	(1) Amt. Code1 (A-H)	(2) Type (e.g. div, rent, int.)	(1) Value Code2 (J-P)	(2) Value Meth. Code3 (Q-U)	(1) Type (ex: buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date: Mnth/Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
Mortgage-Tom Adams (J)	B	INT	J	T					
Mortgage-Robert Assaf (J)	D	INT	K	T					
3530 St. Johns Ave.,	A	RENT	J	W					
Jacksonville, FL (Apt.) (J)									
Pool Villa 3115, Amelia	E	RENT	L	W					
Island, FL (J)									
1331 Ship Watch, Amelia	A	RENT	J	W					
Island, FL (J)***									
3673 St. Johns Ave.,	D	RENT	L	W					
Jacksonville, FL (J)									

Income/Gain Codes: (See col B1 & D4)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to $5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=More than $1,000,000

Value Codes: (See col C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $250,000
	N=$250,001 to $500,000	O=$500,001 to $1,000,000	P=More than $1,000,000	

Value Method Codes: (See column C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market
	U=Book Value	V=Other	W=Estimated	

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

I. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pages 18-27 of instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
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.	(1) Amt. Code1 (A-H)	(2) Type (e.g. div, rent, int.)	(1) Value Code2 (J-P)	(2) Value Meth. Code3 (Q-W)	(1) Type (ex: buy, sell, exchange, redemption)	If not exempt from disclosure (2) Date: Mnth/Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
5128 Indian Lakes Court,	E	RENT	M	W					
Jacksonville, FL (J)									
3669-71 St. Johns Ave.,	D	RENT	L	W					
Jacksonville, FL (J)									
Jacksonville Federal Credit	B	IST	J	T					
Union, Jacksonville, FL (J)									
Mortgage--Joseph McDonough (J)	S	INT	K	T					
4626 Silver Point Road,	A		O	W					
Jacksonville, FL (J)									
Unit 201 Eagles Nest Villas,									

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

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

Value Method Codes: (See column C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

I. INVESTMENTS and TRUSTS — income, value, transactions. (Includes those of spouse and dependent children; see pages 18-27 of instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
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.	(1) Amt. Code1 (A-H)	(2) Type (e.g. div, rent, int.)	(1) Value Code2 (J-P)	(2) Value Meth. Code3 (Q-W)	(1) Type (ex: buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Mnth/Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
Mars Hill, NC (J)									
Merrill Lynch Cash Management	A	INDI	K	T	OPENED				
Account (J)									
10039 Atlantic Blvd.,	F	RENT	O	W					
Jacksonville, FL (S)									
Windsor on the River Assoc.	A		J	T					
Limited Partnership (S)									
Jones Intercable 11-D (IRA)	A	INT	J	T	ROLLED				
Ltd. Part.-Resources Trust Co.									
Barnett Bank (IRA) Custodian-	A	INT	J	T	ROLLED				

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

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

Value Method Codes: (See column C2)	Q=Appraisal U=Book Value	S=Cost (real estate only) V=Other	X=Assessment W=Estimated	T=Cash/Market

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

"II. **INVESTMENTS and TRUSTS** -- income, value, transactions. (Includes those of spouse and dependent children; see pages 18-27 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		S. Transactions during reporting period				
	(1) Amt. Code1 (A-H)	(2) Type (e.g. div, rent, int.)	(1) Value Code2 (J-P)	(2) Value Meth. Code3 (Q-W)	(1) Type (ex: buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Mnth/Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
Barnett Bank (S)									
4561 San Juan Ave.,	E	RENT	M	W					
Jacksonville, FL (S)									
Kemper Invest. Port. Inc.	A	DIV	J	T	ROLLED				
(IRA) Mut. Fund, Raymond James									
& Assoc. Custodian (S)									
Great American Films, Ltd.	C	DIV	J	W					
Partnership (S)									
San Diego Century Assoc., Ltd.	A		K	W					
Partnership (S)									

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
Value Codes: (See col C1 & D3)	J=$15,000 or less M=$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
Value Method Codes: (See column C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

II. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pages 18-27 of instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
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.	(1) Amt. Code1 (A-H)	(2) Type (e.g. div, rent, int.)	(1) Value Code2 (J-P)	(2) Value Meth. Code3 (Q-W)	(1) Type (ex: buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Mnth/Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
Synthetic Industries, Ltd.	A		K	W					
Partnership (S)									
Public Storage Prop. VI, Ltd.	A		J	W					
Partnership (S)									
Sittenhouse Square Assoc.,	A		K	W					
Ltd. Partnership (S)									
Southern Inns Associates, Ltd.	A		K	W					
Partnership (S)									
Research Triangle Assoc., Ltd.	A		J	W					
Partnership (S)									

Income/Gain Codes: (See col B1 & D4)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to $5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=More than $1,000,000

Value Codes: (See col C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $250,000
	N=$250,001 to $500,000	O=$500,001 to $1,000,000	P=More than $1,000,000	

Value Method Codes: (See column C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market
	U=Book Value	V=Other	W=Estimated	

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

***I. INVESTMENTS and TRUSTS -- income, value, transactions. (includes those of spouse and dependent children; see pages 18-27 of instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
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.	(1) Amt. Code1 (A-H)	(2) Type (e.g. div, rent, int.)	(1) Value Code2 (J-P)	(2) Value Meth. Code3 (Q-W)	(1) Type (ex: buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date: Mnth/Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
MAJCO Bldg. Specialties, Ltd.	A		N	W					
Partnership (S)									
Mid-Atlantic Residential	A		K	W					
Investors, Ltd. Partnership(S)									
Levenshen Gazebo Partners,	A		K	W					
Ltd. Partnership (S)									
Consolidated Capitol Proper-	A		J	W					
ties, Ltd. Partnership (S)									
Century Properties Fund 15,	A		J	W					
Ltd. Partnership (S)									

Income/Gain Codes: (See col B1 & D4)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to $5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=More than $1,000,000

Value Codes: (See col C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $250,000
	N=$250,001 to $500,000	O=$500,001 to $1,000,000	P=More than $1,000,000	

Value Method Codes: (See column C2)	Q=Appraisal	S=Cost (real estate only)	S=Assessment	T=Cash/Market
	U=Book Value	V=Other	W=Estimated	

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
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.	(1) Amt. Code1 (A-H)	(2) Type (e.g. div, rent, int.)	(1) Value Code2 (J-P)	(2) Value Meth. Code3 (Q-W)	(1) Type (ex: buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Mnth/Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
American Cable TV, Ltd.	A		J	W					
Partnership (S)									
MAJCO Building Specialties,	A		L	W					
Ltd. Partnership (S)									
Fillmore Pacific Assoc., Ltd.	A		J	W					
Partnership (S)									
Lenox Towers, Assoc., Ltd.	A		K	Q					
Partnership (S)									
2736 University Blvd. W.,	E	SENT	M	W					
Jacksonville, FL (S)									

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

Value Codes: (See col C1 & D3)	J=$15,000 or less M=$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	N=$100,001 to $250,000

Value Method Codes: (See column C2)	Q=Appraisal U=Book Value	S=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

I. INVESTMENTS and TRUSTS — income, value, transactions. (Includes those of spouse and dependent children; see pages (8-27 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. Code1 (A-H)	(2) Type (e.g. div, rent, int.)	(1) Value Code2 (J-P)	(2) Value Meth. Code3 (Q-W)	(1) Type (ex: buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Mnth/Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
9471 Baymeadows Way (Units 401	A	RENT	L	W					
& 402), Jacksonville, FL (S)									
4427-37 Emerson, Jacksonville,	G	RENT	P	W					
FL (S)									
Ponte Vedra Banking Corp. (S)	A		J	1					
Prudential Securities (IRA)	A	INDI	J	1	OPENED				
(S)****									
3651-57 St. Johns Ave.,	F	RENT	N	W					
Jacksonville, FL									
3648 Riverside Ave.,	S	RENT	L	W					

Income/Gain Codes: (See col B1 & D4)	A=$1,000 or less	B=$(,001 to $2,500	C=$2,501 to $5,000	D=$5,00(to $15,000
	E=$15,001 to $50,000	F=$50,00(to $100,000	G=$(00,001 to $1,000,000	H=More than $(,000,000

Value Codes: (See col C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,00(to $100,000	M=$100,00(to $250,000
	N=$250,001 to $500,000	O=$500,00(to $1,000,000	P=More than $1,000,000	

Value Method Codes: (See column C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	1=Cash/Market
	U=Book Value	V=Other	W=Estimated	

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

I. INVESTMENTS and TRUSTS -- income, value, transactions. (includes those of spouse and dependent children; see pages 18-27 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. Code1 (A-H)	(2) Type (e.g. div, rent, int.)	(1) Value Code2 (J-P)	(2) Value Meth. Code3 (Q-W)	(1) Type (ex: buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Mnth/Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
Jacksonville, FL									
7365 103rd Street,	E	RENT	M	W					
Jacksonville, FL									
3654 Riverside Ave.,	B	RENT	L	W					
Jacksonville, FL									
Pool Villa 3111, Amelia	B	RENT	L	W					
Island, FL									
2309 Costa Verde Blvd.,	C	RENT	M	W					
Jacksonville Beach, FL									
5315 Jammes Rd., Jacksonville,	D	RENT	L	W					

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

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

Value Method Codes: (See column C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

I. **INVESTMENTS and TRUSTS** -- income, value, transactions. (Includes those of spouse and dependent children; see pages 18-27 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. Code1 (A-H)	(2) Type (e.g. div, rent, int.)	(1) Value Code2 (J-P)	(2) Value Meth. Code3 (Q-W)	(1) Type (ex: buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date: Mnth/Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
FL									
2107-08 Sawgrass Village,	E	RENT	R	W					
Ponte Vedra Beach, FL									
1810-16 Dancy Street,	D	RENT	L	W					
Jacksonville, FL									
3854 Valencia Street,	C	RENT	K	W					
Jacksonville, FL									
5701 Merrill Rd., Jacksonville	E	RENT	L	W					
Jacksonville, FL									
9471 Baymeadows Way,	S	RENT	R	W					

Income/Gain Codes: (See col B1 & D4)	A=$1,000 or less S=$15,001 to $50,000	B=$1,001 to $2,500 P=$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

Value Codes: (See col C1 & D3)	J=$15,000 or less S=$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

Value Method Codes: (See column C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

VI. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pages 16-27 of instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
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.	(1) Amt. Code1 (A-H)	(2) Type (e.g. div, rent, int.)	(1) Value Code2 (J-P)	(2) Value Meth. Code3 (Q-W)	(1) Type (ex: buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Mnth/Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
Jacksonville, FL									
Mortgage-Paul P. Chatani and	C	INT	K	W					
Kristen Chatani**									
Prudential Securities (IRA)	S	INT	K	T	OPENED				
Prudential Securities (Command	S	IST	L	T	OPENED				
Account) (S)									

Income/Gain Codes: (See col B1 & D4)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to $5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=More than $1,000,000
Value Codes: (See col C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $250,000
	N=$250,001 to $500,000	O=$500,001 to $1,000,000	P=More than $1,000,000	
Value Method Codes: (See column C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market
	U=Book Value	V=Other	W=Estimated	

Name of Person Reporting	Date of Report
SUSAN BLACK	01/24/92

II. **ADDITIONAL INFORMATION or EXPLANATIONS.** (Indicate part of Report.)

*This liability was inadvertently omitted from previous reports.

**This asset was inadvertently omitted from previous reports.

***This asset was incorrectly listed as 1311 Ship Watch on previous reports.

****IRA's previously listed were rolled into this IRA.

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_____

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., § 104, AND 18 U.S.C. § 1001.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to: Judicial Ethics Committee
Administrative Office of
the United States Courts
Washington, DC 20544

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Sonia Sotomayor - 1983 to the Present

Sonia Maria Sotomayor - Birth to Marriage

Sonia Sotomayor de Noonan, Sonia Maria Sotomayor de Noonan or Sonia Noonan, Married Name, 8/76 to 10/83.

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

RESIDENCE:

51 3rd Street, Apt. #1L
Brooklyn, New York 11231

OFFICE:

PAVIA & HARCOURT
600 Madison Avenue
New York, New York
10022

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

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

SCHOOL	DEGREE	DATES ATTENDED	GRADUATION
Princeton University	A.B., Summa Cum Laude	1972 - 1976	June 1976
Yale Law School	J.D.	1976 - 1979	June 1979

6. Employment Record: List (by year) all business or professional corporation, 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.

Organization	Address	Dates of Association	Position
Davis & Harcourt	600 Madison Ave. New York, NY 10022	1/88 to Present 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 St. Brooklyn, New York 11231	1983 - 1986	Counseling and consulting work for family and friends
New York City Campaign Finance Board	40 Rector Street New York, N.Y. 10006	1988 to the Present	Member, Board of Directors
State of New York Mortgage Agency	260 Madison Avenue New York, N.Y. 10016	1987 to the Present	Member, Board of Directors
Puerto Rican Legal Defense & Education Fund	99 Hudson Street New York, N.Y. 10013	1980 to the Present	Member, Board of Directors
Maternity Center Association	48 East 92nd Street New York, N.Y. 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 and received, as a co-winner, the N. Taylor Senior Pyne Prize. I also served as an editor of the Yale Law School Journal.

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, American Bar Association, 1980 to the present.

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

None except I do represent, as their attorney, Fendi S.a.S. Paola Fendi e Sorelle in a Task Force of trademark owners which seeks increased penalties for counterfeiting under New York State's criminal laws.

Please list all other organizations to which you belong.

For the organizations with which I am affiliated as a member of their Board of Directors, see response I(6) hereof.

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 membership. Give the same information for administrative bodies which require special admission to practice.

New York - First Department - April 7, 1980.

United States District Court, Southern District of New York - March 27, 1984.

United States District Court, Eastern District of New York - March 30, 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.

Note: Statehood and the Equal Footing Doctrine: The Case for Puerto Rican Seabed Rights, 88 Yale Law Journal 825 (1979) (Copy attached).

60-251 O - 83 - 10

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

Good. Please note, I am a diabetic. My last physical examination was September 3, 1991.

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

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.

1988 to the present - appointed by the Mayor, Board of Directors, New York City Campaign Finance Board.

1987 to the present - appointed by the Governor, Board of Directors, State of New York Mortgage Agency.

8/79 to 3/84 - Appointed by the District Attorney, Assistant District Attorney, New York County.

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, 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 work required formal legal representation, I referred the matter to my firm, Pavia & Harcourt, or to others with appropriate expertise.

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;

Dates of Association	Organization	Address	Position
4/84 to Present	Pavia & Harcourt	600 Madison Ave. New York, NY 10022	Partner - (since 1/88) 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 since January 1988 as a partner, I have been a general civil litigator in all facets of commercial work including, but not limited to, real estate, employment, banking, contract, distribution and agency disputes. Moreover, my practice has had significant concentration in intellectual property law including trademark, copyright and unfair competition, automobile franchise law, and export commodity trading under the North American Export Grain Association Contract.

My firm's and my own typical clients are significant European companies doing business in the United States.

From 8/79 to 3/84, as a prosecutor on behalf of New York County, my cases typically involved "street crimes", i.e., murders, robberies, etc. I did, however, also engage in investigative matters involving child pornography, police misconduct and fraud.

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 almost daily in court as a prosecutor and I appear regularly in court for a civil commercial litigator with a largely federal practice.

2. What percentage of these appearances was in:

Since 1984:

1. Federal courts; - approx. 70%

2. State courts of record; - approx. 20%

3. Other courts. - approx. 10%

As a Prosecutor:

1. Federal courts: - 0 -

2. State Courts of Record - 100%

3. Other courts - 0 -

3. What percentage of your litigation was:

   My practice as a prosecutor was a 100% criminal and in private practice has been 99% civil and 1% criminal.

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

   I have tried over 22 cases to verdict. In one 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.

    See attached Addendum

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of

your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

A great part of my litigation work involves pre-trial and discovery proceedings for cases which are typically settled before trial. In my litigation experience, and as part of my advising clients, my practice has involved 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 tire regulations; and franchising and licensing matters. I have, moreover, conducted over fifteen arbitration hearings involving, predominantly, export grain commodity trading on behalf of foreign buyers but also hearings involving banking, partnership and fashion industry disputes.

Finally, in addition to my involvement in establishing a national anti-counterfeiting program for Fendi S.a.S. Paola Fendi e Sorelle, I have 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 have 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.

As a partner in Pavia & Harcourt, I have a 1.5% of 106% interest in the firm which interest is valued at $25,616. The partners are currently discussing a redistribution of the percentage interest in the firm of deceased and retired partners. This redistribution may increase my interest and its value. The liquidation of a partner's interest is generally negotiated at the time of a resignation but the partnership has two years to pay the interest. My partners have advised me that they will attempt to liquidate my interest prior to my assumption of any public position.

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 been a practicing attorney, a partner in my firm, a member of the Board of Directors of various organizations, have made one loan to the business of a friend, and am a trustee for family trusts established by a client. I would disqualify myself from hearing matters in which I or my firm have been involved in accordance with 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 and if appointed, I would resign from the Board of Directors of the organizations with which I am currently affiliated and as a trustee for the family trusts of my client.

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 the Attached Financial Disclosure Report

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

See the 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.

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.

All of the non-profit organizations with which I have been affiliated serve the disadvantaged either directly or through projects I have participated in formulating. 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 have 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, has 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 grants college scholarships to minorities and first generation immigrants. I have, moreover, served, in 1990-1991, as a member of New York State's Panel on Inter-Group Relations.

Finally, I have been a member of the New York City Campaign Finance Board since its inception in 1988. 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 have devoted to my service to these various organizations has varied through the years but it has never been less than two hours a week and has been over eight hours a week during certain periods. Currently, I devote an average of approximately six hours a week cumulatively to the various non-profit organizations of which I am a member.

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).

At the suggestion of various friends, I submitted an application to and was interviewed by the Committee on the Judiciary which advises Senator Daniel Patrick Moynihan on his judicial recommendations. I subsequently met with Senator Moynihan who then recommended me to Senator Alfonse D'Amato. Senator D'Amato forwarded my name to the Department of Justice. I was first contacted and interviewed by the Committee on the Judiciary of the Association of the Bar of the City of New York which approved my qualifications for the appointment. Thereafter, on two occasions, I was contacted by and met with various officials at the Department of Justice. I was then sent requisite forms which I completed. I was interviewed by an agent of the Federal Bureau of Investigation and by a representative of the Standing Committee on the Federal Judiciary of the American Bar Association before my nomination by the President.

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

25. 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 of 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.

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.

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.

AFFIDAVIT

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

12/9/91
(DATE)

Sonia Sotomayor
(NAME)

(NOTARY)

ANTHONY S. CANNATELLA
Notary Public, State of New York
No. 41-4969768
Qualified in Queens County
Commission Expires Dec. 11, 1991

ADDENDUM TO UNITED STATES SENATE
QUESTIONNAIRE

QUESTION I(18):

A1.

Case Description: Represented Ferrari North America in an administrative hearing, ordered pursuant to a writ of mandate, of dealer's petition challenging the termination of his Ferrari franchise under California's Automobile Franchise Law. I predominantly conducted the hearing before the California New Motor Vehicle Board which confirmed the termination.

Ferrari North America appealed the judgment rendered on the writ, which judgment was reversed on appeal. The appeal addressed the issue whether a Stipulation of Settlement entered into before the California New Motor Vehicle Board could be enforced, without a good cause hearing, to terminate a dealer.

Although not listed as co-counsel for appellant's briefs, I had significant drafting input into the briefs. The appellate case was entitled 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 Appeal of the State of California in and for the 3rd Appellate District; Sacramento Superior Court, Case No. 360734. See below for the names, addresses and telephone numbers of co-counsel and adversaries).

ADMINISTRATIVE
Case Name: Ferrari of Sacramento, Inc. vs. Ferrari North America.

Agency: State of California New Motor Vehicle Board (Appeared pro hac vice)

Protest No.: PR-973-88

Administrative Law Judges: Robert S. Kendell
Marilyn Wong

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
(213) 553-0451

Adversaries: Jay-Allen Eisen
Jay-Allen Eisen Law Corporation
1000 G Street, Suite 300
Sacramento, California 95814
(916) 444-6171

Donald M. Licker, Esq.
701 University Avenue, Suite 100
Sacramento, California 95825
(916) 924-9600

A2.
Case Description: Represented Ferrari North America, pro hac vice, a franchisor of bankrupt dealer in hearings relating to Ferrari's opposition to the rejection of customer contracts, assumption of the dealer's franchise agreement and confirmation of the proposed sale of dealer's franchise. The Court ruled that the dealer could not reject customer contracts, although financially burdensome, and then assume franchise agreement.

Case subsequently settled with sale of dealership and resolution of claims among dealer, new buyer, Ferrari and customers.

Case Name: 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.

Case No: 3-89-03450-TC

Judge: Thomas E. Carlson
U.S. Bankruptcy Court Judge

Dates of Hearing: 1/22/90 and 3/19/90

Co-Counsel: Nicholas Browning, III, Esq.
Herzfeld & Rubin
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 94010
(415) 342-6601

William Kelly, Esq.
Graham & James
Attorneys for Buyer, Barry Singh
One Maritime Plaza, Suite 300
San Francisco, California 94111
(415) 954-0200

A3 - A5
General Description: Since 1985, my firm has represented Fendi S.a.s. di Paola Fendi e Sorelle ("Fendi") in its national anti-counterfeiting work. Frances B. Bernstein, a deceased partner of my firm, and I created Fendi's program. Since 1988, I have been the partner in charge of that program. I have handled almost all discovery work and substantive court appearances in cases involving Fendi. The following are cases representative of various facets of this work.

A3.
Case Description: Multiple provisional relief appearances relating to Lanham Act claims against street vendors.

Case Name: Jane Doe v. John Doe and Various ABC Companies.

Case No.: 89 Civ. 3122 (TPG)

Court: United States District Court
Southern District of New York

Judge: Thomas P. Griesa
U.S. District Judge

Adversaries: None have appeared.

or

Case Description: Appearances relating to temporary restraining order, preliminary injunction and seizure order under the Lanham Act and granting of default judgment.

Case Name: Fendi S.a.s. Di Paola Fendi e Sorelle v. Dapper Dan's Boutique et.al.

Court: United States District Court
Southern District of New York

Case No: 89 Civ. 0477

Judge: Miriam G. Cedarbaum
U.S. District Judge

Dates of Hearings: 1/23/89 and 2/17/89

Adversary(s): Defendant appeared pro se and then defaulted.

A4.
Case Description: Lanham Act claim which was settled during trial.

Case Name: Fendi S.a.s. di Paola Fendi e Sorelle vs. Burlington Coat Factory Warehouse Corp., et al.

Court: United States District Court
Southern District of New York

Case No.: 86 Civ. 0671 (LBS)

Judge: Leonard B. Sand
U.S. District Judge

SOTOM[illegible] R ADD.
SENATE QUEST.-5-

Dates of Trial: May 18 and 19, 1987

Adversaries: Stacy J. Haigney, Esq.
Herbert S. Kasner, Esq.
Attorneys for Burlington Coat Factory Warehouse and Monroe G. Milstein
Burlington Cost Factory Warehouse, Corp.
263 West 38th Street
New York, New York 10018
(212)221-0010

Dennis C. Kreiger, Esq.
Cuddy & Fedder
Attorneys for Firestone Mills, Inc. and Leo Freund
90 Maples Avenue
White Plains, New York 10601
(914) 761-1300

A5.
Case Description: Motion for summary judgment granted and damages and attorneys fees referred to magistrate. Judgment after hearing entered. (Decision on motion reported at 642 F. Supp. 1143 (S.D.N.Y. 1986)).

Case Name: Fendi S.a.s. di Paola Fendi e Sorelle vs. Cosmetic World, Ltd., Loradan Imports, Inc., Linea Prima, Inc. a/k/a Lina Garbo Shoes, Daniel Bensoul, Michael Bensoul a/k/a Nathan Benedel, Paolo Vincelli and Mario Vincelli.

Court: United States District Court
Southern District of New York

Case No.: 85 Civ. 9666

Judges: Leonard B. Sand
U.S. District Judge

Joel J. Tyler
Magistrate, U.S. District Court

Date of Hearing: 1/6/88

Adversary: Stanley Yaker, Esq.
Attorney for Paolo Vincelli and Mario Vincelli
114 East 32nd Street

Suite 1104
New York, New York 10016
(212) 983-7241

No attorneys appeared for other defendants who settled pro se.

A6.

Case Description: Represented Bulgari Corporation of America on its appeal of the District Court's Denial of a Motion to Modify a Preliminary Injunction (I had extensive participation in the drafting of appellant's brief and reply and I predominantly drafted all motion papers and argued below). The order below was affirmed on appeal.

Case Name: Republic of the Philippines vs. 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").

Court: United States Court of Appeals for the Second Circuit.

Case Nos: 90-7322 and 90-7398

Panel: Thomas J. Meskill
Lawrence W. Pierce
George C. Pratt
U.S. Circuit Judges

Date of Argument: June 15, 1990 (Argued by Roy L. Reardon, Esq. of Simpson, Thacher & Bartlett)

Co-Counsel:

Roy L. Reardon, Esq. (455-2840)
David E. Massengill, Esq. (455-3555)
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017
(212) 455-2000

Adversary(s):

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

Case Description:

Order to Show Cause for Approval of Sublease by Bulgari Corporation of America.

Case Name:

Republic of the Philippines vs. 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")

Court:

United States District Court
Southern District of New York

Case Nos.:

The Philippines Case - 86 Civ. 2294
The Security Pacific Case - 87 Civ. 3629

Judges:

Pierre N. Leval
U.S. District Judge

Date of Argument:

2/12/90

Co-Counsel:

David A. Botwinik
Pavia & Harcourt
600 Madison Avenue
New York, New York 10022
(212) 980-3500

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

A7.

Case Description: Represented claimant Nidera Handelscompagnie, B.V. in a novel claim in NAEGA arbitration which sought indemnification from a seller for the attorneys fees and costs expended in defending against an action in London by Nidera's buyer. A partial award was rendered in favor of Nidera.

Case Name: Nidera Handelscompagnie, B.V. vs. Continental Grain Company.

Tribunal: American Arbitration Association
New York County

Arbitration No: 13-161-1038086

Arbitrators:

Fred C. Ashner
Bunge Corporation
11720 Borman Drive
St. Louis, Missouri 63146
(314) 872-3030

Theo Joseph
147-36 Charter Road
Jamaica, New York 11435
(718) 969-3721
Henri C.A. Van Stolk
Van Stolk Company, Inc.

30 Bay Street, Room 600
Staten Island, New York 10301
(718) 448-8113

Dates of Hearings: 9/27/88 and 3/2/89 - More hearings were held, but dates have been difficult to locate because case spanned over three years.

Adversary: Gerald P. Lepp, Esq.
General Counsel
Continental Grain Company
277 Park Avenue
New York, New York 10172
(212) 207-5686

As.
Case Description: Represented claimant Alfred C. Toepher International, G.m.b.H. in arbitration and in opposing motion to stay arbitration. Motion was denied and cross motion to compel arbitration granted. Case involved issue of whether an alter ego of an entity who signed an arbitration agreement could be compelled to arbitrate. The motion was argued by David A. Botwinik of my office, but I prepared the motion papers.

A Notice of Appeal of the Order of the District Court and a Motion for Stay of Arbitration Pending Appeal was brought before the Second Circuit. I argued the motion to stay, which motion was denied and the appeal dismissed at the conclusion of the argument on the motion.

Arbitration resulted in award in favor of claimant against party who signed agreement and alter ego.

Case Name: Miserocchi & C., S.p.A. vs. Alfred C.Toepfer International, G.m.b.H.

Court: United States Court of Appeals for the Second Circuit

Case No. 85 - 7734

Panel: J. Edward Lumbard

James L. Oakes
George C. Pratt
U.S. Circuit Judges

Date of Argument: September 17, 1984

Adversary: Stephen P. Sheehan
Wistow & Barylick
56 Pine Street
Providence, Rhode Island 02903
(401)831-2700

District Court Case:

Case Name: Miserocchi & C., S.p.A. vs. Alfred C. Toepfer International, G.m.b.H.

Court: United States District Court
Southern District of New York

Case No: 84 Civ. 6112 (KTD)

Judge: Kevin Thomas Duffy
U.S. District Judge

Date of Argument: September 5, 1984
(argued by David A. Botwinik of Pavia & Harcourt)

Adversary: Stephen P. Sheehan
Winstow & Barylick
56 Pine Street
Providence, Rhode Island 02903
(401)831-2700

A9.
Case Description: Represented the State of New York in its prosecution of the first child pornography case in New York State after the U.S. Supreme Court upheld the constitutionality of New York's laws. Defendants convicted after trial and sentenced, respectively to 3-1/2 to 7 and 2 to 6 years.

Case Name: The People of the State of New York vs. Clemente D'Alessio and Scott Hyman.

SOTOMAYOR ADD.
SENATE QUEST.-11-

Court: Supreme Court of the State of New York, County of New York.

Indictment No.: 4581/82

Judge: Thomas B. Galligan
Acting Justice Supreme Court, 1st Jud. Dist.

Dates of Trial: 2/2/83 to 3/2/83

Associate Counsel: Karen Greve Milton
General Counsel
N.Y.S. Commission of Investigation
270 Broadway
26th Floor
New York, New York 10007
(212) 577-0737

Adversaries: Steven Kimelman, P.C.
Attorney for Scott Hyman
110 East 59th Street, 33rd Floor
New York, New York 100022
(212) 682-4200

James Bernard, Esq.
Attorney for Clemente D'Alessio
150 Broadway
New York, New York 10038
(212) 233-0260

A10.
Case Description: Represented the State of New York, with co-counsel, in a consolidated trial of multiple murders, attempted murders, burglaries, robberies and related crimes by the same defendants. Defendant was convicted after trial and sentenced, consecutively, to 67-1/2 years to life. I prepared and argued, before Justice Harold Rothwax, the applicability of New York State's consolidation criteria to crimes of violence which were spread over a year's period of time and which had different modes of entry for each burglary.

Case Name: The People of the State of New York v. Richard Maddicks.

Court:	Supreme Court of the State of New York, County of New York.
Indictment No.:	886/82
Judge:	James J. Leff Justice, Supreme Court
Dates of Trial:	Almost all of January 1983
Lead Counsel:	Hugh H. Mo, Esq. Whitman & Ransom 200 Park Avenue, 27th Floor New York, New York 10166 (212) 351-3448
Adversary:	Peter A. Furst, Esq. 2136 Funston Place Oakland, California 94602 (415) 531-3904

Schedule K-1 (Form 1065) — Department of the Treasury, Internal Revenue Service

Partner's Share of Income, Credits, Deductions, Etc.

▶ See separate instructions.

For calendar year 1990 or tax year beginning , 1990, and ending , 19

OMB No. 1545-0099

1990

Partner's identifying number ▶092-44-0639

Partner's name, address, and ZIP code
SONIA SOTOMAYOR

51 THIRD ST
NEW YORK, NY

Partnership's identifying number ▶13-5604022

Partnership's name, address, and ZIP code
PAVIA & HARCOURT

600 MADISON AVE
NEW YORK, NY 10022

A Is this partner a general partner? ☒ Yes ☐ No

B Partner's share of liabilities (see instructions):
Nonrecourse $
Qualified nonrecourse financing $
Other $ 30,158

C What type of entity is this partner? ▶ INDIVIDUAL

D Is this partner a ☒ domestic or a ☐ foreign partner?

E Enter partner's percentage of:

	(i) Before change or termination	(ii) End of year
Profit sharing	%	4.4583 %
Loss sharing	%	4.4583 %
Ownership of capital	%	1.714 %

F IRS Center where partnership filed return ▶HOLTSVILLE

G(1) Tax shelter registration number ▶ 0

(2) Type of tax shelter ▶

H(1) Did the partner's ownership interest in the partnership change after Oct. 22, 1986? ☐ Yes ☒ No
If "Yes," attach statement. (See Form 1065 instructions.)

(2) Did the partnership start or acquire a new activity after Oct. 22, 1986? ☐ Yes ☒ No
If "Yes," attach statement. (See Form 1065 instructions.)

I Check here if this partnership is a publicly traded partnership as defined in section 469(k)(2) ☐

J Check applicable boxes: (1) ☐ Final K-1 (2) ☐ Amended K-1

K Reconciliation of partner's capital account:

(a) Capital account at beginning of year	(b) Capital contributed during year	(c) Income (loss) from lines 1, 2, 3, 5 & below	(d) Income not included in column (c), plus nontaxable income	(e) Losses not included in column (c), plus nondeductible deductions	(f) Withdrawals and distributions	(g) Capital account at end of year (combine columns (a) through (f))
15,694		11,308	142,390	(1,527)	(142,249)	25,616

		(a) Distributive share item		(b) Amount	(c) 1040 filers enter the amount in column (b) on:
Income (Loss)	1	Ordinary income (loss) from trade or business activities	1	8,189	(See Partner's Instructions for Schedule K-1 (Form 1065))
	2	Net income (loss) from rental real estate activities	2		
	3	Net income (loss) from other rental activities	3		
	4	Portfolio income (loss):			
	a	Interest	4a	2,102	Sch. B, Part I, line 1
	b	Dividends	4b	406	Sch. B, Part II, line 5
	c	Royalties	4c		Sch. E, Part I, line 4
	d	Net short-term capital gain (loss)	4d	1,185	Sch. D, line 5, col. (f) or (g)
	e	Net long-term capital gain (loss)	4e	-574	Sch. D, line 12, col. (f) or (g)
	f	Other portfolio income (loss)	4f		(Enter on applicable line of your return)
	5	Guaranteed payments to partner	5	142,390	(See Partner's Instructions for Schedule K-1 (Form 1065))
	6	Net gain (loss) under section 1231 (other than due to casualty or theft)	6		
	7	Other income (loss) (attach schedule)	7		(Enter on applicable line of your return)
Deductions	8	Charitable contributions	8	205	Sch. A, line 14 or 15
	9	Section 179 expense deduction SEE STATEMENT 4	9	446	(See Partner's Instructions for Schedule K-1 (Form 1065))
	10	Deductions related to portfolio income	10		
	11	Other deductions (attach schedule) SEE STATEMENT 4	11	52	
Investment Interest	12 a	Interest expense on investment debts	12a	66	Form 4952, line 1
	b	(1) Investment income included on lines 4a through 4f above	b(1)	3,119	(See Partner's Instructions for Schedule K-1 (Form 1065))
		(2) Investment expenses included on line 10 above	b(2)		
Credits	13 a	Credit for income tax withheld	13a		(See Partner's Instructions for Schedule K-1 (Form 1065))
	b	Low-income housing credit:			
		(1) From section 42(j)(5) partnerships for property placed in service before 1990	b(1)		Form 8586, line 5
		(2) Other than on line 13b(1) for property placed in service before 1990	b(2)		
		(3) From section 42(j)(5) partnerships for property placed in service after 1989	b(3)		
		(4) Other than on line 13b(3) for property placed in service after 1989	b(4)		
	c	Qualified rehabilitation expenditures related to rental real estate activities (see instructions)	13c		(See Partner's Instructions for Schedule K-1 (Form 1065))
	d	Credits (other than credits shown on lines 13b and 13c) related to rental real estate activities	13d		
	e	Credits related to other rental activities	13e		
	14	Other credits (see instructions)	14		

Schedule K-1 (Form 1065) 1990 — Page 2

	(a) Distributive share item		(b) Amount	(c) 1040 filers enter the amount in column (b) on:
Self-Employment	15 a Net earnings (loss) from self-employment	15a	150,579	Sch. SE, Section A or B
	b Gross farming or fishing income	15b		See Partner's Instructions for Schedule K-1 (Form 1065)
	c Gross nonfarm income	15c		
Adjustments and Tax Preference Items	16 a Accelerated depreciation of real property placed in service before 1987	16a		(See Partner's Instructions for Schedule K-1 (Form 1065) and Form 6251 Instructions)
	b Accelerated depreciation of leased personal property placed in service before 1987	16b		
	c Depreciation adjustment on property placed in service after 1986	16c	873	
	d Depletion (other than oil and gas)	16d		
	e (1) Gross income from oil, gas, and geothermal properties	e(1)		
	(2) Deductions allocable to oil, gas, and geothermal properties	e(2)		
	f Other adjustments & tax preference items	16f		
Foreign Taxes	17 a Income type ▶			Form 1116, Check boxes
	b Foreign country/U.S. possession name ▶			Form 1116, Part I
	c Total gross income fr. sources outside U.S.	17c		Form 1116, Part I
	d Total applicable deductions and losses	17d		Form 1116, Part I
	e Total foreign taxes (check one): ▶ ☐ Paid ☐ Accrued	17e		Form 1116, Part II
	f Reduction in taxes available for credit	17f		Form 1116, Part III
	g Other foreign tax information	17g		See Form 1116 Instructions
Other	18 a Total expenditures to which a section 59(e) election may apply	18a		See Partner's Instructions for Schedule K-1 (Form 1065)
	b Type of expenditures ▶			
Recapture of Tax Credits	19 Recapture of low-income housing credit:			
	a From section 42(j)(5) partnerships	19a		Form 8611, line 8
	b Other than on line 19a	19b		
	20 Investment credit properties:	A	B	C
	a Description of property (State whether recovery or nonrecovery property. If recovery property, state whether regular percentage method or section 48(q) election used.)			Form 4255, top
	b Date placed in service			Form 4255, line 2
	c Costs or other basis			Form 4255, line 3
	d Class of recovery property or original estimated useful life			Form 4255, line 4
	e Date item ceased to be investment credit property			Form 4255, line 8
Supplemental Information	21 Supplemental information required to be reported separately to each partner (attach additional schedules if more space is needed.)			

PARTNER 10

STATEMENT 4 - FORM 1065, SCHEDULE K-1
PAVIA & HARCOURT
13-5604022

SONIA SOTOMAYOR
092-44-0639

LINE 9 - SECTION 179 EXPENSE DEDUCTION

OFFICE EQUIP	446
TOTAL	446

LINE 11 - OTHER DEDUCTIONS

POLITICAL CONTRIBUTIONS	52
TOTAL	52

SC-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

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

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Sonia Sotomayor	U.S. District Court for the Southern District of New York	December 2, 1991
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	**5. Report Type (check appropriate type)**	**6. Reporting Period**
Judicial Nominee	X Nomination, Date 11/27/91 ___ Initial ___ Annual ___ Final	December 2, 1991

7. Chambers or Office Address
Pavia & Harcourt
600 Madison Avenue
New York, N.Y. 10022

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

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

POSITION	NAME OF ORGANIZATION/ENTITY
☐ NONE (No reportable positions)	
Partner	Pavia & Harcourt
Member, Board of Directors	New York City Campaign Finance Board
Member, Board of Directors	New York State Mortgage Agency

(Continued; please see ATTACHMENT A)

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

DATE	PARTIES AND TERMS
☐ NONE (No reportable agreements)	

As a partner in Pavia & Harcourt, I have a 1.5% of 106% interest in the firm which interest is currently valued at $25,616. The partners are currently discussing a redistribution of the percentage interest in the firm of deceased and retired partners. This redistribution may increase my interest and its value. The liquidation of a partner's interest is generally negotiated at the time of a resignation but the partnership has two years to pay the interest. My partners have advised me that they will attempt to liquidate my interest prior to my assumption of any public position.

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

	DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐ NONE (No reportable non-investment income)			
1		Pavia & Harcourt Income 1990	$151,761. (gross)
2		In 1991 to date, I have received distributions from my	$
3		firm in the amount of $133,544 (gross), but until	$
4		Schedule K-1, Form 1065 is prepared for my tax filing in	$
5		April, 1992, I will not know my exact gross income based on partnership allocations of income, credits, deductions,	$
		etc.	$
		*State of New York Mortgage Agency	300.
		*New York City Campaign Finance Board	$ 1,000.

*Payment of $100 per diem for service on Boards of Directors.

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Sonia Sotomayor	December 2, 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.13-15 of instructions.)

	SOURCE	DESCRIPTION
[x]	NONE (No such reportable reimbursements or gifts)	
1		
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

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

	SOURCE	DESCRIPTION	VALUE
[x]	NONE (No such reportable gifts)		
1			
2			$
3			$
4			$
5			$

VI. LIABILITIES.

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

	CREDITOR	DESCRIPTION	VALUE CODE*
[x]	NONE (No reportable liabilities)		
1	As a member of Pavis & Harcourt, I am contingently liable for the debts and obligations of the firm incurred during my partnership. The firm, however, has paid its debts in the ordinary course of business and no claims against individual partners have been made or are anticipated.		
2			
3			
4			
5			

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

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Sonia Sotomayor	December 2, 1991

VII. INVESTMENTS and TRUSTS – Income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 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 (1) Amt. Code (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Citibank, NA, N.Y., N.Y.	P	Sav. Acct. Prin.	K	T					
2 Citibank, NA, N.Y., N.Y.	C	Int. on Sav.	J	T					
3 Citibank, NA, N.Y., N.Y.	None	Check'g Acct.	J	T					
4 Cobble Hill Laundry, Bklyn.					Loan to Bus.	8/91	K	N/A	Personal interest free loan to bus. of a friend to be repaid in three y
5 Cobble Hill Laundry, Bklyn. N.Y.	B	Loan repay.	J	T					
6 Pavia & Harcourt N.Y.	None	Partnership Value	K	V (Partnership self-assessment)					
7	except see III								
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

Pavia & Harcourt as a firm has bank accounts, a mutual fund account, and some stock. I do not manage and do not have signatory power over any of those accounts or stocks, and have never participated in any decision making with respect to those accounts. My K-1, 1065 for 1990 is attached hereto for purposes of reflecting my allocation of partnership income and transactions. Until the close of the calendar year when the K-1 is prepared for my firm, I will not know my allocations for 1991. Since I have only a minimal interest in my firm, 1.5% of 106%, and do not control or manage the firm or its assets, information relating to the firm's assets has not been included.

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less B=$15,001 to $50,000	E=$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 K=$250,001 to $500,000	K=$15,001 to $50,000 O=$500,001 to $1,000,000	L=$50,001 to $100,000 P=More than $1,000,000	M=$100,001 to $250,000
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Sonia Sotomayor	December 2, 1991

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 Sonia Sotomayor Date 12/2/91

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

Name of Person Reporting	Date of Report
Sonia Sotomayor	December 2, 1991

ATTACHMENT A

Member, Board of Directors	Puerto Rican Legal Defense and Education Fund
One of three Trustees for	Ortiz 1989 Family Trust
One of three Trustees for	Candido Ortiz Trust for the benefit of Amanda Maria Valdes
One of three Trustees for	Candido Ortiz Trust for the benefit of Cheo Lopez
One of three Trustees for	Candido Ortiz Trust for the benefit of Christina Citron
One of three Trustees for	Candido Ortiz Trust for the benefit of David Thompson
One of three Trustees for	Candido Ortiz Trust for the benefit of Christopher Thompson
One of three Trustees for	Candido Ortiz Trust for the benefit of Christopher Valdes

I have no beneficial interest in the trusts.

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	35,000	(1)		Notes payable to banks—secured	0		
U.S. Government securities—add schedule	0			Notes payable to banks—unsecured	0		
Listed securities—add schedule	0			Notes payable to relatives	0		
Unlisted securities—add schedule	0			Notes payable to others	0		
Accounts and notes receivable:				Accounts and bills due	2,000	(5)	
Due from relatives and friends	0			Unpaid income tax	0		
Due from others	23,000	(2)		Other unpaid tax and interest	0		
Doubtful	0			Real estate mortgages payable—add schedule	82,500	(6)	
Real estate owned—add schedule	105,000	(3)		Chattel mortgages and other liens payable			
Real estate mortgages receivable	0			Other debts—itemize:			
Autos and other personal property	45,000	(4)		Lease on Car	1,538.	83	(7)
Cash value—life insurance	---						
Other assets—itemize:							
Partnership Interest in Pavia & Harcourt	25,616						
				Total liabilities	86,038.	83	
				Net worth	151,577.	17	
Total assets	237,616			Total liabilities and net worth	237,616.	00	
CONTINGENT LIABILITIES	None	(8)		GENERAL INFORMATION			
As endorser, comaker or guarantor	---			Are any assets pledged? (Add schedule.)	Yes - Co-op Shares		
On leases or contracts	---			Are you defendant in any suits or legal actions?	No (9)		
Legal Claims	---			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	---						
Other special debt	---						

For notes (1) thru (9) see attached Schedule A.

SCHEDULE A

1. A Citibank N.A. joint checking and savings account.

2. This represents an interest free loan I made on August 23, 1991 to Cobble Hill Laundry Dry Cleaning Plant, Ltd., a company owned by a friend. The money is being paid to me over a three year period.

3. I own the cooperative shares for my residence, 51 3rd Street, Apt. 1L, Brooklyn, New York 11231, which I have valued at my purchase price.

4. I own a 1984 Honda Civic and the remainder of this evaluation includes furnishing, clothing, jewelry, etc., at cost.

5. Citibank Visa and Barrie Pace Ltd. credit card debt.

6. This is a mortgage at Apple Bank for Savings for my personal residence. The shares for my cooperative apartment are pledged to the Bank for that mortgage.

7. I have and pay a lease for my mother's Honda Civic with GE Capital Auto Lease, Inc. at the rate of $219.69 per month. The lease terminates in June 1992.

8. As a member of Pavia & Harcourt, I am contingently liable for the debts and obligations incurred by the firm prior to my withdrawal as a partner. The firm has paid its debts in the ordinary course of business. There is no reason to believe it would not do so upon my withdrawal as a partner. No claim against me individually has ever been made and none is anticipated.

9. My firm has been sued by former clients since I have been a partner but not for any matter in which I participated. The firm has insurance which it believes is adequate to cover any potential liability.

UNITED STATES SENATE
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Loretta A. Preska

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

Office: Hertzog, Calamari & Gleason
100 Park Avenue - 23rd Floor
New York, NY 10017

Home: 140 East 37th Street
New York, NY 10016

3. Date and place of birth.

January 7, 1949, Albany, 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 am married to Thomas J. Kavaler, a lawyer who is a member of Cahill Gordon & Reindel, 80 Pine Street, New York, NY 10005

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

College of St. Rose
Albany, New York
September 1966 through May 1970
B.A. Chemistry May 1970

Fordham University School of Law
September 1970 through May 1973
J.D. May 1973

New York University School of Law
Part time, 1975 through 1978
Ll.M. in Trade Regulation 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.

Summer 1971. Law Clerk, Arnold A. Proskin, District Attorney, Albany County, Albany, New York.

Summer 1972. Law Clerk, Cahill Gordon & Reindel, 80 Pine Street, New York, New York 10005

June 1973 - April 1982. Litigation Associate, Cahill Gordon & Reindel, 80 Pine Street, New York, New York 10005

April 1982 - December 1982. Litigation Associate, Hertzog, Calamari & Gleason, 100 Park Avenue, 23rd Floor, New York, New York, 10017

January 1983 - present. Litigation Partner, Hertzog, Calamari & Gleason, 100 Park Avenue, 23rd Floor, New York, New York, 10017

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 had no 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.

The Louis J. Lefkowitz Public Service Alumni Award of the Fordham University School of Law Public Interest Resource Center, 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.

Member of the New York County Lawyers Association (Committee on Federal Courts 1989 to present); American Bar Association (Litigation Section and Corporate Counsel Committee); New York State Bar Association (Committee on the Federal Judiciary 1989 to present); Association of the Bar of the City of New York; Federal Bar Council.

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.

Fordham Law Alumni Association (Vice President)
The Parents 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.

New York State - First Department 1974
United States District Court for the
Southern District of New York 1974
United States District Court for the
Eastern District of New York 1974
United States Court of Appeals for the
Second Circuit 1974
United States Supreme Court 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.

Contributing Author, "Alternatives To Trial" in Federal Civil Practice, New York State Bar Association, 1989

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

My health is excellent. My most recent annual physical was on December 10, 1991.

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

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 opinion on federal or state constitutional issues, together with the citation or 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;

N/A

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

N/A

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

January 1983 - present
Litigation partner, Hertzog, Calamari & Gleason, 100 Park Avenue, New York, New York 10017

April 1982 through December 1982
Litigation associate, Hertzog, Calamari & Gleason, 100 Park Avenue, New York, New York 10017

June 1973 through April 1982
Litigation associate, Cahill Gordon & Reindel 80 Pine Street, New York, New York 10005

Summer 1972
Summer associate, Cahill Gordon & Reindel, 80 Pine Street, New York, New York 10005

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

My practice has always been primarily a commercial civil litigation practice. In addition, I have represented numerous corporate officers under investigation for alleged "white collar"

crimes by federal grand juries and in related proceedings, most notably the E.F. Hutton & Company investigation which resulted in the company's plea to 2000 felony counts.

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

During the last eight or nine years, my practice has emphasized securities matters, contract matters and federal regulatory work. I represent various people on the industry side of securities matters (for example, broker/dealers, registered representatives, traders and other securities industry professionals) in private actions seeking money damages (including under RICO), regulatory and enforcement inquiries seeking to impose penalties, and industry disputes between employees and their firms. In the general contract area, I have represented parties to various contractual relationships in litigation arising out of claims of breach. For example, I represented S Acquisition Corporation in an action before Judge Leval in which an investment banking firm (represented by Simpson Thacher & Bartlett) sued that company for claimed fees in connection with investment banking services in a major corporate acquisition. In another matter, I represented Baltimore Gas & Electric Company in an action before Judge Haight in which preference stockholders (represented by Davis, Polk & Wardwell) sued to enforce rights they claimed under a preference stock purchase agreement.

In the criminal area, I represented several officers of E.F. Hutton & Company before the Grand Jury in connection with the company's eventual plea to 2,000 felony counts and in related proceedings, including appearances before the Subcommittee on Crime of the House Judiciary Committee chaired by the Honorable William Hughes of New Jersey, the Securities and Exchange Commission and the New York Stock Exchange. I have also represented numerous

witnesses before grand juries inquiring into allegations of criminal price fixing.

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 occasionally, that is, consistent with a commercial litigation practice.

2. What percentage of these appearances was in:

(a) federal courts;
(b) state courts of record;
(c) other courts.

Approximately 90 percent of my court appearances have been in federal courts.

3. What percentage of your litigation was:

(a) civil;
(b) criminal.

Virtually all of my court appearances have been in civil matters although I have represented several individuals in connection with grand jury appearances.

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 three cases to verdict as sole counsel and one case just short of verdict as counsel for one of several co-defendants. In addition, I have tried approximately twenty cases to verdict in various arbitration proceedings conducted by, inter alia, the New York

Stock Exchange, the American Arbitration Association and the National Association of Securities Dealers.

5. What percentage of these trials was:

(a) jury;
(b) non-jury.

The three cases I tried to verdict were non-jury; the other was tried to a jury. The arbitrations were all tried to panels of arbitrators.

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) In American Home Assurance Co. et al. v. Baltimore Gas & Electric Co., 87 Civ. 0398 (CSH), aff'd, 87-7812 (2d Cir.), I represented the defendant in an action by holders of certain shares of BG&E's preference stock wherein those holders disputed BG&E's right (under the applicable Preference Stock Purchase Agreement) to repurchase their preference stock. Judge Charles S. Haight of the Southern District of New York denied defendant's motion for summary judgment, and later granted plaintiffs' motion for summary judgment. Judge Haight's order was affirmed by the Second Circuit with one dissent.

This action was litigated in 1987. Opposing counsel was James W.B. Benkard, Davis Polk & Wardwell, One Chase Manhattan Plaza, New York, New York 10005, (212) 530-4000.

I argued before Judge Haight and before the Second Circuit.

(2) In Castellano v. Prudential-Bache Securities Inc. and the New York Stock Exchange, 90 Civ. 1287 (WCC), in the Southern District of New York, plaintiff had filed an arbitration claim against Prudential with the New York Stock Exchange ("NYSE") alleging breach of contract. Pursuant to its own six year limitations period contained in NYSE Rule 603, the NYSE dismissed without appointing a panel of arbitrators to hear the matter. Plaintiff then filed a complaint in the Southern District of New York seeking, inter alia, a declaration that the NYSE had violated its rules by dismissing without appointing a hearing panel and an order requiring a hearing or a declaration that he may refile his claim with the American Arbitration Association ("AAA") (which has no similar limitations period).

Upon defendants' motions for summary judgment, the NYSE argued, inter alia, that plaintiff could refile with the AAA, while I argued on behalf of Prudential that Prudential's written agreement with plaintiff precluded such refiling, In an opinion reported at CCH Fed. Sec. Law Report ¶95,321 and noted in the securities industry because the disputed language appears in many brokerage firms' agreements, Judge William C. Conner held that plaintiff could not refile in another arbitral forum.

Plaintiff's counsel was Louis I. Parley of the Marcus Law Firm, 111 Whitney Avenue, New Haven, Connecticut 06510, and counsel to the NYSE was Russell E. Brooks of Milbank, Tweed, Hadley & McCloy, One Chase Manhattan Plaza, New York, New York 10005, (212) 530-5000. Judge Conner's opinion was dated June 18, 1990.

(3) I recently completed a New York Stock Exchange arbitration entitled Anglo American v. Prudential-Bache Securities Inc., Robert Knutsen and Michael R. Offit wherein claimant alleged that it purchased certain

FHA insured puttable project notes from Prudential and hedged them with treasury futures upon certain representations by Prudential which claimant contends were not true. I tried the matter as sole counsel for Prudential over eight trial days, and it concluded in January 1992.

The panel of arbitrators consisted of Robin Henry, chair, Joseph Mascia and Irwin Wolf, III, all of whom can be contacted through Harry Albirt, Esq., Manager, Arbitration, The New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005 (212) 656-3000. Opposing counsel was Christopher Lovell, 52 Duane Street, New York, New York 10007 (212) 608-1900.

(4) Cohen v. Stanley, et al., 82 Civ. 210 (DNE) and Romacho v. Stanley, et al. 82 Civ. 211 (EW) presented the question of whether the defendant trustees of the Bowne Profit-Sharing Trust and Bowne Health Benefit Plan and Trust, inter alia, acted arbitrarily and capriciously in denying plaintiffs accelerated distribution of their vested benefits, breached their duty to administer the trusts solely in the interest of their participants or failed to disclose the terms of the plans, all in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"). I tried these cases as sole counsel to former Chief Judge David A. Edelstein and to the late Judge Edward Weinfeld, respectively. Judge Edelstein found that the defendants had indeed violated their duties under ERISA, 566 F. Supp. 246, and Judge Weinfeld found that they had not. 567 F. Supp. 1417.

These cases were consolidated on appeal to the Second Circuit with Morse v. Stanley, et al. another related case. I argued the appeal on behalf of Messrs. Cohen and Romacho to Circuit Judges Kaufman, Oakes and Cardamone. The majority upheld the trustees' action, with Judge Oakes dissenting. 732 F.2d 1139 (1984).

Counsel for the trustees and the plans was John W. Ohlweiler of Simpson, Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017, (212) 455-2000. Counsel to Mr. Morse was Thomas F. Curnin, Cahill Gordon & Reindel, 80 Pine Street, New York, New York 10005, (212) 701-3609.

(5) Since April of 1990, I have served on a pro bono basis as Special Trial Counsel, prosecuting a disciplinary matter before the Departmental Disciplinary Committee of the Appellate Division, First Department. The Respondent was charged with violations of three Disciplinary Rules based on a trial conducted some ten years previously in which he was found to have unduly influenced an elderly widow with respect to estate matters. I was asked to become involved when Respondent moved for reconsideration of the Appellate Division's application of collateral estoppel to one charge. I prepared the brief on the motion for reconsideration and assumed sole responsibility for the prosecution from that point on.

I tried the case over three days to a panel of the Disciplinary Committee comprised of Irwin Kahn, Esq., chair, Kahn & Horowitz, P.C. 299 Broadway, Suite 1105, New York, New York 10007, (212) 277-8075; Professor Beatrice Frank, New York University School of Law, 40 Washington Square, Room 424, New York, New York 10012, (212) 998-6100; and Frank Rosiny, Esq., Rosiny & Rosiny, 277 Broadway, Suite 601, New York, New York 10007, (212) 349-8700. Counsel for Respondent were Gary J. Langer, 40 East 10th Street, New York, New York 10003, (212) 614-0345; and Arthur Karger, Karger & Tucker, 415 Madison Avenue, New York, New York 10017, (212) 751-5200.

(6) In Holy Spirit Association for the Unification of World Christianity v. The New York Times Company, the Unification Church sued The Times for defamation based on its report of documents released by the House Subcommittee on International Relations concerning links between the Rev. Sun Myung Moon's Unification Church and the Korean CIA. The Times, which I represented, moved for summary judgment, arguing that the article was privileged as a fair and true report of a legislative proceeding, and that motion was granted. 415 N.Y.S.2d 554 (Sup. Ct. N.Y. Co. 1978). The Appellate Division, First Department, affirmed with one dissent, 68 A.D.2d 833 (1st Dep't 1979), and the New York Court of Appeals affirmed the grant of summary judgment. 49 N.Y.2d 63 (1979).

Opposing counsel was Thomas Fitzpatrick, formerly Chief of the Criminal Division of the United States

Attorney's Office for the Southern District of New York, now a solo practitioner at 100 Park Avenue, New York, New York 10017, (212) 481-9500. I prepared all of the papers and conducted all of the arguments in this action.

(7) In Newman v. L.F. Rothschild, Unterberg, Towbin and Arthur Levine, 86 Civ. 3328 (RWS) and Lowenbraun v. L.F. Rothschild, Unterberg Towbin and Arthur Levine, 86 Civ. 2778 (SWK), plaintiffs asserted claims in the Southern District of New York before Judge Robert W. Sweet and Judge Shirley Wohl Kram, alleging, inter alia, violations of RICO, unsuitability under the rules of the New York Stock Exchange and violations of Rule 10b-5.

Rothschild moved to dismiss these claims, and both judges granted the motions with leave to replead. Newman, 651 F. Supp. 160 (1986); Lowenbraun, CCH Fed. Sec. Law Report ¶93,066 (1987). After plaintiffs repleaded in both actions, Rothschild renewed its motions, and both were again granted. Newman, 662 F. Supp. 957 (1987); Lowenbraun, CCH Fed. Sec. Law Report ¶93,687 (1988). I acted as sole counsel for Rothschild, and Richard Realmuto, 59 John Street, New York, New York 10038, (212) 619-5805 was counsel for plaintiffs.

(8) In Goldberg v. Prudential-Bache Securities Inc., Index No. 8126/87, in the Supreme Court of the State of New York, County of New York, before Justice Martin Evans, Prudential's Michigan counsel had listed plaintiff, a professional expert witness, on his witness list for a trial in Michigan pursuant to a Michigan rule precluding testimony from witnesses not so listed. Michigan counsel did not solicit plaintiff's permission or otherwise contact him before including him on the witness list. The plaintiffs in the Michigan action later retained as new counsel an attorney who had been a student of plaintiff Goldberg, and that counsel submitted an affidavit stating that but for Prudential's counsel's listing of plaintiff Goldberg on its witness list, he would have retained Goldberg as an expert witness.

Plaintiff Goldberg sought to recover the fees he would have earned had he been retained and asserted

claims for, inter alia, interference with prospective business relations and fraud. In response to Prudential's motions to dismiss or, in the alternative, for summary judgment, Justice Evans permitted plaintiff to replead twice but thereafter granted summary judgment to Prudential.

Counsel for Goldberg is now United States District Judge Lawrence M. McKenna of the Southern District of New York, (212) 791-8067.

(9) In Mulhern v. Autranet, Inc., one of the first New York Stock Exchange arbitrations I tried as sole counsel, I represented claimant in his contractual compensation claim against his former employer, a Donaldson, Lufkin & Jenerette subsidiary. The panel awarded Mr. Mulhern a substantial portion of the amount claimed.

Counsel for Autranet was Robert B. Fiske, Jr., Davis Polk & Wardwell, One Chase Manhattan Plaza, New York, New York 10005, (212) 530-4000.

(10) In The First Boston Corp. v. S. Acquisition Corp., 88 Civ. 0555 (PNL), I represented the defendant sued by First Boston to recover investment banking fees in connection with investment banking services in a major corporate acquisition. The parties engaged in vigorous documentary and deposition discovery and then in serious and intense settlement negotiations in which Judge Pierre N. Leval of the Southern District of New York participated extensively. S. Acquisition eventually retained additional counsel because of differences about the advisability of settlement. I understand the matter was resolved some months later (after very active litigation) for an amount not significantly different from that which I discussed with Judge Leval.

Counsel for First Boston was Robert Cusumano of Simpson, Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017, (212) 455-2000. Additional counsel for S. Acquisition was Charles Oransky of Hellring Lindeman Goldstein & Siegal, 1180 Raymond Blvd., Newark, New Jersey 07102, (201) 621-9020.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trail 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 1984-86, I represented several officers of E.F. Hutton & Company in connection with a federal grand jury inquiry into Hutton's money management practices. My clients ranged from a low level vice president to an executive vice president and included witnesses who testified before the grand jury, witnesses who asserted their privilege and a witness who received a target letter.

I personally interviewed and gathered facts about all of them and advised them as to their courses of action. I prepared those who testified and engaged in lengthy negotiations with the Assistant United States Attorney on behalf of the recipient of the target letter. I prepared a Wells submission and made an oral presentation to the United States Attorney and made a Wells submission to both the Chief of the Fraud Section (Robert Ogren) and the Assistant Attorney General in Charge of the Criminal Division (now District Judge) Steven Trott.

Following the Company's plea, I prepared one of my clients for his testimony before the Subcommittee on Crime of the House Judiciary Committee chaired by Representative William Hughes of New Jersey. I also represented various of these clients in related proceedings before the Securities and Exchange Commission and the New York Stock Exchange and in several related civil actions and proceedings.

In Weisman v. Darneille, et al., 77 Civ. 2110 (RJW), I began participating in the representation of one of several co-defendants in an insider trading case only shortly before trial was to begin. The case was tried for several weeks in 1982 to a jury before Judge Robert Ward of the Southern District of New York. I did a good deal of the work required at trial on behalf of my firm's client, and the case settled after plaintiffs rested and during defendants' case.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

My law firm has traditionally paid out the capital accounts of its departing partners over a period of approximately one year. I will try to accelerate the process in this instance, but I would expect to recuse myself from cases involving my firm in any event, at least for a period of time. The present amount of my capital account is estimated to be about $60,000. I also am the trustee and beneficiary of a Keogh retirement account with Hertzog Calamari & Gleason which will be rolled over into an IRA Rollover account when I leave that firm.

In addition, through my husband, I might be thought to have an indirect financial interest in the profits of the law firm of Cahill Gordon & Reindel.

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 arrangement that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I expect to recuse myself in all cases in which either of the two law firms with which I have been associated represents a party. That recusal with respect to Cahill Gordon & Reindel would continue for so long as my husband continues as a member of that firm. I might reconsider the recusal with respect to Hertzog, Calamari & Gleason after the passage of some appropriate amount of time. I also expect to recuse myself with respect to clients I have regularly represented and clients for whom my husband does a significant amount of work. In sum, I expect to follow the Code of Judicial Conduct with respect to recusal.

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

   No.

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

   See attached financial disclosure report.

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

   See Attached

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

   No.

III. GENERAL (PUBLIC)

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

   I have spent several hundred hours in the last twenty months acting on a pro bono basis as Special Trial Counsel to the Departmental Disciplinary Committee of the New York Appellate Division, First Department, prosecuting a disciplinary complaint against an attorney for violation of various ethical rules. That prosecution included evidentiary hearings before a panel of the Committee.

   In addition, I have recently received the Louis J. Lefkowitz Public Service Alumni Award from the Fordham University School of Law Public Interest Resource Center as one of the twelve alumni who provided the initial funding for the Center in its work with the disadvantaged.

   From time to time I have worked on various benefit committees including MFY Legal Services, the New York Hospital-Cornell Medical Center Department of Obstetrics and Gynecology/Lying-In Hospital and the Christ Church Day School.

   From time to time I have also addressed various legal groups including the International Bar Association in 1987 and the Securities Industry Association Legal and Compliance Seminar in 1989. I have also addressed groups of women law students.

   Over the last three years I have read to classes in the library of my children's school, and this year have served as a class parent.

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 now belong nor have I ever belonged to any such organization other than the Girl Scouts of America, of which I was a member from age 7 to age 17.

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 D'Amato's judicial selection committee recommended my nomination. I had made known to a member of the committee my interest in being a District Judge. I was interviewed by Senator D'Amato, and the committee sent me its questionnaire which I filled out and returned. Shortly thereafter, I was interviewed by the committee. Senator D'Amato thereafter forwarded my name to the Department of Justice, by whom I was then interviewed.

In addition, I provided information to and was interviewed by the FBI 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 alleged 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 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 courts are courts of limited jurisdiction. For the same reason a district court would decline to render an advisory opinion, it should decline to decide cases not ripe for decision or where a party does not have proper standing. Thus, it is part of an Article III court's mandate to hear only cases which are properly before it.

In addition, the judiciary is only one of three branches of government and it should endeavor not to intrude into areas of responsibility of the other co-ordinate branches. For example, in seeking what might appear to be the easiest and quickest solution to a problem, a (misguided)

judge might be tempted to take over the legislature's function of prescribing broad affirmative duties on society, stating, for example, that if the legislature had considered the question presented, it would have adopted the view expressed by the judge. The point is that if the legislature did not consider the question, it should be given an opportunity to do so.

Similarly, a judge might think that rather than bothering to send a matter back to the relevant executive department or legislature for another attempt at some constitutionally deficient effort, the court should simply assume the function in question. While that course would almost certainly result in clearing up the situation in a manner satisfactory to some, and perhaps relatively promptly, it is not the manner in which our constitutional system is supposed to work. The branch whose job it is and who, by virtue of election, is in a better position to fashion acceptable solutions, must be given the chance to do so, even at the cost of delay and a perceived lack of neatness. Thus, I believe the judiciary should be mindful of its place as one of three co-equal branches and reserve to the other two branches their proper perquisites and duties.

LORETTA A. PRESKA AND THOMAS J. KAVALER JOINT

FINANCIAL STATEMENT

NET WORTH

As of March 30, 1992

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. [1]

ASSETS				LIABILITIES			
Cash on hand and in banks	256	000		Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule				Notes payable to relatives			
Unlisted securities—add schedule 2	77	925		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 4	3,781	534	
Real estate owned—add schedule 3	4,140	000		Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property	600	000					
Cash value—life insurance	120	000					
Other assets—itemize:							
Law Firm Capital Accounts	560	000					
Law Firm -Int. in Receivables	6,500	000					
Keogh and IRA Accounts 5	927	385		Total liabilities	3,781	534	
				Net worth	4,398	816	
Total assets	8,180	370		Total liabilities and net worth	8,180	370	

CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	— —			Are any assets pledged? (Add schedule.)	NO		
On leases or contracts 6	77	000		Are you defendant in any suits or legal actions?	NO		
Legal Claims	— —			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	— —						
Other special debt	— —						

[1] Excludes trusts for minor children of which neither spouse is the trustee or a beneficiary, and excludes a revocable grantor trust of which Mr. Kavaler's mother (who is still alive) is the grantor and under which Ms. Preska is neither a trustee nor a beneficiary.

[2] See Schedule A

[3] See Schedule B

[4] See Schedule C

[5] See Schedule D

[6] Ms. Preska is a partner in the law firm of Hertzog Calamari & Gleason. As such, she (like all other partners) is personally liable on the lease of the firm's office, up to a limit of approximately $77,000 per capita.

DOI 1979-10

SCHEDULE A - Unlisted Securities

Security	Present Value	Market	Cost
Houston Biotech LP	$ 9,000		$ 10,000
Century Hillcreste LP	5,000		7,000
Allied Capital Corp.	0	60	
Jetstream LP	8,000		15,000
UTS Uncommon Values Fund	8,700	8,700	
ML Lee Acquisition Fund	0		10,000
New Carlton House Partners LP	0		117,850
CG 84 Partnership	0		4,672
Corporate Property Associates III LP	1,000		5,000
Fidelity Magellan Fund	8,150	8,150	
Forrest City Investment Partners LP	0		133,000
Glacier Ridge Associates LP	0		37,500
Krupp Cash Plus II LP	19,000		20,000
Orange County Investors LP	0		53,563
Participating Income Properties 86 LP	17,000		20,000
Real Estate Associates Ltd. IV. LP	0		20,000
Agricultural Minerals LP	2,125		2,150
	$ 77,975		

SCHEDULE B - Real Estate Owned

	Property	Value
1.	140 East 37th Street New York, New York	$2,000,000
2.	5 Dick's Castle Road Garrison, New York	$2,000,000
3.	27 Shore Drive Pine Plains, New York	$ 140,000

SCHEDULE C - Real Estate Mortgages Payable

Property No.	Mortgagee	Balance Due
1.	Citibank, N.A.	$1,434,200
1.	Mina Kavaler Trust	247,500
2.	Citibank, N.A.	1,966,504
2.	River Company Partners	5,350
3.	Hudson City Savings Institution	128,000

SCHEDULE D - Keogh and IRA Accounts

2. (a) Loretta A. Preska is presently both the Trustee and the ultimate beneficiary of a Keogh Plan Account maintained by her law firm, Hertzog, Calamari & Gleason, with Shearson Lehman Brothers. At present the account contains the following securities:

1. International Bank for Reconstruction and Development Bonds
2. Chatanooga Valley Corp. Bonds
3. Foote Cone & Belding Common Stock
4. FNMA Certificates
5. GNMA Certificates
6. CMO Certificates
7. Colonial US Government Trust - Mutual Fund
8. Aetna Real Estate Associates LP
9. Capital Source II LP
10. Malrite Guaranteed Broadcast Partners LP
11. Certificates of Accrual on Treasury Securities
12. United Kingdom Fund
13. Pennsylvania Enterprises Inc. Common Stock

In addition, there are currently in existence the following IRA or IRA Rollover Accounts, of which Loretta A. Preska or Thomas J. Kavaler (as indicated) is the ultimate beneficiary:

(b) IRA Account f/b/o Loretta A. Preska at Shearson Lehman Brothers

Securities presently in that account

1. Kemper Total Return Mutual Fund
2. Colonial Fund Inc. Mutual Fund
3. Mendik Real Estate LP
4. Government Securities Inc. Fund - GNMA
5. TIGR Series - Zeroes

(c) IRA Accounts f/b/o Loretta A. Preska with The Vanguard Group

Mutual Funds presently held

1. Star Fund

2. Windsor Fund
3. Wellington Fund
1. ML Lee Acquisition Fund LP

(d) IRA Rollover Account f/b/o Thomas J. Kavaler at Shearson Lehman Brothers

Securities presently in that account

1. Borden Inc. Common Stock
2. GATX Corp. Preferred Convertible Stock
3. Kemper Total Return Mutual Fund
4. Putnam Voyager Mutual Fund
5. Mendik Real Estate LP
6. Kingdom of Sweden Bonds
7. Union Electric of Missouri Bonds
8. Potomac Edison Bonds
9. Loews Corp. Bonds
10. Krupp Insured Plus LP
11. Lepercq Corp. Income Fund LP
12. Principal Growth Mortgage LP

(e) IRA Account f/b/o Thomas J. Kavaler at Fidelity Investments

Securities presently in that account

1. Fidelity Magellan Fund

(f) Thomas J. Kavaler's law firm maintains a defined contribution pension plan and a 401(k) plan in which he participates. The custodian of these accounts is Marine Midland Bank and the investment advisor is Sanford Bernstein & Company. However, although he receives quarterly reports on the investment progress of these accounts, Thomas J. Kavaler is unaware on a day-to-day basis of what investment decisions are being made by Sanford Bernstein and what securities are held in the account, although this information would probably be available to him if he made inquiry of Sanford Bernstein or of Marine Midland Bank (which he never does).

