OVERSIGHT OF DEPARTMENT OF JUSTICE PUBLIC INTEGRITY SECTION

HEARING

BEFORE THE

MITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

OVERSIGHT OF DOJ'S PUBLIC INTEGRITY SECTION

DECEMBER 11, 1980

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THURSDAY, DECEMBER 11, 1980

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

The committee met, pursuant to notice, at 9:44 a.m., in room 2228, Dirksen Senate Office Building, Senator Dennis DeConcini (acting chairman of the committee) presiding.

Present: Senator DeConcini.

Staff present: Michael J. Altier, counsel, and Ann Woodley, staff assistant, Subcommittee on Improvements in Judicial Machinery; Kim Pearson, minority research assistant, Committee on the Judiciary; and Pamela Phillips, chief clerk, Subcommittee on Improvements in Judicial Machinery.

OPENING STATEMENT OF SENATOR DeCONCINI

Senator DECONCINI. Good morning, ladies and gentlemen.

The Committee on the Judiciary will come to order.

Today's hearing is part of our oversight of the U.S. Department of Justice. Specifically, our attention is focused on the operations and activities of the public integrity section of the Department's Criminal Division.

This particular hearing will concentrate on whether the Department of Justice properly and adequately completed a full investigation of certain complaints and allegations made by Mr. John A. Nard, a Pittsburgh, Pa., businessman. His allegations concern aspects of decisions in civil and criminal proceedings of Federal district and appellate courts, actions of U.S. attorneys in Pennsylvania and Iowa, Federal grand jury proceedings in Iowa, and activities of several officials at the Department of Justice.

Specifically, Mr. Nard's allegations arise from breach of contract suits in Pennsylvania and Iowa, and his own indictment for Federal income tax evasion. Mr. Nard was the operating partner of the Three Rivers Co. of Pittsburgh, which entered into a written contract with Armour & Co. to build a meat-processing plant in Pittsburgh. Periodic payments were to be made by Armour to Nard based on the percentage of completion of the project. The percentage of completion was to be determined by Armour personnel at the project site.

At the same time he was constructing the Armour Pittsburgh plant, Nard constructed a residence for himself. Nard used some of the same subcontractors and suppliers for the Pittsburgh residence that he was using on the Armour job. It was apparently Nard's

intention to keep separate the invoices for work done or materials furnished for his home and to pay the suppliers and subcontractors out of his share of the profits realized on the Armour job.

Armour later terminated this contract, citing delays and breach, and filed a breach of contract suit against Mr. Nard. The complaint was subsequently amended to include allegations of diversion of funds by Nard in construction of his personal residence.

The case was tried before Judge Joseph F. Weis in the U.S. District Court for the Western District of Pennsylvania. Judge Weis found both parties in breach but refused to award damages to either party. However, Judge Weis ordered restitution to Armour for money disbursed to Three Rivers Co., but allegedly not expended for the Armour project. On May 31, 1973, the third circuit affirmed the lower court's decision.

Nard later became aware of the possibility that Armour had not disclosed all the documents in its possession at the Pittsburgh trial, so he filed a motion to vacate under rule 60(b) with Judge Daniel Snyder, U.S. district court judge for the Western District of Pennsylvania. This motion was subsequently denied.

In the midst of the hearings before Judge Snyder, Nard was indicted by a Federal grand jury in Pittsburgh and charged with two counts of failing to file timely tax returns for 1967 and 1968 and one count of evasion of taxes by filing a false and fraudulent return for 1968.

After initially pleading not guilty to all counts, Nard changed his pleas to guilty on the two failures to file counts and to nolo contendere on the evasion count. Judge Baron P. McCune accepted the pleas and sentenced Nard to 3 years suspended sentence and a $10,000 fine on the evasion count, and 1 year suspended on each of the other two counts.

During roughly the same time period as the Pennsylvania contract litigation, Nard and Armour were also in dispute over a construction contract which they entered into in Sioux City, Iowa. Again, Armour prematurely terminated the agreement and sued Nard for breach of contract.

A jury trial was held in the U.S. District Court for the Northern District of Iowa before Chief Judge Edward J. McManus. A verdict was entered awarding Armour $60,000 for delay damages while awarding Nard $20,842 for commissions on costs incurred by Nard prior to termination of the contract. The court's judgment gave Nard an additional sum of $75,965 from a partial summary judgment awarded to Nard during the trial for commissions earned by Nard on the project prior to termination but never paid by Armour. This ruling was affirmed by the Eighth Circuit Court of Appeals.

