COURT OF APPEALS NOMINATION

HEARING

BEFORE THE

COMMITTEE ON
THE DISTRICT OF COLUMBIA
UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

NOMINATION OF
THEODORE R. NEWMAN, JR., TO BE AN ASSOCIATE JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS FOR THE TERM OF 15 YEARS, VICE GERARD D. REILLY, RETIRED

OCTOBER 1, 1976

Printed for the use of the
Committee on the District of Columbia

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CONTENTS

Witnesses

Prepared Statements

Material Submitted

COURT OF APPEALS NOMINATION

Nomination of Theodore R. Newman, Jr., To Be an Associate Judge of the District of Columbia Court of Appeals

FRIDAY, OCTOBER 1, 1976

U.S. SENATE,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The committee met, pursuant to notice, at 8 a.m., in room 6226, Dirksen Senate Office Building, Senator Thomas F. Eagleton (chairman of the committee) presiding.

Present: Senator Eagleton.

Staff present: Robert Harris, staff director and general counsel; and Warren Lee Brown, minority professional staff member.

The CHAIRMAN. Good morning ladies and gentlemen. The Senate District of Columbia Committee is now in session to conduct its hearing on the nomination of Theodore Newman to be an associate judge on the District of Columbia Court of Appeals.

A biographical sketch of Judge Newman, will be made a part of the record in full.

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF THEODORE R. NEWMAN, JR.

Theodore R. Newman, Jr., born July 5, 1934. Son of The Reverend and Mrs. Theodore R. Newman, Tuskegee, Alabama. Attended elementary and secondary schools (through the eleventh grade) in Tuskegee, Alabama. Attended Mount Hermon School, Mount Hermon, Massachusetts, from September 1950 until graduation in June 1951. Attended Brown University, Providence, Rhode Island, September 1951 to June 1955; graduated with an AB degree having majored in Philosophy. Attended Harvard Law School, Cambridge, Massachusetts, from September 1955 to June 1958; graduated with an LLB degree (subsequently converted to a JD degree), having concentrated in constitutional law, jurisprudence and trial practice. Senior thesis at law school was entitled, "*Alabama* v. *Desegregation of Education, An Evaluation,*" under the supervision of Professor Arthur Sutherland.

Entered active duty in the United States Air Force in July 1958, as a 1st Lieutenant (having been commissioned in 1955 at Brown University upon completion of the Air Force R.O.T.C. program). Served on active duty in the Air Force from July 1958 to July 1961. During this period was assigned to the Office of the Staff Judge Advocate, 66th Tactical Reconnaissance Wing, Laon Air Base, France. For two and a half years of this period, was an Assistant Staff Judge Advocate, and for approximately six months, was the Staff Judge Advocate.

In August 1961, became an attorney in the Civil Rights Division, U.S. Department of Justice, assigned to the General Litigation Section. Remained at the Department of Justice for approximately one year.

In August 1962, became an associate with the law firm of Houston, Bryant and Gardner, 615 F Street NW., Washington, D.C.

On February 1, 1968, became an associate of the firm, Pratt, Bowers and Newman (then named Pratt and Bowers).

Involved in the general practice of law from 1962 to November 1970 when appointed an Associate Judge, Superior Court of the District of Columbia. Major areas of practice in estate planning and probate, real estate, personal injury and corporate.

Member of the following civic, professional and social organizations: Washington Urban League; District of Columbia Branch of the NAACP; American Bar Association; National Bar Association and Chairman-Elect of the Judicial Council thereof; District of Columbia Bar Association; Washington Bar Association; The American Judicature Society; Member of the Bar of the Supreme Court of the United States; of the Supreme Court of Alabama; the U.S. Court of Military Appeals, as well as all Courts of the District of Columbia; Washington Alumni Chapter, Kappa Alpha Psi Fraternity.

Married to Constance Berry Newman, Assistant Secretary for Consumer Affairs and Regulatory Functions, Department of Housing and Urban Development.

The CHAIRMAN. Judge, would you please step forward?

Place in the record if you will, Judge, a summary of your career as a lawyer: Where and when you went to law school, how you practiced law since the conclusion of law school, what matters you specialized in, and any reflections you have on your judicial tenure to date.

STATEMENT OF JUDGE THEODORE R. NEWMAN, JR., ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Judge NEWMAN. Thank you, Mr. Chairman.

First of all, I would like to say thanks to you, Mr. Chairman, the members of the committee and the staff of the committee for the expedition with which you have scheduled these hearings. I am only too aware of the rush toward adjournment and the pressures that spring therefrom. I am deeply grateful for your consideration.

Mr. Chairman, as did you, I graduated from an institution up on the Charles River called Harvard Law School.

The CHAIRMAN. I will not hold that against you. I will not hold it in your favor either. [Laughter.]

Judge NEWMAN. After completion of law school, I entered the U.S. Air Force as a judge advocate and spent 3 years stationed in France serving as a judge advocate dealing with the multitude of matters including court martials, claims work, legal assistance work, and part of the most rewarding portion thereof—handling trials of American servicemen in the French courts as a trial observer. I had major responsibility for obtaining releases of jurisdiction authorities to American authorities and came into frequent and rewarding contact with the French prosecutorial and judicial officials.

Upon my leaving active duty, I went to the Department of Justice as an attorney in the Civil Rights Division. It was there that I had my first contact with a gentleman who later became my chief judge when I went to the Superior Court of the District of Columbia.

After approximately a year in the Civil Rights Division of the Department of Justice——

The CHAIRMAN. Who was Attorney General at that time?

Judge NEWMAN. Robert Kennedy.

The CHAIRMAN. Who was head of the Civil Rights Division?

Judge NEWMAN. Burt Marshall. Chief Judge Greene was then head of the appeals and research section.

Upon leaving the Department of Justice after approximately a year, I went with the law firm then known as Houston, Bryant & Gardner, replacing Judge Watty who had just left going on to the then general sessions court and who is now on the U.S. district court. There I engaged in a general practice of law. My particular area of expertise and specialty was estate planning and probate, although I did considerable other areas of civil law, personal injury, real estate, and some degree of corporate work.

During that period until Judge Bryant left the firm for the U.S. district court, I had the experience of often sitting second chair to him in the trials of some major criminal cases in this jurisdiction.

I remained with that firm in the general practice of law until February 1968, when I became a partner in a firm known as Pratt, Bowers & Newman. Once again my area of specialty was estate planning, corporate and real estate, although I did some personal injury work as well.

In October 1970, I was invested as an associate judge of the Superior Court of the District of Columbia. During the last 6 years I have served in every branch of that court with the exception of the tax branch. For 3½ years ending December 31 last year, as a supplemental assignment, I handled all fiduciary work of the superior court. I have, in our major civil branch, tried major medical malpractice cases. I sat in our major criminal branch trying homicides and major rape cases, one of which was the *Green-Vega* rape case. I have done it all. It has been a rewarding, refreshing, and most enjoyable experience.

I look forward, with the advice and consent of the Senate, to leaving that, but I must confess I will leave it with some reservation because I have enjoyed it immensely.

The CHAIRMAN. For the record: You have submitted to us the requisite financial information, and it has been studied by staff and found to be in full compliance with the standards that are in effect with respect to this committee?

Judge NEWMAN. Yes, sir.

The CHAIRMAN. Have you had occasion as a trial judge to render some written opinions that were later taken up on appeal?

Judge NEWMAN. Yes, I have, Mr. Chairman.

The CHAIRMAN. Judge Greene is going to testify a little later, but the appellate court, the one you are seeking to enter, have they had occasion to sustain you, or reverse you, and if so in what degree?

Judge NEWMAN. Mr. Chairman, they have had occasion to do both. I do not keep a batting average. The clerk of the appellate court offered to give me those figures yesterday. I told him that I was certain if the committee wanted them, they would contact him and get them. I have never felt that batting averages were significant to me, rather learning from the error that they point out to me is the more important thing.

The CHAIRMAN. Well, I have only argued three cases before the U.S. Supreme Court, and I lost all three of them. I am a brilliant lawyer.

[Laughter.]

I remember that batting average. It is hard to forget that. In fact all but one of them were unanimous, but they referred to me as learned counsel.

Thank you very, very much, Judge Newman.
Judge NEWMAN. Thank you, Mr. Chairman.
The CHAIRMAN. Our next witness is Mr. Sol Z. Rosen.
Good morning, Mr. Rosen.

STATEMENT OF SOL Z. ROSEN, ATTORNEY AT LAW

Mr. ROSEN. Good morning, Senator Eagleton.
The CHAIRMAN. You may proceed.
Mr. ROSEN. Thank you, sir.

Initially, let me thank the committee for allowing me to appear here today. I realize the great rush for these proceedings, however, I made every effort I could to gather the information.

My purpose in being here is to ask this court, No. 1, to strongly evaluate fully the nomination of Mr. Newman to be an associate judge on the District of Columbia Court of Appeals. I speak as one who has probably represented more cases and tried more criminal cases in the Superior Court of the District of Columbia in the last 15 years than any other lawyer.

Chief Judge Greene was the one who instituted the Criminal Justice Act in one of my cases, that was United States against Frank Walker in 1966. Most of my cases have gone to make new law in the District of Columbia Court of Appeals and in the Supreme Court.

What I think this committee should do is not to rush this nomination of Judge Newman through. I speak as one who appeared in front of him and had a chance to see his day-to-day conduct. Many lawyers have called me, and people in the community have called me since his nomination was announced and asked for the chance to come down and speak in opposition to Judge Newman. I think this committee has adopted the right attitude toward Judge Halleck in considering his reappointment in thoroughly evaluating his record. I think the same thing should be here.

The CHAIRMAN. Did you say many lawyers in the community wanted to testify?

Mr. ROSEN. I would say at least a half a dozen lawyers spoke to me and said they would have liked to come down to present evidence against Judge Newman.

The CHAIRMAN. Did you give the names of those lawyers to the staff?

Mr. ROSEN. If I can get them, I will give them to you.

The CHAIRMAN. Well, there is no problem in your getting them. You said there were half a dozen.

Mr. ROSEN. Well, some businessmen spoke to me on the phone. I will get all the information for you.

The CHAIRMAN. Give us the names of the lawyers and businessmen, and we will contact them ourselves.

Mr. ROSEN. Thank you, sir.

The CHAIRMAN. Give them to us now.

Mr. ROSEN. I certainly will, sir.

The CHAIRMAN. What are their names?

Mr. ROSEN. One I can think of offhand right now is Mr. Sidney Brown.

The CHAIRMAN. Is he a lawyer?

Mr. ROSEN. He is a lawyer and a businessman.

The CHAIRMAN. All right, that is No. 1. Who is No. 2.

Mr. ROSEN. Others you want—I will have to speak to them again and get all their evidence, but until I get their clearance——

The CHAIRMAN. No; you said you had half a dozen lawyers who wanted to testify.

Mr. ROSEN. May I finish, sir? They told me they would be prepared to oppose his candidacy. Now whether they are strong enough to come down and subject themselves is something I would have to clear with them, and I ask for time to speak to them again. I am here because I have had difficulty——

The CHAIRMAN. Well, get us if you will by noon today the names of Nos. 2, 3, 4, 5, and 6.

Mr. ROSEN. I will do what I can, sir.

The CHAIRMAN. OK.

Mr. ROSEN. Because I have had difficulty with Judge Newman. At one time when he was in private practice, I was friendly with him. I knew him. I had a chance to observe him. I did notice when he went on the bench, he did engage in vulgar conduct toward members of the bar, particularly toward myself and toward other lawyers. I regard a lot of his remarks as racially motivated. I regard a lot of his remarks as antisemitic. I particularly regard a remark he made to a member of the bar, Mr. Irving M. Levine, when he called him scum in the courtroom.

The CHAIRMAN. Irving Levine?

Mr. ROSEN. Irving M. Levine. He publicly called him scum in the courtroom.

The CHAIRMAN. I am sorry?