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

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

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
PRESKA, LORETTA A.	SOUTHERN DISTRICT OF NEW YORK	3/30/92

4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
UNITED STATES DISTRICT JUDGE - ACTIVE	✓ Nomination, Date 3/31/92 __ Initial __ Annual __ Final	1/1/91 — 3/30/92

7. Chambers or Office Address
HERTZOG CALAMARI & GLEASON
100 PARK AVENUE
NEW YORK, N.Y. 10017

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

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

☐ NONE (No reportable positions)

POSITION	NAME OF ORGANIZATION/ENTITY
PARTNER	HERTZOG CALAMARI & GLEASON (LAW FIRM)
VICE PRESIDENT	FORDHAM LAW ALUMNI ASSOCIATION
EXECUTRIX	ESTATE OF ANITA M. PRESKA (SISTER)

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

☐ NONE (No reportable agreements)

DATE	PARTIES AND TERMS
	I AM A PARTNER IN A LAW FIRM. UPON CONFIRMATI
	I WILL WITHDRAW FROM THE FIRM, PURSUANT TO THE FIRM'S PRACTIC
	I EXPECT MY CAPITAL ACCOUNT (APPROX. $60,000) TO BE PAID OUT OVER ONE

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

☐ NONE (No reportable non-investment income)

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1989	HERTZOG CALAMARI & GLEASON - LAW FIRM - PSRP INTEREST	$ 164,737
1990	" " " " " " "	$ 169,244
1991	" " " " " " "	$ 155,364 [redacted]
1992	" " " " " " "	$ 40,000 (est
1989, 1990, 1991, 1992	COHILL GORDON & REINDEL - LAW FIRM - PSRP INTEREST	$ (S)

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
PRESKA, LORETTA A	3/31/92

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements or gifts)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

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

	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 spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities)		
1	CITIBANK VISA (S)	REVOLVING CHARGE CARD	J
2	CAHILL GORDON & REINDEL KEOGH PLAN (S)	PERSONAL LOAN AMORTIZATION PLAN	K
3	CGTR MASTER PENSION TRUST (S)	" " " " "	K
4	FORREST CITY INVESTORS LP (S)	PROMISSORY NOTE	J
5			
6			
7			

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

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
PRESKA, LORETTA A.	3/31/92

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

A. Description of Assets (Including trust assets)	B. Income during reporting period (1) Amt. Code (A-H)	(2) Type (Div., int., rent or lnt.)	C. Gross Value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (P, S, Ex. Sale, Partial sale, 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)					EXEMPT				
1 CHECKING & SAVINGS ACCTS AT MANUFACTURERS HANOVER BANK, NYC (J)	E	INT	M	T					
2 CHECKING & SAVINGS ACCTS AT CHASE MANHATTAN BANK, NYC (J)	A	INT	K	T					
3 CHECKING ACCOUNT AT CITIBANK, NYC	A	INT	J	T					
4 CHECKING & SAVINGS ACCOUNTS AT CHEMICAL BANK, NYC (J)	A	INT	J	T					
5 SAVINGS ACCOUNTS AT MANUFACTURERS HANOVER BANK, NYC (DC)	A	INT	J	T					
6 FIDELITY MAGELLAN FUND (J)	A	DIV	J	T					
7 TRUSTEE CONTRACT PAYING INTEREST FROM BONDS (SCHEDULE ATTACHED) (DC)	D	INT	M	T					
8 CAPITAL MANAGEMENT ASSOC. LP (J)	A	K-1	J	U					
9 HOUSTON OILFIELD LP (J)	A	K-1	J	U					
10 ALLIED CAPITAL - COMMITTED (J)	A	DIV	J	T					
11 COMMERCE FINANCIAL & TECHNOLOGY II LP (J)	A	K-1	J	U					
12 JETSTREAM LP (J)	B	K-1	J	U					
13 KAUFF CREDIT PLUS II LP (J)	B	K-1	K	T					
14 MC LEAN & COMPANY FUND LP (J)	A	K-1	J	U					
15 INTERNATIONAL PORTFOLIO, PROFESSIONAL BK LP (J)	A	K-1	K	U					
16 UNCOMMON VALUES UIT (J)	A	DIV	J	T					
17 VARIOUS IRA ACCTS - SCHEDULE ATTACHED									
18 VARIOUS KEOGH ACCTS - SCHEDULE ATTACHED									
19 LOW FLOW CAPITAL C/O PRATT & COLONIAL & HAMPTON			L	W					
20 LOW PARTICIPATION A/C & INTERNATIONAL RESOURCES - SCHEDULE ATTACHED (J)			P	U/W					

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less B=$1,001 to $2,500 C=$2,501 to $5,000 D=$5,001 to $15,000 E=$15,001 to $50,000 F=$50,001 to $100,000 G=$100,001 to $1,000,000 H=more than $1,000,000			
2 Value Codes: (See Col. C1 & D3)	J=$15,000 or less K=$15,001 to $50,000 L=$50,001 to $100,000 M=$100,001 to $250,000 N=$250,001 to $500,000 O=$500,001 to $1,000,000 P=more than $1,000,000			
3 Value Method Codes: (See Col. C2)	Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market U=Book Value V=Other W=Estimated			

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
PRESKA, LORETTA A.	3/30/9[illegible]

VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 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 (1) Amt. Code (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, exchange, 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)					EXEMPT				
1 CARLYLE [illegible] (S)	A	K-1	J	U					
2 CC [illegible] (J)	A	K-1	J	U					
3 [illegible] (S)	A	K-1	J	U					
4 [illegible] (S)	A	K-1	J	U					
5 [illegible] (S)	A	K-1	J	W					
6 [illegible] (S)	A	K-1	J	U					
7 [illegible]									
8 [illegible] (J)	A	DIV	J	T					
9 [illegible] (S)	A	K-1	J	T					
10 [illegible]									
11 [illegible]									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to $5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=more than $1,000,000
2 Value Codes: (See Col. C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $1,000,000
	N=$1,000,001 to $5,000,000	O=$5,000,001 to $25,000,000	P=more than $25,000,000	
3 Value Method Codes: (See Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market
	U=Book Value	V=Other	W=Estimated	

ITEM VII

Schedule for Line 7

Although I have no beneficial interest therein, and am not the trustee thereof, there exist certain trusts of which our children are the beneficiaries. These include the following:

1. Trust f/b/o Katherine E. Kavaler at Shearson Lehman Brothers

B		C	
1	2	1	2
A	INT	J	T
A	INT	J	T
A	INT	J	T
A	INT	J	T
A	INT	J	T
A	INT	J	T
A	INT	J	T
A	INT	J	T

Current contents of this account:

1. New York City Municipal Bonds
2. New York Metropolitan Transit Authority Municipal Bonds
3. New York Municipal Assistance Corporation Municipal Bonds
4. New York State Urban Development Corporation Municipal Bonds
5. New York City Municipal Water Finance Authority Municipal Bonds
6. New York Triborough Bridge & Tunnel Authority General Purpose Revenue Bonds
7. Triborough Bridge & Tunnel Authority Municipal Bonds
8. New York City Municipal Bonds - G.O.

60-251 0 - 93 — 12

2. Trust f/b/o Matthew A. Kavaler at Shearson Lehman Brothers

Current contents of this account:

B	INT	K	T	1. NY State Urban Development Corp. Municipal Bonds
B	INT	K	T	2. NY City Municipal Bonds
A	INT	J	T	3. NY State Dormitory Authority Municipal Bonds
A	INT	J	T	4. NY Metropolitan Transit Authority Municipal Bonds
A	INT	J	T	5. Port Authority of NY and NJ Municipal Bonds
A	INT	J	T	6. NY State Urban Development Corp. Municipal Bonds
A	INT	K	T	7. NY City Municipal Water Finance Authority Municipal Bonds
A	INT	J	T	8. New York Triborough Bridge & Tunnel Authority General Purpose Revenue Bonds
A	INT	J	T	9. New York City Municipal Bonds - G.O.
A	INT	J	T	10. NY State Urban Development Corp. Correctional Facility Municipal Bonds
A	INT	J	T	11. Triborough Bridge & Tunnel Authority Municipal Bonds

E INT M T 3. In addition, there exists a trust for the benefit of our children created by my mother-in-law, of which my husband is the trustee. The assets of this trust are a series of promissory notes, executed by me and my husband, and secured by a mortgage on our primary residence. I am not a beneficiary under this trust, although I am a potential successor trustee and have a contingent power of appointment. My husband is a potential beneficiary of this trust.

Schedule for Line 17

There are currently in existence the following IRA or IRA Rollover Accounts, of which either my husband or I (as indicated) is the ultimate beneficiary:

(a) IRA Account f/b/o Loretta A. Preska at Shearson Lehman Brothers

Securities presently in that account

A	DIV	J	T	1. Kemper Total Return Fund
A	DIV	J	T	2. Colonial Fund Inc. Mutual Fund
A	K-1	J	U	3. Mendik Real Estate LP
A	INT	J	T	4. Government Securities Inc. Fund - GNMA
A	INT	J	T	5. TIGR Series - Zeroes

(b) IRA Accounts f/b/o Loretta A. Preska with The Vanguard Group

Mutual Funds presently held

A	DIV	J	T	1. Star Fund
A	DIV	J	T	2. Windsor Fund
A	DIV	J	T	3. Wellington Fund

(c) IRA Rollover Account f/b/o Thomas J. Kavaler at Shearson Lehman Brothers

Securities presently in that account

A	DIV	J	T	1. Borden Inc. Common Stock
A	DIV	J	T	2. Kemper Total Return Fund
A	DIV	J	T	3. Putnam Voyager Mutual Fund
A	K-1	J	U	4. Mendik Real Estate LP
A	INT	J	T	5. Kingdom of Sweden Bonds
A	INT	J	T	6. Union Electric of Missouri Bonds
A	INT	J	T	7. Potomac Edison Bonds
A	INT	J	T	8. Loews Corp. Bonds
A	K-1	J	T	9. Krupp Insured Plus LP
A	K-1	J	T	10. Lepercq Corp. Income Fund LP
A	K-1	J	T	11. Principal Growth Mortgage LP
A	DIV	J	T	12. GATX Corp. Preferred Convertible Stock

(d) IRA Account f/b/o Thomas J. Kavaler at Fidelity Investments

Securities presently in that account

C	DIV	K	T	1. Fidelity Magellan Fund

<u>Schedule for Line 18</u>

(a) I am presently both the Trustee and the ultimate beneficiary of a Keogh Plan Account maintained by my law firm, Hertzog, Calamari & Gleason, with Shearson Lehman Brothers. At present the account contains the following securities:

A	INT	J	T	1.	International Bank for Reconstruction and Development Bonds
A	INT	J	T	2.	Chatanooga Valley Corp. Bonds
A	INT	J	T	3.	FNMA Certificates
B	INT	K	T	4.	GNMA Certificates
A	INT	J	T	5.	CMO Certificates
B	DIV	K	T	6.	Colonial US Government Trust - Mutual Fund
B	K-1	K	U	7.	Aetna Real Estate Associates LP
A	K-1	J	U	8.	Capital Source II LP
A	K-1	J	U	9.	Malrite Guaranteed Broadcast Partners LP
A	INT	J	T	10.	Certificates of Accrual on Treasury Securities
A	DIV	J	T	11.	Foote Cone & Belding Common Stock
A	DIV	J	T	12.	United Kingdom Fund
A	DIV	J	T	13.	Pennsylvania Enterprises Inc. Common Stock

G	INT DIV, CAP GAINS	O	T	(b)	My husband's law firm maintains a defined contribution pension plan and a 401(k) plan in which my husband participates. The custodian of these accounts is Marine Midland Bank and the investment advisor is Sanford Bernstein & Company. However, although he receives quarterly reports on the investment progress of these accounts, my husband is unaware on a day-to-day basis of what investment decisions are being made by Sanford Bernstein and what securities are held in the account, although this information would probably be available to him if he made inquiry of Sanford Bernstein or of Marine Midland Bank (which he never does).

Schedule for Line 27

		Value
(S)	Equitable - Incentive Life	K
(S)	Equitable Variable - Universal Life	L
(S)	Northwestern Mutual - Whole Life	J
(J)	Northwestern Mutual - Joint Life	K

Schedule for Line 30

A	INT	J	T	Nuveen Tax Exempt Unit Trust
A	INT	J	T	Municipal Investment Trust Fund - NY
A	INT	L	T	Checking and Savings Accounts at Citibank, NYC

Schedule for Line 31

My husband is the joint legal owner, together with his mother, of certain property, but he disclaims any beneficial interest therein while his mother is alive. The property is as follows:

D	INT	G	T	1. United States Treasury Bills
A	INT	J	T	2. A checking account at Chase Manhattan Bank
A	INT	J	T	3. A Certificate of Deposit at Chase Manhattan Bank
A	-	K	U	4. A contingent obligation from an individual who resides in Boston who owns the cooperative apartment in which my husband's mother resides.
A	DIV	K	T	5. Shares in Dreyfus Money Market Instruments Inc. - Government Series

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
PRESKA, LORETTA A.	3/31/92

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 o Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicator function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent childre 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 childrer if any) is accurate, true, and complete to the best of my knowledge and belief, and that any informatioo not reported wa 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 bee 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 Conferenc regulations.

Signature Loretta A Preska Date 3/31/92

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Irene Patricia Murphy Keeley

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

   Home: 316 Buckhannon Avenue
   Clarksburg, WV 26301

   Office: Steptoe & Johnson
   Union National Center East
   P.O. Box 2190
   Clarksburg, WV 26302-2190

3. Date and place of birth.

   January 17, 1944
   Brooklyn, 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

   John Paul Keeley, III

   President
   Ground Breakers, Inc.
   Armory Road,
   P.O. Box 1227
   Clarksburg, WV 26302

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

Undergraduate:

a. College of Notre Dame of Maryland
North Charles Street
Baltimore, Maryland
Dates of Attendance: September 1961 - June, 1965
Degree Awarded: B.A., June, 1965

Graduate:

b. West Virginia University
Morgantown, WV
Dates of Attendance: August, 1976 - August, 1977
Degree Awarded: M.A., August, 1977

Law School: *

c. West Virginia University College of Law
Morgantown, WV
Dates of Attendance: August, 1977 - May, 1980
Degree Awarded: J.D., May, 1980

* In the Fall of 1966, I was admitted to the Georgetown University Law Center. Although I initially enrolled in the school's night program, I withdrew almost immediately due to the fact that I could not coordinate my work schedule with my schedule of classes. Because I had received a partial scholarship for my undergraduate education from the State of Maryland, I was obligated to teach for two years and found I could not work in the suburban Maryland public schools during the day and attend law school in downtown Washington, D.C. at night.

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) I was employed by the Civil Rights Division of the United States Department of Justice as a legal researcher from October to December, 1965. I left my job at the Justice Department to fulfill an obligation to teach school in Maryland pursuant to a scholarship I had received in undergraduate school.

b) I was a secondary school teacher in both Maryland and West Virginia.

My teaching experience included the following:

1) Junior high school teacher, Prince George's County, Maryland, public school system
January 1966 - August 1967

2) High school and junior high school teacher, Harrison County, West Virginia public school system
Full-time: August, 1968 - June, 1970
(Leave of absence for maternity - 3/24/69-8/69)
Substitute: 1968; 1970 - 1973

3) Harrison County Catholic School System - grade school
Substitute only: 1973-1974 and perhaps 1974 - 1975. (Records are unavailable to confirm that these dates are accurate, but I believe them to be so).

c) I have been Vice-President and Secretary of my husband's construction company, Ground Breakers, Inc., since 1979. Ground Breakers, Inc. is located at Armory Road, P.O. Box 1227, Clarksburg, WV 26302. My participation in this company has been nominal; I am not, and never have been, employed by or actively involved in that business enterprise.

d) Summer Clerk, Steptoe & Johnson, May-August, 1979. I also worked part-time for the firm during my last semester in law school, January-April, 1980. Following my graduation from law school in May, 1980, I joined the law firm of Steptoe & Johnson as an associate in the litigation group. I have practiced continuously with the firm of Steptoe & Johnson in its Clarksburg, West Virginia, office since that time. I became a partner in January, 1985.

e) Adjunct Professor of Law, West Virginia University College of Law, August, 1990 - December, 1991. My teaching areas included appellate advocacy and health care law.

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

No

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

a. Outstanding Citizen Award, 1991 - Regional Health Advisory Councils of West Virginia - awarded for my work in educating the public about advance directives.

b. Honors: Law School

Member, West Virginia Law Review, 1978-80; Associate Editor, Volume 82; Author: "Substantive and Procedural Aspects of the Right to Effective Assistance of Counsel," West Virginia Law Review, Vol. 81, No. 3; Member, Moot Court Board, 1978-80; Member, Student Ethics Committee, 1977-78.

c. Offices and Honors: Undergraduate

President, Kymery Board 1964-65; Member of same, 1961-65; Who's Who in American Colleges and Universities, 1965; State of Maryland Teaching Scholarship, 1961-65.

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, Visiting Committee, West Virginia University College of Law, 1987 - 1991. The Visiting Committee is composed of selected members of the bar and bench who provide information and advice regarding academic and operational issues involving the College to the Dean and also the President of West Virginia University.

American Bar Association
Member, Section on Antitrust; Section on Tort and Insurance Practice; Forum Committee on Health Care; Litigation Section

West Virginia State Bar
Member, Committee on Law and Medicine; Chair - 1984-87. During my tenure as Chair, the Committee conducted a five-year look back survey of malpractice verdicts in West Virginia and provided this data to the Bar for use by the State Legislature which was considering tort reform legislation at that time.

Chair - Ad Hoc Committee to Study Proposed Child Abuse Amendments to West Virginia Rules of Evidence, 1986-87. Because of the many juvenile cases in which I was involved in my practice, I became interested in the reform of the evidentiary rules applicable to the testimony of minors in child abuse cases. In 1987 I was appointed to chair this ad hoc committee which drafted proposed amendments to West Virginia's Rules of Evidence liberalizing the admissibility of hearsay evidence in child abuse cases. The Committee's proposal was debated at length within the Bar and the issue ultimately was briefed and submitted to the West Virginia Supreme Court of Appeals. The Court, however, never acted on the proposed amendments. As Chair, I was responsible for preparing and filing the initial and reply briefs in support of the proposed amendments. The Criminal Law Committee of the State Bar filed briefs opposing the proposed amendments.

Member, Special Committee on Professionalism, 1987 - Present. This Committee, whose membership includes attorneys and judges from across West Virginia, has not been active since 1988 - 89. It was organized to address the Bar's concern that lawyers have grown increasingly dissatisfied with their profession. While active, the Committee did develop a voluntary Code of Professional Courtesy which was adopted by the Bar and disseminated to the membership.

Appointee, West Virginia Law Institute, 1990 to present

Member, Harrison County Bar Association - 1980 - present - Treasurer, 1983

Member, Defense Trial Counsel of West Virginia

Member, Defense Research Institute

Member, American Association of Hospital Attorneys

Member, National Health Lawyers Association

Member, West Virginia Society of Hospital Attorneys

Member, American Society of Law and Medicine

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. Organizations That Are Active In Lobbying Before Public Bodies

Guardianship Task Force of the West Virginia Department of Health and Human Resources, 1989 - present.

b. Other Organizations:

Member, Board of Directors, The United Way of Harrison County, West Virginia - 1985 to present; Vice President, 1988-89; President, 1989-90; Member of Executive Committee, 1990-present.

Member, Chamber of Commerce of Harrison County, West Virginia

Family membership, Clarksburg Country Club, Clarksburg, West Virginia

Family membership, Oral Lake Fishing Club, Bridgeport, West Virginia

Member, Immaculate Conception Roman Catholic Church, Clarksburg, West Virginia

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 Northern District of West Virginia

Admitted: July, 1980

United States District Court for the Southern District of West Virginia

Admitted: May, 1980

West Virginia Supreme Court of Appeals

Admitted: May, 1980

West Virginia State Circuit Courts

Admittance to the West Virginia Supreme Court entitles the attorney the to practice in each county in the State of West Virginia. These are the circuits in which I have generally practiced. I do not recall the dates when I first appeared.

Barbour County - 19th Judicial Circuit

Harrison County - 15th Judicial Circuit

Kanawha County - 13th Judicial Circuit

Lewis County - 26th Judicial Circuit

Marion County - 16th Judicial Circuit

Mineral County - 21st Judicial Circuit

Monongalia County - 17th Judicial Circuit

Ohio County - 1st Judicial Circuit

Randolph County - 20th Judicial Circuit

Taylor County - 19th Judicial Circuit

Upshur County - 26th Judicial Circuit

Administrative Agencies

West Virginia Health Care Cost Review Authority
There is no special admission requirement to practice before this agency.

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. "Advance Directives in West Virginia: Recent Legislative Enactments," a lead article to be published in June, 1992 by the West Virginia Law Review. A copy of the article is attached.

2. "Substantive and Procedural Aspects of the Right to Effective Assistance of Counsel," West Virginia Law Review, Vol. 81, No. 3 (1979).

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

Excellent.

February 20, 1992

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

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.

None

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

None

17. Legal Career:

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

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

2. whether you practiced alone, and if eo, 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;

a. Responses:

1. I never served as a clerk to a judge.

2. I never practiced alone.

3. Following my graduation from law school in May, 1980, I joined the law firm of Steptoe & Johnson as an aseociate in the litigation group. I have practiced continuously with the firm of Steptoe & Johnson in its Clarksburg, Weet Virginia, office since that time. I became a partner in January, 1985. I helped develop and currently head the firm's healthcare practice group.

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

(1) 1980 - 1983: General litigation and appellate practice in civil and criminal courte of West Virginia and federal court.

In May, 1982, I attended a ten day trial school sponsored by the National Inetitute for Trial Advocacy (NITA) at the University of North Carolina.

(2) 1984 - Present: Since 1984, I have defended physicians and hospitals in malpractice cases. I also started the firm's administrative law practice in the area of health care law. This practice specifically includes the representation of hospitals and other providers, such as nursing homes and home health agencies, in contested case hearings involving certificate of need or rate applications. I have also represented hospitals and their medical staffs in due process hearings resulting from credentialing disputes, and have drafted and reviewed medical staff bylaws and rules and regulations.

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

My typical former clients include all types of health care providers. The majority of these clients have been acute care hospitals. I also represented three physician group practices, as well as several nursing homes and one community mental health center.

As noted above, since 1984 my practice has been concentrated in the area of health care law, including the defense of malpractice claims and representation of clients before state administrative agencies.

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

I appeared in court frequently from 1980-1988. From the Fall of 1988 until the Winter of 1991, I litigated occasionally in state and federal court, although I did try a six (6) week malpractice case in February-March, 1989. During this period I frequently litigated contested cases before state administrative agencies and represented medical staffs in due process hearings involving credentials disputes. I started litigating frequently in circuit and federal court again in 1991.

2. What percentage of these appearances was in:

   (a) federal courts;

   (b) state courts of record;

   (c) other courts.

   1) Federal courts - 10%
   2) State Courts of Record - 45%
   3) Other Courts (administrative agencies)-45%

3. What percentage of your litigation was:

   (a) civil;

   (b) criminal.

   1) Civil - 90%
   2) 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.

   Approximately 20. Sole counsel: 8
   Chief counsel: 2
   Associate Counsel: 10

   This does not include approximately 30 administrative cases tried before the West Virginia Health Care Cost Review Authority in which I was sole counsel.

5. What percentage of these trials was:

   (a) jury;

   (b) non-jury.

   If the administrative law practice is included:

   1) Jury - 50%
   2) Non-jury - 50%

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

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

10 Most Significant Litigated Matters:

1) Boram v. United Hospital Center, et al. - Jury

Dates of Trial: February 8, 1989 - March 24, 1989

Name of Court: Circuit Court of Harrison County, WV

Name of Judge: Honorable Frank J. Maxwell, Jr.
Co-Counsel for Defendants United Hospital Center, Inc., Donald Frey, M.D. and David Parks, M.D.:

Name: Herbert G. Underwood, Esquire
and
Irene M. Keeley, Esquire
Steptoe & Johnson

Address: Union National Center East,
Clarksburg, WV 26301

Telephone No.: 304-624-8000

I was active trial counsel, involved in direct and cross-examination, and closing argument.

Plaintiff's Counsel:

Name: James Pool, Esquire and Delby Pool, Attorney at Law

Address: 230 Court Street, Clarksburg, WV

Telephone No.: 304-623-9711

Counsel for Co-Defendants:

1. Name: Matthew P. Moriarity, Esquire

   Address: 1001 Lakeside Avenue, Suite 1600, Cleveland, OH 44114-1192

   Telephone No.: 216-736-8600

   and

   Name: Dino S. Colombo, Esquire

   Address: 7 Players Club Drive, Suite 200, P.O. Box 2833, Charleston, WV 25330-2833

   Telephone No.: 304-346-0901

2. Name: Joseph Wallace, Esquire

   Address: P.O. Box 7, Elkins, WV 26241

   Telephone No.: 304-636-1111

3. Name: Edgar A. Poe, Esquire

   Address: 405 Capital Street, Suite 1007, Charleston, WV 25330

   Telephone No.: 304-345-1400

Summary of Case: This malpractice action involved a plaintiff who, at age twenty-seven, underwent a radical hysterectomy and pelvic lymphadenectomy for invasive cervical cancer. She alleged that all or some of the defendants had failed to obtain a pap smear during her pregnancy and also failed to perform adequate surgery after her cervical cancer was diagnosed.

The defendants contended that she had been adequately treated, had been timely notified of the need for follow-up pap smears and, in the face of that information, had knowingly failed to return for further tests and treatment despite the risk that a possible cancer would not be treated. The jury returned a verdict in favor of all defendants.

2) Mahmoodian v. United Hospital Center - Non-jury injunction trial. See Mahmoodian v. UHC, 404 S.E.2d 750 (W. Va. 1991).

Dates of Trial: January 23-24, 1989

Name of Court: Circuit Court of Harrison County, West Virginia

Name of Judge: Honorable Daniel L. McCarthy, Chief Judge

Co-Counsel for Defendant United Hospital Center:

Name: Herbert G. Underwood, Esquire
and
Irene M. Keeley, Attorney at Law
Steptoe & Johnson

Address: P.O. Box 2190, Clarksburg, WV 26302-2190

Telephone No.: 304-624-8144

I was sole counsel at the due process hearing and handled most of the injunction hearing. Mr. Underwood argued the case before the West Virginia Supreme Court of Appeals. Matthew J. Mullaney drafted much of the appellate brief.

Counsel for Plaintiff:

Name: Jerald E. Jones, Esquire
and
Kathryn K. Allen, Attorney at Law

Address: 360 Washington Ave., Clarksburg, WV

Telephone No.: 304-624-5501

Summary of Case: Following extensive due process proceedings pursuant to the Medical Staff Bylaws of United Hospital Center between February 8, 1988 and December 28, 1988, plaintiff's staff privileges were terminated by the hospital's governing board. On January 13, 1989, plaintiff filed suit in the Circuit Court of Harrison County, West Virginia, seeking, among other matters, a preliminary injunction to retain his staff privileges during the pendency of his antitrust action against the Hospital and two other defendants.

On February 1, 1989, the Circuit Court denied plaintiff's request for injunctive relief. On April 18, 1989, however, the West Virginia Supreme Court of

Appeals issued a preliminary injunction. Thereafter, following various motions, on November 29, 1989, the Circuit Court entered an Order making the Supreme Court's preliminary injunction permanent. The Hospital then appealed that decision and the West Virginia Supreme Court of Appeals reversed the award of injunctive relief and upheld the hospital's decision to terminate the physician's staff privileges. Mahmoodian v. UHC, 404 S.E.2d 750 (W. Va. 1991).

3) Bane v. Board of Education - Non-jury trial to the court. See Board of Education v. Starcher, 364 S.E.2d 540 (W. Va. 1987); and Bane v. Board of Education, 343 S.E.2d 673 (W. Va. 1986).

Dates of Trial: November 8, 1985; November 16, 1985; August 28, 1986

Name of Court: Circuit Court of Monongalia County, West Virginia

Name of Judge: Honorable Larry V. Starcher

Co-Counsel for Respondent Board of Education:

Name: Herbert G. Underwood, Esquire
Irene M. Keeley, Attorney at Law
Gordon H. Copland, Esquire
Steptoe & Johnson

Address: P.O. Box 2190, Clarksburg, WV 26302-2190

Telephone No.: 304-624-8000

I tried all the evidentiary proceedings and was co-counsel in all pre-trial negotiations. All three attorneys developed and briefed the issues for appeal, although Mr. Copland did the majority of the writing.

Counsel for Petitioners:

1. Name: David Solomon, Esquire
and
Michael L. Solomon, Esquire

Address: P.O. Box 655, Morgantown, WV 26505

Telephone No.: 304-296-6696

and

2. Name: Regina Charon, Attorney at Law

Address: 174 Chancery Row, Morgantown, WV 26505

Telephone No.: 304-296-8266

Summary of Case: This case involved a dispute between school service personnel and a board of education over the manner in which the money raised by a special levy should be spent to support the salaries of the service personnel. After extensive and prolonged proceedings, the circuit court ruled against the Board of Education. The West Virginia Supreme Court of Appeals reversed and upheld the Board's position in two separate opinions. Bd. of Education v. Starcher, 343 S.E.2d 673 (W. Va. 1986); and Bane v. Bd. of Education, 364 S.E.2d 540 (W. Va. 1987).

4) In Re: Raleigh General Hospital - (Certificate of Need) contested case proceeding - non-jury

Administrative Agency: West Virginia Health Care Cost Review Authority

Hearing Examiner: John Kozak, Esquire

Board of Hearings and Appeals: Priscilla Gay, Esquire, Hearing Officer

Dates of Trial: There were two administrative hearings and one appeal. 1988-89.

Counsel for Raleigh General Hospital:

Name: Irene M. Keeley, Attorney at Law
Steptoe & Johnson

Address: P.O. Box 2190, Clarksburg, WV 26302-2190

Telephone No.: 304-624-8131

I was sole counsel at the administrative hearing. Associates helped to prepare the briefings in this case.

Counsel for Affected Parties:

Name: G. Nicholas Casey, Jr., Esquire
Lewis, Ciccarello & Freidberg

Address: P.O. Box 1746, Charleston, WV 25326

Telephone No.: 304-345-2000

And

Name: David T. Enlow, Esquire
Murphy, King, Enlow & Dunn

Address: 300 First Federal Plaza, Lexington, KY 40507

Telephone No.: 606-255-3371

And

Name: Michael T. Spiker, Esquire
Goodwin & Goodwin

Address: 1500 One Valley Square, Charleston, WV 25301

Telephone No.: 304-346-7000

Summary of Case: This matter involved an application by a hospital for a certificate of need to establish a 17 bed inpatient psychiatric unit. A competitor opposed both that application and a second application for the development of a 20-bed inpatient psychiatric unit at another hospital.

Although my client's application was initially denied, following reconsideration the administrative agency granted approval. The approval was upheld on appeal.

5) Taylor v. King

Dates of Trial: May 29-31, 1984

Name of Court: Circuit Court of Harrison County, WV

Name of Judge: Honorable Daniel L. McCarthy

Co-Counsel: Name: Herbert G. Underwood, Esquire
and
Irene M. Keeley,
Attorney at Law
Steptoe & Johnson

Address: P.O. Box 2190, Clarksburg, WV 26302-2190

Telephone No.: 304-624-8000

I was co-counsel at trial, prepared and examined witnesses, and handled all motions and instructions.

Counsel for Plaintiff:

Name: Clark Frame, Esquire
and
Wesley Matheney, Esquire

Address: 318 Chestnut Street, Morgantown, WV 26505

Telephone No.: 304-292-9429

Summary of Case: Plaintiffs' alleged that an oral surgeon had negligently failed to biopsy a mouth lesion two months before oral cancer was diagnosed. Plaintiffs contended that the wife lost her lower left jaw and floor of her mouth as a result of that delay. The jury returned a verdict for the defendant.

6) State v. Helmick, 386 S.E.2d 245 (W. Va. 1982)

Dates of Trial: July 19-22, 1982

Name of Court: Circuit Court of Lewis County, WV

Name of Judge: Honorable Edward T. Luff (retired)

Co-Counsel: Name: Herbert G. Underwood, Esquire
and
Irene M. Keeley, Esquire
Steptoe & Johnson

Address: P.O. Box 2190, Clarksburg, WV 26302-2190

Telephone No.: 304-624-8144

I assisted in this case but did not actively examine many witnesses. I outlined testimony and prepared instructions and examined minor witnesses. I briefed and argued the case to the West Virginia Supreme Court of Appeals.

State's Counsel: Name: Joseph Wagoner, Pros. Attorney

Address: P.O. Box 838, Weston, WV 26452

Telephone No.: 304-269-1287

Summary of Case: On June 22, 1979, a jury in Lewis County, West Virginia, had convicted defendant of murder in the first degree with a recommendation of mercy. The conviction was set aside in State v. Helmick, 286 S.E.2d 245 (W. Va. 1982). The first trial judge then recused himself at the request of the defendant and the case was retried between July 19-22, 1982. Defendant was again convicted of first degree murder and was sentenced to life imprisonment on July 22, 1982. Defendant's petition for appeal from his second conviction was rejected by the West Virginia Supreme Court of Appeals on August 8, 1991.

7) Garlow, et al. v. Monongalia County Development Authority, Gulf Oil Corporation and Gulf Mineral Resources Company

Dates of Trial: September 26-29, 1983

Name of Court: Circuit Court of Monongalia County, WV

Name of Judge: Honorable Larry V. Starcher

Co-Counsel for Defendant Gulf Oil Company:

Name: Robert G. Steele, Esquire
Irene M. Keeley, Attorney at Law
Steptoe & Johnson

Address: P.O. Box 2190, Clarksburg, WV 26302-2190

Telephone No.: 304-624-8141

I prepared witnesses, outlined direct testimony and cross-examination, prepared the trial notebook and argued instructions.

Counsel for Co-Defendant:

Name: George R. Farmer, Jr., Esquire

Address: P.O. Box 619, Morgantown, WV 26507

Telephone No.: 304-292-7311

Counsel for Plaintiff:

Name: Clark B. Frame, Esquire

Address: 318 Chestnut Street, Morgantown, WV 26505

Telephone No.: 304-292-9429
and

Name: Edgar "Hike" Heiskell, Esquire

Address: P.O. Box 865, Morgantown, WV 26507

Telephone No.: 304-296-1771

Summary of Case: In 1977, a project involving a coal to gas process developed by Gulf Oil Corporation was proposed for Monongalia County, West Virginia. Gulf was to participate in the project with the Governments of the United States, West Germany and Japan. In order to acquire a proposed site for the project, Gulf had extended written authority to the Monongalia County Development Authority to take options and acquire property as a site for the project. The Authority acquired two written options from plaintiffs.

Thereafter, the project failed to materialize and the project was terminated. Gulf had no need or use for the property and deeded its interest to the Development Authority so that the Authority could pursue the development of an industrial park. Gulf also terminated the Development Authority's agency relationship with Gulf. Thereafter, the Authority exercised the options on the plaintiffs' property.

The key issue in the case was whether this action was done as the act of the Authority and not as an agent of Gulf. After the Garlow options had been exercised by the Authority, numerous events occurred, and the Authority failed to complete the transaction. The Garlows then sued Gulf and the Authority for over $ 2 million.

The jury found that the Development Authority, not Gulf, was obligated to purchase the property.

8) Selmon v. Kirdnual
332 S.E.2d 872 (W. Va. 1985)

Dates of Trial: February 6 and 7, 1984

Name of Court: Circuit Court of Harrison County, WV

Name of Judge: Honorable Robert Ziegler (deceased)

Co-Counsel: Name: Herbert G. Underwood, Esquire
and
Irene M. Keeley,
Attorney at Law
Steptoe & Johnson

Address: P.O. Box 2190, Clarksburg, WV 26302-2190

Telephone No.: 304-624-8144

I assisted at trial with cross-examination of plaintiffs' witnesses and was responsible for all discovery in the case.

Co-Counsel for Plaintiff:

Name: Charles S. Morrow, Esquire

Address: 1320 Grant Building, Pittsburgh, PA 15219

Telephone No.: 412-391-2515

Name: Kenneth E. Kincaid, Esquire

Address: 519 Monongahela Building, Morgantown, WV 26505

Telephone No.: 304-296-4545

Summary of Case: This was the first of two trials in which plaintiffs alleged that the treating obstetrician negligently failed to advise of the increased possibility that, because of plaintiff's age, she could give birth to a child suffering from Down's Syndrome. The complaint alleged claims for wrongful birth and wrongful life. The court dismissed the case on motion for a directed verdict, and the West Virginia Supreme Court of Appeals, after finding a cause of action for wrongful birth, remanded for further proceedings consistent with its decision.

9) UHC v. Rockefeller - Non-jury; Preliminary injunction and declaratory judgment proceedings

Dates of Trial: April 26, 1983; May 4-6, 1983; October 31, 1983 - November 1, 1983

Name of Court: U.S. District Court for the Northern District of West Virginia

Name of Judge: Honorable Robert E. Maxwell

Co-Counsel for Plaintiff Hospitals:

1. Name: George G. Guthrie, Esquire
King, Betts and Allen

Address: P.O. Box 3394, Charleston, WV 25333

Telephone No.: 304-344-7250

and

2. Name: Robert J. O'Neil, Esquire
Spilman, Thomas, Battle & Klostermeyer

Address: Suite 1200, United Center, 500 Virginia Street, East, Charleston, WV 25301

Telephone No.: 304-344-4081

and

3. Name: John W. Crews, Esquire
and
Martin A. Donlan, Jr., Esquire
Crews, Hancock & Dunn

Address: 700 Building, Suite 1015, 700 East Main Street, Richmond, VA 23219-2693

Telephone No.:

and

4. Name: Herbert G. Underwood, Esquire
and
Irene M. Keeley, Attorney at Law
Steptoe & Johnson

Address: P.O. Box 2190, Clarksburg, WV 26302-2190

Telephone No.: 304-624-8000

and

5. Name: Thomas W. Bayley, Esquire

Address: P.O. Box 2135, Parkersburg, WV 26101

Telephone No.: 304-442-6559

and

6. Name: John T. Madden, II, Esquire

Address: P.O. Box 511, Moundsville, WV 26041

Telephone No.: 304-845-1171

and

7. Name: Joseph A. Wallace, Esquire
Wallace & Ross

Address: P.O. Box 7, Elkins, WV 26241

Telephone No.: 304-636-1111

I attended the trial of this matter and prepared and examined UHC's witnesses. Messrs. O'Neil and Donlan were lead counsel. I participated in developing the theory of the case, trial strategy and reviewed the 4th Circuit briefing.

Counsel for State Defendants:

Name: William F. Carroll, Esquire
Office of the Attorney General

Address: 26-E, State Capitol Building, Charleston, WV 25305

Telephone No.: 304-348-7021

Counsel for Intervenors Wise & Chace:

Name: Deborah Lewis Rodecker
General Counsel
West Virginia Board of Medicine

Address: 101 Dee Drive, Charleston, WV 25311

Telephone No.: 304-348-2921

Summary of Case: Plaintiffs sought and obtained a preliminary injunction against the defendants to prevent them from enforcing W. Va. Code § 16-29-4, which was enacted on March 12, 1983, and froze hospital rates, including rates charged to Medicare and Medicaid patients, retroactive to February 1, 1983.

Thereafter, on December 30, 1983, the District Court entered an order declaring § 4 to be unconstitutional on the grounds that it violated various federal Medicare and Medicaid statutes and thereby the Supremacy Clause of the United States Constitution. The defendants appealed the decision to the United States Court of Appeals for the Fourth Circuit which reversed the District Court in United Hospital Center v. Richardson, 757 F.2d 1445 (4th Cir. 1985). The basis for the reversal was that a revised version of the legislative rules implementing § 4's freeze specifically excluded the Medicare and Medicaid programs from state regulation and cured any statutory overbreadth.

10) Ruby J. Siron and John P. Siron, Jr. v. Jeffrey H. Poling v. Sisters of the Pallotine Missionary Society, dba St. Joseph Hospital

Dates of Trial: April 4 -7, 1984

Name of Court: Circuit Court of Lewis County, WV

Name of Judge: Honorable William L. Fury (retired)
120 West Second Street, Weston, WV
26452; 304-269-2133

Counsel for Defendant Sisters of the Pallotine Missionary Society dba St. Joseph's Hospital:

Name: Irene M. Keeley, Attorney at Law
Steptoe & Johnson

Address: P.O. Box 2190, Clarksburg, WV
26302-2190

Telephone No.: 304-624-8131

Sole trial counsel.

Counsel for Plaintiffs:

Name: Richard W. Cardot, Esquire

Address: P.O. Drawer 1729, Elkins, WV 26241

Telephone No.: 304-636-1424

Counsel for Co-Defendant :

Name: J. Michael McDonald, Esquire
McNeer, Highland & McMunn

Address: Empire Bank Building, Clarksburg, WV 26301

Telephone No.: 304-623-6636

and

Name: John Lewis Marks, Jr., Esquire

Address: 360 Lee Avenue, Clarksburg, WV 26301

Telephone No.: 304-624-4004

Summary of Case: As a result of an automobile accident, plaintiff received three blood transfusions from which she contracted Non A, Non B hepatitis. She and her husband filed suit seeking damages from defendant driver for the accident and from the defendant hospital for the alleged negligent operation of its blood bank.

After a four day trial the jury returned a verdict for the plaintiffs. Ten percent of the fault was allocated to the hospital which paid $500.00.

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 that did not involve litigation: I have drafted numerous medical staff bylaws for hospital clients and regularly advise health care clients on an array of issues including risk management, reimbursement and physician recruitment.

Since 1989, I have served as a member of the Guardianship Task Force of the West Virginia Department of Health and Human Resources. The Guardianship Task Force is a volunteer group that is concerned about guardianship issues/abuses in West Virginia. Its members include senior citizens, health department employees, attorneys, physicians and advocates for the mentally and physically disabled. Currently, the Task Force is working on legislation to reform

West Virginia's guardianship laws along the lines of the Uniform Probate Code model.

In 1989-90, I was chair of the subcommittee of the Task Force that drafted legislation regarding health care powers of attorney and living wills. In that capacity, I testified before several committees of our state legislature in support of this legislation. I was not a paid lobbyist. The proposed legislation was enacted at W. Va. Code § 16-30A-1 et seq. ("The Medical Power of Attorney Act"); W. Va. Code § 16-30-1 et seq. (the 1991 amendments to "The Natural Death Act").

Since the passage of the West Virginia Medical Power of Attorney Act in 1990, I have addressed and counselled numerous professional and community groups throughout West Virginia, including local bar groups and medical societies, senior citizens, church and civic organizations, as well as families of patients in nursing homes and hospitals, regarding the use of advance directives. I also appear in a videotape produced by the Department of Health and Human Resources in which I discuss the Medical Power of Attorney. The tape has been disseminated to many hospitals and nursing homes throughout the state. All of this activity has been pro bono.

I have also lectured on the subject of advance directives at two CLE courses sponsored by the West Virginia State Bar and have written a lead article on the subject for the West Virginia Law Review.

In 1991, I worked with the ABA Commissions on Legal Problems of the Elderly and the Mentally Disabled which co-sponsored a training seminar entitled "Training on Alternatives to Guardianship". I was one of the presenters at that seminar which was held on May 13, 1991 in Charleston, West Virginia.

In 1984, I was appointed Chair of the State Bar's Committee on Law and Medicine, a position I held until 1987. This Committee's membership includes plaintiff and defense attorneys who concentrate their practices in the area of medical malpractice and health care. As Chair in 1985, I directed a statewide survey of malpractice verdicts. The Bar then provided the information compiled by the Committee to the Legislature which was considering various tort reform proposals.

In 1986-87, I chaired an Ad Hoc Committee of the State Bar which proposed certain amendments to the West Virginia Rules of Evidence applicable to child abuse cases.

Significant litigation which did not progress to trial: I have been involved in numerous medical and hospital malpractice cases which have settled prior to trial. In particular, I was involved in several so-called "bad baby" cases in which either physicians or obstetrical nurses were alleged to have deviated from the standard of care in the birth of an asphyxiated/anoxic infant.

For a period of approximately 10 years, I was appointed to represent criminal defendants in the West Virginia state court system. A majority of these cases ended in plea agreements.

Administrative Litigation: I have tried numerous certificate of need and hospital rate cases before the West Virginia Health Care Cost Review Authority, the administrative agency in West Virginia charged with regulating hospitals. These cases have all involved extensive expert testimony in the areas of health planning and health care finance.

I have also represented medical staff peer review committees in due process hearings.

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.

STEPTOE & JOHNSON

1. Pension Plan:
   Steptoe & Johnson's pension plan is a 401(K) self-directed plan which is independently administered by the Union National Bank of Clarksburg, West Virginia, Trustee and can be converted to an IRA.

2. Capital Account: My Steptoe & Johnson Capital Account can be returned to me in a lump sum payment immediately upon my withdrawal from the partnership of Steptoe & Johnson.

3. RD&D: My retirement, death and disability (RD&D) benefit also can be distributed to me in a lump sum upon my withdrawal from the partnership of Steptoe & Johnson.

4. Severance Pay: Any income due to me from the partnership will be distributed in a lump sum upon my withdrawal from the partnership of Steptoe & Johnson.

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.

   a. Steptoe & Johnson:

      (1) When I resign from the partnership of Steptoe & Johnson, any financial or other relationship with the firm will be terminated. I will decline to hear any matter in which Steptoe & Johnson was

involved as of the date of my withdrawal from the firm. These cases can be identified by a computer printout of matters being handled by the firm as of the date of my withdrawal.

(2) My pension plan at Steptoe & Johnson is a self-directed plan. Union National Bank of Clarksburg is the trustee. The Bank is a client of Steptoe & Johnson. The plan can be converted to an IRA if leaving it with the Union National Bank would create an appearance of impropriety.

(3) All financial arrangements with Steptoe & Johnson will be severed through a lump sum payout of any accrued compensation or benefits.

b. Ground Breakers, Inc.:

(1) I will not sit on any case involving either my husband's construction company or any company or individual with whom his firm does business.

(2) I will withdraw from and terminate my association with my husband's company, Ground Breakers, Inc. I have never been actively involved in the company, and the titles of Vice-President and Secretary have been nominal only.

c. I will resign from the Board of Directors of the United Way of Harrison County, Inc. and also from the Guardianship Task Force of the West Virginia Department of Health and Human Resources.

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 copy of "Financial Disclosure Report," attached.

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

   See attached Net Worth Statement.

6. Have you ever held a poeition 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 responsibilitiee.

   1. 1984 - Campaign manager and financial agent for the successful campaign of Justice Richard Neely for re-election to the West Virginia Supreme Court of Appeale. I organized all fundraising, filed all financial information on behalf of the campaign and personally contributed to the campaign.

   2. 1990 - Member of a committee supporting the re-election of Senator John D. Rockefeller, IV to the United Statee Senate. I helped organize a fundraiser and pereonally contributed to the campaign.

   3. 1992 - Organized a fundraiser for Cleve Benedict, candidate for Governor and contributed to hie campaign.

III. GENERAL (PUBLIC)

1. An ethical coneideration under Canon 2 of the American Bar Association'e Code of Professional Reeponsibility calle for "every lawyer, regardlees of profeeeional prominence or profeesional workload, to find eome time to participate in serving the dieadvantaged." Describe what you have done to fulfill theee responsibilities, lieting specific inetancee and the amount of time devoted to each.

   1. Since 1989, I have volunteered between 500 - 600 hours annually in support of the Guardianship Task Force'e legielative agenda and public education efforts. I regularly adviee groupe of senior citizene and individuals who are given my name by the Bar or the Department of Health and Human Resources about the uee of advance directives. I will speak at nureing homee, public meetinge or adviee eomeone who comes to my office.

2. I have served on the Board of Directors, the Allocations Committee, and the Executive Committee of the United way of Harrison County. In this position I have worked to increase local funding for agencies serving women in crisis, the homeless, the addicted as well as the agencies traditionally funded by United Ways, such as the YMCA, the YWCA and the Red Cross. My United Way activities currently involve approximately 50-75 hours a year; when I served as Vice President and President in 1988-90, I volunteered between 200-250 hours.

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?

   Not applicable. I do not belong 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 end (including the circumstances which led to your nomination and interviews in which you participated).

   There is no judicial selection commission in West Virginia.

   I submitted my name for consideration for appointment to the newly created federal judgeship in the Northern District of West Virginia in December, 1990. I was interviewed by the Department of Justice in January, 1991. In late September, 1991, I was notified by the Office of the Attorney General that I would move forward in the selection process. An FBI investigation of my background was undertaken. I completed a personal questionnaire for both the Department of Justice and the American Bar Association. In mid-December, 1991, I was interviewed by a member of the ABA's Standing Committee on the Federal Judiciary.

   The Department of Justice received the ABA's evaluation in late February or early March, 1992. I understand that my name was then forwarded by the Department of Justice to the White House Counsel's office shortly thereafter. On March 31, 1992, President Bush called to advise me that he intended to nominate me for appointment as the new district court

judge in the Northern District of West Virginia. I understand that the official date of my nomination is April 1, 1992.

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 cornerstone of constitutional law is that ours is a government of separate but co-equal branches which exercise the limited powers granted to them by the Constitution. Although it is left to the judiciairy to answer questions

respecting the extent of the powers actually granted to the three branches of government, the judiciary's power to do so is limited by what was intended by the Constitution.

As Chief Justice Marshall admonished, the Constitution was "intended to endure for ages to come." However, sound construction of the Constitution does not empower the federal courts to micro-manage the social problems our country faces. The fundamental principles and goals of the Constitution, as well as the relevant statutes and judicial opinions, ought to guide judicial resolution of specific cases or controversies that come before the federal courts.

Judges are bound to be impartial and disinterested arbiters, focusing on the commands of the Constitution and adhering to precedent, without regard to a desire to block or achieve social change. When a court settles a constitutional dispute regarding the rights of individuals or the relationship among different branches of government, resolution of that grievance cannot fail to affect a broad class. Its decision, however, should be made in the context of the specific rights of the litigants.

PAGE

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics in Government Act of 1978, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C.App. §, §§101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
KEELEY, IRENE M.	UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF WEST VIRGINIA	4/2/92
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
UNITED STATES DISTRICT COURT JUDGE	X Nomination, Date 4/1/92 X Initial ___ Annual ___ Final	January 1, 1991 to March 31, 1992

7. Chambers or Office Address
STEPTOE & JOHNSON
P.O. BOX 2190, UNION BANK BUILDING
CLARKSBURG, WV 26302-2190

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

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

☐ NONE (No reportable positions)

POSITION	NAME OF ORGANIZATION/ENTITY
Partner	Steptoe & Johnson, Attorneys at Law
Co-Executor	Estate of George Jackson (deceased 12/30/91)
Co-Trustee	Trust in Behalf of Mary Jackson (Established by will of George Jackson)

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

☒ NONE (No reportable agreements)

DATE	PARTIES AND TERMS

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

☐ NONE (No reportable non-investment income)

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	Steptoe & Johnson-Partnership Income - 1/1/92-3/31/92(Est	$ 37,000.00
2	Steptoe & Johnson-Partnership Income - 1991	$ 149,364.00
3	Steptoe & Johnson-Partnership Income - 1990	$ 136,926.00
4	WVU College of Law-Teaching Salary - 1991	$ 7,200.00
5	**See Attached Schedule**	$

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

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

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
KEELEY, IRENE M.		4/2/92
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type) ___ Nomination, Date_____ ___ Initial ___ Annual ___ Final	6. Reporting Period
7. Chambers or Office Address		

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

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

POSITION	NAME OF ORGANIZATION/ENTITY
☐ NONE (No reportable positions)	

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

DATE	PARTIES AND TERMS
☐ NONE (No reportable agreements)	

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

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐ NONE (No reportable non-investment income)		
1	WVU College of Law - Salary - 1990	$ 3,600.00
2	Ground Breakers, Inc. - Salary - 1991	$ (S)
3	Ground Breakers, Inc. - Salary - 1990	$ (S)
4		$
5		$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
KEELEY, IRENE H.	4/2/92

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals '(S)' and '(DC)' to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements or gifts)	
1	EXEMPT	EXEMPT
2		
3		
4		
5		
6		
7		
8		

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

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts)		
1	EXEMPT	EXEMPT	$
2			$
3			$
4			$

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

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities)		
1	CR&T of Harrison County (S)	Personal Guarantor of Corporate Line of Credit	J
2	Empire National Bank (S)	Personal Guarantor of Corporate Equipment Installment Obligation	M
3	USF&G Bonding Company (S)	Personal Guarantor of Corporate Construction Performance & Payment Bonds	P
4	**the above are all contingent		
5	liabilities, see Part VIII,		
6	Additional Information**		
7			

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

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
KEELEY, IRENE M.	4/2/92

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

A. Description of Assets (Including trust assets) Indicate, where applicable, owner of the asset by entry of the parentheses "(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 (1) Amt. Code (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, mergers, 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 Union National Bank Clarksburg, WV	A	Int.	K	T	----------	----------	EXEMPT	----------	----------
2 Union National Bank Clarksburg, WV (J)	A	Int.	J	T	----------	----------	EXEMPT	----------	----------
3 CB&T of Harrison County Clarksburg, WV (J)	A	Int.	J	T	----------	----------	EXEMPT	----------	----------
4 Union National Bank Clarksburg, WV (J)	B	Int.	K	T	----------	----------	EXEMPT	----------	----------
5 Note receivable Ground Breakers, Inc. (S)	A	Int.	N	T	----------	----------	EXEMPT	----------	----------
6 3 sh. Ground Breakers, Inc. Common Stock (S)	A	Div.	O	U	----------	----------	EXEMPT	----------	----------
7 265 sh CB&T Financial Corp. Common Stock	A	Div.	J	T	----------	----------	EXEMPT	----------	----------
8 10 sh US Air Group Inc. Common Stock (S)	A	Div.	J	T	----------	----------	EXEMPT	----------	----------
9 10 sh Southwestern Public Srvc. Comm. Common Stock (S	A	Div.	J	T	----------	----------	EXEMPT	----------	----------
10 100 sh Allegheny Power Sys Common Stock (S)	A	Div.	J	T	----------	----------	EXEMPT	----------	----------
11 100 sh Carolina Power & Light Common Stock (S)	A	Div.	J	T	----------	----------	EXEMPT	----------	----------
12 100 sh Chevron Corporation Common Stock (S)	A	Div.	J	T	----------	----------	EXEMPT	----------	----------
13 200 sh Consolidated Natural Gas Common Stock (S)	A	Div.	J	T	----------	----------	EXEMPT	----------	----------
14 1000 sh Duquesne Light Common Stock (S)	B	Div.	K	T	----------	----------	EXEMPT	----------	----------
15 200 sh Exxon Common Stock (S)	A	Div.	J	T	----------	----------	EXEMPT	----------	----------
16 100 sh Illinois Power Common Stock (S)	A	Div.	J	T	----------	----------	EXEMPT	----------	----------
17 300 sh Mylan Labs Common Stock (S)	A	Div.	J	T	----------	----------	EXEMPT	----------	----------
18 8 sh Texaco Inc. Varible Stock (S)	A	Div.	J	T	----------	----------	EXEMPT	----------	----------
19 400 sh Texaco Inc. Common Stock (S)	B	Div.	K	T	----------	----------	EXEMPT	----------	----------
20 Merrill Lynch IRA	A	Int. Div.	J	T	----------	----------	EXEMPT	----------	----------

1 Income/Gain Codes: (See Col. B1 & B4)	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 S=$250,001 to $500,000	K=$15,001 to $50,000 O=$500,001 to $1,000,000	L=$50,001 to $100,000 P=More than $1,000,000	M=$100,001 to $250,000
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
KEELEY, IRENE M.	4/2/92

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

A. Description of Assets (including trust assets)	B. Income during reporting period (1) Amt. (A-H)	(2) Type (Int., Div., Rent, or Int.)	C. Gross value at end of reporting period (1) Value (J-P)	(2) Value Method (Q-W)	D. Transactions during reporting period (1) Type (P, S, or E)	(2) Date (Mo., Day)	(3) Value (J-P)	(4) Gain (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
1 Merrill Lynch IRA (S)	A	Int. Div.	J	T	----------	----------	EXEMPT	----------	----------
2 Penn Mutuel IRA	A	Int. Div.	J	T	----------	----------	EXEMPT	----------	----------
3 Penn Mutuel IRA (S)	A	Int. Div.	J	T	----------	----------	EXEMPT	----------	----------
4 Steptoe & Johnson 401K Retirement Plan	D	Int. Div.	M	T	----------	----------	EXEMPT	----------	----------
5 Steptoe & Johnson Ptrshp Capital Account	C	Int.	K	U	----------	----------	EXEMPT	----------	----------
6 Keelex 1985-A Oil/Gas Limited Ptrshp Interest (S)	A	Working Int.	J	U	----------	----------	EXEMPT	----------	----------
7 Keelex 1986-A Oil/Gas Limited Ptrshp Interest (J)	A	Working Int.	J	U	----------	----------	EXEMPT	----------	----------
8 Keelex 1986-B Oil/Gas Limited Ptrshp Interest (J)	A	Working Int.	J	U	----------	----------	EXEMPT	----------	----------
9 Keelex 1987-A Oil/Gas Limited Ptrshp Interest (J)	A	Working Int.	J	U	----------	----------	EXEMPT	----------	----------
10 Cash Surrender Value Northwestern Life Ins. (S)	A	Div.	L	T	----------	----------	EXEMPT	----------	----------
11 Real Estate-Shop & Yard Clarksburg, WV (J)	A	Rent	M	W	----------	----------	EXEMPT	----------	----------
12 1/12 Interest in House Washington D.C. (S)	A	Rent	J	W	----------	----------	EXEMPT	----------	----------
13 Ten pieces of earth moving equipment rental (S)	G	Rent	N	W	----------	----------	EXEMPT	----------	----------
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to $5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=over $1,000,000
2 Value Codes: (See Col. C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $250,000
	N=$250,001 to $500,000	O=$500,001 to $1,000,000	P=over $1,000,000	
3 Value Method Codes: (See Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cost/Market
	U=Book Value	V=Other	W=Estimated	

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	KEELEY, IRENE M.	4/2/92

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

Part III - Non-Investment Income - Line 1 Steptoe & Johnson partnership income 1/1/92-3/:
The reporting person's distributive share of partnership income for the period 1/1/92-3/31/92 from Steptoe & Johnson is an estimate. Final determination is made by the partnership at year end.

Part VI - Liabilities - Reporting person's spouse is President and sole-stockholder of Ground Breakers, Inc. (a WV Corporation). Spouse has personally guaranteed the described bank obligations and construction performance and payment bonds of Ground Breakers, Inc.

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 Irene M. Keeley Date Apr. 3, 1992

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

March 31, 1992

John P., III and Irene M. Keeley

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	61	791	00	Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
				Notes payable to relatives			
Listed securities—add schedule	101	705	00	Notes payable to others			
Unlisted securities—add schedule	2,500	000	00	Accounts and bills due	2	013	00
Accounts and notes receivable:				Unpaid income tax			
Due from relatives and friends				Other unpaid tax and interest	6	150	00
Due from others	171	800	00	Real estate mortgages payable—add schedule	350	000	00
Doubtful				Chattel mortgages and other liens payable			
Real estate owned—add schedule	1,200	000	00				
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property	78	100	00				
Cash value—life insurance	60	751	00				
Other assets—itemize:							
Veeted Int.-Retirement Acct.	199	785	00				
Conetruction rental equip.	365	000	00				
Veeted Int. in Law Ptrshp	34	374	00	Total Liabilities	358	173	00
Antiquee & Collectiblee	133	800	00	Net worth	4,751	735	00
Total assets	5,109	908	00	Total liabilities and net worth	5,109	908	00

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	See Attached	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		

JOHN P., III and Irene M. Keeley
Supplementel Schedules - Net Worth
March 31, 1992

	Listed Securities		Market Value
265 sh	CB&T Financial Corporetion	$	3,975
10 sh	US Air Group		160
10 sh	Southwestern Public Service		150
100 sh	Allegheny Power System		4,175
100 sh	Cerolina Power & Light		5,275
100 sh	Chevron Corporation		6,400
200 sh	Cnnsolidamd Naturel Gas		7,400
1000 sh	Duquesne Light		28,500
200 sh	Exxon Corporation		10,950
100 sh	Illinois Power Company		2,087
300 eh	Mylan Labs		11,362
8 sh	Texacn Incorporeted Variable		421
400 sh	Texaco Incorporated		22,850
		$	103,705

	Unlisted Securities		
3 sh	Ground Breakers, Incorpnreted	$	2,500,000

Notes Receivehle - Oue From Others		
Note receivable due from Grnund Breakers, Inc. (A WV Corporetion solely owned by Jnhn P. Keeley, III)	$	371,000.00

Reel Estate Ownel		
Residence, Clarksburg WV	$	250,000
Residence, Oeep Creek MD		700,000
Commercial Property, Clarksburg WV		250,000
	$	1,200,000

Contingent Liabilities

John P. Keeley, III, husband, personally securee a lins of credit of Ground Breekers, Inc., with a Deed of Trust on our personal residence. There is no outstanding balance oo ths line of credit at this time.

John P. Keeley, III, husband, is the personal guarentor of Ground Breekers, Inc.'s construction performance and peyment boods.

Jobn P. Keeley, III, husband, is tbe personal quarantor of Ground Breekers, Inc.'s squipmeot iostallment obligation at Empire National Benk.

John P., III And Irene M. Keeley
Supplemental Schedulee - Net Worth
March 31, 1992

Real Estate Mortgages Payable	Balance at 3/31/92
Mortgage Note Payable: CB&T of Harrison County; original amount of $400,000; payable in quarterly inatallmente of $20,000 plus intereet at New York prime; eecured by real eetate at Deep Creek, MD.	$ 280,000
Mortgage Note Payable: John L. Murphy; original amount of $100,000; payable in quarterly installmenta of $5,000 plua intereet at 8%; secured by real estate at Deep Creek, MD.	70,000
	$ 350,000

CONFIRMATION HEARING ON HON. NORMAN H. STAHL, EDUARDO C. ROBRENO, GORDON J. QUIST, AND THOMAS K. MOORE

THURSDAY, JUNE 18, 1992

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

The committee met, pursuant to notice, at 2:08 p.m., in room SD-628, Dirksen Senate Office Building, Hon. Howard M. Metzenbaum, presiding.

Present: Senators Metzenbaum, Thurmond, and Specter.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. The hearing will come to order.

This afternoon the Judiciary Committee will conduct hearings on four judicial nominees: Judge Norman H. Stahl of New Hampshire, a judge for the Court of Appeals for the First Circuit; Mr. Thomas Moore for the Virgin Islands; Mr. Eduardo Robreno for the eastern district of Pennsylvania; and Mr. Gordon Quist for the western district of Michigan.

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

The portions of the questionnaire available to the public will be printed in the record of this hearing. We will also keep the record open for a limited time just in case members of the committee would like to submit written questions. And of course we will place in the record the full introductory statements of home State Senators and Congresspersons.

We have a number of very distinguished Senators with us today and let us begin with them. I believe I have a list here and I am not sure how the order was made up, but it was handed to me by the staff. I think what we will do is have the Senators present their nominees in order that the Senators may then leave for other areas of their responsibilities and then from there, the chair will have some inquiry of each of the nominees.

I know that Senator Riegle had hoped to be here, but he is presenting a bill on the floor of the Senate. Senator Carl Levin, I did see him here.

Senator Levin, would you care to present your nominee?

STATEMENT OF HON. CARL LEVIN, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. Mr. Chairman. Thank you.

Congressman Henry and Congressman Upton are also here and perhaps they could join me briefly—Paul Henry and Fred Upton. I am pleased to be here this afternoon, Mr. Chairman, to introduce Gordon Quist to the Judiciary Committee to recommend his confirmation to you. Don Riegle is on the floor managing a bill this afternoon or else he would have been here as well and he would like some remarks to be made part of the record.

Senator METZENBAUM. Whatever his remarks are will be included in the record.

[The prepared statement of Senator Riegle follows:]

1 Dean Riegle.

MR. RIEGLE. Mr. Chairman, I am pleased to be here before the committee to introduce Gordon Quist who has been nominated to be a Judge for the U.S. District Court for the Western District of Michigan.

The seat that Gordon Quist has been nominated to fill was recently added to the western district and is an important step toward improving the quality of our court system in my state. I appreciate the work the you and the Committee have done to increase the number of judgeships so that our courts are able to handle the growing number and complexity of the cases before them.

The nominee before you this afternoon has spent most of his life in western Michigan, in and around the Grand Rapids area. He has made a mark in his community, and I have heard from a number of people from Michigan who strongly support his nomination. Those who I talked to and heard from thought highly of his ability and integrity and I believe that speaks well for the nominee.

As I mentioned, Mr. Quist has lived in Michigan for most of his life and received his undergraduate education at two of Michigan's fine colleges: beginning in Grand Rapids at Calvin College, then transferring to Michigan

State, where he received his undergraduate degree. His law degree came from George Washington University here in Washington, where he graduated with honors.

After a short period in which he practiced law in Washington and Chicago, Gordon Quist returned to his hometown of Grand Rapids where he has worked for the well-known firm of Miller, Johnson, Snell & Cummiskey for twenty-five years. For the past five years, he has been the managing partner of the firm.

The bulk of his legal practice has been in business and in the commercial litigation field. In his practice, he has represented many of Michigan's most respected companies in a range of matters.

Although most of his legal experience has been in civil cases, he has had some experience with criminal matters. That experience will be to his benefit should his nomination be approved by this Committee and the Senate.

Again, thank you for giving me the opportunity to introduce Gordon Quist to the Committee. His nomination has engendered support from a wide range of the Michigan legal community and I urge the Committee to give him every possible consideration.

Senator LEVIN. Also, Mr. Quist's wife, Jane, is here this afternoon and I would like to introduce her as well to the committee.

Senator METZENBAUM. Please do. Are there any other members of your family with you?

Mr. QUIST. I have five children that are not here.

Senator METZENBAUM. They are not here.

Mr. QUIST. They all have careers of their own. They are busy working.

Senator LEVIN. They are busy supporting the old man is what it amounts to. We are delighted with this appointment, and to be very brief, I did not know Mr. Quist until he was nominated. After he was nominated, we spent some time in my office and I concur with the many recommendations which we received supporting him from a broad cross-section of the west Michigan community.

Just to very briefly read from two of these, Rhett Pinsky who I know very well, a lawyer in Grand Rapids, said it this way. Mr. Quist has "the experience and intellectual ability to handle the job. More importantly, he has a judicial temperament and an innate sense of fairness. He treats people with dignity and respect." He is a well-known, democratic lawyer in Grand Rapids.

And also, there is an interesting letter from Herbert Rubin which I would like to make part of the record because it is so long. He is a New York lawyer who is involved in the screening of judicial candidates for the Governor of New York and the mayor of New York. I am not sure exactly, I guess he had litigation against Mr. Quist and they met that way. He did not screen Mr. Quist. This is based on litigation where he was on the other side and it is a very, very glowing letter about the characteristics, the patience, the judicial temperament that Mr. Quist has.

I would like his letter, as well as Mr. Pinsky's and a letter from Prof. William Hutchinson at Duke University to be made part of the record, and just simply say that I fully support this nomination and hope he is promptly confirmed.

[The aforementioned letters follow:]

PINSKY, SMITH, FAYETTE & HULSWIT
ATTORNEYS AT LAW
1515 McKAY TOWER
GRAND RAPIDS, MICHIGAN 49503
(616) 451-8496

92 APR 27 AM 9:03

H. RHETT PINSKY
EDWARD (NED) M. SMITH
MICHAEL L. FAYETTE
DAVID E. HULSWIT, JR.
PAMELA K. BRATT

A. ROBERT KLEINER
1916 - 1987

April 22, 1992

Senator Carl Levin
459 Russell Senate Office Bldg.
Washington, D.C. 20510-2202

Dear Senator Levin:

I was delighted to learn that Gordon Quist has been nominated by President Bush to be a United States District Judge for the Western District of Michigan. I understand, however, that this being a political year his confirmation may encounter obstacles which otherwise would not exist. I hope this will not be the case.

I have known Mr. Quist for approximately 25 years, both as an advocate and friend. It would be unfortunate if he were not confirmed. He has the experience and intellectual ability to handle the job. More importantly, he has a judicial temperament and an innate sense of fairness. He treats people with dignity and respect. He will make a fine federal judge.

Respectfully,

H. Rhett Pinsky

HRP/mm

Duke University
School of Law
Durham, North Carolina
27706

F. William Hutchinson
Senior Lecturer in Law

Telephone (919) 684-5358
Facsimile (919) 684-3417
Telex 80282

April 27, 1992

92 MAY -1 AM 8:16

The Honorable Donald W. Riegle, Jr.
SD 105 Dirksen Bldg.
Washington, D.C. 20510

Dear Don:

I understand that Gordon Quist of Grand Rapids has been nominated by the President to fill the Federal District Court vacancy resulting from Doug Hillman's change of status to Senior Judge. I write to support Gordon's nomination and to tell you why I do so.

I have known Gordon for many years in many capacities. I am sure you are already familiar with his background, education, and professional experience. In my view, he is a very talented, able and articulate lawyer of wide experience, particularly as a litigator. These qualifications alone would make him a well-qualified nominee; but, in addition, he has qualities of independence of judgment, community interests, compassion, and dedication to the rights of others that would, I believe, make him an outstanding federal judge. I mention two personal experiences as illustrative.

In 1971, I organized and chaired a committee of lawyers and laymen who sought to establish a law school in Grand Rapids. This was a bi-partisan group, motivated by the belief that a Grand Rapids law school would be a useful addition to the city's educational resources, and, in particular, a positive influence in attracting minority professionals to the community. Although the project ultimatedly aborted in the political turmoil of the Michigan Legislature, I still recall Gordon's energetic and enthusiastic participation in the committee's work. He was perceptive and supportive, agreeing that a law school would be an important addition to the educational opportunities in Grand Rapids, particularly for minorities.

Nearly 20 years later, I learned that Gordon had agreed to serve as counsel, pro bono, for Robert Lee Shell, an indigent defendant awaiting execution in Mississippi in Shell's appeal to the United States Supreme Court from his death sentence. Gordon asked me to review some of the files in the case, and I did so. Gordon acted, I know, not out of sympathy for the defendant in this

The Honorable Donald W. Riegle, Jr.
April 27, 1992
Page 2

difficult and unpopular caee, but eimply becauee he believed so strongly in the rule of law and the importance of a fair trial in our eociety. *Shell v. Mississippi* wae thereafter remanded by the United States Supreme Court to the Supreme Court of Mississippi for reconeideration of Shell'e death eentence. The Miseissippi Supreme Court, in turn, hae remanded the caee to the trial court for re-eentencing.

I believe Gordon Quist would make a fine federal judge. I hope that the Senate agreee.

I etill remember the very pleaeant afternoon I epent with you in your office in Washington in the spring of 1979 when you were interviewing candidatee for possible appointment to the federal bench. You were kind to allow me eo much time in the midst of your busy echedule, and I did appreciate it.

Warm regarde,

S/FWH

F. William Hutchineon

FWH/ssh

cc: The Honorable Carl Levin
459 Ruesell Senate Office Bldg.
Waehington, D.C. 20510-2202

HERZFELD & RUBIN, P.C.
ATTORNEYS AT LAW
40 WALL STREET
NEW YORK, N.Y. 10005
TELEPHONE: (212) 344-5500
TELEFAX (212) 344-3333
CABLE: PIEROWAL NEW YORK
W. U. I. 661541

92 MAY 19 PM 12:17

May 15, 1992

Senator Carl Levin
Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Levin:

I am informed that Gordon Quist, Esq. of Grand Rapids, Michigan, has been nominated to be a U.S. District Court Judge.

In my opinion, Mr. Quist's availability for appointment to this post presents an outstanding opportunity to enlist in the public and community interest the talents of a special and uniquely qualified practitioner and human being. I strongly commend him to you for this sensitive and demanding position and warmly endorse him for such appointment.

In a sense, I bring a somewhat different approach to the process of judicial screening and evaluation. For more than fifteen years, I have been a member of permanent judicial screening panels for screening candidates to be appointed by the Governor, and by the Mayor for state and city judgeships. I have also served for some 15 years on Senator Moynihan's Committee to screen for the U.S. District Courts. I hope my comments will be weighed in the light of that background.

Mr. Quist and I have known each other for about fifteen years in a professional and, arising therefrom, in a social capacity over the major part of that period.

In meeting with his wife, children, colleagues and also his clients, I have had many occasions and many contexts in which to come to know him. He, on the one hand, and I, on the other hand, have represented clients with a long and continuing relationship,

HERZFELD & RUBIN, P.C.

Senator Carl Levin
May 15, 1992
Page 2

sometimes adversary, sometimes conflicting and sometimes consistent with each other. The changing relationships have imposed stringent demands on Mr. Quist's legal scholarship, industry and temperament. They have also permitted me to observe and evaluate his integrity, personal values and sense of professionalism.

In each of these areas, Mr. Quist scores an impressive high which eminently qualifies him for the important position under consideration.

Without pomp or affectation, Mr. Quist is a solid scholar. Whether substantive or procedural, exotic antitrust or bread and butter product liability questions, Mr. Quist is at home with the issues and, more important, open minded to research and weigh all aspects of the questions at hand. His direct, forthright and cordial manner win confidence. The knowledge that his commitment, once given, is unshakable marks him as a person of remarkable stability and responsibility. His patience and courtesy, while pressing forward on the business at hand, are additional attributes which mark him as a person of outstanding qualifications for this position.

In my opinion, the bench, bar and the community at large will be fortunate at the appointment of Mr. Quist to the U.S. District Court. He will surely be an outstanding addition of whom we will all be proud.

Sincerely,

Herbert Rubin

HR:mh

Senator METZENBAUM. Thank you very much, Senator Levin, your testimony and your support of Mr. Quist goes a long way in our consideration. We appreciate your testimony and we will accept Senator Riegle's statement to be included in the record.

Congressman Upton and Congressman Henry, we will be happy to hear from both of you.

STATEMENT OF HON. PAUL B. HENRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. HENRY. Thank you, Mr. Chairman.

I am Congressman Henry. I have known Mr. Quist personally for about 20 years. We first knew each other as neighbors. We used in our western district the process that has been reaching back 50–60 years on judicial appointments of having a very broadly based community panel review each judicial candidate. There are very clearly bipartisan, very clearly multiethnic and very diverse in terms of the types of legal practices represented on the committee. We work closely with members of the Federal bar in putting together the committee.

The committee was unanimous and enthusiastic in submitting Mr. Quist's name to the members of the Michigan Republican delegation. We were strong in our support when we recommended his name to the White House and to the two distinguished Senators. I also understand you have a very strong, common friend, John Cummiskey, who served on the Antioch School Board with you. John is one of Gordon's law partners. I consider it an honor to be here today, Mr. Chairman, to speak on Gordon's behalf and to share with you my own strong personal support of his nomination to the Federal judiciary.

Senator METZENBAUM. Thank you.

Congressman Upton.

STATEMENT OF HON. FREDERICK S. UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman.

As Congressman Henry indicated, we do have a very good group. I am not a lawyer. I rely on our little task force quite heavily. I have known Mr. Quist 6 or 7 years in a very close capacity. In fact his daughter at one time worked for me some years ago, but I know that Gordon and the community people in the Grand Haven and Holland area in Ottawa County couldn't speak higher of Gordon's capabilities. He has been very involved with a terrific law practice in Grand Rapids, widely respected through the State, and I commend Senator Levin, as well as Senator Riegle for urging this consideration as well.

Senator METZENBAUM. Thank you very much.

I am going to hear from the other Senators and Congresspersons who are present before getting into the questions with the various nominees. So if you will all excuse yourself from the table.

Senator LEVIN. Thank you, Mr. Chairman, Senator Specter, thank you, too. I appreciate it.

Senator METZENBAUM. I think our list shows that Senator Warren Rudman and Senator Robert Smith are here for Judge

Stahl. Senator Rudman, we are happy to have you with us. We have not had you since the days of Souter. I see that you are now supporting, not a Supreme Court nominee, but a circuit court of appeal nominee and we will be glad to hear from you in connection with this nomination.

STATEMENT OF HON. WARREN RUDMAN, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator RUDMAN. Thank you very much, Mr. Chairman and Senator Specter.

First, allow me to insert in the record a statement from the Republican leader, Senator Bob Dole, who is in Kansas today with Russian President Yeltsin or would have been here. Senator Dole has been a family friend of the Stahls for sometime and has here a statement to be inserted in the record which I would appreciate be entered.

Senator METZENBAUM. Without objection, it will be included in the record.

[The prepared statement of Senator Dole follows:]

Warm Regards
Best
Bob Dole

SENATOR BOB DOLE
STATEMENT FOR THE RECORD
CONFIRMATION HEARING OF JUDGE NORMAN STAHL
THURSDAY, JUNE 18, 1992

MR. CHAIRMAN:

THANK YOU FOR THE OPPORTUNITY OF ALLOWING ME TO ENTER THIS STATEMENT IN THE RECORD. I HAD HOPED TO BE THERE IN PERSON TO OFFER MY STRONG SUPPORT OF JUDGE STAHL--AS I WAS FOR NORM'S CONFIRMATION HEARING TO THE UNITED STATES DISTRICT COURT--BUT I WILL BE IN KANSAS WITH RUSSIAN PRESIDENT BORIS YELTSIN.

THERE CAN BE NO DOUBT THAT PRESIDENT BUSH MADE AN OUTSTANDING CHOICE IN NOMINATING JUDGE NORM STAHL TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

JUDGE STAHL'S RESUME SPEAKS FOR ITSELF: NEARLY TWENTY FIVE YEARS WITH ONE OF NEW HAMPSHIRE'S LARGEST AND MOST INFLUENTIAL LAW FIRMS...SERVICE AS PRESIDENT AND MANAGING DIRECTOR OF THAT FIRM...LEADERSHIP POSITIONS IN A WIDE VARIETY OF LEGAL ORGANIZATION AND GOVERNMENT ADVISORY COMMITTEES...TWO YEARS OF EXPERIENCE AS A UNITED STATES DISTRICT JUDGE.