Following completion of the Sioux City trial, but prior to the Pittsburgh trial, Nard approached the U.S. attorney's office in Cedar Rapids, Iowa. The U.S. attorney, Evan Hultman, opened an investigation regarding possible perjury and subornation of perjury in the Iowa trial, and convened a grand jury. Hultman called one witness at the first grand jury.

Following the Pittsburgh trial, Hultman apparently received jurisdiction to investigate similar charges against Armour in the Pittsburgh litigation. Hultman told Nard he would pursue Nard's Iowa charges, but Nard would have to substantiate his Pittsburgh

allegations before Hultman would pursue them. According to Mr. Nard, he attempted to document his charges by providing Hultman with eight notebooks of court testimony and depositions cross-referenced with Armour's own correspondence and internal memoranda.

Following the first grand jury, Hultman assigned Assistant U.S. Attorney Alan Kirshen to investigate the Nard matter. A second grand jury was later convened. Although several witnesses were called to testify, the only appearance before the grand jury was made by Mr. Nard. Kirshen was later removed from the case.

At the third grand jury, those witnesses called for the second grand jury were not recalled. It is Nard's claim that Hultman did not pursue the allegations which would have uncovered what he considers to be wrongdoing by Armour.

Nard thereafter brought his complaints to Washington. His charges again concerned Armour and their counsel for the way they conducted the litigation, Judge Weis for allegedly being culpably influenced in his Pittsburgh decision, Hultman's conduct regarding the three grand juries in Iowa, and former U.S. Attorney Richard Thornburgh for allowing the income tax prosecution against him knowing that, in Nard's view, it was based on manufactured evidence.

Among other Federal officials, Nard took his case to the Watergate Special Prosecutor's office, which referred him to the Office of Professional Responsibility. Lacking jurisdiction to pursue Nard's allegations, the Office of Professional Responsibility referred Nard to Deputy Attorney General Harold Tyler's office.

Nard then provided materials to Judge Tyler's special assistants, Mary Wagner and Maureen Gevlin, regarding the Armour trials and Nard's tax prosecution. Ms. Wagner subsequently informed Nard that there was no evidence that could be found to support his allegations.

Nard then wrote to Attorney General Griffin Bell requesting a meeting between himself, Bell, and Senators Hatch and Nunn. The Attorney General's office referred Nard's file to the Public Integrity Section for review. A Public Integrity staff memo apparently went to Thomas Henderson, then head of the section, advising against such a meeting.

Attorney General Bell subsequently informed Nard that there was no purpose for further departmental review of his problems. Nard subsequently approached the new U.S. attorney for Iowa, Mr. James Reynolds, who took it upon himself to determine the extent of the investigation made by the Department of Justice. Mr. Reynolds is one of the witnesses we will hear from today.

I would like to make it very clear that this committee will not attempt to retry the cases mentioned or involved herein. It is not our intention to do so. Our sole aim in this hearing is to examine the handling of the investigations by the Department of Justice and the U.S. attorneys of the allegations of Mr. Nard.

We will listen to the scheduled witnesses as to whether Mr. Nard's allegations were reviewed adequately and impartially, in furtherance of the administration of justice. It is possible that such an inquiry may also serve to demonstrate some of the weaknesses of our Federal judicial system.

The witnesses we will be hearing from today are Evan Hultman, former U.S. attorney for Iowa; Alan Kirshen, former assistant U.S. attorney for Iowa; Mary E. Wagner, former Special Assistant to the Deputy Attorney General; Thomas H. Henderson, former Section Chief of the Public Integrity Section; James H. Reynolds, U.S. attorney for the Northern District of Iowa; Paul A. Manion, president of the Allegheny County Bar Association; David B. Fawcett, president of the Pennsylvania Bar Association; and David B. Buerger, former counsel to Jack Nard.

Prior to beginning, I would like each of the witnesses to be reminded that our focus this morning will be primarily on the allegations made by Mr. John A. Nard as to the handling of his various charges by the Department of Justice. Mr. Nard's case was included in the Judiciary Committee's oversight investigation of the Public Integrity Section in our letter to the Department of Justice on May 21, 1980.

Also in that May 21 letter to the Department, the committee requested the closed case file of the Criminal Division's investigation into allegations brought against Judge Joseph F. Weis, Jr. The committee considered the two cases separate at that time, and it is my impression that we will continue to do so.

I wish to point out at this time that the Judicary Committee's oversight investigation of the Justice Department's handling of the Judge Weis matter was not prompted by Mr. Nard's charges against Judge Weis, nor was it prompted by our initial investigation into the Department's handling of Mr. Nard's case. Although Mr. Nard may have complaints regarding Judge Weis, it is my understanding that allegations against Judge Weis were referred to the Department of Justice independent of Mr. Nard's charges.