Mr. ROSEN. I said, he publicly called him scum in the courtroom. As far as I am concerned that is an antisemitic remark. I am just as sensitive to the rights of other minorities as Judge Newman is to the rights of minorities as well as black lawyers. He would be equally upset if it was a white judge such as Judge Greene or any other judge called a black defendant or black person scum in his courtroom.

I think this committee should evaluate his record. I think all the lawyers who appear in front of him every day regard him as someone who is a popoff guy—as a vulgar person.

The CHAIRMAN. As a what person?

Mr. ROSEN. A popoff guy—someone who always shoots his mouth off, makes abusive remarks toward people. I do not think he is a person who deserves being on the District of Columbia Court of Appeals. I do not think this committee should run this nomination through the mill in a half hour hearing. I think this committee should evaluate his candidacy very carefully just as you have Judge Halleck, and just as you have other persons. I think this is too serious a seat to fill. That is my position, sir. I speak with that authority. I have no personal hatred against Judge Newman. I stay out of his court. I do not go near him. If any of my criminal justice cases or other cases are in his courtroom, I ask to be relieved, because I have no confidence in his ability to be fair. I think he is intellectually dishonest. That is my position.

The CHAIRMAN. How many years have you been in the bar here in the District?

Mr. ROSEN. Sixteen years, sir.

The CHAIRMAN. Sixteen years.

Mr. ROSEN. I am a graduate of Columbia Law School.

The CHAIRMAN. You are an active trial lawyer, I take it?

78-131 O - 76 - 2

Mr. ROSEN. Yes, sir. You can ask Judge Greene and Mr. Stein.

The CHAIRMAN. Engaged in both civil and criminal practice law?

Mr. ROSEN. Yes, sir.

The CHAIRMAN. We have a letter here from Sidney Brown. I will read it in a minute when you conclude. Mr. Irving M. Levine is an attorney?

Mr. ROSEN. Yes, sir.

The CHAIRMAN. Is he a partner of yours or just an associate?

Mr. ROSEN. No; just a lawyer I see every day.

The CHAIRMAN. You were not present, I take it, in the courtroom when this scum business appeared?

Mr. ROSEN. No; I was not.

The CHAIRMAN. Well, I hope, Mr. Rosen, you can supply us with reasonable dilligence the names of other attorneys or businessmen——

Mr. ROSEN. I will make every effort to Your Honor. I might also state, Your Honor, when Judge Newman commented on a moral case and he was reversed, I think you ought to consider the contempt case when he was summarily reversed on the matter of Carl Morano.

The CHAIRMAN. What is the name?

Mr. ROSEN. On the matter of Carl Morano.

The CHAIRMAN. Morano?

Mr. ROSEN. M-o-r-a-n-o. Mr. Morano was a lawyer who practiced in the traffic division of the Superior Court.

The CHAIRMAN. Carl, did you say?

Mr. ROSEN. Yes, Carl, C-a-r-l.

The CHAIRMAN. He is an attorney?

Mr. ROSEN. Yes, sir.

The CHAIRMAN. What happened with respect to Judge Newman and Mr. Morano?

Mr. ROSEN. Well, they had some words, as I understand. Mr. Morano practiced in front of Judge Newman and was not there for a reason—the fact of his illness. Judge Newman held him in contempt and the case went to the District of Columbia Court of Appeals. It was summarily reversed, and in fact the reading of the record clearly shows that Judge Newman was in the wrong. After speaking to Mr. Morano, he felt that Judge Newman used the contempt power in a form of endeavor, rather than any other purpose.

The CHAIRMAN. This is a written opinion of the District of Columbia Court of Appeals?

Mr. ROSEN. Yes; it is in the District of Columbia Court of Appeals. A unanimous decision I might say.

The CHAIRMAN. Do you know what year this was?

Mr. ROSEN. I believe it was either 1971 or 1972. I think it was during the first year or the first 18 months of Judge Newman being on the bench. At least Mr. Morano indicated to me he thought it was racially motivated, and it was also motivated because of the hostility that existed between Judge Newman and him rather than a factual determination.

The CHAIRMAN. Is Mr. Morano still a practitioner here in the District?

Mr. ROSEN. Yes; he is, Senator Eagleton.

The CHAIRMAN. Now, could you give us any incidents between yourself and Judge Newman insofar as what you would describe as being nonjudicious or intemperate remarks or antisemitic remarks?

Mr. ROSEN. Well, antisemitism is just like any form of bigotry, as you know. I would say the most insulting comment of Judge Newman involved a situation where, I believe after the figures came out for the money claimed by lawyers under the Criminal Justice Act, and I earned something like $70,000 for the fiscal year. The first time I came into Judge Newman's court on a totally unrelated matter, Judge Newman stood up, saluted to me like a clown and said there is a lawyer who makes twice as much as I do. I bet he thinks he is twice as good as I am. I was just totally stunned by it. Two minutes later he stood up again like a clown or a buffoon and said, you are a fifth streeter. You don't earn $70,000 a year. Only uptown lawyers earn $70,000 a year. I think this is a perfect example of hostility, of bigotry, of professional jealousy. I think it regards injudicious conduct.

The CHAIRMAN. In what context were these remarks made? Was the court retrying a case?

Mr. ROSEN. No; I just came into the courtroom on an unrelated matter. My case had not even been called yet. I was totally incensed and totally insulted by his conduct.

The CHAIRMAN. As I heard your description of it you made $70,000. You are a what—what did he say—a fifth street lawyer?

Mr. ROSEN. Yes; a fifth streeter. That is derogatory remark when used in the context—when you say only uptown lawyers make that kind of money not fifth streeters.

The CHAIRMAN. I see. Well, passing for the moment on the wisdom of the remark or the nature of the remark: What is antisemitic in that remark?

Mr. ROSEN. Well, I did not say that was antisemitic per se. I said I regard his conduct in a sense of being very subtle, just like it is possibly in appointing lawyers to cases, possibly in considering the nature of the parties.

The CHAIRMAN. I am Irish Catholic. Suppose you had been Irish Catholic: Would that have been an anti-Irish Catholic remark?

Mr. ROSEN. No; I did not say that particular remark was antisemitic per se. But when you asked for a kind of behavior or saw it over a period of time, for example, if you were an Irish Catholic judge, and you appointed only Irish Catholics to cases, or let us say you had the power to appoint guardians or conservatives, I might be a little incensed at it, because I think we have manifested a certain form of bigotry. I do not think that is the purpose of the Criminal Justice Act. I do not think that is the purpose of the judge's duty or the judge's function.

The CHAIRMAN. What incident or words in which you were involved with Judge Newman would have, in your opinion, an antisemitic overtone?

Mr. ROSEN. There were no words per se in a sense of calling me names. I just think it is an atmosphere of hostility, an atmosphere of disrespect. When I see a pattern of abuse to a group of lawyers, whether they are all black, or all white, by a judge, or all Irish Catholic or all Italian, I can only conclude that the bigotry is manifested.

Now, I might state that just as I think Judge Newman is guilty of it, there are other judges in the courthouse which do the other thing on the other side, who in a subtle manner discriminate, for example, against black lawyers in the assigning of cases in paying their vouchers or cutting down their vouchers or awarding guardianships or conservatorships.

One does not justify the other, of course. I think possibly this is something that you might want to concern yourself as to what really goes on in the courthouse day by day because I am there every day.

The CHAIRMAN. Well, is the whole Superior Court of the District of Columbia bench a bunch of bigots?

Mr. ROSEN. I don't say whole——

The CHAIRMAN. Do the white judges hate blacks and the black judges hate whites?

Mr. ROSEN. I do not say they are all bigots. Senator, I think there is bigotry and hostility there. I say this in all candor, I think the outcome of a case—the sentence the defendant gets, whether released on bond, certain rulings in civil cases—depend on who the lawyer is, his background, his race, or his religion. I think the whole criminal justice system, the whole court structure is corrupt and bigoted.

The CHAIRMAN. Mr. Rosen, it would be of help to us, if you will, when you leave this morning and go to your office, I wish you would contact these other lawyers and businessmen.

Mr. ROSEN. I certainly will, sir.

The CHAIRMAN. Call Mr. Harris here. Do you want to write this number down, 224–4161, and give to him the names of any of these other lawyers and businessmen, so that he may contact them?

Mr. ROSEN. I most certainly will, sir. I will make every effort to do so.

The CHAIRMAN. All right. We will make an attempt to contact Mr. Irving Levine. Just for the record here: I will have Mr. Harris describe his attempts to contact and talk with Mr. Levine.

Mr. HARRIS. When you informed me about Mr. Levine that evening, I called his office after you gave me the phone number and left a message. The following day, when I again talked to you, I again called him and again left a message indicating my name, telephone number, and the purpose of my call, which was to discuss the nomination of Judge Newman. So far I have not received a return phone call.

Mr. ROSEN. May I state also that I made efforts to contact him yesterday. He was not in court. I did try his office, and there was no response.

Mr. HARRIS. I just wanted you to know that we did try to——

Mr. ROSEN. I understand and I certainly appreciate that, Mr. Harris.

The CHAIRMAN. We will try again this morning.

Mr. ROSEN. Thank you.

The CHAIRMAN. If you will get us the other names we will attempt to contact them also.

Mr. ROSEN. I most certainly will. Thank you.

The CHAIRMAN. Thank you, Mr. Rosen.

I am going to take a moment to read the letter from Mr. Brown. We will be in recess for 3 minutes.

[At which time there was a short recess.]

AFTER RECESS

The CHAIRMAN. I have here a letter dated September 30, hand delivered from Sidney J. Brown, real estate investments; also attorney at law. It is a rather brief cover letter and then appended to it is a 2½-page letter on the same date, September 30, which was written

to President Ford. Both letters, the cover letter and the full letter will be made a part of the record, and I will question Judge Newman about it at the conclusion of this morning's hearings. Judge Newman has a copy of it.

In the meanwhile, we will go on to hear from the other witnesses who want to testify.

[The cover letter with attachment from Mr. Brown follows:]

ATTORNEY AT LAW,
REAL ESTATE INVESTMENTS,
Greenbelt, Md., September 30, 1976.

Hon. Senator THOMAS F. EAGLETON,
Chairman, Senate District Committee,
Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR EAGLETON: I enclose herewith a letter which I had addressed to President Ford regarding what was at the time a recommendation of Theodore Newman to be a Judge in the Court of Appeals for the District of Columbia.

Unfortunately, the letter didn't get out in time and President Ford made his nomination before I sent the letter.

I would urge you to postpone the hearing which I understand is scheduled for 8:00 a.m., Friday morning because there just isn't enough time for either me or others that I know who share my views to appear and give testimony with respect to this very important nomination. I have spoken to others who would like to testify but in view of the shortness of the notice they are unable to rearrange their schedules and appear before your committee. I solicit your serious consideration of this request.

Respectfully yours,

SIDNEY J. BROWN.

Attorney at Law — Real Estate Investments

Sidney J. Brown

First Federal Building — 7910 Cherrywood Lane — Greenbelt, Maryland 20770 — (301) 345-6300

September 30, 1976

President Gerald R. Ford
White House
Washington, D.C.

Dear Mr. President:

I should like to comment on the "recommendation" of Theodore Newman to be a Judge in the Court of Appeals for the District of Columbia.

I have known Judge Newman both as a lawyer and as a Judge for twenty years, and quite frankly I have never been able to understand why he was appointed as a Judge in the first instance.

He lacks scholarship, learning, judicial termperament and has exhibited an inability to deal fairly and equitably in situations, but bases his conclusions and his decisions on bias, innuendo and "off the top of his head" opinions.

An example of his inability to understand basic legal principles and to act in accordance with law and equity is evidenced by his handling of a matter which was recently heard by him. The case involved a summary dispossess proceeding for failure on the part of a liquor store tenant to pay rent. Although such cases normally are disposed of within a period of thirty days at the most, that being the intention of the summary dispossess statutes, this case has been in the courts over two years simply due to the dilatory pleas and unfounded and improper claims made by the defendant.