IT HAS BEEN MY PRIVILEGE TO KNOW NORM AND HIS WIFE, SUE, FOR A NUMBER OF YEARS. OUR COLLEAGUE, SENATOR RUDMAN, HAD SPOKEN VERY HIGHLY ABOUT NORM, AND IT DIDN'T TAKE ME LONG TO FIGURE OUT WHY.

THROUGHOUT HIS CAREER, NORM HAS TRULY COMMITTED HIMSELF TO MAKING A DIFFERENCE--A DIFFERENCE FOR HIS PROFESSION, HIS COMMUNITY, HIS STATE, AND HIS COUNTRY.

I AM CONFIDENT THAT THROUGH HIS INTELLECT AND HIS INTEGRITY, HE WILL CONTINUE TO MAKE THAT DIFFERENCE AS A JUDGE OF THE UNITED STATES CIRCUIT COURT OF APPEALS.

Senator RUDMAN. Mr. Chairman, I will be very brief.

It is not terribly often you can sit before a committee and introduce someone for an important Federal post. In this case the First Circuit Court of Appeals in Boston, a man that you have known for 50 years. Norman Stahl and I knew each other as young children. We have known each other through our entire adult lives. He is someone who has a reputation for integrity and intellectual incisiveness in our State that is second to no one.

Two years ago in searching for the kind of excellence that I know that this committee shares with me as to what we look for for the Federal judiciary, I, after long discussions convinced Norman Stahl to leave an extraordinary law practice in which he was for many years the managing partner in one of New Hampshire's most prestigious law firms and end his legal career serving his country in the Federal bench. In the 2 years he has served in that bench amongst lawyers and judges, he has built in that short time an extraordinary reputation and no surprise to those of us who know him.

Thus, I am delighted to introduce him here today to succeed Justice David Souter on the First Circuit Court of Appeals. And I thank the chairman for the time.

Senator METZENBAUM. Thank you very much, Senator Rudman.

Senator Smith.

STATEMENT OF HON. BOB SMITH, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator SMITH. Mr. Chairman, it is an honor and a pleasure to appear before this committee today to introduce Judge Norman Harold Stahl, a district judge from my State of New Hampshire who has been nominated by President Bush to the First Circuit Court of Appeals.

Mr. Chairman, I have known Judge Stahl for 12 years, and I believe Judge Stahl epitomizes Granite State qualities of intelligence, common sense, and judicial restraint—qualities which our country sorely needs.

Judge Stahl was born in Manchester, NH, in 1931. He graduated magna cum laude from Tufts University and received his law degree from Harvard Law School in 1955. Judge Stahl practices law with the same firm from 1956 to 1990, handling such complex and important issues as the ramifications of a bankruptcy filing by the Public Service Co. of New Hampshire.

Since 1990, Judge Stahl has served as a district judge on the U.S. District Court for the District of New Hampshire, rendering admirable service to both the residents of the State of New Hampshire and the country as a whole.

Mr. Chairman, in view of Judge Stahl's long and distinguished career, it gives me great pleasure to join with my colleague, Senator Rudman, in introducing him to you and recommending him to your consideration.

Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Senator Rudman and Senator Smith.

Judge Stahl, if you would care to introduce your family at the present time, we would be very happy.

Judge STAHL. I would, thank you, Senator.

The second row, my daughter, Ellen; my mother-in-law, Jane Heimerdinger; my wife of 34 years, Sue; my son, Peter, who is the fellow with the camera; and a couple of members of my extended family that every judge has: A former law clerk, Jack Hoffman; sitting next to him, my brother, Bob; and in the next to the back row, Londia McCafferty, a current law clerk of mine who came down here to see what I was going to do today.

Thank you.

Senator SPECTER. Mr. Chairman, just a comment or two. When Senator Rudman was last here, as you have noted, it was with Judge Souter. We did not realize the importance of that circuit court confirmation, but we certainly will not make that mistake today. We will have an appropriate line of questioning for Judge Stahl to see how the contours of the clear and present danger test work through. We still have our notes from some of the prior Supreme Court hearings, but we would not want to pass that up.

When Senator Smith made some comments about the Granite State, I know he is a man of extraordinary judgment because he originated in the Delaware Valley just a little north of Philadelphia.

Thank you very much.

Senator METZENBAUM. And now Senator Arlen Specter and Senator Harris Wofford.

Senator Specter is well known as a member of this committee and we are happy to have you with us, both as a member of the committee, as well as for the purpose of introducing Mr. Robreno.

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

Senator SPECTER. Thank you, Mr. Chairman.

I am delighted to join with my colleague, Senator Wofford, in presenting to this committee Eduardo C. Robreno for a position on the U.S. District Court for the Eastern District of Pennsylvania. Mr. Robreno has an outstanding academic background from Westfield State College in Westfield, MA, the University of Massachusetts with a master's degree, and from Rutgers Law School.

Mr. Robreno has had a distinguished career with the Antitrust Division of the Department of Justice and with prestigious Philadelphia law firms such as Meltzer & Schiffrin. The distinguished partner of Meltzer & Schiffrin, Mr. Herb Linsinberg, is here today. Mr. Robreno was also with Stradley, Ronon, Stevens & Young, and most recently with Fox, Rothschild, O'Brien, & Frankel.

Mr. Robreno was on the Law Review in law school. He has an outstanding reputation within the Philadelphia Bar and his nomination is part of an effort to bring all diverse segments of the community onto the Federal bench. When I was elected district attorney in Philadelphia in 1965, I sought to hire assistant district attorneys from all segments of the community. At that time I could not find a Hispanic lawyer in town to hire as an assistant district attorney.

Mr. Robreno is a native of Cuba and a naturalized citizen. In our efforts to broaden and diversify the Federal bench, we have found a man of outstanding capability in any league. The Philadelphia District Court is the big league and he will fit in there very well.

Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Senator Specter.

Senator Wofford, we are very pleased that you are with us this afternoon.

STATEMENT OF HON. HARRIS WOFFORD, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator WOFFORD. It is a pleasure, Senator Metzenbaum, chairman, to join my senior colleague in introducing and warmly recommending Eduardo Robreno to the committee. He will make an excellent U.S. district judge for the Eastern District of Pennsylvania. I will just add facts, not repeat facts.

Beginning with the fact that, at age 15, Eduardo Robreno came to this country by himself in a program called Peter Pan. I salute that program for giving us this outstanding citizen. He directs his firm's involvement in the VIP program which provides civil representation to the poor in creditor and debtor cases. He has accepted appointments as counsel for indigent criminal defendants. He is a founding member of the Hispanic Bar Association of Pennsylvania. He served as Chair of my colleague, Senator Specter's Council on Hispanic Community and as a member of former Governor Thornburg's Council on the Hispanic Community. He has acted as legal counsel to many nonprofit Hispanic-American organizations in Pennsylvania. In short, Mr. Robreno has a distinguished career of service.

I just want to end by reporting that in the last days before we lost my great predecessor, John Heinz had the pleasure of meeting Eduardo Robreno and formally endorsing him for this appointment. I enthusiastically join this endorsement.

Thank you.

Senator METZENBAUM. Thank you very much, Senator Wofford.

Mr. Robreno, would you care to introduce your family?

Mr. ROBRENO. Thank you, Mr. Chairman.

My wife, Nana Robreno and my youngest son, Andrew Robreno; my brother-in-law and sister-in-law, Dr. Leon and Mrs. Leon; and my nephew, John Viev; and my former law partner and good friend, Herb Linsinberg came down from Philadelphia for this occasion.

Senator METZENBAUM. I would like to ask your son a question. What is his name?

Mr. ROBRENO. Andrew Robreno.

Senator METZENBAUM. Andrew, I want to ask you a question. Do you think your dad would make a good judge? Do you think he is fair?

Senator SPECTER. Andrew, you have a right to remain silent. [Laughter.]

Andrew ROBRENO. Yes.

Senator METZENBAUM. Thank you.

[Applause.]

Senator METZENBAUM. Last but not least is a good friend, Senator John Warner, and Representative Ron de Lugo and Lieutenant Governor Derek M. Hodge from the Virgin Islands, who are here to introduce Mr. Moore.

STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Mr. Chairman, Senator Specter, it is always a pleasure for those of us here in the Senate to know that we have the opportunity to come before this committee in its very important capacity of providing this Nation with competent, qualified people of judicial temperament for the judicial branch and to witness a scene like I have just witnessed with you, Mr. Chairman. I think it is terribly important and I commend you and others for doing that, because this is a total family commitment when someone steps on the Federal bench in many, many ways.

I just want to say how much I appreciate as a Member of the Senate the manner in which you and other members of this committee, both the majority and minority, handle with great care these important nominations, and I am privileged to be here today, joined by a distinguished Member of Congress, Mr. Ron de Lugo, on behalf of Thomas K. Moore of St. Thomas, VI, who has been nominated to be the U.S. district judge for St. Thomas, VI.

Since 1987, Mr. Thomas Moore has been with the St. Thomas law firm of Grunert, Stout, Moore & Bruch. Mr. Moore is a partner in a broad-based practice in that firm.

During the years 1981–87, he was a partner in the firm of Hoffman & Moore, where he handled litigation practice. He also took over an ongoing real estate and business-related practice during the years 1978–81. There is a good deal of detail in my statement which I will submit for the record about his extensive active practice as a trial lawyer.

Senator METZENBAUM. Your entire statement will be included in the record.

[The prepared statement of Senator Warner follows:]

JOHN WARNER
VIRGINIA

COMMITTEES
ARMED SERVICES
SELECT COMMITTEE ON INTELLIGENCE
ENVIRONMENT AND PUBLIC WORKS
RULES AND ADMINISTRATION

United States Senate

[illegible] RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC [illegible]
[illegible]

CONSTITUENT SERVICE OFFICES

[illegible] WORLD TRADE CENTER
NORFOLK, VA [illegible]
[illegible]

MAIN STREET CENTRE
[illegible] MAIN STREET
RICHMOND, VA [illegible]
[illegible]

[illegible] FEDERAL BUILDING
[illegible] WEST MAIN STREET
ABINGDON, VA [illegible]
[illegible]

DENNISON BANK BUILDING
[illegible] S. JEFFERSON ST. SUITE [illegible]
ROANOKE, VA [illegible]
[illegible]

STATEMENT BY SENATOR JOHN WARNER
NOMINATION OF THOMAS K. MOORE
TO BE U.S. DISTRICT COURT JUDGE FOR ST. THOMAS, VIRGIN ISLANDS

JUNE 18, 1992

Mr. Chairman and members of the Senate Judiciary Committee, I am pleased today to introduce to the Committee Mr. Thomas K. Moore of St. Thomas, Virgin Islands, who has been nominated to be United States District Court Judge for St. Thomas, Virgin Islands.

Since 1987, Mr. Thomas Moore has been with the St. Thomas law firm of Grunert, Stout, Moore & Bruch. Mr. Moore is a partner in a broad based practice in real estate, personal injury and general business litigation.

During the years 1981 to 1987 Mr. Moore was a partner in the firm of Hoffman & Moore where he handled the litigation practice. Mr. Moore also took over an on-going real estate and business related practice during the years 1978 to 1981. As a sole practitioner, he expanded the business and included more litigation.

In 1976 Mr. Thomas relocated to St. Thomas where he served as an Assistant U.S. Attorney for the District of the Virgin Islands. At ~~the~~ this time, he ~~had been~~ became a resident of the Commonwealth of Virginia for ten years.

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During the years 1971 to 1976, Mr. Thomas served as Assistant U.S. Attorney for the Eastern District of Virginia. He was primarily in charge of grand jury investigations and prosecutions of white-collar crime.

Mr. Thomas also served for a year as Assistant U.S. Attorney for the District of Columbia in 1971.

Mr. Thomas is currently affiliated with a number of professional associations, including the Bars of the Territory of the United States Virgin Islands; Virginia and the District of Columbia; and a member of the American Bar Association.

Mr. Thomas graduated from Harvard College with a Bachelor of Arts degree 1960. He was awarded his law degree from Georgetown University Law Center in 1967.

Mr. Thomas is married to Judith Thomas and they have two sons, David and Jonathan.

Mr. Chairman, Mr. Thomas' experiences in the legal profession have allowed him to gain the knowledge and legal tools necessary to perform in an exemplary manner as U.S. District Court Judge for St. Thomas, Virgin Islands.

I hope the Committee will give his nomination the utmost consideration for this position and that the floor of the Senate will eventually receive his nomination and report favorably to the President.

Senator WARNER. He also served as an assistant U.S. attorney and that was in the Commonwealth of Virginia where I and others had the occasion to make his acquaintance. Mr. Thomas graduated from Harvard College with a bachelor of arts degree in 1960 and he was awarded his law degree from Georgetown University Law Center in 1967. He is married to Judith Thomas and they have two sons, David and Jonathan. And, with the permission of the chair, I would like to have the nominee introduce his family.

Senator METZENBAUM. Please do.

Mr. MOORE. Mr. Chairman, I would like to introduce my wife, Judith, and if I could, I have some other friends who are here.

Senator METZENBAUM. Please proceed.

Mr. MOORE. My former law partner, Paul Hoffman; a colleague whom I worked with in Virginia for many years, Joe Fisher; and a young lady who happens to be Congressman de Lugo's niece, Ana Perlinsky, who is going to be the law clerk on the district court; and two young gentlemen I just met, Mr. Modest and Mr. Walker who are on Congressman de Lugo's staff.

Thank you.

Senator METZENBAUM. Thank you.

Mr. de Lugo.

STATEMENT OF HON. RON de LUGO, A REPRESENTATIVE IN CONGRESS FROM THE VIRGIN ISLANDS

Mr. DE LUGO. Mr. Chairman, Senator Thurmond, this is a joyful day hearing the Senators present their various nominees and certainly that wonderful exchange between the Chair and the son of one of the nominees. It is inspiring.

This is a particularly joyful day for the Virgin Islands. This U.S. territory, the District Court of the Virgin Islands, has been without a judge since 1987. I mean more than 5 years there has been no judge for the District Court of the Virgin Islands. There are two seats there. They have been without the other judgeship being filled since 1989. So you can imagine how pleased we are to have the nomination of Attorney Moore before this committee at this time.

And it is particularly joyful for us because this morning the President picked up the phone and called Judge Raymond Finch down in St. Croix and told him that he had also nominated him. So we are hopeful that we will have both of these vacancies filled and that we will have the court operating first class after all these years.

Thomas Moore, his background, we have heard Senator Warner refer to it. He was an undergraduate at Harvard. He is a Georgetown Law School graduate and 5 years assistant U.S. attorney in Virginia. But he has had extensive practice and experience in the Virgin Islands and he has lived in the Virgin Islands since 1976. For 2 years, he was assistant U.S. attorney and then he went into private practice. He has been in private practice for 11 years, 5 of those years were with Paul Hoffman's firm and the rest of the time he has been serving with Grunert & Stout.

So I want to thank you for this hearing today and I want to take just a moment to thank Chairman Biden also. And I want to thank

a very fine professional that this committee has and has been very helpful to me and to the Virgin Islands and that is the chief nomination's counsel of the committee, Harriet Grant. I want to thank her for the assistance that she rendered us in resolving this problem.

Also, let me say that we got a lot of help in the last several days from the Deputy Assistant Attorney General Barbara Drake over at Justice and I want to commend those people and I want to recommend Tom Moore to this committee.

Senator METZENBAUM. Very good, Representative de Lugo. Let me ask you in passing, what has happened to our former colleague Senator Ed Brook on the Virgin Islands?

Mr. DE LUGO. Ed Brook, he does not spend enough time with us any more. I think he spends——

Senator WARNER. He is a resident of Virginia, Mr. Chairman, and he enjoys it. [Laughter.]

Senator METZENBAUM. I know of no reason why he should not.

Senator WARNER. But he constantly reminds me that there is a life after the Senate, a happy one.

Thank you, Mr. Chairman.

Senator METZENBAUM. We will hear from the Lieutenant Governor, Derek Hodge.

STATEMENT OF HON. DEREK HODGE, LIEUTENANT GOVERNOR, U.S. VIRGIN ISLANDS

Mr. HODGE. Thank you, Mr. Chairman. Good afternoon, Senator Thurmond and Senator Specter.

I am Derek Hodge and I am presently serving as the elected Lieutenant Governor of the U.S. Virgin Islands. I am honored to have this opportunity to introduce Tom Moore whom the President has nominated to be judge of the U.S. District Court for the Virgin Islands.

Mr. Chairman, we are deeply pleased to see this action to fill one of the two vacancies in the district court. This bench has been vacant too long. We believe we have the dubious honor of having the only district court in the country with a 5-year vacancy.

The committee is to be commended for scheduling Mr. Moore's confirmation hearing with enough time remaining in the session to ensure that a confirmation vote can occur before a German sine die. The administration of justice in the territory requires a fully functioning Federal district court. We strongly urge prompt and final action in this confirmation process and equally timely and prompt action in filling the other vacancy in our court as well.

Mr. Chairman, Tom Moore is a 1961 graduate of Harvard University. He obtained his juris doctor from Georgetown University Law Center here in Washington. Tom graduated from Georgetown Law a few years before my own class from that outstanding institution. After this legal education, Tom had the good sense to move to the Virgin Islands. Tom Moore and his lovely wife and two children have now lived among us in the Virgin Islands for nearly two decades.

In the Virgin Islands, he has gained valuable experience as an assistant U.S. attorney from 1976 through 1978. He then entered

private practice. I am certain that he will bring to the bench the same excellent qualities that have been the hallmark of his performance in the practice of law. Tom's knowledge together with his sense for equity and fairness will no doubt assure well reasoned, respected judicial opinions.

Speaking for all Virgin Islanders, I can say that it will be a great relief to have once again a U.S. district court judge who resides in the territory.

Mr. Chairman, thank you for this opportunity to appear on behalf of Tom Moore's nomination and for the honor to introduce him to this distinguished panel.

I also wish to say that I look forward to appearing again before your committee shortly to introduce the Honorable Raymond Finch whom President Bush called this morning informing him that he would be nominated for our other district court position. I urge the committee to approve favorably in Tom Moore's nomination to the full Senate for prompt action.

Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you very much.

Following our usual practice, we will hear from Judge Stahl, if he would be good enough to come back. Judge Stahl, do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. STAHL. I do.

[The biographical statement of Judge Stahl follows:]

NORMAN H. STAHL

11 Glen Road
Bedford, Naw Hampshira 03102
Homa (603) 622-0123

P. O. Box 1224
Concord, New Hampshire 03302-1224
Office (603) 225-1525

Professional Background and Experience:

Effective May 7, 1990, United Statee District Judge, District of New Hampshira, locatsd at Concord, New Hampshire

Former President and Managing Director of a 50-lawyer firm (26 partners, 24 asaociates) in Manchester, New Hampehire. Devine, Millimet, Stahl and Branch, Profsssional Association, now Devine, Millimat and Branch, Professional Aesociation, ie generslly known as one of the largest and most influantial firms in the Stats of New Hampshire. Began with firm in 1956; became partner in 1959. Left firm on April 30, 1990 to becoma United States District Judga, Concord, New Hampshire.

Major specialization was in the field of Corporate, Banking, Real Estate Development and Public Law. General rspraeentation of corporate and public clients. Directed outside legal efforte of State of New Hampehira in connection with bankruptcy proceedings of Public Service Company of Nsw Hampshire.

Admitted to Massachusetts Bar in 1955, Maseachusetts Federal District Court in 1955, New Hampshire Stata Bar in 1956, and New Hampshire Dietrict Court in 1956.

Mamber of Manchester Bar Assoiation; New Hampshire Bar Association; American Bar Association.

Member, Naw Hampahire Board of Bar Examiners (1967-1974), Chairman (1972-1974). Appointed by State Supreme Court. Member of State Judicial Counoil (1983-1990), Chairman (1989-1990). Appointed by Governor and Counoil, Chairmanship by vote of members of Judicial Council. Resigned upon appointment as United States District Judge. Formar mamber, Profassional Conduct Committaa of State Bar Aesociation. Appointed by State Suprems Court. Memberehip in othar Committees of the Bar. Appointed Chairman of Special Committee on Correctione for State of New Hampshire by formar Governor Walter Paterson. In that role was rasponsible for preparation of summary report of committee findings.

Former Fellow, American College of Raal Eetate Attorneys.

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To Beth Ryan	From Judge Stahl
Office of Senator Rudman	Co.
Dept.	Phone #
Fax # 202-224-4803	Fax # 202-224-7776

NORMAN H. STAHL
Resume
Page 2

Public Service:

City Solicitor, Manchester, New Hampshire (six month period 1975), as public service to reorganize the office and establish standards for staffing the office.

Former Trustee, Manchester Institute of Arts and Sciences; former Trustee, Manchester Historic Association; founding Director and former Board Member, Federated Arts of Manchester, Inc.; former Member and President, Manchester Jewish Federation; former Board Member, Congregation Adath Yeshurun.

Former Member, Commission for Preservation of America's Heritage Abroad; former Chairman of Manchester Chamber of Commerce Airport Study Committee, Manchester, New Hampshire.

Formerly active in Republican party affairs. Delegate, Republican National Convention 1988. Member, Credentials Committee, Republican National Convention 1988. Member of Republican Party 1988 State Platform Committee.

Education and Personal:

Born January 30, 1931, Manchester, New Hampshire. Primary and secondary education Manchester Public Schools. Tufts College, B.A. magna cum laude, 1952. LL. B., Harvard Law School 1955. Law Clerk to Massachusetts Supreme Judicial Court Justice John V. Spalding, 1955-1956.

Married to Sue H. Stahl residing at 11 Glen Road, Bedford, New Hampshire. The Stahls have two children - Peter, age 31, formerly a self-employed businessman and currently a degree candidate at the Amos Tuck School, Dartmouth College and Ellan, age 23, a recent graduate of Bradford College, Haverhill, Massachusetts.

TESTIMONY OF HON. NORMAN H. STAHL, OF NEW HAMPSHIRE, TO BE A U.S. CIRCUIT JUDGE FOR THE FIRST CIRCUIT

Senator METZENBAUM. Judge Stahl, do you have any opening statement that you care to share with the committee?

Judge STAHL. The only thing I want to say is that I am pleased to be here this afternoon and I am prepared to answer any questions that the committee might have.

Senator THURMOND. Mr. Chairman, I am in an antitrust chairing and I have got to get back there. Mr. Chairman, I just want to say that I have reviewed the records of all of these people before this hearing. I have very few questions, about three questions for each one of them, if they would answer them for the record. I am convinced that you are all well qualified. I will be glad to support you and we will try to get you through.

I guess you did not want to be on the Supreme Court or Mr. Rudman could have gotten you on there. You have a fine record, as these other nominees do, and we are very proud to do all we can to help and expedite it. Senator Metzenbaum, I am sure, as to where he chairs, is going to expedite them through the Senate, are you not?

Senator METZENBAUM. In spite of that strong recommendation of support from Senator Thurmond, I think you have still got a great chance of getting through.

Judge STAHL. Thank you, Senator.

Senator THURMOND. We will give you these questions, if you will just answer them for the record.

Senator METZENBAUM. Judge Stahl, criminal sentencing guidelines have been in effect since 1987. The guidelines attempt to specify appropriate sentences for criminals based upon the nature of the offense, the conduct of the offender during the crime, and his or her prior criminal record. As a district judge, you had occasion to apply the guidelines in the case of *United States* v. *Bell.* That case involved the defendant who had failed to appear in court to stand trial on firearms charges. The defendant was subsequently acquitted on the firearms charges, but he pled guilty to the charge of failing to appear.

In calculating the defendant's sentence under the guidelines, you enhanced his sentence based upon a finding that Mr. Bell had obstructed justice. The First Circuit Court of Appeals reversed your decision to grant an upward adjustment to the defendant's sentence. In the first circuit's view, the relevant sentencing guideline did not allow the sentence to be increased. The court concluded that Mr. Bell's decision to rent a mailbox under an alias did not constitute avoidance of arrest nor did it obstruct pursuit of a criminal investigation as required by the guideline.

The court of appeals also found that Mr. Bell's possession of a gun and his delay in complying with an officer's request during arrest did not justify enhancing his sentence under the guidelines. Do you agree with the court of appeals ruling in that Bell case?

Judge STAHL. Well, obviously I have to, Mr. Chairman. The court of appeals said that I was incorrect in the enhancement. The guideline on that particular area is not particularly clear and this was a matter of basically first impression in the first circuit. I felt at the

time when I was faced with making the decision that the fact that he had reached for a gun and he was a felon already in possession of a gun, that was the basic underlying charge, that that under the circumstances was enough for the enhancement. The circuit felt otherwise and obviously that circuit precedent. I had no problem following that precedent.

Senator METZENBAUM. Actually was not the gun issue sort of put aside and the fact that he was acquitted on the firearms charges, and rather, it was the fact that he had failed to appear was that you gave him the additional punishment over and above that which the guidelines provided for? Was it that you were somewhat piqued at his failure to appear?

Judge STAHL. Not at all. It was not that he failed to appear before me. He failed to appear on the first, following the possession of a firearm charge before my colleague. And subsequently was captured, apprehended, brought back, stood trial, found not guilty on that charge. He appeared before me on the failure to appeal charge; pled guilty; and the issue came up because at the time that he was apprehended in May, he was again a felon in possession of a firearm.

And they had been looking for him since he had failed to show up for sentencing and at the time of the testimony, it was at the time of this apprehension. He was there with a gun. There were several armed marshals and the chief marshal, as I recall, testified as to his reaching for the gun. He had used the alias in connection with the mailbox and there was some indication that that had made it harder to find him.

I thought reading the guidelines and reading the commentary, that under those circumstances, the enhancement was justified. Subsequently, he was convicted in Maine on the subsequent firearms charge sentenced there as a career criminal and that was just reversed. That was before another judge. And the guidelines in this area are just being developed.

Senator METZENBAUM. Do you think that the guidelines unduly limit a judge's ability to fashion an appropriate sentence?

Judge STAHL. Generally speaking, I had no experience to speak of with preguidelines sentencing. I came to the court in 1990, so I think I have only sentenced two or three people who are not guidelines involved. I would venture to guess that most of my sentences would probably be the same with or without the guidelines. That is, that is if the guidelines work. At the margins, however, first time offenders, you have some problem, I think, with the guidelines. And I believe there is before the Senate and the Congress now some proposed changes to the guidelines which will give district judges more flexibility in dealing with that initial offender.

Senator METZENBAUM. Recent debate has been growing about judges increased willingness to impose sanctions against lawyers or parties who file frivolous lawsuits. Some attorneys have suggested that the fear of what is known as rule 11 sanctions has had a chilling effect, particularly when they try to make creative arguments in new or developing areas of the law such as civil rights.

As the chief judge of the New York Court of Appeals has put it, today's frivolity maybe tomorrow's precedent. What do you think of

when I attended his swearing in for the third circuit in Erie he made a point to repeat the admonition which I thought was very important.

And I say it not only for you Judge Stahl, but it is something that I repeat on the occasions when I attend the swearing in ceremonies of our own Federal judges. It is something that has to be in the forefront of everyone's mind.

Judge STAHL. I absolutely agree.

Senator SPECTER. Thank you. In the absence of the chairman, I call Mr. Robreno for his testimony.

Thank you very much.

Judge STAHL. Thank you very much.

Senator SPECTER. Judge Stahl, I think you are in good shape here for confirmation.

Mr. Robreno, do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROBRENO. I do.

TESTIMONY OF EDUARDO C. ROBRENO, OF PENNSYLVANIA, TO BE A U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Senator SPECTER. You may be seated. I am going to proceed to Senator Metzenbaum's questions, if I may? Let us just wait a moment or two for the chairman to return.

Mr. Robreno, in the interim, I might ask you just a question or two. What are your own views as to your qualifications for the Federal judgeship? In terms of the extent that you care to comment on that, I would think it appropriate for the record.

Mr. ROBRENO. Thank you, Senator Specter, I would like to thank the committee for having granted me the privilege to appear here today, and of course I would like to thank you for the very large role that you have played in my nomination throughout the process.

Senator, I believe that a Federal district judge ought to have the professional qualifications, of course, and that is a threshold judgment that needs to be made. But in addition to that, particularly in a multicultural society in which we live, he ought to bring to the Federal bench a good bit of life experience. And I believe the circumstances of my life, both in the upbringing and my working career and the types of clients that I have represented would indicate that I have the empathy and sensitivity to deal with what is ultimately a court of justice.

Senator SPECTER. Mr. Robreno, that is fine.

The chairman has returned, so I will yield to him for the questions which he has prepared.

Senator METZENBAUM [presiding]. Thank you very much and I appreciate your having started, Senator Specter.

Mr. Robreno, your questionnaire indicates that from 1978 to 1981, you worked as an attorney in the Justice Department Antitrust Division specializing in price fixing and merger litigation. In my view, there have been substantial changes in both the substance of antitrust law and the quality of antitrust enforcement in

the years that have passed since 1981. Frankly, I do not think these changes have benefited either consumers or competition.

I wonder if you have any thoughts on the changes in antitrust doctrine and antitrust enforcement which have taken place in the years since you left the Antitrust Division?

Mr. ROBRENO. Mr. Chairman, I would not have any informed thoughts on the subject and perhaps because the last decade has not reflected a great deal of antitrust activity in the private bar. It happens to coincide with my experience there and my practice in private sector has almost excluded completely antitrust work. There might have been some conjectural areas, but frankly I would have nothing of an informed nature to offer to the committee on that subject.

Senator METZENBAUM. After you left the Antitrust Division and you entered private practice in Philadelphia, in one case you represented a prison inmate charged with inciting a riot. In your questionnaire you wrote that this case "required the use of a special litigation strategy for representing unpopular defendants in sensitive cases. This defense consisted of an acknowledgement of participation, but development of the justification of self-defense."

The defendant you represented was convicted of simple assault and rioting, but acquitted of an aggravated assault, conspiracy, and making terroristic threats. What prompted you to employ this defense strategy and how successful was the strategy?

Mr. ROBRENO. I believe it was successful to the extent that the charges of which the inmate was ultimately convicted carried a much lesser penalty than he would have received if he had been convicted of aggravated assault at all. The experience that I had in that case was that a high profile case of that sort in the representation of a defendant in a case where you have law enforcement officers on the other side is inherently difficult. And in this particular situation, the witnesses who were to testify for the inmate were themselves inmates and were not particularly sympathetic witnesses from the point of view of their background and history.

The strategy that we attempted to do was trying to in a sense acknowledge that the offense had occurred, but focus upon what had brought it about. And that, in a sense, the actions that the inmate had undertaken were, in fact, as described, but that they had been the result of provocation and that he had been engaged in self-defense.

Senator METZENBAUM. What kind of practice have you had for the last 11 years?

Mr. ROBRENO. Commercial litigation practice and over the last 5 or 6 years it is concentrated principally in the debtor-creditor area and the bankruptcy area.

Senator METZENBAUM. You have not been accepting any of those munificent fees of $500 an hour about which I was complaining yesterday on the floor of the Senate, have you, in those bankruptcy cases?

Mr. ROBRENO. No, I have not had any of those cases, but I am aware of the chairman's sensitivity about that problem.

Senator METZENBAUM. If confirmed, what lessons would you apply from your years as a litigator to help expedite a crowded court docket?

Mr. ROBRENO. An early trial date. As soon as a case is filed, the judge has to get on top of that case and as early as it is practicable, they ought to have an early date and that date ought not to be adjourned except for compelling circumstances. My experience has been that lawyers and often the clients when they get to the courthouse doors tend to settle the case. If that period of time between the filing of the lawsuit and the courthouse doors can be shortened, I think that we could dispose of a larger number of cases.

Senator METZENBAUM. One of the proposals that has recently been made in connection with the litigative process is that losers would be required to pay costs and attorneys fees in any case involving a discovery dispute and in any case where a Federal court is exercising diversity jurisdiction. You have been an active litigator for a number of years now. What impact do you think that proposal would have on the civil justice system?

Mr. ROBRENO. Mr. Chairman, in terms of discovery, I believe under the provisions of rule 37 today, that tool is available to the judges; that is, one sanctions may be imposed for abuses of the discovery process. As far as implementing, I guess what we could call a modified version of the English system which would require a losing litigant to pay, my reaction would be that I would be rather cautious because of the impact that that may have on civil rights litigants and other litigants who are both without the ability to make those payments, as well as the chilling effect that it may have on the creative skills of counsel pursuing those cases. So I would be rather cautious about it.

Senator METZENBAUM. Some lawyers have commented that that proposal, which as you probably know is the administration's proposal, would reward wealthy litigants who are making it too costly for the average citizen to bring suit. Would you agree with that?

Mr. ROBRENO. I am not entirely familiar with the administration's proposal, other than what I have read in the press, so I do not know if I can characterize it with finality in terms that the chairman has suggested.

Senator METZENBAUM. I have no further questions. Thank you very much, Mr. Robreno. Good luck to you.

Senator SPECTER. Thank you, Mr. Robreno. I join the chairman in wishing you good luck. I look forward to be at your swearing in ceremony.

Mr. ROBRENO. Thank you so much.

Senator METZENBAUM. Mr. Quist. Do you solemnly swear to tell the truth, the whole truth, nothing but the truth, so help you God?

Mr. QUIST. Yes.

TESTIMONY OF GORDON J. QUIST, OF MICHIGAN, TO BE A U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

Senator METZENBAUM. Mr. Quist, do you have an opening statement?

Mr. QUIST. No; I do not, Mr. Chairman.

Senator METZENBAUM. You have been nominated to be a judge in the western district of Michigan. It is my understanding that there is a local rule which allows the court either upon request or on its initiative to dispose of motions without oral argument. Several law-

yers have criticized the rule which allows oral argument only on discretionary basis. Concerns have been raised that, particularly in dispositive motions, a losing party will feel as if he or she may not have gotten their day in court, if he or she has not been allowed an oral argument.

In addition, it has been noted that oral argument allows clarification of the issues through a dialog between the lawyers and the judge. If you are confirmed as a Federal judge, do you intend to allow oral arguments in every matter before you or are there circumstances in which you would forgo oral argument?

Mr. QUIST. I cannot imagine the circumstances under which I would forgo oral argument. I have talked with the judges of the western district about that. Some of them feel that oral argument does not add much to the written briefs. On the other hand, I myself feel, being one of the arguers usually or always, not a decider, that all argument does clarify the issues for the judge, gives the attorneys an opportunity to make their key points more emphatically; and also I think the parties, the real people involved, feel much better and much more satisfied and feel they have had a much fairer shake from our system if they have had an opportunity to have oral argument before the court.

And in addition to that, I talked to a judge on the sixth circuit, Judge Engle, who told me that some lawyers cannot write well, but they are very very good in making their points in oral presentations, so I think that is a factor. And there may be situations in which I would not want oral argument, but I cannot imagine what those are right now.

Senator METZENBAUM. What kind of practice have you had, Mr. Quist?

Mr. QUIST. I have had pretty much a 50-percent litigation practice and a 50-percent business practice. For the last 5 years, I have had about 50 percent of my time being used as managing partner of a law firm which is about 75 lawyers. So that has been a busy part of my practice in the last 5 years.

Senator METZENBAUM. Have you always, in litigative matters, been a defense lawyer?

Mr. QUIST. Pretty much, yes.

Senator METZENBAUM. Do you feel that you would have any difficulty in being fair to plaintiffs, having come from a background, a successful background, being a corporate lawyer or insurance company lawyer, whatever the case may be and then being able to see the position and the problem of the plaintiff and the plaintiff's lawyer before you in a courtroom?

Mr. QUIST. I have never been an insurance company lawyer. It has been mostly commercial litigation. But everybody brings, as an earlier witness said, their own background to it. I think I would have no problem at all. My law firm does represent plaintiffs. Our law firm represents plaintiffs often. I just happen to be that one in the law firm that is doing mostly defense work.

But we represent plaintiffs and product's liability cases in commercial transactions. We represent defendants in criminal matters. My specialty has been, in the litigation area, more of defense and antitrust matters, civil securities' cases and things like that.

Senator METZENBAUM. Has the firm provided any availability of their lawyers for pro bono work?

Mr. QUIST. Oh yes. As a matter of fact, an acquaintance of yours, John W. Cummiskey, who was on the Antioch Law School Board with you, is a partner of mine. He has been honored by the State of Michigan in that they give the John W. Cummiskey Pro Bono Award each year to the person in the State that has contributed the most to pro bono activities. Our firm actively supports that.

Several of our lawyers have been cited by the Bar Association. We encourage that not only in the legal sense, but in the personal sense too, involvement with community activities and that type of thing.

Senator METZENBAUM. That is very encouraging and say hello to him for me, please.

Mr. QUIST. I will. He said to say hello to you, too.

Senator METZENBAUM. Thank you. In one of the cases mentioned in your questionnaire, you defended the 3M Corp. in an antitrust suit brought by a 3M products dealer. In the questionnaire you state that,

> This was a fairly typical dealer termination case, except for the fact that the plaintiff produced an expert who testified in his deposition that the sales practices of 3M and the termination by 3M constituted an unreasonable restraint of trades.

You go on to say that the expert was propounding the populist theory of antitrust law. I have a little trouble with that and I just was wondering how you would describe the populist theory of antitrust law. Do not forget my State sent to the U.S. Senate the Republican Senator John Sherman who is the daddy of the antitrust laws in this country and I have served, as you probably know.

Mr. QUIST. I know, Senator.

Senator METZENBAUM. I have served as the chairman of the Antitrust Subcommittee for a good many years and I am a little interested in the word populist theory. It has sort of a—it is negatively pregnant with sort of a dig.

Mr. QUIST. It is a term of art, however, that I think I found in a Rita & Turner or some book like that for the theory that antitrust laws, among other things, are designed to protect the small businessman, as distinguished from the consumer. That was, as I understand it, the populist theory of antitrust law. And the witness that was a professor from Michigan State University was testifying basically on a pre-GTE-Sylvania standard for the antitrust laws. He is talking about the *Schwinn* case. He was arguing that the *Schwinn* case was still the law in effect. That was his standard of reference in giving his expert testimony.

But the populist theory is a word I picked up, I think it was Rita & Turner or similar type treatise.

Senator METZENBAUM. I think the first antitrust case you get you ought to say, it better be balanced on this one or Metzenbaum will be all over my back. He will call me on the telephone.

Mr. QUIST. I will. The only thing I can say, well they told me not to volunteer information, but the only thing about antitrust law——

Senator METZENBAUM. I think that is great. That is the best remark.

Mr. QUIST. I cannot help it. I told them that I tell witnesses that all the time and no witness ever did it and I have told them to do it, so there is no reason I should either. But antitrust law is—when I started practicing, I started practicing antitrust law. That was way back in 1962 and then I worked for the Hollabaugh & Jacobs firm; then Sonnenschein, Levinson, Carlin, Nath & Rosenthau in Chicago. And back then everything was illegal and nowadays just about everything is legal. That has switched that you have focused on that has occurred in that period of time.

Senator METZENBAUM. I am going to call Teddy Roosevelt back from the grave to help a little bit in that area. In August 1990, the Judiciary Committee passed the resolution where it expressed the sense of the committee that it was inappropriate for nominees to be members of private clubs, if those clubs invidiously discriminated on the basis of race, sex, or religion in their membership policies.

In your committee questionnaire, you stated you belonged to the Athletic Club of Grand Rapids which has since merged with the University Club of Grand Rapids. The Athletic Club formerly excluded women from its membership. Until a few years ago, the University Club did not allow women full access to its athletic facility.

It is my understanding that you personally made some efforts to open up the Athletic Club to women and to get the University Club to build athletic facilities for women. Would you be willing to describe the efforts you made in both changes at those clubs?

Mr. QUIST. Sure. I do not want to drag this out, but it is a little bit complicated unless I start out. The building in which my office was at that time, the Old Kent Building, which was really owned by the Old Kent Bank, had two clubs in it. On the top floor was the University Club. That was a typical luncheon club. It was nice. They had tablecloths and things like that. In the basement was the Athletic Club. The Athletic Club as its name implied, it did not have a kitchen you could cook in, but they would have a cold spread for those of us that would play racquetball and wanted to eat lunch afterward. They did not have facilities for women in the Athletic Club which was primarily, like I say, a squash court-racquetball court.

There was pressure placed on the club to allow women in for lunch, because there was no way they could use the athletic facilities for a while without expansion, and I participated in that. Eventually, I think about 1989, the University Club and the Athletic Club merged. So now you had a nice luncheon club and then athletic facilities. And then the issue then became, what about the women members of the University Club, because it had women members, how are they going to use the athletic facilities? And I think that I was probably the key leader to get the now joint clubs to expand the athletic club facilities so that women could use the Athletic Club facilities.

Senator METZENBAUM. Have you ever belonged to any clubs that discriminated on the basis of race, color, creed, national origin, or gender?

Mr. QUIST. No.

Senator METZENBAUM. Do you have any view on the committee's resolution on this subject?

Mr. QUIST. I support the committee's resolution. I am one of those that when I went to college, the leading colleges in the United States did not allow women, and I think I have had two very good teachers named Martha and Susan, my daughters. I think that my attitudes and my sensitivity—not my attitude so much, but my sensitivity has certainly been heightened throughout my life.

Senator METZENBAUM. I thank you very much and good luck to you in your new career.

Mr. QUIST. Thank you very much.

Senator METZENBAUM. Our last witness is Mr. Moore, Thomas Moore. Mr. Moore, I do not want you to think that you are slighted in any way because you are last. Senator Specter was here when he took his nominee, but who goes first and who goes last does not really matter much. As a matter of fact, probably the last has the best advantage because the Chair is sort of anxious to get away and you will probably get less questions.

Do you have any opening statement, Mr. Moore?

Mr. MOORE. The only think I would like to say, Mr. Chairman, is I certainly understand——

Senator METZENBAUM. I did not swear you in. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. MOORE. I do.

TESTIMONY OF THOMAS K. MOORE, OF THE VIRGIN ISLANDS, TO BE A U.S. DISTRICT JUDGE FOR THE DISTRICT OF THE VIRGIN ISLANDS

Mr. MOORE. I did not mention my two sons. One just graduated from college, from Williams College up in Massachusetts, and he was fortunate enough to get a job. So he could not make it. My youngest son went back to the Virgin Islands. He was with us for a while. We were on vacation when this hearing was set. And he was able to get a job too, so in this environment, I did not think it was really worth—it would be difficult for them to come up. But they really wanted to be here and I wish that they could have been here with me.

Senator METZENBAUM. I am sorry they cannot. Did you know Henry Kimmelman down in the Virgin Islands?

Mr. MOORE. I have met Mr. Kimmelman, yes, sir.

Senator METZENBAUM. Is he still a part-time resident?

Mr. MOORE. He spends a good deal of time. I do not think he is down there quite as much as he used to be, but he still is a very good friend of the Virgin Islands and has interest down there and does spend a good bit of time.

Senator METZENBAUM. I think he was Ambassador to Haiti?

Mr. MOORE. Yes, sir, he was.

Senator METZENBAUM. Do you have anything you care to say first?

Mr. MOORE. No, Mr. Chairman.

Senator METZENBAUM. They told you not to volunteer any information and you cannot say anything. You have nearly 10 years experience as a prosecutor, both for the State of Virginia and the Virgin Islands. I am concerned that the criminal justice system treats white collar criminals much more leniently than it does criminals who are from poor disadvantaged backgrounds. As a matter of fact, as recently as this morning while I was waiting for my daughter in the hospital, I was reading about the special kind of treatment that Mr. Boesky got when he was supposedly incarcerated, apparently not totally incarcerated at all.

The criminal justice system will not be perceived as fair and impartial if defendants are given differential treatment based upon their income or professional background. Do you believe that a defendant's income or social and professional circumstances should be taken into account for sentencing or punishment purposes?

Mr. MOORE. I think those would be factors that could be considered, but I think that they would not have very great weight in the sentencing process. My criminal practice as a private attorney is not that extensive and I am not as familiar with the sentencing guidelines as I hope to become. But I think that those kinds of factors are probably factored in those sentencing guidelines.

Senator METZENBAUM. Your questionnaire indicates in recent years your practice has focused chiefly on real estate law. It is my understanding that you are currently representing a number of defendants in a real estate case that involves over 400 defendants and has tied up a substantial amount of property in the east end of St. Thomas. If confirmed it will be your duty as a judge to manage a large case load and move complicated cases through the judicial system as quickly as possible.

Will your involvement or has your involvement in this case given you any insight into how a judge can effectively manage his or her docket, and are you concerned that you may find yourself in a situation where you have either been on one side or the other of some particular defendant in that particular case, and will that create some problem for you as far as handling your docket?

Mr. MOORE. That is a fairly unique case. In my years in the Virgin Islands I do not believe there has been one that has brought quite as many different property owners in. In that particular instance under the canons and just a conflict of interest, I assume you would not be able to have any participation in that case. In my experience, I cut my teeth in the rocket docket in the Eastern District of Virginia and I think we are in a pilot program implementation plan for the Civil Justice Reform Act.

In moving cases along, we have a tremendous backlog which is going to take a while to whittle down. But I expect to use the magistrates to move the cases and one of the important factors, probably the most important from my experience at any rate, is that whenever something happens in a docket in a case, that there be a definite date for the parties to come back and that there be follow-up on that.

I am not familiar to a great extent with how much computerization we have in the Virgin Islands, but I certainly would expect to explore that and implement that. And I think we can really help move our docket once we get current and keep current.

Senator METZENBAUM. In a small area such as the Virgin Islands, does one get to know a very substantial number of the residents or the inhabitants of the island more so than in a place such as New York or Cleveland or Detroit?

Mr. MOORE. Well, I think, yes, you are bound to get to know more people. You certainly know more of the lawyers who litigate and I am not sure that you would know any more individuals, but the number of businesses, and you know, larger enterprises are fewer, so you do get to know them.

Senator METZENBAUM. How big was your law firm?

Mr. MOORE. We have five partners and one associate right now.

Senator METZENBAUM. I understand that you currently serve as chairman of the St. Thomas Bar Ethics and Grievance Committee. You stated in your questionnaire that you consider your work on the committee as one of your most significant activities. Give us a sense of your duties and activities as chairman of the Ethics and Grievance Committee.

Mr. MOORE. Well in the Virgin Islands up until now and I have been promoting a change, but up until now the committees—there is one in St. Croix and another committee—there are nine people each—nine lawyers on St. Croix and nine lawyers on St. Thomas. And they are all active practicing lawyers and they are all volunteers. We have no paid investigators. I have been advocating and appointed people to look into professionalizing the staff investigative aspect of it to take the burden off of the lawyers and to enable the complaints and grievances to move it through more quickly.

There are some other areas. We need to pay attention to and develop procedures for making disciplinary actions available to the public so that the public will realize that there is an avenue for relief if they have a problem with a lawyer. And I would expect in the not terribly far future that we will begin to bring lay people in and participate in the actual grievance procedure.

Senator METZENBAUM. Do you belong to some of the clubs or have you belonged to some of the clubs in the Virgin Islands?

Mr. MOORE. Yes, Mr. Chairman, I belong to the St. Thomas Yacht Club which is a combined social yacht club, tennis club. I owned a boat for a number of years, so I primarily play tennis. My wife and I use it as a tennis facility.

Senator METZENBAUM. Is that a fully integrated club?

Mr. MOORE. Absolutely fully integrated. That is right.

Senator METZENBAUM. Both with respect to race as well as religion?

Mr. MOORE. Race, religion, creed, place of origin, gender.

Senator METZENBAUM. Are there members of all faiths and all creeds and all colors in that club?

Mr. MOORE. As far as I know. There are certainly all creeds and colors and male and female and people from everywhere. I do not really know that much about the faiths of people. I would assume so. It is not really something that is discussed very much unless you know someone personally.

Senator METZENBAUM. The American Bar Association and House of Delegates rejected a recommendation from one of its commissioners that it would have made complaints of unethical conduct and findings of disciplinary boards a matter of public record from

the time a complaint was filed. The head of the ABA commission proposing that recommendation said that, "it would free lawyers from charges of cronyism, coverup and self-protection and charges that we are looking out for our interests and not the interests of the public." That is all a quote.

Those opposed the recommendation have said the rule would damage lawyer's reputations. What is the practice before the Grievance Committee in the Virgin Islands?

Mr. MOORE. The practice in the Grievance Committee which I am trying to get reevaluated to provide more publicity. But basically the first time that the public would know that there has been a grievance filed in the Virgin Islands would be when there actually is an action which either dismisses the complaint, finds no violation or finds a grievance. And then that would be made public at that point. But not from the beginning when the complaint was filed.

Senator METZENBAUM. You are already aware the committee has received an affidavit from retired Virgin Islands police officer Mr. Raymond Fredericks. In his affidavit, Mr. Fredericks alleges that in 1978 while you were a private practitioner, you attempted to bribe him in order to drop drug possession charges against one of your clients.

Mr. Fredericks acknowledged to the Judiciary Committee staff that he never reported this allegation to the appropriate officials, nor did he discuss with anyone the possibility of pressing charges against you, or reporting this allegation to the local bar association.

In his interview with committee staff, Mr. Frederick stated that he mentioned the allegation to two officers with whom he worked. The committee staff interviewed both those officers and neither of them could recall Mr. Fredericks ever discussing any bribery attempt on your part. The officers also stated that because of the serious nature of the allegation, it was highly unlikely that they would ever forget such a conversation, if it had taken place.

Mr. Fredericks also told committee staff that at the time of this alleged bribery attempt, he discussed the matter with then Attorney General Ive Swan. However, Mr. Swan has also indicated that he does not recall ever discussing with Mr. Fredericks any bribery attempt on your part. You have already discussed this matter with committee staff.

Because this allegation was mentioned in the Virgin Islands press a few months back, I wanted to give you the opportunity to respond to these charges under oath and on the public record. By my raising the question, I do not mean inferentially or impliedly or in any other way to give any substance to the charge. But I thought you might care to respond?

Mr. MOORE. Yes, thank you, Mr. Chairman, I certainly do welcome the opportunity to refute these baseless and scurrilous charges that Mr. Fredericks has made since they have received a good bit of press publicity in the Virgin Islands. I did not really deem it was appropriate to get involved in that at that time. I welcome this opportunity.

Mr. Fredericks, whom I had worked with when I was an assistant U.S. attorney—and I think at the time that he is talking about

I had only been in private practice for maybe a year, year and a half, something like that, maybe even less than that—and he is a trained officer. If someone had attempted to bribe him or offered him a bribe in his presence, he knew how to pursue that, either to make an immediate arrest or to followup and arrange to an investigation and to make an arrest, if it was appropriate.

He did not do that and did not do that for the same reason that none of the people that he suggested could corroborate, help corroborate that nor can they corroborate it. It is because it did not happen. And I just—that absolutely and categorically, it did not happen.

Senator METZENBAUM. All right. I appreciate your responses, Mr. Moore, and I wish you well in your new undertaking.

This hearing stands adjourned.

Mr. MOORE. Thank you, Mr. Chairman.

[Whereupon, at 3:28 p.m., the committee adjourned.]

JUDGE STAHL'S RESPONSE TO CHAIRMAN BIDEN'S QUESTIONS

1. As a circuit court judge, would you consider yourself bound by Supreme Court decisions even though you might personally believe some of those decisions were incorrect or failed to interpret the Constitution as you suggest it should be?

> As a circuit court judge I am bound by Supreme Court decisions even though it might be my personal opinion that a particular decision was constitutionally incorrect or failed to adequately and properly interpret the Constitution. I have no doubt that pronounced constitutional law decisions must be followed by inferior courts.

2. Suppose you heard a case where there was no clear Supreme Court precedent on point, but which was clearly governed by a First Circuit precedent with which you did not agree. What do you believe your obligation is in that situation? Under what circumstances would you vote to reverse such a First Circuit precedent? What are the factors you would consider?

> While your question does not directly raise the issue, a reconsideration is appropriate where a prior panel decision has been affected by controlling authority subsequently announced or by a statutory overruling.
>
> In the circumstances where a prior circuit decision controls and a judge disagrees, he is nonetheless bound by the existing ruling of the earlier circuit panel. In the rare case where a circuit judge believes that a prior panel decision is incorrect and the issue is of importance, that circuit judge could suggest in a concurrence that it would be appropriate for the issue to be considered by the entire court.
>
> In determining whether an en banc court should reverse a prior decision, one could appropriately consider recent well-reasoned and convincing decisions of sister circuits. It would be necessary that the authority be most persuasive before a change in existing precedent occurs. Unquestionably, the orderly development of the law, the requirement for stability in its development, the value of predicteble results, and the need to ensure even-handed justice militates against an easy change in existing precedent.

In the final analysis, before one considers overturning existing precedent, the issue raised should be of major importance and its likelihood of recurrence would have to be a matter of very real concern.

ANSWERS TO SENATOR THURMOND'S QUESTIONS

1. Judge Stahl, you have served as a United States District Court Judge for New Hampshire since 1990. Now the President has nominated you to serve as a United States Circuit Judge for the First Circuit. What do you feel will be the most rewarding aspect of serving in this capacity?

The intellectual challenge of reviewing the myriad of decisions which come before a district judge is perhaps the most rewarding aspect that I see to being a circuit judge. The collegiality aspect of service with a group of able judges where the give and take of the law occurs is again something which I look forward to with great anticipation. The ability to have a significant role in reviewing and deciding issues of first impression will give me great personal satisfaction.

2. Judge Stahl, as an appellate judge you will be reviewing decisions of district court judges. What criteria do you intend to use in reviewing these decisions and trial records?

Having served two years as a United States District Judge I am very cognizant of the vast number of issues which one faces in that position. I will review factual decisions made by district judges with great deference and will follow circuit court precedent in reviewing other non factual matters.

3. Judge Stahl, what is the proper application of stare decisis in Constitutional law; specifically, what is the duty of a federal judge when confronted with a case in which one of the precedents of his or her court clearly conflicts with the Constitution as that judge interprets it?

Unless, and until, an en banc decision of the court changes a prior Constitutional precedent, there is no doubt that any personal opinion of mine which might conflict with that existing precedent must not be given weight in arriving at any given decision. Stare decisis is the bedrock of our system and any movement away from decided precedent must be taken with great care.

RESPONSES FROM MR. THOMAS K. MOORE TO WRITTEN QUESTIONS FROM SENATOR THURMOND

1. Mr. Moore, the phrase "judicial activism" is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority. What does the phrase "judicial activism" mean to you?

ANSWER

The role of the judicial branch is circumscribed by provisions of the Constitution and the laws enacted there under by Congress. The District Court is further limited by decisions of appellate courts. A trial judge's function is to apply the Constitution and laws, as interpreted by courts of appeals and the Supreme Court, to particular issues presented by specific cases and controversies. In my view, judicial activism occurs when these bounds are exceeded.

2. Mr. Moore, how would you handle an incident in which counsel for one of the parties in your court was obviously not a skilled litigator or was not prepared to adequately represent the interests of his or her client?

ANSWER

I would distinguish between civil and criminal cases. Since the consequences in a criminal case involve the defendant's liberty, I would be more inclined to intervene to insure that the defendant receives a fair trial. Criminal cases

are also more likely to involve disadvantaged persons who often cannot afford to choose their own counsel. In civil cases, on the other hand, litigants are more often able to retain attorneys of their own choosing. For this reason I would be less likely to intervene in a civil case. In any event, I would do everything possible to make any suggestions or corrections to the attorney outside of the hearing of the jury or the public to minimize embarrassment to the attorney and prevent prejudice to the client.

3. Mr. Moore, would you tell the Committee what procedures you will follow in determining any potential conflicts of interest and how you intend to resolve them?

ANSWER

I will be guided by the Canons of the Judicial Code of Conduct in determining any potential conflicts of interest. For example, I will not be able to hear any matters involving cases in which any of my clients, former clients, family, close personal friends or business associates are involved. Only after all financial relationships with my law firm have been terminated will I be able to hear cases in which my former partners and associates participate.

RESPONSES OF THOMAS MOORE TO WRITTEN QUESTIONS FROM SENATOR SIMON

During his questioning, Senator Metzenbaum expressed his concern to you regarding the lenient treatment of some white collar defendants. In your testimony before the Committee, you stated that the income of the defendant should be taken into account during sentencing. You emphasized that although it should be a factor in the judge's decision, it should not be a major factor.

Could you elaborate on when income should be a factor? Should it be a factor when the defendant is impoverished, or when the defendant is not impoverished? If confirmed by the Senate, how would such a factor influence your sentencing decision?

ANSWER

As I indicated, I have not worked with the sentencing guidelines enough to know if they provide for, or even allow, the income level of a defendant to be considered. To the extent it can be taken into account, I would not hold the income level or economic circumstances of a disadvantaged defendant against him. If anything, a disadvantaged background could be a mitigating factor in my mind, at least for a first offender. White collar crime is usually committed by one with more advantages and higher income and persons convicted of such crimes should not expect to receive more lenient treatment. Again, I want to emphasize that I will be guided strictly by the sentencing guidelines set by Congress and the Sentencing Commission.

ANSWERS TO QUESTIONS OF SENATOR THURMOND
GORDON J. QUIST,
NOMINEE TO U.S. DISTRICT COURT FOR
WESTERN DISTRICT OF MICHIGAN

1. Mr. Quist, you have been in the private practice of law since 1962. Now the President has nominated you to be a United States District Judge for the Western District of Michigan. Do you foresee any difficulty in the transition from advocate to impartial jurist?

No. I know the difference between an advocate and a judge. A judge must set aside personal preferences and apply the law to honestly determined facts. In making the change, I will have the support of my colleagues on the bench and the opportunities for education provided by the Judicial Center and others.

2. Mr. Quist, do you feel that a judge should assume direct control over complex issues and cases in order to avoid delays and to effectively manage such cases?

Yes. My experience leads me to conclude that if the responsible district court judge becomes personally involved in these cases at an early stage, the cases move more swiftly with fewer problems among counsel for the parties.

3. Mr. Quist, are there ever any circumstances under which you would consider it appropriate to decide a case on some basis other than one where the intent of the framers of legislation or constitutional provisions can be detected, either through the text of a provision or its surrounding legislative history?

No.

Gordon J. Quist
June 22, 1992

1. Mr. Robreno, you have been a practicing attorney since 1978. I noted in reviewing your file that your most recent experience has been civil in nature. Would you tell the Committee what steps you have taken to prepare yourself for the criminal caseload that awaits you at the federal district court level?

I have taken steps to ensure that I am current on the developments in the criminal law which have occurred since I left the Department of Justice in 1981. To that effect, I have been in touch with the Federal Judicial Center to obtain a list of publications and tapes which I will be studying with great care in the near future. Additionally, I will be seeking the guidance of my more experienced colleagues on the bench. I intend, of course, to act with due deliberateness in the early stages of my judicial career particularly in criminal cases.

2. Mr. Robreno, I consider judicial temperament to be a prerequisite for a federal judge. Would you give me your thoughts on this subject?

I recognize the need for a federal judge to be patient in listening to the testimony and arguments of the bar and parties and to act, at all times, in a polite and respectful manner towards them. Rudeness or intemperate remarks by a federal judge towards a member of the bar, litigants, or the public are wholly inappropriate.

3. Mr. Robreno, there is frequently a conflict between the deeply-felt Constitutional views of a federal judge and the constraints of judicial precedent. How would you resolve the tension between your personal views and precedent?

It will be my duty to enforce the law as I find it based upon the will of the Congress and the interpretations of the United States Supreme Court and the Circuit Courts of Appeal. My personal views on a particular issue will not be relevant in the discharge of my judicial duties.

NORMAN H. STAHL

Birth:	Januery 30, 1931	Menchester, New Hampshire
Legal Residence:	New Hampshire	
Maritel Stetus:	Married	Sue Heimerdinger Stahl 2 children
Educetion:	1948 - 1952	Tufts College B.A. degree, magne cum leude
	1952 - 1955	Hervard Law School LL.B. degree
Bar:	1955 1956	Messechusetts New Hampshire
Experience:	1955 - 1956	Law Clerk to Hon. John Spelding Supreme Judiciel Court Commonweelth of Messachusetts
	1956 - 1990	Devine, Millimet, Stehl & Brench Associete end Pertner
	1990 - present	United States District Judge District of New Hampshire
Office:	55 Pleesent Street P. O. Box 1224 Concord, New Hamsphire 03302-1224 603 225-1525	

To be United Stetes Circuit Judge for the First Circuit

United States Senate
Questionnaire for Judicial Nominees

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Norman Harold Stahl

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

Residence: 11 Glen Road, Bedford, New Hampshire 03110
Office: United States District Court
55 Pleasant Street
P. O. Box 1224
Concord, New Hampshire 03302-1224

3. Date and place of birth.

Manchester, New Hampshire - January 30, 1931

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

Married - Sue Heimerdinger (maiden name)
Spouse's Occupation - Senatorial Staff Assistant to United States Senator Warren B. Rudman, Concord, New Hampshire 03301

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

Tufts University 1948 through 1952, B.A., Magna Cum Laude, 1952
Harvard Law School 1952 through 1955, LL.B, 1955

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.

Camp Samoset, Gilford, New Hampshire
Counselor Boys Camp - 1953-1954

George C. Benjamin, Inc., Manchester, New Hampshire
Rod Man - June to August 1955

Clerk, John V. Spalding, Supreme Judicial Court, Commonwealth of Massachusetts - September 1955 to August 1956

Devine, Millimet, 1838 Elm Street, Manchester, New Hampshire - 1956 - Associate

Devine, Millimet, McDonough, Stahl & Branch, 1838 Elm Street, Manchester, New Hampshire 03104 - Partner

Devine, Millimet, Stahl & Branch, 1838 Elm Street, Manchester, New Hampshire 03104 - 1973 - Partner

Served as interim City Solicitor, City of Manchester, Manchester, New Hampshire - 1975 - continued to maintain my regular practice

Devine, Millimet, Stahl & Branch, 1850 Elm Street, Manchester, New Hampshire 03104 - 1976 - Partner

Devine, Millimet, Stahl & Branch, Professional Association, 1850 Elm Street, Manchester, New Hampshire 03104 - 1978 - Officer

Devine, Millimet, Stahl & Branch, Professional Association, 111 Amherst Street, Manchester, New Hampshire 03101 - 1987 - Officer

I practiced with the same law firm from 1956 through April 1990. Although the law firm changed from a partnership to a professional association and there were address and name changes, it remained essentially the same firm. I had only this association throughout my professional career, other than my period clerking for Judge Spalding.

United States District Court, 55 Pleasant Street, P. O. Box 1224, Concord, New Hampshire 03302-1224

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 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.

American College of Real Estate Attorneys

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 Hampshire Bar Association, 1956 to present
Manchester Bar Association, 1956 to present
Merrimack County Bar Association, 1991 to present
American Bar Association, 1959 to present
New Hampshire Board of Bar Examiners, Member, 1967 to 1974
New Hampshire Board of Bar Examiners, Chairman, 1972 to 1974
Professional Conduct Committee of the State of New Hampshire, Member 1974 to 1979
New Hampshire Judicial Council, Member, 1984 to 1990
New Hampshire Judicial Council, Chairman, 1989 to 1990

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 That Occasionally Lobby

American Bar Association
New Hampshire Bar Association
Federal Judges Association

All Other Organizations

Manchester Historic Association
New Hampshire Historical Society
Friends of the Currier Gallery of Art
Manchester Institute of Arts and Sciences
Jewish Federation of Greater Manchester
New Hampshire Council on World Affairs
Manchester Bar Association
Merrimack County Bar Association

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 Judicial Court, Commonwealth of Massachusetts, admitted 9/5/55
Federal District Court, District of Massachusetts, admitted 2/29/56
State of New Hampshire, admitted 9/4/56
Federal District Court, State of New Hampshire, admitted 1/8/57
United States Court of Appeals for the First Circuit, admitted 4/4/61
Tax Court of the United States, admitted 8/9/67

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 do not have any published materials as such. While I have given speeches before the legislature in connection with my work as a member of the Judicial Council on matters of legal policy, I do not have any printed copies of any remarks. I have also appeared on various bar education panels through the years but at this time I do not have available copies of my materials used in connection with these sessions. A copy of my speech made to a high school audience in 1991 is attached as is a copy of the report I co-authored in connection with the Public Service bankruptcy and a copy of an Airport Committee Report I authored a few years ago.

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

The state of my health is very good. My last physical examination was held on January 8, 1991.

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

Judge, United States District Court - District of New Hampshire - Appointed

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.

See attached schedule

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 an elected public office. Other than running for Bedford Town Library Trustee unsuccessfully many years ago, I have not been a candidate for public office. I was a delegate to the 1988 Republican Convention and was an unsuccessful delegate candidate in 1972 and 1980. In 1975, I served as City Solicitor for the City of Manchester. This was an appointed position. I was appointed by Governor and Counsel to the State Judicial Council, and reappointed to that position by Governor and Counsel, and elected Chairman by act of the members of the Judicial Council.

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 was a law clerk to Massachusetts Supreme Judicial Court Justice, John V. Spalding, September 1955 to August 1956.

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;

Devine, Millimet, 1838 Elm Street, Manchester, New Hampshire 1956 - Associate

Devine, Millimet, McDonough, Stahl & Branch, 1838 Elm Street, Manchester, New Hampshire 03104 - Partner

Devine, Millimet, Stahl & Branch, 1838 Elm Street, Manchester, New Hampshire 03104 - 1973 - Partner

Devine, Millimet, Stahl & Branch, 1850 Elm Street, Manchester, New Hampshire 03104 - 1976 - Partner

Devine, Millimet, Stahl & Branch, Professional Association, 1850 Elm Street, Manchester, New Hampshire 03104 - 1978 - Officer

Devine, Millimet, Stahl & Branch, Professional Association, 111 Amherst Street, Manchester, New Hampshire 03101 - 1987 - Officer

I practiced with the same law firm from 1956 through April 1990. Although the law firm changed from a partnership to a professional association and there were address and name changes, it remained essentially the same firm and I had only this association throughout my professional career, other than my period clerking for Judge Spalding until I became a United States District 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?

When I commenced practice with Devine & Millimet, it was essentially a defense trial law firm, mainly dealing in workmen's compensation and automobile accident cases. The firm had a very small business practice which was handled by a junior partner. I began work on the trial side of the firm and spent approximately the first ten plus years of my practice in the trial area. At that time discovery practice in New Hampshire was significantly different than it is today in that written interrogatories were not a large part of trial preparation, rather most of trial preparation involved the actual taking of oral depositions, the usual fact investigation, and pretrial motions. I worked as the second person on many jury cases, handled many depositions, and argued motions both in the state and federal court. On my own, I tried numerous court cases, largely in the state system. I did try a few jury cases in the state system as the principal attorney and, to the best of my recollection, tried one or two through to conclusion.

As the nature of the law practice in New Hampshire changed, and with the departure from our firm of the partner who had been handling business work, I began to do more of the firm's emerging business practice. During the next five years, I began to spend significantly more time in the development of a business practice and less time on the trial side. In the initial ten-year period of my practice I had developed a specialty in construction cases, and continued to perform a significant amount of work for construction bonding companies, and handled a fairly large number of cases involving defaulting contractors where I was responsible for the completion of projects and the recovery of the amounts that the bonding company had spent in the completion work.

As a result, during this period I was involved in several cases which were largely court cases involving the recovery of sums from defaulting contractors and the defense of claims brought by unpaid materialmen and subcontractors.

Initially the business practice of our law firm was primarily with small to medium size New Hampshire corporations, and I did all of the legal work that a small or medium size business would generate. I did tax work, labor work, some litigation, general counseling, and appeared before numerous public bodies for businesses with problems involving state and federal agencies.

During the period of the tenth to twenty-fifth year of my practice, I spent a significant amount of time before our State Public Utilities Commission representing a major waste hauler in numerous hearings before the Commission over the obtaining of rights to serve various communities within the Stats, and at the same time on behalf of the same client, objected to the obtaining of rights by others in my client's territory. All of this work required hearings before the Commission and included the presentation of witnesses and the cross examination of opposing witnesses.

At no time did I have a significant practice in the criminal area, although as was ths case with most New Hampshire attorneys in the late fifties and early sixties, I tried traffic and other minor offense cases in what was then our Municipal Court System.

Starting with approximately 1970 I began to develop a spscialty in banking law and banking related matters. Sometime in that period I became counsel to the New Hampshire Banksr's Association. In that capacity I wrote legislation, appeared before legislative bodies in connection with legislation, and generally advissd banks on all aspect of banking law.

At the same time I was gsneral counsel to a major New Hampshire bank and a member of its Board of Directors and Executive Committee. This representation spanned a ten-year period ending in the early 1980s. In my representation of individual banks I was involved in regulatory matters, lending matters, and the handling of loan recoveries.

With the advent of the explosive growth in southern New Hampshire, I became very active in real estate development law, and for the last ten years of my practice I spent a significant amount of time before planning boards, zoning boards of appeals, town selectmen, and city officials all in connection with the approval process for large development projects. I was the lead man in our firm in connection with

some very major New Hampshire real estate developments, and was generally responsible for overseeing and doing much of the work in this area.

During the last decade, my former firm began to act as bond counsel in both local and county bond issues, and I personally served as co-counsel to Underwriters in connection with several State of New Hampshire public offerings.

In 1990 the firm became outside counsel to the State of New Hampshire in connection with the Public Service Company of New Hampshire bankruptcy, and I served as the firm's lead negotiator during this period. Our work for the state actually commenced in 1984, when one of my partners and I authored a report to the state on the implications of a public utility bankruptcy. With the advent of the bankruptcy of the Public Service Company of New Hampshire, I became involved on a daily basis representing the State of New Hampshire in its attempt to protect the rights of the state and the ratepayers in the reorganization of the company. In that connection, although I did not appear in the bankruptcy court, I did take part in almost all of the negotiations with the various creditor bodies, potential buyers, and did all of the interface work with the client at the state level including regular appearances before the Joint Committee of the Legislature which was monitoring the progress of the bankruptcy.

As a part of the firm's representation of the state, I appeared with other members of the team before both the Senate and House Judiciary Committees at public hearings on relevant legislation pending in the United States Congress.

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

My typical client was a major developer, industrial concern or bank both locally based and with national connections.

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.

Almost not at all after the first ten years of my practice

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

At this time records from which an accurate percentage could be obtained are no longer available.

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

Practically all civil

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.

It is practically impossible for me at this time to find records which would enable me to give an accurate picture of the amount of litigation I handled in the first ten years of my practice. My former firm's record destruct policy does not make it feasible for me to do anything other than estimate what I did during that period. I know that I did serve as lead counsel on several jury cases, and my recollection is that I did try at least one and possibly two jury cases through to conclusion where I was the sole counsel. I tried many court cases during that period and served as either co-counsel or second counsel on a number of jury cases during the same period of time.

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

Jury - 20%
Non-jury - 80%

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

(a) the dates of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Because of the difficulty I have had in getting actual case records, I can only speak in a general sense about

significant litigated cases in which I was personally involved. Most of the cases I can recall were cases which ultimately were appealed to the New Hampshire Supreme Court. The case of State v. Roy, which was tried in 1962, involved a land damage matter in which the State of New Hampshire had taken a significant part of our client's property in order to build a portion of the interstate highway system. I served as second counsel to the landowner in this case, and took a very active part in the trial of the case and ultimately handled the brief on appeal. This case was significant in that for the first time in New Hampshire our trial strategy was to use the landowner, Mr. Roy, as the principal witness as to the value of his own property. Mr. Roy was qualified as an expert and the question for the Supreme Court was whether his testimony was properly admitted. The decision in State v. Roy is reported in volume 104, page 513 of the New Hampshire Reports.

I represented Francis Whaland, then of Nashua, New Hampshire, later to become the Insurance Commissioner for the State of New Hampshire, now retired, in a dispute involving a Covenant Not To Compete. Mr. Whaland desired to set up a new insurance agency and his former employer, the Slawsby Agency, Inc., of Nashua, New Hampshire, represented by William S. Green, of Sheehan, Phinney, Bass & Green, P.A., 1000 Elm Street, P. O. Box 3701, Manchester, New Hampshire 03105-3701, (603) 668-0300, sought to enjoin him from doing so based on the terms of an existing employment contract. The case involved some rather complicated questions about the enforceability of the employment contract which basically prevented the employee from working on his own for several years in a wide geographic area after he terminated his employment with the insurance agency. The case went to trial, and was settled during the first day of trial. At that time, the case was of some importance because the issue of employment covenants was just beginning to be litigated in this state.

Another litigated matter which was interesting and somewhat unique, was the case of Maine Bonding and Casualty Company v. Foundation Constructors, Inc., which was ultimately decided by the Supreme Court of New Hampshire on July 17, 1964, with a reported decision at 105 N.H. 470. The case, in which I represented the bonding company, involved a question of whether a construction bond was a performance and payment bond or solely an indemnity bond, and revolved around some rather unique parol evidence issues. The case was tried by me in the court below, and argued in the Supreme Court by a partner of mine. The principal attorney for the third party claimant was Francis G. Moulton, who is now deceased. The judge at the trial was Judge William A. Grimes, who at that time was a Superior Court Justice and

who is currently the retired Chief Justice of the New Hampshire Supreme Court.

In another litigated matter, this one litigated before the New Hampshire Insurance Department, I represented the Nationwide Insurance Company before the department seeking to overturn a departmental decision to deny certain filed rate increases. The case was tried in late 1978 and early 1979, before the then Commissioner of Insurance, Francis E. Whaland. The case involved significant questions about the power of the insurance commissioner to consider the profits made by the company from writing of insurance in jurisdictions other than New Hampshire, the obligation of the commissioner to consider underwriting losses within the state, and other matters involving state insurance law. In particular, one of the matters ultimately appealed from was the commissioner's decision to base a portion of his ruling in denying rate increases on evidence which was not a part of the record and which he took notice of after the closing of the hearing without giving my client the opportunity to be heard on the evidence. The Supreme Court of New Hampshire upheld the commissioner, but ordered him not to consider evidence not part of the record in making future rate decisions. The state was represented by the Office of the Attorney General.

I served as second man on several jury trials in the federal court, including one in which the late Kenneth Graf of McLane, Graf, Raulerson & Middleton, P.A. of Manchester, New Hampshire, served as counsel to the defendant, the Cott Bottling Company. Our client was Liquid Carbonic Corporation. This case, which was basically a contract dispute, was settled after a few days of trial. I believe the trial occurred sometime during 1957.

I recall serving as second counsel in another federal court case involving a client of ours, Manchester Sand, Gravel & Cement Co., Inc., in which the defendant was Unity Grist Mill, Inc. This case was tried through to verdict for the plaintiffs in December of 1957. Our client was a contractor seeking to recover on a disputed construction contract. Defendant's counsel in that matter was Attorney William F. Phinney of Sheehan, Phinney, Bass & Green, P.A., who is now deceased.