At this time, due to the limited amount of time available this morning, I would like each of today's witnesses to summarize any statements that they may have and be able to spend most of their testimony responding to questions which will be asked. Since we do have a time constraint, it may be necessary for several of the questions to be submitted and answered after today's hearing.

I also want the record to show that there may be votes that will necessitate my leaving.

I am accompanied today by counsel Mike Altier of my subcommittee, who has prepared much of this and done some of the investigation in this area, as well as by Kim Pearson, a member of the Judiciary Committee staff who has also been assigned by the Judiciary Committee to work on this particular matter.

At this time we will proceed with our first witness, Mr. Evan Hultman of Waterloo, Iowa.

Mr. Hultman, are you here?

Thank you, sir, for being with us.

Please raise your right hand.

Do you swear the testimony you are about to give this committee is the truth, so help you God?

Mr. HULTMAN. I do.

Senator DECONCINI. Fine. Please proceed.

If you have an opening statement and would like to summarize it for us, that would be fine.

STATEMENT OF EVAN HULTMAN, FORMER U.S. ATTORNEY, STATE OF IOWA

Mr. HULTMAN. Mr. Chairman, I do not have an opening statement for two reasons, as I indicated in my phone call on Monday. One, I only learned on Friday that I was to be here. Second, other than the general knowledge of the subpena and two phone calls from two newsmen, I had no idea as to what subject I was to address.

However, because of the general subject that has been announced and also the accusations that were made through the two newspaper reporters who contacted me, who I am sure contacted me because of the contact Mr. John Nard had made to them, I would like to introduce as a statement, in that sense of the word, one, a series of articles done by two investigative reporters in the Pittsburgh Post-Gazette. That is item No. 1.

Second, because of the charge he has made that I in some way was going to be retained by a Democratic administration, a Democratic Attorney General, two Democratic Senators, and a Democratic committee, and, thus, this was the reason why my conduct was as he alleges, I want to introduce my application before the Iowa Federal Judiciary Selection Committee. That application contains my background, my experience, my reasons for applying to that commission.

Then because of the allegations that he is making concerning the conduct of the Office of U.S. Attorney, I would like to introduce a letter from the Democratic Attorney General of the United States dated May 11, 1977, which pertains to the execution of the Office of U.S. Attorney by me; a letter dated April 25 from the Assistant Attorney General of the Criminal Division at that time, who is now the Attorney General of the United States, Benjamin Civiletti, which, likewise, has reference to the conduct of the Office; third, a letter from the Director of the Federal Bureau of Investigation at that time, which, likewise, refers to the conduct of specific matters in the Office; and, finally, what I believe is a press release of some kind that was given by the Attorney General of the United States in 1977, Griffin Bell, which renamed me to the committee of advisers to the Attorney General.

I would like to introduce those items as an opening statement in that sense of the word. Then I will be very pleased to respond to any questions.

Senator DECONCINI. Very good, Mr. Hultman. All of the statements and material that you have mentioned will appear in the record without objection at this time.

[Material referred to above follows:]

John G. Craig Jr.

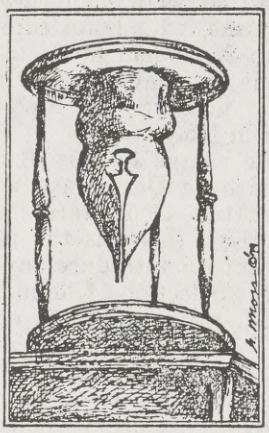
The Strange Case of Jack Nard and the Stranger Ethics of His Allies

There are worrisome ethical and journalistic questions in the bizarre case of Jack Nard of Sewickley — the subject of a two-article series that ran in the Post-Gazette on Monday and Tuesday.

Nard, who is a five-time loser in the courts (once on income taxes and four times on civil liability), has been successful in peddling a conspiracy theory in some of the highest councils of national government and to one of the nation's largest communications companies, the Gannett Corp. And he has been so successful largely because the people involved have not taken the time to do their homework or, because of a convergence of interests, have been willing to give the benefit of the doubt to a man with the most questionable story to tell.

Nard says he had to pay a multi-thousand-dollar civil judgment to the Armour Co. and plead no contest to one charge of tax evasion, because the "fix" was in. The pivotal fact in the web of conspiracy he weaves is obvious enough, that the political affiliation of lawyers plays a role in their appointment as judges and U.S. attorneys.