In any event, the defendant sought to take plaintiff's deposition in a companion case which the defendant had filed in another court, and although this case was consolidated with the dispossess case, no jurisdiction has been obtained over the plaintiff by the defendant through service of any kind. Nonetheless, the plaintiffs agreed to appear at a deposition on a prearranged date but it appears that the defendant changed the date, although it had been made clear to the defendant that any date within thirty days of the first date would not be available because one of the plainiffs was scheduled to go to Australia for two weeks.

Nonetheless, when the plaintiff did not appear for the deposition on a new date which was set within that 30 day period without Plaintiff's knowledge or consent and while he was in Australia, Judge Newman entered a default against the plaintiff in connection with his claim for rent, gave judgment to defendant on his "unserved" complaint and set a date for an ex parte hearing as to damages on defendant's claim.

In other words, here was a case where a party was supposed to appear for a deposition and had never been served with process of any kind in connection with the case in which he was being asked to appear, and although he agreed to appear voluntarily on a certain date and made it clear that he could not appear on a date within the next thirty days, nonetheless the deposition was postponed to a date when plaintiff was in Australia and when plaintiff didn't appear, although he had been seeking to collect over $10,000 in rent for two years from a tenant, a default was granted against him, because of what appeared to be, if indeed it was, a technical variance.

It would seem in all justice and fairness, and with any amount of reasonable scholarship it should have occurred to Judge Newman that after two years of dilatory and frivolous pleas on the part of the defendant, the least he could do was to give the plantiff an opportunity to have his day in Court rather than to completely dismiss plaintiff's claim and grant a default in favor of the defendant with respect to his counter-claim.

What is even more distressing is the fact that there was another plaintiff in the action who lives in New York and who is named a plaintiff only because the law appeared to require his name to be on the pleadings in order to bring the case in the District of Columbia, and he was forced to become a defendant without service in defendant's companion case.

Judge Newman's handling of this case is typical of his entire attitude and practice, because instead of dealing with the law and the facts and the equities, he relies on preconceived notions, prejudices and "off the cuff" impressions.

He even goes so far as to comment in open court about his impressions of litigants and the lawyers before the trial even commences. You can tell by his actions, intonations and attitude how he is going to rule before the first argument is made before him or the first witness is on the stand.

There are far more experienced and worthy jurists sitting on the bench in the District of Columbia District Court who I am surprised are not considered for this very important position. One such individual is Judge James A. Washington, Jr. who has a record of accomplishments which is unparrelled in this day and age in the District of Columbia. He was one of the first black attorneys in the Department of Justice in the 1940's. Then after serving on the faculty of the Howard Law School he became it's Dean. Thereafter he was appointed to be Chairman of the Public Service Commission in the District of Columbia and was tapped to be the General Counsel of the Department of Transportation.

After serving in that office he was appointed to the District Court and his judicial accomplishments are a matter of record. You would do well to review Judge Washington's qualifications and compare them with those of people like Judge Newman. I believe it's Judge Washington's lack of political sponsorship that has heretofore denied him the opportunity for more important judicial appointment. I recommend your review of this entire matter before taking such a serious step as the appointment of a Judge to the Court of Appeals.

Very truly yours,

Sidney J. Brown

SJB:lat

cc: Edward H. Levi, Attorney General
of the United States
Washington, D.C.

The CHAIRMAN. Mr. Jacob Stein, attorney in the District of Columbia?

STATEMENT OF JACOB STEIN, ATTORNEY AT LAW

Mr. STEIN. Thank you, sir.

The CHAIRMAN. Good morning, sir.

Mr. STEIN. I appear here to vigorously support the confirmation of Theodore R. Newman, Jr., as judge of the District of Columbia Court of Appeals.

I have known Judge Newman both as a lawyer and as a trial judge. From my observation, even when he was an advocate in a partisan position, he was always fair and compassionate. As a judge he has displayed those qualities of fairness and neutrality which serve the ends of justice. I know of no instance in which he has shown as personal bias or has permitted the particular identification of a party to affect his evenhanded method of doing justice. Going to his devotion to the law, I know that he loves the law, works hard at it, and also avails himself of every opportunity for education and improvement.

I think that I know as many lawyers who practice in the District of Columbia Superior Court as anyone would, and I have never heard anyone say anything paralleling the remarks that I heard Mr. Rosen state. Mr. Rosen said that he practices in the District of Columbia Superior Court and has practiced there for 16 years.

I have been practicing there for 28 years, and have been there in every form that court has taken. The Municipal Court, I think, with a jurisdiction of $1,000 when I first began to practice, and it is now a court of unlimited jurisdiction. I have appeared in criminal matters, civil matters, and I have lost, I think, every type of case that it is possible to lose. I have had a good opportunity as a loser to judge judges including Judge Newman with an extremely critical and paranoid viewpoint smarting from the effects of the loss. Judge Newman and most of the other judges on the District of Columbia Superior Court are very talented, extremely hard working, and devoted to their work. Judge Newman takes the bench on time, which in my judgment is a very significant factor for a trial judge, works long hours——

The CHAIRMAN. You notice I was almost on time this morning. [Laughter.]

Mr. STEIN. Very close to it, Senator.

The CHAIRMAN. You notice Senator Mathias was not on time. [Laughter.]

Mr. STEIN. Right. Various things like that determine the attitude of lawyers to judges.

Since the name of Mr. Brown has been brought up—Sidney Brown—when I go back to my office, I am going to look up the citation of *Brown* v. *Coates*, which you should have, Mr. Harris. This is a case cited by the U.S. court of appeals in which I believe the court of appeals affirmed a verdict against Mr. Brown for fraud.

The CHAIRMAN. Civil verdict?

Mr. STEIN. Civil verdict and it is quite an opinion. I will give Mr. Harris the citation.

[The opinion in the case of *Brown* v. *Coates* follows:]

78-131 O - 76 - 3

FEDERAL REPORTER

Second Series

Volume 253 F.2d

Cases Argued and Determined

in the

UNITED STATES COURTS OF APPEALS

UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

AND

UNITED STATES EMERGENCY COURT OF APPEALS

ST. PAUL, MINN.

WEST PUBLISHING CO.

1958

Sidney J. BROWN, Appellant,
v.
James R. COATES, Marion E. Coates, and Margaret E. Brown, Appellees.
No. 13749.

United States Court of Appeals
District of Columbia Circuit.

Argued Oct. 17, 1957.

Decided Jan. 31, 1958.

Petition for Rehearing In Banc Denied March 14, 1958.

Action by home owners against real estate broker to recover damages for broker's alleged fraud. The United States District Court for the District of Columbia, Edward A. Tamm, J., entered judgment awarding both compensatory and punitive damages, and broker appealed. The Court of Appeals, Burger, Circuit Judge, held that evidence sustained finding that broker, in inducing home owners to enter into contract with him for exchange of their old house for new one with resulting effect that home owners received no money for equity in old house, was guilty of breach of trust and award of compensatory and punitive damages was proper.

Affirmed.

1. Brokers ⇐38(4)

In action by home owners against realtor for damages as result of alleged fraud arising out of contract whereby owners exchanged their home with broker for a new home on broker's representation that upon sale of old home net proceeds would be applied toward reduction of encumbrances on new home, evidence showing that broker claimed old home was his absolute property sustained finding that broker had committed a breach of trust.

2. Brokers ⇐19

Where home owners desired to sell their old home and broker suggested that they exchange with broker their old home for a new one and broker stated that he would protect their interests and that an attorney was not necessary since he was both a lawyer and a broker, home owners had right to rely on competency and good faith of broker in guarding their interest.

3. Brokers ⇐38(7)

In action by home owners against broker for damages as result of alleged breach of trust by broker who failed to keep promise that from net proceeds of home which owners had deeded to him and in which they had about a $9,000 equity, broker would use the same to reduce encumbrances assumed by owners in accepting new home, evidence sustained finding of damages of $7,000.

4. Principal and Agent ⇐33, 79(1)

Relationship between principal and agent arises out of contract and ordinarily an agent who has violated a duty owed to principal is considered as having breached his contract entitling principal to contract remedies of rescission or damages.

5. Damages ⇐89(2)

For breach of contract standing alone punitive damages are generally not recoverable.

6. Damages ⇐87(1)

Punitive damages are not favored.

7. Principal and Agent ⇐79(9)

Punitive damages may be allowed for breach of agent's fiduciary duties under contract in certain narrowly defined circumstances, where the breach merges with and assumes the character of a willful tort, calculated rather than inadvertent, flagrant, and in disregard of obligations of trust.

8. Brokers ⇐38(7)

Where evidence sustained finding that broker had fraudulently induced home owners to convey their house to him in exchange for another house on representation that from proceeds of sale of old house broker would use net amount to reduce encumbrances on exchanged house, under circumstances, awarding of punitive damages was proper as expressing broad public policy

that one who holds himself out to perform special services for others in conduct of personal or business affairs, assumes certain fiduciary responsibilities.

9. Brokers ⇐38(7)

In home owners' action against real estate broker for damages as result of broker's fraud which resulted in owners losing equity in home which they conveyed to broker after they had hired broker to sell it for them, under circumstances, evidence sustained award of $7,500 punitive damages.

10. Courts ⇐406.9(6)

Court of Appeals need not reverse or modify judgment below for purpose of correcting a variation in damages which is insubstantial if it exists at all.

Mr. Brainard H. Warner, III, Washington, D. C., with whom Mr. Herman Miller, Washington, D. C., was on the brief, for appellant.

Mr. Harry A. Finney, Washington, D. C., with whom Mr. Dennis Collins, Washington, D. C., was on the brief, for appellees.

Before WASHINGTON, BASTIAN and BURGER, Circuit Judges.

BURGER, Circuit Judge.

This is an appeal from a judgment entered on a verdict awarding appellees $7,059.00 compensatory and $7,500.00 punitive damages for an agent's breach of trust in a real estate transaction. Resolving all conflicts of evidence to conform with the verdict, the facts are these:

[1] Having seen newspaper ads soliciting business from the public appellee Mrs. Coates telephoned the First National Realty Company, a real estate brokerage firm entirely owned by appellant Brown, to arrange the sale of her home.[1] A salesman from the company inspected appellees' property and at the same time suggested that appellees might purchase a new house with the proceeds from the sale of the old one. Appellees and the saleman then looked at various properties and appellees finally agreed to buy one of the houses shown to them.

Appellees and appellant thereupon entered a written "exchange contract," under which appellant was to convey the new house to appellees (subject to appellees' assumption of encumbrances equaling $14,450.00) and appellees were to convey their old house to appellant (subject to his assumption of encumbrances equaling $5,750.00). Conflicting testimony was offered at the trial as to whether this contract represented the entire transaction between the parties: appellant contended that it did, appellees alleged it was, and necessarily had to be, but a part. Appellees testified that title to the old house was conveyed to appellant in reliance on the latter's representation that such a conveyance was necessary if he was to be able to act expeditiously as their agent in arranging a sale of the old house. They asserted that appellant had agreed to sell the old house, to deduct the agreed commission, and to apply the net proceeds of the sale to a reduction of the debt to appellant created in taking the new house. The jury's verdict is an implicit acceptance of appellees' version of the facts,[2] and we accept that finding.

By virtue of this transaction, appellees conveyed to appellant title to a house valued at between $13,000.00 and $15,000.00,[3] and in which they had had an

1. Appellees Mrs. Coates and her mother were the co-owners of this property. The third party appellee is the husband of Mrs. Coates.

2. At an earlier trial, the jury also found for plaintiffs-appellees, and awarded both compensatory and punitive damages. But finding the verdict excessive, the trial judge ordered a new trial. Following the second trial, the jury again returned a verdict for plaintiffs-appellees. It is from the judgment entered on the verdict in the second trial that this appeal is taken.