I was local counsel and took an active part in a federal court case involving the question of the right of the plaintiff to obtain royalties for a machinery design, which case ultimately was settled just prior to trial. I was fully involved in the trial preparation, appeared several times in the federal court with Boston counsel, James D. St. Clair and Jerome P. Facher of the firm of Hale & Dorr, Sixty

State Street, Boston, Massachusetts 02109, (617) 742-9100. On a few occasions, I handled hearings before the presiding judge when Boston counsel was not present, and I took part in the negotiations leading to the ultimate settlement of the case.

I also recall trying two state court non-jury cases in which the current Senior Judge of the Federal District Court of New Hampshire was opposing counsel. I do not remember the facts of either of these cases.

I was principal trial counsel in the matter of Dennis Bishop and C & S Disposal, Inc., Petition for authority of the first petitioner to transfer Property Carrier Certificate of Public Convenience and Necessity No. 236 to the second petitioner in which I represented an objecting party, Browning Ferris Industries, Inc. Other counsel in the case were George J. Basbanes, Esq., 385 Gorman Street, Lowell, Massachusetts 01852, (617) 459-3333, and Robert Allgaier, who represented Sanitas Waste Disposal of N.H., Inc. This matter raised some relatively new questions involving whether the second petitioner was fit, willing, and able to perform properly the proposed service, and to conform to the statutes, rules, and regulations issued by the Commission. The defendants also raised the issue of whether the operating rights the second petitioner was seeking to enforce were different and more extensive than those held or utilized by the first petitioner. Ultimately, the Commission decided that the only issue it had to reach was the fitness of the second petitioner to perform properly under the statutes, and rules and regulations of the state, and the Commission found that the second petitioner was unfit. This was a fairly significant decision because it squarely raised that issue in a way that it had not been fully raised in previous cases.

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.)

Throughout my legal career I was involved in matters of public policy. Some years ago, I was Chairman of a committee appointed to review the criminal justice system in the State of New Hampshire and authored the final report. I served as a member (1967-1974) and later Chairman (1972-1974) of the Board of Bar Examiners. I was the Chairman of the State Judicial Council, having first become a member in 1984. Each of these functions brought me into matters of

public concern about the judiciary and the legal process. I also served for a period on the Committee for Professional Conduct.

Perhaps the most significant case with which I was involved was the bankruptcy and reorganization of the Public Service Company of New Hampshire. In 1984, the Governor and the Executive Council of the State of New Hampshire engaged me and my firm to review the question of the effect of a bankruptcy of the state's largest utility (Public Service Company of New Hampshire) on the State of New Hampshire. A report was prepared for the state, and subsequently when it became evident that the company was going bankrupt, we were engaged again by the State of New Hampshire to represent the interests of the State and the ratepayers in that bankruptcy. I was intimately involved throughout the bankruptcy proceedings in the negotiations which took place in connection with attempts to settle the bankruptcy on a consensual basis. While I did not appear in the bankruptcy court itself, that work being handled by other members of my firm, I was directly involved in practically all of the negotiations and appeared before legislative committees, the legislature itself, and in public on all aspects of the bankruptcy. The bankruptcy of the Public Service Company of New Hampshire was perhaps the most important issue which had faced the state during my entire legal career.

Just prior to becoming a judge, I represented the companies which prepared the reuse study for the Pease Air Force Base Commission which was on the phase-out list. How this facility is redeveloped may well have a significant long-term effect on the economic health of the State of New Hampshire.

I served as legal counsel to a major developer whose condominium project was bisected by a proposed state highway. This was the first condominium project to be taken by the State of New Hampshire in an eminent domain proceeding, and was probably the largest single eminent domain proceeding to have taken place in this state. The case involved some significant legal issues, many of first impression, and while the case never went to trial, I was intimately involved in all the negotiations with the state in connection with the initial taking and in devising the strategy to be used in connection with the land damage process itself.

Prior to my becoming a judge, I routinely handled major real estate developments which occurred in the State of New Hampshire during the decade of the eighties. One in particular, the Center of New Hampshire project, was the first project in this state to involve the use of air

rights. The real estate and technical problems in connection with that development were unusual, and while the case did not involve litigation it was significant in that it had much to do with the redevelopment of an important part of downtown Manchester, New Hampshire.

In 1975 I was asked by the then mayor of the city of Manchester to act as interim City Solicitor. The city had, up to that time, used part-time solicitors and the city had had significant difficulty in obtaining adequate legal services from a part-time department. The mayor asked me as a public service to serve essentially for a one-month period to prepare for a full-time solicitor's department, with the understanding that I, of course, had no interest in the job.

Shortly after I took the post the mayor resigned to accept a position as the director of a local hospital. I remained as acting City Solicitor for many months more than I expected primarily because the city went through an acting mayor who subsequently became ill, and then an interim mayor, resulting in significant problems which had to be handled on an ongoing basis until such time as the full-time department became operational. While I did receive some compensation for this work, I accepted the task essentially as a public service.

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 the terms of an employment agreement with Devine, Millimet, Stahl & Branch, P.A., I had the right to termination payments. Under the terms of the contract, the termination payment was to be determined by taking the average of my last three years total earnings from the firm, and paying that average amount over a six-year period (in equal monthly installments). Although the agreement did not provide for a lump sum payment, I was able to negotiate a shorter repayment period of five years. Other than that payment, I have no other financial connection with my former law firm. I recently rolled over the last of my former firm's pension funds, to which I was entitled, into an IRA.

I continue to hold a one-half interest in a tract of undeveloped land in Bedford, New Hampshire. The other one-

half interest is owned by a trust of which John E. Pearson, a former client, is a principal. Efforts to sell this tract of land have been unsuccessful. Given the current economic situation in the state, it is practically impossible to sell at this time. Ultimately, I assume that given the fact that this land has public water and sewerage, it will be sold. I will continue to pursue a disposition of this property until I reach a successful sale.

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 became a federal district judge I have scrupulously tried to avoid conflict. I have always conducted myself in accordance with the Code of Judicial Conduct and, on occasion, when I have had a doubt I have contacted the committee for advice. All of the stock that I or my wife own and the stocks and bonds in the trusts for the benefit of my mother-in-law appear on my recusal list. I take no cases involving my former law firm and, on occasion, when a matter has arisen where I have at some time represented a party, this has always been disclosed in open court on the record and counsel has been given the opportunity of requesting my recusal from further action on the matter. In addition, in any case where I think there is any potential for conflict because of a past representation, however remote, I have advised counsel of that fact and have given each side the option of requesting my 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.

None

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

See Financial Disclosure Report (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.

I have been involved in numerous political campaigns over the years. In 1972 I was involved in the campaign of Representative Paul N. McCloskey, Jr. who was seeking the Republican nomination for President. I worked for Congressman McCloskey up to the New Hampshire primary which occurred sometime in the spring of 1972.

In 1979 I was involved in the presidential campaign of Senator Robert Dole, and served largely in an advisory capacity through the New Hampshire primary.

In 1988 I was involved in Senator Dole's primary campaign in New Hampshire and served as co-chairman of the New Hampshire campaign.

I was involved in the 1980 campaign of Senator Warren B. Rudman in a fund raising and general advisory position. I was involved in Senator Rudman's 1986 Senate campaign in a similar capacity.

I was involved in Governor John Sununu's 1982, 1984, and 1986 campaigns for governor of the State of New Hampshire, again, largely in a finance and advisory position.

I was involved in Governor Judd Gregg's 1988 gubernatorial campaign in a finance and advisory position. Prior to my nomination as United States District Judge, I was involved in Senator Robert Smith's 1990 campaign for the United States Senate in a finance and advisory capacity.

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 long-term member of my former firm's Executive Committee and during the period that I was President of that

law firm, I enlarged the firm's handling of pro-bono matters through the Bar Association program. The work I performed for the Judicial Council, which obviously was done on a pro-bono basis, inured to the benefit of those people who were indigent. The council bore a great deal of oversight responsibility for the public defender program and managed the state's contract counsel program. I spent significant blocks of time almost on a weekly basis in connection with my post as chairman of that body. Throughout my career as a practicing attorney, I served on numerous charitable boards including the Manchester Historic Association, Federated Arts of Manchester, Jewish Federation of Greater Manchester, Manchester Institute of Arts and Sciences, Elliot Hospital and others.

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, I am not a member of any club or organization that discriminates on the basis of race, sex, or religion. I have not and do not belong to any clubs of any kind.

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 your participated).

There is no selection commission in our jurisdiction recommending candidates for nomination to the federal courts.

I was first approached about the vacancy for the United States Court of Appeals for the First Circuit by Senator Warren B. Rudman, who suggested that I consider seeking the nomination. Subsequently, I was interviewed by the Department of Justice on two separate occasions, and spoke about the appointment with our junior United States Senator, Robert Smith and with former Governor John Sununu. In addition, I was interviewed by the Federal Bureau of Investigation and the American Bar Association's Committee on the Judiciary.

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

No

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

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

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

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

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

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

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

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In a general sort of way it is my philosophy that ours is a society of law, and that it is a judge's proper role to interpret the law as set forth by the Congress or by the state legislature as the case may be, and not to impose his or her personal opinion in the determination of controversies which may come before him or her. If the legislature enacts a statute which leaves areas open for interpretation, then I believe that a judge has to exercise his judgment in dealing with those areas where the law does provide for interpretation. This still remains a government of limitation, and recognizing that there are three co-equal

branches of government, the judiciary has an obligation to properly consider the rights of the other co-equal branches of government and the judiciary's own limitations. I believe that it is essential that the judiciary follow established precedent. My service as a United States District Judge has reinforced my feelings in this regard.

Attachment to
United States Senate
Questionnaire for Judicial Nominees

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

(1) a. U.S. v. Arache, 946 F.2d 129 (1st Cir. 1991);
b. Bellino v. Schlumberger, 944 F.2d 26 (1st Cir. 1991);
c. Foreberg v. Volkswagen, 769 F. Supp 33 (D.N.H. 1990);
d. Bow v. Quentin W., 750 F. Supp 546 (D.N.H. 1990);
e. Seo v. Anheuser-Busch, 749 F. Supp. 1173 (D.N.H. 1990);
f. Polyclad Laminates v. VITS Maschinenbau, 749 F. Supp. 342 (D.N.H. 1990)

[The following four opinions were not published. I have attached them to this schedule.]

g. Kaufmann v. Sullivan, No. 91-241-S (February 10, 1992);
h. Conductron v. Williams, No. 90-148-S (August 23, 1991);
i. Gem Industries v. Design Contempo, No. 87-208-S (February 21, 1991);
j. G.D. v. Westmoreland, No. 89-086-S (September 24, 1990)

(2) I have been reversed twice. In Davidson v. Sullivan, 942 F.2d 90 (1st Cir. 1991), the First Circuit reversed my decision to follow Lemire v. Secretary of Health and Human Services, 682 F. Supp. 102 (D.N.H. 1988) and to overturn the Social Security Administration's reduction of plaintiff's social security disability benefits pursuant to 42 U.S.C. § 424a, the "offset" provision. In United States v. Bell, 953 F.2d 6 (1st Cir. 1992), the First Circuit disagreed with my finding at sentencing that defendant's use of an alias to obtain a post office box and possession of a loaded handgun and momentary hesitation upon arrest constituted obstruction of justice under United States Sentencing Guidelines §§ 3C1.1 and 3C1.2.

I have not had any substantive or procedural rulings affirmed with significant criticism.

(3) The following four cases raised significant federal constitutional issues. None of the following cases has been appealed. Since they were not published, I have attached them to this schedule.

a. Trask v. County of Strafford, No. 89-083-S (December 20, 1991);
b. Costello v. Dover, No. 89-425-S (November 22, 1991);
c. Deachman v. Crocker, No. 88-509-S (September 13, 1991);
d. Gangi v. Cunningham, No. 90-323-S (August 6, 1991).

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics in Government Act of 1978, P.L. 95-521, 92 Stat. 1824, November 30, 1978 (5 U.S.C.A. App. 6, 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
STAHL, NORMAN H.	US COURT OF APPEALS-1ST CIR.	04/10/92
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
ACTIVE STATUS	X Nomination, Date 04/09/92 ___ Initial ___ Annual ___ Final	1/91-4/92
7. Chambers or Office Address		
55 PLEASANT STREET CONCORD, NEW HAMPSHIRE 03301		

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

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

POSITION	NAME OF ORGANIZATION/ENTITY
☐ NONE (No reportable positions)	
Partner	1933 Associates (No active participation)
	Interest terminated January, 1992
Co-Trustee	U/W/O Leo Heimerdinger (No financial interest)

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

DATE	PARTIES AND TERMS
☐ NONE (No reportable agreements)	
1/1/86	Devine, Millimet, Stahl & Branch, PA - Termination Agreement
	(now Devine, Millimet & Branch, PA)

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

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐ NONE (No reportable non-investment income)		
1 1991	Devine, Millimet, Stahl & Branch, PA - Termination Pay	$ 59676.00
2 1992	Devine, Millimet, Stahl & Branch, PA - Termination Pay	$ 14919.00
3 1991	United States Senate, Staff Assistant - Salary (s)	$ 0.00
4 1991	Devine, Millimet, Stahl & Branch, PA - Salary Through 4/90	$ 68225.00
5	(Now Devine, Millimet & Branch, PA)	$ 0.00

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
STAHL, NORMAN H.	04/10/92

IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp. 12-14 of Instructions.)

	SOURCE	DESCRIPTION
[ ]	NONE (No such reportable reimbursements or gifts)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. OTHER GIFTS.

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

	SOURCE	DESCRIPTION	VALUE
[ ]	NONE (No such reportable gifts)		
1	EXEMPT		$ 0.00
2			$
3			$
4			$

VI. LIABILITIES.

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 16-17 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
[X]	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 (cont'd)	Name of Person Reporting	Date of Report
	STAHL, NORMAN H.	04/10/92

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 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 (1) Amt.1 Code (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value2 Code (J-P)	C. (2) Value Method3 Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value2 Code (J-P)	(4) Gain1 Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
1 Carlyle Real Estate LP XV	A	DIST	J	W					
2 Carlyle Real Estate LP XV	A	DIST	J	W					
3 Ashland House Associates	D	DIST	M	W					
4 1933 Associates	A	DIST	K	W					
5 Common Stock VanCap, Inc.	A	DIV	J	W					
6 Common Stock Roan Corp.	A	DIV	J	W					
7 Indian Trail Groves Ltd. (S)	A	DIST	J	W					
8 Com Stk, Walt Disney Co.	A	DIV	J	T					
9 Com Stk, Pepsico	A	DIV	K	T					
10 Com Stk, Time-Warner, Inc.	A	DIV	J	T					
11 Com Stk, AT Cross, Inc.	A	DIV	J	T					
12 Com Stk, Burl. Northern, Inc.	A	DIV	J	T					
13 Com Stk, Potomac Electric	A	DIV	J	T					
14 Com Stk, Boeing Co.	A	DIV	J	T					
15 Com Stk, Browning-Ferris	A	DIV	J	T					
16 Com Stk, Merck & Co., Inc. (S)	A	DIV	K	T					
17 Com Stk, Merck & Co., Inc.	A	DIV	K	T					
18 Mutual Fund, Mass Invest. (S)	A	DIV	J	W					

1 Income/Gain Codes: (See Col. B1 & D4) A=$1,000 or less B=$1,001 to $2,500 C=$2,501 to $5,000 D=$5,001 to $15,000 E=$15,001 to $50,000 F=$50,001 to $100,000 G=$100,001 to $1,000,000 H=More than $1,000,000

2 Value Codes: (See Col. C1 & D3) J=$15,000 or less K=$15,001 to $50,000 L=$50,001 to $100,000 M=$100,001 to $250,000 N=$250,001 to $500,000 O=$500,001 to $1,000,000 P=More than $1,000,000

3 Value Method Codes: (See Col. C2) Q=Appraisal R=Cost(real estate only) S=Assessment T=Cash/Market U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
STAHL, NORMAN H.	04/10/92

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 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 (1) Amt. Code (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-V)	D. Transactions during reporting period (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)									
19 ILL Housing Develop. Bonds (S)	A	INT	J	T					
20 NH Muni Bond Bank	A	INT	J	T					
21 Cmn Stk, ADP, Inc. (S)	A	DIV	J	T					
22 Cmn Stk, ADP, Inc.	A	DIV	K	T					
23 NHHE&H Bonds	A	INT	K	T					
24 NHHE&H Bonds	A	INT	J	T					
25 NH Turnpike Bonds (S)	A	INT	K	T					
26 Cmn Stk, IBM	A	DIV	J	T					
27 Bntl Bldg 904 Mein Lynch VA(S)	A	RENT	J	W					
28 CD, NH Sav. Bank Concord, NH	C	INT	L	T					
29 CD, Dertm. Sav., Dertm. NH (S)	B	INT	L	T					
30 CD, NH Sav. Bank Conc. NH (S)	B	INT	L	T					
31 CD, NH Sav. Bank	B	INT	K	T					
32 Investment Acct., Prud-Bache	A	INT	J	W					
33 Inveat. Acct., Kidder-Peabody	A	INT	J	W					
34 Rent. Prop., 11.1 Acre,Bed.NH	A	RENT	L	W					
35 IRA, First NH Bank (Amosk.)	A	INT	K	W					
36 IRA, First NH Bank (Amosk.)(S)	A	INT	K	W					

1 Income/Gain Codes: (See Col. B1 & D4) A=$1,000 or less B=$1,001 to $2,500 C=$2,501 to $5,000 D=$5,001 to $15,000 E=$15,001 to $50,000 F=$50,001 to $100,000 G=$100,001 to $1,000,000 H=More than $1,000,000

2 Value Codes: (See Col. C1 & D3) J=$15,000 or less K=$15,001 to $50,000 L=$50,001 to $100,000 M=$100,001 to $250,000 N=$250,001 to $500,000 O=$500,001 to $1,000,000 P=More than $1,000,000

3 Value Method Codes: (See Col. C2) Q=Appraisal R=Cost(real estate only) S=Assessment T=Cash/Market' U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	STAHL, NORMAN H.	04/10/92

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 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, "A(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period (1) Amt.1 Code (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value2 Code (J-P)	C. (2) Value Method3 Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month-Day	D. (3) Value2 Code (J-P)	D. (4) Gain1 Code (A-H)	D. (5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
37 Pens-Dev, Mill&Branch, Man. NH	E	INT	N	W					
38 Com Stk, AT&T	A	DIV	J	T					
39 Com Stk, Bell Atlantic	A	DIV	J	W					
40 Com Stk, Bell South Corp.	A	DIV	J	W					
41 Com Stk, Carolina Power	A	DIV	J	W					
42 Com Stk, Central SW Corp.	A	DIV	J	W					
43 Com Stk, Exxon	A	DIV	J	W					
44 Com Stk, General Motors	A	DIV	J	1					
45 Com Stk, General Motors Cla. H	A	DIV	J	1					
46 Com Stk, NYNEX	A	DIV	J	1					
47 Com Stk, Pacific Talesis	A	DIV	J	1					
48 Com Stk, Unitil	A	DIV	J	W					
49 Com Stk, Bristol-Meyers,Squibb	A	DIV	K	W					
50 Spec. Ck Acct. - FNH(Amosk)	A	INT	L	T					
51 Spec. Ck Acct. - FNH(Amosk)(S)	A	INT	J	T					
52 Ck Acct. - FNH(Amosk) (J)	A	INT	J	T					
53 Sav Acct - Centerpoint Bank(S)	A	INT	K	T					
54 Sav Acct - Centerpoint Bank(J)	A	INT	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	S=Cost(real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
STARR, NORMAN H.	04/10/92

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 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 (1) Amt.1 Code (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value2 Code (J-P)	C. (2) Value Method3 Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value2 Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
55 CD - Centerpoint Bank	A	INT	L	T					
56 Sav Acct - Bank of NH	A	INT	K	T					
57 Sav Acct - Bank of NH (S)	A	INT	L	T					
58 Sav Acct - Bank of NH (DC)	A	INT	J	T					
59 CD - Bank of NH (DC)	A	INT	K	T					
60 Com Stk, Walmart	A	DIV	K	T					
61 Com Stk, Walmart (S)	A	DIV	J	T					
62 Com Stk, GE (S)	A	DIV	J	T					
63 Com Stk, Johnson & Johnson	A	DIV	K	T					
64 Com Stk, Johnson & Johnson (S)	A	DIV	K	T					
65 Com Stk, McDonalds Corp.	A	DIV	K	T					
66 Centennial Tax Exempt Tr (S)	A	DIV	L	T					
67 Centennial Tax Exempt Tr	A	DIV	L	T					
68 Com Stk, General Mills	A	DIV	K	T					
69 Pension, Civil Service (S)	A	DIST	J	W					
70 Com Stk, Minn. Mining & Mfg	A	DIV	K	T					
71 Com Stk, Walgreens	A	DIV	J	T					
72 Com Stk, Marsh & McLennan	A	DIV	J	T					

1 Income/Gain Codes: (See Col. B1 & D4) A=$1,000 or less; B=$1,001 to $2,500; C=$2,501 to $5,000; D=$5,001 to $15,000; E=$15,001 to $50,000; F=$50,001 to $100,000; G=$100,001 to $1,000,000; H=More than $1,000,000

2 Value Codes: (See Col. C1 & D3) J=$15,000 or less; K=$15,001 to $50,000; L=$50,001 to $100,000; M=$100,001 to $250,000; N=$250,001 to $500,000; O=$500,001 to $1,000,000; P=More than $1,000,000

3 Value Method Codes: (See Col. C2) Q=Appraisal; U=Book Value; R=Cost(real estate only); V=Other; S=Assessment; W=Estimated; T=Cash/Market

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
STAHL, NORMAN H.	04/10/92

VII. Page 5 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 of Instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period (1) Amt.1 Code (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value2 Code (J-P)	C. (2) Value Method3 Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value2 Code (J-P)	(4) Gain1 Code (A-H)	(5) Identity of buyer/seller (if private transaction)
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.									
NONE (No reportable income, assets, or transactions)									
73 Cmn Stk, RR Donnelly & Sons	A	DIV	J	T					
74 Cmn Stk, Oracle Systems (S)	A	DIV	J	T					
75 Cmn Stk, Oracle Systems	A	DIV	J	T					
76 Cmn Stk, Westmark	A	DIV	J	T					
77 Cmn Stk, Coca-Cola, Inc.	A	DIV	K	T					
78 Cmn Stk, Kellog Co.	A	DIV	K	T					
79 Cmn Stk, Northern Trust Co.	A	DIV	K	T					
80 Cmn Stk, Pfizer	A	DIV	J	T					
81 Cmn Stk, Rubbermaid	A	DIV	K	T					
82 Cmn Stk, State St. Boston Corp	A	DIV	K	T					
83 Cmn Stk, Sysco Corp.	A	DIV	K	T					
84 Cmn Stk, Toys R Us	A	DIV	K	T					
85 Cmn Stk, Philiip Morris Co.	A	DIV	K	T					
86 Loxahachee, Investors, Ltd (S)	A	DIST	J	W					
87 Cmn Stk, Abbot Labs	A	DIV	K	T					
88 Cmn Stk, Abbot Labs (S)	A	DIV	J	T					
89 Cmn Stk, Pepsico (S)	A	DIV	J	T					
90 Cmn Stk, Picturetel (S)	A	DIV	J	T					

1 Income/Gain Codes: (See Col. B1 & D4) A=$1,000 or less B=$1,001 to $2,500 C=$2,501 to $5,000 D=$5,001 to $15,000 E=$15,001 to $50,000 F=$50,001 to $100,000 G=$100,001 to $1,000,000 H=More than $1,000,000

2 Value Codes: (See Col. C1 & D3) J=$15,000 or less K=$15,001 to $50,000 L=$50,001 to $100,000 M=$100,001 to $250,000 N=$250,001 to $500,000 O=$500,001 to $1,000,000 P=More than $1,000,000

3 Value Method Codes: (See Col. C2) Q=Appraisal R=Cost(real estate only) S=Assessment T=Cash/Market U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
STAHL, NORMAN H.	04/10/92

VII. Page 6 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 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 (1) Amt. Code (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-V)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value2 Code (J-P)	(4) Gain1 Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
91 Com Stk, Rubbermaid (S)	A	DIV	J	T					
92 IRA, Heuberger & Berman	E	DIV	O	T					
93 Com Stk, Home Depot, Inc.	A	DIV	K	T					
94									
95									
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103									
104									
105									
106									
107									
108									

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 (cont'd)	Name of Person Reporting	Date of Report
	STAHL, NORMAN H.	04/10/92

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

Statement #1 - Agreements

1) Devine, Millimet, Stahl & Branch - Termination Agreement
Pursuant to an employment contract dated 1/1/86 my salary for the years 1987 through 1989 was averaged and the resulting amount is being paid to me over a 60 month period ending in April 1995 in equal monthly installments.
(now Devine, Millimet & Branch, PA)

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting STAHL, NORMAN H.	Date of Report 04/10/92

IX. CERTIFICATION.

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

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

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

Signature _____ Date 4/13/92

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee
Administrative Office of the
United States Courts
Washington, 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	307	823	00	Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule Exh	736	526	00	Notes payable to relatives			
Unlisted securities—add schedule Exh	1,114	000	00	Notes payable to others			
Bonds Exh III	77	215	00	Accounts and bills due			
Accounts and notes receivable:				Unpaid income tax			
Due from relatives and friends				Other unpaid tax and interest			
Due from others				Real estate mortgages payable—add schedule	39	966	00
Doubtful				Chattel mortgages and other liens payable			
Real estate owned—add schedule Exh IV	754	000	00	Other debts—itemize:			
Real estate mortgages receivable							
Autos and other personal property *	100	000	00				
Cash value—life insurance Exh V	85	179	00				
Other assets—itemize:							
IRA - Exh V	814	526	00				
Pensions - Exh V	196	029	00				
				Total liabilities	39	966	00
				Net worth	3,146	932	00
Total assets	3,186	898	00	Total liabilities and net worth	3,146	898	00

CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	NONE			Are any assets pledged? (Add schedule.)	NO		
On leases or contracts	NONE			Are you defendant in any suits or legal actions?	NO		
Legal Claims	NONE			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	NONE						
Other special debt	NONE						

* Personal property is an estimate only and without an appraisal.

SEE ATTACHED EXHIBITS

EXHIBIT I

NORMAN H. AND SUE H. STAHL

Cash on Hand and in Banks

	Ownership	Amount
First NH Bank/Amoskeag Division (Spec. Checking - bal. as of 3/19/92)	H	$73,402
First NH Bank/Amoskeag Division (Spec. Checking - bal. as of 2/28/92)	W	6,159
First NH Bank/Amoskeag Division (Reg. Checking - bal. as of 3/12/92)	J	4,500
Centerpoint Bank CD	H	73,842
Centerpoint Bank (Savings - bal. as of 2/28/92)	J	6,128
Bank of New Hampshire (Passbook - bal. as of 12/2/91)	H	20,162
Centerpoint Bank (Savings - bal. as of 1/23/92)	W	44,932
Bank of New Hampshire (Passbook - bal. as of 10/24/91)	W	78,198
Total		$307,323

EXHIBIT II

NORMAN H. AND SUE H. STAHL

Listed Securities as of 3/12/92

Number of Shares		Ownership	Estimated Market Value
300	Abbott Lab	H	$ 17,925
400	Automatic Data Processing Inc.	H	17,550
300	Bristol Myers Squibb	H	23,700
500	Coca Cola	H	40,563
400	General Mills Inc.	H	26,400
600	Johnson & Johnson (as of 3/16/92)	H	57,600
400	Kellogg Co.	H	22,850
800	McDonalds Corp. (as of 3/16/92)	H	34,100
150	Merck & Co., Inc.	H	22,125
500	Northern Trust Corp.	H	25,125
900	Pepsico	H	28,463
200	Pfizer	H	14,525
800	Rubbermaid	H	25,300
500	State Street Boston Corp.	H	30,625
500	Sysco Corp.	H	21,938
500	Toys R Us	H	16,813
700	WalMart	H	37,013
200	Philip Morris Company (as of 3/16/92)	H	15,575
300	Home Depot	H	18,600
56	Bell Atlantic	H	2,380
66	Carolina Power	H	3,448
134	Central & South West	H	3,484
140	Exxon	H	7,735
215	Unitil	H	8,224
1079.316	Mass. Investors Growth Stock	W	12,952
200	Abbott Labs	W	11,950
100	General Electric	W	7,800
200	Johnson & Johnson	W	19,200
100	Merck & Company Inc.	W	14,775
300	Pepsico Inc.	W	9,562
100	Picturetel	W	4,700
300	Rubbermaid Inc.	W	9,375
200	WalMart	W	10,475
208	ADP	W	8,996
	Sub-Total		$631,846
	Cash held by broker (as of 3/16/92)		
	Centennial Tax Exempt Tr (Hopper Soliday)	W	54,395
	Centennial Tax Exempt Tr (Hopper Soliday)	H	50,385
	Total		$736,626

EXHIBIT III

NORMAN H. AND SUE H. STAHL

Statement of Listed and Unlisted Securities

	Ownership	Estimated Market Value
Investment in Carlyle Limited Partnership	H	$ 1,000
Investment in Carlyle Limited Partnership	W	1,000
Investment in Ashland House Partnership	H	112,000
Investment in VenCap, Inc.	H	0
Investment in Roan Ventures	H	0
Investment in Indian Trail	W	-
Investment in Loxahaxie	W	-
Total		$114,000

Bonds

New Hampshire Higher Education & Health - due 2000 Student Loan New Bank (as of 3/18/92)	H	16,307
New Hampshire Higher Education & Health - due 2013	H	15,000
New Hampshire Municipal Bond Bank - due 7/92 (as of 3/18/92)	H	5,035
New Hampshire State GO - due 5/95 (as of 3/18/92)	H	5,124
Ill. Housing Development Authority - due 8/98	W	4,975
New Hampshire Turnpike Sys. - due 4/95	W	30,774
Total		$ 77,215

EXHIBIT IV

NORMAN H. AND SUE H. STAHL

Real Estate Owned

	Ownership	Estimated Market Value
Personal Real Estate, Bedford, NH	W	$245,000
Land and Building, Chilmark, MA	J	400,000
Land in Bedford, NH - 50% interest	H	95,000
Building in Lynchburg, VA - 12.5% interest	W	14,000
Total		$754,000[1]

Real Estate Mortgages Payable

There is a mortgage on residence on 11 Glen Road, Bedford, New Hampshire, due in monthly installments of principal and interest of $823.00 through February 1997. Balance as of 3/5/92 is $39,966.85.

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[1]No separate real estate appraisals have been obtained for 11 Glen Road, Bedford, NH, land and building in Chilmark, MA, and land in Bedford, NH. These are the owner's best estimates of current value. There is no current appraisal for the building in Lynchburg, Virginia. This is the best estimate of value based largely on the income received from the partnership.

EXHIBIT V

NORMAN H. AND SUE H. STAHL

Individual Retirement Accounts

	Ownership	Amount
First NH Bank/Amoskeag Division (as of 3/12/92)	H	$33,821
First NH Bank/Amoskeag Division (as of 3/12/92)	W	19,443
Neuberger & Berman (as of 3/12/92 - see attachment 1)	H	761,262
Total		$814,526

Pensions

Civil Service Retirement	W	9,055
Deferred Compensation from Devine, Millimet, Stahl & Branch, Professional Association per contract (as of 3/92)	H	188,974
Total		$198,029

Cash Value Life Insurance

New England Life - Policy #8301035[2] (as of 3/11/92)	20,096
New England Life - Policy #8300482	65,083
Total	$85,179

[2]owned by irrevocable insurance trust

Attachment 1
to EXHIBIT V

Individual Retirement Accounts

Neuberger & Berman (as of 3/12/92)

Number of Shares		Ownership	Estimated Market Value
500	Abbott Laboratories	H	$ 29,875
200	Bristol Myers Squibb Co.	H	15,800
700	Coca-Cola Co.	H	56,788
600	General Mills Inc.	H	39,600
400	Home Depot Inc.	H	24,800
400	Johnson & Johnson	H	38,400
850	Kellogg Co.	H	48,556
1,000	McDonalds Corp.	H	42,750
200	Merck & Co. Inc.	H	29,500
700	Northern Trust Corp.	H	35,175
1,500	Pepsico Inc.	H	47,438
350	Pfizer Inc.	H	25,419
600	Rubbermaid Inc.	H	18,975
350	State Street Boston Corp.	H	21,438
1,000	Sysco Corp.	H	43,875
900	Wal-Mart Stores Inc.	H	47,588
	Sub-Total		$565,977
	Cash Equivalents		202,501
	Dividends Receivable		1,080
	Minus Cash		(8,296)
	Total		$761,262

EDUARDO C. ROBRENO

Birth:	July 28, 1945	Havana, Cuba
Naturalized:	February 23, 1970	Newark, New Jersey
Legal Residence:	Pennsylvania	
Marital Status:	Married	Gladys M. Gonzalez 2 children
Education:	1963 - 1967	Westfield State College B.A. degree
	1967 - 1969	University of Massachusetts M.S. degree
	1975 - 1978	Rutgers University School of Law J.D. degree
Bar:	1978 1979	Pennsylvania New Jersey
Experience:	1978 - 1981	Department of Justice Antitrust Division Trial Attorney
	1981 - 1986	Meltzer & Schiffrin Associate, 1981-1985 Partner, 1985-1986
	1986 - present	Fox, Rothschild, O'Brien & Frankel Partner
Office:	2000 Market Street, 10th Floor Philadelphia, Pennsylvania 19103 215 299-2000	

To be United States District Judge for the Eastern District of Pennsylvania

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Eduardo C. Robreno

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

   109"B" Lombard Street
   Philadelphia, PA 19147

   Office:

   2000 Market Street, Tenth Floor
   Philadelphia, PA 19147

3. Date and place of birth.

   Havana, Cuba 7/28/45-became naturalized citizen February 2, 1971

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

   Married. Gladys M. Gonzalez - 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.

   Rutgers Law School - Camden, NJ
   9/75 to 6/78
   J.D. 1978

   University of Massachusetts - Amherst, MA
   9/67 to 6/69
   M.S. 1969

   Westfield State College, Westfield, MA
   9/63 to 6/67
   B.A. 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.

Fox, Rothschild, O'Brien & Frankel (1987-Present)
2000 Market Street, Tenth Floor
Philadelphia, PA 19103

Meltzer & Schiffrin (1981-1986)
c/o Fox, Rothschild, O'Brien & Frankel
2000 Market Street, Tenth Floor
Philadelphia, PA 19103

Antitrust Division (1978-1981)
U.S. Department of Justice
Curtis Building, Suite 650
7th & Walnut Streets
Philadelphia, PA 19105

Stradley, Ronon, Stevens & Young (Summer 1976)
2600 One Commerce Square
Philadelphia, PA 19103

Massachusetts Teachers Association (1971-1975)
20 Ashburton Place
Boston, MA 02108

Rutgers University (1969-1971)
Labor Education Center
Ryders Lane
New Brunswick, NJ 08846

University of Massachusetts (1967-1969)
Labor Relations & Research Center
Draper Hall
Amherst, MA 01003

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.

N.A.

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

Articles Editor of Law Review - June 1977 - June 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.

American Bar Association
Pennsylvania Bar Association
Philadelphia Bar Association
National Hispanic Bar Association
Hispanic Bar Association of Pennsylvania
(Board of Directors 1983-1986)

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.

Cuban American Community Club	(not involved in lobbying)
Puerto Rican Festival Committee	(not involved in lobbying)
Riverview Condominium Association	(not involved in lobbying)
American Red Cross Southeastern Pennsylvania Chapter	(not involved in lobbying)
Episcopal Hospital	(not involved in lobbying)

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.

Pennsylvania 1978
New Jersey 1979
U.S. District Court for the Eastern District of Pennsylvania 1978
U.S. District Court for the District of New Jersey 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.

"Cooperative Collective Bargaining Conduct Among Trade Competition and the Non Statutory Labor Exemption to Antitrust Liability." 9 Rutg L.J. 477 (Spring 1978)

"The Venue of Real Estate Limited Partnership Bankruptcy Cases", Legal Intelligencer, Dec. 21, 1991 at 3. (Philadelphia, Pa.)

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

Excellent. May 31, 1991

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

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most eignificant opinione you have written; (2) a short summary of and citations for all appellate opinions where your decieione were revereed or where your judgment was affirmed with eignificant criticism of your subetantive or procedural rulinge; and (3) citations for eignificant opinions on federal or etate conetitutional iseues, together with the citation to appellate court rulinge on euch opinions. If any of the opinions listed were not officially reported, please provide copies of the opinione.

N.A.

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

None.

17. Legal Career:

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

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

see below

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

see 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;

see below

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

see below

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

see below

1986-1991 Fox, Rothschild O'Brien & Frankel-Partner. 125 lawyers; Philadelphia, Pa. and Princeton, N.J. Administrator of Creditors' Rights Department. Supervision of seven associates and two paralegals. Practice involves representation of creditors in banking related and commercial litigation matters in state, federal district and bankruptcy courts throughout the United States including actions in mortgage foreclosures, guarantees, assignments of rent, subordination agreements, agreements affecting real estate as well as lender and environmental liability. Currently, lead litigation counsel for national commercial lender involved in litigation in six states.

1981-1986 Meltzer & Schiffrin-Partner (since 1985) 15 lawyers; Philadelphia, Pa. commercial transactional and litigation boutique firm. Practice involved general commercial litigation, including real estate, construction, unfair trade practices, libel, labor and administrative law. Also involved in counseling and representation of witnesses in grand jury investigations and representation of defendants pro-bono at trial or on appeal in the state courts;

representation of Hispanic merchants in business and personal matters; and legal counsel to a number of non-profit organizations including the Spanish Merchants Association, the Puerto Rican Week Festival Committee, Inc., the Cuban-American Association of Philadelphia and the Republican Hispanic Assembly of Pennsylvania.

1978-1981 United States Justice Department Antitrust Division; Recruited into the Department's Honor Program from law school graduates ranked in top 15% of national class. Represented the United States in major price fixing and merger litigation. Served as Special Assistant United States Attorney for the District of New Jersey for four months prosecuting currency and tax violations. The representation included grand jury investigations, jury trials, sentencing and pre-trial motion practice.

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

Regularly. During the earlier years of my practice (1978-1985), I tried a larger number of cases to verdict. This is partially because my current caseload representing commercial lenders often involves summary proceedings (e.g., sequestration of rents, injunctions of foreclosures) the outcome of which, as a practical matter, is dispositive of the case.

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

Federal courts.
60%

State courts of record.
30%

Other courts.
10%

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

   Civil.
   95%
   Criminal.
   5%

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.

   Four, as sole counsel.

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

   1. Jury.
      25%

   2. 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.

   A. Jury Trials

   1. United States v. Deerfield Specialty Papers et al.; 501 F. Supp. 798 (E.D. Pa. 1980)

   - Co-counsel for government

- November 1980 three week jury trial before the Honorable John B. Hannum

- Defense trial counsel, Ralph W. Brenner, Esquire
  Three Parkway, 20th Floor,
  Philadelphia, PA 19102
  (215) 665-7231

- Defense trial counsel, Seymour I. Toll, Esquire
  1760 Market Street, 6th Floor,
  Philadelphia, PA 19103
  (215) 567-5770

- Defense trial counsel, A. Grant Sprecher, Esquire
  Fidelity Building, 23rd Floor
  Philadelphia, PA 19102
  (215) 875-5100

- Defense Counsel, Arthur H. Kahn, Esquire
  1600 Market Street
  Philadelphia, PA 19103
  (215) 751-2480

- Defense Counsel, Samuel E. Dennis, Esquire
  2000 Market Street
  Philadelphia, PA 19103
  (215) 299-2881

- Government Supervisory Counsel,
  John Hughes, Esquire
  Chief, Antitrust Division
  Curtis Building
  Philadelphia, PA 19106
  (215) 597-7405

The case involved the prosecution of five companies and nine individuals for violations of Section 1 of the Sherman Act. The agreement alleged by the government involved fixing the price of glassine and greaseproof paper. Ten individuals and companies pled guilty or were convicted at trial.

Judge Hannum imposed the largest fines theretofore imposed in the district on companies ($1,000,000 on the lead corporate conspirator) and jail time for individual defendants.

The trial was the result of a lengthy nationwide grand jury investigation and followed extensive

pre-trial motion practice in which I acted as co-counsel writing the memoranda and arguing key motions to the Court. See 501 F. Supp. 798 (E.D. Pa. 1980). At trial, I had the role of giving the closing statement and questioning critical witnesses.

The case involved one of the first prosecutions after the penalties under the Sherman Act were increased from misdemeanor to felony level. Successful investigation and prosecution of the offenses and the Judge's willingness to impose the maximum allowable sentence after convictions gave credibility to the Sherman Act as a tool to ensure freedom in the market place.

2. United States v. James Suleski;
United States District Court for the District of New Jersey, Criminal No. 81-31

- Sole counsel for government

- May, 1981 one week jury trial before the Honorable Stanley Brotman
- Defense counsel, Bruce L. Thall, Esquire
2128 Locust Street
Philadelphia, PA 19103
(215) 545-2400

The case involved prosecution of the defendant for violations of 28 U.S.C. &7206(i) relating to the filing of false information in a federal income tax return in two consecutive years.

The government presented evidence that the defendant had set up a complex scheme to siphon funds from one operating company into another. The defendant argued that his company was merely a "conduit" or a "wallet" to pass through certain funds to the second company operated by his father and that he received no benefit from the transactions. The principal issue was the degree of control the defendant had exercised over the funds. The government's proofs relied on tracing of funds and expert testimony of IRS Special Agents. The jury returned guilty verdicts against the defendant on both counts of the indictment.

The Court's jury instruction and the verdict validated the government's theory that the

taxpayer had effective control over the income he had failed to report.

3. Oreland Housing, Inc. v. O'Neill et al
No 1387 Civil-84 Court of Common Pleas, Cumberland County, Pennsylvania

- Sole counsel for plaintiff.

- April 1987 four-day jury trial before the Honorable Edgar Bailey

- Counsel for corporate defendant,
Richard C. Snelbaker, Esquire
West Main Street
Mechanicsburg, PA 17055
(717) 697-8528

Counsel for individual defendants,
Walter K. Swartzkopf, Jr., Esquire
410 Walnut Street
Hollidaysburg, PA 16648
(814) 696-1000

- Local Counsel for plaintiff,
James Flower Sr., Esquire
7 Urbine Road
Carlisle, PA
(717) 249-3022 17013

I acted as lead counsel for the plaintiff undergoing reorganization under Chapter 11 of the U.S. Bankruptcy Code, in an action against a local bank and two individuals who were suppliers of construction materials to the plaintiff. The main issue involved the validity of an assignment to the plaintiff of a certain certificate of deposit, given as security for work performed, and whether the bank had improperly and without authorization released the certificate of deposit to the individual defendants.

The individual defendants contended that the signature on the assignment was a forgery and that, in any event, certain triggers under the construction agreements, which permitted the release of the certificate by the bank to the plaintiffs, had not occurred. The bank contended that under the law of negotiable instruments, it had no liability for the release of the

certificate of deposit and that it had never agreed to act as escrow agent.

The jury returned a verdict for the plaintiff and against both the bank and the individual defendants for $65,000, including interest, representing the amount of the certificate of deposit.

4. Mouratidis et al v. Design and Funding, Inc., et al; U.S. District Court for the Eastern District of Pennsylvania, Civil Action No. 82-1738

- Sole counsel for plaintiffs, eight members of the same family

- April 1984 one week jury trial before the Honorable William Ditter

- Defense counsel,
  Louis Sinatra, Esquire
  640 Sentry Parkway
  Blue Bell, PA 19422
  (215) 941-2498

The matter involved allegations of fraud and negligent misrepresentation concerning the development and marketing of a "Greek Cookie". The plaintiffs claimed the defendants had collected in excess of $35,000 from plaintiffs to evaluate the prospects of success of the product and to assist them in marketing it. The plaintiffs' efforts at manufacturing and marketing the product did not succeed. In the process, the plaintiffs claimed to have spent over $100,000. The defendants denied liability and contended that the plaintiffs failed to follow the advice given. The defendants introduced expert testimony concerning the rate of failure for start-up businesses. On the eve of trial, the corporate defendant filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code.

The case proceeded to trial against the president of the corporate defendant. The fraud count was dismissed by the Court at the end of the plaintiffs' case. The jury returned a verdict for the individual defendant on the negligent misrepresentation count.

The Court accepted the proposition that Section 552 of the Restatement of Torts 2d concerning liability for furnishing information on a negligent manner, had been adopted in Pennsylvania and instructed the jury to consider this theory of liability.

B. Non-Jury Trials

5. Commonwealth v. David Gill, Court of Common Pleas of Philadelphia County, #8202-228

- Counsel for defendant

- April 1982 four day trial before Honorable Leon Katz

- Counsel for co-defendant,
  Kenneth Dixon, Esquire
  1315 Walnut Street
  Philadelphia, PA 19107
  (215) 545-0325

- Then Assistant District Attorney,
  Nathaniel Metz, Esquire
  Mesirov, Gelman, Jaffe, Cramer & Jamieson
  1735 Market Street
  Philadelphia, PA 19103
  (215) 994-1269

The defendant was an inmate at Holmesburg State Prison, Philadelphia, Pennsylvania. This case involved prosecution of the defendant for rioting, conspiracy, aggravated assault, simple assault and terroristic threats in connection with a riot at the prison. After being appointed counsel, I conducted a lengthy factual investigation involving the interview of two dozen inmates in search of potential witnesses.

The Government claimed the defendant led the disturbance by inciting other inmates and striking several correctional officers. The defendant did not deny participation, but claimed he did not incite others and did not strike officers except in self-defense.

The case required the use of a special litigation strategy for representing unpopular defendants in sensitive cases. This approach consisted of

acknowledgment of participation but development of the justification of self-defense. The Court acquitted the defendant of aggravated assault, conspiracy and making terroristic threats, but convicted the defendant of simple assault and rioting. The Superior court affirmed the verdict.

6. Barbara Stanger, et al v. Athos Steel Aluminum, Inc, et al; In the United States Bankruptcy Court for the Eastern District of Pennsylvania, 71 B.R. 525 (Bankr. E.D. Pa. 1987) affirmed, Judicate, 1989.

- Counsel for plaintiffs

- Two day trial in February 1988 before Honorable Bruce Fox

- Counsel for defendants,
  Franklin Poul, Esquire
  Wolf, Block, Schorr & Solis-Cohen
  The Packard Building, 9th Floor
  15th & Chestnut Street
  Philadelphia, PA 19102
  (215) 972-2200

The plaintiffs, minority shareholders of a closely-held corporation, brought this action, derivatively, on behalf of shareholders and, individually against two closely-held corporations, an officer and director of the corporations, and the legal counsel to the corporations. The complaint charged that the defendants' principal officer planned and executed certain financial transactions, with the advice of corporate legal counsel which were designed to acquire control and ownership of one of the two corporations (which was solvent) through the use of the funds of the other corporation (which was insolvent).

The case involved numerous complex legal issues including the jurisdiction of the bankruptcy court to hear "core" and "related" proceedings, 28 U.S.C. §157; whether the complaint stated a derivative cause of action; the scope of the duty of loyalty and/or care owed by officers of closely-held corporations to minority shareholders and whether those duties are breached by an

officer who seeks "control" of the corporation and whether corporate counsel owed minority shareholders a duty of loyalty and, if so, did his actions breach that duty; and whether the sellers of the stock were indispensable parties under F.R.Civ.P.19.

The Bankruptcy Court found that the plaintiffs were entitled to bring the action derivatively; that one count of the complaint was "core" as to which the court would enter judgment while, as to the other count, it would issue only proposed findings of fact and conclusions of law; that the defendants were subject to the heightened test of "intrinsic fairness" but that under that test, the defendants had not breached their fiduciary duty to the plaintiffs; and that the use of the money of one corporation to get control of another did not adversely affect the rights of plaintiffs.

By agreement of the parties, the appeal of the case was submitted to Judicate, a private conflict resolution organization, in lieu of the U.S. District Court. Judge Greenberg, former judge of the Court of Common Pleas of Philadelphia County, sitting as an appellate court and applying principles of appellate review, affirmed the decision of the Bankruptcy Court.

7. Northern Liberties Neighbors Association v. The City of Philadelphia, et al.; Court of Common Pleas of Philadelphia County, July Term, No. 4210

- Counsel for plaintiffs

- Four day non-jury trial in May 1985 before the Honorable Charles A. Mirarchi, Jr.

- Defense counsel,
  John S. DiGiorgio, Esquire
  Redevelopment Authority of City of Philadelphia
  1234 Market Street
  Philadelphia, PA 19107
  (215) 854-6800

- Defense Counsel,
  Jesse Milan, Esquire
  Temple University, Sullivan House
  2nd Floor
  Broad & Berks Mall
  Philadelphia, PA 19122
  (215) 787-7405

- Defense Counsel,
  Charles A. Peruto, Sr., Esquire
  Washington West Building
  N.E. Corner 8th & Locust Streets
  Philadelphia, PA 19106
  (215) 925-5800

I represented the Northern Liberties Neighbors Association ("Association), a local citizens organization, seeking to enjoin the Redevelopment Authority of the City of Philadelphia from entering into and/or executing the terms of a contract with a private developer to build two buildings to be leased to the Commonwealth of Pennsylvania for use as state offices. The plaintiff contended that the actions of the defendants were arbitrary, capricious and discriminatory; violated the provisions of the Urban Redevelopment Law in that the construction was not in conformity with the comprehensive general laws of the City of Philadelphia; and violated the constitutional rights of the members of the Association to due process of law and equal protection of the law.

After trial, the Court denied the plaintiff's motion for injunctive relief and entered judgment for defendants.

8. Marx Stationary & Printing Company et al v. City of Philadelphia; Court of Common Pleas of Philadelphia County, Pennsylvania, November Term 1982, No. 1313, affirmed, 114 Cmwlth. 265, 538 A.2d 648 (1988); petition for allocatur denied, 520 Pa. 610, 553 A.2d 972 (1988). Before the Honorable Lois G. Forer

- November 1982 - December 1988

- Co-counsel for plaintiffs

- Co-Counsel for Defendant Redevelopment Authority of City of Philadelphia,
  Donna S. Kahn, Esquire
  1600 Market Street
  Suite 1416
  Philadelphia, PA 19103
  (215) 568-4202

- Co-Counsel for Defendant Redevelopment Authority of City of Philadelphia
  Carol E. Tracy, Esquire
  Women's Law Project
  125 S. 9th Street
  Philadelphia, PA 19107
  (215) 928-9801

This case involved a commercial building known as the Harrison Building (the "Building"), which was located at 1001-23 Filbert Street, Philadelphia, Pennsylvania. Plaintiffs ("tenants") were former tenants of the Building.

In a prior case brought by the Owners of the Building (the "Owners Case") the Court of Common Pleas had found that there had been a de facto taking of the Building, by the Redevelopment Authority of the City of Philadelphia ("RDA").

Thereafter, the Tenants filed a Petition for Appointment of a Board of View based on the de facto taking which the trial court had found in the Owners' Case. The RDA and the City of Philadelphia ("City") filed Preliminary Objections to the Petition. The Tenants, the RDA and the City then agreed to hold in abeyance the Petition and the Preliminary Objections pending the determination of the appeals to the Commonwealth Court in the Owners' Case.

While the appeal in the Owners' Case was still pending, the Owners, the RDA, the City and a proposed purchaser of the Building settled the Owners' Case. The trial court, however, was not advised of the pendency of the Tenants' action at the time it was asked to approve the Stipulation of Settlement dismissing the owners' action and vacating its prior finding that a Order taking had occurred.

When the Tenants later discovered that the Owners' Case had been settled and that the finding of a taking had been vacated, they filed an Amended Petition setting forth the additional facts that they had discovered. The RDA and the City, again, filed preliminary objections.

The trial court sustained the Preliminary Objections of the City but overruled those on the RDA. The case was then submitted to the Court on the basis of depositions and a stipulated record. After argument, the trial court granted the Tenants' Amended Petition for Appointment of a Board of View finding that the doctrine of collateral estoppel was available to the Tenants to bar relitigation of the issue of the de facto taking and that the Tenants were displaced persons under the Eminent Domain Code.

The RDA requested the trial court to stay the decision pending appeal. After hearing, the trial court denied the request. The RDA appealed to the Commonwealth court which, after a telephone hearing before a single judge, granted the stay, pending appeal on the merits.

After argument, the Commonwealth Court affirmed the decision of the trial court dismissing the RDA's preliminary objections and directing the case to proceed to a Board of View. The RDA's petition for allocatur was denied.

The case involved a veritable precis of Pennsylvania taking law including a consideration of whether under the Eminent Domain Code the plaintiffs were "condemnees and/or displaced persons" and if so, the types of damages as to which they were entitled. Additionally, the case raised a plethora of procedural issues including the applicability of "offensive" collateral estoppel, the jurisdiction of the trial court to vacate orders once the periods for reconsideration has expired and the effect of "fraud on the court" on the court's ability to modify an earlier order.

I acted as co-counsel through the lower court litigation, preparing pleadings and assisting in the conduct of discovery.

Beginning in the summer of 1987, I acted as counsel on the appeal before the Commonwealth Court on both the stay of the lower court's decision and on the decision on the merits. Since the decision by the Commonwealth Court directing the case to proceed to hearing before the Board of View, I have not been involved in the case.

C. Multi-Party and Multi-Forum Litigation

9. Mortgage and Realty Trust v. Philip Pilevsky; United States District Court for the District of Massachusetts, Civil Action 90-113315, before Honorable Walter J. Skinner;
Mortgage and Realty Trust v. Philip Pilevsky, et al. t/a Berdon Plaza; Bristol County, Massachusetts Superior Court 90-1064, before the Honorable John M. Xifaras;
Mortgage and Realty Trust v. Philip Pilevsky, et al. t/a Berdon Plaza Massachusetts Appeals Court 91-J-5, before the Honorable Edith Fein;
Mortgage and Realty Trust v. Philip Pilevsky, et al. t/a Berdon Plaza Massachusetts Appeals Court 90-J-636, before the Honorable Frederick Brown;
Mortgage and Realty Trust v. Philip Pilevsky, et al. t/a Berdon Plaza, Massachusetts Appeals Court, No. 90-P-1322; Panel not assigned
Mortgage and Realty Trust v. Philip Pilevsky et al., United States Bankruptcy Court for the Central District of California, LA-90-08976-SB, before the Honorable Samuel L. Bufford.

- Counsel for plaintiff
  April 1990 - March 1991

- Counsel for defendants
  Paul Wilson, Esquire
  Mintz Levin Cohn Ferris
  Glovsky & Popeo, P.C.
  1 Financial Center
  Boston, MA 02111
  (617) 542-6000

- Substitute counsel for defendants
  Barry S. Fischer, Esquire
  Bernkoff, Goodman & Baseman
  125 Summer Street
  Boston, MA 02110-1621
  (617) 345-0770

- Substitute Counsel for defendants
  David C. Segal, Esquire
  Sukenik, Segal & Graff, P.C.
  350 Broadway, Ninth Floor
  New York, NY 10013-3984
  (212)-966-6100

- Plaintiff's Massachusetts counsel
  Leslie H. Rudnick, Esquire
  Ring Rudnick & Grefe, P.C.
  The Heritage on the Garden
  75 Park Plaza
  Boston, MA 02116
  (617) 482-6300

- Plaintiff's California counsel
  Nicholas Franke, Esquire
  Morgan, Lewis & Bockius
  Twenty Second Floor
  801 South Grand Avenue
  Los Angeles, CA 90017
  (213) 612-2500

I represented the plaintiff, Mortgage and Realty Trust, a national commercial real estate lender, in efforts to collect on a $5,400,000 loan, secured by a mortgage upon a shopping center, an assignment of the income stream generated by rents from tenants of the shopping center, and a personal guarantee. The action spanned three jurisdictions (district and state court in Massachusetts and bankruptcy court in California) and was before the Massachusetts Appeals Court on three occasions. The Plaintiff pursued four parallel actions as follows.
One, the plaintiff began an action in Bristol County (Massachusetts) Superior Court seeking to enjoin the defendants from interfering with the plaintiff's rights to collect rents directly from the tenants of the shopping center upon defendants' default. After hearing, the Superior Court denied the plaintiff's motion and, instead, enjoined the plaintiff from interfering with the defendants' right to the rents. The plaintiff appealed to a Single Justice of the Massachusetts Appeals Court who, after hearing, reversed the Superior Court, and ordered the rents to be paid into escrow.

Two, the plaintiff commenced a foreclosure action on the mortgage. On the eve of the foreclosure,

the defendants filed a "counterclaim" in the Bristol County (Massachusetts) Superior Court action, alleging lender liability as an offset to the plaintiff's claim. Upon request of defendants and after hearing the Superior Court enjoined the foreclosure. The plaintiff appealed to a Single Justice of the Massachusetts Appeals Court which, again, after hearing, reversed the Superior Court and allowed the foreclosure to proceed.

Three, because the defendants had "counter-claimed" against the plaintiff, an entity which was in bankruptcy, the plaintiff filed a motion for contempt in the U.S. Bankruptcy Court in the Central District of California seeking compensation and punitive damages for violations of the automatic stay.

Four, the plaintiff commenced an action on the guaranty in the U.S. District Court. The individual defendant filed a motion to dismiss which was denied by the Court.

The case was resolved on favorable terms to the plaintiff by permitting the foreclosure to occur, providing for the turn-over of all rents to the plaintiff and payment of $850,000 of the $1,600,000 guaranty.

A significant and unsettled issue under Massachusetts law was raised by the litigation. In a previous case, on similar facts, the U.S. Bankruptcy Court applying Massachusetts law, had ruled that a mortgagee not in possession of the property was not entitled to collect rents directly from the tenants, upon the default of the mortgagor, notwithstanding the existence of an independent assignment of rents. This ruling formed the basis for the Superior Court's decision enjoining the plaintiff's alleged interference. The Single Justice of the Massachusetts Court, by vacating the injunction and restraining the defendants from interfering with the plaintiff, chose not to follow the Bankruptcy Court's holding. The ruling is significant in that it may allow mortgagees to collect rents without taking possession of the property.

I directed all phases of the litigation and personally prepared pleadings and tried and/or argued all motions and appeals except those in the

Bankruptcy Court action on the West Coast.

10. Colonial Mortgage Service Company of California v. Pioneer Federal Savings and Loan, et al United States District Court for the Central District of California. Case No. 84-2175 before the Honorable William Matthew Byrne, Jr.

- Co-counsel for plaintiff

- April 84 - June 87

- Counsel for corporate defendants, Pioneer Federal Savings and Loan and Pacific Pioneer,
  Manuel S. Klausner, P.C.
  Kindel & Anderson
  Twenty Six Floor
  555 South Flower Street
  Los Angeles, CA 90071 (213) 680-2222

- Counsel for individual defendant,
  Robert Ash
  Paul F. Cohen, Esquire
  Fogel, Rothschild, Feldman & Ostrov
  5900 Wilshire Boulevard
  Twenty Six Floor
  Los Angeles, CA 90036
  (213) 937-6250

- Co-Counsel for plaintiff,
  Jon Moss, Esquire
  Berger, Kahn, Shafton & Moss
  4215 Glencoe Avenue
  Marina del Rey, CA 90292
  (213) 821-9000

The plaintiff was engaged in the business of originating, placing and servicing commercial real estate loans in the western United States. The individual defendant was the head of its western operation. The corporate defendants were a Florida savings and loan and its commercial loan subsidiary.

The action involved allegations that the individual defendant breached his fiduciary duty to the plaintiff and that the corporate defendants knowingly participated in and received the benefits of the individual defendant's disloyalty, by acquiring, in one fell swoop, the plaintiff's

six field offices and all of its personnel located at offices in the western United States.

The case was logistically complicated in that the plaintiff was located in Philadelphia, PA, the corporate defendants in Clearwater, FL, the individual defendant in Seattle, WA and the material witnesses in California, Colorado and Washington state. Additionally, the plaintiff's parent whose actions were material to the case (GMAC Assurance Corporation) was located in Michigan and the expert witnesses were in New York and California, respectively.

Legally, the case raised issues of conflicts of law and tested the notion of whether an employee, not subject to a non-compete covenant, could be held liable for breach of fiduciary duty, if he led the defection of employees under his supervision to a competitor, notwithstanding the subordinates' dissatisfaction and intent to leave their present employment. Conversely, the Court was asked to consider whether a competitor who received the benefit of the breach, could be held liable for unfair competition.

The defendants claimed that the employees were "dissatisfied" as a result of plaintiff's corporate policies and "would have left" the plaintiff's employment regardless of defendants' conduct. The Court ruled on the eve of trial in response to a motion in limine that "dissatisfaction", even if true, was not a justification for a breach of fiduciary duty. Therefore, the individual dissatisfaction of the defendant was cognizable but not that of his subordinates.

The defendants also sought to introduce evidence that their conduct was justified based on notions of freedom of contract. The Court also excluded this evidence as irrelevant and intended to invade the province of the jury.

I served as co-counsel, taking all discovery, drafting all pleadings and arguing the key motions for summary judgment and in limine.

After the jury was selected the case was settled. A confidentiality order bars disclosure of the terms of the settlement.

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 1978 to 1981, I was co-counsel to significant grand jury investigations conducted by the Antitrust Division through its Philadelphia office. In addition to the matter described above, In re Glassine and Greaseproof Paper (United States v. Deerfield Specialty Paper), I was co-counsel in two investigations where no indictments were ultimately returned, In re Fine Paper and In re Packaging Paper.

These investigations, nation-wide in scope, examined allegations of price fixing in major product markets. They involved the review of thousands of documents, the interviewing and grand jury appearance of dozens of witnesses, the negotiation of use immunity with counsel for cooperating witnesses, subjects and targets of the investigation, the analysis of economic data involving conditions in the industry and price movements, and the organizing and presentation of the evidence gathered to senior Department of Justice officials. I participated extensively in all of these activities and assisted in providing a strategic direction to the cases.

On the civil side, I was co-counsel to an Antitrust Division merger investigation of a possible violation of Section 7 of the Clayton Act in the brick industry in the Northeast United States. The Marion Brick Company, one of the top ten manufacturers of bricks servicing the Northeast United States was acquired by a British conglomerate, which already controlled Glen Gerry, also one of the top ten manufacturers of brick in the relevant market. The combined entity was to become the leading brick manufacturer in the northeast United States. In re Glen Gerry. The investigation took the form of collection and review of economic data filed by the merging parties under Scott-Hart-Rodino, interviewing of competitors, customers and putative competitors, analysis of the data in light of the then in effect Department of Justice's merger guidelines and development of a legal definition of the relevant product and geographic markets. The investigation took place on a continuous basis over a two month period in the Spring 1981. Subsequent to my departure from government service, the Antitrust Division determined it would not challenge the merger.

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 will receive approximately $10,000 to $20,000 on or about March 31, 1992, as the balance of my share of the profits for the fiscal year 91-92. The exact amount will be determined based on a formula contained in the Firm's partnership agreement and will involve no exercise of discretion in amount or timing. A capital account maintained at the Firm of approximately $17,500 and my interest in the Firm's 401(k) plan amounting to approximately $40,000 will be rolled over to an IRA or government pension plan upon effective date of judicial appointment.

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 code of judicial conduct and also will apply the provisions of 28 U.S.C. $453.

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

   None

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

   See attached Ethics in Government Act of 1978 form.

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

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

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Robreno, Eduardo C.	United States District Court For the Eastern District of Pennsylvania	November 26, 1991
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
Judicial Nominee	___ Nomination, Date ___ X Initial ___ Annual ___ Final	January 1, 1990 to November 1, 1991

7. Chambers or Office Address
2000 Market Street
10th Floor
Philadelphia, PA 19103

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

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

☐ NONE (No reportable positions)

POSITION	NAME OF ORGANIZATION/ENTITY
Partner	Fox, Rothschild, O'Brien & Frankel, Phila, Pa
Trustee	Episcopal Hospital Phila., P
Director	Southeastern Pennsylvania Red Cross, Phila., P

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

☐ NONE (No reportable agreements)

DATE	PARTIES AND TERMS
June 11, 1991	Fox, Rothschild, O'Brien & Frankel (See Attachment No. 1)

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

☐ NONE (No reportable non-investment income)

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	Fox, Rothschild, O'Brien & Frankel	$
2	(law partnership) Calendar year 1990 distribution	$ 110,000
3	Calendar year 1991 to 11/1/91	$ 84,000
4		$
5		$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Eduardo C. Robreno	November 26, 1991

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of instructions.

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements or gifts)	
1	N.A. to initial reporting	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

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

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts)		
1	N.A. to initial reporting		$
2			$
3			$
4			$

VI. LIABILITIES.

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

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities)		
1	United Valley Bank (J)	Unsecured line of credit	K
2	Phila., PA		
3			
4			
5			
6			
7			

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

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Eduardo C. Robreno	November 26, 1991

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

A. Description of Assets (Including trust assets) Indicate, where applicable, owner of the asset by using the parentheses (J), for joint ownership of reporting individual and spouse, (S), for ownership by Dependent child. Please "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period (1) Amt. Code (A-E)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period (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-E)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
1 C.D. Provident Bank Phila., Pa	B	Int	J						
2 Bank account, PSFS Phila., Pa	A	Int	J						
3 Retirement Plan Fox, Rothschild									
4 O'Brien & Frankel	C	Div	K						
5									
6									
7									
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9									
10									
11									
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16									
17									
18									
19									
20									

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 K=$250,001 to $500,000	E=$15,001 to $50,000 O=$500,001 to $1,000,000	L=$50,001 to $100,000 P=More than $1,000,000	M=$100,001 to $250,000
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Eduardo C. Robreno	November 26, 1991

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 c Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicato function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent childre 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 childre if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported w 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 be 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 Conferen regulations.

Signature _____ Date _____

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

CONFIDENTIAL

TO: Don M. Knerr

FROM: Louis W. Fryman

DATE: June 11, 1991

MEMORANDUM

RE: EDUARDO C. ROBRENO

The following is the formula for calculating earnings to which Eduardo will be entitled upon his termination:

(1) Eduardo will continue to receive his regular draw up to the date of his termination.

(2) After the end of our fiscal year, when the [illegible] unit values are calculated, Eduardo will be entitled to his pro-rata share of profit-only income based on the [illegible] unit values.

(3) We will discuss the payout of Eduardo's capital balance when we determine the exact date of his termination.

LWF/[illegible]

cc: Eduardo C. Robreno

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

   See attached.

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

   Campaign Chairman of Karen Chizek for State Representative Committee (Philadelphia, Pa.) (Nov. 1988)
   Campaign Chairman of Jack Ortiz for State Representative Committee (Philadelphia, Pa.) (Nov. 1984)
   In both campaigns my responsibility involved signing the financial disclosure forms filed with the Secretary of the Commonwealth of Pennsylvania.
   Chairman, Latinos for John Egan (1983)
   Chairman, Hispanics for Arlen Specter (1986)
   Organized committees seeking to persuade Latino community to support candidates for Mayor of Philadelphia, Pa. and U.S. Senate

FINANCIAL STATEMENT

NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks (1)	6,000	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured (6)	23,500
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 (7)	97,500 27,000
Real estate owned—add schedule (2)	205,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property	93,000		
Cash value—life insurance (3)	1,800		
Other assets—itemize:			
401(K) Plan (4)	40,000	American Express	2,300
Partnership Capital Account (5)	17,500		
		Total liabilities	150,300
		Net worth	213,000
Total assets	363,300	Total liabilities and net worth	363,300

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	No	Are any assets pledged? (Add schedule.)	No
On leases or contracts	No	Are you defendant in any suits or legal actions?	No
Legal Claims	No	Have you ever been bankrupt?	No
Provision for Federal Income Tax	No		
Other special debt	No		

(1) PSFS
Accountant No. 605701656

(2) 109"B" Lombard Street
Philadelphia, PA 19147

(3) Cash surrender value: $1,800.55
Principal Mutual Life, Des Moines, Iowa.

(4) Fox, Rothschild, O'Brien & Frankel
Contact: Don Knerr, Chief Financial Officer
Fox, Rothschild, O'Brien & Frankel
2000 Market Street
Philadelphia, PA 19103

(5) Fox, Rothschild, O'Brien & Frankel
Contact: Don Knerr, Chief Financial Officer
Fox, Rothschild, O'Brien & Frankel
2000 Market Street
Philadelphia, PA 19103

(6) United Valley Bank, Philadelphia, Pa.

(7) GMAC Mortgage Corp., Phildelphia, Pa.
Account No. 01723 1991460

Mellon-PSFS Philadelphia, Pa.
Account No. 0611-293-0000445-17

III. GENERAL (PUBLIC)

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

   In the past ten years I have been actively involved in the Hispanic community of Greater Philadelphia. In that regard, I have been involved with and served as a member of the board of directors of the Puerto Rican Festival Committee, the Cuban Community Club and ths Spanish Merchants Association; I have also provided advice and counsel to the elected political leadership of the Commonwealth on issues relating to the Hispanic community through service as Chairman of Senator Arlen Specter's Council on Hispanic Community and as a member of Govsrnor Dick Thornburgh's Council on Hispanic Community.

   I have also been involved in a variety of non-profit organizations in the community at large including serving on the Board of Directors of the American Red Cross Southeastern Pennsylvania Chapter and as member of the American Red Cross national nominating committee, Episcopal Hospital and the Fellowship Commission. In the Red Cross, I chaired the Hispanic initiative program which was intended to make Red Cross service available to the disadvantaged Hispanic population. Episcopal Hospital is located in the heart of the City of Philadelphia's poorest area and it services largely disadvantaged population.

   Finally, I have been involved in attempting to improve minority representation in all aspects of our legal system. In that regard, I am a founding member of the Hispanic Bar Association of Pennsylvania, have served as a Member of the Committee to Select Interpreters for Court of Common Pleas of Philadelphia County. I have accepted appointments to serve as counsel to indigent criminal defendants, and supervise my law firm's involvement in the VIP Program (civil representation to poor) in creditor-debtor cases.

   Overall, I estimate that the community activities described above occupy 10% of my professional time.

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).

In the Eastern District of Pennsylvania, there is a nominating commission (the "Commission"). The members of the Commission were appointed by the late Senator John Heinz and Senator Arlen Specter. In December 1990, I asked to be considered by the Commission for appointment to the federal bench. I was interviewed by the Commission in February 1991. The Commission submitted the names of 16 candidates to Senators Heinz and Specter. I met with both Senators, separately, in Washington, D.C. on March 6, 1991. I was advised by Senator Specter on April 26, 1991, that he was forwarding my name to the White House as the nominee for one of the four newly created positions in the Eastern District of Pennsylvania. Since Senator Specter's recommendation, I have been interviewed by officials of the Justice Department, an agent of the FBI and the investigator for the American Bar Association's Standing Committee on the Federal Judiciary.

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

No.

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

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

the prerogatives of other branches and levels of government.

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

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

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

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

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

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The genius of American democracy may well be rooted in the framers' allocation of power and responsibilities between the central government and the states and among the three branches of the central government. Adherence to predictable rules of decision making promotes trust and confidence in the judicial process and ensures the requisite popular support for its results.

The role of the district judge under Article III of the Constitution is not to "make law" but rather it is to apply it, as he/she finds it, from the pronouncements of the Supreme Court and the Courts of Appeals. Put in a slightly different manner, the district court judge is first and foremost the presiding officer of a dispute resolution forum hearing cases between discrete parties. The court's principal role is to ensure that the fact finding process is carried out fairly and to apply the law to the facts of the case as to achieve a legally correct result.

GORDON J. QUIST

Birth:	November 12, 1937	Grand Rapids, Michigan
Legal Residence:	Michigan	
Marital Status:	Married	Martha Jane Capito Quist 5 children
Education:	1955 - 1957	Calvin College
	1957 - 1959	Michigan State College B.A. degree
	1959 - 1962	George Washington University Law School J.D. degree
Bar:	1962 1964 1967	District of Columbia Illinois Michigan
Experience:	1961 - 1964	Hollabaugh, Jacobs & Ward Associate
	1964 - 1966	Sonnenschein Levinson Carlin Nath & Rosenthal Associate
	1967 - present	Miller, Johnson, Snell & Cummiskey Associate, 1967-1971 Partner, 1971-1987 Managing Partner, 1987-present
Office:	800 Calder Plaza Building Grand Rapids, Michigan 49502 616 459-8311	

To be United States District Judge for the Western District of Michigan

United States Senate

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Gordon Jay Quist

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

   Residence

   12055 Bluewater Road
   Grand Haven, MI 49417

   Office

   800 Calder Plaza Building
   Grand Rapids, MI 49503

3. Date and place of birth.

   November 12, 1937; Grand Rapids, Michigan

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

   Married: Martha Jane Capito
   Not employed outside of home

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

   George Washington University Law School
   9/59 to 5/62
   J.D., with honors

   Michigan State University
   9/57 to 3/59
   B.A.

   Calvin College
   9/55 to 6/57
   Transferred to Michigan State University

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.

1/67 - Present - Managing Partner - Lawyer
Miller, Johnson, Snell & Cummiskey
800 Calder Plaza Building
Grand Rapids, MI 49503

6/64 - 12/66 - Associate Lawyer
Sonnenschein, Levinson, Carlin, Nath
8000 Sears Tower
Chicago, IL 60606

5/62 - 6/64 - Associate Lawyer
Hollabaugh & Jacobs, Washington, D.C.
(No Longer Exists)

10/61 - 5/62 - Research Clerk (part time)
C. Aubrey Gasque
Supreme Court Bldg.
Washington, D.C.

7/61 - 10/61 - Research Clerk (Part time)
Richard Arens (Deceased)
Washington, D.C.

5/61 - 7/61 - Summer Clerk
U.S. Bureau of Public Roads
Miss Markham
Washington, D.C.

5/60 - 9/60 - Mason's Tender
Cornelius Quist (Uncle - Deceased)
Grand Rapids, MI

5/59 - 9/59 - Mason's Tender
Joe Vlietstra
1464 Grenadier Ct. S.W.
Wyoming, MI 49509

Current Directorships:

Kent Funds, Director, Investment Company Act of 1940. (1991-Current.) This company manages mutual funds for Old Kent Financial Corporation. The funds are known as Kent Funds. Elected for one year terms. The board meets four times a year.

Transnational Motors, Inc. d/b/a Mazda Distributors Great Lakes, Director and Secretary. (1977-Current.) This company is the wholesale distributor of Mazda brand motor vehicles in five states. I am also an officer and director of some affiliated companies. Elected for one year terms. The board meets a few times a year.

Travel Consultants, Inc., Director and Secretary. (1985-Current.) This company is a travel agency. Elected for one year terms. The board meets about twice a year.