From this truism it takes but a short, twisted leap of logic to contend that all the federal judges and U.S. attorneys who did not further Nard's interests did so because they were corrupted by the venality of their ultimate political patron. But what of the patron (in this case former Sen. Hugh Scott)? What would his motives be for getting "his judges and lawyers" to do in Jack Nard? The



answer is not specific: it just follows; big man, big business. It is as simple as that.

In such an intellectual jungle it is easy to talk about $10,000 payoffs for judgeships, blocked investigations in return for political support and nepotistic incompetence. It is "the way the system works."

As Post-Gazette reporters Dave Warner and Al Neri pointed out, there is not one shred of evidence to support this theory other than a reprimand of a civil engineer by a licensing board for overstatements he made in testimony in a case Nard brought and lost against Armour in Iowa. Yet Nard has found an audience for his line of innuendo because he has effective friends.

One is a U.S. senator, who used to be Nard's lawyer and to whom Nard still owes $25,000, a debt the senator lists among his assets in public records on file in Washington. A second is a young lawyer who was employed by Nard's friend and creditor, the U.S. senator. A third and fourth are investigative reporters who have received $21,000 in contributions over the past three years from Nard to help support their investigations of his case and other instances of "corruption" in the federal judiciary.

The collective result of the efforts of these four friends has been significant embarrassment to Judge Joseph Weis of the 3rd Circuit Court of Appeals, who decided the original civil case between Nard and Armour here in Pittsburgh; a political whispering campaign about possible obstruction of justice charges being filed against Gov. Dick Thornburgh and general complaints about corruption in the federal judiciary of Western Pennsylvania which, while vague in the extreme, are seductive enough to have currency.

Obviously, Judge Weis and Gov. Thornburgh are big boys who accepted public office cognizant of the risks involved. And if the federal judiciary of

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(John G. Craig Jr. is editor of the Pittsburgh Post-Gazette.)

this area — or any other — can't withstand a bit of rumor it would not deserve to survive.

What is bothersome are two other aspects of this case, the behavior of the national journalists involved and the significance for successful passage of the Judicial Tenure Act of their behavior and the behavior of those public official who join them in championing the case of Jack Nard.

To take up the second subject first, there is a legitimate concern about the impregnable position of the men and women who hold lifetime appointments to the federal bench to the extent that such tenure makes it impossible to remove from office any federal judge except by impeachment, a remedy so complicated and exhausting that it is hardly ever undertaken, let alone followed through to decision. Some means short of the "ultimate" solution is needed to remove from the federal bench those few bad apples that poison the barrel.

But are we really to believe that Judge Weis, on the basis of the Nard case, is such a judge? If pressed, none of the participants in this campaign of vitriol, with the possible exception of Nard himself, would say "yes," but it suits their purpose to avoid the question. They are building a case for political change and cannot resist incremental arguments ("the example of Judge Weis of Western Pennsylvania"). It does not matter that there is nothing on the record to indicate that any court in the country presented with the facts of the Nard case found fault with the Weis decision, that Judge Weis gets anything but the highest respect from his colleagues and members of the bar or that the aggrieved man himself, Jack Nard, has exhausted the avenues for legal remedy available to him.

When it is political change you want, it is a lot easier to attack the integrity of an opponent with inference than refute the public record. There is irony in the fact that a campaign for legitimate and needed judicial reform is being undermined by political excesses of the very sort lifetime judicial tenure is designed to protect against. It is not just the federal judge who needs to be insulated from the wrath of the mob, but the system itself. Justice is to be found in the courts, not in the streets.

A newspaper chain that circulates nationally a story that is built entirely on the testimony of Jack Nard and one man's critique of his case can also justifiably be asked if, in its anxiety to work for the Judicial Tenure Act, it has not overstepped the bounds of objectivity and reportorial prudence. The question seems particularly pertinent inasmuch as the author of the critique on which their story rests is a young attorney with limited experience in civil litigation and none on the bench who was employed (he has since changed jobs) by Nard's former lawyer, a man to whom Nard still owes money and a man with whom Nard has been involved in other profit-making (at least for Nard) enterprises.

It is also bothersome that some of the reporters and editors involved in the story have crossed the line from being the disseminators of information to becoming participants in the story themselves by testifying before a Senate subcommittee for judicial reform, accepting financial contributions from Nard for support of their work, soliciting funds from his friends to finance their efforts and introducing Nard to congressional officials who might help him.

It is most unlikely that they would accept as objective the words of anyone in or out of public life whose personal interests were so intertwined with a cause he was championing. So why the double standard?

No matter what else it may be, the Nard story is a case study in the power of the press and how easy it is to overstep the bounds of fair play, even while convinced you are operating with the best of motives. I am afraid, alas, that all of us in the business are guilty of this more than we would ever like to admit.