3. These are term, rather than cash prices. Appellant was later able to sell this house, on terms, for $14,950.00.

equity of approximately $9,000.00. At the same time appellees acquired legal title to a house valued at between $14,000.00 and $17,000.00[4] but in which they had no equity at all. The "exchange contract" obligated them to pay $14,450.00 for the new house. However, relying on appellant's statements, they expected that once appellant had sold their old house, he would credit the net proceeds of their equity in that house, less his commission, towards the purchase price of the new one. This would seem to be a most reasonable expectation, as it may hardly be assumed that appellees would have merely surrendered their $9,000.00 equity in the old house, so as, in effect, to pay $23,450.00 for the new house concededly worth not more than $17,000.00.

However, when appellant did sell the old house, he refused to credit any part of the proceeds received against the balance owed by appellees for the new one. He stated that by the terms of the exchange contract he had obtained absolute title to the first house including all equities in the property.[5] As appellees viewed the contract they had at this point lost the equivalent of their equity in the first house, or about $9,000.00 less commission and expenses.

At the trial, considerable evidence was introduced by both parties on the issue of the damages suffered by appellees as a result of this transaction. Complex computations were required involving the discounting of various encumbrances on both properties concerned. The jury was adequately instructed on this point, and it calculated actual damages to be $7,059.00. The jury then proceeded to award appellees $7,500.00 as punitive damages under instructions which are challenged on this appeal.

Appellant appeals from the judgment entered on this verdict, urging that appellees were not misled into entering the "exchange contract," and that the contract should be enforced according to its terms. Further, he urges that even if he was at fault in not explaining the terms of the contract to appellees in greater detail, his actions were not such as to allow the imposition of punitive damages.

[2] Appellant was a licensed real estate broker. He held himself out to the public as a person in whom the public could place trust and confidence in real estate transactions.[6] The evidence adduced at trial was adequate to support the finding implicit in this verdict that appellees engaged appellant, in his expert and publicly proclaimed capacity, for the purpose of effectuating this not uncomplicated sale and purchase of properties. When appellees hesitated at one point, appellant expressly assured them that he would "take care of" them, and in response to their suggestion before settlement that a lawyer be obtained, he volunteered that he was both a lawyer and a broker. In this situation appellees had a right to rely on the competence, honesty and good faith of appellant, assured that he would guard their interests; conversely, appellant must be considered to have owed appellees a high degree of fidelity—foremost being the obligation of fair dealing and full disclosure and the utmost protection of their interests in the transaction. Anything less on appellant's part would have violated the well recognized fiduciary duty an agent owes to his principal.[7]

4. Again these are term prices. Appellant had earlier paid $14,250.00 for this house, on terms one-third cash and two-thirds credit.

5. The contract obligated him to pay $5,750.00 on remaining deeds of trust on the property. The $9,000.00, previously paid on such deeds by appellees, he claimed as his own.

6. Persons licensed as real estate brokers in the District of Columbia must have satisfied the Real Estate Commission that they are "trustworthy and competent to transact the business of a real estate broker" and that they have "a general and fair understanding of the obligations between principal and agent." D.C.Code, § 45-1404 (1951 ed.)

7. Searl v. Earll, 1954, 95 U.S.App.D.C. 151, 221 F.2d 24; Holtzman v. Linton, 1906, 27 App.D.C. 241; Evans v. United

The record is clear that appellant did violate the fiduciary relationship which he invited appellees to enter. By calculated and deceitful practices he defrauded appellees of some $7,000.00. He exploited their trust flagrantly for his own gain; he could hardly have been *less* a fiduciary. The questions, therefore, that we must now consider are (1) does the record support the award of compensatory damages and (2) may punitive damages be allowed in these circumstances and on this record. Underlying this second point is the declared policy of the legislative branch that the real estate business in the District of Columbia be conducted by persons with "a good reputation for honesty, truthfulness, fair dealing, and competency." [8]

[3] From what has been recited as to the facts it is plain that the evidence supports the jury finding of compensatory damages of approximately $7,000.00 and we so hold. As to the award of punitive damages we find no prior cases in this circuit expressly authorizing such damages for breach of a duty arising out of the relationship of principal and agent.

[4–6] The relationship between principal and agent arises out of contract. Ordinarily, an agent who has violated a duty he owes his principal, is considered to have breached his contract, entitling the principal to contract remedies of rescission or damages.[9] For breaches of contract standing alone, punitive damages are generally not recoverable.[10] Moreover, it is axiomatic that punitive damages are "not favored." Some courts have refused to allow the imposition of punitive damages in *any* contract actions, regardless of the types of contracts involved or the circumstances surrounding their breach.[11]

[7] We join with those courts which decline to follow such mechanical classification. We believe the better view to be that in certain, narrowly defined circumstances, where a breach of contract merges with, and assumes the character of, a wilful tort, calculated rather than inadvertent, flagrant, and in disregard of obligations of trust punitive damages may be assessed.[12] In this view we are by no means alone. That punitive damages have a proper place in a civil case as a punishment of, and as a deterrent to, various forms of wrongful behavior has long been recognized by the federal courts including this court.[13] All but four states have in some form adopted a

States Fidelity & Guaranty Co., D.C. Mun.App.1956, 127 A.2d 842; Restatement, Agency § 13.

8. Real Estate and Business Brokers' License Act, § 5, 50 Stat. 789 (1937), D.C. Code, § 45–1405 (1951 ed.)

9. Searl v. Earll, supra; Earll v. Picken, 1940, 72 App.D.C. 91, 113 F.2d 150; Ballard v. Spruill, 1934, 64 App.D.C. 60, 74 F.2d 464; Wlodarek v. Thrift, 1940, 178 Md. 453, 13 A.2d 774; Wright v. Everett, 1956, 197 Va. 608, 90 S.E.2d 855; Restatement, Agency §§ 400, 407 (1).

10. Chesapeake & Potomac Telephone Co. v. Clay, 1952, 90 U.S.App.D.C. 206, 194 F.2d 888; Minick v. Associates Investment Co., 1940, 71 App.D.C. 367, 110 F.2d 267; 5 Corbin, Contracts § 1077 (1951); Restatement, Contracts § 342.

11. Fordson Coal Co. v. Kentucky River Coal Corp., 6 Cir., 1934, 69 F.2d 131; Young v. Main, 8 Cir., 1934, 72 F.2d 640; Steiner v. Rowley, 1950, 35 Cal.2d 713, 221 P.2d 9; Chelini v. Nieri, 1948, 32 Cal.2d 480, 196 P.2d 915; White v. Metropolitan Merchandise Mart, 1954, 9 Terry, Del., 526, 107 A.2d 892.

12. See 5 Corbin, Contracts 367 (1951); McCormick, Damages 290 (1935); Note, Exemplary Damages in the Law of Torts, 70 Harv.L.Rev. 517, 532 (1957); and see cases cited in notes 17 and 19, infra.

13. See, e. g., Woodward v. Ragland, 1895, 5 App.D.C. 220; Wardman-Justice Motors, Inc. v. Petrie, 1930, 59 App.D.C. 262, 39 F.2d 512, 69 A.L.R. 648; Mills v. Levine, 1956, 98 U.S.App.D.C. 137, 233 F.2d 16; Day v. Woodworth, 1851, 13 How. 363, 54 U.S. 363, 14 L.Ed. 181; Scott v. Donald, 1896, 165 U.S. 58, 17 S.Ct. 265, 41 L.Ed. 632; Greene v. Keithley, 8 Cir., 1936, 86 F.2d 238; Scalise v. National Utility Service, Inc., 5 Cir., 1941, 120 F.2d 938; Reynolds v. Pegler, 2 Cir., 223 F.2d 429, certiorari denied, 1950, 350 U.S. 846, 76 S.Ct. 80, 100 L.Ed. 754.

similar rule.[14] The types of behavior that courts have considered sufficiently "wrongful" so as to warrant the assessment of punitive damages, have varied greatly. Usually the defendants' actions have been labeled "wilful," or "malicious" or "reckless" or "wanton" or "outrageous."

[8] We need not adopt any single, particular formula in upholding an award of punitive damages against a faithless agent. On the contrary, we believe each case must be considered on its peculiar facts; but once it has been shown that one trained and experienced holds himself out to the public as worthy to be trusted for hire to perform services for others, and those so invited do place their trust and confidence, and that trust is intentionally and consciously disregarded, and exploited for unwarranted gain, community protection, as well as that of the victim, warrants the imposition of punitive damages. This is particularly true in areas of conduct where the acts committed, while reprehensible, may fall short of rendering the wrongdoer subject to criminal prosecutions.[15] When one is commissioned by, or holds himself out to, the community to perform special services which may be engaged for hire by others in the conduct of their personal or business affairs, such as lawyers, trust companies, realtors, or the like, such persons inescapably assume certain fiduciary responsibilities. The community in turn has a broad public interest, as a matter of public policy, in how such persons conduct their relations with those who place trust in them. Sometimes that public policy is expressed in terms of specific regulatory statutes with penal sanctions, sometimes by the courts and professional associations in disciplinary actions. In this case we express the broad public policy by the imposition of punitive damages. Punitive damages are particularly apt in such circumstances because they both punish the wrongdoer, and offer the wronged a greater incentive to bring derelicts to justice[16] a process which can subject the victim to considerable expense and trouble.

The facts of the case before us fall well within the narrow bounds in which we think punitive damages are properly imposed. Appellant held himself out to the public as an expert in real estate matters; he invited and solicited the trust of, among others, the appellees. He expressly dissuaded the latter from consulting a lawyer. And yet, instead of acting in the best interests of his principals, he executed a carefully planned and cleverly concealed method of betraying the trust appellees at his instance had placed in him. Real estate confidence games of this character must be discouraged. They have been the basis for recoveries of punitive damages elsewhere.[17] We need not decide whether appellant's conduct was such that it constituted the common law tort of fraud

14. Three states—Louisiana, Massachusetts and Washington—refuse to recognize punitive damages in the absence of an authorizing statute, see Note, Apportionment of Punitive Damages, 38 Va.L.Rev. 71, 72, (1952), and Connecticut considers such damages only as extra compensation for plaintiffs, sufficient for them to cover otherwise unobtainable attorney's fees. Tedesco v. Maryland Casualty Co., 1941, 127 Conn. 533, 18 A.2d 357, 132 A.L.R. 1259.

15. Nor is it a necessarily sufficient alternative that on facts such as those presented by the instant case, the administrative remedy of license revocation may be utilized to curb the wrongdoer's behavior. D.C.Code, § 45–1408 (1951 ed.).

16. This rationale would also seem to underlie the various statutory authorizations for the collection of treble damages in private civil suits brought against persons who, e. g., violate the antitrust laws, Clayton Act, § 4, 15 U.S.C.A. § 15; import articles at dumping prices, 15 U.S.C.A. § 72; infringe patents, 35 U.S.C. § 284; or demand or accept rent in excess of statutory ceilings, 50 U.S.C.A.Appendix, § 1895(a), (b).

17. E. g., Bell v. Gailey, 1951, 37 Tenn. App. 17, 260 S.W.2d 300; Kress v. Soules, Tex.Civ.App.1953, 255 S.W.2d 244; Briggs v. Rodriguez, Tex.Civ.App. 1951, 236 S.W.2d 510.

and deceit, for the commission of which, independent of fiduciary relationship, appellant may have been held liable for punitive damages.[18] We find a sufficient wrong for that purpose in the total conduct in which appellant engaged.[19]

[9, 10] The court charged that if the jury found for the appellees, it could award, in addition to compensatory damages, punitive damages "as a punishment for a wrong wilfully and maliciously done." In addition to advising it of the elements of malicious or wanton disregard of appellees' rights as a basis for punitive damages, the court told the jury:

> "If you find from the evidence in this case that the defendant, Sidney J. Brown, was retained by the plaintiffs to act as their agent, either in selling their house or procuring a house for them to purchase, then as a matter of law, you are instructed that Sidney J. Brown owed the plaintiffs the highest fidelity and was bound to inform them fully of every important development affecting their interests and particularly not secretly or otherwise to take any step in which he would reap a profit personally at their expense."

This charge was correct.