Spartan Distributors, Inc., Director and Secretary. (1976-Current.) This company is a wholesale distributor of lawn, garden and snow equipment - primarily Toro brand. Elected for three year terms. The board meets once a year.

Eastpointe Car Co., Director and Secretary. (1982-Current.) This company owns and operates several retail auto dealerships. Elected for one year terms. The board transacts business on a unanimous written resolution basis.

All of these director positions require a minimum amount of time. I am not involved in the day to day operations of any of these businesses.

Formerly a director of the following for-profit corporations:

Muller Shoes, Inc. (1982-1989)
1001 28th St.SW, Wyoming, MI 49509

Import Motors Limited, Inc. (1967-1981) (Dissolved)

The non-profit directorships are listed in response to Question No. III, 1.

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.

Order of the Coif

J.D., with honors, 1962

Research Editor, George Washington University Law Review, 1961-62

Trustee Scholarship (Tuition waiver), George Washington University Law School, 1961-62

Listed in The Best Lawyers in America (1989-1990, 1991-1992) (For what it is worth.)

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.

Council Member and Vice President, Michigan State Bar Business Law Section - Council member since 1987, Co-Chairperson and Moderator of 1989 Mid-year meeting and program, Chairperson and Moderator of 1990 and 1991 Mid-year meetings and programs

1988 - Current, Fellow, Michigan State Bar Foundation

1963 - Current, American Bar Association (Litigation, Antitrust and Business Law Sections)

1987 - Current, Michigan State Bar Association (Business and Antitrust Law Sections)

1967 - Current, Grand Rapids Bar Association

1987 - Current, Ottawa County Bar Association

Past member of Chicago Bar Association (1966-67)

Past member of District of Columbia Bar Association (1963-64)

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.

Grand Rapids Economic Club; Federalist Society.

To the best of my knowledge I do not belong to an organization engaged in lobbying.

Social Clubs: I am a member of The University Club, Grand Rapids (1989-Current.); The Peninsular Club, Grand Rapids (1972-Current.). By-laws of these clubs are attached to the original of this document.

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 District of Columbia: December 14, 1962

U.S. Court of Appeals for the D.C. Circuit: January 2, 1963

Illinois: November 19, 1964

U.S. District Court for the Northern District of Illinois: February 11, 1965

U.S. Supreme Court: March 18, 1968

Michigan: March 8, 1967

U.S. District Court for the Western District of Michigan: 1967

U.S. Court of Appeals for the Sixth Circuit: March 6, 1969

U.S. District Court for the Eastern District of Michigan: May 5, 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.

None

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

Excellent. November 1991

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

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.

None

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

None

17. Legal Career:

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

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

No

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

No

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

(a) Hollabaugh, Jacobs & Ward: 5/61-64
Barr Building
Washington, D.C.

I was an associate with this firm. This firm no longer exists. It was merged into the firm of Foley & Lardner, headquartered in Milwaukee, WI. A person who has direct personal knowledge of my work at this firm is:

Alan S. Ward
Baker & Hostetler
Washington Square, Suite 1100
1050 Connecticut Ave. N.W.
Washington, D.C. 20036
Telephone. 202/861-1515

(b) Sonnenschein Levinson Carlin Nath & Rosenthal: 6/64-12/66
8000 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
Telephone: 312/876-8000

I was an associate at this firm. A person who has direct personal knowledge of my work at this firm is:

Harold D. Shapiro
Sonnenschein Nath & Rosenthal
8000 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
Telephone: 312/876-8000

(c) Miller, Johnson, Snell & Cummiskey: 1/67-Present
Partner: 1971
Managing Partner: 1987-Present
800 Calder Plaza Building
250 Monroe Ave. NW
Grand Rapids, Michigan 49503

A person who has direct personal knowledge of my work with this firm is:

Robert D. Brower
Miller, Johnson, Snell & Cummiskey
800 Calder Plaza Building
Grand Rapids, MI 49503
Telephone: 616/459-8311

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.

In Washington, D.C. I worked with a firm that specialized in antitrust law before various courts, the U.S. Congress and the FTC. I basically wrote briefs and memos and helped try an FTC Act Section 5 case. In Chicago, IL., I worked on frauds, antitrust, construction and other matters. I appeared in court on motions. I also did some transactional (acquisition) work.

I started with Miller, Johnson, Snell & Cummiskey on January 2, 1967. Until I became Managing Partner on March 1, 1987, I divided my time about equally between business and litigation matters.

In the business area I have negotiated and drafted contracts regarding sales and acquisitions of privately held companies, negotiated a major distribution contract with a Japanese auto importer and manufacturer, drafted various other types of agreements, advised clients on questions relating to contracts, distribution of goods and other matters. With small exception, I have not represented people in real estate, estate planning, probate, divorce, etc. I rely on tax experts for tax advice.

When I first came to Grand Rapids, I received federal court appointments in criminal and habeas corpus matters, and I was appointed to represent a witness who refused to testify in a bank robbery-murder trial.

From the 1970's into the early 1980's in the employment litigation area, I handled and assisted in civil rights (Title VII), "Boys Market", LMRA §301, type of cases, etc. Long ago, I developed our firm's original check lists and forms for strike violence injunctions and "Boys Market" cases. In the 1970's, I tried many arbitration cases for clients such as Ferris State College and Michigan Carton Company.

Also, in the early 1970's, Dow Chemical Company decided to start using non-union building trades in its huge Midland, Michigan facility. This led to labor disturbances. I was the primary lawyer for the non-union contractor, Collinson Construction Company, and a lead counsel for Dow Chemical Company. We filed a federal civil law suit and an NLRB charge which led, after some legal skirmishing, to injunctions against the building trades which effectively stopped the problems. Also, during this period I assisted the house counsel for Lear-Siegler, Inc. in the defense of two Title VII actions which were tried in the U.S. District Court for the Western District of Michigan. Mabin v Lear-Siegler, Inc., 4 FEP Cases 679 (W.D. Mich. 1971), aff'd 457 F.2d 806 (6th Cir. 1972).

Since about the mid-1970's, I have been the lawyer responsible for General Motors Corporation's employment litigation in Western Michigan. Many of the GM cases were in federal court, and some were in State court. Most of the cases were dismissed on motion or abandoned by the plaintiffs. Only a few cases were settled, and only two settlements were of substance. To the extent possible, I have delegated my responsibilities in the employment law area.

In the commercial litigation area, I have handled Sherman Act cases (for Minnesota Mining and Manufacturing Co. and Cessna Aircraft Company, among others), Dealers Day in Court Act (for Import Motors Limited, Inc. and Mazda Distributors Great Lakes), breach of contract, tortious interference with contract (for Holland Hitch Forwarding Co.), stockholders rights and directors duties (for ACEMCO, Inc., a small manufacturer in Grand Haven, MI.), Securities Exchange Act §10(b) (for outside directors of Zondervan Corporation and a Grand Rapids broker-dealer), breach of contract for sales representatives of a major furniture manufacturer; sales rep commission; broker-dealer matters filed in federal and state courts (for different people including Robert W. Baird & Co.). In the late 1980's and early 1990's, I represented bank officers of a failed bank in suits brought by the FDIC and others (National Bank & Trust of Traverse City). While I have been responsible for these cases, I have usually had the necessary assistance of other partners and associates of my firm.

Since March 1, 1987, I have been the Managing Partner of my law firm of about 75 lawyers. I am responsible for the management of the firm much as a CEO is responsible in a corporation. In other words, I have a fair amount of authority. My role as Managing Partner has limited my practice of law to about 1000 billable hours per year. Therefore, I have chosen to work on a few relatively complicated matters such as a major CERCLA case on behalf of CPC International, Inc., a major case on behalf of BDO Seidman, and an antitrust case on behalf of Cessna Aircraft Company and the FDIC matters described above. In addition, I, together with a law school professor, have recently represented a Special Committee of directors of a publicly held corporation which was trying to sell all or part of its assets or stock - director's Revlon duties, etc.

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.

Occasionally.

2. What percentage of these appearances was in:

(a) federal courts; 70%
(b) state courts of record; 15%
(c) other courts. 10%

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 cannot answer this for sure. There are about 12 of which I was sole counsel for about 50%; co-counsel for about 25% and associate counsel for about 25%. If summary judgments are included, the number of cases would be much greater.

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.

It is very difficult for me to determine what cases are the most important. The following list gives you a good idea of the types of matters I have handled over the last several years.

1. Case: Bono v. Van Eerden, Inc.; Dkt No. 90-69626-CK
Court: Kent County Circuit Court
Judge: Michael R. Smolenski
Kent Circuit Court Judge
Hall of Justice
333 Monroe Ave. NW
Grand Rapids, MI 49503
Telephone: 616/774-3677

Opposing Counsel: Gary P. Schenk
Frederick J. Boncher
Schenk, Boncher & Prasher
180 N. Division
200 College Park Plaza
Grand Rapids, MI 49503
Telephone: 616/454-8277

Co-Counsel for Defendants: David J. Gass
Miller, Johnson, Snell & Cummiskey
800 Calder Plaza Building
Grand Rapids, MI 49503
Telephone: 616/454-8311

This case involves the alleged breach of a stock purchase agreement and employment agreement. Plaintiff claims that our client, the purchaser, did not use his best efforts to sell the product of the seller. I have been involved in "strategizing" the case, made the opening statement, cross-examined plaintiff's major witness, and examined defendant's major witness. I attended about one-third of the trial. My partner David J. Gass attended the whole trial and made closing argument. The case was tried from January 21, 1992 through February 13, 1992. The plaintiffs sought damages in excess of $1,000,000. Judge Smolenski intends to enter judgment for about $22,000--an amount which we believe is a "victory" for our client.

2. Case: Kolb v. Transnational Motors Inc.; DKT No. 90-65641-CK
Court: Kent County Circuit Court
Judge: George S. Buth
Kent Circuit Court Judge
Hall of Justice
333 Monroe Ave. NW
Grand Rapids, MI 49503
Telephone: 616/774-3784

Opposing Counsel: Richard J. Stolcenberg
1777 28th St. SW
Grand Rapids, MI 49509
Telephone: 616/532-1666

This was a wrongful termination case which potentially involved the interpretation of recent Michigan Supreme Court decisions in the area. I was sole trial counsel for the defendant employer. Because the case is fairly recent, I thought that you would be interested. This was a bench trial that started on November 18, 1991 and was settled after one week of intermittent trial.

3A. Case: Kaufman, et al v. BDO Seidman, et al; No. 89-24813-CK
Court: Muskegon County Circuit Court
Judge: R. Max Daniels
Muskegon County Courthouse
990 Terrace St.
Muskegon, MI 49442
Telephone: 616/724-6337

Opposing Counsel: Grant J. Gruel
Gruel, Mills, Nims & Pylman
Suite 700 West
50 Monroe Place
Grand Rapids, MI 49503
Telephone: 616/235-5500

Co-counsel: Hon. Edward R. Post
58th District Court Judge
57 W. 8th St.
Holland, MI 49423
Telephone: 616/392-6991

Our firm represented the defendants, BDO Seidman and David J. Fles. The claim was that our clients made negligent misrepresentations and committed accountants' malpractice in advising their former client, the plaintiff, to invest about $4.0 million in limited partnerships. My partner, Edward R. Post, and I shared the trial responsibilities; we both argued, examined witnesses, etc. I did most of the strategizing on the case. The importance of the case was the

amount of money involved (about $4.0 million invested) and the fact that our clients felt that their reputation was at stake. There are also interesting legal issues such as the statute of limitations and whether there really could have been negligent misrepresentation under the circumstances. The case ended in a jury verdict for the defendants. The case is currently on appeal. (Case tried 9/11/90)

3B. Case: Kaufman, et al v. BDO Seidman, et al; ____ F.Supp. ____ (W.D. Mich. 1992)
Court: U.S. District Court
Judge: Douglas W. Hillman
U.S. District Court
Federal Building
Grand Rapids, MI 49503
Telephone: 616/456-2523

Opposing Counsel: Grant J. Gruel
Gruel, Mills, Nims & Pylman
Suite 700 West
50 Monroe Place
Grand Rapids, MI 49503
Telephone: 616/235-5500

In addition to filing the case described as #3A, plaintiffs filed a complaint alleging 10b(5) and RICO claims. Judge Hillman granted defendants' motion for summary judgment because of claim and issue preclusion on January 31, 1992.

4. Case: General Aviation, Inc. v. The Garrett Corporation, et al, 743 F. Supp. 515 (W.D. Mich. 1990)
Court: U.S. District Court for the Western District of Michigan
Judge: Wendell A. Miles
U.S. District Court
Federal Building
110 Michigan St. NW
Grand Rapids, MI 49503
Telephone: 616/456-2314

Opposing Counsel: William A. Sankbiel
Kerr, Russell & Weber
2100 Comerica Bldg.
Detroit, MI 481226
Telephone: 313/961-0200

Co-Defendant's Counsel: Barbara L. Goldman
Dykema Gossett
35th Floor
400 Renaissance Center
Detroit, MI 48243-1504
Telephone: 313/568-6604

Our firm represented The Cessna Aircraft Company, a defendant. The claim was that The Garrett Corporation's agreement with Cessna that Garrett would not sell aircraft engine repair parts to Cessna dealers or certain others violated Section 1 of the Sherman Act. I came up with the initial idea for the defense, handled the depositions on behalf of Cessna, etc. My former partner, Edward R. Post, handled most of the "statute of limitations" issue on the state law claim. The case was important because it went to the heart of how Cessna intended to distribute its aircraft repair parts and maintain the aircraft after they were sold by Cessna dealers. The case was also important because it was the first reported case in Michigan dealing with "dual distribution." The case ended in summary judgment for the defendants.

5. Case: Kantor, et al v. The Zondervan Corporation, et al;
Docket #G85-253 CA1
Court: U.S. District Court for the Western District of Michigan
Judge: Wendell A. Miles
U.S. District Court
Federal Building
110 Michigan St. NW
Grand Rapids, MI 49503
Telephone: 616/456-2314

Opposing Counsel: Roger W. Kirby
Kaufman, Malchman, Kaufmann & Kirby
919 Third Avenue
New York, New York 10022
Telephone: 212/371-6600

Co-Defendant's Counsel: Jay A. Cragwall, Jr.
Warner, Norcross & Judd
900 Old Kent Building
Grand Rapids, MI 49503
Telephone: 616/459-6121

Stephen D. Turner
Dykema Gossett
248 Louis Campau Promenade NW
200 Oldtown Riverfront Building
Grand Rapids, MI 49503
Telephone: 616/776-7500

William S. Farr
Farr & Oosterhouse
400 Ledyard Building
125 Ottawa Ave. NW
Grand Rapids, MI 49503
Telephone: 616/459-3355

Grant J. Gruel
Gruel, Mills, Nims & Pylman
Suite 700 West
50 Monroe Place
Grand Rapids, MI 49503
Telephone: 616/235-5500

This was a class action Securities Exchange Act §10(b) case. The plaintiff alleged that an over-evaluation of inventory and other errors caused The Zondervan Corporation's earnings and assets to be overstated. I represented most of the "outside directors" and played a very active part in the case. We made motions to dismiss and for more definite statement, conducted discovery, etc. Most important, I think that I played a valuable roll in getting the parties and insurers talking with each other. The case was settled in October 1988.

6. Case: Manufacturers Supply Co. v. Minnesota Mining and Manufacturing Co., 688 F. Supp. 303 (W.D. Mich. 1988); Dkt #G85-960-CA1
Court: U.S. District Court for the Western District of Michigan
Judge: Douglas W. Hillman
U.S. District Court
Federal Building
110 Michigan St. NW
Grand Rapids, MI 49503
Telephone: 616/456-2523

Opposing Counsel: Dale W. Rhoades
Rhoades, McKee, Boer, Goodrich & Titta
600 Waters Building
Grand Rapids, MI 49503
Telephone: 616/235-3500

Co-Counsel: Jon G. March
Miller, Johnson, Snell & Cummiskey
800 Calder Plaza Building
Grand Rapids, MI 49503
Telephone: 616/459-8311

Our firm represented Minnesota Mining and Manufacturing Company, the defendant. This was a fairly typical dealer termination case except for the fact that the plaintiff produced an expert who testified in his deposition that the sales practices of 3M and the

termination by 3M constituted an unreasonable restraint of trade. The expert was propounding the "populist theory" of antitrust law. I handled the antitrust aspects of the case, and my partner, Jon March, handled the contract portion of the case. I deposed the expert, wrote and argued the antitrust portion of the case. The case ended in summary judgment for the defendant. The District Court accepted our argument of the "market power" threshold test for reasonableness.

7. Case: Wood, et al v. General Teamsters Union, Local 406, et al, 565 F. Supp. 1011 (W.D. Mich. 1983) (Right to jury trial in LMRA § 301 case.); Wood v. Teamsters, 583 F. Supp. 1471, 101 F.R.D. 784 (W.D. Mich. 1984) (Denial of motion to disqualify counsel on grounds that arbitrator had joined plaintiffs' firm.); Wood v. Teamsters, 593 F. Supp. 355 (W.D. Mich. 1984) (Motion in limine.); Wood v. Teamsters, 603 F.Supp. 992 (W.D. Mich. 1985) (Denial of judgment n.o.v.), rev'd 807 F. 2d 493 (6th Cir. 1986).

Court: U.S. District Court for the Western District of Michigan

Judge: Hon. Benjamin F. Gibson
United States District Court
110 Michigan St. NW
Grand Rapids, MI 49503
Telephone: 616/456-2528

Opposing Counsel: Hon. Dennis C. Kolenda
Kent Circuit Judge
Hall of Justice
333 Monroe Ave. NW
Grand Rapids, MI 49503
Telephone: 616/774-3788

Co-Defendant's Counsel: H. Rhett Pinsky
Pinsky, Smith, Fayette & Hulswit
1515 McKay Tower
146 Monroe Center
Grand Rapids, MI 49503
Telephone: 616/451-8496

Our firm represented The Kroger Co. in an LMRA §301 case, which involves a union's duty of fair representation and an alleged breach of a collective bargaining agreement. There were several legal issues that were not decided at the time the case was pending, e.g. the right to a jury trial in a Section 301 case. The issue at trial was whether the defendant union violated its duty of fair representation after Kroger closed a warehouse. Former Teamsters claimed that the union violated its duties, among other ways, by permitting the successor of Kroger to hire former Kroger employees without regard to seniority and by not trying an arbitration as it should. The issue as to Kroger was whether Kroger broke the collective bargaining agreement. I handled discovery and tried the case for Kroger. I was assisted by an associate, Wm. H. Fallon. The case was very high profile in the community - the plaintiffs were referred to in the media as "the Kroger orphans." The trial was bifurcated between liability and damages. After a six week trial on liability in September and October 1985, a jury verdict was

entered for the plaintiffs on liability. On interlocutory appeal, judgment was entered for the defendants for reasons that were argued to the trial court. Another law firm handled the appeal.

8. Case: EEOC v. Bronson Methodist Hospital, 489 F. Supp. 1066 (W.D. Mich. 1979)
Court: U.S. District Court for the Western District of Michigan
Judge: Benjamin F. Gibson
United States District Court
110 Michigan St. NW
Grand Rapids, MI 49503
Telephone: 616/456-2528

Opposing Counsel: Charlie C. Taylor
1316 Penobscot Bldg.
Detroit, MI 48226
Telephone: 313/963-5303

Our firm represented the defendant, Bronson Methodist Hospital, in a preliminary injunction trial. The basic claim was that the defendant retaliated against a nurse because she had filed a claim of discrimination against the hospital. I tried the case for the defendant for three days. The case was very important to Bronson Hospital because the hospital felt that its ability to enforce reasonable disciplinary standards was at stake. (The nurse had pulled a weapon on a hospital patient.) The case also involved the issue of whether the EEOC had to prove all of the elements that are typically required in order to obtain a preliminary injunction. The request for an injunction was denied. The EEOC then dismissed the case.

9. Case: B & E Sales v. Advance Steel Co. and Holland Hitch Forwarding Co.; No. 78-171211-CK
Court: Oakland County Circuit Court
Judge: Fred M. Mester
Oakland County Courthouse
1200 N. Telegraph Road
Pontiac, MI 48053
Telephone: 313/858-0355

Opposing Counsel: Barry A. Steinway
Thav, Gross & Steinway, PC
30150 Telegraph Rd., Ste 444
Birmingham, MI 48010-2948
Telephone: 313/645-1700

Co-Defendant's Counsel: David M. Fried
Fried & Levitt
Ste 3655
30700 Telegraph Rd
Birmingham, MI 48010-3734
Telephone: 313/645-1003

Our firm represented a co-defendant, Holland Hitch Forwarding Company, that was charged with tortiously interfering with a sales contract for a substantial amount of steel. I was the only trial lawyer for Holland Hitch. The importance of the case from a legal standpoint was the plaintiff's ability to convince the trial court (in overcoming a motion for summary judgment) that it was possible for a buyer under an ordinary sales contract to negotiate a release from that contract with its seller and then be held liable to the seller's supplier if the seller breached its own contract. After several days of trial in 1983, Holland Hitch was dismissed with a directed verdict because the plaintiff did not show that Holland Hitch had knowledge of its supplier's contract with the plaintiff. Judgment was entered against a co-defendant for breach of the sales contract, and that judgment was affirmed on appeal.

10. Case: Overseas Motors, Inc. v. Import Motors Limited, Inc., 375 F.Supp. 499 (E.D. Mich. 1974), aff'd 519 F.2d 199 (6th Cir. 1975), cert. denied 423 U.S. 987 (1975)
Court: U.S. District Court for the Eastern District of Michigan
Judge: John Fiekens
U.S. District Court
722 U.S. Courthouse
Detroit, MI 48226
Telephone: 313/226-6857

Counsel for
Co-defendants: Herbert J. Rubin
Herzfeld & Rubin
40 Wall Street
New York, New York 10005
Telephone: 212/344-5500

George E. Bushnell, Jr.
Miller, Canfield, Paddock & Stone
150 W Jefferson, Ste. 2500
Detroit, MI 48226-4415
Telephone: 313/963-6420

Bert Burgoyne
Butzel, Long, Gust, Klein & Van Zile
32270 Telegraph Rd., Ste 200
Birmingham, MI 48010-6244
Telephone: 313/258-1616

Opposing Counsel: Wilfred Burke (Deceased)

I was the sole trial counsel for Import Motors Limited, Inc., a regional distributor of Volkswagen, Porsche and Audi automobiles. The target defendants were Volkswagen of America and Audi NSU Auto Union. The plaintiffs alleged violations of the Dealers Day in Court Act and the Sherman Act. Early in the trial I moved to exclude evidence regarding my client until the plaintiff could introduce some evidence that an illegal conspiracy existed before the plaintiff threatened the defendants with a lawsuit. The court granted this motion, so I spent quite a bit of the six weeks of trial as an alert "trial watcher." At the conclusion of the plaintiffs' proofs, the trial court directed a verdict for the defendants, and the verdict was affirmed on appeal. The case was important to VWOA and Import Motors because it involved the import rights to the Audi automobile. The case did establish 6th Circuit law on the definition of "coercion" under the Dealers Day in Court Act.

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 organized and moderated the Mid Year Meetings of the State Bar Business Law Section in 1990 and 1991. (I was co-chairperson and moderator in 1989. From 1989 to 1991 attendance at these meetings grew from about 40 to 135.) I have always stayed up to date on certain aspects of distribution law - especially as it affects the automobile industry and especially, also, the antitrust aspects of exclusive dealing, dealer terminations, etc.

Some of the other reported cases include: Davis v. Bronson Methodist Hospital, 159 Mich. App. 251 (1986); Lear Siegler, Inc. v. UAW, 419 F.2d 534 (6th Cir. 1969) (This case was one of my most interesting cases in that I had difficulty having anyone in my firm of labor lawyers accept my theory. Finally, John Cummiskey argued the case to the District Court and the Sixth Circuit where we eventually prevailed. I understand that the UAW had to change its constitution because of the ruling: making an employer bargain with a sub-unit of a certified bargaining unit in order to obtain ratification of a contract can be a "secondary boycott."); McGee v. The Grand Rapids Press, 486 F.Supp. 584, aff'd 663 F.2d 1072 (6th Cir. 1981); EEOC v Ferris State College, 493 F. Supp 707 (W.D. Mich. 1980).

My most recent trial was on March 4, 1992:

Case: People v. John V. Bolling
Court: Ottawa County Circuit Court
Judge: Calvin L. Bosman
303 Ottawa County Building
Grand Haven, MI 49417
Telephone: 616/846-8320

Opposing Counsel: Gregory J. Babbitt
414 Washington St.
Grand Haven, MI 49417
Telephone: 616/846-8215

I was sole trial counsel for the defendant, who was charged with possession of cocaine. He was found guilty by the jury. He is to be sentenced on March 30, 1992.

60-251 O - 93 — 18

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 Partnership Agreement of Miller, Johnson, Snell & Cummiskey, I have an interest in the increase of accounts receivable of that firm since I became a partner in 1971. As of January 1, 1991, the book value of those receivables was $212,836. However, if I leave the firm at my current age, 54, those receivables are to be paid to me at the rate of $1000.00 per month, without interest, until paid in full. At a capitalization rate of 8%, those receivables have a present value of $113,572. I hope to negotiate payment in full at the present value.

   My capital interest in the firm is $16,614. Pursuant to the Partnership Agreement, this capital must be repaid to me within one year of my leaving the firm. No interest will be paid to me on my capital.

   In addition, I am a general partner in ARS Investors. This is a partnership composed of several of the partners of Miller, Johnson, Snell & Cummiskey. ARS is, in turn, a partner in another partnership that has an ownership interest in the office space occupied by Miller, Johnson, Snell & Cummiskey pursuant to a 10 year lease with about 9 years remaining on the lease term. Miller, Johnson, Snell & Cummiskey pays rent, and I receive a benefit from that rent. For the past several years, I have been paid between $16,000 and $20,000 per year because of my interest in ARS. If I become a judge, I intend to sell my interest in ARS. I estimate the current value of ARS to be between $150,000 and $200,000. There is some movement toward refinancing ARS so that I may be paid in full in October 1992.

   I have self directed 401-K and money purchase pension plans. These are typical plans that I will transfer to an IRA account if I become a judge.

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 intend to resign from all Boards, including charitable boards. If a conflict arises with my current firm or clients, I would not participate as a judge. In all instances, I will be guided by the Canons of Judicial Ethics and the law.

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.

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

   Attached.

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

   1970 - Arranged campaign luncheon and other meetings for U.S. Senator Phillip A. Hart

   1972 - Headed Kent County campaign of Horace A. Gilmore for Michigan Supreme Court

   1976 - Hosted fundraiser at my home for U.S. Congressman Harold Sawyer (5th District of Michigan) in his first campaign for this position.

   1989-90 - Raised funds for U.S. Congressman Fred Upton and hosted two breakfasts in my home for Congressman Upton (4th District of Michigan).

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.

ABA Post Conviction Death Penalty Representation Project - Current (Robert Lee Shell, Mississippi) (The day I went to Mississippi to start working on this case, Mr. Shell's sentence was reversed by the U.S. Supreme Court and remanded to the Mississippi Supreme Court. I spent the week with Jim Craig of the Mississippi Project meeting Mr. Shell, Mr. Shell's trial lawyers, research, etc. I have studied the transcript, researched legal issues and outlined fact questions. Mr. Shell's direct appeal was handled by Mr. Clive Stafford Smith of Atlanta, GA. Mr. Shell's sentence has been reversed by the Mississippi Supreme Court. I intend to work with Mr. Stafford Smith on the resentencing.)

Past or current* member of following Boards: Wedgewood Acres Christian Youth Homes, Inc. (1968-74); Mary Free Bed Rehabilitation Hospital (1979-88) (I was chairperson of the personnel committee; reviewed and revised personnel policies, etc.); Indian Trails Camp for Handicapped (1973-79, 1982-88) (I was president of the organization on two occasions. I met regularly with the directors; met with families of campers, etc.); Better Business Bureau (1972-80); Christian Reformed Publications (1968-74, 1977-87) (I was treasurer and member of the Executive Committee of the Board for several years. The Board is responsible for the publications of the Christian Reformed Church in North America.); West Michigan Health Systems Agency Special Committee (to study Emergency Medical Services) (I became a member of the subcommittee which developed the report and recommendations as to the delivery of emergency health care in Kent County, Michigan.); Opera Grand Rapids*; Mary Free Bed Brace Shop*; Seymour Christian School (1970-75). I spend approximately 50 hours per year on these matters.

In 1990, I handled a court appointed "prisoner's rights" case on a pro bono basis. Earlier in my career I handled criminal matters on a pro bono 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?

From about 1976 to November 1989 I was a member of the Grand Rapids Athletic Club. This was a small athletic club of about 150 members in the basement of the Old Kent Building which did not have facilities for women. In 1989 the club merged with The University Club of Grand Rapids. I encouraged the club to expand to accommodate women. The University Club did add women's athletic facilities and is totally non-

discriminatory. In addition, as a member of management of our law firm, I supported our firm's policy of not paying initiation fees or monthly dues for clubs that discriminated in any manner. See enclosed petition and letter.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? Yes. If so, did it recommend your nomination? It found four of the candidates to be qualified. I was one of the four. 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).

Along with several other candidates, I submitted a written application to a Judicial Selection Committee of approximately 30 lawyers. I and the other candidates were interviewed by this committee. This committee recommended four of the applicants as qualified to the Michigan Republican Congressional delegation.

The Michigan Republican delegation recommended three candidates to the United States Department of Justice. I, along with the other two candidates, was interviewed by the United States Department of Justice in Washington, D.C. In November 1991, I was informed by the United States Department of Justice that I was the "tentative nominee."

After being informed that I was the "tentative nominee" I filled out forms for the FBI, the American Bar Association, the Department of Justice and the United States Senate. I was interviewed by an agent of the FBI in November 1991. I was interviewed by Sixth Circuit representative of the American Bar Association Standing Committee on Federal Judiciary in January 1992.

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.

Our Constitution establishes three co-equal branches of government, and the separate powers of these branches should be respected. For example, I believe that policies and laws are to be made by the elected officials in the give and take of the political arena. This is not the arena in which judges should operate. Judges are not an elite group of "wisepersons" who can solve the country's problems through judicial decrees. As is contemplated by the Constitution's separation of powers, judges should limit themselves to applying the laws passed by the legislature and executive. I believe that when construing the Constitution or a statute, a judge should attempt to determine the principles of those that drafted the document. Of course, as a District Judge, I would be bound by the precedents set by the Supreme Court and the Court of Appeals in the Sixth Circuit.

Judges should not find "facts" in order to reach social policy results that fit into their own ideas of what is "good for the country." Rather, judges should be "neutral" in their application of law to the facts honestly determined even though they might not agree with the law to be applied to the case at hand.

AFFIDAVIT

I, Gordon J. Quist do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 26, 1992
(DATE)

(NAME) Gordon J. Quist

Subscribed and sworn to before me this 26th day of March, 1992.

(NOTARY) Janis Swenson
Kent County, Michigan
My commission expires 1/6/93

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

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

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Quist, Gordon J.	U.S. District Court for the Western District of Michigao	March 24, 1992
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type) X Nomination, Date 3/20/92 ___ Initial ___ Annual ___ Final	6. Reporting Period 3/21/92

7. Chambers or Office Address
Miller, Johnson, Soell & Cummiskey
800 Calder Plaza Building
Grand Rapids, MI 49503

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

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

☐ NONE (No reportable positions)

POSITION	NAME OF ORGANIZATION/ENTITY
Partner	Miller, Johnson, Soell & Cummiskey
Partner	ARS Investors
See Attachment No. 1	

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

☐ NONE (No reportable agreements)

DATE	PARTIES AND TERMS
See Attachment No. 2	

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

☐ NONE (No reportable non-investment income)

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	Miller, Johnson, Snell & Cummiskey	$ 210,120.
2	ARS Investors, a partnership	$ 20,000.
3	Transnational Motors, Inc. (Paid to Miller Johnson by me)	$ 1,675.
4		$
5		$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Quist, Gordon J.	3/24/92

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements or gifts)	
1	Not Applicable	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

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

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts)		
1	Not Applicable		$
2			$
3			$
4			$

VI. LIABILITIES.

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

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities)		
1	NBD - Grand Rapids	Bank Loan	K
2	Prime America Bank	Bank Loan	J*
3	Michigan National Bank	Loan from own retirement account	K
4			
5			
6			
7	*Now less than $10,000.		

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

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Quist, Gordon J.	3/24/92

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

See Attachment No. 3

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 "(E)" after each asset exempt from prior disclosure.	B. Income during reporting period (1) Amt. Code (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period Exempt (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									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
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13									
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16									
17									
18									
19									
20									

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 (cont'd)

Name of Person Reporting	Date of Report
Quist, Gordon J.	3/24/92

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 Gordon J. Quist Date 3/24/92

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

Quist, Gordon J.
Part I
March 24, 1992

Attachment No. 1

Position	Name of Organization
Director	Kent Funds, Investment Company Act of 1940 One Vandenberg Center Grand Rapids, MI 49503
Director and Secretary	Transnational Motors, Inc. 618 Kenmoor Ave. SE Grand Rapids, MI 49506
Director and Secretary	Travel Consultants, Inc. 989 Spaulding Ave. SE Grand Rapids, MI 49546
Director and Secretary	Spartan Distributors, Inc. 487 West Division Sparta, MI 49345
Director and Secretary	Eastpointe Car Co. 4070 28th St. SE Grand Rapids, MI 49512
Director	Opera Grand Rapids 203-D Waters Bldg. Grand Rapids, MI 49503
Director	Mary Free Bed Brace Shop 350 Lafayette SE Grand Rapids, MI 49503

Quist, Gordon J.
Part II
March 24, 1992

Attachment No. 2

Pursuant the Partnership Agreement of Miller, Johnson, Snell & Cummiskey, I have an interest in the increase of accounts receivable of that firm since I became a partner in 1971. As of January 1, 1991, the booked value of those receivables was $212,836. However, if I leave the firm at my current age, 54, those receivables are to be paid to me at the rate of $1000.00 per month, without interest, until paid in full. At a capitalization rate of 8%, those receivables have a present value of $113,572. At a capitalization rate of 9%, those receivables have a present value of $109,096. I hope to negotiate payment in full at the present value.

My capital interest in the firm is $16,614. Pursuant to the Partnership Agreement, this capital must be repaid to me within one year of my leaving the firm. No interest will be paid to me on my capital.

In addition, I am a general partner in ARS Investors. This is a partnership composed of several of the partners of Miller, Johnson, Snell & Cummiskey. ARS is, in turn, a partner in another partnership that has an ownership interest in the office space occupied by Miller, Johnson, Snell & Cummiskey pursuant to a 10 year lease with about 9 years remaining on the lease term. Miller, Johnson, Snell & Cummiskey pays rent, and I receive a benefit from that rent. For the past several years, I have been paid between $16,000 and $20,000 per year because of my interest in ARS. If I become a judge, I intend to sell my interest in ARS. I estimate the current value of ARS to be between $150,000 and $200,000. There is some movement toward refinancing ARS so that I may be paid in full in October 1992.

I have self directed 401-K and money purchase pension plans. These are typical plans that I will transfer to an IRA account if I become a judge.

Quist, Gordon J.
Part VII
March 24, 1992

Attachment #3

	Gross Value As of 3/20/92 Value Code	Value Method
ARS Investors 800 Caldar Plaza Bldg Grand Rapids, MI 49503	M	W
Miller Johnson Snell & Cummiskey 800 Calder Plaza Bldg Grand Rapids MI 49503	M	U
NBD - Grand Rapids (J)	J	T
NBD - Grand Haven (J)	J	T
Comarica Bank - IRA	J	T
Fidelity Investments--IRA(S) Puritan Fund	J	T
Fidelity Investments--IRA	K	T
The following assets are held in my retirement account administered by Michigan National Bank, 77 Monroe N.W., Grand Rapids, MI 49503:		
Fidality Cash Reserves	J	T
Indep. Prime Money Market	L	T
50,160 Treasury Bond Rcpt Ser 1 Int Pmt 0.000% Due 08-15-94	X	T
McDonnell Douglas Corp. 8.500% Due 02-01-93	K	T
Wells Fargo & Co. 8.000% Due 7/15/93	J	T
Philip Morris Inc. 7.625% Due 2/15/94	J	T
Eastman Kodak Co. 9.200% Due 2/15/95	J	T

	Value Code	Value Method
Textron, Inc. 11.000% Due 7/1/95	J	T
Citicorp Inc. 12.500% Due 1/15/96	K	T
Michigan National Bank qutly mjsd 15-common cvt. 8.000% Due 12/15/98	J	T
Safeway Senior Sub. 9.650% Due 1/15/04	J	T
Kroger Zeroes 10/15/06 15.500% Due 10/15/93	K	T
Comerica Inc 4.32 Cum Pfd Ser B	J	T
RJR Nabisco PERSC	K	T
Reliance Elec Pfd. 15% fman-28	J	T
Ceco Bonds 15.500% Due 11/30/00	K	T
Grand Bank Fin'l Corp. common	K	W
991 Old Kent Fin'l Corp. common	K	T
Fidelity Blue Chip Growth	K	T
Fidelity Puritan Balanced Fund	L	T
Selected American Shares	J	T
Fidelity Contra Fund	X	T
Fidelity Growth and Income	J	T
Personal Notes	K	U

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	005	00	Notes payable to banks–secured	--	--	--
U.S. Government securities–add schedule				Notes payable to banks–unsecured	36	763	00
Listed securities–add schedule Schedule #1	507	150	00	Notes payable to relatives	--	--	--
Unlisted securities–add schedule Schedule #1	61	005	00	Notes payable to others	--	--	--
Accounts and notes receivable: (Present Value 9%)	109	096	00	Accounts and bills due (Est.)	2	000	00
Due from relatives and friends	(3	000	00)	Unpaid income tax	--	--	--
Real estate owned–add schedule Schedule #2	275	400	00	Other unpaid tax and interest	--	--	--
Real estate mortgages receivable	--	--	--	Real estate mortgages payable–add schedule	178	920	00
Autos and other personal property	25	000	00	Chattel mortgages and other liens payable (auto)	9	731	00
Cash value–life insurance (Net)	16	812	00	Other debts–itemize:			
Other assets–itemize:				Michigan National Bank (To Retirement Account)	15	205	00
ARS Investors (Partnership)	175	000	00				
IRA'S	21	361	00				
Fidelity Funds - IRA(S)	3	314	00				
Partnership Capital (MJS&C)	16	614	00				
Total Assets	1,218	757	00	Total liabilities	232	888	00
				Net Worth	985	869	00
				Total liabilities and net worth	1218	757	00
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor (Son's student loan)	39	793	00	Are any assets pledged? (Add schedule.)	No		
On leases or contracts	--	--	--	Are you defendant in any suits or legal actions?	No		
Legal Claims	None			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	--	--	--				
Other special debt	None						

STOKES & COMPANY
PORTFOLIO APPRAISAL
Mr. Gordon J. Quist
March 21, 1992

(Less Reinvested Divs.)

Quantity	Security	Unit Cost	Total Cost	Price	Market Value	Pct. Assets	Yield
Cash and Money Funds							
	Fidelity Cash Reserves		6,514		6,514	1.1	4.9
	Indep. Prime Money Market		69,233		69,233	12.2	4.5
			75,747		75,747	13.3	4.5
U.S. Government Obligations							
50,160	Treasury Bond Rcpt Ser 1 Int Pmt 0.000% Due 08-15-94	29.82	14,958	86.48	43,378	7.6	6.1
			14,958		43,378	7.6	6.1
Corporate Bonds - Investment Grade							
20,000	McDonnell Douglas Corp. 8.500% Due 02-01-93	98.04	19,609	101.05	20,210	3.6	7.2
10,000	Wells Fargo & Co. 8.000% Due 07-15-93	96.12	9,612	102.03	10,203	1.8	6.4
10,000	Philip Morris Inc. 7.625% Due 02-15-94	99.96	9,996	101.84	10,184	1.8	6.6
10,000	Eastman Kodak Co. 9.200% Due 01-15-95	99.75	9,975	105.25	10,525	1.9	7.1
10,000	Textron, Inc. 11.000% Due 07-01-95	106.78	10,678	101.26	10,126	1.8	10.5
20,000	Citicorp Inc. 12.500% Due 01-15-96	101.37	20,275	103.00	20,600	3.6	11.5
			80,145		81,848	14.4	8.5
Corporate Bonds - Near Investment Grade							
13,000	Mich. Nat'l Bnk; qrtly mjsd 15-common cvt. 8.000% Due 12-15-98	75.25	9,782	89.00	11,570	2.0	10.4
10,000	Safeway Senior Sub. 9.650% Due 01-15-04	101.00	10,100	101.00	10,100	1.8	9.5
			19,882		21,670	3.8	10.0

SCHEDULE 1

STOKES & COMPANY
PORTFOLIO APPRAISAL
Mr. Gordon J. Quiet
March 21, 1992

Quantity	Security	Unit Cost (Less Reinvested Divs.)	Total Cost	Price	Market Value	Pct. Assets	Yield
Corporate Zero Bonds - Quality							
28,000	Kroger Zeroes 10/15/06 15.500% Due 10-15-93	55.21	15,460	88.62	24,815	4.4	7.9
			15,460		24,815	4.4	7.9
Preferred Stock - Investment Quality							
200	Comerica Inc 4.32 Cum Pfd Ser B	44.00	8,800	50.00	10,000	1.8	8.6
			8,800		10,000	1.8	8.6
Preferred Stock - PERC - Investment Qual.							
1,900	RJR Nabisco PERCS	11.50	21,851	10.50	19,950	3.5	7.9
			21,851		19,950	3.5	7.9
Preferred Stock - High Yield							
1,000	Reliance Elec Pfd. 15% fman-28	10.00	10,000	11.50	11,500	2.0	13.0
			10,000		11,500	2.0	13.0
Corporate Bonds - High Yield (1)							
50,100	Ceco Bonds 15.500% Due 11-30-00	59.13	29,622	79.00	39,579	7.0	20.8
			29,622		39,579	7.0	20.8
Common Stock							
916	Grand Bank Fin'l Corp.	43.18	39,550	50.00	45,800	8.1	0.0
991	Old Kent Finl Corp	14.93	14,798	40.37	40,012	7.0	2.6
			54,348		85,812	15.1	1.2

STOKES & COMPANY
PORTFOLIO APPRAISAL
Mr. Gordon J. Quiet
March 21, 1992

Quantity	Security	Unit Cost (Less Reinvested Divs.)	Total Cost	Price	Market Value	Pct. Assets	Yield
Mutual Funds - Conservative							
1,322.067	Fidelity Blue Chip Growth	17.02	22,500	21.42	28,319	8.0	1.1
4,135.495	Fidelity Puritan Balanced Fund	10.82	44,755	14.71	60,833	10.7	6.7
280.899	Selected American Shares	17.80	5,000	17.88	5,022	0.9	2.6
			72,255		94,174	16.6	4.8
Mutual Funds - Growth							
1,142.270	Fidelity Contra Fund	19.70	22,500	26.44	30,202	5.3	0.9
673.029	Fidelity Growth and Income	18.57	12,500	21.21	14,275	2.5	3.5
			35,000		44,477	7.8	1.8
Notes and Mortgages							
15,205	Personal Notes	100.00	15,205	100.00	15,205	2.7	9.5
			15,205		15,205	2.7	9.5
TOTAL PORTFOLIO			453,274		568,155	100.0	6.5

STOKES & COMPANY
PORTFOLIO APPRAISAL
Mr. Gordon J. Quist - IRA
March 21, 1992

(Less Reinvested Divs.)

Quantity	Security	Unit Cost	Total Cost	Price	Market Value	Pct. Assets	Yield
Cash and Money Funds							
	Fidelity Cash Reserves		3,608		3,608	24.0	4.9
			3,608		3,608	24.0	4.9
Mutual Funds - Growth							
164.126	Fidelity Magellan	57.88	9,500	69.81	11,458	76.0	2.1
			9,500		11,458	76.0	2.1
TOTAL PORTFOLIO			13,108		15,066	100.0	2.8

REAL ESTATE SCHEDULE

The only real estate I own is my house at 12055 Bluewater Road, Grand Haven, Michigan. This house is owned jointly with my wife. The value shown for the house ($275,400) is based upon the tax assessor's valuation. I have been informed by others that the house is worth in excess of $400,000.

The first mortgage on the house is held by NBD Grand Rapids in the amount of $103,200.78. I have a "home equity" loan from Grand Bank, Grand Rapids, Michigan, in the current amount of $75,719.45.

7-21-00

We, the undersigned, request the Athletic Club Board of Directors to hold a secret ballot vote, after adequate notice, on the policy regarding female guests in the lounge of the Club for noon lunch.

James L Stokes

Arnold D. Lubbers (14)
(Lubbers)

(Mutch)

(Dan Horning)

(Maxfield)

Scott Dryer

(Robt Perry)

Ed Barnes (Ed Barnes)

(Jabin)

(13)

MILLER, JOHNSON, SNELL & CUMMISKEY
ATTORNEYS
800 CALDER PLAZA BUILDING • GRAND RAPIDS, MICHIGAN 49503
ANN ARBOR • GRAND HAVEN • KALAMAZOO • LANSING

GORDON J. QUIST

TELEPHONE: 616/459-8311
FAX: 616/459-0048
ABA NET: QUIST.G.J.

October 15, 1990

Mr. Lynn Francis, President
University Club
Board of Directors
One Vandenberg Center
Grand Rapids, MI 49503

Dear Mr. Francis:

As Managing Partner of Miller, Johnson, Snell & Cummiskey I encourage the board of directors of the University Club to expand the athletic facilities to permit use by our Club's women members. Recent changes to the Michigan State Bar rules of ethics and the increasing number of women lawyers hired by law firms makes support of a club that practices discrimination on any basis unethical and unwise. More important, providing equal access and use of the Club's facilities for current and future women members is the only fair and responsible course for the Club.

I became a member of the University Club because of my membership in the Athletic Club. I gained many friends at the Athletic Club - some of whom probably want to keep things as they were. However, the merger with the University Club has been of great benefit to me and others. We should build upon the good will and financial strength created by the merger by being fair to all of our members.

Times have changed. We must recognize and encourage the meaningful roles that more and more women play in society and business. The Club can do this by treating our women members the same as its male members.

Thank you for your consideration.

Very truly yours,

MILLER, JOHNSON, SNELL & CUMMISKEY

By

Gordon J. Quist
Managing Partner

GJQ:js

THOMAS K MOORE

Birth:	January 15, 1939	Idaho Falls, Idaho
Legal Residence:	Virgin Islands	
Marital Status:	Married	Judith G. Moore 2 children
Education:	1956 - 1958 1959 - 1961	Harvard College A.B. degree
	1964 - 1967	Georgetown University Law School J.D. degree
Bar:	1967 1969 1977	Virginia District of Columbia U.S. District Court, VI
Military Service:	1961 - 1964	United States Ari Force
Experienca:	1967 - 1968	Law Clerk to Hon. John Danaher U.S. Court of Appeals for the District of Columbia
	1968 - 1969	Department of Transportation Office of General Counsel Staff Attorney
	1969 - 1970	Stanford, Reed & Gelenian Associata
	1970 - 1971	Assistant U. S. Attornay District of Columbia
	1971 - 1976	Assistant U. S. Attorney Eastern District of Virginia
	1976 - 1978	Assistant U. S. Attorney District of the Virgin Islands
	1978 - 1981	Sole practitioner St. Thomas, VI
	1981 - 1987	Hoffman & Moora, P.C. Shareholder
	1987 - present	Grunert, Stout, Moore & Bruch Partner
Office:	24-25 Kongensgade St. Thomas, USVI 00802 809 774-7270	

To be a Judge of the District Court of the Virgin Islands

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Thomas Kail Moore.

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

Office: Grunert, Stout, Moore & Bruch, 24-25 Kongensgade, St. Thomas, USVI 00802 (P.O. Box 1030, St. Thomas USVI 00804).

Home: 18 Tracy Way, Cowpet Bay East, St. Thomas, USVI 00802.

3. Date and place of birth:

January 15, 1938; Idaho Falls, Idaho.

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

Married: Judith G. Moore; maiden name: Judith Diane Gilman; teacher (part-time) Antilles School, Frenchman's Bay, St. Thomas.

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

Harvard College, September 1956 to June 1958; September 1959 to graduation in June 1961 with A.B. Degree.

Georgetown University Law School, September 1964 to graduation in June 1967 with J. D. Degree.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

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 1961: Research Assistant at Harvard, Center for Research in Personality.

September 1961 to September 1964: Extended active duty in the United States Air Force, permanently stationed at Altus AFB, Altus Oklahoma.

September 1967 to December 1968: Law clerk to the Honorable John A. Danaher, Circuit Judge, US Court of Appeals for the District of Columbia Circuit.

December 1968 to August 1969: Staff Attorney in the Honors Program of the Office of General Counsel, Office of the Secretary, Department of Transportation, Washington, D.C.

August 1969 to December 1970: Associate, Stanford, Reed & Gelenian, Washington, D.C.

December 1970 to August 1971: Assistant United States Attorney for the District of Columbia.

August 1971 to February 1976: Assistant United States Attorney for the Eastern District of Virginia at the Alexandria Office.

February 1976 to August 1978: Assistant United States Attorney for the District of the Virgin Islands at the St. Thomas Office.

August 1978 to February 1981: Sole practitioner with an office in the Grand Hotel, Post Office Square, St. Thomas.

February 1981 to August 1987: Fifty percent (50%) shareholder in a professional corporation with Paul Hoffman in Hoffman & Moore, P.C., at 41-42 Kongens Gade, St. Thomas.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

November 1982 to 1985: Shareholder, director and officer in Marina Management, Inc.;

Early 1984 to May 1991: Partner in Cranmore Leasing;

Summer 1984 to early 1991: Partner in T & R Leasing;

August 1987 to Present: Partner in the law firm of Grunert, Stout, Moore & Bruch.

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. Extended active duty September 19, 1961 to September 1, 1964; United States Air Force; A03108406; I was a 1st Lt. at the end of extended active duty, stayed in the Reserve and was honorably discharged as a Captain.

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

Bruce Baird Scholarship in law school from the Hattie M. Strong Foundation, Inc., Washington, D.C. .

American Jurisprudence Prize for excellence in Crimes from Bancroft Whitney.

Editor-in-Chief of the Georgetown Law Journal.

I was on scholarship during my four years at Harvard.

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:

Virgin Islands Bar Association -- active
American Bar Association -- active
District of Columbia -- inactive
Virginia State Bar -- inactive

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

Committee Memberships and Chairmanships:

Member of Grievance Committee of VI Bar in late 1970's and early 1980's
Presently Chairman of St. Thomas Subcommittee of the Grievance Committee of VI Bar
Designee of US Attorney to the Virgin Islands Criminal Code Revision Task Force sponsored by the Law Enforcement Planning Commission in 1977-78.

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 Association of Retired Persons.

I am a member of the following organizations: St. Thomas Yacht Club; M.O.S.T. (Macrobiotic Organization of St. Thomas); American Association of Retired Persons; St. Thomas Council of the Arts, and the St. Thomas Humane Society; Cowpet Bay East Condominium Association; Magens Point Condominium Association; and National Republican Committee.

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.

Virginia Court of Appeals -- 1967
D. C. Court of Appeals -- 1969

US Courts of Appeal:
Fourth Circuit -- 1967
District of Columbia Circuit -- 1969
Third Circuit -- 1977

US District Courts:
Eastern District of Virginia -- 1967
District of Columbia -- 1969
District of the Virgin Islands -- 1977

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

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. Case Note on *Martin v. Virginia* written in second year of law school and published in Volume 54 of the GEORGETOWN LAW JOURNAL (galley proof is enclosed since my copy of Volume 54 has disappeared over the years).

b. I was Editor-In-Chief of Volume 55 of the GEORGETOWN LAW JOURNAL and did the final edit of all materials in that issue (I do not have a copy of this volume).

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

Excellent; my last physical was July 1991.

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

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.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

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

None.

17. Legal Career:

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

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

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

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

September 1967 to December 1968: Law clerk to the Honorable John A. Danaher, Circuit Judge, US Court of Appeals for the District of Columbia Circuit. I prepared bench memoranda analyzing cases coming up for hearing to give the Judge my version of the controlling issue of law and my recommendation for disposition. After argument, I did whatever additional research either Judge Danaher or I thought necessary on particular points; reviewed and commented on opinions the Judge or other members of the hearing panel proposed. On occasion I helped the Judge draft opinions.

December 1968 to August 1969: Staff Attorney in the Honors Program of the Office of General Counsel, Office of the Secretary, Department of Transportation, Washington, D.C. The Honors Program for Attorneys was designed to rotate each of the initial six of us for four-month stints through each of the legal offices of the myriad administrations brought together under

the umbrella of DOT, e.g., Federal Aviation Administration, Federal Highway Administration, Urban Mass Transit Administration, Coast Guard, including the Office of General Counsel for the Department. I worked mainly at Highway Safety and also in the General Counsel's Office.

August 1969 to December 1970: Associate, Stanford, Reed & Gelenian, Washington, D.C., with general practice in the District and Northern Virginia. I did some plaintiff's personal injury cases, wills, estates, general business and some domestic relations matters.

December 1970 to August 1971: Assistant United States Attorney for the District of Columbia, first at the Court of General Sessions (Superior Court) papering cases and trying misdemeanors, then in Special Proceedings at District Court handling petitions for habeas corpus and relief under Section 2255.

August 1971 to 1976: Assistant United States Attorney for the Eastern District of Virginia, acting as Principal Assistant of the Alexandria Office from Fall 1974 to January 1976. I was primarily in charge of grand jury investigations and prosecutions of white-collar crime. For example, our grand jury investigation of the Pomponio brothers, who built many of the office buildings in Crystal City and Roslyn, Virginia, culminated in convictions for tax fraud, securities fraud, perjury, and interstate transportation in aid of racketeering. I also participated in the grand jury investigation of two ship repair firms in the Tidewater, Virginia area and the civil suits against two of the shipyards for false claims against the government which resulted in settlements of about $750,000 each in favor of the United States.

January 1976 to August 1978: Assistant United States Attorney for the District of the Virgin Islands. I handled not only the regular case load of criminal prosecutions, but also virtually all civil matters in the Office.

During this time, we handled and tried in federal court all state-type common law crimes punishable by more than five years. I tried everything from first degree murder, rape, robbery, burglary, assault and conspiracy cases to drug possession and distribution, immigration and customs matters.

August 1978 to February 1981: I took over on-going real estate and business-related practice as a sole practitioner, which I expanded generally and specifically included more litigation. My office was in the Grand Hotel, Post Office Square, St. Thomas.

February 1981 to August 1987: As a fifty percent (50%) shareholder in a professional corporation I practiced with Paul Hoffman as Hoffman & Moore, P.C., a general and business-related practice in which I handled the trial work. I also began to concentrate in real estate and became a title insurance agent and approved attorney for two national title insurance companies.

August 1987 to Present: Partner in the law firm of Grunert, Stout, Moore & Bruch. We have a broad practice, with areas of concentration in personal injury, real estate, and corporate and general business practice. My areas have become real estate and title insurance, and I supervise litigation in these areas.

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

1967 to 1971: Nonlitigative government service in federal agencies, general practice in a small law firm, and litigative government service as Assistant U.S. Attorney.

1971 to 1978: I handled all functions of the United States Attorney's Office from presenting cases through case agents to federal grand juries in routine matters, investigating white collar crimes with the assistance of special

investigative grand juries, prosecuting civil and criminal cases on behalf of the United States and common-law felonies on behalf of the Government of the Virgin Islands, preparing appellate briefs and arguing cases before the Courts of Appeals for the Third and Fourth Circuits, and administering an office of ten to fifteen attorneys and support staff (in Alexandria).

1978 to 1987: General practice with an emphasis on business and real estate law and related litigation; I handled landlord and tenant cases, some uncontested divorces, several bankruptcies, a lawsuit growing out of the failure of an insurance company on behalf of a my client with a "cut-through endorsement," and the usual kinds of business and commercial disputes which tend to end up in court. I began representing several larger real estate developers of subdivisions and condominiums and became title insurance agent and approved title attorney.

1987 to Present: The character of my practice is office-oriented for the most part, involving real estate, business and commercial matters and providing title insurance. I supervise some of the significant lawsuits involving my larger clients, working with a litigation associate in preparing and editing pleadings and memoranda for court and devising strategies and tactics for the litigation. I handle my share of court-appointed criminal cases in Territorial and District Court, and court-appointed civil cases, e.g., custody, guardianship, and juvenile cases in Territorial Court.

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

My typical clients are real estate developers, such as Bayside Resort, Inc., which is building Sapphire Beach Resort and Marina Condominium; St. John Land Investment Partnership, which developed Peter Bay on St. John; and purchasers and sellers of residential and commercial real

estate. I am agent and approved attorney for two title companies: First American Title Insurance Company and Chicago Title Insurance Company. I represent First American Title Insurance Company, American Title Insurance Company, Lawyers Title Insurance Company, and other landowners on the East End of St. Thomas in the Wenner Lawsuit described more fully in Answer No. 18. My specialty, if any, is real estate 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 variance, giving dates.

Occasionally from 1967 to 1971 and from 1986 to present;
somewhat more frequently from 1978 to 1986.

Very frequently from 1971 to 1978.

2. What percentage of these appearances was in:

a) Federal courts
35% from 1978 to present
99% from 1971 to 1978;

b) State courts of record:
65% from 1978 to present
1% from 1971 to 1978;

c) Other courts:
None.

3. What percentage of your litigation was:

a) Civil:
80% from 1978 to present
10% from 1971 to 1978;

b) Criminal:
20% from 1978 to present
10% from 1971 to 1978.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

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

From 1978 to present:

25 to 30, two as associate counsel and the rest as sole counsel;

From 1971 to 1978:

While an Assistant US Attorney in the Virgin Islands, I tried an average of one case per month to verdict, all as either chief or sole counsel; while an AUSA in Virginia, I tried 5 to 7 cases per year to verdict, 75% of which were complicated cases in which I was co-counsel with the US Attorney or other AUSA's.

5. What percentage of these trials was:

a) jury:
10% from 1978 to present
90% from 1971 to 1978;

b) non-jury:
90% from 1978 to present
10% from 1971 to 1978.

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.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

1) *Altagracia Lindo Wenner, as the Administratix of the Estate of Elias Lindo v. Government of the Virgin Islands et al.*: Lawsuit filed in 1988 to recover possession and quiet title to virtually the entire East End of St. Thomas, naming some 440 plus defendants, and based primarily on a 1780 deed and Danish surveys done in 1789 and 1795. A lis pendens is filed in the land records at the Office of Recorder of Deeds. Plaintiff claims the land called "Estate Frydenhoj" inherited by her father is actually much larger than the area shown on the land records.

This litigation is tying up millions of dollars worth of property and creating tremendous hardship for everyone from small property owners to large developers and the title insurers of those properties. My litigation associate and I got the second amended complaint dismissed without prejudice and with guidelines from the Court for how the complaint could be recast and amended. Plaintiff filed an even broader third amended complaint which ignored most of the Court's directions. I have prepared and filed a lengthy and comprehensive supplement to our earlier motion for summary judgement to show that the 18th Century surveys plaintiff relies on, when accurately translated and plotted by a competent surveyor, map out almost exactly the same boundaries of Estate Frydenhoj as shown at the Recorder of Deeds for the last thirty or forty years.

Although the case has been pending since 1988, it is still in the Rule 12(b) Motions stage and is assigned to Stanley S. Brotman, Senior District Judge (DCNJ) and Acting Chief Judge (DCVI) (DCVI, STT Civil No. 88-129). We represent First American Title Insurance Company, American Title Insurance Company, Lawyers Title Insurance Company, and other landowners on the East End of St. Thomas. In addition to preparing the summary judgment motion, I supervise the litigation and review and edit pleadings of our litigation associate; I have also done extensive searches of titles on the East End and consulted with our Danish/American translator, law expert and legal historian in the Washington, D.C. area. There are many other counsel representing other defendants, the designated lead counsel being Frederick G. Watts, 14A Norre Gade, St. Thomas, USVI, 809 774-0673.

Plaintiff's counsel is G. Luz A. James, P.O. Box 4998 Christiansted, St. Croix, Virgin Islands 00822, 809 778-8802; Judith L. Bourne, P.O. Box 6458, St. Thomas, Virgin Islands 00804, 809 776-8487, preceded James as plaintiff's attorney.

2) Celestina L. Thomas v. Alfred Lockhart: Action for fraud and deceit, damages and specific performance brought by my client regarding a piece of land sold to her in 1970 by defendant, who showed plaintiff one lot which she selected and paid for but gave her a deed to another lot. Defendant later deeded the lot Mrs. Thomas had selected to someone else. My client was an unsophisticated lady who put her life savings of $4,895 in the lot and planned to build her retirement home there. When she was finally ready to begin construction of her house, she found that the lot she had been deeded was the wrong lot and unbuildable.

The course of this litigation shows how easily unsophisticated persons can be taken advantage of and how difficult it is for them to get relief from the system. Since the amount involved was small, plaintiff first tried the conciliation process offered by the Territorial Court. When she was unsuccessful, I filed suit, got a default, the default was vacated, and we started the trial on August 25, 1982. Defendant agreed in open court to pay $8,000 in settlement, which was reduced to writing, signed by both parties and approved by the Court. Defendant reneged on the agreement and the Court voided the settlement on our motion. I went back to court and finally received a judgment rescinding the sale and awarding plaintiff the purchase price plus interest and reimbursement for property taxes and a portion of her attorneys' fees. I then had to depose defendant in aid of execution, and only after I had his home and other property attached and advertised for sale did defendant pay the judgment. The net result of all this effort was that plaintiff received about $16,000 in 1984, which was inadequate to buy a comparable lot to the one for which she paid $4,985 in 1970.

Trial was August 24 & 25, 1982 and completed February 15, 1983 before Henry L. Feuerzeig, Judge of the Territorial Court (Terr Ct Civil No. 713/1981), sitting without a jury. I was sole counsel. Opposing counsel was Ronald T. Mitchell, P.O. Box 4137, St. Thomas, Virgin Islands 00804, 809 776-1985.

3) *Williamson v. Hess*: Action to declare valid a covenant-not-to-compete contained in an employment contract. My client, Dr. Hess, signed an employment agreement with Williamson, who had a well established veterinarian practice on St. Thomas. Included in the agreement was a covenant-not-to-compete on St. Thomas and St. John for three years if the employment relationship did not work out. The Territorial Court enforced the covenant.

The significance is that the case upheld the validity and enforceability of noncompetition clauses in employment contracts for the first time in the insular environment of the Virgin Islands.

Trial was December, 1978 to Verne A. Hodge, Presiding Judge of the Territorial Court (Terr Ct STT Civil No. 66-1978), sitting without a jury, and reported in 16 V.I. Reports 284 (1979). I was sole counsel. Opposing counsel was John E. Stout, presently my one of my partners.

4) *Government of the Virgin Islands v. Paul Testamark*: Appeal of dismissal of Information charging defendant as habitual criminal and, alternatively, petition for writ of mandamus ordering Chief Judge Christian to resentence Testamark as a habitual criminal (at this time we had no grand jury in the Virgin Islands and all criminal prosecutions were by information filed by the US Attorney and supported by affidavit of the investigative agent or police officer). Late in the evening of March 29, 1977, Testamark was found guilty of first degree assault with intent to rape. The Court immediately set sentencing for 8:30 the next morning, and, since the Clerk's Office was closed, I filed the Habitual Criminal Information against him with the courtroom clerk in accordance with accepted practice and the same time served defense counsel. Judge Christian treated the Information as properly filed and before the Court at sentencing the next morning but

refused to consider it, dismissed it, and held the Habitual Criminal Information Act unconstitutional.

Although the Court of Appeals held that the Habitual Criminal Information had not been properly filed, with the Clerk as required by a letter the Chief Judge had sent to attorneys some years earlier (but nowhere contained in the published Local Rules of the District Court). The Court however noted in a footnote that the Supreme Court had upheld the constitutionality of a very similar habitual criminal statute.

Sentencing was March 30, 1977 before Almeric L. Christian, Chief Judge (DCVI, STT Cr. No. 77-64). I wrote the Brief and Petition. Opposing counsel was Michael L. Rankin, now a Superior Court Judge, 3d & Constitution, Washington, D.C.

5) *Government of the Virgin Islands v. Julian Frett*: Charged by Information with first degree murder and possession of an unlicensed firearm in shooting death of a hotelier while burglarizing condominiums at Pineapple Beach Club on St. Thomas. Two accomplices initially charged with Frett pled guilty and testified at trial.

This case was one of the first times the US Attorney's Office here used a polygraph to test the veracity of cooperating codefendants, in this case to determine who had the gun and actually pulled the trigger. Frett also took the polygraph examination, which we hoped would induce a plea. The codefendants were shown to be truthful and Frett was shown to be lying about the facts of the killing, but he still did not plead guilty until the middle of the government's case.

Trial period was October 26 through October 27, 1976 to a jury before Almeric L. Christian, Chief Judge (DCVI, STT Cr. No. 76-147). Frett was allowed to plead guilty in the middle of trial to second degree murder and was sentenced October 28, 1976 to 35 years. I was sole prosecuting counsel and defense counsel was Acting Federal Public Defender, Michael L. Rankin, now a Superior Court Judge, Washington, D.C.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

6) *United States v. Alphonso Wiltshire and Jerry Reed*: Charged by Information (we had no grand jury then) with sale and distribution of cocaine; informant made several buys from the defendants, one of whom was a police detective.

Successful prosecution of a corrupt police detective about whom there had long been rumors but no prosecution or conviction. It is also one of the first times evidence of tape recorded conversations was successfully presented to a jury on St. Thomas.

Trial period was June 7 through June 10, 1976 to a jury before Almeric L. Christian, Chief Judge (DCVI, STT Cr. No. 76-86), aff'd by Judgment Order dated May 10, 1977. I was sole prosecuting counsel. Opposing counsel were Frederick Rosenberg, presently retired in Florida, for Wiltshire, 813 475-6455, and James Coleman, deceased, for Reed.

7) *United States v. Earl Franklin Cole and Catherine Jean Baker, aka Gault*: Convicted for making false statements and claims while General Cole was serving in Vietnam with Gault as his secretary. The indictment charged that Cole authorized inflated overtime pay for Gault while she was on trips outside of Vietnam and that Gault was paid a living allowance while actually residing in government quarters.

As far as I know, this is one of the few cases actually prosecuted which grew out of an extensive investigation by the Army and Congress into such alleged abuses in Vietnam. It also shows the difficulty in proving such crimes in a war theater. The convictions were reversed by the Fourth Circuit because of the trial court's excessive intrusion into the presentation of the case and prejudicial interference with defense counsel's efforts to defend their clients, United States v. Cole, 491 F.2d 1277 (4th Cir. 1974).

Trial was to a jury before Oren R. Lewis, District Judge EDVa, Alexandria, in early 1972. Trial co-counsel with me was David Hopkins, AUSA EDVa, now retired and residing at 8703 Nero Street, Annandale, VA 22003, 703 591-4044. Opposing trial counsel were Albert J. Ahern, Jr., P.O. Box 16270, Alexandria, VA 22302, 703 931-8400, and Warren E. Magee, then of

Washington, D.C., whose present whereabouts I do not know.

8) United States v. Rocco Paolicelli: Indicted for making false statement to a grand jury under 18 U.S.C. §1623. Defendant was an employee and the uncle of the Pomponios, who was questioned before the grand jury about possibly bribery of one Paul Fry by giving him a Continental Mark III, the purchase of which Paoliceli negotiated and ordered from the dealer. Defendant denied any knowledge and was charged and convicted of lying to the grand jury. The Court of Appeals upheld the conviction. United States v. Paolicelli, 505 F.2d 971 (4th Cir. 1974).

It was important to the success of the Pomponio grand jury investigation to make the point that witnesses subpoenaed before it had to cooperate and tell the truth, even if they might be close to the targets of the investigation.

Trial was on December 18, 1973 to Oren R. Lewis, District Judge, EDVa, Alexandria (Cr. No. 268-73-A), sitting without a jury. The defendant was sentenced on January 11, 1974 to two years' imprisonment. I was sole prosecution counsel. Opposing trial counsel was Plato Cacheris, 1914 Sunderland Place, Washington, D.C., 202 482-9886.

9) Two cases: United States v. Peter and Paul Pomponio and Charles J. Piluso; and United States v. Louis J. Pomponio, Jr.: Indicted for interstate travel in aid of racketeering ("ITAR"), Peter and Paul Pomponio and their attorney, Charles J. Piluso, were tried before Judge Lewis; Peter and Paul were acquitted and Piluso was convicted. Louis J. Pomponio, Jr. was later tried and convicted before Judge Bryan. The unlawful activity underlying the ITAR charge was the bribery of a bank official at the Royal National Bank in New York. The defendants' pretrial motion to dismiss on the ground that commercial bribery, a misdemeanor under New York and federal law, was not the kind of unlawful activity contemplated by the ITAR statute and was denied by Judge Lewis. Judge Bryan, however, granted Lou Pomponio's post-trial motion to arrest his judgment of conviction based on this same ground.

The Court of Appeals upheld the convictions, ruling that commercial bribery is fully within the ambit of the ITAR Act. United States v. Pomponio, 511 F.2d 955 (4th Cir. 1975).

Piluso's trial to a jury began March 25, 1974 before Oren R. Lewis, District Judge, EDVa (Cr. No. 269-73-A); Lou Pomponio's trial was in April or so to a jury before Albert V. Bryan, Jr., District Judge, EDVa. I was lead counsel in both trials and on the Appellate Brief for Piluso's appeal, I believe I was sole trial co-counsel for Piluso's case and tried Lou Pomponio with another AUSA, probably David Hopkins, now retired and residing at 8703 Nero Street, Annandale, VA 22003, 703 591-4044. Opposing counsel were Albert J. Ahern, Jr., P.O. Box 16270, Alexandria, VA 22302, 703 931-8400, and Alan Y. Cole with Lee A. Schutzman, Cole is dead; I don't know the whereabouts of Schutzman.

10) United States v. Peter and Paul Pomponio and Charles Piluso: Conviction for filing false income tax returns in violation of 26 U.S.C. §7206(1) by indictment returned by the special investigative grand jury. The defendants listed advances from their corporations as loans which were really income and took corporate losses as personal deductions.

The Supreme Court decision reversed the Court of appeals and upheld the trial court's instruction on the standard of willfulness in such tax cases: "A willful act [is] ... one done 'voluntarily and intentionally and with the specific intent to do something the law forbids, that is to say with [the] bad purpose either to disobey or to disregard the law.'" United States v. Pomponio, 429 U.S. 10, 11 (1976), reversing 528 F.2d 247 (4th Cir. 1975), aff'd on remand, 563 F.2d 659

Trial was to a jury beginning March 19, 1974 before Oren R. Lewis, District Judge, EDVa, Alexandria (Cr. No. 304-73-A). Trial co-counsel with me was Bernie Bailor then of the Tax Division, Department of Justice, but whose present address I do not know. Opposing trial counsel were Albert J. Ahern, Jr., P.O. Box 16270, Alexandria, VA 22302, 703 931-8400, and Alan Y. Cole with Lee A. Schutzman; Cole is dead and I don't know the whereabouts of Schutzman.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

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

The cases described above barely begin to describe the extent of my trial experience. I consider my work on the Ethics and Grievance Committee to be the most significant other legal activities I have pursued. I was a member of the Grievance Committee some years ago and am presently the chairman of the St. Thomas Subcommittee. We are attempting to clarify, streamline and modernize the grievance rules and procedures, particularly the methods of disseminating the results of disciplinary actions to the public. For example, I recently gave a talk to the "Legal Secretaries Association of the Virgin Islands" on the Model Code in general and as it applies to non-attorney staff. While lawyers tend generally to be held in higher esteem in the Virgin Islands than on the Mainland, respect for the profession has also declined here over the years since Watergate.

In a general practice such as mine, it is difficult to separate out any specific cases which I have settled without trial, which have been many; all such matters are significant to the clients. One of many examples might be my successful negotiation of a settlement for a client who ran into difficulties with fellow shareholders who accused him of trying to deal for himself rather than the corporation. I was able to obtain a substantial cash settlement for the promoter-client, who had not invested any cash.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   I expect to receive payments from three or four former clients totalling about $20,000.

   I own one and two-thirds percent (1 2/3%) of the stock of VMEASE, Inc., a St. Thomas corporation, and have acted as director, secretary, assistant treasurer, and counsel. The stock, for which I paid $25,000, presently has no value so I do not expect to receive any benefit from it.

   The arrangement I make with my law firm when I am confirmed will be for a definite lump sum "severance settlement" payable over a relatively short period of time, e.g., three to four years. Negotiation of this arrangement will be finalized in the very near future.

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

   I would be precluded from hearing any matter involving virtually any of the clients I have represented over the years, any businesses with which I have been involved (when confirmed, I will resign all positions as officer and director in such entities). I will also recuse myself from hearing any matters involving members and associates of my present firm for the period of our lump-sum payout arrangement and thereafter until cases that were in the office while I

was there are completed. In sum, I will follow the guidelines of the Judicial Code of 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 amount of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See attached Financial Disclosure Report (AO-10) filed with the Judicial Ethics Committee, Administrative Office of the United States Courts.

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

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

   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.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

a. I have represented poor and disadvantaged persons, such as Celestina Thomas, who was taken advantage of as explained in Item 2) of Answer to Question 18. It took countless hours, a default, a breached settlement, a trial, post-judgment court proceedings, and levy and execution to finally resolve the dispute. While I collected some fees from the defendant and a little more from Mrs. Thomas, the total fees recovered were no where near full compensation.

Somewhat similar was my representation of an lady who won the lottery and got involved with tax problems. She was not a citizen and tried to divide up the winning ticket among family and friends who were citizens. Lottery winnings received by citizens received more favorable tax treatment by the Government of the Virgin Islands. The matter went to trial and I also negotiated with the tax people. Again, the compensation charged and recovered was far less than justified by the time and effort expended.

b. In the Virgin Islands, all attorneys are routinely appointed to represent indigent defendants in criminal cases in the District and Territorial Courts and juveniles in the Territorial Court. We are also appointed to represent the poor and disadvantaged in civil matters, such as child custody, mental incompetence, guardian ad litem, and child support cases. Between the two courts, the appointments seem to average between three and five per year. While we receive some compensation for these appointed cases, it is minimal and amounts to pro bono work. I can give two instances which are not atypical:

I was appointed in February 1986 to represent a juvenile charged with the equivalent of assault. I spent 12 hours in 1986 handling his matter through disposition. There were further proceedings in 1987 on which I spent another 8.5 hours. In 1990 and 1991 I spent another 3.7 hours on other proceedings, most recently in August of this year. Thus far I have received $1300 compensation for approximately 25 hours of work.

In May of 1989 I was appointed guardian ad litem for a minor on a petition of the

government for temporary protective custody. From May 1989 through March 1991 I spent 19.5 hours on this matter, for which I have received compensation of $1000.

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).

No. Through former associates and friends I let my interest in an appointment to the District Court here on St. Thomas be known to Senators John Warner and Bob Dole. Senators Dole and Warner kindly agreed to meet with me and wrote letters of recommendation to the White House and Department of Justice. Other Senators and Representatives also made inquiries on my behalf. Many letters were also sent by Virgin Islanders who have known me over the years. I was subsequently interviewed for the position by officials at the Department of Justice. Sometime later, I was notified that I had been selected as a potential nominee, completed questionnaires for the American Bar Association, Department of Justice, and Federal Bureau of Investigation, and was interviewed by Special Agents of the FBI and a representative of the ABA Standing Committee on Federal Judiciary.

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 28, 1991

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 view on the following criticism involving "judicial activism."

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

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

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

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

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

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

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The federal judiciary is but one branch of the three separate "Powers" set up in the Constitution. Each of these three branches of the federal government has its particular role within the overall system. Over the years the

exercise of these powers by each separate branch has operated to check, balance, and fine tune the functioning of our government. The three branches do not always mesh smoothly and efficiently and the system does not always work or as effectively as it might, but, in my view, it is the best system anyone has come up with so far.

Within this tripartite system of governance the role of the courts is a circumscribed one, being limited by the restrictions of the Constitution and the provisions of the laws passed by Congress. The scope of action of a district court judge is further constrained by the precedents of courts superior to the trial level. My conception of the function of a trial judge is to apply the Constitution and laws, as interpreted by higher federal courts, to particular issues presented by specific cases and controversies.

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

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

1. Person Reporting (Last name, first, middle initial) Moore, Thomas K.	2. Court or Organization District Court of the VI St. Thomas - St. John Division	3. Date of Report 10/26/91
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time) District Judge - Active	5. Report Type (check appropriate type) __ Nomination, Date 10/22/91 X Initial __ Annual __ Final	6. Reporting Period 1/1/90 to 10/1/91
7. Chambers or Office Address United States Courthouse, Charlotte Amalie, St. Thomas, USVI		

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

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

POSITION	NAME OF ORGANIZATION/ENTITY
☐ NONE (No reportable positions)	
Local Counsel	American Title Insurance Company
Local Counsel & Asst. Secretary	Bayside Resorts, Inc.
As Counsel & Asst. Secretary	Brass Island Club, Ltd.

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

DATE	PARTIES AND TERMS
☐ NONE (No reportable agreements)	
Not yet final	Severance agreement with my law partners Grunert, Stout & Bruch
	for settlement, probably a lump sum, payable over three or four years
	(I will supply details when final)

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

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐ NONE (No reportable non-investment income)		
1 1989	Grunert, Stout, Moore & Bruch - Legal Services	$158,885
2 1989-91	Antilles School-part-time teaching (S)	$ ---
3 1990-91	Interest on Philadelphia Life Ins. Co. Policy (S)	$ ---
4 1990-91	Grunert, Stout, Moore & Bruch - Legal Services	$147,500
5 1990-91	Legal fees from former client	$ 1,400

FINANCIAL DISCLOSURE REPORT, Attachment 1
Thomas K. Moore, 10/26/91

Counsel, Cabrite Point Condominium Association;

Approved Title Examiner and Local Agent , Chicago Title Insurance Company;

Partner, Cranmore Leasing;

Counsel, Devcon International Corporation;

Approved Title Examiner and Local Agent, First American Title Insurance Company;

Counsel and Assistant Secretary, Joe Vogel Diving, Inc.;

Counsel and President of the Bd of Directors, Magens Point Condominium Association;

Counsel, St. John Land Investment Partnership;

Partner, T & R Leasing; and

Counsel, Director, Secretary, and Assistant Treasurer, VMEASE, Inc.

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Thomas K. Moore	10/26/91

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements or gifts)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

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

	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 spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities)		
1	Chase Manhattan Bank (J)	Mortgage on Magens Pt. Condo	K
2	Marble Bank, Rutland, VT (J)	Mortgage on Marina Slip	J
3	Fairfield Mountains, NC (J)	Timeshare Installment Contract	J
4	Williams College assigned to Mass. ~~Educational Fin. Authty~~ (J)	Financing David's Senior Yr.	K
5	University of San Diego (J)	2d Semester Jon's 1st Yr.	J
6	Banco Popular de Puerto Rico	Guarantee business loan for failed business-Cranmore Leasing	K
7			

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

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Thomas K. Moore	10/26/91

VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 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 (1) Amt. Code (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period (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)					E X E	M P	T		
1 Barnett Bank, Money Market Acct., Sebring, FLA	C	Int.	J	T					
2 Prudential Command Account Vero Beach, FLA (J)	A	Int.	J	T					
3 Key Trust of Maine-Firm Retirement, Portland, ME	A	Div.	J	T					
4 Philadelphia Life Ins-Cash Value, Dallas, TX (S)	C	Int.	K	T					
5 Timeshare, Fairfield Mountains, NC (J)	A	None	J	R					
6 ½ interest in Lot, Great Oak Est., Kent County, MD	A	None	J	W					
7 Magens Point Condo Unit St. Thomas, VI (J)	D	Rent	K	W					
8 Marina Slip Condo Unit(J) Sapphire Beach, St. Thomas	D	Rent	M	R					
9 Home Intensive Care (Common) (J)	A	None	J	T					
10 Keystone Tax Free Fund (J)	A	Div.	J	T					
11 Municipal Investment Trust Fund (J)	B	Div.	K	T					
12 Sunrise Technologies (Common) (J)	A	None	K	T					
13 1st Capital Income & Growth Fund Series 12 (Ptship)	B	Div.	K	T					
14 AT&T (Common)	A	Div.	J	T					
15 Blackstone 1998 Term Trust	A	Div.	J	T					
16 Chrysler (Common)	A	Div.	J	T					
17 Equivest (IRA)	B	Div.	K	T					
18 Rollins Environmental Services (Common)	A	Div.	J	T					
19 1st Capital income & Growth Fund Series IV (S)	A	Div.	J	T					
20 Blackstone 1991 Term Trust (S)	A	Div.	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 E=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

ATTACHMENT 2

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Thomas K. Moore	10/26/91

VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 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 dependant child. Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period (1) Amt. Code (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, exchange, redemption)	D. If not exempt from disclosure (2) Date: Month Day	(3) Value Code (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)					E X	E M	P T		
1 Equivest (IRA) (S)	B	Div.	J	T					
2 Global Gov't Plus Fund (Prudential) (S)	A	Div.	J	T					
3 UTS C IF DISC B (S)	A	Div.	J	T					
4 Dominion Resources (Common) (DC)	B	Div.	J	T					
5 Exxon (Common) (DC)	A	Div.	J	T					
6 Financing Corp. CPN FICO Strips Ser. 12 (DC)	B	Div.	J	T					
7 Prudential Money Market Assets (DC)	A	Int.	J	T					
8 Prudential Special Money Market Fund (DC)	B	Div.	J	T					
9 Prudential Incomvertible Plus Fund (DC)	B	Div.	K	T					
10 Certificate of Deposit Barnett Bank	D	Int.	L	T					
11 Merrill Lynch Cash Management Account	A	Int.	J	T					
12 VMEASE, Inc. (Common) (J)	A	None	I	W					
13 ½ Interest in Motor Vessel "Mila"	A	Rent	K	T					
14 Note - Marc Crandall re: Cranmore Leasing	A	None	J	T					
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less F=$15,001 to $50,000	B=$1,001 to $2,500 J=$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=$500,001 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 (cont'd)

Name of Person Reporting	Date of Report
Thomas K. Moore	10/26/91

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

PART II: I will receive payments of about $20,000 from former clients pursuant to a Chapter 11 Bankruptcy Plan, informal agreement and court action.

PART VI: The loan guarantee is left over from a partnership, Cranmore Leasing; the loan was to finance a dock and marina project which was never completed; all my interest has has been assigned to my partner.

PART VII: The M.V. "Mila" sank in January 1990, was salvaged, and was sold in 1990 on a contract completed in 1991.

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 10/26/91

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

Attached to the Questionnaire
for Judicial Nominees

FINANCIAL STATEMENT

NET WORTH

THOMAS K. MOORE

October 1, 1991

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	7,250	Notes payable to banks—secured	—
U.S. Government securities—add schedule	—	Notes payable to banks—unsecured	—
Listed securities—add schedule	141,800	Notes payable to relatives	—
Unlisted securities—add schedule	-0-	Notes payable to others	—
Accounts and notes receivable:		Accounts and bills due	—
Due from relatives and friends	—	Unpaid income tax	—
Due from others	19,000	Other unpaid tax and interest	600
Doubtful	7,000	Real estate mortgages payable—add schedule	66,500
Real estate owned—add schedule	466,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable	—	Other debts—itemize:	
Autos and other personal property	29,000	Life insurance pol. loan	13,500
Cash value—life insurance	37,420	Educational loan	22,000
Other assets—itemize:			
Law Firm Retirement	10,740		
Equivest IRA's	31,360		
		Total liabilities	102,600
		Net worth	647,470
Total assets	750,070	Total liabilities and net worth	750,070
CONTINGENT LIABILITIES		**GENERAL INFORMATION**	
As endorser, comaker or guarantor	16,145	Are any assets pledged? (Add schedule.)	NO
On leases or contracts	—	Are you defendant in any suits or legal actions?	YES
Legal Claims	—	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	15,000		
Other special debt	—		

QUESTIONNAIRE FOR JUDICIAL NOMINEES
SENATE COMMITTEE ON THE JUDICIARY
October 26, 1991

SCHEDULE OF LISTED SECURITIES:

Home Intensive Care	-	Common Stock	
Sunrise Technologies	-	Common Stock	
AT&T	-	Common Stock	
Rollins Environmental Services	-	Common Stock	
Dominion Resources	-	Common Stock	
Exxon	-	Common Stock	
Sonora Gold	-	Common Stock	
Global Government Plus Fund	-	Mutual Fund	
Prudential Inconvertible Plus Fund	-	Mutual Fund	
Blackstone 1998 Term Trust	-	Mutual Fund	
First Capital Income & Growth Plus Fund Series IV and 12	-	Partnership	
Financing Corporation CPN FICO Strips Ser. 12			
Keystone Tax Free Fund	-	Tax Free	
Municipal Investment Trust Fund	-	Tax Free	
UTS C IF Disc B	-	Unit Trust	
Total Value as of 10/1/91			$141,800

SCHEDULE OF UNLISTED SECURITIES:

VMEASE, Inc. (St. Thomas Corp.)	-	Common Stock	
Total Value as of 10/1/91			-0-

SCHEDULE OF REAL ESTATE OWNED:

Condominium at Cowpet Bay, St. Thomas (Home)	$300,000
Condominium at Magens Point, St. Thomas	45,000
Marina Slip Condominium at Sapphire Beach, St. Thomas	105,000
1/2 Interest in lot at Great Oak Estates, Kent County, Maryland	5,000
TimeShare at Fairfield Mountains, North Carolina	11,000
Total Value as of 10/1/91	$466,000

SCHEDULE OF REAL ESTATE MORTGAGES PAYABLE:

Cowpet Condominium, Chase Manhattan Bank	$ 29,500
Magens Point Condominium, Chase Manhattan Bank	16,000
Marina Slip Condominium, Marble Bank	14,000
Fairfield TimeShare	7,000
Total owed as of 10/1/91	$ 66,500

CONFIRMATION HEARING ON TIMOTHY D. LEONARD, LOURDES G. BAIRD, IRMA E. GONZALEZ, AND RUDOLPH T. RANDA

WEDNESDAY, JULY 1, 1992

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

The committee met, pursuant to notice, at 10:45 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Herb Kohl presiding.

Present: Senators Kohl and Thurmond.

OPENING STATEMENT OF SENATOR KOHL

Senator KOHL. This hearing will come to order. I am sorry for the delay, but, as you know, there was a vote on the Senate floor.

This morning, the committee will conduct a hearing on four judicial nominees—Timothy D. Leonard for the Western District of Oklahoma, Ms. Lourdes Baird for the Central District of California, Judge Irma Gonzalez for the Southern District of California, and Judge Rudolph Randa for the Eastern District of Wisconsin.

As is customary, we will hear first from Senators who wish to introduce nominees to the committee, but before we turn to them, let me state for the record that each nominee has completed a detailed questionnaire on his or her qualifications, experience, finances, and philosophy. The portions of the questionnaire available to the public will be printed in the record of this hearing. We will also keep the record open for a limited time in case members of the committee would like to submit written questions. And, of course, we will place in the record the full introductory statements of home State Senators and Congressmen.

We have a number of distinguished Senators with us today and we will begin with them as they introduce their nominees. We have with us Senator Boren and Senator Nickles, who would like to introduce Timothy Leonard.

Senator Boren, would you like to start?

Senator BOREN. Mr. Chairman, I would be happy—I will defer to my colleague, Senator Nickles, since he had the privilege of making the recommendation of Mr. Leonard. Then I would be happy to add my remarks immediately after his.

Senator KOHL. Senator Nickles.

STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Mr. Chairman, thank you, and I thank Senator Boren. It is indeed a pleasure for me to present to the committee a very good friend, and I think a very well qualified person to be the next Federal judge in the Western District of the State of Oklahoma.

I have had the pleasure of knowing Tim Leonard for many years. He presently is serving as U.S. attorney for the western district, and he has since October of 1989. I might mention that as U.S. attorney he has done an outstanding job, and I heard compliments and accolades from Federal judges; I have heard that from people on the bench, I have heard it from people who are in the bar and before the U.S. attorney either in opposition or in working in conjunction with him. He comes highly recommended from people who have had the pleasure of knowing him and working with him.

Prior to his confirmation as U.S. attorney, he practiced law in Oklahoma City. He has a wealth of experience in the judicial process and the law. He also served in the Oklahoma State Senate from November 1979 to 1988, and he was also elected minority leader in the State senate in 1985. I had the pleasure of serving with Tim in the Oklahoma State Senate during my brief tenure in that body.

From 1968 to 1970, Tim served as an assistant Oklahoma attorney general. He is a graduate of the University of Oklahoma and received his law degree in the university's law school. As a member of the U.S. Navy from 1965 to 1968, he served in the Judge Advocate General's office in the Pentagon for 2½ years, as well as serving as a White House military aide to President Johnson from 1966 to 1967.

In Oklahoma, he has had the distinction of being involved in numerous community organizations, such as serving on the board of trustees of the Donna Nye Foundation and serving on the advisory board of the Oklahoma State Fair. Tim and his wife, Nancy, are natives of Beaver, OK. They have three children—Kirsten, Ryan, and Tyler.

Mr. Chairman, again, I have stated this before, but I have had the pleasure of knowing Tim and his family for several years. I know of his integrity, I know of his character. I think he will be an outstanding addition to the Western District of the State of Oklahoma. I would urge this committee to move as expeditiously as possible and have the entire Senate confirm him. I think he will be an outstanding addition to the judicial branch.

Senator KOHL. Thank you, Senator Nickles.

Senator Boren.

STATEMENT OF HON. DAVID L. BOREN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator BOREN. Thank you, Mr. Chairman. It is a privilege to join with Senator Nickles in recommending to you and the members of this committee the prompt confirmation of Tim Leonard to the bench in Oklahoma.

I have known Tim—I was thinking back—almost 30 years. I have known him when he was a civic leader in his home community of

Beaver, OK, a small community in northwestern Oklahoma, in the Oklahoma panhandle region. I have known him as he has been in the private practice of law there for many years. I have known him since he entered public life, as Senator Nickles has said, spending 10 years with a very distinguished record in the Oklahoma State Senate, serving as minority leader during part of that time. And then I have known him, also, as he has been a part of our judicial process as assistant attorney general for the State of Oklahoma, and then most recently as U.S. attorney for the Western District in Oklahoma.

I have thought over and over again if there is anything I could say bad about Tim Leonard. There is one thing. His party affiliation leaves something to be desired, but other than that, I have to tell you that he is a person for whom I have enormous respect.

When I think back about the people who have been nominated to serve from Oklahoma on the Federal bench over many years since statehood, I would certainly place Tim Leonard among that small number that have been most highly qualified to serve.

He has strong bipartisan support in our State. People have confidence in him without regard to their party affiliation. Those that have dealt with him in the legislature in the State government—and I have been in on some of those conversations and I have talked with many of his colleagues on both sides of the aisle. The word that they use most often to describe him is "fair." He is a person that shows respect for various points of view, who listens intently, who does his homework and then tries to reach a fair decision, and he has the courage of his convictions. He is a person of absolute integrity. I would never question for 1 minute the attitude that he would bring to the bench in terms of his personal character and in terms of his fairness and ability to listen to all sides of an issue.

So it really is a privilege—and I use that term not in the sense that we use it every day as a matter of form of speech, but I use it in its real and genuine sense—it is a privilege for me to be here and to recommend to you the confirmation of Tim Leonard to the Federal bench for Oklahoma. He is a person of enormous ability and he has virtually the unanimous support of the people of Oklahoma as he has been nominated for this position.

Senator KOHL. Thank you, Senator Boren.

We also have with us Senator Kit Bond from Missouri, who would like to say a few words about Mr. Leonard.

STATEMENT OF HON. CHRISTOPHER BOND, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator BOND. Thank you, Mr. Chairman. After the very fine words of the two extremely distinguished Senators from Oklahoma, it is with some trepidation that I come in and say anything about my good friend, Tim Leonard.

As the distinguished senior Senator from Oklahoma has said, outside of his party affiliation, he can find nothing wrong with Tim, and I would hope that all our colleagues on both sides of the aisle would join in a very swift and quick confirmation of Tim Leonard.

I have had the pleasure of knowing Tim and his lovely wife, Nancy, quite well for over 25 years, going back to the time when he was in Washington with the Judge Advocate General Corps. I know his work in Oklahoma primarily through reputation, but I do know Tim and I know his family. I know the kinds of high standards, the great ability, and intellect that he has, and I appreciate the opportunity to join with my colleagues in Oklahoma in saying that this is one of the outstanding candidates who has been nominated, and I certainly can think of no finer action that the Senate can take than to move expeditiously on this confirmation.

I appreciate very much the time, and I certainly add my wholehearted personal endorsement to this nomination.

Senator KOHL. Thank you, Senator Bond.

Thank you, gentlemen.

Judge Randa, would you like to step forward now with Senator Kasten?

Senator Kasten.

STATEMENT OF HON. ROBERT W. KASTEN, JR., A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KASTEN. Mr. Chairman, thank you very much, and let me first of all say how pleased I am to see you chairing this hearing, but also how pleased I am to be here this morning to introduce and, more importantly, to highly recommend to your committee Judge Rudolph T. Randa.

As you, Mr. Chairman, are well aware, Judge Randa has been nominated by the President to fill the open judgeship of the Federal District Court for the Eastern District of Wisconsin. I wasn't surprised when Judge Randa was one of the five candidates that was considered most qualified by the Federal merit selection commission which, included members chosen by you, Mr. Chairman, the State Bar of Wisconsin, and also me.

The commission had the difficult job of reviewing the credentials of 22 highly qualified individuals. Though the qualifications of the five individuals recommended by the commission reflected the high caliber of jurists and practitioners that we have in Wisconsin, I was pleased to recommend to the President the fine jurist that we have here with me today and that we will hear from later.

Judge Randa has distinguished himself as both a practicing attorney and as a jurist in Wisconsin's fine judicial system. He has practiced on his own, served for 5 years in the Milwaukee city attorney's office, and then served since 1975 as a judge on various courts.

Prior to his current position as Milwaukee county circuit court judge, which he has held for 10 years, Judge Randa served as both a Milwaukee municipal court judge and as a Milwaukee County circuit judge, as well as on two different panels of our State's court of appeals.

Mr. Chairman, though we all wish it were not so, Wisconsin, and particularly the southeastern part of Wisconsin, the Milwaukee area, has been hard hit by crime and drug problems that plague this Nation. Beyond the sadness that such problems mean to the individuals involved as victims, a severe strain is put on the whole

judicial system as criminal cases must take precedence over civil matters.

The eastern district bench needs the current vacancy to be filled as soon as possible, and I know that you, Mr. Chairman, are personally aware of this. Working on the premise that justice delayed is justice denied, the 19-month time period that civil matters take to get through the eastern district must be reduced. Mr. Chairman, both of us recognize that a great step in that direction would be the expedited confirmation of Judge Rudolph Randa.

I am pleased that Randy has his two sons, Rudolph and Daniel, and his wife, Melinda, behind me; also, Melinda's mother and other relatives. They are here today to share this important occasion with Randy, and I also, Mr. Chairman, want to say that last night the family ventured to Baltimore. The idea was to watch the Brewers defeat the local team up there, the Orioles, which didn't happen; but they are all watching here today, and today makes their trip worthwhile. We couldn't bring a Brewers win, but today makes their trip worthwhile, and I know that all the people behind me are proud of their father, their husband, and their son-in-law.

I wish to thank you, Mr. Chairman, for holding this hearing, for your efforts to see that the federal judgeship vacancy in the Eastern District of Wisconsin is filled as quickly as possible. I give Judge Randa my very highest recommendation. I look forward to working with you, Mr. Chairman, in expediting this nomination.

Thank you very much.

Senator KOHL. Thank you very much, Senator Kasten.

Judge Rudolph Randa is a very good example of Wisconsin's fine education system. Judge Randa was born and raised in Milwaukee. He attended Riverside University High School and he received his undergraduate degree from the University of Wisconsin-Milwaukee in 1963 and his law degree from the University of Wisconsin in 1966.

Judge Randa has an extensive public service career, including time spent at the Civil Rights Division of the Department of Justice and with the city of Milwaukee, as well as serving as a judge of the Milwaukee Municipal Court, the Milwaukee Circuit Court, the Wisconsin Court of Appeals, and finally as judge of the Milwaukee County Circuit Court.

Obviously, Judge Randa has had vast experience, and the American Bar Association agrees. Judge Randa was unanimously rated qualified by the Standing Committee on the Federal Judiciary of the ABA.

As with most Federal circuits, the Eastern District of Wisconsin has a lengthy backlog of cases. The sooner the opening created by Judge Warren's senior status can be filled, the better off the people of Wisconsin will be.

I congratulate Judge Randa on his nomination and we welcome him on behalf of the Judiciary Committee.

Judge RANDA. Thank you, Mr. Chairman.

Senator THURMOND. We are glad to have you. Thank you for coming.

Senator KASTEN. Thank you, Strom.

Senator KOHL. Senator Seymour, would you like to bring up your two nominees?

Senator SEYMOUR. Yes, I would, Mr. Chairman. I appreciate that.

STATEMENT OF HON. JOHN SEYMOUR, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator SEYMOUR. Chairman Kohl, distinguished Senator Thurmond, thank you for allowing me the distinct pleasure to introduce Ms. Lourdes Baird, an exceptional nominee to the U.S. District Court for California's Central District.

We often speak of America as the land of opportunity, but it takes a remarkable story of an extraordinary person like Lourdes Baird to show us that the promise of this Nation is still alive. Her story is one of courage, of perseverance, and of creating one's own opportunity on the strength of character.

Ms. Baird came to the United States as a child from Ecuador, and after raising her five children in the rough-and-tumble streets of Los Angeles, she returned to school and set out on a new path of self-improvement. Graduating at the top of her class from UCLA Law School was just the beginning of her late-starting but exceptionally devoted academic career, and since then Ms. Baird has served California's legal and judicial professions, as well as America's law enforcement community, with distinction.

Ms. Baird's credentials for this post are impeccable. She has experience as a Federal prosecutor from her service as an assistant U.S. attorney for the Central District of California from 1977 to 1983, and as our current U.S. attorney for the same district since 1990.

She has 3 years of experience in private practice as a partner in the firms of Baird & Quadros, and Baird, Munger & Myers, and she has prior judicial experience in the East Los Angeles Municipal Court, the Los Angeles Municipal Court, and the Los Angeles Superior Court.

But to fully appreciate Lourdes Baird, one needs to look beyond her professional achievements to the leadership she has provided to her community. Lourdes Baird has been and continues to be a strong, articulate advocate of women's and Hispanic issues. Ms. Baird also taught trial advocacy as an adjunct professor at Loyola Law School in Los Angeles.

I would like to congratulate Ms. Baird for the award she won last year from the UCLA Law School as Alumnus of the Year, and from the Hispanic Women's Council as Woman of Promise. But these accolades, while wholly appropriate, only recognize part of her personal strength. Lourdes Baird is more than a role model for women, more than a role model for Hispanics. Ms. Baird is an exceptionally capable and competent role model for people of all races and genders, because she has the strength, the determination, and the courage to believe in her dreams.

It is a pleasure and an honor, Mr. Chairman, to introduce to the members of the Senate Judiciary Committee Ms. Lourdes Baird.

Ms. BAIRD. Thank you.

Senator SEYMOUR. Mr. Chairman and Senator Thurmond, it is my distinct pleasure and honor to introduce Judge Irma Gonzalez to the Judiciary Committee, an outstanding nominee to the Federal

court in California's Southern District. With her today are her husband and daughter, and both are equally proud of her.

She is a Californian by birth and a graduate of Stanford University. Judge Gonzalez began her distinguished legal career in the Grand Canyon State of Arizona, where she attended the University of Arizona School of Law. Following graduation, she served for 2 years as a law clerk for U.S. District Judge William C. Frey in Tucson, and then served for 4 years as an assistant U.S. attorney.

In 1979, she returned to the Golden State and specifically, to Los Angeles, where she worked as a trial attorney for the Department of Justice and then as assistant U.S. attorney. In 1981, she moved to San Diego where she practiced as an associate attorney for the firm of Seltzer, Caplan, Wilkins & McMahon.

Beginning in 1984, Judge Gonzalez served as a U.S. magistrate for the U.S. District Court in San Diego. In January, 1991, after 7 years of distinguished service as a magistrate, she was appointed to serve as a judge of the California Superior Court in Vista, where she continues to serve with distinction.

Of equal importance in knowing Irma Gonzalez, the State judge, is appreciating Irma Gonzalez, the private citizen. Indeed, she has devoted countless hours of service to her community. She has served as chairperson of the Girl Scout Women's Advisory Cabinet, as a member of the board of trustees of the San Diego Museum of Man, and is still a member of the San Diego mayor's Citizen Advisory Board on Police-Community Relations.

Mr. Chairman, it fills me with immeasurable pride when I speak of Californians who have distinguished themselves in their profession and in their community. It is an even greater pleasure to recommend such extraordinary individuals to positions on the Federal bench. I am seated next to such a distinguished person.

Irma Gonzalez, whether as lawyer, judge, community leader, wife and mother, has pursued life with energy, dedication, and distinction. I have great confidence that she will bring those same qualities, that same boundless spirit, to the Federal bench as a U.S. district court judge.

Again, Mr. Chairman, members of the committee, it is my pleasure to introduce an extraordinary Californian, Judge Irma Gonzalez.

Judge GONZALEZ. Thank you.

Senator KOHL. Thank you very much.

Judge Gonzalez, I understand from Senator DeConcini that you grew up in Tucson, AZ. Senator DeConcini had expected to be here, had wanted to be here, but he is unable to be here this morning. But he is going to insert a strong recommendation in the record on behalf of your nomination.

Judge GONZALEZ. Thank you, Mr. Chairman.

[The prepared statement of Senator DeConcini, along with correspondence, follow:]

STATEMENT OF SENATOR DeCONCINI
CONFIRMATION HEARING OF JUDGE IRMA GONZALEZ
TO BE UNITED STATES DISTRICT COURT JUDGE
SOUTHERN DISTRICT OF CALIFORNIA
JULY 1, 1992

MR. CHAIRMAN, I WOULD LIKE TO EXPRESS MY STRONG SUPPORT FOR THE CONFIRMATION OF THE HONORABLE IRMA E. GONZALEZ TO BE A UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA. IT IS MY UNDERSTANDING THAT JUDGE GONZALEZ IS THE FIRST HISPANIC TO BE NOMINATED FOR THE FEDERAL BENCH IN SAN DIEGO. I BELIEVE SHE HAS THE EXPERIENCE AND BACKGROUND TO BE AN EXCELLENT ADDITION TO THE FEDERAL BENCH.

AS A SENATOR WHO REPRESENTS ARIZONA, I CONSIDER JUDGE GONZALEZ TO BE ONE OF OUR OWN. SHE AND HER FAMILY ARE LONGTIME RESIDENTS OF TUCSON. AFTER GRADUATING FROM STANFORD UNIVERSITY, JUDGE GONZALEZ RETURNED TO HER HOME TOWN TO ATTEND THE UNIVERSITY OF ARIZONA SCHOOL OF LAW. AFTER LAW SCHOOL, SHE CLERKED FOR UNITED STATES DISTRICT JUDGE WILLIAM FREY.

JUDGE GONZALEZ HAS DEMONSTRATED OUTSTANDING ABILITIES THROUGH A WIDE ARRAY OF POSITIONS. AFTER HER FEDERAL JUDICIAL CLERKSHIP, SHE WAS AN ASSISTANT U.S. ATTORNEY IN TUCSON FOR FOUR YEARS. SHE WAS A TRIAL ATTORNEY FOR THE ANTITRUST DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE. FROM THERE SHE SERVED AS AN ASSISTANT UNITED STATES ATTORNEY FOR THE CENTRAL DISTRICT OF CALIFORNIA.

AFTER A FEW YEARS IN PRIVATE PRACTICE, JUDGE GONZALEZ SERVED AS A UNITED STATES MAGISTRATE FOR THE SOUTHERN DISTRICT OF CALIFORNIA. SINCE JANUARY 1991, SHE HAS SERVED AS A SUPERIOR COURT JUDGE IN SAN DIEGO, CALIFORNIA.

NOT ONLY DOES JUDGE GONZALEZ HAVE A DISTINGUISHED LEGAL RECORD, BUT SHE HAS BEEN VERY ACTIVE IN HER COMMUNITY. IN ADDITION, WHEN COMMITTEE STAFF CONTACTED A NUMBER OF ATTORNEYS WHO HAVE APPEARED BEFORE JUDGE GONZALEZ IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA AND THE SUPERIOR COURT FOR SAN DIEGO COUNTY, JUDGE GONZALEZ WAS DESCRIBED AS HIGHLY QUALIFIED, EVEN-TEMPERED, AND OF UNQUESTIONED INTEGRITY.

I COMMEND PRESIDENT BUSH FOR NOMINATING JUDGE GONZALEZ. OUR FEDERAL JUDICIARY IS WELL SERVED BY THE ADDITION OF INDIVIDUALS FROM DIVERSE BACKGROUNDS.

WE IN ARIZONA ARE VERY PROUD OF JUDGE GONZALEZ. I STRONGLY SUPPORT THIS NOMINEE AND URGE MY COLLEAGUES ON THE COMMITTEE AND THE SENATE TO CONFIRM JUDGE GONZALEZ EXPEDITIOUSLY.

I WOULD LIKE TO SUBMIT FOR THE RECORD SEVERAL LETTERS FROM ARIZONA IN SUPPORT OF THIS NOMINEE.

1992 Jun 23 42

CITY OF TUCSON
OFFICE OF THE MAYOR

GEORGE MILLER
MAYOR

255 WEST ALAMEDA
P.O. BOX 27210
TUCSON, ARIZONA 85726-7210
PHONE: (602) 791-4201
FAX: (602) 791-5198

June 18, 1992

The Honorable Dennis DeConcini
U.S. Senate
Washington, D.C. 20510

Dear Senator DeConcini:

I was happy to hear that Superior Court Judge Irma E. Gonzales was recommended for San Diego's federal beneh. I truly support having a Latino woman in this very important position. Her qualifications certainly speak for themselves.

The southwest is abundant with Latin heritage, as you well know, and the increasing needs of our growing Latin constituency is an important issue that must be addressed. I feel that Judge Gonzales has the understanding and sensitivity that is necessary when dealing with criminal drug and immigration concerns.

I am sure that our Hispanie community, as well as our University of Arizona law school, will be forever proud and grateful if her appointment becomes a reality.

Sincerely,

George Miller

George Miller
Mayor

AAL

cc: Hispanic Professional Action Committee
League of United Latin American Citizens
El Concilio

92060382

RECYCLED PAPER

Arizona Superior Court
Pima County
110 WEST CONGRESS
TUCSON, ARIZONA 85701

Telephone
(602) 740-8241
FAX
(602) 622-0269

HON. LINA S. RODRIGUEZ
DIVISION 1

MARY ROBERTS
Judicial
Administrative
Assistant

NANCY DUCKWILER
Courtroom Clerk

MARY BERNAL
Court Reporter

JACK WHITE
Bailiff

June 10, 1992

Senator Dennis DeConcini
United States Senate
328 Hart Senate Office Building
Washington, D.C. 20510

Re: Judge Irma E. Gonzales
Judge of Superior Court
of the State of California
San Diego

Dear Senator DeConcini:

I am writing this letter to urge the appointment of Judge Irma E. Gonzales to fill the vacancy on the District Court of the Southern District of California. She is the only Hispanic who has ever been nominated for the Federal Bench in San Diego. More importantly, Judge Gonzales is eminently qualified and would be a superb Federal District Judge.

As in Arizona, I believe the Federal District Court of California could use a broader base in its Judges who would bring a new and worthwhile perspective to the Bench. Inasmuch as I am an Hispanic Woman Judge, I feel that I can state that Judge Gonzales would bring such an appropriate perspective to the Federal District Bench in California which is much needed. With her superb credentials, I would urge that you support and expedite a hearing for Judge Gonzales in her application for the District Court vacancy in the Southern District of California.

Best Regards.

Lina Rodriguez

Lina S. Rodriguez

LSR:mr

1992 JUN 1 2

June 8. 1992

Honorable Dennis DeConcini
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator DeConcini:

Irma E. Gonzalez, a Judge of the Superior Court in San Diego County, has been nominated to the Federal District Court for the Southern District of California.

Judge Gonzalez' family are longtime residents of Arizona. Her father was born and raised in Nogales and has practiced medicine in Tucson for the last 33 years.

Judge Gonzalez graduated from Catalina High School in Tucson. After graduating from Stanford University, Judge Gonzalez returned to her home town to attend the University of Arizona School of Law. After law school, Judge Gonzalez clerked for U.S. District Court Judge William C. Frey and was an Assistant U.S. Attorney in Tucson.

Judge Gonzalez is the only Hispanic ever to be nominated to the federal bench in San Diego. She has demonstrated her outstanding abilities by virtue of her service as an attorney, U.S. Magistrate, and Superior Court Judge.

We urge that you take whatever action you can to see that Judge Gonzalez obtains a hearing before the Senate Judiciary Committee as expeditiously as possible.

Sincerely,

ALBERT M. FLORES
President
337 N. 4th Avenue
Phoenix, Arizona 85003

AMF/pg

HISPANIC PROFESSIONAL ACTION COMMITTEE

June 15, 1992

Senator Dennis DeConcini
2424 East Broadway
Tucson, AZ 85719

Dear Senator DeConcini:

I am writing on behalf of the Hispanic Professional Action Committee, a Tucson organization of more than 100 Hispanic business and professional leaders.

We urge you to do whatever possible to schedule a confirmation hearing for Judge Irma E. Gonzalez, who has been nominated for the federal bench in San Diego.

Judge Gonzalez, a former Tucsonan, is well known in our community, and we take special interest in her nomination as the first Hispanic federal judge in San Diego. We fear the nomination may be lost if it is not confirmed by the U.S. Senate this year.

We trust you will assist with this effort. Thank you from HPAC.

Sincerely,

Edith Auslander

Edith Auslander
HPAC President

HPAC
P O BOX 27481
TUCSON, ARIZONA 85726-7481

DEDICATED TO THE CONCERNS OF HISPANIC AMERICANS

RICHARD L. McANALLY
G. EUGENE ISAAK
GERALD MALTZ
JANICE A. WEZELMAN
T. PATRICK GRIFFIN
PHILIP J. HALL
GRACE McILVAIN
THOMAS G. COTTER
LINDSAY BREW
ARMANDO RIVERA
GUS ARAGON, JR.
EUGENE N. GOLDSMITH
DENNEEN L. PETERSON
JONATHAN REICH
GILDA M. TERRAZAS
CAROLE A. SUMMERS

MILLER, PITT & McANALLY, P.C.
ATTORNEYS AT LAW
111 SOUTH CHURCH AVENUE
TUCSON, ARIZONA 85701-1680

AREA CODE 602
792-3836
FAX (602) 624-5060

OF COUNSEL
ROBERT F. MILLER
DONALD PITT

BARRY N. AKIN
(1939-1988)

June 16, 1992

Senator Dennis DeConcini
2424 E. Broadway
Tucson, Arizona 85719

Dear Senator DeConcini:

I am writing in support of the nomination of the Honorable Irma E. Gonzales to the Federal District Court in San Diego.

I met Irma in 1967 at a coffee for undergraduates entering Stanford given at the home of Jo Ann Diamos here in Tucson. I followed Irma to the University of Arizona Law School, and we have remained in touch even after she moved to San Diego in 1979. As you can see from her attached resume, she is an experienced and highly qualified judicial candidate.

I was very excited to learn of Irma's appointment to the Federal bench, since I believe very strongly that our judiciary is improved when it is made up of qualified individuals from diverse backgrounds. It is my understanding that there is a substantial backlog in the Judiciary Committee for scheduling confirmation hearings for judicial appointees. I would truly appreciate any assistance you could give in expediting the hearing on this appointment.

Very truly yours,

MILLER, PITT & McANALLY, P.C.

Janice A. Wezelman

JAW/lv

Enc.

Senator KOHL. Thank you very much.

Senator THURMOND. We are glad to have you with us.

Senator SEYMOUR. Thank you.

Senator KOHL. So let's begin now with Timothy Leonard. Timothy Leonard has been nominated to be a judge for the U.S. District Court for the Western District of Oklahoma.

Would you please raise your right hand, Mr. Leonard? Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LEONARD. I do.

Senator THURMOND. Mr. Chairman, could I make a statement?

Senator KOHL. Of course.

Senator THURMOND. Mr. Chairman, I am in two other committees that are taking action right now and I am going to have to leave. I just want to say that I have studied the records of all these people—Mr. Leonard, Judge Baird, Judge Gonzalez, and Judge Randa—and I commend the President for selecting these people. They appear to me to be highly qualified, and I commend the Senators—Senators Nickles and Boren, Senator Seymour, and Senator Kasten—for going along with these nominees.

I will ask them just to answer some written questions, and at this time I will ask you to excuse me. I will be glad to support all of them. I think they are well qualified.

Senator KOHL. Thank you very much, Senator Thurmond.

Mr. Leonard, would you like to introduce to us members of your family who are with you here today?

TESTIMONY OF TIMOTHY D. LEONARD, OKLAHOMA CITY, OK, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA

Mr. LEONARD. Thank you, Mr. Chairman. My wife, Nancy, is here, and Nancy and I met in this city and so this is a fond return. As a matter of fact, when we met she was working for the late Senator Everett Dirksen, whom this building is named after, so this is a special day for us.

My son, Ryan. Ryan is a sophomore in college. He just finished his sophomore year and has been an intern up here with Senator Nickles this last 6 weeks. I have two other children—my daughter, Kirsten, who graduated from college this past year, who is not able to be here and is out of the country. And I have a younger son, Tyler, who has a job washing dishes and is playing summer league basketball, and he could not find it in his busy schedule to get up here. [Laughter.]

I have my brother, Bill Leonard. Bill is an attorney in Philadelphia and has lived in Philadelphia for the last about 8 or 10 years, and several other friends and former associates. Thank you.

Senator KOHL. Very good. Mr. Leonard, prior to your tenure as U.S. attorney for 9 years, you served as a Senator in the Oklahoma State Senate. How, if at all, do you think your approach to judicial decisionmaking will be affected by the time that you spent as a State legislator?

Mr. LEONARD. Mr. Chairman, I think that one of the unique advantages that I've had is having served in the past in both the executive and the legislative branches of government. I have a real appreciation for the role that the legislative branch plays, as well as the executive branch, and I think that having been a State senator, in a position of leadership in the State senate, I was well aware sometimes of the frustration legislators have in sometimes the judiciary overstepping its bounds or, on some occasions, maybe the executive, or whatever.

But I have a real appreciation for the role, and the distinct role, that each branch of government plays, and I think that gives me a unique opportunity in the judicial branch to have an appreciation for that role.

Senator KOHL. Mr. Leonard, there has been recent debate about what changes should be made to our Nation's tort laws. Several proposals have urged that punitive damage awards be limited, while others have suggested no change at all is necessary. You have written on the subject of tort reform in Oklahoma, and while you served in the Oklahoma State Senate you authored a law to correct some abuses in the tort liability area.

What suggestions and observations can you share with the committee on the issue of tort reform?

Mr. LEONARD. When I was in the State senate, Mr. Chairman, the issue of tort reform swept the country and was one of the most, not only emotional issues, but one of the issues that dominated almost one complete session of our legislative year.

I worked on that and tried to play a role in not taking the position of either extreme, either completely overhauling a system which I thought basically worked—on the other hand, I felt like that we had reached a point where litigation—and as we became a more litigious society, we had reached a point where the courts were overburdened. Those with true claims could not be heard, and I really felt like that there was some corrections that we need to make.

So I took more of a middle ground, and some of the issues that we addressed was putting some provisions in State law where there was some more authority for the judges to control the litigation a little more as far as frivolous lawsuits, in particular.

And also in the area of punitive damages, I think punitive damages certainly have a place, certainly have a role, but I think in some instances they had reached a point where they were not only punitive, but they basically were destroying some of the fabric of the people involved.

So I really felt like that there was a middle ground; there were some adjustments, corrections, that needed to be made in our system so that people did have an opportunity. On the other hand, I really did not feel that we should completely overhaul our entire tort system, where average citizens did not have their day in court.

Senator KOHL. Mr. Leonard, recently we have seen an increase in the use of secrecy orders in product liability and environmental tort cases. Critics of this trend claim that it may prevent the public from learning about threats to public health and safety, and some now cite the recent stories about Dow Corning and Halcion as examples. In fact, we understand that a few States, including Texas

and Virginia, have just changed their rules to make sealing cases more difficult.

When a judge hears a request to make documents confidential, how should she or he balance the public's right to know against the litigant's right to privacy?

Mr. LEONARD. Mr. Chairman, of course, I think that would be one of the more delicate issues that any judge would face. I certainly think there is—I have a strong belief in the public's right to know. On the other hand, there are certainly some overriding concerns at times with particular parties and maintaining some secrecy.

I think the first thing you would have to do if you were faced with that situation is to have some type of in camera hearing where you could determine and make a determination, but it would be a very delicate balance that you'd have to strike. I think there are two competing concerns on some occasions and you would have to look at it on a case-by-case method.

Senator KOHL. The committee has been contacted by several people who have raised questions concerning your role as U.S. attorney in the decision to reprosecute an Oklahoman named Dale Crabtree. Mr. Crabtree was tried in early 1992 on charges of conspiracy, mail fraud, wire fraud, bankruptcy fraud, and money laundering. The jury acquitted Mr. Crabtree on a number of charges, but was deadlocked on others.

Let me state that these individuals have offered no evidence of wrongdoing on your part. However, they do question the wisdom of reprosecuting Mr. Crabtree. They also question whether your decision to reprosecute might be based on your friendship with an individual who has been involved in civil litigation against Mr. Crabtree.

You have talked about this issue with the committee, but since these charges have been raised and mentioned publicly in Oklahoma, it is best that you be given an opportunity to respond to them in an open and public forum. Let me also note that we received many favorable comments concerning your tenure as U.S. attorney.

Would you like to tell the committee what role you have had in the decision to reprosecute Mr. Crabtree?

Mr. LEONARD. Mr. Chairman, I'd be glad to. First of all, since there is a trial scheduled in July, I would not comment on the particular facts of the case. I think that would be improper. As far as my role in the decision to retry, I would very briefly tell the committee that when I became U.S. attorney, Mr. Crabtree had been under investigation by the office and by the Federal Bureau of Investigation for some 3 years. The investigation was pretty well complete and it basically involved bankruptcy fraud matters.

So when I became the U.S. attorney in October of 1989, that case had been in the office for some 2 to 3 years. I treated it as I did any other case in the office. It was assigned to an assistant. Unfortunately, in this case when the case was about ready to be presented to the grand jury for indictment, that assistant moved with her husband to another district and two other assistants were assigned the case and they had to pretty well start over. So it was almost another year before the indictment was brought down by the grand jury.

The case has been handled by an assistant named Susan Dickerson. Susan has been an employee in our office for approximately 2 years. She was the former criminal chief of the State attorney general's office, a former State prosecutor. She comes with very high credentials. She has had experience in major cases both in the attorney general's office and in our office. The other assistant handling it was an expert in bankruptcy matters.

Those two assistants made the call and did all of the trial preparation. I did not intervene in any of that. They made the trial preparation, they presented the case at trial. At the conclusion of that case when there was a hung jury on some of the counts, they asked the judge; the judge properly allowed both parties, both of the attorneys for the parties, to interview the jurors. They did those interviews.

At the conclusion of those interviews and at the conclusion of the counts that were remaining that the jury had been—that the mistrial was declared on, they came to me with the decision that they felt very strongly that the case should be retried.

I have supported in almost every instance the decisions of the assistants in their judgment on a case, and in this case I did that. There is no, in my understanding of the case—and as I say, I did not have a direct, hands-on involvement with the case—there is no issue that I'm aware of that the actions of the U.S. attorney's office in any way affected any civil litigation between Mr. Crabtree and any other parties as that civil litigation had gone on for some 7 or 8 years and had gone through the State courts, the appellate courts, and the bankruptcy courts, and I think are all concluded.

So I know of no effect that any action that this office took, that the U.S. attorney's office took, that would have any bearing on any relationship or litigation between other parties. So far as I'm concerned, it was a proper decision by the assistants and I merely supported that, as I do most of the decisions by the assistants in the office, or they wouldn't be assistants if I didn't trust their judgment.

Senator KOHL. Very good. Mr. Leonard, you have had a very successful legal career, and also a career in public office. We imagine that a lucrative legal practice is available to you, so the last question is a simple one. Yet, we hope that it provides the committee with insight into you as a person, not necessarily on your judicial philosophy.

What attracted you to the law and what do you hope to accomplish as a judge?

Mr. LEONARD. Mr. Chairman, I guess what attracted me to the law was a sense of—I guess in the purest sense was a sense of wanting to be of some assistance and help to my fellow man. I practiced law in the Navy for 3 years and then, after the Navy, came back to the Oklahoma attorney general's office, practiced with a large firm in Oklahoma City 1 year and found that my real interest as being a lawyer was in a small-town general practice in my hometown of about 2,000 people.

I spent 17 years in that practice, including those years I traveled back and forth to the State senate, and I found that the practice of law in a small community, the general practice of law, is the practice in the purest sense. You know the people that you're repre-

senting. You know their causes. Many times, many hours are spent in talking common sense and maybe counseling people out of litigating certain issues that will have an effect not in anybody's best interest.

I enjoyed that kind of public service and, in many ways, helping people whether they could afford to pay a fee or not pay a fee; but, generally, I guess in the purest sense being involved in a community, feeling like I had made some contribution through my profession in that community.

I think in public service I have thoroughly enjoyed being a member of the State senate serving the public. I have enjoyed the job in the U.S. attorney's office, and I look forward to what I think is the highest calling that a lawyer can have, and that is to serve on the Federal bench.

I feel like public service has many more rewards than making great sums of money. I have always made an adequate living in practicing law, and a comfortable living, but I have never been driven by how many billable hours I had each month and how much wealth I could accumulate and what kind of car I drove. That has not been my interest in life.

Senator KOHL. Is your wife satisfied with your decision to forego increasing possibility of money for the Federal bench?

Mr. LEONARD. I think she is very satisfied in this decision and, like in all of our decisions, has certainly been a very equal partner in that decision.

Senator KOHL. Thank you very much. You have done a good job.

Mr. LEONARD. Thank you, Mr. Chairman, and I want to just take a minute to thank the committee and thank you for allowing me to be here for this hearing, and also, for the record, to thank Senator Nickles, Senator Boren, and Senator Bond for their very kind introductory remarks.

Thank you.

Senator KOHL. Thank you.

Our next nominee is Lourdes Baird, who has been nominated to the bench for the Central District of California.

Ms. Baird, please step forward to the witness table and raise your right hand. Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. BAIRD. I do.

Senator KOHL. Ms. Baird, if there are any members of your family here, we would like to be knowledgeable of them at this time.

TESTIMONY OF LOURDES G. BAIRD, LOS ANGELES, CA, TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Ms. BAIRD. Unfortunately, they are all in California, except for youngest son who is doing some commercial fishing in Alaska. He may not be washing dishes and playing baseball, but he's out there working pretty hard.

Senator KOHL. All right.

Ms. BAIRD. They were unable to make the trip, unfortunately.

Senator KOHL. Very good. Ms. Baird, we understand that you served as a State court judge from 1986 through 1990. What experiences will you bring with you that will assist you as a Federal judge?

Ms. BAIRD. Well, I think the experience of being on the bench is going to be very similar. There certainly are differences, but it will be similar to what I anticipate I will be having if indeed I am appointed.

What I learned—perhaps that would be a way of approaching it—what I learned was how to control a courtroom, how to deal with heavy caseloads, and always making sure that the litigants in the court did have their day in court, and that the treatment was fair and appropriate. I always hoped that people who left my courtroom left with a good sense about the judicial system.

Senator KOHL. As U.S. attorney for the Central District of California, you serve as the Government's chief prosecutor in Los Angeles. After the events following the Rodney King verdict, the last few months must have made your job quite a bit more difficult than usual. No doubt, you have been involved in the Justice Department's response to the State court's verdicts and the rioting that followed. What has been your role in these matters?

Ms. BAIRD. The Rodney King investigation is being conducted in my office, together with the Civil Rights Division of the Department of Justice. Of course, since it is a grand jury investigation, I am quite sure you're not asking me any questions with regard to the facts.

However, the case is presently being investigated. It is a question of reviewing. There is quite a bit out there. There is a transcript, a trial transcript, of several weeks' trial. We also have transcripts of witnesses that were brought before the State grand jury that must be reviewed and analyzed.

It is something that is certainly a very important decision. The responsibility is very heavy, and one of the things that I believe, together with the Attorney General, is that we must take the time that is necessary to do the very best job we can to unearth the facts, to analyze the case, to make the decision whether to present this before the grand jury—I should say present an indictment before the grand jury—and if indeed an indictment is returned, to be sure that we have the very best trial team and best preparation we can.

Senator KOHL. Could you tell us the status of the Federal investigation concerning civil rights charges against the Los Angeles police officers or charges against those individuals implicated in the beating of truck driver Reginald Denney?

Ms. BAIRD. Those charges are those that I described—the status is as I described before. The investigation was renewed right after the return of the verdicts, and the status of the investigation right now is that it is going very strong. We have approximately four lawyers from the Civil Rights Division here from the Department of Justice in my office, as well as approximately anywhere from 2 to 10 lawyers from my office that are working on the case intermittently. But it is going forward at a very fast pace, and I wish I could tell you when it was going to be concluded, but I'm afraid that would be a little bit too speculative.

Senator KOHL. All right. In your opinion, what are the lessons to be learned from the Rodney King incident and the Los Angeles rioting? If confirmed, how might these lessons help you to discharge your duties more effectively as a Federal judge?

Ms. BAIRD. Well, the lessons to be learned with regard to the—the question was with regard to the Rodney King verdicts or the rioting itself? Perhaps I need a clarification, Mr. Chairman.

Senator KOHL. On the rioting conditions, the things that you will bring to your court as a result of your experiences.

Ms. BAIRD. Los Angeles is, as all of us know, a very large city. It is a very multicultural city. We have perhaps—oh, I can't tell you. It is the State with the greatest variety of cultures, but we certainly do have them. There is a great need for understanding. There is a need of understanding and communication among the various ethnic groups that live in the city.

We have a new police chief who was sworn in yesterday, Police Chief Williams. He has come, I believe, with a good view, a view of serving the community, and I am very hopeful that given the lessons that all of us have learned—it has been a great shock to all of us in Los Angeles, and I am quite sure to the entire country—I would hope that all of us will be in a position to look more carefully and to be sure that all citizens are indeed able to have access to the justice system, and fair and equal access to that system.

Senator KOHL. Would you share with us your observations on just a few points? First, in your years as a litigator, what institutional biases have you or other women or minority lawyers faced, and how will you address these if you are confirmed as a Federal judge?

Ms. BAIRD. Sometimes when that question is asked of me, I feel a little bit guilty because I have been very successful and very lucky. I wouldn't be here today testifying, Mr. Chairman, if I haven't had lots of opportunities that have been given to me. That does not mean that there have not been institutional biases against women.

I was very fortunate when I graduated from UCLA Law School to be hired at the U.S. attorney's office, and I do believe that there were few, relatively, institutional biases there. There are more of us now in the practice of law. There are more women. We are all becoming accustomed to women. It is not quite so unusual; we do not create the stir that we did when we entered the courtroom in the early 1970's to argue law and motion in the Federal courts. Now, we are commonly seen there.

What I do to help that—I have tried very hard to act as a role model and to encourage women to come into the field of law. I do believe that the more women that enter the field, then the less bias there will be.

Senator KOHL. All right. What advice would you offer to this President or any other President on the wisdom of increasing the number of women and minority nominees, and what do you think is the best approach to increasing the number of women and minority representatives in the judiciary?

Ms. BAIRD. The best way to increase that is to increase the pool. I was active with Governor Deukmajian in the State of California, and his appointment secretary, in order to encourage the applications of not only women, but also Hispanics. There are extremely

competent ethnic minorities out there that should be holding judicial positions and visible positions of that type.

And the issue is, indeed, to increase the pool, and how I have done that in the past—and I would hope to continue to do that by addressing ethnic bar associations and groups and encouraging those individuals who are qualified to join the pool of applicants.

Senator KOHL. Mr. Baird, you have had a varied legal career—U.S. Attorney, professor, judge, and attorney partner. Why did you decide to pursue the study of law?

Ms. BAIRD. That's an interesting question, Mr. Chairman. I went to school after—I had my first college class after the birth of my youngest son, and I went to night school at Los Angeles City College. I did not really have a focus at that time, but I knew that I wanted to do something to improve myself.

I had, frankly, focused myself to go into social welfare, and I had hoped that I would get a master's degree in social welfare. As I look back on it, I think it was because I had spent an awful lot of time spraying Bactine on skinned knees and giving children good hugs and patting them on the head and being the mother that I thought I should be.

Fortunately, in those areas, the requirement is that one work in the field in order to be accepted into the schools. The academic credentials are secondary to your experience, and it was fortunate because when I did work for two summers in the field, I realized that it was something that I was not really very good at. So before I was going into my last year in my undergraduate, I was beginning to explore other areas.

A friend of mine had suggested that I look into law school. Quite frankly, Mr. Chairman, I could not identify myself as being a lawyer because most all the lawyers I knew were men that I really didn't identify with. I took the time and the effort of exploring and doing some research, and there were a number of admirable pioneer women, if you will, in the field that I did identify with. I guess I saw them and thought if she can do it, then I can do it. And the law had always been something that I felt was something that would be not only very interesting, but I could make a contribution not only to myself as a person, but primarily to my community.

Senator KOHL. What area of the law interests you most?

Ms. BAIRD. Well, it's hard to say. I have been spending most of my time in the last 2 years focusing primarily on the criminal area, although there is a great deal of affirmative litigation that my office has had. It's really difficult to say which area I am interested in most. I do believe that the civil area is the area that I practiced in in private practice, and I found that to be very interesting. I'm afraid I can't pick one specific area that I would tell you is more important than another one to me.

Senator KOHL. With more lucrative options available to you, why do you choose the bench?

Ms. BAIRD. I have been in public service throughout my entire career, except for 3 years when I was in private practice. I went into private practice because I felt that I needed that experience, and I primarily wanted to see whether I would be able to make it on my own.

I enjoyed the practice. I found it to be very rewarding, but, frankly, public service is really very appealing to me. I had been in public service. I was in private practice for 3 years and I was very happy to come back to public service and I am just committed to public service.

Senator KOHL. Very good. Thank you very much, Ms. Baird.

Ms. BAIRD. Thank you.

Senator KOHL. We would like to call at this time Judge Irma Gonzalez. Judge Gonzalez has been nominated to the bench for the Southern District of California.

Would you raise your right hand, please? Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge GONZALEZ. I do.

Senator KOHL. Thank you very much. Would you like to introduce us to any members of the family you may have with you here today?

TESTIMONY OF IRMA E. GONZALEZ, SAN DIEGO, CA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Judge GONZALEZ. Yes, I would. Thank you, Mr. Chairman. First of all, I would like to introduce my husband, Robert Brewer, if he would please stand.

[Mr. Brewer stood.]

Judge GONZALEZ. My daughter, Amy, and I would also like to introduce very close friends who took time out from their busy schedules to be here with me today, Joseph Covington and Ms. Del Dameron.

Senator KOHL. Thank you. Welcome.

Judge Gonzalez, from 1984 through 1991, you served as a U.S. magistrate judge for the Southern District of California. If you are confirmed, how will your responsibilities change on a day-to-day basis from those you exercised as a U.S. magistrate?

Judge GONZALEZ. The most important change will be that I will—my jurisdiction will expand. For the first time, I will be able to try felony cases in Federal court. As a magistrate, my jurisdiction was limited under the statute and I only presided over misdemeanor and petit offense trials.

In addition, on the civil side I will be able to preside over any dispositive proceedings—that includes pretrial motions, any trial—without having to have the consent of the attorneys, which is what is required for a magistrate to handle any dispositive motions or trials, is that the consent of the attorneys was always needed, and sometimes that was difficult to obtain. So I will look forward to being able to try felony cases and being able to handle all civil matters.

Senator KOHL. All right. From your broad experience as a magistrate, can you offer any suggestions on how to improve magistrates' current role in our judicial system?

Judge GONZALEZ. Absolutely. I guess I'm a real advocate of using magistrates in a way that will help the district court and help the caseload, and certainly help in the management of the caseload. I was very privileged to work in a district that utilized magistrates

to their fullest, and what I mean by that is that we participated in case management from the very beginning, and that meant that we held status conferences at the very start, and I'm talking about civil cases right now.

And, more importantly, the magistrates handled all settlement conferences. So as a magistrate, I had the experience of presiding over hundreds and hundreds of settlement conferences at early stages of litigation, so that hopefully litigation costs could be kept down. Hopefully, the parties could have their day in court and not feel that they weren't being treated fairly.

So I think magistrates can be used early on in civil litigation, in the early stages of litigation, by handling status conferences, by seeing whether a case can be settled. And we are talking about some cases that are not minor to the litigants, but certainly may be minor as far as the amount of damages are concerned.

As a magistrate, I also handled many trials by consent, and that involved the education of the bar. I think that's very important. I think it's very important for districts to be involved, for the district judges, for the members of the county bar to educate lawyers on the magistrates and how a magistrate can try cases by consent, and that they are available and that they are competent, and that they should, and they can, handle any case that a district judge can handle.

Senator KOHL. So you intend to use them quite extensively in your courtroom if you are confirmed?

Judge GONZALEZ. Absolutely, yes.

Senator KOHL. More so than might be found in other courtrooms?

Judge GONZALEZ. No, I don't think so. I think that all the district judges in our district, the Southern District of California, use the magistrates the same, and by local rule we've set out how the magistrates will be utilized and I think—and they are used very extensively, and I will follow that practice.

Senator KOHL. All right. According to a study conducted by the Federal Pre-Trial Services Agency, in a recent 12-month period over 50 percent of defendants appearing in San Diego Federal courts were unable to make bail set by magistrates at their initial hearing. The study found that the national rate was just slightly over 8 percent. The head of the Federal Defender Service in San Diego has said that the San Diego Federal courts follow the philosophy that, quote, "Nobody gets out on bail."

Would you offer your observations to us on why people appearing in San Diego Federal courts are at least six times less likely than individuals appearing elsewhere to make bail set by magistrates?

Judge GONZALEZ. Frankly, I was surprised at the statistics, but we're in a very unique geographical location. We are only 15 miles from the Mexican border. Most of our cases are drug-related cases, and quite a few of the defendants who are arraigned in Federal court are nationals from other countries, not only Mexico, but perhaps other Central or South American countries, and in some instances even Asia.

I suppose one of the reasons—and, certainly, that's one of the factors we must take into consideration under the Bail Reform Act; that is, what is this person—what ties does this person have to the

community. And if we have before us a person who may have some wealth, who has no ties to the community, who is a national of another country, naturally the bail is going to be set higher than perhaps a person who has substantial ties to the community.

I can think that that is one reason for the high bail, and because the narcotics business is very lucrative and it's very easy for some of these defendants to post bail, and unfortunately a high bail is necessary. But I can tell you and I can assure you, having arraigned and set bails in literally thousands of cases, that I never had the philosophy that no one gets out of jail, and I certainly know that none of my colleagues did either.

Senator KOHL. Do you have any suggestions on the Federal bail law that you think could be improved to make it more fair and impartial?

Judge GONZALEZ. I think that the Federal bail law is very fair. As you probably know, there are many factors that we must look at in determining whether a person should be released on bail. I certainly feel that pretrial services—and perhaps that's why these statistics might be askew a little bit. Pretrial services did not come into being in our district until approximately 2 years ago, so we never had the services and the input of pretrial services, and I think that's very important in any magistrate—in setting bail in any case, is to have the resources that pretrial services provides, and that is they do conduct a very important investigation of that person's background. They make recommendations. They also can supervise a person while out on bond.

So I think that I don't necessarily have any recommendation as to how to change the Bail Act, but I certainly feel very strongly about utilizing other resources and, in particular, pretrial services and the assistance of pretrial services, and perhaps even the probation office or other agencies that could lend assistance in being able to supervise people out on bail, and that probably would help us in being able to release persons who perhaps might be better off—might have landed in jail initially, but might be able to be supervised by an agency while out on bail.

Senator KOHL. Judge Gonzalez, some people suggest that settling appropriate cases early would relieve some of the docket backlog faced by Federal courts. While that may be true, some litigants would prefer their day in court perhaps to even a favorable settlement.

As a trial judge, what role do you intend to play in this whole settlement process?

Judge GONZALEZ. I think the settlement process is very important. We have a tremendous backlog of civil cases, but I don't think settlement should take the place of a litigant having his or her day in court. I think it's very important for the litigants to know that it's going to be expensive to go to trial, that the outcome may not necessarily be what they anticipate or what they feel it should be.

And so I think a settlement early on in a case, and perhaps another settlement during the discovery phase so that the judge can perhaps impress upon the attorneys and the litigants what it will cost to try this case—and I think that's probably the worst thing about litigation these days; that is, the tremendous cost that we

incur in litigating cases. But there is no way that I have ever forced a party or an attorney to settle a case.

And you're right. If a party wants his or her day in court, they will have it, but at least I had made sure as a magistrate that the litigants and the attorneys knew what it would cost them, and knew that there was a chance that they could lose the case. So as a judge, I will continue to maintain that line of thinking, or that philosophy, and I certainly know that the magistrates in our district have that philosophy. And as a district judge, I'm hoping to be able to participate myself in case management and trying to settle cases, but certainly not at the expense of a litigant having his or her day in court.

Senator KOHL. Judge Gonzalez, the administration has recently proposed that losers be forced to pay legal fees in certain types of lawsuits. Would the administration's proposal have affected the dynamics of any of the cases that you handled as a magistrate?

Judge GONZALEZ. I think so. I can't think of any case in particular, but we come back again to the settlement process, and I think that's a factor that you must tell the parties about, that if you lose this case, there is a chance that you will have to pay attorney's fees for the other side. And unfortunately that's something that each party has to take into consideration, and I am sure that that might have had an effect on a case that perhaps didn't settle that might have settled, knowing that there was—the outcome might be that attorney's fees would have to be paid, especially when I told a party that I thought that there was a stronger possibility of losing the case than winning the case.

And I felt that I was in a unique position to be able to advise parties of what I felt their chances were of winning or losing a case. Because of my experience, because of the number of cases that I had settled, I felt that I would predict to a certain extent whether a person had a good case or a bad case. And knowing that attorney's fees might have to be paid, I think, would have been a significant factor.

Senator KOHL. Some lawyers have commented that the administration's proposal would reward wealthy litigants, while making it too costly for the average citizen to bring suit. How do you respond to those comments?

Judge GONZALEZ. There probably is some truth to those comments. I'm hoping that as a district judge—that's why I think it's important that Federal judges be involved in case management, that you be able to oversee how a case is going and be able to—if you see that one side is being abused or whether discovery costs are being increased or are increasing at the expense of the other side, that you will step in and try to settle the case, and perhaps then prevent a wealthy client—or a wealthy party—excuse me—from being the prevailing party in every instance.

Senator KOHL. Judge Gonzalez, you have held numerous legal positions since your law school days. Undoubtedly, you have had ample time to consider your career. What was your reason for pursuing a legal career, and have your motivations changed over the years?

Judge GONZALEZ. I listened to that question as you asked the others, and I have to go back a long way. I never thought about

law, frankly. I always wanted to be a doctor and follow in my father's footsteps. I was the oldest of seven children and I assumed I would be a doctor, and then I decided when I was in college that I didn't like taking organic chemistry and various other—calculus, and I felt I wanted to be more creative with a career and that law would give me that opportunity. So I decided to go to law school, not really knowing or having in mind a particular mentor or person in whose footsteps I wished to follow, but I'm glad I did it.

And once I graduated from law school, I knew I wanted to be a litigator. I've always, always cherished the courtroom, and I'm hoping that being on the bench as a district court judge will give me the opportunity to be able to preside over trials that are hard-fought by good litigators because I appreciate good litigation. So my ideas about the law certainly haven't changed and I'm glad I've been a litigator. I'm glad I've been a judge and I'm glad I chose law over medicine.

Senator KOHL. Very good. Thank you very much.

Judge GONZALEZ. Thank you, Mr. Chairman, and thank you for allowing me to be here today.

Senator KOHL. Judge Randa has been nominated to the bench for the Eastern District of Wisconsin.

Would you please step forward and raise your right hand? Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge RANDA. I do.

Senator KOHL. Thank you very much. If you have any members of your family who are here, and they are, could we be introduced to them, please?

TESTIMONY OF RUDOLPH T. RANDA, MILWAUKEE, WI, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WISCONSIN

Judge RANDA. Thank you, Mr. Chairman. First of all, I'd like to say how proud I am to be here. It's truly an honor just to go through this process, and it's a privilege to have my sons and my family here to witness it and to get a flavor of what the democratic system and our Republic is all about. And I think even from my sons' maturity level, they can appreciate some of that, and I really respect the process. I hope they respect the process and I am happy for the privilege to have them see this.

I have here today, Mr. Chairman, of course, my wife, Melinda, and my mother-in-law, Katherine Materra from Kenosha, WI. And particularly pleasing to me today is the fact that my sister, Claire, has flown in from London, and I got short notice of this hearing and I didn't anticipate her being here, but when I walked into the Dirksen Building today, there she was, my sister, Claire McKuen, from Milwaukee, and my cousin, Ann Ziff, from New York. They both surprised me today; and my son, Rudy, and my son, Daniel.

And particularly pleasing, also, by my sister showing up, and since she's the only remaining sibling that I have left—unfortunately, through death, I lost my other two sisters and my parents, but today is my mother's birthday and I think just like Judge

Leonard—I mean, Attorney General Leonard; I am anticipating a bit—that's something special.

Senator KOHL. Thank you. It is nice to have you with us, and your family.

Judge Randa, you have got an impressive background, having served as a State court judge since 1975. If confirmed, what difficulties do you foresee in making the transition from the State to the Federal bench?

Judge RANDA. I was asked that question by a number of people before I came to this meeting, Mr. Chairman, and I don't see a great deal of difficulty in making the transition. I have been a judge for 17 years, having served on all levels, the municipal court, the circuit court of the State, and the court of appeals. And I think the Federal bench—and in addition to that, I was a trial attorney in the Federal courts. I did substantial practice in the Federal courts when I was with the city attorney.

And the rules of evidence that we have in Wisconsin are patterned after the Federal Rules of Evidence. I think the Federal Rules of Civil Procedure essentially parallel, and what I would perceive as a difficulty, but not much of a difficulty, is the substantive aspect of it dealing with different areas of the law, but hopefully I'll be a quick study. I, quite frankly, don't anticipate a great deal of difficulty, and the nuances that one has to pick up as a judge, learning that craft, if you will—I think I've picked up a lot of those nuances over the last 17 years.

Senator KOHL. All right. Your questionnaire indicates that you were an original board member of the Child Abuse Prevention Fund. You wrote that this organization, quote, "was founded to help stem the rising tide of child abuse in our community by raising private moneys to supplement funds from the public sector."

From your work with the Child Abuse Prevention Fund, can you offer any suggestions to us on how the Federal Government might improve its response to the problem of child abuse in local communities?

Judge RANDA. Well, one of the reasons for the establishment of the CAP fund, the Child Abuse Prevention Fund, which is an organization, as you mentioned, Mr. Chairman, that was formed to supplement the efforts made by the county board in Milwaukee County, is—was formed for that purpose. I hate to say just to throw some money at it, but the reason for the formation of the CAP fund was because there wasn't enough money, first of all, to deal with the problem on the county level—more social workers, more everything along that line to, first of all, discover and deal with those problems.

I think it's almost a knee-jerk reaction to say, well, we need more money from the Federal Government whenever there's a problem, but I think that the Senate and the Congress can focus in on the problem by perhaps——

Senator KOHL. Providing more funding.

Judge RANDA. More funding for the local authorities. I think we've got a pretty good structure in place to deal with it, but the reason, as I mentioned, for the establishment of the CAP fund was—and Supervisor Tom Bailey of the county board was very

active in this regard. He recognized the problem first of all and was very instrumental in forming that, but more money.

Senator KOHL. OK. Judge Randa, the Wisconsin media has talked about your wife's affiliation with Adoption Choice, Inc., a Milwaukee-based adoption service, and your own conservative philosophy has been the subject of numerous articles. In fact, we recall one Milwaukee Journal article that mentioned you favoring limited abortion rights.

Can you assure this committee and the people of Wisconsin that your personal philosophy will not affect your ability to remain impartial on the bench or your ability to follow precedent in areas where your personal belief may conflict with the current status of the law?

Judge RANDA. I can assure the committee of that, Senator, and I think in some of those same articles I assured the reporters of that fact, that I'm not here to implement my personal philosophies. I've always—I'm obviously a believer in the doctrine of stare decisis and I've always followed precedent.

Senator KOHL. Very good. Judge Randa, as you know from experience in Wisconsin, we use a bipartisan merit selection process, a 15-member selection commission to advise on Federal judicial nominations. Although you must be happy with the commission's work on the vacancy in the eastern district, would you share with the committee your observations on the merit selection process in Wisconsin and offer any suggestions on how it might be improved?

Judge RANDA. Taking the latter first, we should shorten the process. It's been since, I think, last April or May, but I say that partly in jest, understanding the nature of it is one that requires a great deal of deliberation and consideration by a variety of people.

I was very pleased with the process. I think the one that we've established in Wisconsin is a very good one, and I can't think of improving it in any fashion off the top of my head. Perhaps with some deliberation and consideration of it, I might be able to offer some suggestions, but my own experience, getting back to the initial part of your question, has been very favorable, except for the usual things that accompany it, such as the tension of whether or not you're going to make it and approaching it from——

Senator KOHL. But you believe in the merit selection? In your opinion, it is a good way to select Federal judges?

Judge RANDA. Yes, I do. I believe in the merit selection process, Mr. Chairman.

Senator KOHL. All right. Judge Randa, not many people become judges, and you have held numerous judicial positions. Would you tell us what attracted you to the study of the law initially and what of significance you hope to accomplish as a Federal judge?

Judge RANDA. Well, generally, I think I had an appreciation of the law from my father. He was a man who lived by the law even though he was a sheet metal worker, and he taught me a deep respect for the law and making me understand, I think, very clearly that the law is what is the backbone and framework of civilized life, and that it is what guides us in our daily affairs and it provides, hopefully, the peace and tranquility in any community, and without it we don't have that. So there was that general apprecia-

tion that was instilled in me, I think, by my father, if I had to go back, as some of the nominees here have gone back.

When I went to school in undergraduate school, I was thinking law, but I wasn't convinced of law, and one of the other, I think, influences was Walter Brandeis Rauschenbush, who was the professor at the University of Wisconsin Law School who was doing some interviewing on campus. And his enthusiasm for the law, I think, put me over the top and I became, I think, hooked and I went to law school after that.

What I expect to gain—or accomplish on the Federal bench, I think, is something that I've accomplished up to this point, and that is to be involved in the implementation of the law and to get the satisfaction out of being involved in the process that has as its ideal a government of laws and not of men. And to that end, it's a thrill, it's an honor, it's a privilege, it's a heavy responsibility to attempt to attain that goal to implement the law without favor or fortune.

Senator KOHL. Very good. Would you tell us how your family feels about this perspective?

Judge RANDA. They are very excited. I think they are as excited as I am and looking forward to, hopefully, my confirmation.

Senator KOHL. All right. Where did you grow up, in what part of——

Judge RANDA. I grew up on the north side—near north side of Milwaukee, and went to Riverside High School, and that's, well, near Currant Park, that area.

Senator KOHL. Yes.

Judge RANDA. Holton and Townsend. I think you're familiar with it, Mr. Chairman.

Senator KOHL. Yes, I am, of course. Just two other questions. When you were young, did your parents shop at Kohl's? [Laughter.]

Judge RANDA. They certainly did. In fact, there was a Kohl's store, one of the first ones, over on Holton and Townsend, and it was one of the, as I say, first stores and we shopped at Kohl's. [Laughter.]

Senator KOHL. All right, and the last question is are your sons current fans of the Milwaukee Bucks?

Judge RANDA. They certainly are, and they are very pleased with the trades. I know my son, Rudy, was particularly happy about the Mayberry acquisition——

Senator KOHL. Good, all right.

Judge RANDA [continuing]. Even though he was down in the draft.

Senator KOHL. That is right; very good. Well, you have done fine job, and I would like to say at this time that I am very supportive of your nomination. I know quite a bit about your background and I think you are a very fine person and that you will make an outstanding judge, and I am going to support your nomination on the floor.

Judge RANDA. I appreciate that, Mr. Chairman. Thank you very much.

Senator KOHL. Nice to have you here.

Judge RANDA. Nice to be here.

Senator KOHL. We thank you all for being here this morning. You have done a terrific job.

At this time, this hearing will be closed.

[Whereupon, at 11:59 a.m., the committee was adjourned.]