The court also instructed the jury that if it found for appellees it must "allow to the defendant [a] commission amounting to 5 per cent." On this record it would have been more appropriate for the court to instruct the jury that if it found Brown to be faithless to the trust reposed in him as agent, it could *disallow* his commission entirely.[20] Since the jury's verdict makes it obvious that it found appellant to be an agent and that as such he was faithless to his duty, the instruction with respect to the commission was more favorable to him than he was entitled to receive. However, this $747.00 "windfall" credit, allowed by the jury to appellant under the instruction, may be considered as a counterweight, offsetting the $700.50 by which appellant claims the jury *overvalued* appellees' compensatory damages. Even if we accept appellant's version as to the item of $700.50 we need not reverse or even modify the judgment below for the purpose of correcting a variation which is insubstantial if it exists at all.

We have separately considered whether the amount of the punitive damages should be altered. Considering the whole record including the fact that the victims of appellant's fraud have been put through two separate trials to vindicate their rights and giving careful consideration to the public policy aspects of the case we are not disposed to disturb the verdict.

Accordingly, the judgment is

Affirmed.

18. See District Motor Co. v. Rodill, D.C.Mun.App.1952, 88 A.2d 489; 1 Sedgwick, Damages § 367 (9th ed., 1920).

19. Cf. Greene v. Keithley, 8 Cir.1936, 86 F.2d 238; Davis & Clanton v. C.I.T. Corp., 1939, 190 S.C. 151, 2 S.E.2d 382; Holland v. Spartanburg Herald-Journal Co., 1932, 166 S.C. 454, 165 S.E. 203, 84 A.L.R. 1336; Smith v. Jordan, Tex.Civ.App.1949, 220 S.W.2d 481; 5 Corbin, Contracts 367 (1951).

20. Wadsworth v. Adams, 1890, 138 U.S. 380, 11 S.Ct. 303, 34 L.Ed. 984; Evans v. United States Fidelity and Guaranty Co., D.C.Mun.App.1956, 127 A.2d 812; Haymes v. Rogers, 1950, 70 Ariz. 408, 222 P.2d 789, 17 A.L.R.2d 896; Restatement, Agency § 469.

Mr. STEIN. All in all I think the District of Columbia Court of Appeals, if Judge Newman is confirmed, will get a man who is totally devoted to the law, has a fine education, has a background which certainly equips him for the cases that will come to the court of appeals. As I say, I have observed Judge Newman in the domestic relations branch, the fiduciary branch, the criminal branch, and the civil branch, and one might get the impression from what Mr. Rosen said that there is a body of lawyers who hold the same view that Mr. Rosen does. I do not know that body of lawyers. I am not going to recite my background, but if you care to read it, you will see that I have had the opportunity to meet most everyone who practices before the District of Columbia Superior Court.

Thank you.

The CHAIRMAN. Mr. Stein, as one who has been actively engaged in the practice of law before the District of Columbia Superior Court for the recent years which Judge Newman has been on the bench and even preceding him being on the bench when the court had a different jurisdiction and a different name, you almost qualify, and strike me almost, as an expert witness in a sense. What is the reputation of Judge Newman amongst the lawyers that you know who are active practitioners before the District of Columbia Superior Court?

Mr. STEIN. He has a fine reputation. I would say his reputation with respect to legal ability is of the very highest.

The CHAIRMAN. Have you, yourself, ever been in the presence of Judge Newman where there was any hint—even remote hint—of antisemitism or prejudice expressed in any form: antisemitic, anti-white, anti-anything?

Mr. STEIN. No, sir; and that includes opportunities to observe Judge Newman in court and socially. He and I know many of the same people, so my opportunities to collect information of that kind are very good.

The CHAIRMAN. Thank you very much.

[The biographical sketch of Mr. Stein follows:]

Jacob A. Stein, born Washington, D.C., March 15, 1925; admitted to bar, 1948, District of Columbia; 1956, Maryland. George Washington University (LL.B, 1948). Author: District of Columbia Tort Casefinder—An Analysis of all Appellate Tort Decisions for the District of Columbia, with supplements; Misrepresentation in Automobile Sales; American Jury Trials, Volume 13, 1967; Closing Argument, The Art and The Law, Callaghan and Company, 1969; Cross Examination of Defendant's Physician Witness—Examination of Witnesses, Matthew Bender 1973; Trial Handbook for Maryland Lawyers, Lawyers Co-operative Publishing Co., 1972; Damages and Recovery, A Survey of the Law of Damages, Vol. One, 1972, Lawyers Co-operative Publishing Co.; Author Medico-Legal Section, Steadman's Medical Dictionary, Lawyers Edition, 1972; President, 1968–69 Bar Association of the District of Columbia; Member of American Bar Association; Maryland Bar Association; Maryland Bar Association Committee on Pattern Jury Instructions; American Trial Lawyers Association (Member National Board of Governors, 1969); Association of Plaintiff's Trial Attorneys of Metropolitan Washington, D.C., (President 1959–60); Member International Academy of Trial Lawyers; Fellow, American College of Trial Lawyers; Chairman, Special Committee appointed by the United States District Court for the District of Columbia to Revise the Rules of Court (1973); Member Civil Rules Advisory Committee of the Superior Court of the District of Columbia, 1970–76; Member Committee on Grievances and Admissions, United States Court of Appeals for the District of Columbia, 1970–1974; Lecturer on Evidence and Trial Practice for the Bureau of Narcotics and Dangerous Drugs and Drug Enforcement Administration 1973 (Recipient of Award, Drug Enforcement Administration, 1974); Faculty—Practicing Law Institute Seminars on Trial Practice; Faculty—American Trial Lawyers Seminars on Civil and Criminal Trial Practice, Faculty—National Institute for Trial Advocacy; Faculty participant, Special Course in

Trial Advocacy, Harvard Law School 1975, 1976; Conference Member Roscoe Pound Foundation Conference on Trial Advocacy, 1976; Faculty, National College of Advocacy; Chairman, District of Columbia Court of Appeals Committee on Adminissions (Bar Examiners and Admissions for the District of Columbia).

The CHAIRMAN. Mr. William Borders?

STATEMENT OF WILLIAM BORDERS, ATTORNEY AT LAW

Mr. BORDERS. Mr. Chairman, I appear on behalf of the National Bar Association of which I am a fourth vice president.

We as an association know Judge Newman as a friend, as an intellect, a scholar, and a great judge. In my prepared statement, it will show that Judge Newman holds a high position with the Bar Association and the black judges.

I had a prepared statement, but in listening to the remarks earlier I was somewhat amazed and shocked in that in knowing Judge Newman in the 9 years that I have been practicing law, and I have practiced in the Superior Court of the District of Columbia and the District Court of the District of Columbia. My practice is solely criminal law. I am in and out of the courtroom on a daily basis. I know of no instance where Judge Newman has been racially motivated. I know of no instance where he has dealt with any individual based on his race or anything of that nature.

I heard a remark by Mr. Rosen in connection with his making x amount of dollars under the Criminal Justice Act. During that time I think there was a newspaper article, quite a few people were talking to Mr. Rosen about it, in fact because of what Mr. Rosen had done the whole system was changed in terms of the ceiling. I think, Mr. Chairman, that you may be aware of the fact that there were some problems about the Criminal Justice Act in terms of money. I think the problem came about basically because of Mr. Rosen and the amount of money that he had made. While I do not take cases under the Criminal Justice Act, I do know about it, and I think that Judge Newman is qualified to sit on the District of Columbia Court of Appeals, educationally, and also he has the community at heart.

The CHAIRMAN. Mr. Borders, have you ever been present in a courtroom or in a noncourtroom gathering when Judge Newman was present, and have you ever observed any indicia of bigotry, black versus white, antisemitism, anti-you-name-it?

Mr. BORDERS. No; I have not. On the contrary, I have been present when other people have tried to bring that issue up, and whatever the situation was Judge Newman has come to the aid of that individual, trying to negate any antisemitism or any other type of racial situation.

The CHAIRMAN. Thank you very much, Mr. Borders.

The CHAIRMAN. Mr. Dudley Williams?

STATEMENT OF DUDLEY WILLIAMS, ATTORNEY AT LAW, PRESIDENT, HOWARD LAW ALUMNI ASSOCIATION OF THE GREATER WASHINGTON AREA

Mr. WILLIAMS. Good morning, Mr. Chairman.

The CHAIRMAN. Good morning, Mr. Williams.

Mr. WILLIAMS. I represent, as president, the Howard Law Alumni Association of the Greater Washington Area.

I have a prepared statement to submit. I will submit it or read it into the record whichever is convenient.

The CHAIRMAN. Your prepared statement will be made part of the record.

Would you like to summarize it for us sir?

Mr. WILLIAMS. Yes. Generally speaking, the Howard Law Alumni Association unequivocally supports Judge Newman for the position of associate judge or judge on the District of Columbia Court of Appeals. I, like Mr. Borders, have practiced before the Superior Court of the District of Columbia and the Court of General Sessions of the District of Columbia for the past 10 years. I have no knowledge of any incident as represented to you by Mr. Rosen. That took me somewhat by surprise that such a representation could in good conscience be made in reference to Judge Newman.

I am also head of what is probably the largest clinical program in the District of Columbia, and I probably appear before more judges more often than any other attorney in the District of Columbia. I know of no situation where this problem has arisen in reference to Judge Newman.

I would point out in one case, I was present in court when Judge Newman rendered a brilliant extemporaneous decision in reference to a rather lengthy and complicated civil trial that had taken place in his court for approximately 2 or 3 days. At the close of that opinion the attorney who lost the case, before the record was closed, got up and thanked Judge Newman and indicated on the record that he had never heard a more brilliant, extemporaneous, legal judgment in reference to the trial that he had just tried before him and had lost.

The CHAIRMAN. Have you ever been present or have you ever heard of any incident wherein Judge Newman displayed any kind of racial, religious, or ethnic bigotry?

Mr. WILLIAMS. Absolutely not.

The CHAIRMAN. Thank you very much.

[The prepared statement of Mr. Williams follows:]

HOWARD LAW ALUMNI ASSOCIATION OF THE
GREATER WASHINGTON AREA
September 30, 1976

Reply to:
2831 Hillcrest Dr., S.E.
Wash., D.C. 20020

The Honorable
Thomas F. Eagleton
Chairman, Senate District Committee
United States Senate
Washington, D. C. 20510

Mr. Chairman:

It is indeed a personal pleasure and on behalf of the Howard Law Alumni Association to say a word of recommendation on behalf of Judge Theodore R. Newman, Jr., for appointment to the District of Columbia Court of Appeals.

As an active practitioner in the District of Columbia trial courts and as a director of the largest clinical program of the District of Columbia, I am perhaps before more trial judges more often than any attorney in this city, and I can state unequivocably that there is no D. C. judge more qualified or capable for this position than Judge Newman.

His tenure on the Superior Court bench has evidenced, without exception his awareness and concern of the whole plethora of our community problems, composition, strengths and weaknesses. His scholarly and sound analysis of the ambulatory growth of law, his knowledge of the comprehension of its methods has earned for him the respect of the Bar generally and particularly the Howard Law Alumni Association.

His keen awareness, as exemplified by his demeanor and the conduct of his court and bar, that the most fundamental social interests relative to the administration of justice is that the law be uniform and impartial, without prejudice, favor or arbitrainess has earned for him that reputation of being "one of the best legal scholars on the Superior Court bench."

Such knowledge, such experience, his personal commitment to the legal health of this community is reflected by his objective estimate of the values of our divergent community rather than what may be his own idiosynerasies of conduct and belief.

The Bar, I know is keenly aware of the higher standard of excellence expected, indeed demanded, of those appearing before him. This expectation, this demand, clearly serve the administration of justice as we all perceive it should be practiced.

We have never found him too busy or too cloistered that he has not given unselfishly of his own time to guide, to advise or to appropriately admonish the embryonic members of the Bar, not to mention those seasoned veterans of us, who ocasionally suffer lapses of our canon dictates.

The Howard Law Alumni Association of the Greater Washington Area, without reservation, feel that his competence for this position had been clearly determined by the esteemed quality of his prectice as a lawyer and by his academic and pragmatic expertise as a jurist, both in keeping with the highest tenets of our profession.