Timothy D. Leonard

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Timothy D. Leonard; Tim Leonard

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

   Residence: 621 Northwest 38th Street
   Oklahoma City, OK 73118

   Business: 200 Northwest 4th Street
   Room 4434, U.S. Courthouse
   Oklahoma City, OK 73102

3. Date and Place of Birth:

   January 22, 1940
   Beaver, Oklahoma

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

   Married to Nancy (Laughlin) Leonard
   Occupation: Homemaker

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

   University of Oklahoma (1958-1962)
   Norman, Oklahoma
   Degree: Bachelor of Arts (1962)

   University of Oklahoma College of Law (1962-1965)
   Norman, Oklahoma
   Degree: Juris Doctor (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.

   6/63 - 9/63 Legal Intern
   Landsen, Drum and Goetzinger Law Office
   Beaver, Oklahoma 73932

9/65 - 9/68	United States Navy Office of the Judge Advocate General Office of Investigations Legal Assistance Office Pentagon, Washington, D.C.
1/69 - 1/71	Assistant Attorney General Oklahoma Attorney General's Office State Capitol, Oklahoma City, OK
1/71 - 11/71	Partner, Blankenship, Herrold, Russell & Leonard Oklahoma City, OK
11/71 - 10/88	Partner, Trippet, Leonard & Kee Beaver, OK 73932
11/79 - 11/88	State Senator, State of Oklahoma
10/88 - 9/89	Of Counsel, Huckaby, Fleming, Frailey, Chaffin & Darrah, Oklahoma City, OK
1980 - 1989	Limited Partner, Alpha Marlin Drilling Program Oklahoma City, OK
1987 -	Board of Trustees, The Donna Nigh Foundation, Edmond, OK
1987 -	Advisory Board Member, State Fair of Oklahoma, Oklahoma City, OK
10/89 - now	United States Attorney, Western District of Oklahoma, Oklahoma City, OK

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.

9/65 - 9/68	U.S. Navy, Lieutenant, Serial Number 697809, Honorable Discharge.
9/68 - 1/72	U.S. Navy Reserves, Rank of Lieutenant Commander, 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.

White House Military Aide, President, United States, 1966-67
Oklahoma University Track Team, 1958-62
Minority Floor Leader, Oklahoma State Senate, 1985-86
Who's Who in America (Marquis)
Who's Who in the South and Southwest (Marquis)

Who's Who in American Politics (Marquis)
Who's Who in American Law (Marquis)
West's Who's Who in U.S. Law Enforcement Leaders
Outstanding Legislator, Oklahoma School Board Association 1988
Faculty Member Continuing Legal Education (OCU/CLE); Tort Reform and Oklahoma Law, 1987.

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

Oklahoma Bar Association, 1965 - present
American Bar Association, 1965 - present
Federal Bar Association, 1989 - 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 organizations that are active in lobbying before public bodies, other than the above mentioned bar associations.

American Legion Post 149, 1971 - Present
University of Oklahoma, Varsity "O" Club - 1961 to Present

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

United States Supreme Court, Admitted March 5, 1970
United States Court of Appeals for the Tenth Circuit, January 16, 1969
United States District Court for the Western District of Oklahoma, July 23, 1969
United States District Court for the Northern District of Oklahoma, July 24, 1969
United States Court of Military Appeals, February 24, 1966
United States District Court for the District of Columbia, February 28, 1969
Oklahoma Supreme Court and all Courts in Oklahoma, August 3, 1965

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.

4 Days, 40 Hours, edited by Riva Poor, 1970, (Contributing Author)
Tort Reform and Oklahoma Law, continuing legal education seminar

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

Excellent.
Last physical examination: February, 1991

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

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.

Public Offices Held:

Assistant Oklahoma Attorney General, January 1969 to January 1971, Appointed
State Senator, State of Oklahoma, November 1979 to November 1988, Elected
United States Attorney, Western District of Oklahoma, October 1989-Present, Appointed by President, Confirmed by U.S. Senate

Timothy D. Leonard

Unsuccessful candidacies for Elective Public Office:
United States Congress, Primary Election, 1974
Lieutenant Governor, Oklahoma, General Election, 1986

17. Legal Career:

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

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

N/A

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

N/A

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

6/63 - 9/63	Legal Intern, Landsen, Drum and Goetzinger Law Office Beaver, OK 73932
9/65 - 9/68	United States Navy Office of the Judge Advocate General: Office of Investigations; Legal Assistance Office Pentagon, Washington, D.C.
1/69 - 1/71	Assistant Attorney General Oklahoma Attorney General's Office State Capitol Oklahoma City, OK 73105
1/71 - 11/71	Partner, Blankenship, Herrold, Russell & Leonard Oklahoma City, OK
11/71 - 10/88	Partner, Trippet, Leonard & Kee 123 Douglas Beaver, OK 73932
11/79 - 11/88	State Senator, State of Oklahoma State Capitol Building Oklahoma City, OK 73105

Timothy D. Leonard

10/88 - 9/89 Of Counsel, Huckaby, Fleming, Frailey, Chaffin & Darrah
1215 Classen Drive
Oklahoma City, OK 73103

10/89 - now United States Attorney
Western District of Oklahoma
Room 4434, U.S. Courthouse
200 Northwest Fourth
Oklahoma City, OK 73102

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: Served in the Office of the Navy Judge Advocate General. While in the Office of Investigations, I reviewed all Navy investigations and was primarily responsible for making the determination whether an injury or death to Naval personnel occurred in the line of duty. After making such determination, I wrote binding published opinions supporting the result. After being transferred to the Legal Assistance Office, I provided a wide variety of legal advice and assistance to all Navy and Marine personnel stationed in the Washington, D.C. area. Such assistance consisted of writing and reviewing legal documents and contracts, estate planning, and general advice on legal matters.

1968 - 1971: As an Assistant Attorney General, my responsibilities included representing many state agencies and boards. This representation included giving written legal opinions which were published and had the force of law and giving informal advice on legal matters. Also, I served as the final reviewing authority on all bond issues of state and local subdivisions. In addition to these duties, I wrote many appellate briefs representing the State on criminal matters before the Court of Criminal Appeals and appeared before that Court for oral argument. Also, I wrote appellate briefs in civil cases and appeared before the State Supreme Court for oral argument on several occasions. In addition, I made one appearance before the U.S. Supreme Court. I conducted proceedings for several state grand juries.

1971 - 1989: As a private practitioner, my law practice was general and varied. I handled most of the litigation matters for my law firm, including areas of family law, criminal and juvenile matters, personal injury, estate disputes, and oil and gas matters. I have handled estate planning, real estate matters, and real estate title opinions. My practice required numerous court appearances including jury and non-jury trials. I

practiced primarily in state court, but also appeared in federal court on a number of occasions.

1989 - Present: As United States Attorney, I have represented the United States Government in both civil and criminal matters. In addition to managing an office of 32 attorneys and 45 support personnel, I have been directly involved in the oversight and management of some 900 criminal cases and 3,000 civil cases. I have been personally involved in making prosecutorial decisions in the important criminal cases, as well as litigative decisions in the important civil cases. In addition, it has been my responsibility to coordinate cases with the Department of Justice and with the investigative agencies.

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

When I was in private practice, my typical clients were average citizens, farmers, and business persons and firms. I also represented several banks, many school districts and some municipalities. I specialized in oil and gas law and had an extensive practice representing the interests of royalty owners.

As United States Attorney, my client has been the United States Government, its agencies, departments and individual employees. I have been involved in all aspects of federal civil and criminal practice.

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

I appeared in court frequently from 1968 until 1985. Although I continued to handle cases and make court appearances, such appearances became less frequent from 1985 through 1989 as my duties in the Oklahoma State Senate required more and more of my time.

From 1989 to present, I have personally appeared in court as co-counsel on several criminal and civil cases and have monitored the court proceedings in numerous other criminal and civil cases in which the U.S. Attorney's Office has been involved.

2. What percentage of these appearances was in:

(a) federal courts: 20 percent
(b) state courts of record: 80 percent

3. What percentage of your litigation was:

   (a) civil: 80 percent
   (b) criminal: 20 percent

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

   Total: 60
   Sole Counsel: 15
   Chief Counsel: 25
   Associate Counsel: 20

5. What percentage of these trials was:

   (a) jury: 30 percent
   (b) non-jury: 70 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:
   (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties:

(1) **Paul Duerson, et al. vs. Amoco Production Co., et al.**, Case No. C-78-1

Substance of Case:
Plaintiffs were mineral owners of certain royalty interest and brought suit against Defendants to cancel certain oil and gas leases for breach of implied covenants to further develop the leases and for drainage of their oil and gas minerals by surrounding production. Petitioners in Intervention were also mineral owners who alleged that the leases were in force beyond their primary term and should be cancelled for failure to produce in paying quantities. Defendants denied allegations and stated that the leases were still in full

force and effect and that the leases were paying in quantities to keep them from being cancelled. At trial, the issues narrowed to those raised by Petitioners in Intervention. Most interesting points of law which developed were what expenses could be deducted for depreciation purposes and as operating expenses. This case set new precedent in Oklahoma law.

Parties Represented:
Roger Mills; Francis Mills; Letha Maxine Mills; Fern Angleton; B.R. Smylie; Overta Smylie; Iva Lauderdale; and Vernie McLaughlin (Petitioners in Intervention)

Nature of Participation:
Research of law; preparation of pleadings and motion and court appearances on same. Preparation of Interrogatories, examination of witnesses, preparation of trial and principal attorney on behalf of clients at trial of case. Preparation of pleadings and briefs for case on appeal.

Disposition of Case:
Trial Court cancelled all leases and quieted title in Plaintiff and Petitioners in Intervention and barred Defendants from claiming any interest in the property. Oklahoma Court of Appeals made some adjustment in the Trial Court's ruling, but affirmed the overall effect of cancelling the leases. The Oklahoma Supreme Court denied Certiorari.

(a) Date of trial period: March 1978 - March 1982

(b) District Court, State of Oklahoma, County of Beaver. Oklahoma State Court of Appeals, Division II, No. 54, 196.

Judge: Honorable Frank Ogden, District Judge
Boydson, Presiding Judge - wrote opinion
Bacon and Brightmare, Concurred

(c) Co-Counsel: Robert J. Kee, 123 Douglas, Beaver, OK (405) 625-4597

Counsel for Other Parties: C. Harold Thweatt, 1700 Liberty Tower, Oklahoma City, OK (405) 235-7751 (Defendant). Keith Drum, Beaver, OK (Plaintiffs), (405) 625-4526.

(2) **Shadden, et al. vs. Cities Service Oil Corp. and Amoco Production Co.**, Case No. C-78-18

Substance of Case:

Plaintiffs were owners of mineral interests and Defendants were owners of oil and gas leases of the property. Plaintiffs brought action to cancel lease as to non-producing formations for breach of implied covenants to further develop property and for damages for drainage of oil and gas by surrounding production. Defendants denied allegations and asserted they had been prudent operators of the lease.

Parties Represented:
W.C. Shadden and Ralph Harvey (Plaintiffs)

Nature of Participation:
Conferences with parties, preparation and presentation in court of pleadings and motions, interviewing witnesses, and lead counsel at trial.

Disposition of Case:
Court ordered lease cancelled unless Defendants commenced drilling a new well within 90 days of date of Judgment. Damages for drainage were denied.

(a) Date of trial period: June 1977 to March 1979

(b) District Court, State of Oklahoma, County of Beaver.

Judge: Honorable Frank Ogden, District Judge

(c) Co-Counsel: Robert J. Kee, 123 Douglas, Beaver, OK 73932, (405) 625-4597

Counsel for Other Parties: C. Harold Thweatt, 20 North Broadway Avenue, Oklahoma City, OK 73102, (405) 235-7700

(3) **Franz vs. American Triticale Inc. and Nytco Services, Inc.; Irving Trust Co. - Intervenor**, Case No. C-75-38

Substance of Case:
Complex litigation filed by Plaintiff Franz to recover from Defendants certain sums of money for rental of storage facilities and for handling grain and equipment. The Defendants cross-petitioned against Plaintiffs alleging conversion and certain other claims. Irving Trust intervened in the matter because certain warehouse receipts totaling $258,202.00 were issued by Defendant Nytco to them. A receiver was appointed and it was discovered about one-half of the grain was missing or stolen. The case was complex because of all the rights of the various parties, the poor records kept by many of the parties, the stolen grain, and agreements and lawsuits between the parties in other jurisdictions.

Parties Represented:
Irving Trust Company, One Wall Street, New York, NY 10015 (Intervenor)

Nature of Participation:
Correspondence with New York counsel. Research, preparation and presentation of all pre-trial motions in court. Oversaw appointment of receiver. Also, filing of a foreign judgment in a related case and counsel responsible for trial of case.

Disposition of Case:
Judgment rendered against Plaintiffs and Defendant, American Triticale, and in favor of Intervenor, Irving Trust, to receive all monies.

(a) Date of trial period: April 1975 - June 1978

(b) District Court, State of Oklahoma, First Judicial District, County of Beaver.

Judge: Honorable Merle Lansden, District Judge
Honorable Frank Ogden, District Judge

(c) Co-Counsel: Roy H. Carlin of Krause, Hirsch & Gross, 41 East 42nd Street, New York, NY 10017, (212) 986-1122.

Counsel for Other Parties: Leon Fetzer, 1703 Main, Woodward, OK, attorney for Plaintiff Franz. Bryan L. Wright, Box 591, Guymon, OK, (405) 338-6591, attorney for Defendant Nytco.

(4) **Hughes vs. White Shield Oil and Gas Corp.**, Case No. C-71-34

Substance of Case:
Plaintiffs brought a suit for damages to their irrigated agricultural farmland as a result of oil and gas drilling operations by the Defendants. The issue involved was the amount of damages and how they were to be calculated. Plaintiffs were requesting damages for lost crops in the past and in the future because the land was not capable of being restored to its original condition. This would have resulted in a very large award of damages. Defendant claimed that Plaintiffs could recover only the value of the land before the damage occurred, less the value of the land after the damage, and not loss of future crops. Also at issue were future damages to crops since Plaintiffs used flood irrigation on property, and

contended that damaged land would affect crops on all of land, as materials might flood over on other land.

Parties Represented:
White Shield Oil and Gas Corp (Defendant)

Nature of Participation:
Served as primary counsel during all preliminary court motions and during trial of case and in dealing with other attorneys.
Disposition of Case:
Defendants prevailed in their arguments to the Court and jury, and, although Defendants did pay a portion of the damages which occurred, this amount was based on Defendants' theory of how the damages should be calculated.

(a) Date of trial period: March 1971 - June 1973

(b) District Court, State of Oklahoma, First Judicial District, County of Beaver

Judge: Honorable Merle Lansden, District Judge

(c) Co-Counsel: R.F. Hamilton, Post Office Box 2139, Tulsa OK.

Counsel for Other Parties: H.A. Berry, Post Office Box 9158, Amarillo, TX 79105 - Baker & Taylor Drilling Co., Co-Defendant.
Otis Shearer, Post Office Box 520, Perryton, TX 79070 (806) 658-4545 - Hughes, Plaintiffs.

(5) **Glenda, Joann, and Walter Dale Mitchell vs. E.W. Larkey and Sons, Inc.; Richard Gene Maulton and Gulf Insurance Company**, Case No. CIV-77-616-D

Substance of Case:
Plaintiffs brought action in negligence seeking to recover damages for injuries they sustained as a result of a two-vehicle accident. Defendants denied liability and offered only a token amount in settlement. Jury awarded Plaintiffs a total of $106,000 in damages. Court later ordered a new trial on the basis it had committed prejudicial error at trial in sustaining Plaintiffs' objections to the introduction of the investigating trooper's official accident report and his opinion as to the cause of the accident.

Parties Represented:
Glenda, Joann, and Walter Dale Mitchell (Plaintiffs)

Nature of Participation:
Interviewed witnesses, worked with co-counsel in preparation of all court pleadings and interrogatories, court appearances, preparation for pre-trial and trial, and participation with co-counsel at trial.

Disposition of Case:
Plaintiffs and Defendants finally settled matter for about 80 percent of the jury's original verdict.

(a) Date of trial period: April 1977 - June 1980

(b) United States District Court for the Western District of Oklahoma

Judge: Honorable Fred Daugherty

(c) Co-Counsel: Kent Fleming, 1215 Classen Drive, Oklahoma City, OK 73102, (405) 235-6648

Counsel for Other Parties: Drew Neville, Bank of Oklahoma Plaza, Oklahoma City, OK, (405) 239-6781

(6) **Bryant and LaMunyon vs. Barby and Barby a Co-Partnership**, Case No. C-80-100

Substance of Case:
Plaintiffs claimed adverse possession and wanted title quieted in their name. Defendant claimed that any possession by Plaintiffs of the land owned by Defendants had been for the purpose of convenience between parties because of a flooding problem on the creek running between Plaintiffs' and Defendants' land. At issue also would have been mineral rights. The case would have set precedent regarding adverse possession law in Oklahoma.

Parties Represented:
Russell Barby and Alferd Barby, a Co-Partnership (Defendants)

Nature of Participation:
Researched law, prepared all court documents and made appearances in court on all pre-trial motions, met with witnesses, and conducted all trial matters on behalf of defendants.

Disposition of Case:
Jury rendered verdict for Defendants. Plaintiffs appealed, but later dismissed their appeal.

(a) Date of trial period: December 1980 - July 1982

(b) District Court, State of Oklahoma, First Judicial District, County of Beaver.

Judge: Honorable Wayne B. Smith, Associate District Judge

(c) Co-Counsel: Robert J. Kee, 123 Douglas, Beaver, OK 73932, (405) 625-4597, law partner

Counsel for Other Parties: Tom Hieronymus, Post Office Box 529, Woodward, OK 73802, (405) 256-5517

(7) **Evans vs. Bank of Beaver**, Case No. C-75-22

Substance of Case:
Plaintiff Evans sued the bank for conversion for placing certain checks in an account based on a forged signature. These facts all dealt with a former law partnership involvement and bank accounts of this partnership which had been dissolved. The issue of the Statute of Limitations also was applicable in regard to when Plaintiff had knowledge of certain events and allegations.

Parties Represented:
Bank of Beaver, Beaver, OK; Firemen's Fund Insurance Company, Dallas, TX (Defendants)

Nature of Participation:
Researched and prepared all court responses, motions, and pre-trial pleadings. Also prepared trial brief and personally represented clients in all court matters, including trial and appeal. Prepared brief for appeal to Supreme Court.

Disposition of Case:
Defendant Bank prevailed at the trial level, and decision was upheld by the Oklahoma Supreme Court.

(a) Date of trial period: February 1975 - July 1977

(b) District Court, State of Oklahoma, First Judicial District, County of Beaver.
Supreme Court, State of Oklahoma, Case No. 49041.

Judge: Honorable J. Russell Swanson, District Judge
Honorable Ben T. Williams, Chief Justice - op: written by Justice Davison

(c) Co-Counsel: Richard P. Trippet, Box 728, Beaver, OK (law partner), (405) 625-4597

Counsel for Other Parties: Josh J. Evans, Guymon, OK

(8) **Leonard and Anderson vs. Atlantic Richfield, P.C. Frazee, et al.**, Case No. C-80-25

Substance of Case:
Plaintiffs sued to cancel an oil and gas lease which was beyond its primary term and was being held by production. The well had been shut in for several months by a fire. The leases called for cancellation if there was cessation of production for a definite period of time. Also, some of the Defendants were owners of royalty interest for a term specified "for as long as there is production." Plaintiffs contended that the cessation of production terminated those Defendants' ownership and asked that title be quieted in them.

Parties Represented:
William L. Leonard and Richard F. Anderson (Plaintiffs)

Nature of Participation:
Researched law, prepared pleadings and other court documents, presented motions in court, negotiated with opposing counsel and served as lead attorney in trial of the case.

Disposition of Case:
The Trial Court ruled that production had ceased for the period of time in question and called for cancellation of those oil and gas leases. Also, the Court ruled that the term mineral interest owned by certain Defendants had terminated and quieted title in Plaintiffs.

(a) Date of trial period: January 1980 - May 1981

(b) District Court, State of Oklahoma, First Judicial District, County of Beaver

Judge: Honorable Frank Ogden, District Judge

(c) Co-Counsel: Robert J. Kee, 123 Douglas, Beaver, OK 73932 (law partner), (405) 625-4597

Counsel for Other Parties: C. Harold Thweatt, 20 North Broadway Avenue, Oklahoma City, OK 73102, (405) 235-7700

(9) **Western Waste Management, Inc. vs. United States of America**, Case No. CIV-88-1849-T

Substance of Case:
Two Plaintiffs sued the United States of America under the Federal Tort Claims Act for damages in excess of $300,000. The Plaintiffs alleged employees of the United States caused hazardous material to be placed in a trash receptacle which was later picked up by Western Waste Management, Inc., a contract trash hauler for Tinker Air Force Base. The Plaintiffs further alleged that the material ignited causing the truck and the building in which it was parked to be destroyed by fire. The case involved extensive expert witness preparation and testimony, in both fire orientation and chemical analysis.

Parties Represented: United States of America, Tinker Air Force Base (Defendants)

Nature of Participation: Interviewed witnesses; researched the law; prepared the case for trial with co-counsel; served as co-counsel at trial; and examined and cross-examined witnesses.

Disposition of Case:
The Plaintiffs were jointly awarded a verdict of $148,940.

(a) Date of trial period: June 26-28, 1990

(b) United States District Court, Western District of Oklahoma

Judge: Honorable Ralph G. Thompson, Chief Judge

(c) Co-Counsel: Assistant United States Attorney Vicki Zemp Behenna, U.S. Attorney's Office, 200 Northwest Fourth Street, Room 4434, Oklahoma City, Oklahoma (405) 231-5281.

Counsel for Other Parties: Randy Sewell, Richard Black, and Thomas S. Adler, Suite 1400, 101 North Robinson, Oklahoma City, OK 73102, (405) 232-1211, for the Plaintiff Cecil Curtis.
Dan Holloway and Gary Bachman, Suite 900, 211 North Robinson, Oklahoma City, OK 73102, (405) 235-8593, for the Plaintiff Western Waste Management, Inc.

(10) **United States of America vs. Thomas B. Ackerman, William E. Fields, and Robert D. Glossip**, Case No. CR-90-228-R

Substance of Case:
This case involved the criminal offenses of conspiracy and theft from interstate shipment. The Defendants were

ringleaders in a multi-state theft and fencing ring which operated out of rental property managed by Ackerman in south Oklahoma City. Defendants presented a two-fold defense: (1) any illegal conduct was done by a "straw" person who supposedly had access to rental property, and (2) denial that any criminal wrongdoing occurred.

Parties Represented: United States of America

Nature of Participation: Interviewed witnesses; research of law; preparation of case for trial with co-counsel; co-counsel at trial; and examined and cross-examined witnesses.

Disposition of Case: The case was tried to a twelve person jury before the Honorable David L. Russell. All Defendants were convicted of Counts 1, 4, and 5 of the Indictment and acquitted on Counts 2, 3, and 6. All Defendants were sentenced to the custody of the Attorney General of the United States and are currently incarcerated.

(a) Date of trial period: January 28-30, 1991

(b) United States District Court, Western District of Oklahoma

Judge: Honorable David L. Russell

(c) Co-Counsel: Assistant United States Attorney Ted A. Richardson, U.S. Attorney's Office, 200 Northwest Fourth Street, Room 4434, Oklahoma City, OK (405) 231-5281, for the Government.

Counsel for Other Parties: Michael Gassaway, Suite 1100, One North Hudson, Oklahoma City, OK 73102, (405) 232-2800, for Defendants Ackerman and Fields. Jerome Kearney, Assistant Federal Public Defender, 524 Old Post Office Building, 215 Dean A. McGee, Oklahoma City, OK 73102, (405) 231-5725, for Defendant Glossip.

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) William F. Poulas, Petitioner, vs. Ford, Case No. 50931 - In the Supreme Court of Oklahoma, Ralph B. Hodges, Chief Justice

The Petitioner brought an action in the State Supreme Court asking the Court to assume original jurisdiction in interpreting a State constitutional provision and challenging the method used in disbursing to school districts ad valorem tax money on public utility property. The applicant successfully represented sixty-five school districts in intervening in the lawsuit. The litigation had a major impact on school funding in Oklahoma. The Supreme Court denied application, thus upholding the position of intervenors represented by applicant. Applicant prepared Petition in Intervention, Brief and made oral arguments to the Supreme Court.

(2) Independent School District No. 22, Beaver County, Oklahoma.

In 1977, Applicant was counsel for School District in preparation of all documents and advising school district on a $750,000 school bond issue which was successfully passed and sold.

(3) In the Matter of the Estate of George W. Cafky, Deceased, Case No. P-72033, Beaver County, Oklahoma

From April 1971 until December 1977, Applicant represented the only child of the deceased in a protracted and complex estate matter with the deceased's second wife. Litigation involved several matters that went to trial and were appealed in State Courts as well as one matter tried and appealed in Federal Court. Questions involved from interpretation of title to joint-tenancy instruments to possession of estate property and inventories.

(4) Applicant was counsel and/or co-counsel on five major personal injury and wrongful death cases that were settled prior to trial and resulted in major recoveries for clients. Complex questions of fact and law were involved in all of these cases.

(5) Applicant represented numerous royalty owners in litigation involving cancellation of oil and gas leases. Almost all of these cases resulted in the cancellation of existing leases or in the drilling of additional wells to satisfy the terms of the leases and to the benefit of Applicant's clients.

(6) As an Assistant Attorney General, served as counsel for two major county grand juries to investigate fraud and

corruption in county government. Both grand juries recommended ouster and criminal indictments against corrupt county officials.

(7) As an Assistant Attorney General, represented the State of Oklahoma in the appeal of many criminal cases. Prepared briefs and made oral arguments to the Court of Criminal Appeals in numerous cases on behalf of the State of Oklahoma.

(8) As a State Senator, was the principal author of a bill which was passed into law which allowed the surviving spouse of an intestate deceased to receive one-half rather than one-third of the decedent's estate.

(9) As a State Senator, was the principal author of legislation which was passed into law which allowed for sanctions to be imposed and costs to be awarded in frivolous lawsuits and also made other necessary reforms to correct some of the abuses that had arisen in the tort liability area.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   Oklahoma Public Employees' Retirement, Plan 001 -- vested retirement, due from service in State Senate. No arrangements have been made other than upon reaching a certain age, I will be eligible to receive a monthly sum of income from the retirement system.

   Thrift Savings Plan -- When leaving the United States Attorney's Office, I will be entitled to be reimbursed the total sum of my contributions.

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

   There is a recognition that as United States Attorney there are numerous cases in which I have been directly or indirectly involved which will be before the Federal Court. I will follow the Code of Judicial Conduct as it applies to recusal and recuse myself from any matter or case which the United States Attorney's Office was involved during my tenure. I am aware of no other categories of litigation or financial arrangements that are likely to present a potential conflict of interest. However, I will follow the Code of Judicial Conduct as it applies to recusal to avoid any actual or perceived conflict.

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

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so,

copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Copy of Financial Disclosure Report, required by Ethics in Government Act of 1978 enclosed herein.

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

Financial Net Worth Statement, Schedules A, B, C, and D enclosed herein.

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.

1970	Coordinator G.T. Blankenship for Attorney General Campaign
1974	Republican Candidate for U.S. Congress
1974	Chairman Beaver County Republican Party
1979	Elected to the Oklahoma State Senate District 49, Candidate
1980	Reelected to Oklahoma State Senate without opposition, Candidate
1984	Reelected to Oklahoma State Senate, Candidate
1986	Republican nominee for Oklahoma Lt. Governor, Candidate
1988	State Co-Chairman George Bush for President
1988	State Co-Chairman Shorten Our Session petition drive

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics in Government Reform Act of 1989, P.L. 101-194, November 30, 1989 (5 U.S.C.A. App. 5, §§101-111)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
LEONARD, TIMOTHY D.	United States District Court Western District of Oklahoma	11/21/91
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	**5. Report Type (check appropriate type)**	**6. Reporting Period**
United States District Judge	X Nomination, Date 11/20/91 X Initial ___ Annual ___ Final	1/90 - 11/91

7. Chambers or Office Address

Room 4434, U.S. Courthouse
200 Northwest 4th Street
Oklahoma City, OK 73102

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

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

☐ NONE (No reportable positions)

POSITION	NAME OF ORGANIZATION/ENTITY
United States Attorney	U.S. Department of Justice
Advisory Board Member	State Fair of Oklahoma (Resignation effective 11
Board of Trustees	Donna Nigh Foundation (Resignation effective 12/1/91

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

☒ NONE (No reportable agreements)

DATE	PARTIES AND TERMS

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

☐ NONE (No reportable non-investment income)

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	Children's Medical Research, Inc.	$ S
2		$
3		$
4		$
5		$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
LEONARD, TIMOTHY D.	11/21/91

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

	SOURCE	DESCRIPTION
X	NONE (No such reportable reimbursements or gifts)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

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

	SOURCE	DESCRIPTION	VALUE
X	NONE (No such reportable gifts)		
1	EXEMPT		$
2			$
3			$
4			$

VI. LIABILITIES.

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

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

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

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
LEONARD, TIMOTHY D.	11/21/91

VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 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 (1) Amt. Code (A-H)	(2) Type (Div., Rent, or Int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period EXEMPT (1) Type (e.g., buy, sell, exchange, 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	160 acres farmland Beaver County, OK	B	Rent	K	R *[See Part VIII]					
2	Oil & Gas Royalty Interest Beaver County, OK	D	Share Prod.	K	W					
3	Oil & Gas Working Interest Beaver County, OK	D	Share Prod.	K	W					
4	Oil & Gas Royalty Interest Meade County, KS	A	Share Prod.	J	W					
5	Personal IRA Acct. Bank of Beaver, Beaver County, OK	A	Int.	K	T					
S 6	Personal IRA Acct. Bank of Beaver, Beaver County, OK	A	Int.	K	T					
7	Okla Public Employee Retirement, OKC, OK	A	Divers	K	T					
8	Cash Value Life Ins. Provident Co., Chattanooga TN	A	Int.	J	T					
9	Equity Bank, OKC, OK Interest on Acct	B	Int.	J	T					
S 10	Nichols Hills Bank, OKC, OK, Bank Acct.	A	Int.	J	T					
11	Leonard Joint Venture Beaver County, OK 20% Int	A	Work. Int.	J	V *[ ]					
12	LT&K Joint Venture, Beaver County, OK 53 1/3% Int	D	Work. Int.	J	V *[See Part VIII]					
13	Alpha Marlin Drilling, OKC OK, Limited Partner	D	Work. Int.	J	V *[ ]					
DC 14	Kirstin Leonard Irrev. Trust Royalty Int. Beaver Co., OK	C	Prod.	K	W					
DC 15	Cash Value Life Ins. New York Like Ins.	B	Int.	K	T					
DC 16	Bank of Beaver - Checking Beaver County, OK	A	Int.	J	T					
DC 17	100 Shares Kerr McGee	A	Div.	J	T					
DC 18	Ryan Leonard Irrev. Trust Royalty Int. Beaver Co., OK	C	Prod.	K	W					
DC 19	Bank of Beaver, CD Beaver County, OK	B	Int.	K	T					
DC 20	Equity Bank - CD Okla. City, OK	B	Int.	K	T					

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to $5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=More than $1,000,000
2 Value Codes: (See Col. C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $250,000
	N=$250,001 to $500,000	O=$500,001 to $1,000,000	P=More than $1,000,000	
3 Value Method Codes: (See Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market
	U=Book Value	V=Other	W=Estimated	

ATTACHMENT 1

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
LEONARD, TIMOTHY D.	11.21.91

VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 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. Please "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period (1) Amt. Code (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period EXEMPT (1) Type (e.g., buy, sell, exchange, 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 Cash Value Life Ins. New York Life Ins.	B	Int.	K	T					
2 100 Shares Kerr McGee	A	Div.	J	T					
3 Tyler Leonard Irrev. Trust Royalty Int. Beaver Co., OK	C	Prod.	K	W					
4 Bank of Beaver CD Beaver Co., OK	B	Int.	K	T					
5 Equity Bank CD Okla. City, OK	C	Int.	K	T					
6 Cash Value Life Ins. New York Life Ins.	B	Int.	K	T					
7 100 Shares Kerr McGee	A	Div.	J	T					
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20									

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to $5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=Over $1,000,000
2 Value Codes: (See Col. C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $250,000
	N=$250,001 to $500,000	O=$500,001 to $1,000,000	P=Over $1,000,000	
3 Value Method Codes: (See Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	
	U=Book Value	V=Other	W=Estimated	T=Cash/Market

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
LEONARD, TIMOTHY D.	11/21/91

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

Part VII - #1 160 acres farmland (surface only) purchased in July 1980 for $50,000. Surrounding sales would indicate the property has depreciated in value since purchase.

Part VII - #11, #12, and #13 Values were determined on these properties by sale of interest in these properties during reporting period.

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 Timothy D. Leonard Date 11-22-91

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

LEONARD, TIMOTHY D.

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	-0-		
U.S. Government securities—add schedule	-0-				Notes payable to banks—unsecured	-0-		
Listed securities—add schedule	-0-				Notes payable to relatives	-0-		
Unlisted securities—add schedule	-0-				Notes payable to others	-0-		
Accounts and notes receivable:					Accounts and bills due	-0-		
Due from relatives and friends	-0-				Unpaid income tax	-0-		
Due from others	-0-				Other unpaid tax and interest	-0-		
Doubtful	-0-				Real estate mortgages payable—add schedule D	106	000	00
Real estate owned—add schedule A	235	000	00		Chattel mortgages and other liens payable			
Real estate mortgages receivable	-0-				Other debts—itemize:	-0-		
Autos and other personal property	60	000	00					
Cash value—life insurance	11	000	00					
Other assets—itemize:								
Oil & Gas Royalty Sch. B	40	000	00					
Dep. Children's Trusts &								
Personal Accts. Sch. C	219	000	00		Total liabilities	106	000	00
					Net worth	463	000	00
Total assets	569	000	00		Total liabilities and net worth	569	000	00

CONTINGENT LIABILITIES					GENERAL INFORMATION			
As endorser, carrier 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-							

Timothy D. Leonard

SCHEDULE A: REAL ESTATE OWNED

Personal Residence:	Lots Forty-two (42) to Forty-five (45), both inclusive, to Block Sixteen (16), In Blocks 11 thru 16, Crown Heights Addition, to Oklahoma County, Oklahoma	$ 200,000
Rural Agricultural Farmland:	SW 1/4 Section 33-Twp4N-Range 22 ECM, Beaver County, OK	$ 35,000
	TOTAL	$ 235,000

Timothy D. Leonard

SCHEDULE B: Other Assets--Oil & Gas Royalty Owned

Section 21-Twp1N-Range21ECM, Beaver County, OK

Section 22-Twp3N-Range25ECM, Beaver County, OK

Section 23-Twp3N-Range25ECM, Beaver County, OK

Section 24-Twp3N-Range25ECM, Beaver County, OK

Section 21-Twp4N-Range24ECM, Beaver County, OK

Section 27-Twp3N-Range27ECM, Beaver County, OK

Sections 9,10,15,16-Twp34S-Range28W6PM, Meade County, KS

Total Value of All Royalty Interest Owned: $40,000

Timothy D. Leonard

SCHEDULE C: Dependent Children's Trusts & Personal Accounts

Kirstin D. Leonard Irrevocable Trust:

Cash on hand	$ 3,500.00
Cash Value-Life Insurance	14,000.00
Stocks-100 shs. Kerr McGee	4,200.00
Royalty Interest-Beaver Co. OK Sec.27-3N-25 ECM	20,000.00
Total Trust Assets	**$41,700.00**

Ryan T. Leonard Irrevocable Trust:

Cash on hand	$10,000.00
Certificates of Deposit	25,000.00
Cash Value-Life Insurance	16,000.00
Stocks-100 shs. Kerr McGee	4,200.00
Royalty Interest-Beaver Co. OK Sec. 27-3N-25 ECM	20,000.00
Total Trust Assets	**$75,200.00**

Tyler D. Leonard Irrevocable Trust:

Cash on hand	$ 6,000.00
Certificates of Deposit	55,000.00
Cash Value-Life Insurance	14,000.00
Stocks-100 shs. Kerr McGee	4,200.00
Royalty Interest-Beaver Co. OK Sec.27-3N-25 ECM	20,000.00
Total Trust Assets	**$99,200.00**

Kirstin D. Leonard Personal Bank Account Balance	$ 500.00
Ryan T. Leonard Personal Bank Account Balance	$ 1,500.00
Tyler D. Leonard Personal Bank Account Balance	$ 900.00

TOTAL ASSETS--DEPENDENT CHILDREN'S TRUSTS AND PERSONAL ACCOUNTS: $219,000.00

Timothy D. Leonard

SCHEDULE D: Real Estate Mortgage Payable

Personal Residence:	Lots Forty-two (42) to Forty-five (45), both inclusive, to Block Sixteen (16), In Blocks 11 thru 16, Crown Heights Addition, to Oklahoma County, Oklahoma	
	Original Mortgage $110,000.00	
	Due and Owing to Dwight Leonard Post Office Box 925 Beaver, OK 73932	$106,000.00

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.

   1969-79 Served on a County Bar Program to meet monthly with prisoners who were in a pre-release center and about ready for release. The purpose of the meeting was to answer all legal questions they might have dealing with their release or other personal legal matters they or their families were having. 5 hours per month

   1970-1989 While in private practice, I performed many legal services and offered consultation on numerous occasions to persons who were unable to pay for legal services. In a small town where my practice was located, there was no legal aid or other source for those people to turn to. Approximately 10 hours per month

   1970-1989 Participated in Bar Association Program "Ask A Lawyer" on Law Day, along with other lawyers in the community. I was available to give legal advice free of charge to people who called. 5 hours per year

   1970-1989 In addition to the above specific programs, I was active in several community service organizations and not only provided free legal service to these organizations, but also many hours of a non-legal nature and service through and with these organizations. Also, I served on my church board and provided free legal services to not only my church, but other churches and non-profit organizations in the community.

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, not to my knowledge.

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. Pursuant to notice of judicial vacancy, I responded to a judicial selection committee appointed by Senator Don Nickles (R-OK) of my interest in the position. The committee interviewed all applicants (over 50) over a two-day period and, selected three applicants to recommend to Senator Nickles. I interviewed with the committee and subsequently interviewed with Senator Nickles. After Senator Nickles' recommendation, I interviewed with several officials within the Department of Justice. Subsequent to those interviews, I have filled out lengthy questionnaires for the Federal Bureau of Investigation and the American Bar Association, and interviewed representatives from both organizations.

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 have had the unique opportunity to serve in both the executive branch of government at the state and federal levels and the legislative branch as an elected official. I have a deep respect for the separation and unique role of these two branches, as well as the role the judicial branch serves. Certainly, there have been occasions where the courts through "judicial activism" have had a tendency to usurp some of the prerogative of the other branches of government. The federal judiciary should not "legislate" and the interpretation of legislation should follow the true intent of the legislative branch rather than any personal agenda or goal. Judges should limit themselves to the particular case before them and restrict their rulings to the individual facts and issues of that case. They should always be mindful to use restraint.

QUESTIONNAIRE FOR JUDICIAL NOMINEES

UNITED STATES SENATE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Lourdes Gillespie Baird

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

Residence	Office
631 N. June St. Los Angeles, CA 90004	1200 U.S. Courthouse 312 North Spring St. Los Angeles, CA 90012

3. Date and place of birth.

May 12, 1935, Quito, Ecuador

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.

Los Angeles City College; September 1966-June 1971; AA 1971

U.C.L.A.; September 1971-June 1973; BA 1973

U.C.L.A. School of Law; September 1973-June 1976; JD 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.

1977 to 1983:
Assistant U.S. Attorney
U.S. Attorney's Office, Central District of California

1983 to 1984:
Attorney partner
Baird & Quadros, Los Angeles, California

1984 to 1986:
Attorney partner
Baird, Munger & Myers, Los Angeles, California

1986 to 1987:
Judge
East Los Angeles Municipal Court

1987 to 1988:
Judge
Los Angeles Municipal Court

1988 to 1990:
Judge
Los Angeles Superior Court

1986 to 1990:
Adjunct Professor (part-time)
Loyola Law School
Los Angeles, California

1990 to Present:
United States Attorney
U.S. Attorney's Office, Central District of California

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.

U.C.L.A. School of Law Moot Court Honors Program

U.C.L.A. Dean's Honor List; Honors Program

U.C.L.A. School of Law "Alumnus of the Year" 1991

L.A. City College "Alumnus of the Year" 1991

L.A. City College, "Valedictorian" 1971 graduating class

Hispanic Womens' Council "Woman of Promise Award" 1991

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.

Attorney General's Advisory Committee
U.S. Department of Justice
Vice Chairman, 1991 to present
Member, 1990 to present

Ninth Circuit Conference Executive Committee
Member, 1991-present

Judicial Council of California
Member, 1987-1988

Ninth Circuit Court of Appeals, Advisory Committee on Rules and Procedures
Member, 1983-1986

Ninth Circuit Judicial Conference
Lawyer Representative, 1983-1986

Mexican-American Bar Association, 1986 to present

California Women Lawyers, 1980 to present

American Bar Association, 1989 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.

To my knowledge, I belong to no organizations active in lobbying other than the bar associations listed above in paragraph 9.

Constitutional Rights Foundation
Los Angeles, California

Immaculate Heart High School Board of Trustees
Los Angeles, California

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.

On December 22, 1976, I was admitted to practice in all California State Courts.

On April 29, 1977, I was admitted to practice in the United States District Court of the Central District of California.

On May 3, 1977, I was admitted to practice in the United States Court of Appeals for the Ninth Circuit.

On June 30, 1980, I was admitted to practice in the United States Supreme Court.

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.

Ecumenical Leadership Conference Speech, 1991

"Motions and Pleading Considerations on Civil RICO Actions," Civil RICO Course Handbook, Practicing Law Institute, 1984

"The Predicate Offenses of Mail and Wire Fraud" Civil RICO 1985 Course Handbook, Practicing Law Institute, 1985

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

Excellent. February 7, 1992.

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

East Los Angeles Municipal Court
Appointed 1986
Jurisdiction: criminal misdemeanor, felony preliminary hearings, traffic and civil matters under $15,000

Los Angeles Municipal Court
Appointed 1987
Jurisdiction: Same as above

Los Angeles Superior Court
Appointed 1988
Jurisdiction: Criminal felonies, juvenile, family law, probate law and all civil matters over $15,000

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.

None. My assignments since 1986 on the Municipal and Superior Courts did not provide the opportunity to write opinions.

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

United States Attorney
Presidential Appointment, 1990
4-year term

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;

July 1990 to present:

United States Attorney
United States Attorney's Office
1200 United States Courthouse
312 North Spring Street
Los Angeles, CA 90012

September 1988 to July 1990

Judge
Loe Angeles Superior Court
111 North Hill Street
Los Angeles, CA 90012

September 1987 to September 1988

Judge
Los Angeles Municipal Court
110 North Grand Avenue
Loe Angeles, CA 90012

January 1986 to September 1987:

Judge
East Los Angeles Munioipal COurt
214 South Fetterly Avenue
Los Angeles, California 90022

June 1984 to January 1986:

Attorney Partner
Baird, Munger & Myers
727 West Seventh Street
Los Angeles, CA 90017

July 1983 to June 1984:

Attorney Partner
Baird & Quadros
727 West Seventh Street
Los Angeles, CA 90017

April 1977 to July 1983:

Assistant United States Attorney
United States Attorney's Office
1200 United States Courthouse
312 North Spring Street
Los Angeles, CA 90012

17. (Cont'd.)

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.

July 1990 to present:

Since July, 1990 to the present, I have headed the United States Attorney's Office for the Central District of California. This district is the most populous district in the nation with over 15.5 million persons. The office is staffed with over 200 Assistant U.S. Attorneys (AUSAs) practicing in the United States District Court and the Ninth Circuit Court of Appeals.

The United States Attorney's clients are all federal agencies who have matters before the United States District Court and the Court of Appeals. My principal responsibilities include management and policy setting for this district; coordination with the U.S. Department of Justice in Washington, D.C.; and, most importantly, the oversight of the major criminal and civil investigations and cases in the district. As the principal federal law enforcement officer in this district, I have the responsibility to coordinate the efforts of joint federal and local law enforcement efforts in several anti-crime task forces in the district.

September 1988 to July 1990:

In September, 1988, when I was appointed to the Los Angeles Superior Court, I was assigned to the North-Central District in Burbank. My assignment consisted of a direct calendar of all civil matters within the jurisdiction of the Superior Court, except for juvenile. The calendar included family, probate and civil matters.

From November, 1988, to July, 1990, I was assigned to the Juvenile Dependency Department in Los Angeles Superior Court. My calendar was a direct calendar consisting of detentions, dispositions, six-month judicial reviews, guardianship hearings and voluntary commitment hearings; all of which are civil in nature. All matters concerned dependent minors of the court who were victims of physical abuse, sexual abuse or abandonment. Trials were adjudications of petitions and contested dispositions, six-month reviews and guardianships, all of which were tried to the court.

September 1987 to September 1988:

In September, 1987, after my appointment to the Los Angeles Municipal Court, I was assigned to a criminal felony panel division, hearing long-cause preliminary hearings which consisted of a cross-section of the more complex criminal filings. In addition to the preliminary hearings, I handled all motions brought by the parties to the hearings and I was the primary magistrate responsible for all arrest warrants and search warrants submitted to the Los Angeles Municipal Court.

January 1986 to September 1987:

After my appointment in January, 1986, until September, 1987, I sat in East Los Angeles Municipal Court. My calendar was a direct calendar, consisting of mostly criminal cases, which included preliminary hearings, jury and court trials, pretrial motions, arraignments, pleas, arrest warrants, search warrants, as well as restitution, diversion and bail hearings. I also handled a small number of civil cases, including pretrial motions, jury trials and court trials in all areas within the civil jurisdiction of the Municipal Court.

August 1983 to January 1986:

From August, 1983, to my appointment to the bench, I was engaged in a general civil and criminal litigation practice, representing a range of clients which included public agencies, corporations, small businesses and individuals. My specialties were in the civil area of employment defense and commercial fraud defense.

April 1977 to August 1983:

From the beginning of my legal career to 1983, I was an Assistant United States Attorney in the Central District of California in the Criminal Division, handling the investigation and prosecution of federal criminal violations. My practice consisted of conducting grand jury investigations, case disposition, jury and court trials, appellate practice, training new attorneys and supervising senior attorneys.

17. (Cont'd.)

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

2. What percentage of these appearances was in:

(a) federal courts;
(b) state courts of record;

(c) other courts.

3. What percentage of your litigation was:

(a) civil;
(b) criminal

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

5. What percentage of these trials was:

(a) jury;
(b) non-jury

Since July, 1990, when I was appointed the United States Attorney, I have made very few court appearances. From January, 1986, until July, 1990, I was a California State Court judge and I was in court daily.

My calendar in Los Angeles Superior Court from September, 1988, to July, 1990, consisted of all civil matters and, with the exception of one jury trial in the North-Central District, all hearings and trials were court trials. I presided over approximately 50 full trials during this period.

My calendar in Los Angeles Municipal Court from September, 1987, to September, 1988, consisted of all felony preliminary hearings tried to the court.

My calendar in East Los Angeles Municipal Court from January, 1986, to September, 1987, consisted of approximately 95% criminal matters and 5% civil matters, and the trials over which I presided were approximately 85% jury and 15% court trials. The approximate number of cases I tried during this period was 40.

In my private practice from mid-1983 to January 1986, I appeared in court one to two times per month on law and motion matters and tried three cases to verdict totaling approximately twenty-two trial days. During that time, approximately 15% of my court appearances were in federal court and 85% were in California state courts of record. My practice was approximately 95% civil and 5% criminal. Two of my trials were court trials and one was a jury trial.

My experience from 1977 to 1983 was exclusively as an Assistant United States Attorney in the Criminal Division of the United States Attorney's Office in the Central District of California. My court experience during those years was extensive and exclusively in federal court. My trials were approximately 95% jury and 5% court trials. I tried to verdict approximately 20 trials as sole counsel or chief counsel.

In 1977 when I became an Assistant United States Attorney, I began immediately conducting hearings on motions to suppress and bail motions, writing and arguing appeals to the Court of Appeals for the Ninth Circuit, and trying simpler felony cases. At that time, I made at least two court appearances per week in addition to trials and appeals.

In 1978, I entered the Complaints Unit of the United States Attorney's Office for approximately eight months at which time I prepared cases for consideration and presentation to the grand jury, presented cases to the grand jury, argued bail motions in Magistrate courts, handled arraignments and supervised the preparation of arrest warrants and search warrants.

From 1978 to 1980, I was in the Major Crimes Unit of the United States Attorney's Office where I conducted grand jury investigations; briefed and presented evidentiary hearings and arguments on pretrial motions, revocations of probation and modifications of bail in District Court; conducted major felony trials in District Court; and briefed and argued appeals in the United States Court of Appeals for the Ninth Circuit.

In my last two years as an Assistant United States Attorney, 1981 to 1983, I spent one year as the Assistant Division Chief in charge of Training in which I was responsible for the training and direct supervision of each new Assistant United States Attorney in case development and strategy, trial advocacy and appellate advocacy. As a result, all of my court appearances during that year were accompanying a new attorney at his or her trial. The other year I supervised senior attorneys and appeared in court on the average of twice per week on hearings, motions and trials.

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

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

Selected cases I handled as a trial attorney are as follows:

1) United States v. Gerald L. Rogers, CA 83-5037

Judges: Honorable Robert Takasugi in the United States District Court, Central District of California

Honorables Proctor Hug, Jr., Dorothy W. Nelson and William C. East* in the United States Court of Appeals, Ninth Circuit

*Senior United States District Judge for District of Oregon sitting by designation.

Defense Counsel:
Mr. Pierce O'Donnell
Kaye, Scholer, Fierman, Hays & Handler
2121 Avenue of the Stars
Los Angeles, California 90067
Telephone: (310) 552-6400

Mr. Jeffrey S. Gordon
Kaye, Scholer, Fierman, Hays & Handler
2121 Avenue of the Stars
Los Angeles, California 90067
Telephone: (310) 552-6400

Rogers was charged with nine counts of mail fraud and twenty-one counts of aiding and abetting the filing of false income tax returns. The indictment charged that Rogers devised a multi-million dollar tax shelter fraud involving the sale of ownership interests in motion pictures. The sales were made to victims based on misrepresentations regarding the nature of the investment and the resulting tax advantages. The litigation consisted of a large number of pretrial motions and evidentiary hearings.

The District Court granted one of defendant's motions to dismiss based on a finding of government misconduct. The District Court's finding of government misconduct was based upon the Internal Revenue agent's interview of an attorney who had represented the defendant for a period of time during the years alleged in the indictment.

The decision of the District Court was appealed by the United States, and the Ninth Circuit Court of Appeals reversed the District Court's ruling. The principal legal issue raised on appeal was the standard for dismissal of an indictment based on government misconduct. The holding was significant at the time because it clarified the standard in a factual setting commonly encountered in the investigation

and prosecution of fraud cases. The case is reported at 751 F.2d 1074 (9th Cir. 1985). I represented the United States at trial and on appeal.

2) United States v. William E. McLaughlin, CA 79-1637

Judges: Honorable Lawrence T. Lydick in the United States District Court, Central District of California

Honorables Anthony M. Kennedy, Warren J. Ferguson and William A. Norris in the United States Court of Appeals, Ninth Circuit

Defense counsel:
Mr. Ronald Von Wert (In U.S. District Court)
1301 Dove Street, Suite 900
Newport Beach, California 92660
Telephone: (714) 752-7964

Hon. William D. Keller
(In U.S. Court of Appeals)
United States District Court
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-2659

McLaughlin was a major framing contractor in the home building industry in Orange County. He was charged with eight counts of aiding and abetting the subscribing of a false income tax return. After six days of a jury trial, McLaughlin was found guilty on all eight counts and sentenced to one year in custody and fined.

McLaughlin appealed his conviction to the Ninth Circuit Court of Appeals and his conviction was reversed. The case is reported at 663 F.2d 949 (9th Cir. 1981). On remand, McLaughlin entered a plea of guilty. I handled both the trial and the appeal, representing the United States. There were no particularly significant factual or legal issues at trial or appeal. The significance of the case lies primarily in its effect on the construction industry in this district. It had been alleged that an industry practice was that contractors in the home building industry paid certain carpenters a wage higher than that mandated by the collective bargaining agreements of the Carpenter's Union. This "bonus" was paid in cash to circumvent the union agreement and the Internal Revenue laws. The prosecution had a substantial effect in changing this practice.

3) United States v. Leonard Peltier, et al., 1979

Judges: Honorable Lawrence T. Lydick in the United States District Court, Central District of California

Honorables Alfred T. Goodwin, J. Blaine Anderson and Earl B. Gilliam* in the United States Court of Appeals, Ninth Circuit

*United States District Court Judge for the Southern District of California sitting by designation.

Defense counsel:

Professor Karen Smith
(In U.S. District Court)
Southwestern University of Law
675 South Westmoreland Avenue
Los Angeles, California 90005-3992
Telephone: (213) 738-6700

Hon. Rudolph A. Diaz
(In U.S. District Court)
Municipal Court of Rio Hondo
11234 East Valley Boulevard
El Monte, California 91731
Telephone: (818) 575-4103

Mr. Bruce Ellison (In U.S. District Court and Court of Appeals)
Law Office of Bruce Ellison
816 St. Joseph St.
Rapid City, South Dakota 57701
Telephone: (605) 348-9458

Leonard Peltier, Bobby Garcia and Roque Duenas were charged with conspiracy, escape and assault on a federal officer, and Peltier was charged with being a convicted felon in possession of a firearm. This indictment was based on the armed escaped of three prisoners from the Federal Correctional Institution at Lompoc, California.

The defendants raised coercion and necessity as a defense. After five and one-half weeks of trial, Peltier and Garcia were found guilty and the jury was unable to agree on a verdict as to Duenas. The two convicted defendants appealed their convictions to the Ninth Circuit Court of Appeals and Duenas entered a plea of guilty.

The Ninth Circuit Court of Appeals reversed the convictions of Peltier and Garcia by memorandum opinion. The government filed a petition for rehearing which was

granted and the Court of Appeals withdrew its memorandum opinion. After rehearing, the Ninth Circuit Court of Appeals affirmed the conviction of Peltier. The case is reported at 693 F.2d 96 (9th Cir. 1982) and 529 F.Supp. 549 (C.D. Cal. 1982). I represented the United States at trial and on appeal.

It is noteworthy because the principal defendant was a well known leader of the American Indian Movement (AIM). Because of defendant Peltier's position, the trial received a great deal of attention from members of AIM, political commentators and the media. These dynamics resulted in several interesting peripheral issues such as security of the courtroom, security of witnesses and the defendants, and first amendment issues raised by the defendants as well as demonstrators.

4) United States v. Hector Rivera and Rene Bloch, 1979, CA No. 81-1424

Judges: Honorable Laughlin E. Waters
in the United States District Court,
Central District of California

Honorables J. Blaine Anderson,
Harry Pregerson and Dorothy W. Nelson
in the United States Court of Appeals,
Ninth Circuit

Defense counsel:
Mr. Richard Walton (In U.S. District Court)
880 West First Street, Suite 614
Los Angeles, California 90012-2458
Telephone: (213) 680-2404

Mr. John Meyers (In U.S. District Court and Court of Appeals)
800 West First Street, Suite 614
Los Angeles, California 90012-2458
Telephone: (213) 680-2404

Bloch and Rivera, business agents of Local 47, Musicians Union, were charged with conspiracy and six counts of accepting payments of money in violation of the United States Labor Code. After two weeks of jury trial, both defendants were found guilty on all counts charged. Defendants were sentenced and fined by the District Court. The case is significant because it was one of the first prosecutions under the criminal provisions of the United States Labor Code.

Both defendants appealed their convictions to the United States Court of Appeals for the Ninth Circuit and

their convictions were affirmed. The decision is reported at 696 F.2d 1212 (9th Cir. 1983).

5) Clyde Dickerson v. Southern California Rapid Transit District, United Transportation Union and Local, LASC No. C 308 919

Judge: Honorable Norman Dowds in the Los Angeles Superior Court

Opposing counsel:
Ms. Yvonne Renfrew
1299 Ocean Avenue, Suite 312
Santa Monica, California 90401
Telephone: (310) 395-4224

Dickerson filed a suit charging the Southern California Rapid Transit District with employment discrimination based on Title 7 of the Civil Rights Act, the Federal Rehabilitation Act, and California anti-discrimination statutes. I represented the defendant, Southern California Rapid Transit District. This case is significant as representative of employment discrimination matters which I handled during my private practice.

After a four-day presentation before the Court of plaintiff's case, defendants made motions for judgment pursuant to C.C.P. § 631.8. The motions were granted.

6) James Krumme v. Southern California Rapid Transit District, United Transportation Union and the Local 1985

Judge: Honorable Stanley R. Malone, Jr. in the Los Angeles Superior Court

Opposing Counsel:
Douglas Del Tondo
Nelson, Sheehan, Del Tondo & Guggenheim
12424 Wilshire Boulevard, Suite 1120
Los Angeles, California 90025
Telephone: (310) 207-8337

Krumme sued the Southern California Rapid Transit District for breach of its collective bargaining agreement with the United Transportation Union and he sued the Union and the Local for breach of their duty of fair representation. I represented the defendant, Southern California Rapid Transit District. Pretrial motions were argued and plaintiff's case-in-chief was presented to a jury over a period of ten court days. A motion for nonsuit was made by defendants and granted by the Court. This case is

significant as representative of employment discrimination matters which I handled during my private practice.

Selected cases which I heard as a judge are as follows:

1) People v. Lowe, Hu, Berry, GAL Construction and Panda Corporation, LASC No. C643162

Prosecutor: Deputy District Attorney
Jan Chatten-Brown
L.A. County District
Attorney's Office
320 West Temple Street
Los Angeles, California 90012
Telephone: (213) 974-5903

Defense counsel:
William Driscoll
Drew, Driscoll & Peterson
251 South Lake Street
Pasadena, California 91101
Telephone: (818) 795-2801

Michael D. Nasatir
Nasatir & Hirsch
2115 Main Street
Santa Monica, California 90405
Telephone: (310) 399-3259

Mr. Michael Mayock
35 South Raymond
Pasadena, California 91105
Telephone: (818) 405-1465
Mr. Carl K. Osborne
Osborne & Eisenberg
1157 South Beverly Drive
Los Angeles, California 90035
Telephone: (310) 278-2345

H.G. Robert Fong
Ku and Fong
609 South Grand Avenue
Los Angeles, California 90017
Telephone: (213) 488-1400

The defendants were charged with involuntary manslaughter, a violation of Penal Code § 192(b), and violation of Labor Code § 6423(a). The complaint was based upon the death of a construction worker on a building site caused by a cave-in of an excavation alleged to have been without reinforcement and in violation of the Labor Code. Those charged were the owner of the property, the developer of the project, the building contracting company and its president, and the soil engineer who prepared the soil

analysis and report. Several motions were heard prior to the preliminary hearing. The preliminary hearing lasted approximately ten court days.

This case was significant inasmuch as the Labor Code statute creates a stricter criminal liability for individuals and entities encompassed within the statute and found in violation of the statute. The case was one of first impression and application of the statute in this case held the defendants to different standards depending on their status in relationship to the Labor Code. As a result, the soil engineer, defendant Hu, who was charged only with involuntary manslaughter since he was not within the umbrella of the Labor Code, was dismissed for insufficient evidence to support a charge of manslaughter. The remaining defendants were held to answer on all charges.

2) People v. Pratter, et al., LASC No. A705427, 1987

Prosecutor: Deputy District Attorney
Joseph Charney
L.A. County District Attorney's Office
Environmental Crimes Unit
320 West Temple Street
Los Angeles, California 90012
Telephone: (213) 974-5907

Defense Counsel:
Mr. Ronald A. Ziff
11111 West Olympic Boulevard
Los Angeles, California 90064
Telephone: (310) 477-9064

Mr. Michael M. Plotkin
4219 Sherman Oaks Avenue
Sherman Oaks, California 91403
Telephone: (818) 501-5019

The defendant and her corporation were charged with several counts of unlawful disposal of hazardous wastes, violation of Health and Safety Code § 25189.5. The complaint alleged that the defendants had recklessly abandoned various highly toxic chemicals at sites open to the public.

The significance of this case turned on the toxicity of the hazardous wastes and the testimony of the experts. This area of environmental prosecution was a new one and there was little guidance in the caselaw to determine whether a substance was "hazardous" as contemplated in the statute.

The preliminary hearing lasted approximately ten court days and defendants were held to answer.

3) People v. Rodriguez, et al., LASC No. A963568, 1988

Prosecutors: Deputy District Attorneys
Curt Hazell and Ellen Burke
L.A. County District Attorney's Office
18000 Criminal Courts Building
210 West Temple Street
Los Angeles, California 90012
Telephone: (213) 974-7454

Defense Counsel:

Mr. Robert L. Shapiro
2121 Avenue of the Stars
Los Angeles, California 90067
Telephone: (310) 282-6255

Mr. Gerald V. Scotti
8383 Wilshire Boulevard
Beverly Hills, California 90211
Telephone: (310) 651-2822

Mr. Gerald H. Klausner
4676 Admiralty Way
Marina del Rey, California 90292
Telephone: (310) 821-4045

Mr. Gerald M. Cobb
8484 Wilshire Boulevard
Beverly Hills, California 90211
Telephone: (310) 658-8977

Mr. Richard Caballero
280 South Beverly Drive
Beverly Hills, California 90212
Telephone: (310) 271-6241

Mr. Alvin S. Michaelson
Michaelson & Levine
1901 Avenue of the Stars
Los Angeles, California 90067
Telephone: (310) 278-4984

Defendants were charged with conspiracy, possession, and possession for sale of a controlled substance, to wit, cocaine, violations of Penal Code § 182 and Health and Safety Code §§ 11350 and 11351. The defendants filed motions to suppress based on Fourth Amendment privacy violations which were the significant issues in the case. The preliminary hearing and the motions were heard over a period of several weeks. Six of the seven defendants were held to answer.

4) People v. Blake and National Titanium Corp., 1988

Prosecutor:

William Carter
Ass't. Secretary of Law Enforcement
California Environmental Protection Agency
555 Capitol Mall, Suite 525
Sacramento, California 95814
Telephone: (916) 445-3846

Defense Counsel:

Mr. Joel Moskowitz
Gibson, Dunn & Crutcher
333 South Grand Avenue
Los Angeles, California 90071-3197
Telephone; (213) 229-7000

Mr. John Burns
Gibson, Dunn & Crutcher
2029 Century Park East
Los Angeles, California 90067-3026
Telephone: (310) 557-8056

The defendants were charged with several counts of unlawful disposal of hazardous wastes, a violation of Health and Safety Code § 25189.5. The complaint alleged that the defendants had willfully disposed of highly toxic chemicals to enter the sewer system.

The significance of this case rested on an issue raised in defendant's motion to suppress turning on the expectation of privacy of the defendant corporation of its enclosed workyard. The motion to suppress was heard and denied. The preliminary hearing lasted approximately five days and defendants were held to answer.

5) People v. Marshall and Harris, LASC No. A954922, 1988

Prosecutor:

Deputy District Attorney
John Krayniak
Los Angeles District Attorney's Office
210 West Temple Street
Los Angeles, California 90012
Telephone: (213) 974-3611

Defense Counsel:

Ms. Madelynn Kopple
528 Colorado Avenue
Santa Monica, California 90401-2408
Telephone: (310) 451-1486

Mr. John E. Meyers
880 West First Street, Suite 614
Los Angeles, California 90012-2458
Telephone: (213) 680-2404

The defendants were charged with murder in the first degree with special circumstances. The preliminary hearing lasted four days and defendants were held to answer. The significance of this case rests upon the seriousness of the charge rather than any factual or legal issues.

6) Simpson House Movers, et al. v. Fine House Movers, et al., LASC No. NCC 30068-B, 1988

Plaintiffs' Counsel:
William D. Pangburn
260 Maple Court, Suite 230
Ventura, California 93003
Telephone: (805) 656-1390

Defense Counsel:
Steven R. Young
Cummings & Young
660 Newport Center Drive, Suite 750
Newport Beach, California 92660
Telephone: (714) 640-1822

The complaint alleged several causes of action of breach of contract, conversion and fraud. The parties waived jury and tried the case to the court. Pretrial motions were filed and heard. The trial lasted approximately eleven court days. Plaintiff prevailed and was awarded damages.

This case has no particularly significant legal or factual issues; however, it is representative of civil cases I heard as a judge.

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 waived.)

I am presently the Vice Chairman of the Attorney General's Advisory Committee and am involved in several of its subcommittees. Together with other United States Attorneys and officials of the Department of Justice, national policy is set and implemented through this committee and its subcommittees.

Chief Justice Malcolm Lucas appointed me to the Judicial Council of California and I served for the years 1987 and 1988. The Council consisted of a small group of judges from each of the four levels of the California courts, two members of the California legislature and three members of the bar of California. The Council studied

issues affecting the courts and advised the Chief Justice on policy matters.

From 1986 to 1990, after my appointment as U.S. Attorney, I taught trial advocacy at Loyola Law School in Los Angeles. In addition to imparting trial skills and providing trial practice to the students, the class dealt extensively with the law of evidence and legal ethics.

When I was in private practice, I served from 1983 to 1986 on the Advisory Committee to the Ninth Circuit Court of Appeals on Rules and Procedures. The Committee, which consisted of approximately twenty Circuit judges and members of the bar completely revised the Ninth Circuit's appellate rules and procedures.

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.

   Los Angeles County Trustee: The Holden Group, Los Angeles, California. When I left my position as Judge of the Los Angeles Superior Court I kept my deferred compensation account and my 401-K savings plan account intact and with Los Angeles County's trustee. Since my resignation from the Los Angeles Superior Court in July, 1990, I have not received further contributions to these funds nor have I any arrangement with the County for any future compensation.

   Federal Retirement Thrift Savings Plan. Since August, 1991, I have participated in the above deferred income program. When I resign from my present position, I will no longer be eligible for the program and I do not anticipate making or receiving any contributions to this 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.

   Any potential conflict of interest will be handled on a case by case basis. The most common conflict which will occur will be cases brought during my tenure as the United States Attorney. In those cases the conflict will generally be resolved by my recusal or a waiver of the potential conflict by all parties. I do not anticipate any other major conflicts; however, if others occur, they would be handled in the same manner in conformance with 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.)

Please see attached Financial Disclosure Report.

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

See attached financial statement and schedules.

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

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	1,000	Notes payable to banks—secured	0
U.S. Government securities—add schedule	0	Notes payable to banks—unsecured	0
Listed securities—add schedule	96,292	Notes payable to relatives	0
Unlisted securities—add schedule	2,000	Notes payable to others	0
Accounts and notes receivable:		Accounts and bills due	0
Due from relatives and friends	0	Unpaid income tax	0
Due from others		Other unpaid tax and interest	0
Doubtful		Real estate mortgages payable—add schedule	290,685
Real estate owned—add schedule	850,000	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts—itemize:	0
Autos and other personal property	20,000		
Cash value—life insurance	0		
Other assets—itemize:	0		
Deferred compensation and IRA accounts	86,585		
		Total liabilities	290,685
		Net worth	768,192
Total assets	1,058,877	Total liabilities and net worth	1,058,877

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule.) No.	0
On leases or contracts		Are you defendant in any suits or legal actions? No	0
Legal Claims		Have you ever taken bankruptcy? No.	0
Provision for Federal Income Tax			
Other special debt			0

Listed Securities Schedule	Value
American Telephone & Telegraph Bond	$ 10,300
Eastman Kodak Co. Bond	10,050
Franklin Custodian Fund U.S. Government Series	9,809
Government Securities Income Fund GNMA Ser.	8,900
Teppoo Partners Common Stook	5,962
Bankamerica Corp. Bond	5,100
Chase Manhattan Corp. Preferred Stock	1,325
General Motors Preferred Stock	2,562
Govt. Securities Income Fund	567
Occidental Petroleum Corp. Common Stock	3,575
Pacific Telesis Group Common Stock	2,231
Southern California Edison Preferred Stock	3,625
American Home Products Common Stock	8,462
Chase Manhattan Corp. Preferred Stock	1,325
First Interstate Bancorp	3,000
General Motors Corp.	2,562
Household Finance Corp. Bond	5,212
Security Pacific	5,975
TCW Convertible Securities Fund, Inc.	8,750
	$ 99,292

Unlisted Securities Schedule	Value
Imperial Bancorp Bond	$ 2,000

Other Accounts Schedule	Value
Los Angeles County Deferred Compensation Plan	$ 39,675
Los Angeles County 401(K) Savings Plan	24,637
Thrift Savings Plan for Federal Employees	3,073
Bank of America IRA Account	7,000
Western Federal Savings & Loan IRA Account	4,000

Alliance Capital Reserves Money Market Account	8,200
	$ 86,585

Real Estate Schedule	Value
50% Interest in Residential Rental at 4935 Marathon, Los Angeles, CA	$150,000
Personal residence at 631 N. June St. Los Angeles, CA	700,000
	$850,000

Real Estate Mortgages Payable Schedule	Balance
American Savings Bank First mortgage holder on personal residence	$148,170
Bank of California Equity Line Second mortgage holder on personal residence	66,515
Coast Federal Savings & Loan First mortgage on Marathon property (50% interest)	76,000
	$290,685

Rev. 1/91

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics in Government Act of 1978, as amended; 5 U.S.C. App. § 101 et seq.

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
BAIRD, LOURDES G.	U.S. Attorney's Office 312 N. Spring St., Suite 1200 Los Angeles, CA 90012	4/3/92
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	**5. Report Type (check appropriate type)**	**6. Reporting Period**
United States Attorney	X Nomination, Date ____ __ Initial __ Annual __ Final	1/1/91 - 3/30/92
7. Chambers or Office Address		
1200 United States Courthouse 312 North Spring St. Los Angeles, CA 90012		

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

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

POSITION	NAME OF ORGANIZATION/ENTITY
☐ NONE (No reportable positions)	
1/1/90-Present Trustee	Immaculate Heart High School Bd. of Trustees, LA, CA
1/1/90-6/1/90 Adjunct Professor	Loyola Law School, LA, CA

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

DATE	PARTIES AND TERMS
☐ NONE (No reportable agreements)	
L.A. County:	Deferred compensation and 401K accounts. These accounts accrued during my employment as a judge for Los Angeles County. All contributions ceased upon my resignation; however, the balances remain in the independent and widely diversified fund managed by Holden Group, 11365 Olympic Blvd., Los Angeles, CA 90064.

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

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
X NONE (No reportable non-investment income)		
1.		
2.		$
3.		$
4.		$
5.		$
		$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
BAIRD, LOURDES G.	4/3/92

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

	SOURCE	DESCRIPTION
EXEMPT	NONE (No such reportable reimbursements or gifts)	
1		
2		
3		
4		
5		
6		
7		
8		

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

	SOURCE	DESCRIPTION	VALUE
EXEMPT	NONE (No such reportable gifts)		
1			$
2			$
3			$
4			$

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

	CREDITOR	DESCRIPTION	VALUE CODE*
	NONE (No reportable liabilities)		
1	Coast Federal Bank Van Nuys, CA	Mortgage on Rental Property (50% interest)	L
2	Sears Mortgage Corp. No. Hollywood, CA	Mortgage on Non-Rental Property	K
3			
4			
5			
6			
7			

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

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
BAIRD, LOURDES G.	4/3/92

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

A. Description of Assets (Including trust assets)	B. Income during reporting period (1) Amt. Code (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, exchange, 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)					E X E M P T				
1 American Telephone & Telegraph Bond	A	Int.	J	T					
2 Eastman Kodak Co. Bond	A	Int.	J	T					
3 Franklin Custodian Fund U.S. Government Series	A	Div.	J	T					
4 Government Securities Income Fund GNMA Ser.	A	Div.	J	T					
5 Teppco Partners Common Stock	A	Div.	J	T					
6 Bankamerica Corp Bond	A	Int.	J	T					
7 Chase Manhattan Corp. Preferred Stock	A	Div.	J	T					
8 General Motors Preferred Stock	A	Div.	J	T					
9 Gov't. Securities Income Fund	A	Div.	J	T					
10 Occidental Petroleum Corp. Common Stock	A	Div.	J	T					
11 Pacific Telesis Group Common Stock	A	Div.	J	T					
12 So. California Edison Preferred Stock	A	Div.	J	T					
13 American Home Products Common Stock	A	Div.	J	T					
14 Chase Manhattan Corp. Preferred Stock	A	Div.	J	T					
15 First Interstate Bancorp Common Stock	A	Div.	J	T					
16 General Motors Corp. Common Stock	A	Div.	J	T					
17 Household Finance Corp. Bond	A	Int.	J	T					
18 Security Pacific Common Stock	A	Div.	J	T					
19 TCW Convertibls Securitiss Fund, Inc.	A	Div.	J	T					
20 Imperial Bancorp Bond	A	Int.	J	T					

1 Income/Gain Codes: (See Col. B1 & H1)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to $5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=over $1,000,000
2 Value Codes: (See Col. C1 & P1)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $250,000
	N=$250,001 to $500,000	O=$500,001 to $1,000,000	P=over $1,000,000	
3 Value Method Codes: (See Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market
	U=Cost	V=Other	W=Estimated	

BAIRD, LOURDES G.

VII. Investments and Trusts (Cont'd.)

	A. Description	B. Income During Reporting Period		C. Gross Value At End of Reporting Period	
		Amount	Type	Value	Value Method
21.	Central Hudson Gas & Electric Common Stock	A	Div.	J	T
22.	Puget Sound Power & Light Co. Common Stock	A	Div.	J	T
23.	International Business Machines Common Stock	A	Div.	J	T
24.	Bristol Myers Squibb Common Stock	A	Div.	J	T
25.	Glenfed, Inc. Common Stock	A	Div.	J	T
26.	Ford Motor Co. Preferred Stock	A	Div.	J	T
27.	Los Angeles County Deferred Compensation Plan	B	Int.	K	T
28.	Los Angeles County 401(K) Savings Plan	B	Int.	K	T
29.	Bank of America, Civic Center Branch Los Angeles, CA IRA Account	A	Int.	J	T
30.	Western Federal Savings & Loan Los Angeles, CA IRA Account	A	Int.	J	T

BAIRD, LOURDES G.

31.	Alliance Capital Reserves Secaucus, NJ Money Market Account	B	Int.	J	T
32.	50% Interest in Residential Rental at 4935 Marathon Los Angeles, CA	D	Rent	M	V

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	BAIRD, LOURDES G.	4/3/92

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 Lourdes G. Baird Date 4/3/92

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. 4, § 104, AND 18 U.S.C. § 1001.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

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 I became a lawyer in 1976 I have worked in a pro bono capacity in the following areas:

Continuing Legal Education Programs:

Practicing Law Institute
Civil Rico Programs, 1984-1985

National Institute of Trial Advocacy, 1980-1986

American Bar Association
Corporate Criminal Liability, 1991

State Bar of California
Federal Sentencing, 1991-1992

University of Southern California
Federal Sentencing Guidelines, 1992

Tulane Law School
Corporate Law Institute, 1992

Community Legal Education Programs:

Constitutional Rights Foundation
Lawyer-in-classroom program, 1979-1985
Junior and Senior High School
Mock Trial Program, 1979-1990

Marymount School, Los Angeles, CA
Lecturer on legal ethics

Immaculate Heart High School, Los Angeles, CA
Lecturer on legal ethics, 1979-1983

Community Volunteer Work:

Immaculate Heart High School, Los Angeles, CA
Board of Trustees, 1989 to present
Commencement speaker 1980 and 1990

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?