Yours truly,

Dudley R. Williams

Dudley R. Williams
President

The CHAIRMAN. Judge Harold Greene, chief judge, District of Columbia Superior Court?

Good morning, Judge Greene. You may proceed.

STATEMENT OF HAROLD H. GREENE, CHIEF JUDGE, DISTRICT OF COLUMBIA SUPERIOR COURT

Judge GREENE. Mr. Chairman, I am very pleased to be before this committee today at its invitation to testify in support of the nomination and the confirmation of Judge Newman to the District of Columbia Court of Appeals.

As Judge Newman pointed out earlier, I have known him since the days he and I served together in the Civil Rights Division of the Department of Justice. He has been a colleague of mine on the bench of the Superior Court for the last 6 years. I have had an opportunity to observe him as a judge and as a human being.

I have had especially close ties during those years with Judge Newman because on many occasions when problems of policy or law relating to the management of the Superior Court have arisen, I have discussed them with him far more than would be true of the average judge in the Superior Court.

I have no doubt, whatever, of his qualifications for the District of Columbia Court of Appeals. He has an outstanding legal mind. He is hard working. I have heard nothing but good things about his judicial temperament. He has handled in our court the most complex civil and criminal trials which our court has handled, and he has handled them for a very lengthy period of time. Judge Newman was the one who took over the probate division of our court when that jurisdiction was transferred from the U.S. District Court, and in a sense that is particularly significant because fears were expressed at the time of court reorganization and the transfer of jurisdiction from the U.S. District Court that if the probate matters and the register of wills were transferred to the Superior Court of the District of Columbia they would somehow fall apart and would not be handled well.

Judge Newman handled them for 2 years at least, up until January of this year, and the efficacy of his efforts was demonstrated when just a couple of months ago the Probate Section of the Bar Association gave a luncheon for some of us, but primarily I think in gratitude to Judge Newman for the outstanding job he had done in perpetuating the probate jurisdiction that fears had been expressed that the Superior Court could not handle.

Judge Newman is generally interested in the law, in the courts, in the administration of justice, and in the community. I think he understands the role of the law, and the changing society, and he is not afraid to apply that understanding.

As I say I am unhesitatingly supporting him, and I would hope that the committee and the Senate would speedily confirm him.

On questions raised this morning about his attitude toward Jews and about anti-Semitism. I personally know nothing about the particular incidents that Mr. Rosen talked about, and cannot comment upon them one way or the other. But I can say that in 6 years of close association in many situations, social and professional, tense and lighthearted, I never had the slightest indication of anti-Semitism or any other kind of bigoted attitude. The attitude to me and to all others

in my presence has always been to treat each person alike without regard to race, color, or religion and that also has been his reputation insofar as I know it and I think I know it.

I am sensitive to anti-Semitism where it exists, and I think I would know it if it were displayed. I never detected any such attitude in Judge Newman. As I say, I would be the first to oppose anyone regardless of association with me or not who were anti-Jewish, or anti-black or antiwhite or anti-Catholic or whatever, who would judge people on considerations other than merit. I have not the slightest reason to believe that Judge Newman is in that category.

The CHAIRMAN. Judge, thank you very much. You make an excellent witness because you have an excellent mind and you are an excellent judge, and if I ever need a witness to testify for me in some hearing, I am going to call on you. Thank you.

Judge GREENE. I would be glad to do that.

The CHAIRMAN. Good to see you. Thank you very much.

We have three other gentlemen who wish to testify. I will call now Mr. John Nevius, former Chairman of the City Council of the District of Columbia, and a distinguished lawyer.

STATEMENT OF JOHN NEVIUS, FORMER CHAIRMAN, DISTRICT OF COLUMBIA CITY COUNCIL, AND ATTORNEY AT LAW

Mr. NEVIUS. Thank you, Mr. Chairman.

I was shocked to hear the allegations by the gentleman who was the second witness here this morning. I have known Judge Newman socially for nearly 15 years and have known him very well. I have never detected the slightest hint of any kind of bigotry in that man in the entire time I have ever known him. Moreover, I have been a practicing lawyer in this city for over 25 years. While I am not a trial lawyer, I can conservatively say that I know personally hundreds of laywers in this city, and throughout the 25 years or more of my practice, I have never heard the slightest hint of any such thing as the gentleman alleged this morning suggested by any lawyer in this city or any other human being in the time that I have lived in this city.

The CHAIRMAN. Thank you very much, Mr. Nevius. We are glad to have you with us.

Mr. NEVIUS. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Leroy Nesbitt?

STATEMENT OF LEROY NESBITT, ATTORNEY AT LAW, AND PRESIDENT, SUPERIOR COURT TRIAL LAWYERS ASSOCIATION

Mr. NESBITT. Mr. Chairman, I am happy to appear on behalf of the Superior Court Trial Lawyers Association which heartily endorses the appointment of my friend and respected judge to the District of Columbia Court of Appeals.

The Superior Court Trial Lawyers Association on last Wednesday evening—a black tie event a few feet away from this place, your colleague on the other side in the House spoke—the chairman of the House District Committee—and during the course of the presentation of judges that evening, by the way Mr. Sol Rosen was not present at that affair—I had occasion to announce to the body as a whole the President's intention to name Judge Newman to the District of Co-

lumbia Court of Appeals. Even as I was speaking, the body got hold of the fact that Judge Newman was about to be named, and they rose and as a body applauded—sustained applause for Judge Newman because they realized he was the person most qualified among them. This body included the members of the Superior Court Trial Lawyers Association, that is the lawyers who practice each and every day in that court. This body also included just about every judge in the District of Columbia courts and many judges from visiting jurisdictions. It included the wives and persons who were knowledgeable about the criminal justice system and the activities of the courthouse.

I use that example to indicate that Mr. Rosen, in his absence from that dinner, failed to witness probably the most potent endorsement that could be given to Judge Newman for his impartiality and for his wisdom as a judge.

I know every member of the Superior Court Trial Lawyers Association because before I was elected president I had to campaign for each one of them, and I can speak on behalf of the lawyers who practice in the court every day, who see every judge, who are able to evaluate every judge and to make comparisons and say that they view Judge Newman as one of the few judges who has one of the fastest minds on the bench. I know of no occasion in my presence or reported to me as president of the Superior Court Trial Lawyers Association where Judge Newman has exercised his power in any way other than in a way that a judge should exercise. I know of no occasion where he has shown bias or prejudice to anyone.

One last remark, Mr. Rosen called the system corrupt. I call the system probably the most industrious system of judges I know. Judge Newman takes the bench every morning at 9 o'clock, upbraids an assistant U.S. attorney who is not there, upbraids a defense counsel who is not there, who is supposed to be there. He sits throughout the day and takes additional cases from other judges. He is not alone in that. There are judges who come earlier to the court than Judge Newman, and there are judges who stay later to the court than Judge Newman. They are an industrious group of men who are proud of the job that they are doing, and I believe that Mr. Rosen's remarks about corruption and about bias were misspoken and I believe upon reflection he will be able to come out to this body and straighten out that mistake.

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Nesbitt. You, too, are a very compelling witness. Excellent testimony.

Mr. NESBITT. Thank you.

The CHAIRMAN. Mr. Peter Kolker?

Good morning, Mr. Kolker.

STATEMENT OF PETER KOLKER, ATTORNEY AT LAW

Mr. KOLKER. Good morning, Mr. Chairman.

I would just very briefly like to make some remarks with repect. to the question of Judge Newman's qualifications for the appointment.

I have practiced for about 8 years in the Superior Court of the District of Columbia. Before those years, on the criminal side alone when I was working with the Public Defenders Service, and for the most recent 4 years on the civil side. I am an attorney in private practice.

I have appeared before Judge Newman on numerous occasions and have been down for the court many, many times. In all of my appearances before Judge Newman, I have found him to be eminently fair, making decisions based entirely upon the evidence and dealing with very complex questions of law in a very forthright manner. I have never, myself, experienced any signs whatever of bigotry or bias in any direction whatsoever. I think I would be sensitive to this. As a Jew I would be particularly sensitive to any claim of antisemitism or any manifestation of it. I have never seen any, nor have I ever heard of any in my discussions with other attorneys who practice regularly before the court. I know of no basis whatsoever for any such charge.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Kolker, thank you very, very much. I appreciate your taking the time to be with us and we value your testimony.

Other than Judge Newman, himself, is there anyone else here present who would wish to testify in connection with this nomination?

Judge, if you do not mind, we would ask you to come back for your comments on basically two matters: Item 1, the testimony of Mr. Rosen and item 2 the letter from Mr. Sidney Brown. First, give us your comment on the statements made by Mr. Rosen.

Judge NEWMAN. Mr. Chairman, first a couple of matters dealing with some of the specifics mentioned by Mr. Rosen. He is correct, I held Carl Morano in contempt of court. He is correct that that judgment was reversed on appeal. What he does not say that in the interim the Supreme Court of the United States had decided a case which changed the procedure for contempt adjudications, where under the context of the fact arising in *Morano*, under the new decision of the Supreme Court I was required to certify that matter to another judge for a hearing. Under the law as it existed when I held the hearing as pronounced by the Supreme Court, I was the one to hear and try the case.

With respect to the complaint that Mr. Rosen made that I have shown favoritism in the appointment of attorneys to criminal justice cases, and his assertion that I have shown favoritism in the appointment of guardians and conservators when I served as fiduciary judge. Suffice it to say that the record of the Superior Court of the District of Columbia will show that subsequent to February 1975, when Mr. Rosen filed a complaint with the District of Columbia Commission on Judicial Disabilities and Tenure about me, making most of the same accusations he makes here today, I have appointed Mr. Rosen as frequently to criminal cases when I have been sitting in our arraignment part of the court as I did before that. Mr. Rosen, whatever his faults, is an effective trial advocate. Whatever one may think of other characteristics that Mr. Rosen may or may not manifest, and when I have to deal with the liberty of a defendant, I have a deep and burning zeal to make sure that that defendant is represented by competent counsel and have not let Mr. Rosen's attitudes about me in any way influence my decision to appoint or not appoint him.

With respect to the allegation about the appointment of guardians and conservators, I find that one particularly ironic. When the fiduciary jurisdiction was transferred to our court, there were several matters which as a practitioner I had observed and found to be wanting. One of them was the system of selection of guardian items, of conservator and guardians.

Without getting into the details of what I perceived to be the defects, I decided that it was a matter that needed correction. Consequently with the consent of my chief judge, we published for a series of weeks in the Washington Law Reporter a notice requesting any attorney desiring to serve in such a capacity to submit a letter to the Register of Wills. Once we received those letters, we supplemented them with persons, we both knew, who were qualified in the field, and composed a master roster.

Since the transfer of jurisdiction to the Superior Court in every appointment as guardian or conservator where we have had the right to make the appointment, the next name on the list has been the one appointed, save for extraordinary cause shown. Indeed, I had to decide not to break that rule when the estate of Stewart Alsop came before me and it was necessary to appoint a guardian item for his children, the next name on the list happened to be a former senior partner of mine. I debated and decided that that was no reason to break what we had adopted as a rule that the next name on the list would be the one appointed.

My only other comment about the matters raised by Mr. Rosen is twofold. Mr. Rosen's attitude about me, as far as I know it, springs from February 1975, when he was a probate defendant in a legal malpractice case brought by a criminal defendant he had been appointed to represent.

I ruled against Mr. Rosen on a procedural question in that lawsuit, a motion for summary judgment. Mr. Rosen thereupon filed a motion to recuse me, a complaint with the Commission on Judicial Disabilities and Tenure, making virtually every accusation he made here today.