I have no personal knowledge of a selection commission; however, I have been told that an advisory committee exists for the purpose of recommending candidates for nomination to the federal courts.

If so, did it recommend your nomination?

I believe so.

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).

In November I was contacted by Senator John Seymour's office regarding my interest in appointment as a judge in the U.S. District Court in the Central District. After an interview with Senator Seymour's staff the Senator offered to recommend me for nomination for appointment to the U.S. District Court in this district. I accepted the Senator's offer.

Later, I interviewed with staff at the U.S. Department of Justice. I completed several application forms and returned them to the Department of Justice.

Shortly thereafter I interviewed with an agent from the Federal Bureau of Investigation and a member of the Standing Committee on the 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 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.

Our Constitution defines three separate branches of government, each with a distinct role. This framework works best when each branch fulfills its role without infringing upon the role of the other. A natural and healthy tension exists among the three branches which is necessary to achieve a proper balance and this tension functions as a means to effectuate that balance.

Courts have a heavy responsibility to interpret the law, to decide the facts and to apply the law to the facts in the case before them. Court decisions often have far-reaching consequences on government and society; however, those "characteristics" of judicial activism described above are generally not within the defined role of the court. Courts were not meant to administer social institutions, to solve all of the problems of society, nor to micromanage government or the legislature.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Irma Elsa Gonzalez
Irma E. Dirst (former name used)
Irma Gonzalez Dirst (former name used)

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

730 Pomona Avenue (residence)
Coronado, CA 92118

Superior Court (office)
220 West Broadway
San Diego, CA 92101

3. Date and place of birth.

March 29, 1948, Palo Alto, California

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

Husband - Robert S. Brewer, Jr.
Attorney - Partner with the law firm of
McKenna & Cuneo
750 B Street, Ste. 2800
San Diego, CA 92101

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

Stephens College Columbia, MO	Sept., 1966 - May, 1967
Stanford University Stanford, CA	Sept., 1967 - June, 1970 Bachelor of Arts Degree in History, June 14, 1970
University of Arizona School of Law Tucson, AZ	Aug., 1970 - May, 1973 Juris Doctor Degree, May 19, 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.

Sept., 1972 - May, 1973 (part time law clerk while attending law school)	Dickerson, Butler & Rabb 673 E. River Rd., Ste. 169 Tucson, AZ 85704
Aug., 1973 - March, 1975	Law Clerk William C. Frey (deceased) U.S. District Judge District of Arizona Tucson, AZ
March, 1975 - May, 1979	Assistant U.S. Attorney Criminal Division U.S. Attorney's Office District of Arizona 110 S. Church Ave., Ste. 8310 Tucson, AZ 85701
May, 1979 - Sept., 1979	Trial Attorney Antitrust Division U.S. Department of Justice 300 Los Angeles St. Los Angeles, CA 90012
Sept., 1979 - Oct., 1981	Assistant U.S. Attorney Criminal Division U.S. Attorney's Office Central District of California 312 N. Spring Street Los Angeles, CA 90012
Dec., 1981 - March, 1984	Associate Attorney Seltzer Caplan Wilkins & McMahon 750 B Street, Ste. 1900 San Diego, CA 92101
April, 1984 - Jan., 1991	U.S. Magistrate Judge Southern District of California U.S. Courthouse 940 Front Street San Diego, CA 92101
Jan., 1991 - present	Superior Court Judge San Diego County 220 West Broadway San Diego, CA 92101

Jan., 1992 - present

Adjunct Professor
University of San Diego School of Law
Alcala Park
San Diego, CA 92110

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

No.

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

None.

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

California Bar Association
San Diego County Bar Association
Arizona Bar Association
Pima County Bar Association
National Association of Women Judges
National Council of United States Magistrates
Lawyers' Club of San Diego
American Bar Association
California Judges Association
Thomas More Society, President 1990-1991
La Raza Lawyers
Education Committee, Ninth Circuit Judicial Conference, 1988-1990
Compensation & Retirement Committee, California Judges Assn., September, 1991-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.**

California Judges Association
Other Organizations: Trustee, San Diego Museum of Man
President, Girl Scout Women's Advisory Cabinet
American Inns of Court

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 State of Arizona	9/29/73
U.S. District Court for the District of Arizona	10/1/73
Ninth Circuit Court of Appeals	3/3/75
Supreme Court of the State of California	5/30/80
U.S. District Court for the Central District of California	6/16/80
U.S. District Court for the Southern District of California	8/2/82

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 nor edited any published materials other than two opinions.

I have never given a speech on constitutional law or legal policy. One time I served on a panel which discussed the history of women and the constitution.

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

My health is excellent. The date of my last physical examination was January 20, 1992.

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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 April 10, 1984, to January 4, 1991, I was a United States Magistrate Judge sitting in the Southern District of California. I was appointed to that position by the judges of the district court. The jurisdiction of a magistrate judge is limited by Title 28 United States Code §636. Pursuant to that authority, I tried civil and criminal misdemeanor cases with the consent of counsel. In addition, I arraigned defendants, set bail and appointed counsel in criminal cases. I handled a wide variety of non-dispositive motions and settlement conferences in civil cases.

I am presently a Superior Court Judge sitting in San Diego County, California. I was appointed by the Governor of California, George Deukmejian, on January 4, 1991. The Superior Court is a trial court of general jurisdiction. I am presently assigned to a trial department. Approximately 95% of the cases I have tried have been civil and 5% have been criminal.

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

(1) I have attached copies of ten of the most significant opinions I have written. They are:

(a) Reavis v. Metropolitan Property and Liability Insurance Co. and Metropolitan Life. This case is reported at 117 F.R.D. 160 (S.D. Ca., 1987)

(b) In re Sealed Search Warrant For Cubic Corporation. This case is reported at 1989 WL 16075 (S.D. Ca.)

(c) Joseph Fernando Balelo v. Campbell Industries, et al., Case No. 86-0044 IEG. (S.D. Ca.)

(d) In the Matter of the Extradition of Henry Errol Kingswell, Case No. 86-5650-M. (S.D. Ca.)

(e) In the Matter of the Extradition of Jorge G. Kraiselburd, Case No. 84-2644-M: (S.D. Ca.)

(f) United States of America v. Real Property Located at 9930 Stevens Road, Santee, California, Case No. 88-1206 GT/IEG. (S.D. Ca.)

(g) United States of America v. One Residential Property Located at 936 Cornish Street, San Diego, California, Case No. 85-1068 IEG. (S.D. Ca.)

(h) The Estate of George Augustus Bishop, et al. v. Bechtel Power Corp., Case No. CV 87-0814GT(IEG) and Case No. CV 88-0997GT(IEG). (S.D. Ca.)

(i) United States of America v. Walker Bennett Monroe, Case No. 89-0013-JLI. (S.D. Ca.)

(j) United States of America v. One Residential Property Located at 11488 Alkaid Dr., San Diego, California, Case No. 89-0373IEG. (S.D. Ca.)

(2) I am not aware of any appellate opinion where my decisions were reversed or where my judgment was affirmed with criticism of my substantive or procedural rulings.

(3) The only significant opinion I have written concerning federal or state constitutional issues is In re Sealed Search Warrant For Cubic Corporation, 1989 WL 16075 (S.D.Ca.), which is attached in response to Question 15(1) above.

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

I have never held a public office, other than a judicial office. 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;**

Aug., 1973 -
March, 1975 — Law Clerk
William C. Frey (deceased)
U.S. District Judge
District of Arizona
Tucson, AZ 85701

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;**

March, 1975 -
May, 1979: — Assistant U.S. Attorney
Criminal Division
U.S. Attorney's Office
District of Arizona
110 S. Church Ave., Ste. 8310
Tucson, AZ 85701

Responsible for case filings, pre-trial hearings and motions, grand jury investigations, trials and writing and arguing appeals.

May, 1979 -
Sept., 1979: — Trial Attorney
Antitrust Division
U.S. Department of Justice
300 Los Angeles St.
Los Angeles, CA 90012

Participated in investigation of bid-rigging by construction firms during construction of several nuclear plants.

Sept., 1981 -
Oct., 1981: — Assistant U.S. Attorney
Criminal Division
U.S. Attorney's Office
Central District of California
312 N. Spring St.
Los Angeles, CA 90012

Responsible for case filings, pre-trial hearings and motions, grand jury investigations, trials and writing and arguing appeals.

Dec., 1981 -
March, 1984: Associate Attorney
Seltzer Caplan Wilkins & McMahon
750 B Street, Ste. 2200
San Diego, CA 92101

At the time I worked at Seltzer Caplan, I handled predominately commercial litigation matters. There were approximately 30 attorneys with the firm at that time.

April, 1984 -
Jan., 1991: U.S. Magistrate Judge
Southern District of California
U.S. Courthouse
940 Front St.
San Diego, CA 92189

I arraigned thousands of defendants. I set bail and appointed counsel in those cases. I tried both civil and criminal (misdemeanor) cases, with the consent of counsel. I also handled a wide variety of non-dispositive motions and settlement conferences in civil cases.

Jan., 1991 -
present: Superior Court Judge
San Diego County
220 West Broadway
San Diego, CA 92101

Superior Court is a court of general jurisdiction. I am presently assigned to a trial department. Approximately 95% of the cases I have tried have been civil and 5% have been criminal trials.

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 the time I graduated from law school until March, 1975, I clerked for a district court judge. I performed legal research and wrote bench memoranda in civil cases. I assisted the judge in researching jury instructions in criminal cases.

The general character of my practice from March, 1975, to October, 1981, was criminal law. As an Assistant U.S. Attorney, I represented the United States and handled a wide variety of criminal cases, including bank fraud, mail fraud, bank robbery, tax evasion and narcotics violations.

While in the anti-trust division, between May, 1979, to September, 1979, I participated in one investigation of bid-rigging by construction firms in bidding for the construction of nuclear plants.

While I was an associate attorney at Seltzer Caplan Wilkins & McMahon, from December, 1981, to March, 1984, approximately 75% of my practice was devoted to business litigation. The remainder involved general litigation matters.

Since April 1984, I have been a judicial officer. I have described my responsibilities in response to Question 17a.

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

My typical former clients while in private practice included real estate developers and builders involved in disputes over construction defects; and banks and large corporations involved in disputes over commercial transactions. I also handled two plaintiffs' personal injury cases, two antitrust cases, and a palimony lawsuit. As an Assistant United States Attorney, I represented the United States in criminal cases.

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

I appeared in court frequently from March, 1975, to October, 1981. During this time, I tried approximately 20 cases and handled many pre-trial motions. I appeared in court occasionally from December, 1981, to April, 1984. During this time I tried two civil trials and handled several motions.

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

   (a) From March, 1975, to October, 1981, 100% of my appearances were in federal court. From December, 1981, to March, 1984, approximately 2% of my appearances were in federal court.

(b) From December, 1981, to March, 1984, 98% of my appearances were in state court.

(c) I have made no appearances in any other courts.

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

(a) I handled no civil cases from March, 1975, to October, 1981. From December, 1981, to March, 1984, 100% of my litigation was civil.

(b) From March, 1975, to October, 1981 (except May-September, 1979), 100% of my litigation was criminal. I handled no criminal cases from December, 1981, to March, 1984.

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 22 cases to verdict or judgment in courts of record. I was chief counsel in two cases, associate counsel in three cases and sole counsel in all other cases.

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

(a) 98% of these trials were jury
(b) 2% of these trials were non-jury

18. **<u>Litigation:</u> 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) Stewart v. Amway Corp. & General Int. Industries, San Diego Superior Court Case No. 475235 (1981). (Date of representation: 1981-1983.)

Co-counsel Gerald McMahon and I represented the plaintiff in this personal injury lawsuit. Plaintiff, an elderly gentleman, burned his foot on a thermal massage device (a Polorator) manufactured by GII and distributed by Amway. Plaintiff sought damages under theories of strict liability for a design defect, negligence and breach of warranty. In addition to compensatory damages, plaintiff sought punitive damages. I handled and coordinated all pre-trial discovery, pre-trial motions and trial preparation. I conducted many depositions in Ada, Michigan (Amway's headquarters).

This case is significant because through discovery, I learned that Amway knew of the dangers (overheating) inherent in the Polorator and that there had been accidents similar to that of Mr. Stewart's before he brought this lawsuit. GII was aware of several safer design alternatives for the Polorator at the time they manufactured the device. I firmly believe that a jury would have awarded punitive damages if the case had been brought to trial. However, the case settled shortly before trial was scheduled to commence in late 1983. A substantial settlement in favor of plaintiff was reached.

Settlement Judge:	Honorable Gilbert Harelson JAMS 401 B Street, Ste. 200 San Diego, CA 92101 (619) 236-1848
Co-Counsel:	Gerald McMahon, Esq. Seltzer Caplan Wilkins & McMahon 750 B Street, Ste. 2200 San Diego, CA 92101 (619) 685-3003
Opposing Counsel:	Michael T. Gibbs, Esq. Gibbs, Eppsteiner & Stagg 1420 Kettner Blvd., 602 San Diego, CA 92101 (619) 234-1760

Ray J. Artiano, Esq.
Stutz, Gallagher & Artiano
401 West A Street, 15th Floor
San Diego, CA 92101-8298
(619) 232-3122

(2) Rhea v. Robert J. Casale, San Diego Superior Court Case No. 498969 (1982). (Dates of representation: 1982-1984.)

In this case I represented the defendant, Mr. Casale, who was sued by plaintiff, a woman with whom he lived for approximately seven years. Plaintiff sought a declaration from the court that an oral agreement was entered into between plaintiff and defendant whereby the parties agreed to live together as an unmarried couple and thereafter combine their efforts and earnings and share equally any property accumulated during the relationship. Plaintiff also sought a declaration from the court that the actions of the parties gave rise to property and contract rights by implication. I handled all pre-trial discovery, prepared and argued a summary judgment motion and began to prepare for trial. Prior to trial I was appointed a U.S. Magistrate. The case was tried by Bonnie N. Reading of Seltzer Caplan Wilkins & McMahon before the Honorable Franklin Orfield (now retired) in November, 1984.

During trial the parties reached a stipulated judgment in favor of defendant. This case is significant because the legal issues were unique. The provisions of the Family Law Act do not govern property rights of non-marital partners. At the time there were few cases that had been brought under the theory advanced in the case. In addition, it was a very emotional case for both parties which focused on their private lives and the lives of their three children.

Opposing Counsel: Thomas Ashworth, III
(subsequently appointed to the Superior Court)
Superior Court
1501-55 Sixth Avenue
San Diego, CA 92101
(619) 557-2005

(3) County of San Diego v. Lafayette Steel Co., dba Ocean Systems Research, San Diego Superior Court Case No. 462635 (1980). (Dates of representation: 1979-1983.)

I represented the defendant in this lawsuit brought by the County seeking recovery of unsecured delinquency taxes and penalties on a vessel as personal property for the year 1978. The defendant, an oceangoing vessel designed for fishing and

oceanographic research, was home-ported in Alaska and was in San Diego for nine months of 1978 undergoing repairs and refurbishing. I handled all discovery, pre-trial preparation and trial. The case was tried to the court in one day, June 28, 1983. The court entered judgment for plaintiff.

This case is significant because the County was able to tax a vessel which had no connection to San Diego other than the nine months it was in port. The defendant contended plaintiff did not have sufficient jurisdiction over the vessel to assess a tax because the vessel did not have a permanent situs within San Diego. The sole reason for its being in San Diego was for repairs and refurbishing.

Trial Judge:	Honorable Ben W. Hamrick (Retired) JAMS 401 B Street, Ste. 200 San Diego, CA 92101 (619) 236-1848
Opposing Counsel:	Bruce W. Beach, Esq. Jennings, Engstrand & Henrickson 501 W. Broadway, Ste. 1400 San Diego, CA 92101 (619) 557-7626

(4) Sorensen v. McMillan Construction Co., Inc., San Diego Superior Court Case No. 472998 (1980). (Dates of representation: 1980-1982.)

Co-Counsel Gerald McMahon and I represented plaintiffs, Mr. and Mrs. Sorensen, in this lawsuit against McMillan, the builder of their home. Plaintiffs alleged that cracks in the concrete slabs and walls of their home were due to the existence of compressible organic soil for which the defendant should be strictly liable. Plaintiffs also claimed negligence per se due to a violation of the County Code and breach of warranty. I handled all pre-trial discovery which included the depositions of engineers. I also prepared all written memoranda including settlement conference briefs. The plaintiffs received a substantial amount due to a settlement reached prior to trial.

This case is significant because plaintiffs were able to convince the defendant of the profound effect the deterioration of their home had on their lives. More importantly, the soil problem prevented plaintiffs from being able to install a pool which was needed for their 7-year old son who suffered from Duchenne Muscular Dystrophy.

Co-Counsel: Gerald McMahon, Esq.
Seltzer Caplan Wilkins & McMahon
750 B Street, Ste. 2200
San Diego, CA 92101
(619) 685-3003

Opposing Counsel: John Lally, Esq.

Mr. Lally is no longer practicing law and I do not know his whereabouts. His supervising attorney on the case was:

Michael Edwards, Esq.
Edwards, White & Sooy
1615 Murray Canyon Road, Ste. 1000
San Diego, CA 92108
(619) 692-2020

(5) Standard Bank of Swaziland Limited v. Roy Black and Anthony Black, San Diego Superior Court Case No. 501378 (1983). (Dates of representation: 1983-1986.)

I represented Plaintiff, Standard Bank of Swaziland, which gave a line of credit to WVM, a corporation which distributed American television programs in Africa. The defendants, Roy and Anthony Black, were the principals of WVM and they personally guaranteed repayment to plaintiff of all sums WVM might owe to plaintiff. When the defendants failed to make repayments under the terms of their guarantees after demand by plaintiff, plaintiff filed a lawsuit in San Diego. The Blacks were living in San Diego at the time. I obtained writs of attachment on the Blacks' assets (residences and bank accounts) pending trial of the matter. I handled all the discovery and started preparing for trial. While the case was pending, I was appointed a U.S. Magistrate. The case was taken over by Dennis Wickham of Seltzer Caplan Wilkins & McMahon. The case eventually settled on July 18, 1986, in favor of plaintiff.

This was one of the most interesting cases I ever litigated. I worked very closely with Peter Keyter, an attorney with Standard Bank of Swaziland. Through Mr. Keyter I learned much about Swaziland, an independent kingdom in South Africa. Defendants contended that the loans by plaintiff were illegal transactions because they violated the Rand restrictions under the laws of Swaziland and South Africa.

Opposing Counsel: Jeffrey Isaacs, Esq.
Procopio, Cory, Hargreaves & Savitch
530 B Street, Ste. 1900
San Diego, CA 92101
(619) 238-1900

(6) United States v. Catarino Murillo, et al., United States District Court for the Central District of California, Case No. CR 81-363(A) WPG (1981)

I served as the government's co-counsel. This case presented the prosecution of a major Mexican heroin distribution organization supervised in Los Angeles by Catarino Murillo. The defendant was charged with conspiring to import, possess and distribute large quantities of heroin as well as several counts of tax evasion. Murillo was also charged with supervising a continuing criminal heroin enterprise. This was one of the first cases in the Central District of California where the government successfully sought and obtained the criminal forfeiture of a defendant's heroin wealth, including a home, ranch, vehicles, jewelry and cash. This was also the first case in which the Justice Department successfully obtained records of a defendant's Mexican bank accounts in a heroin trafficking/income tax evasion case. After a four week trial, Murillo was convicted on all counts on October 14, 1981. On October 15, 1981, the jury returned special forfeiture verdicts for all of Murillo's property listed in the indictment.

In an unpublished opinion, the Ninth Circuit Court of Appeals affirmed Murillo's conviction. The government appealed the district court's order exempting certain property from the jury's special forfeiture verdict under Title 21 USC §848. The Ninth Circuit reversed the district court's order. The case is reported at 709 F2d 1298 (9th Cir. 1983).

Trial Judge:	Honorable William P. Gray U.S. District Court 312 N. Spring Street Los Angeles, CA 90012 (213) 894-5265
Co-Counsel:	Layne Phillips, Esq. (Former U.S. District Court Judge) Irell & Manella 840 Newport Center Dr., Ste. 500 Newport Beach, CA 92660 (714) 760-0991
Opposing Counsel:	Alvin Michaelson, Esq. 1901 Avenue of the Stars, Ste. 1708 Los Angeles, CA 90067 (213) 272-1293

(7) United States v. German Gomez, et al., United States District Court for the Central District of California, Case No. CR 80-373MRP (1980).

I served as the government's counsel. Six defendants were charged with conspiracy to distribute cocaine and distribution of one kilo of cocaine. One defendant was charged with possession of a firearm. Three defendants pled guilty, one defendant absconded and two defendants went to trial. During the trial of this matter, the government presented evidence of undercover negotiations with DEA agents which led up to the final transaction. One of the defendants provided security during the negotiations by being armed with a firearm. The trial lasted four days and both defendants were convicted on or about July 30, 1980. DEA agents arrested the defendant who absconded approximately ten years later, when they learned he was running a major cocaine organization.

Trial Judge:	Honorable Marianna Pfaelzer U.S. District Court 312 N. Spring Street Los Angeles, CA 90012 (213) 894-7284
Opposing Counsel:	Wayne McMillan, Esq. 462 South Marengo Pasadena, CA 91101 (818) 796-5008
	Samuel Jackson, Esq. 11400 W. Olympic, Ste. 600 Los Angeles, CA 90064 (310) 473-3100

(8) United States v. Walter Seifert & Jack Ehrlich, United States District Court for the District of Arizona, Case No. CR 78-318TUC(WCF) (1978).

I served as the government's chief counsel in this prosecution in which two individuals were charged with 19 counts of interstate transportation of property taken by fraud. The defendants devised a scheme whereby they opened a camera retail store. The defendants established credit by ordering small amounts of camera equipment which they paid for in a timely manner. Thereafter, they started ordering large quantities of camera equipment on credit from wholesalers. Defendants then would hire individuals to transport the equipment to California for resale. The scheme, called a "bust-out", resulted in a loss of over $100,000 to the camera equipment wholesalers. I coordinated the investigation of the case whereby we were able to track all shipments of the camera equipment by interstate carriers to defendants' store in

Arizona. After six days of trial, both defendants were convicted on March 14, 1979.

The case was later appealed. Co-counsel argued the appeal because I had already moved to California. The Ninth Circuit reversed the judgment of conviction of Seifert and affirmed the judgment of conviction of Ehrlich. The opinion is reported at 648 F2d 557 (9th Cir. 1980).

Trial Judge:	Honorable James Fitzgerald (Sitting as a visiting judge in Tucson, Arizona) U.S. District Court District of Alaska (Anchorage) (907) 271-5553
Co-Counsel:	John G. Hawkins (deceased) Tucson, AZ
Opposing Counsel:	Richard Kirschner, Esq. 10850 Wilshire Blvd., Ste. 400 Los Angeles, CA 90024 (310) 474-6555
	Philip Deitch, Esq. 10850 Wilshire Blvd., Ste. 400 Los Angeles, CA 90024 (310) 474-8891

(9) United States v. Billie Mac Jobe, et al., United States District Court for the District of Arizona, Case No. CR 78-042TUC(WCF) (1978).

I served as government co-counsel in this prosecution which grew out of the failure of the Peoples Bank of Wilcox, Arizona. The bank failed because of fraudulent transfers and loans made by the owners and president of the bank. Using the wire transfer system and connections in other banks, the defendants created a $3,000,000 check kite through the bank's correspondent accounts. Shortages were covered by falsely documented straw loans without collateral. The bank was closed by the FDIC and the on-site investigation by the FDIC and the FBI took six months. This was the largest check kiting scheme that had been investigated by the FBI at the time. The main defendants, Jobe, Gary Guilford, and Kenneth Brightwell pled guilty before trial. Three of five remaining defendants were convicted after a two week trial which co-counsel tried in December, 1978.

I was co-counsel working with a team of up to three other lawyers. The grand jury investigation lasted two years. I traveled to Missouri and Kansas several times in order to

retrieve records and talk to witnesses. Pre-trial motion practice was extensive.

Trial Judge:	William C. Frey (deceased) U.S. District Court Tucson, AZ
Co-Counsel:	Daniel G. Knauss, Esq. U.S. Attorney's Office 110 S. Church Ave., Ste. 8310 Tucson, AZ (602) 670-6511
	Bruce R. Heurlin, Esq. One S. Church Ave., Ste. 2200 Tucson, AZ 85701-1621 (602) 628-4639
	Edward S. Castoria, Esq. 6655 Lipmann Street San Diego, CA 92122 (619) 535-9450
Opposing Counsel:	Bert Polis, Esq. 338 N. Granada Avenue Tucson, AZ 85701 (602) 884-9911
	Clague A. Van Slyke Snell and Wilmer One S. Church Citibank 1500 Tucson, AZ 85701-1612 (602) 882-1200
	James A. Fein Alpert, Fein & Hameroff 300 N. Main, Ste. 104 Tucson, AZ 85701-8287 (602) 792-4700
	James Stuehringer Waterfall, Economidis 5210 E. Williams Circle, Ste. 800 Tucson, AZ 85711-4473 (602) 790-5828

Benjamin W. Lazarow
Lazarow and Lazarow
25 E. University
Tucson, AZ 85705
(602) 623-5856

Lee A. Chagra (deceased)
El Paso, TX

(10) United States v. Sharon Marquez, et al., United States District Court for the District of Arizona, Case No. CR 75-120TUC(JAW) (1975).

I served as government counsel in this case where five defendants were charged with violating the narcotics laws. Among the charges were conspiracy to import and distribute heroin and distribution of cocaine. In this case, five young people devised a scheme to bring narcotics into the United States from Mexico. Defendant Sharon Marquez, on several occasions, would hide the narcotics on her body and then would walk across the border with one or more of the other co-defendants. I handled all trial preparation and the trial of the case. The case was tried to a jury on May 13 and 14, 1975. All four of the defendants who went to trial were convicted. The convictions in this case had a profound effect on the families of the defendants. At least two of the defendants were heroin addicts. The defendants committed the crimes charged not only to make a profit, but to support their own drug habits. The defendants were young and came from well respected families in Tucson.

Trial Judge: James A. Walsh (Retired)
U.S. District Judge
Tucson, AZ

Opposing Counsel: Thomas Chandler, Esq.
Chandler, Fuller, Udall & Redhair
33 N. Stone, Ste. 1700
Tucson, AZ 85701
(602) 623-4353

Patrick J. Briggs, Esq.
1495 Pacific Highway, Ste. 201
San Diego, CA 92101
(619) 238-1015

Fredric F. Kay
Federal Public Defender
97 E. Congress, Ste. 130
Tucson, AZ 85701
(602) 670-6521

Robert L. Murray
(Disbarred, no longer practicing law)

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

As a prosecutor, I participated in the investigation of two significant criminal cases: United States of America v. Billie MacJobe, et al, CR 78-042 TUC (WCF) and United States of America v. Catarino Murillo, et al, CR 81-363(A) WPB (both cases are referred to in response to Question No. 18 above. The grand jury investigation in the Jobe case took two years to complete. Thousands of documents were subpoenaed by the grand jury and numerous witnesses appeared to testify before the grand jury. I coordinated the entire investigation. Eventually 16 people were indicted. As stated previously, the principal defendants pleaded guilty before trial.

In the Murillo case, the grand jury investigation took more than one year to complete. Again, many documents were subpoenaed by the grand jury. Several convicted felons testified before the grand jury. The entire drug case hinged on the testimony of a convicted murderer. I spent months debriefing him about his knowledge of the drug conspiracy. All of these conversations were in Spanish. This cooperating individual testified before the grand jury. As a result, numerous individuals were indicted. All but the principal defendant pleaded guilty before trial. At trial the jury found Murillo guilty, largely due to the testimony of the cooperating witness.

As a U.S. Magistrate Judge, I presided over the settlement negotiations of hundreds of civil cases. I settled two separate personal injury cases (product liability) against car manufacturers in which each plaintiff obtained a settlement well in excess of two million dollars. I also settled a shareholders derivative lawsuit against the officers and directors of a corporation. Violations of the 1933 and 1934 Securities and Exchange Acts were alleged. After months of settlement negotiations with attorneys for insurance carriers, the case settled for fifteen million dollars.

As a member of the Ninth Circuit Education Committee from 1988 to 1990, I participated in the planning of judicial educational programs. I also participated in one of those programs. Since 1985 I have participated in at least three Continuing Education of the Bar programs for the State of

California.

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 vested interest in my judge's retirement fund. I have not been on the bench long enough for my retirement to vest. However, 8% of my salary per month goes into a retirement fund. When I leave service as a state court judge I will roll over the amount withheld into an 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.**

   As soon as a case is assigned to me, I will attempt to learn the identity of the parties and the attorneys. I have a checklist of grounds for disqualification if it appears there will be a conflict of interest. If the conflict is one that cannot be waived by the parties and attorneys, then I will disqualify myself automatically. Those situations would include: my spouse or other relative appearing as a party, attorney or witness in the case; my having served as a lawyer in the case; my belief or another person's belief that I could not be impartial; and my having a financial interest in a party. If the conflict appears to be one that can be waived, I would ask the parties and their attorneys if they wish to waive the disqualification once I inform them of what I perceive to be the conflict. I would not seek to induce a waiver. A waiver must be in writing, signed by all parties and their attorneys.

   I do not believe there is any category of litigation which is likely to present a conflict of interest. I have not practiced law for almost eight years. There are also no financial arrangements that are likely to present a conflict of interest. However, I will follow the guidelines that are set forth in the Code of Judicial Conduct.

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

   I have an agreement with the University of San Diego School of Law to be an Adjunct Professor of law for the Spring 1992 semester to co-teach a two-credit section in Lawyering Skills II. I teach the course every other week and my compensation will be a total of $750.00.

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 disolosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   Attached is a completed copy of the Financial Disclosure Report.

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

   Attached is a completed financial net worth statement and schedules.

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

   I have never held a position nor 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.**

   As a prosecutor, I always felt that I was serving the disadvantaged (victims of crime) by protecting them and fairly convicting those accused of committing crimes. I served as an Assistant United States Attorney for six and one-half years.

   As a judicial officer, I am precluded from engaging in the practice of law. However, I have participated in serving the disadvantaged by being a mentor for a hispanic law student during 1990. I made myself available to give advice and support to her during her first year of law school. At least twice a year from 1987 to 1990, I spoke to ethnic minority students at local grammar and junior high schools. All of these students lived and attended schools in low-income neighborhoods. I spoke to the students about law as a career and tried to answer any questions they had about the law. I continue to attempt to be a role model for ethnic minorities and particularly young women by speaking to various groups such as the Chicano Federation, La Raza Law Students and California Women Lawyers. I am presently a member of the Girl Scout Women's Advisory Cabinet. We promote Girl Scouting in the San Diego Community, especially in low-income schools and neighborhoods.

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).**

Yes. I believe I was one of three persons recommended to the Senator by the selection commission. I completed an application similar to the American Bar Association's Personal Data Questionnaire and forwarded it to Mr. John Davies, Chairperson of the selection commission of which I believe there are five members. The commission conducted an investigation of my legal qualifications by sending questionnaires to or interviewing members of the bar. Thereafter, I was interviewed by Mr. Davies. Following that interview, I was interviewed by Mr. Floyd Farano, Legal Counsel to Senator John Seymour. Approximately one month after my interview with Mr. Farano, Senator Seymour called to tell me that he was recommending me as a candidate for nomination.

Subsequently, I was interviewed by representatives of the Department of Justice, an FBI Agent and a member of the ABA Standing Committee on the Federal Judiciary.

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

No.

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

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

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

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

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

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

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

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

A major feature upon which our republic is founded is the separation of powers, which means that under Article I of the Constitution the legislative powers are entrusted to Congress, under Article II the executive power is entrusted to the President and under Article III the elements of the judicial power are set forth. These powers are very different in nature, although the executive and legislative powers are shared at times. The intended function of the federal courts is to interpret the Constitution and the laws passed by congress.

The controversy surrounding judicial activism stems from members of the federal judiciary who are perceived as having reached beyond their authority to arrive at a certain decision. The Constitution provides that all of those given the authority to make policy or laws are directly accountable to the people through regular elections. Federal judges, however, are given life tenure precisely so that they will not be accountable to the people. If judges are to perform their vital role, unelected and unaccountable, judges must consider themselves bound by law that is independent of their own views of what a desirable result may be. Judges cannot act as super legislators. Legislators who are duly elected are better equipped with their committees and their hearings to make decisions deemed best for society.

Judicial activists, in my opinion, are also those judges who do not respect precedent. Precedent requires simply that a judge follow prior case law in deciding legal questions. Respect for precedent promotes predictability and uniformity. Through its application citizens can have a better understanding of the law and act accordingly.

In summary, it is not the function of the federal district judge to search for an innovative interpretation of the law that invades the provinces of the executive and legislative functions of the government or to expand precedent, whether it is done in furtherance of "conservative" or "liberal" philosophies. The Constitution did not place the responsibility for solving social and political problems in the hands of the Courts.

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

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

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
GONZALEZ, IRMA E.	U.S. District Court	4/9/92
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
U.S. District Judge	X Nomination, Date 4/9/92 __ Initial __ Annual __ Final	1/1/91 - 4/8/92
7. Chambers or Office Address 940 Front Street San Diego, California 92189		

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐ NONE (No reportable positions)		
-	TRUSTEE	San Diego Museum of Man

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

	DATE	PARTIES AND TERMS
X NONE (No reportable agreements)		

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

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐ NONE (No reportable non-investment income)		
	State of California-Superior Court Judge-Salary	$ 124,121.00
	County of San Diego-Judges' Executive Auto Allowance	$ 2,010.00
	University of San Diego- Adjunct Professor Compensation for	$ 750.00
11/6/91	Honoraria-Calif. Continuing Education of the Bar	$ 149.00
	(S) Employee of Law Firm of McKenna & Cuneo - Salary	$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
IRMA E. GONZALEZ	4/9/92

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements or gifts)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

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

	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 spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities)		
1	(S) Great Western Bank P.O. Box 1900, Northridge, CA	1st Trust Deed on Rental Propsrty (Asset No. 12 in Section VII)	M
2	First California Bank 550 West C St., San Diego, CA 92101	1st Trust Deed on 22 acres (Asset No. 14 in Section VII)	M

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

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
IRMA E. GONZALEZ	4/9/92

VII. INVESTMENTS and TRUSTS – Income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 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 (1) Amt. Code (A-H)	(2) Type (Q.D., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period EXEMPT (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 Cabrillo Federal Credit Un. 880 Front St.,San Diego, CA.	A	Int.	J	T					
2 IRA-Home Federal Savings 7th & Broadway, San Diego, CA	B	Int.	K	T					
3Mutual Fund-Dreyfus3dCentury P.D. Box 105,Newark, N.J.	A	Div.	J	T					
4IRA-Janus Venture Fund, Inc. PO Box 173372, Denver, CO.	A	Div.	J	T					
5 BTMT Growth Fund 1665 Charleston Rd,MtnView,CA	B	Div.	K	T					
6Mutual Find-Dreyfus3dCentury PO Box 105, Newark, N.J.	A	Div.	K	T					
7Financial Funds, Health 7800 E. Union Ave,Denver,CO.	A	Div.	K	T					
8 Founders Special Fund PO Box 419638 Kansas City,MD	A	Div.	K	T					
9 Founders Bluechip PO Box 419638 Kansas City,MD	A	Div.	K	T					
10T.Rowe Price New America Growth Fund 100 E. Pratt Street 1st Fl. Baltimore,MD 21202	A	Div.	K	T					
11Safeco Growth Fund Safeco Plaza, Seattle, WA.	A	Div.	K	T					
12 Rental Residence, 11418 Madera Rosa Wy,San Diego,CA	A	Rent	M	V					
13 Petro-Tieg Energy Partners 4275 Exec.Sq., Suite 320 La Jolla, CA (Ltd. partner in oil drilling)	A	Div.	K	T					
14 2nd Trust Deed on 22 acres of vacant land,Highland Rd. Poway, California	C	Int.	L	R					
15 Mutual Fund - Dreyfus 3rd Century P.D. Box 1D5 Newark, New Jersey	A	Div.	J	T					

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less	B=$1,001 to $2,500	C=$2,501 to 5,000	D=$5,001 to $15,000
	E=$15,001 to $50,000	F=$50,001 to $100,000	G=$100,001 to $1,000,000	H=More than $1,000,000
2 Value Codes: (See Col. C1 & D3)	J=$15,000 or less	K=$15,001 to $50,000	L=$50,001 to $100,000	M=$100,001 to $250,000
	N=$250,001 to $500,000	O=$500,001 to $1,000,000	P=More than $1,000,000	
3 Value Method Codes: (See Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market
	U=Book Value	V=Other	W=Estimated	

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
IRMA E. GONZALEZ	4/9/92

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

1) For Asset No. 12 (rentel reeidence) velue ie epproximately 135,000 baeed on comparebleealee.

2) For Asset No. 14 (22 ecres of vacant lend) property wss purchaeed in November 1985 for $225,000. The land was sold in August, 1989 for 250,000. Spouee took back a second trust deed and etill owes on the 1st truet deed.

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 Irma E. Gonzalez Date April 10, 1992

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT
[NET WORTH]

ASSETS			LIABILITIES		
Cash (In Banks)	$ 3,700.	00	Notes Payable to Banks (Secured)	$ 246,200.	00
Personal Retirement Accounts (IRA, Keogh)	125,000.	00	Notes Payable to Banks (Unsecured)		Ø
Stocks/Bonds		Ø	Notes Payable/Others		Ø
Notes Receivable (Doubtful)	235,000.	00	Accounts/Bills Due	3,500.	00
Autos (3)	22,000.	00	Taxes Payable	40,000.	00
Household Goods (Est.)	30,000.	00	Real Estate Payable (Schedule A)	478,000.	00
Real Estate Owned (Schedule A)	975,000.	00	Chattel Mortgage/Other Liens Payable	8,800.	00
Real Estate Receivable (Rent)	8,000.	00	Other Debts:		Ø
Mutual Funds (Schedule B)	142,700.	00	Boat Loan	89,000.	00
Cash Value/Life Ins.	3,000.	00			
Other Assets:					
Boat	80,000.	00			
Money Market Funds	18,000.	00			
BTMT GROWTH FUND	37,000.	00	TOTAL LIABILITY	865,500.	00
			NET WORTH	813,900.	00
TOTAL ASSETS	$ 1,679,400.	00	TOTAL LIABILITY/ NET WORTH	$ 1,679,400	.00

1. Assets Pledged: NONE
2. Legal Actions (Pending): NONE
3. Bankruptcy (Ever): NEVER

FINANCIAL STATEMENT
[NET WORTH]

SCHEDULE A - REAL ESTATE OWNED

ADDRESS	TYPE	ESTIMATED VALUE	AMOUNT OWED	MORTGAGEE
1. 730 Pomona Avenue Coronado, CA	Home	$ 800,000.	$ 390,000.	Valley Federal Savings
2. 11418 Madera Rosa Way San Diego, CA	Rental	$ 175,000.	$ 88,000.	Great Western Savings

SCHEDULE B - MUTUAL FUNDS OWNED

FUND	VALUE
1. Dreyfuss Third Century	$ 20,000.00
2. Financial Fund - Health	28,500.00
3. Founders Special	29,000.00
4. Nicholas II	33,400.00
5. T. R. Price New America	3,100.00
6. SAFECO Growth	28,700.00
TOTAL	$ 142,700.00

1. **Full Name:**

Rudolph Thomas Randa.

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

Office Address: *Circuit Court - Branch 10*
Milwaukee County Safety Building
821 West State Street - Rm. 324
Milwaukee, WI 53233

Home Address: *2707 East Edgewood Avenue*
Milwaukee, WI 53211

3. **Date and Place of Birth:**

July 25, 1940 - Milwaukee, Wisconsin.

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

Married.

Wife's maiden name: Melinda N. Matera

Wife's occupation: Psychiatric Social Worker and Co-Director of
Adoption Choice, Inc.
815 N. Cass Street
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.

University of Wisconsin-Milwaukee, 1958-1963
Bachelor of Science Degree, Political Science-Major; History-Minor; Russian Language (4 credits short of a minor).

University of Wisconsin Law School, 1963-1966
Juris Doctorate Degree

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

1966 - 1967	*Sole Practitioner*
1967 - 1969	*U.S. Army*
1970 - 1975	*City Attorney's Office* *City of Milwaukee*
1975 - 1979	*Municipal Judge* *City of Milwaukee*
1979 - 1981	*Circuit Court Judge* *County of Milwaukee*
1981 - 1982	*Court of Appeals Judge* *County of Milwaukee* *District One*
1982 - Present	*Circuit Court Judge* *Court of Appeals Judge* *Milwaukee County and* *District 4 Court of Appeals*

1990 - Present	*Board of Directors, UWM Alumni Association*
1979 - Present	*Board of Directors, Wisconsin Impact, Inc.*
1979 - 1985	*Board of Directors, Thomas More Society*
1990 - 1991	*Board of Directors, Child Abuse Prevention Fund*

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.

Commissioned 2nd Lt. 1963, U.S. Army

1963 - 1967	*Inactive Reserve, 1st Lt.*
1967 - 1969	*Active Duty, Captain, Company Commander, Vietnam (Bronze Star, VCM, 5 Campaign Stars, NDSM, VSM)*
1969 - 1975	*U.S. Army Reserve, 84th Div.*
1976	*Honorable Discharge*

Serial Number: 391-40-4789

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

Phi Alpha Theta, National Honorary History 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.

Wisconsin and Milwaukee Bar Associations;
Milwaukee Bar Association Bench and Bar Committee;
Appellate Court;
Wisconsin Association of Trial Judges;
Wisconsin Association of Trial Judges, State Criminal Law Section;
The Publications Committee of the Appellate Court;
The State Municipal Judges Association;
Milwaukee Young Lawyers Association.

I did not hold any title as such in any of these organizations or groups.

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 Before Public Bodies:
Voluntary Association of Trial Judges
American Legion, Cudworth Post
Veterans of Foreign Wars

Board of Directors, UWM Alumni Association
Board of Directors, Child Abuse Prevention Fund
Trustee, Ronald McDonald House
Former President and Board of Directors, Thomas More Society
Board of Directors, Wisconsin Impact, Inc.
Milwaukee County Historical Society
Phi Alpha Delta Alumni Association
St. Jude League
Milwaukee Society, PNA
St. Robert's Church
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.

Wisconsin Circuit Courts - August 1966.

Wisconsin Supreme Court - August 1966.

Federal Courts, Eastern and Western Districts - August 1966.

U.S. 7th Circuit Court of Appeals - March 1972.

United States Supreme Court - May 1973.

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply copies of all published material not readily available to the Commission. 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 given many speeches during the course of my 17 years on the bench (including those given in at least three contested campaigns) relative to the Courts and the Criminal Justice System but do not have copies thereof. Some of these were commented on in the press but these reports are not readily available.

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

Excellent. January 3, 1992.

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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.

August 1982 to Present: *Judge, Milwaukee County Circuit Court and Wisconsin Court of Appeals.*

I was appointed to the Circuit Court in August of 1982 and elected in April of 1983 after having served a year on the Court of Appeals. During the years 1985 and 1986, I was asked by the Chief Justice of the Supreme Court, Nathan Heffernan, to sit at various times on the Fourth District Court of Appeals in Madison to assist with a case backlog there. This was in addition to my Trial Court duties.

The first year during this period, I handled criminal/felony cases. The next 6 years on the Circuit Court I handled civil as opposed to criminal cases. I also handled criminal cases in addition to my civil calendar because of an overload in the Criminal Division. The last two years I have been handling criminal/felony cases.

While sitting on the Court of Appeals, I handled all types of cases; Probate, Family, Civil, Criminal and Juvenile.

The Circuit Court is a court of general jurisdiction and Milwaukee County is the geographical area.

The Fourth District Court of Appeals handles all appeals from the Fourth District Trial Courts, but its published rulings have statewide application.

August 1981 to August 1982: *During this period of time I served as an Appellate Court Judge on the Wisconsin Court of Appeals for the First District. I was appointed by Governor Lee Dreyfus and remained on this Court for one year. This Court is responsible, as indicated in the aforesaid response, for handling all appeals from the Trial Court level and its published opinions have statewide precedential effect. The Court handles every type of case. While I sat on the Court, the number of criminal appeals ran at 26 percent of the case load and the civil appeals made up 74 percent.*

1979 to 1981 - *During this period of my judicial service I served on the Milwaukee County Circuit Court and was assigned to the Criminal Division. Jurisdiction extended to the First Judicial District, which is Milwaukee County. I was elected to this position in 1979 and left after being appointed to the Wisconsin Court of Appeals.*

1975 to 1979 - During this period of time I served on the Milwaukee Municipal Court and this Court's jurisdiction extended to the City of Milwaukee and involved the resolution of violations of any City of Milwaukee Municipal Ordinance. I was elected to this position in April of 1975.

15. **Citations:** If you are or have been a judge, provide: (a) Citations for the ten most significant opinions you have written; (b) 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 (c) Citations for significant opinions on Federal or State Constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(a) Citations for the ten most significant opinions you have written:

1. *M. Bryce and Associates, Inc., vs. Gladstone and Harley Davidson Motor Company, 107 Wis.2d 241.*

2. *State vs. Anastas, 107 Wis.2d 270.*

3. *Bruner vs. Kops, 105 Wis.2d 615.*

4. *Maci vs. State Farm Fire and Casualty, 105 Wis.2d 710.*

5. *Hortman and Aetna Casualty Company vs. Otis Erecting, et.al., 108 Wis.2d 456.*

6. *Milwaukee Community Service Board vs. Athans/Haskins, 107 Wis.2d 35.*

7. *Strong vs. Wisconsin Chapter of Delta Upsilon, 125 Wis.2d 107.*

8. *Circuit Court Case No. 568-117, Cobb vs. Reblin. Upheld by the Wisconsin Court of Appeals at 84-2334.*

9. *State Farm vs. Kelly, et.al., Circuit Court Case No. 651-463, 132 Wis.2d 187.*

10. *Britton vs. State Department of Transportation, 123 Wis.2d 226.*

(b) 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:

Pabst Brewing Company vs. City of Milwaukee and Wisconsin Department of Revenue, 125 Wis.2d 437.

This action involved the issue of whether or not a tax exemption Statute was to be applied against certain structures owned by the Pabst Brewing Company. These structures were barley bins, malt houses, head houses, etc. As the trial Judge, I ruled that the structures in question did qualify for exemption from the property tax under the Statute. This portion of my ruling was upheld, but that portion of my ruling that extended the exemption to the years outside the set of facts stipulated to by the parties, was overturned.

Century Shopping Center Fund vs. Crivello & Godfrey Company, Inc., 156 Wis.2d 227.

This case involved the interpretation of a lease between the above parties and in particular whether the Plaintiff's complaint should have been dismissed for failure to state a cause of cation. Whether the complaint by the Plaintiff, Century Shopping Center, stated a claim against the Defendant, Godfrey, turned first on whether the lease permitted Godfrey to close its retail food store operation in the shopping center owned by Century and move it to a nearby competing shopping center.

I held that the lease allowed Godfrey to do the above and the Court of Appeals disagreed. The Court of Appeals held that the case authority argued by the Defendants and relied on by me to interpret the contractual language was not persuasive and that sufficient facts were alleged to support a possible breach of the contract in this regard.

Plaintiffs also brought a claim for abandonment which I dismissed. This was upheld by the Court of Appeals.

A third cause of action alleged "tortious injury to business". I dismissed this cause of action but the Court of Appeals held that there were sufficient factual allegations in the Complaint that if true would provide a basis for relief.

State vs. Williamson, 109 Wis.2d 83 and 113 Wis.2d 389.

This case involved a motion by the Defendant to suppress evidence that was the result of an alleged unconstitutional seizure. The Defendant argued that the stop and frisk that the Police performed on him resulting in the discovery of a concealed weapon was in violation of the Defendant's Fourth Amendment right in the U.S. Constitution against unlawful searches and seizures and the corresponding right in the Wisconsin Constitution, Article I, Section II.

In an extensive discussion of Terry vs. Ohio, 392 U.S. 1 (1968), the Wisconsin Supreme Court reversed the ruling of the Wisconsin Court of Appeals which had earlier reversed my ruling at the trial level.

(c) Citations for significant opinions on Federal or State Constitutional issues, together with the citation to appellate court rulings on such opinions:

State vs. Williamson, 109 Wis.2d 83 and 113 Wis.2d 389.

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.

No offices held except judicial offices.

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 law clerk.

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

1966-1967 - Sole Practitioner - 3369 N. Pierce St., Milwaukee, WI, 53212.

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;

1970-1975 - Employed by the Milwaukee City Attorney's Office, 200 East Wells St., Milwaukee, WI, 53202.

(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 2 below.)

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

1966-1967 - Sole Practitioner - 3369 N. Pierce St., Milwaukee, WI, 53212. During this period I handled several contract disputes; workmen's compensation cases; some probate matters; and a water rights case for private clients; and did indigent defender work (that work which the Public Defender's Office does today).

1970-1972 - Milwaukee City Attorney's Office, 200 E. Wells St., Milwaukee, WI, 53202. Represented a variety of City Departments on property damage and personal injury claims both as Plaintiff and Defense Counsel. Acted as Trial and Appellate Counsel in all cases. Took issues of Municipal liability to the Wisconsin Supreme Court. Acted also as a Prosecutor for a brief period in County Court.

1972-1975 - Milwaukee City Attorney's Office, 200 E. Wells St., Milwaukee, WI, 53202. In addition to the above, I became the Representative for the Fire and Police Commission, the Fire and Police Department, and other Departments. Again, I acted as Trial Counsel and Appellate Counsel. This practice involved administrative law, Federal and State actions, particularly Title 42 U.S.C. 1983, of the Civil Rights Act.

(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 regularly not only in the State and Federal Trial Courts, but also in the State and Federal Appellate Courts.

2. What percentage of these appearances was in:

(a) Federal Courts:

40% of cases were in Federal Court.

(b) State Courts of record:

50% of cases were in State Court.

(c) Other Courts.

10% were with Administrative Agencies.

3. What percentage of your litigation was:

(a) Civil:

90% civil cases.

(b) Criminal.

10% criminal cases.

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.

Fifteen major cases, 12 of which I was sole counsel; two of which I was chief counsel.

5. What percentage of these trials was:

(a) Jury:

80% of these were to juries.

(b) Non-Jury.

20% of these were to the Court.

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. State ex.rel. Cortez vs. Board of Fire and Police Commissioners, 49 Wis.2d 130. Appellant Police Officer challenged a City ordinance which gave the Fire and Police Commission authority to bring to trial any Police Officer through a procedure of citizen complaint. This case was significant because by upholding the ordinance, the Supreme Court corrected a glaring equal protection deficiency that existed in the prior ordinance which allowed only "reputable freeholders" to bring complaints. I represented the Fire and Police Commission and handled the brief to the Supreme Court. The Supreme Court upheld my client's position.

(a) *Writ of Prohibition argued in May of 1970.*

(b) *This case was argued before Milwaukee Circuit Court Judge Max Raskin.*

(c) *Co-counsel on this case was Thomas E. Hayes, Milwaukee City Hall, 200 E. Wells Street, Milwaukee, Wisconsin. Telephone: (414) 278-2601. Opposition counsel on this case was Gerald Boyle, 1124 West Wells Street, Milwaukee, Wisconsin, 53233. Telephone: (414) 271-1717.*

2. *Armor vs. Wisconsin Gas Company, 54 Wis.2d 302 (1971). The City of Milwaukee was sued for negligence as a third-party defendant in the construction of an underground sewer. This case involved the extent of a municipality's liability/immunity, especially in light of a then recent decision altering municipal immunity. I represented the City of Milwaukee at the Trial Court and the Supreme Court; first on a demurrer (motion to dismiss) and then the appeal of that motion to the Supreme Court of Wisconsin. The Supreme Court decided against the City but the decision was significant because it expanded on its earlier decision and also dealt with differing decisions from other jurisdictions relative to the issue of a municipality's duty to the public in general as opposed to its duty to an individual in particular.*

(a) *May, 1971, was the approximate date of the hearing on the motion to dismiss and the arguments in the Supreme Court were heard on February 29, 1972.*

(b) *The case was heard before Judge Marvin Holz in the Circuit Court of Milwaukee County.*

(c) *Co-counsel in this case was Mr. William Lukacevich, Milwaukee City Hall, 200 East Wells Street, Milwaukee, Wisconsin. Telephone: (414) 278-2601. Opposition counsel on the case was Harrold J. McComas, 777 East Wisconsin Avenue, Foley & Lardner, Milwaukee, Wisconsin, 53202. Telephone: (414) 289-3528.*

3. *Milwaukee vs. Pontell, 49 Wis.2d 662 (1970). A case I briefed and argued to the Supreme Court on the question of: What is a "provable" debt under Sec. 63(a)(1) and Sec. 63(a)(7) of the Bankruptcy Act 11 U.S.C.A.?*

This case resulted in the clarification of the status of a large number of "claims" that were to be included or excluded in the discharge of debts. I think it was very helpful to the practicing Bar, especially in the area of bankruptcy.

I represented the City of Milwaukee and initially I participated with Assistant City Attorney Wallace Zdun on the collection matter. I later handled it alone before the Supreme Court. I argued the motion to dismiss at the Trial Court level and later briefed and argued the case before the Wisconsin Supreme Court. This case was won in the Supreme Court.

(a) *The period of the motion to dismiss was in May of 1970.*

(b) *This case was brought on by demurrer (now a motion to dismiss) by defense counsel Peter Kondos before Judge Thaddeus Pruss of the Milwaukee County Court.*

(c) *Peter Kondos was the Attorney representing the Defendant and his address is 700 North Water, Milwaukee, Wisconsin, 53202. Telephone: (414) 271-8000.*

4. *United States of America, Loren Washington, National Association for the Advancement of Colored People, Milwaukee Branch vs. City of Milwaukee, a municipal corporation; William Stamm, Chief Engineer; City of Milwaukee Fire Department; Richard Block, et.al., Fire and Police Commissioners; Milwaukee Fire and Police Commission. Federal District Court Case 74-C-318 and 74-C-480. "Consent Decree" between the City of Milwaukee Fire and Police Commission and the Fire Department and the United States Department of Justice and the N.A.A.C.P. and other Plaintiffs.*

This involved a complaint filed by Loren J. Washington, the U.S. Department of Justice and the N.A.A.C.P. against the Fire Department, the Fire and Police Commission, and the City of Milwaukee. The complaint which dealt with the Plaintiffs' claim that the Defendants were engaged in a pattern and practice of discrimination based on race and national origin led to a "Consent Decree" dated October 17, 1974.

The significance of the case rests in the fact that the Plaintiffs' claims were resolved short of what would have been a lengthy and costly lawsuit and that the lengthy, detailed, and complex negotiations led to a Decree which has basically met all of the Plaintiffs' goals. As only one example of the legal research required to fashion an agreement acceptable to all parties, I would refer to Part 3 of said agreement titled "Qualification" dealing with age, residence, education, etc. Construction of an agreement relative to these specifics alone required the detailed analysis of Federal and State decisions nation-wide and a tailoring of those decisions to the needs of the parties at Bar.

Today the Fire and Police Commission, the Fire Department and the City of Milwaukee have been relieved of the hiring portion of the Court's order because the long-range efforts to recruit and hire Blacks, Latins, and American Indians in sufficient numbers has been a success.

This case absorbed a great deal of energy on the part of the undersigned while other responsibilities of the office were being handled.

(a) *There were no specific trial dates but, as mentioned, extensive and detailed negotiations were required with the clients and with the Justice Department, N.A.A.C.P., and all other parties Plaintiff.*

(b) *This case was handled in the Federal District Court of the Eastern District, Judge John Reynolds presiding. Telephone: (414) 297-3188.*

(c) *The name of co-counsel on this case is Thomas E. Hayes, now Deputy City Attorney, Milwaukee City Hall, 200 E. Wells Street, Milwaukee, Wisconsin. Telephone: (414) 278-2601.*

There were numerous counsels representing the Plaintiffs, including Richard M. Klein, Larry Ferris, Patrick O. Patterson of Milwaukee Legal Services, Inc., Milwaukee, Wisconsin, 53206, (414) 765-0600; James S. Angus and Theresa M. Halland, Assistant Attorney Generals, Department of Justice, Washington, D.C., 20530, (202) 514-2151; Michael J. Skwierawski, now the Hon. Michael J. Skwierawski, Milwaukee County Courthouse, 901. N. 9th Street, Milwaukee, Wisconsin, 53233, (414) 278-4596.

5. *A similar action as cited in No. 4 above involving the Milwaukee Police Department, along with the Fire and Police Commission and the Chief of Police, was handled at approximately the same time. United States of America vs. City of Milwaukee, a municipal corporation; Harold Breier, Chief of Police; City of Milwaukee Police Department; Richard Block, et.al., Fire and Police Commissioners; Milwaukee Fire and Police Commission. Federal District Court Case 74-C-318, 74-C-480.*

Although this case involved some different Plaintiffs and a different Defendant (City of Milwaukee Police Department and the Chief of Police), the pattern of research, negotiations, and settlement were as demanding, complex, and extensive as was the case with the Fire Department. I did not see negotiations to conclusion because I was required to take a leave of absence from the City Attorney's Office when I ran for Municipal Judge.

This case holds the same significance as the case involving the Fire Department.

(a) *Again, there were no specific trial dates but extensive and detailed negotiations were required with the clients and with the Justice Department, N.A.A.C.P., and all other parties Plaintiff.*

(b) *This case was handled in the Federal District Court of the Eastern District, Judge John Reynolds presiding. Telephone: (414) 297-3188.*

(c) *Thomas E. Hayes, now Deputy City Attorney, Milwaukee City Hall, 200 E. Wells Street, Milwaukee, Wisconsin. Telephone: (414) 278-2601.*

In addition, Grant Langley, now City Attorney of the City of Milwaukee, handled the remainder of the case in my absence. (same address as above.)

Opposition counsel in this case were essentially the same as in No. 4.

6. *Clark vs. Ziedonis, 513 Fed.2d (1975). This case involved the question of the use of force by a Police Officer in apprehending an escaping felon. This case is significant because the issue of how much force can be used in this situation was never decided, and this case did so. The case is still quoted in Wisconsin Statutes under Sec. 939.48 "Self Defense of Others", as a standard as to when a person may employ deadly force against another.*

I represented the Police Officer at the trial level and I also wrote the brief and argued the case before the Seventh Circuit Court of Appeals. The Trial Judge entered a decision relative to a use of force standard that was contrary to my client's position and the Seventh Circuit Court of Appeals in Chicago sustained him.

The case is significant because it did define the standard as aforesaid.

(a) *The case was tried in January of 1974 and argued before the Seventh Circuit Court of Appeals in November of 1974.*

(b) *The case was heard in the Federal District Court of the Eastern District of Wisconsin with the Hon. Myron Gordon presiding. Telephone: (414) 297-3922.*

(c) *Opposing counsel was Gary Gerlach, now the Hon. Gary Gerlach, Milwaukee County Courthouse, 901 N. 9th Street, Milwaukee, Wisconsin, 53233. Telephone: (414) 278-4490.*

7. *Boscarino vs. Nelson, 518 Fed.2d 879 (1975). This case dealt with the standard of "probable cause" necessary for arrest and concepts of "good faith" and "reasonable belief" that provided defenses in civil actions when probable cause in a "constitutional sense" is lacking. The significance of the decision rests in the fact that a different standard of "probable cause" can exist in this and perhaps in other circumstances. Up to that point the issue was not raised or resolved anywhere in the country. This case and discussion of the law is still being used at Marquette University in classes discussing the standard.*

I tried the case at the District Court level representing the Police Officer and also wrote the brief for the appeal. I could not argue the appeal before the Seventh Circuit Court of Appeals in Chicago because I was required to take a leave of absence from the City Attorney's Office when I ran for the position of Municipal Judge.

The Seventh Circuit Court of Appeals overturned the ruling of the Trial Court and my client's position was ultimately sustained.

(a) This case was tried in July of 1974.

(b) The case was heard in the Federal District Court of the Eastern District of Wisconsin, the Hon. Myron Gordon presiding. (414) 297-3922.

(c) Opposition counsel was Gary Gerlach, now the Hon. Gary Gerlach, Milwaukee County Courthouse, 901 N. 9th Street, Milwaukee, Wisconsin, 53233. Telephone: (414) 278-4490.

8. *Bence vs. Harold A. Breier, 501 Fed.2d 1185 (1974). This case represented a Constitutional challenge by the Plaintiffs to use by the Defendant Chief of Police of a disciplinary rule which proscribed "conduct unbecoming a member and detrimental to the service". The significance of the case rests in the fact that similar rules existed in the military (see the Uniform Code of Military Justice), and also in Police Departments throughout the country. The question of whether a rule deemed necessary in a military organization should and could pass Constitutional muster in a "para-military" organization was not answered. This case and its appeal to the Seventh Circuit Court of Appeals and the United States Supreme Court decided this important issue. I handled the case for the Chief of Police from summary judgment motion at the Trial Court level to the Court of Appeals and the United States Supreme Court. The Statute was declared unconstitutionally vague and sustained on appeal, although it was a divided appellate court with Senior District Judge Jameson rendering a partial dissent. The United States Supreme Court denied certiorari.*

(a) The dates of the lower court proceedings were approximately August of 1973.

(b) The case was handled in the Federal District Court of Wisconsin, the Hon. John Reynolds presiding. Telephone: (414) 297-3188.

(c) The name of opposition counsel was Gerald Boyle, 1124 West Wells, Milwaukee, Wisconsin, 53233. Telephone: (414) 271-1717.

9. *Carl E. Nanneman vs. Harold A. Breier, 390 Fed.Supp. 633 (1975). This case involved Plaintiff's Constitutional challenge to a Police Department rule that Police Officers treat official business of the Police Department as confidential. This case is significant because it clarified the scope of activity that bargaining agents for the Police Union could engage in while negotiating rule changes in the Department. I handled the case for the Police Department at the trial level where my client won. The case was later appealed and overturned. I did not engage in the appeal because I was now on leave of absence from the City Attorney's Office to run for the Municipal Court.*

   (a) *The date of the lower court proceeding is approximately August of 1974.*

   (b) *The case was handled in the Federal District Court of the Eastern District of Wisconsin, the Hon. Myron Gordon presiding. Telephone: (414) 297-3922.*

   (c) *Initially, there was no co-counsel on this case, although it was subsequently handled by Grant Langley during my leave of absence from the office.*

   Opposition counsel was David Loeffler of Goldberg, Previant & Uelmen, 788 N. Jefferson, Milwaukee, Wisconsin. Telephone: (414) 271-4500.

10. *Baranowski vs. City of Milwaukee, 70 Wis.2d 684, in which I wrote the Supreme Court brief. The decision of the Wisconsin Supreme Court clarified the important question of the distinction between negligent and intentional torts.*

   (a) *The date of the lower court proceeding is approximately October of 1974.*

   (b) *The case was first handled in the Circuit Court for Milwaukee County, Hon. Harvey L. Neelen presiding (now deceased).*

   (c) *Initially there was no co-counsel on this case, although it was subsequently handled by Grant Langley during my leave of absence from the office.*

   (d) *Opposition counsel was James P. Maloney of Zubrensky, Padden, Graf & Brun, 828 N. Broadway. Telephone: (414) 276-4557.*

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 these matters. Please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

(a) *With Attorney Thomas E. Hayes of the Milwaukee City Attorneys' Office, I handled the complete research, writing and negotiations in the aforementioned civil rights actions of United States of America vs. City of Milwaukee; City of Milwaukee Police and Fire Commission; Chief of Police; Fire Department, etc. Federal District Court Case 74-C-318, 74-C-480.*

This case did not proceed to trial because of the Consent Decree that was ultimately formulated.

(b) *Miller, Magyera, Clark, Inc., vs. DeRance, Inc.. This case involved a major legal malpractice action against the above prominent plaintiff law firm which extended over a period of at least 5 years in my court. Millions of dollars of losses were claimed by the DeRance Foundation. The magnitude of the case can be ascertained by the following: The principal Defendant's deposition was taken 27 times; the depositions of the principal officers of the Plaintiff corporation were taken 22 times; and requests for documents in the discovery process resulted in approximately 1,500,000 to 2,000,000 documents being exchanged or made available for viewing which were the subject of 67 motions alone.*

This case was one of the most complex pieces of litigation in the history of Milwaukee County and was ultimately settled subsequent to a later ruling by me structuring the "law of the case".

(c) *I have acted as a lecturer on occasion at the Marquette Law School; presided over many moot court competitions, student mock trial exercises; and given informational talks to a wide variety of community organizations.*

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 except 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 on the federal bench.

   I do not perceive any potential conflict of interest now nor during my initial service on the Federal bench. However, I would recuse myself from any case in which I or my family would have a financial interest. I plan to follow 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 have any such plans. My wife will continue her employment as detailed in the response to Question 4.

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 attached.)

AO-10
Rev. 1/91

FINANCIAL DISCLOSURE REPORT

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

1. Person Reporting (Last name, first, middle initial) RANDA, RUDOLPH T.	2. Court or Organization CIRCUIT COURT STATE OF WISCONSIN	3. Date of Report 4/11/92
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) STATE CIRCUIT COURT JUDGE STATE OF WISCONSIN	5. Report Type (check appropriate type) ✓ Nomination, Date 4/9/92 __ Initial __ Annual __ Final	6. Reporting Period 1/1/91 TO 4/11/92
7. Chambers or Office Address MILWAUKEE CIRCUIT COURT 821 W. STATE STREET MILWAUKEE, WISCONSIN 53233		

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

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

POSITION — NAME OF ORGANIZATION/ENTITY

✓ NONE (No reportable positions)

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

DATE — PARTIES AND TERMS

✓ NONE (No reportable agreements)

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

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
NONE (No reportable non-investment income)		
1 STATE OF WISCONSIN,	STATE COURT JUDGE	$ 78,201.76
2 ADOPTION CHOICE INC,	SALARIED EMPLOYEE OF ADOPTION AGENCY	$ (S)
3 WISCONSIN RETIREMENT SYSTEM (WRS),	STATE PENSION PROGRAM	$ 14,936.51
4		$
5		$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
RANDA, RUDOLPH T.	4/11/92

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of instructions.)

	SOURCE	DESCRIPTION
☑	NONE (No such reportable reimbursements or gifts)	
1		
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

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

	SOURCE	DESCRIPTION	VALUE
☑	NONE (No such reportable gifts)		
1			
2			$
3			$
4			$
			$

VI. LIABILITIES.

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

	CREDITOR	DESCRIPTION	VALUE CODE*
☑	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

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

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
RANDA, RUDOLPH T.	4/11/92

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

A. Description of Assets (Including trust assets) Indicate, where applicable, owner of asset, using the parenthetical (J), for joint ownership of spouse, (S) for sole individual and spouse, (D) for dependent ownership by spouse, (DC) for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period (1) Amt. Code (A-H)	(2) Type (Div., Rent, or Int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (S, P, Exch., Purch.)	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, MUTUAL FUND (J)	A		J	T					
2 STRONG MUTUAL FUND (J)	A		J	T					
3 RENTAL UNIT ATTACHED	C		F	Q					
4 TO OUR PRIMARY RESI-									
5 DENCE (J)									
6 APPRAISAL DONE 9/90									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less B=$1,001 to $2,500 C=$2,501 to 5,000 D=$5,001 to $15,000 E=$15,001 to $50,000 F=$50,001 to $100,000 G=$100,001 to $1,000,000 H=More than $1,000,000			
2 Value Codes: (See Col. C1 & D3)	J=$15,000 or less K=$15,001 to $50,000 L=$50,001 to $100,000 M=$100,001 to $250,000 N=$250,001 to $500,000 O=$500,001 to $1,000,000 P=More than $1,000,000			
3 Value Method Codes: (See Col. C2)	Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market U=Book Value V=Other W=Estimated			

FINANCIAL DISCLOSURE REPORT (cont'd)

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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 Rudolph T. Randa Date 4/11/92

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

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

(See attached.)

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

No. I have been a candidate for non-partisan judicial posts on five occasions.

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	3	000	00	Notes payable to banks—secured	41	000	00
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule	20	000	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	2	000	00	Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable—add schedule	92	000	00
Real estate owned—add schedule	245	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property	45	000	00	CHARGE CARDS	2	000	00
Cash value—life insurance	10	000	00	CAR LOAN	5	000	00
Other assets—itemize:				(KK FEDERAL BANK)			
RUGS	26	000	00				
PAINTINGS	9	000	00				
ANTIQUES	35	000	00	Total liabilities	140	000	00
SILVER & CRYSTAL	7	000	00	Net worth	300	000	00
Total assets	440	000	00	Total liabilities and net worth	440	000	00

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	NA	Are any assets pledged? (Add schedule.)	No
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	NA		
Other special debt	NA		

ADDED SCHEDULES TO FINANCIAL STATEMENT IN RESPONSE TO QUESTION II-5

ASSETS

1. Listed Securities:

   USAA Cornerstone Fund
   (Mutual Fund)

   Strong Total Return Fund
   (Mutual Fund)

2. Real Estate Owned:

   2707 East Edgewood Avenue.
   Milwaukee, WI 53211

LIABILITIES

Real Estate Mortgages Payable to:

Advantage Bank
Kenosha, WI

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 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 starting the practice of law I have served the "disadvantaged" in the following ways: (These activities are in chronological order.)

1966-1967 *Pro bono work in the County Courts as a sole practitioner, limited to three or four cases.*

1967-1968 *As a Company Commander in the Republic of Vietnam, I "volunteered" my troops to aid and assist Vietnamese orphanages by supplying them with food, clothing, shelter and other necessities (mosquito netting, etc.). We dug wells and refurbished buildings that housed orphans who were products of the war and in particular the Tet offensive. This became a continuous operation for the year I spent in Vietnam. Although this answer is not directly suggested by the question, this work was done while I was a lawyer and also while I handled some Court Martials and rendered Article 15 decisions as a Company Commander under the Uniform Code of Military Justice.*

1970-1976 *As a member of the Board of Directors of the Milwaukee JC's, I directed or participated in a variety of programs held on an annual basis for inner city youth. Among them were summer outings at Dandelion Amusement Park in Muskego; Christmas programs; the JC Circus; the Junior Champ Track Meet; and Christmas dinner for the elderly.*

1977-Present *Working with a minority single parent of 10 children. Efforts by my wife and myself in befriending and assisting this family and sharing their problems and successes has extended to the present.*

1983-Present *In 1983 while President of the Thomas More Lawyers' Society, the organization started a sandwich program for the poor at the Guest House here in Milwaukee. This program supplements the community's efforts to feed the homeless. It provides sandwiches and other items to fill a gap in the Guest House meal program that existed on weekends. I and fellow Society members participate by making and then delivering the sandwiches and other items on the weekends.*

1980-Present *Board Member of Wisconsin Impact, Inc. Original Board member of the "most successful minority job training program" in Milwaukee County. This organization had the highest success rate of any community organization with similar objectives in providing minority youth dropouts the opportunity to gain their high school diplomas and good entry level jobs in the private sector. It did so at a cost per individual of less than half of CETA and JTPA programs. In recognition it was given the Governor's Award For Excellence in 1986 by then Governor Tony Earl.*

1989-Present *Original Board Member of the Child Abuse Prevention Fund (CAP-Fund). This organization was founded to help stem the rising tide of child abuse in our community by raising private monies to supplement funds from the public sector.*

1987-Present *Trustee of the Ronald McDonald House. Aids and assists parents whose children have cancer (and must come to Children's Hospital for treatment) by providing a "home away from home". (Children's is one of the nation's leading facilities in the treatment of childhood cancer.) Although not categorized as "disadvantaged" in the strict sense of that term, these people would be unable to afford a stay in Milwaukee with their children were it not for the House.*

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

In the year 1959 as an 18/19 year old, I was a member of the Milwaukee Eagles Club which was the local branch of the National Order of Eagles. It had a policy of admitting only whites. I joined the Eagles Club at the same time I joined the Jewish Community Center, for the purpose of using both organization's gym and pool facilities. I was quite frankly unaware of the policy and therefore did not take steps to change it. It is my understanding that several years after I left the policy barring minorities was dropped. My current understanding is that the local Eagles Club no longer exists.

In addition to the above, when I joined the Milwaukee JC's in 1970, the membership was restricted to men only. That policy was subsequently changed.

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 15 member selection commission was established by Senator Robert Kasten, Senator Herb Kohl, and the Wisconsin Bar Association. Seven members were appointed by Senator Kasten; 3 members by Senator Kohl; and 4 past Wisconsin Bar Presidents were appointed by the current President of the Wisconsin Bar. The Dean of the Marquette Law School was selected as the final member and Chairman.

The Committee did recommend my nomination.

I submitted my name for consideration by the Commission. The Commission then required all candidates to respond to a series of questions concerning each candidate's experience, etc.

After those responses were made, the Commission narrowed the list down to twelve and invited these twelve in for oral interviews. After the oral interviews, the Commission recommended five names to Senator Robert Kasten. Senator Kasten then recommended three of those names to the Department of Justice. In addition, I was interviewed by the Department of Justice, completed forms for and was 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".

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", as I understand its use in current political discourse, is, in essence, decision making by judges which negates legislative enactments and executive decisions without clear warrant in the Constitution or law. It represents actions taken by judges that are outside the proper judicial function. First, the judge should only decide a case in which the parties have "standing" to pursue the cause in question. In addition, the question or cause must be "ripe" for resolution. Second, once these requirements are met, the focus must be narrowed to the case or controversy actually before the Court. Third, in cases of Constitutional dimension, a judge must attempt to develop and preserve the permanent principles that most all agree are contained in the Constitution. Fourth, a judge, particularly a District Court Judge, has to recognize his or her own and the judicial branch's limitations in implementing broad social policy.

Utilizing these as guides, it is then the duty of the judge to follow precedent.

AFFIDAVIT

I, **RUDOLPH T. RANDA,** *do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.*

4/20/92
(Date)

Rudolph T. Randa
(Signature)

State of Wisconsin)
)SS:
Milwaukee County)

The foregoing affidavit was signed by the affiant in my presence on the date stated.

Heidi V. Trapp
Notary Public
State of Wisconsin
My commission expires July 10, 1995

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