His evidence of antisemitism which he cites in that complaint was that I had been abusive to him, to Irving Levine, and to Gerald King. Gerald King, without my knowledge, wrote a letter to the Commission saying that Mr. Rosen had no authority to mention his name; that he had no problems with me; indeed deemed me one of the finest judges on the Superior Court bench and desired to disassociate himself from those remarks, and sent me a copy of it. Irving Levine came to my chambers and told me the same thing in person. I wrote a memorandum opinion voluntarily withdrawing from the case after analyzing each of the allegations that Mr. Rosen made and Mr. Chairman I emphatically deny each and every one of them. I sent a copy of that memorandum opinion to the Commission on Judicial Disabilities and Tenure and I have never heard a word from that Commission about this issue.

Now, Mr. Rosen makes one accusation about me that offends every fiber in my being. When he accuses me of antisemitism I am appalled and I find that accusation to be massively repugnant to everything that I have stood for all my life. I deny it. I am offended by it.

With respect to Sidney J. Brown, Mr. Chairman, there is a factual misstatement, minor, but perhaps indicative. Mr. Brown says he has known me for 20 years. I have lived in the District of Columbia, Mr. Chairman, only 16 years. I first met Mr. Brown in the mid-fifties. His offices were right down the street from where my law offices were with the law firm of Houston, Bryant & Gardner. I have had virtually no contact with Sidney Brown, save for early this year while sitting in the motions part of the Superior Court of the District of Columbia.

In a case that he referred to in his letter where the opposing party was represented I think by David Dole of the law firm of Danzansky, Dickey & Tydings, I ruled on a procedural question. Mr. Brown was not in the courtroom. The ruling was adverse to him. Mr. Brown, probably, Mr. Chairman, would not recognize me if he saw me in a lineup.

That is all I have to say about Mr. Brown, Mr. Chairman.

The CHAIRMAN. Thank you very much, Judge, for your explanation.

Judge NEWMAN. Thank you, Mr. Chairman, for your concern and consideration.

The CHAIRMAN. I will note that when this nomination came up and when we first heard from Mr. Rosen about the nature of his complaints, in addition to trying to talk with Mr. Levine, a name that was supplied to us by Mr. Rosen, on our own, we did make contact with leading citizens of the community. Most particularly leading citizens of the community who were Jewish. Including people who were active with the Anti-Defamation League of B'nai B'rith, and even other organizations that had many Jewish members or participants. In talking with these people and questioning them, as to what they heard or had heard through the community, we did not find even a hint, not even the slightest trace of antisemitism in connection with Judge Newman. We did not do this just haphazardly or casually, it was done with due deliberation. One gentleman was contacted twice by Mr. Harris and once by me, Mr. David Brody, who is a very respected member of the District of Columbia community. He is the Washington Representative of the Anti-Defamation League. I have known him myself since I have been here in Washington and I talked with him personally. It was yesterday over in the Capitol building when he was here on another interest of his, and he said he could find nothing in that connection.

I am going to suggest that we conclude the hearing at this time. Mr. Harris will talk with Mr. Levine. We will await any other information that Mr. Rosen can give to us. Subject to what that information might be—we are going to give them an opportunity to be heard—but I intend to move on this nomination, if nothing adverse develops. I will not prejudge what might or might not happen.

We will leave the record open for a week for any additional material which might be submitted.

Therefore, that will conclude this hearing on the nomination of Judge Newman. Thank you very much.

[Whereupon, at 9:10 a.m., the hearing was adjourned.]

Subsequent to the hearing the following material was received.

September 30, 1976

STATEMENT OF LEONARD S. BROWN, JR., ESQUIRE,
IN SUPPORT OF THE CONFIRMATION OF THE HONORABLE
THEODORE R. NEWMAN, JR., ASSOCIATE JUDGE, DISTRICT OF
COLUMBIA SUPERIOR COURT TO BE ASSOCIATE CIRCUIT
JUDGE, D. C. COURT OF APPEALS

Chairman Senator Thomas F. Eagleton and members of the Committee On The District of Columbia of the United States Senate I am making this brief statement in support of the Committee's vote and that of the United States Senate itself for the confirmation of the Honorable THEODORE R. NEWMAN, JR., Associate Judge of the D. C. Superior Court to be an Associate Circuit Judge of the D. C. Court of Appeals.

I appear as a private citizen and as one who supplement here, if not buttress, the contents of the copied correspondence appearing as an Appendix I and an Appendix II to this statement of mines.

I am now 45 years of age [and nearly the 46th year on December 9, 1976] and since I was aged 15 (and in high school in my native Virginia) I have been a regular visitor of courthouses, court sessions, and court proceedings--from the lowest municipal court on up to the State Supreme Court and then there on up to the U. S. Supreme Court in the federal sphere! I have followed the law and court decisions, court rules and procedures, and the techniques, methods, and styles of both the judges and the attorneys, if not the plaintiffs and defendants and witnesses too! And this how I know of Judge Newman. I was in the court-

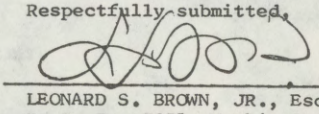
room of the U. S. Court of Appeals for the District of Columbia on several occasions when Judge Newman appeared as a court-appointed attorney for indigent defendants; and until this very day, and of all the courtrooms and sessions I have visited in New York; Maryland; Baltimore; Richmond; Virginia; South Carolina; Denver, Colorado; Chicago (City and Cook County); New Jersey (Trenton); Philadelphia, and Wyoming, I have not witnessed a similar "performance"!

Judge Newman excelled in his oratory, in his argument, in his facts, in his paper work, in his temperament, in his interactions with his fellow attorneys in the courtroom, and with the sitting judges, and not to leave out his methods, techniques, and presentations.

I have fellowed THEODORE R. NEWMAN, JR., and his judgeship since his appointment to the D. C. Superior Court and if there has ever been a change in his PAR EXCELLENCE it has been PLUPERFECT EXCELLENCE!

Accordingly, THEODORE R. NEWMAN'S [and with the Junior suffixing thereafter] elevation to the D. C. Court of Appeals, and his scholarly manner, should not be delayed and held in any abeyance than any one day longer then his confirmation should take --and I am hoping that he will be confirmed before Congress goes home this session!

Respectfully submitted,



LEONARD S. BROWN, JR., Esquire
P. O. Box 7371, Washington, D. C., 20044

APPENDIX I.

COPY

P. O. Box 7371,
Washington, D. C. 20044

September 30, 1976

HONORABLE THOMAS F. EAGLETON,
Chairman,
Committee On The District of Columbia
UNITED STATES SENATE
Washington, D. C. 20510

My dear Senator:

This communication comes both in support of and in opposition, simultaneously and respectively, to judicial nominations made yesterday by the President to the D. C. Court of Appeals and D. C. Superior Court:

1. I support fully and strongly the nomination of the Honorable THEODORE R. NEWMAN, JR., Associate D. C. Superior Court Judge, to be an Associate D. C. Appeals or Circuit Judge! Judge Newman is highly qualified without a question!

2. I am so opposing the nomination of one EDWIN C. BROWN, JR., Esquire, to be a member of the D. C. Superior Court as an Associate Judge because information comes to me again this year that same as last year this nomination is, again, a would-be criminal 18 U.S.C., §§912-914 (1970) false personations and false pretenses of myself! And accordingly with raw intelligence to me that the D. C. Superior Court nomination is, again, out of military interventions and interference into the civilian spheres of government, I submit the contents of attached, copied August 19, 1975, letter of mines as the full testimony of my strong and very vigorous opposition to the appointment of a false personation and false pretenses of myself!

As a private citizen, I ask your Committee vote of YES in submitting for Senate confirmation of the D. C. Appeals Court appointment and your vote of NO for the confirmation of the D. C. Superior Court nomination!

Sincerely yours,

LEONARD S. BROWN, JR.,
Esquire

Enclosure:

COPY

APPENDIX II.

CROMWELL APARTMENTS #203
1615 Ogden Street
Washington, D. C. 20010

August 19, 1975

Edwin C. Brown, Jr., Esquire
Attorney-At-Law
1100 - 6th Street, N. W.
Washington, D. C. 20001

Dear Edwin:

Just a friendly little note during the current sessions of the National Bar Asssociation here in Washington and as a fellow Howard University alumnus.

Intelligence comes to me from rather reliable sources that there has been in operations for sometime locally false personations of myself in the local legal circles and at the local courthouses. Cf. 18 USC, §§912, 913, 914 (1970) and D. C. Code §§22-1304-1307 (1973). The G-2 is, further, that you have been among those false personating me locally and/or that you have been so successfully "use and exploited" unwittingly by others to accomplish the same goals.

If all of this goings-on is valid, I am now ready to assert my own identity and claim my own property rights! Cf. Civil Rights Acts of 1866, 1870, 1871, 1964, 1968, and 1972; 42 USC, §§1981, 1982 (1970). I will be so glad to meet with you informally to reach an agreement or stipulation (Rule 29, FRCP) as to fee slipping (or rather splitting), especially in regards to any retainers existing, if any at all (smile). I suppose the theft, robbery, and "eminent domain 'condemnation and taking'" of identity, PR, and personifications--if not achievents, accomplishments, and contributions to the community and society both!

Moreover, the G-2 is that your recent recommendation by the D. C. Judicial Nomination Commission for a local judgeship nomination (supposedly to the D. C. Court of Appeals) came really for the purposes of further afflictions and false personations of myself (I suppose it was "inverse condemnation" this time) in the forciable taking of my personal property. And I must admit and confess here and now that I had a Darwinian "survivial of the fittest" choice to make during the consideration of your judicial appointment recommendation! The choices were that of either acquiescing by registering no objections (because a "Brown" is a "brown" regardless of what may come) to your recommendation (as if stealing from myself because of myself) and follow it through to the conclusion of your final nomination and confirmation to the brench and hope for something in the end humanely, or work to stop the injustices of the false personation act at and in the White House (and <u>otherwise</u> commit, as it were, "suicide") regain, assert, and reclaim what belongs to me! I so chose the latter course--to so kill your judicial recommendation at the White House (or just a little ephemeral lasting "suicide" for us both) by "pulling" a few strings

here and there (Rule 24, FRCP). I think that I was successful for the time being--for no one knows what might happen even tomorrow? And I trust that you will so concur with me as a fellow practioner of the law that a principle was so involved, that honesty, equity, and my identity was at stake! I was so claiming a birthright and something that should not be transgressed against by anyone for any reasons whatsoever! It is an inhumane taking and "homicide" of ones natural birthright, his personality, personifications, and his "breadmaker" by the state's "eminent domain taking and condemnation" of the individual's sacred, human life and birthright! It is an act of destructive debilitation and use and exploitations without just compensations for the taking, seizure, and use. It is a major, unpardonable crime, to say the least. To me, it amounts to the lost of and still compensationable sum of $25,000,000.00 or more! Cf. Rules 68, 64, 67, 70, and 71A, FRCP. One need not discuss the legal ethics involved in the whde mess, need one?

But, at any rate, this theft of my identity (locally, nationally, and internationally), as if a past and present state policy, has been going on for sometime and has had many co-participants (with few organizations and persons now guiltless). There have been many false personators, masquerades, and impostors of myself--from the high and the mighty, near greats, and the so-called vulgates. All to my monetary loss and my present-day poverty-striven immobilities! Cf. Rule 67, FRCP. I am still attempting to fathom the extent of the false personations of myself, discover, and ascertain the originator-inventor (s). Some say the FBI, CIA, military, Jerry V. Wilson, John S. Hughes, Frances G. Knight, Carl E. Anderson, G. Frederick Stanton, the PHS-HEW, NIH, DEA, Walter Monroe Booker, and Mayor Washington/Julian Dugas. My G-2 so indicates that it is the FBI! Some $25,000,000.00 worht! Ruel 67,FRCP. I am awaiting upon Rule 67, FRCP!

By way of concluding, I trust that my assertions of this "tort" claim with you and others for the reclaiming, regaining, and compensations of and for my personal identity, personality, and personification meets with your personal approval and within our protracted stipulation agreement of non-trespassing upon others identities(smile). Rule 29, FRCP. But seriously, things do augur well for us (and the omens are with us too): That we are both going to get judgeships in the not too distant future; that we are both going to receive Alumni Achievement Awards from Howard University on a futre Charter Day; that we are both going to receive Honorary Degrees from Howard University (perhaps Doctorates of Humane Letters), and that we are both going to be elected to permanent positions on the Howard University Board of Trustees! Rules 29, 68, 67, 66, 70, and 71A, FRCP!

I'll probably be a multi-miilionaire by then, and I might need your personal, legal assistance by then--when the Rule 67, FRCP is in proceeding toward reality! Cf., generally:

1. Brown v. Howard University et al., C. A. 2189-68, USDCDC, 396 U. S. 909 (1969), where I sue our alma mater for its own good! It was reversing it chartered course of humaness in society and heading towards the debilitating course of individual exterminations.

2. Brown v. Jerry V. Wilson, John S. Hughes, Bernard Angelo Nigro et al., C. A. 1271-72, Superior Ct. D. C. The would-be local dictators and "police-statists."

3. Brown v. Frances G. Knight et al., C. A. 2368-69, USDCDC. The Soviet Union Apologist and Social Democracy in America architect, if not the most active Soviet agent in this nation of ours!

4. Brown v. Barbara M. Watson et al., C. A. 92-70A, USDCEdVa (Alexandria Division). Same goes as for No. 3, supra.

5. Brown v. NCHA et al., C. A. 1163-72, USDCDC. Efforts of human indignities and attempted individual execution and exterminations by governmental organizations and their servants--all using USA funds!

6. Brown v. USPS, File No. X-1477707, Bureau of Employees Compensation, U. S. Department of Labor. Another evidence of attempted total liquidation of myself, before the declaration of NONPERSON, UNPERSON, and NOBODY (togehter with false personation theft of identity) was declared against me, myself, and I.

7. Brown v. DUCB et al., C. A. ----75, USDCDC. The current, protracted litigation to claim compensations for further afflictions of injuries, damages, harassments, intimidations, false personations, attempted executions, use and exploitation (without any thoughts of reparations at all), etc.

Now, I trust that you will have a pleasant and fine NBA meeting week and so forth--and from then and thereon out! Tell your family and father hello for me! I hope and trust that SENIOR is well, fine, healthy and STILL RICH! As you may know, your father and I are old friends, associates, and fellow NAACP activists. I owe him and Attorney James H. Raby credit for about three-fourths of the informal legal education and actual experience I have today. That's what I get (and got) by associating with them--beginning in my teens. I owe the other fourth to Attorney Nathan A. Dobbins, Esquire. This is where I got my informal JD, JSD, and LLB!

I am taking the liberty of directing copies of this letter to the following persons for the reasons so indicated therewith:

1. C. K. Brown, Jr., Esquire, 611 F Street, N. W. (another "Brown, Jr.,") because G-2 so indicates that he, too, has been in the 18 USC, §§912, 913, 914 (1970); D. C. Code §§22-1304-1307 (1973) "business." I so propose to meet with him too to split the fees (smile). C. K's. brother and I are old friends from our McGuire Funeral Home employments.

2. Dean Charles T. Duncan, JD, School of Law, Howard University, and Chairman of the D. C. Judicial Nominating Commission, because of his possible knowledge of any intended false personation of myself during your judicial recommendation by that Commission.

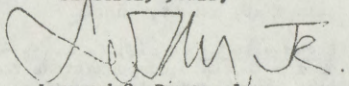
3. Mayor Walter E. Washington (via Julian R. Dugas, Jr., City Ad-

Ministrator), because he (and they are) is the HEAD!

4. Carl E. Anderson, Ed.D., Vice President for Student Affairs, Howard University (who I seriously believe is the de facto President of Howard University and who is actually running the day-to-day activities of the University today, since they eliminated me in 1968 from consideration because of my supposed expected death in six weeks from terminal cancer) because G-2 so indicates that I am personally upon Anderson's "S--t List," that he has been the grand perpetrator on false personating me on the Hilltop Campus, and that he has me upon a "Flamingo Road" black list in so far as all alumni, faculty, staff, and students are concerned. This so-called PERSONA NON GRATA personification is the gratitude I get from him for having discovered him for the University in 1959-60 when he was a mere, fresh Cook Hall Dormitory Residence Hall Director fresh out of East St. Louis! Cf. Brown v. Frances G. Knight et al., C. A. 2368-68, USDCDC

Let me hear from you and hear you out completely! I am

Sincerely yours,



Leonard S. Brown, Jr.,
Esquire
Attorney-At-Law
Gen., USAR
291-5967

cc: C. K. Brown, Jr., Esquire

Dean Charles T. Duncan, JD

Mayor Walter E. Washington

Dr. Carl E. Anderson, Ed.D.

October 4, 1976

STATEMENT OF MELVIN J. WASHINGTON, PRESIDENT, WASHINGTON BAR ASSOCIATION, BEFORE THE COMMITTEE ON THE DISTRICT OF COLUMBIA OF THE UNITED STATES SENATE AT THE HEARING ON NOMINATION OF JUDGE THEODORE R. NEWMAN TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Mr. Chairman and members of the Committee:

The Washington Bar Association wishes to thank the Committee for the opportunity to participate in the process of selecting the members of the judiciary of the District of Columbia by presenting its views, with respect to the nominee before the Committee. This Association has a deep and profound interest in the judicial system of the District of Columbia and the manner in which it is administered. The Association has examined the nominee and testifies as follows:

The Washington Bar Association supports and gives an unqualified recommendation for the confirmation of Judge Theodore R. Newman to serve as Associate Judge of the District of Columbia Court of Appeals. In general, we have found and believe that the nominee is qualified for the respective appointment for which he has been nominated. We have found no evidence of lack of integrity, honesty, sincerity, or judicial temperament.

Judge Newman has an impeccable record as an Associate Judge, Superior Court of the District of Columbia. While as a practicing attorney

the nominee was a vigorous advocate for the issues and clients he represented. As a member of the bench, he demonstrated the capacity to detach himself from his personal feelings and decide the issues that came before him in accordance with existing rules of procedure and law and mandates from the several courts of appeal.

The nominee will take with him to the Court of Appeals a wide range of talents and exposure in the several facets of the legal disciplines. The Association believes that this blending of talent and experience is very important because of the effort by the Congress and Administration to upgrade the courts of the District of Columbia and provide a forum where each person with business before the courts will be accorded fair and impartial treatment with dignity. It may be suggested that if the future appointees are of the same caliber as this nominee, the commitment to upgrading of the courts will have been demonstrated and the judicial system of the District of Columbia will become a model for the nation.

The Association has made an evaluation of the nominee and concludes that he will bring an important element to the bench, which we feel is as necessary as the educational and experience factors. One could write a dissertation outlining this quality, but it can be synthesized in the phrase, "commitment to the rule of law and the District of Columbia as a body politic."

The Washington Bar Association wishes to commend the President and Attorney General for their choice of this nominee, and recommends speedy approval and confirmation.

Mary Gustin
901 Irvington St.
Oxon Hill, Md. 20021
August 27, 1976

The Honorable Thomas F. Eagleton
United States Senate
Chairman, U.S. Senate Committee
on the District of Columbia
Washington, D.C.

Dear Senator Eagleton:

Considering myself aggrieved and irreparably damaged, and suffering great loss by the treatment I received at the hands of Judge Theodore R. Newman of the Superior Court of the District of Columbia, I wish to acquaint you with the injustice, bias, and prejudice accorded me.

While living in Germany where my husband was stationed, one of our sons, nearly five years old at the time, was almost electrocuted when he came in contact with a high voltage transformer site. As a result, our son Paul lost one hand and part of the arm almost to the elbow, part of one foot, and suffered burns on his entire body.

Because this accident happened on U.S. government property, Congress awarded the sum of $26,000 toward the care and treatment of the injured child.

The parents of the child, Roger W. and Mary Gustin, duly qualified as guardians of their son's estate. In the Orphans Court in Upper Marlboro, Md., they were ordered to invest in Maryland securities, which they did. However, the loan company failed in part, and was forced to go out of business. Therefore, that portion of the funds was lost, and the guardians, considering it to be in the best interest of their son, invested the remainder in real estate

in Washington, D.C.

Years later, this writer was told by Mr. Lyons of the Lawyers Title Co. that the property had been sold. At a preliminary hearing before Judge Belsom, she explained to the judge that she knew nothing of the sale of the property until Mr. Lyons told her on March 6, 1974. Attorney Goldberg called and asked her to come to court as a witness only, to say that she did not sign the contract and knew nothing about it, which was the truth. Judge Belsom said, "I want to see this case through so you will get justice. No telling what they'll do to you." How the case ever got into the hands of Judge Newman is unknown to the writer hereof.

The case came up before Judge Newman, and my attorneys explained that this was estate property. It was then and there that Judge Newman took jurisdiction of the estate away from the courts of Upper Marlboro, Md. Other real estate had been bought in D.C. and Judge Newman also assumed jurisdiction over them, casting aside entirely the control of Maryland courts. He said he didn't care about the court in Maryland or where the money came from. He further said he was going to change the laws, which he apparently did in this case. Passing title to property on an incomplete contract bearing a forged signature is a dangerous law, detrimental to innocent and uninformed persons.

While I was on the witness stand, Judge Newman was so annoyed that he yelled at me. He so confused me that I didn't understand some of his questions. He kept telling me about the Fifth Amendment, over and over again. I had nothing to hide, so I told the story to the best of my knowledge.

From the way the judge treated me, I was going to leave the courtroom, because it appeared that he had already made up his mind before he got in court. I knew I had lost the case, yet I couldn't understand how forgery could pass title, or how an incomplete contract could be a valid document. I couldn't understand why Judge Newman was so prejudiced against me. But later I read an article about Judge Newman in the newspaper, and found out that Judge Newman's wife and Ronald Stegall, the purchaser of the property, work under the same department at H.U.D., 7th and D Street, SW. And apparently they are well known to each other, as Judge Newman said in court that he knew the house well, and spoke of what a unique and beautiful home it is. He even mentioned the deer in the yard. He had no way of knowing the house, unless Mr. Stegall had shown it to him, because Judge Newman is domiciled on upper 16th St. NW. Only two owners are recorded on the property, those being the builder and myself, as the guardian of my son's estate.

Furthermore, Judge Newman in court called me a liar, and said he wouldn't believe me under oath, when in fact I told the truth, and I believe he knew it, too. I also believe that there existed a conspiracy against me.

As a further grievous error on Judge Newman's part, he conveyed under his own order, one of the guardianship parcels, while the matter was and still is undecided by the Supreme Court of the United States, which I insist the judge had no right to do. Thus ignoring the Supreme Court, Judge Newman ordered the Deed of Correction expunged from the records of the recorder of deeds, which I am informed he also had no authority to do.

Judge Newman knew that the brief was filed in the Supreme Court, yet three days later he forced sale of the property by appointing an attorney in my place, to execute conveyance to Mr. Stegall. No notice to vacate was ever served me but, for fear of my life, I fled the premises. However, I returned to check on my belongings in the house, and on those of my attorney, whose office furniture and fixtures I kept there for him after he had closed out his office in the National Building following his long hospitalization. Whem I went to the house, I was unable to enter because there was a new lock on the door. As of this date, I do not know what dispostion was made of our property.

A young law student about to graduate, dared to challenge Judge Newman by letter and by phone on his decision on this case. To avenge himself, Judge Newman wrote to the American Bar, the D.C. Bar, and the examining bodies, to prevent this young man from taking the Bar examination and, thus, deprive him of his equal rights under law to achieve his goal of becoming a lawyer. Such conduct on the part of Judge Newman is irreprehensible to this writer.

It is understood that Judge Newman aspires to a judgeship on the appellate bench. Because of his conduct in this case, he is not deserving of such an elevation or even of staying on the bench he is on.

In view of the foregoing, it is believed that Judge Newman should be stripped of his judicial robe, taken off the bench, and replaced by a more honest, more capable judge.

If further information is desired, please do not hesitate to call upon me. Thank you.

Respectfully submitted,

Mary Gratis

Phone: (301) 567-0204