Mon., June 25, 1979

One Man's Trip in Twisting Legal Maze

JOHN A. NARD

First of two articles.

By ALBERT J. NERI and DAVID WARNER
Post-Gazette Staff Writers

Special Report

For John A. Nard, life is a crusade.

Feeling wronged by the federal courts, by federal prosecutors, by those he once did business with and by the Internal Revenue Service, Nard, 51, of Sewickley Heights, has pursued his cause with the tenacity of a pack of hounds hunting its prey.

The man has friends and supporters — some rich, some powerful. He has a list of those he considers enemies — most of them powerful.

"He's talked to everyone except God," says Evan Hultman, a former U.S. attorney that Nard includes on his enemies list. "He (Nard) starts out as your friend and then actually becomes your enemy unless you accept his story that 10,000 people were all crooks, including every federal judge in Pittsburgh."

So far, Nard's quest has led him to the halls of the U.S. Senate, grand jury rooms, offices of U.S. attorneys, newsrooms here and in Washington and the U.S. Justice Department.

What started it all was what most people in this age of multimillion dollar lawsuits would consider an insignificant court case.

In 1972, a federal judge ordered Nard and his then-business partners to pay Armour & Co. — the meat packing people — $809,283 following a battle over who was to blame for a meat plant construction job that went wrong.

Subsequently, Nard pleaded no contest to a charge of income tax evasion, was fined and received a suspended jail sentence. A big issue in both cases was the mansion home Nard built in Sewickley Heights with part of the construction money from Armour.

Nard feels a serious injustice has been done, and he questions the motives of three federal district judges, the 3rd U.S. Circuit Court of Appeals, the Justice Department and a former U.S. attorney — now Gov. Richard L. Thornburgh.

Nard's case dates back to 1967. He lost the original court battle against Armour and subsequent appeals, but has continued to fight. Now, a grand jury in Iowa, where Nard began constructing a second plant for Armour, is taking a new look at Nard's claims.

"All of these judges are crooks. I tell you, it's amazing," he told the Post-Gazette.

Jack Nard is convinced there is a conspiracy to do him in — a conspiracy he charges is rooted in influence in the courts by powerful Pennsylvania Republicans.

"Somebody has to fight for this country," says Nard as he shuffles through two suitcases filled with at least partial documentation of the alleged conspiracy.

"I'm fighting the energy situation, and I'm fighting the Justice Departmemt and the federal judiciary and I'll win them all," he insists as he bangs on a desk at the Post-Gazette.

"I'm tough, mean and ornery," is the description he provides of himself. It's an assessment with which his enemies — who groan at the very mention of the name Nard — would wholeheartedly agree.

Nard lives in an English Tudor mansion on six acres overlooking the Sewickley Heights Golf Club, drives a Cadillac Fleetwood and jets about the country on various enterprises.

But appearances are deceiving. Far from being wealthy, he is deeply in debt. His list of creditors in Allegheny County is long. He owes money for everything from his house to a tailor-made suit of clothes to a motorcycle for one of his five children.

A short, balding, bulb-nosed man whose parents immigrated to Norton, Va., from their native province of Calabria, Italy, his speech is a rapid-fire blur.

On the subject of Jack Nard, though, there are two distinct camps.

His allies: U.S. Sen. Orin Hatch, R-Utah, a former Pittsburgher who was once Nard's lawyer; Michael Hunter, a former Hatch aide now working for Sen. Alan Simpson, R-Wyoming; Clark R. Mollenhoff, prominent journalist and lawyer; Mollenhoff's associate Greg Rushford; and the Gannett newspaper chain.

Nard also counts as his ally the U.S. attorney for the northern district of Iowa, James Reynolds, who has convened an investigative grand jury to look into Nard's charges of political wheeling and dealing in the courtrooms of the federal judiciary.

Nard's campaign to right what he feels is a decade-old wrong has been highlighted by:

- Renewed interest brought on by the Reynolds grand jury. Reynolds called the inquiry because of the "loose rumors floating around." The Nard charges, he says, should be "laid to rest one way or another."
- At Reynolds' request, the U.S. Secret Service is also looking at Nard's charges.
- A KDKA-TV broadcast in February by reporter Charles Bosworth that said Gov. Thornburgh is being investigated for possible obstruction of justice by the Iowa grand jury.
- A story largely supporting Nard sent to newspapers in the 80-newspaper Gannett chain on Nard's struggle. Many Gannett papers printed it, including the Tarentum-based Valley News Dispatch.
- An investigation into his complaints by a U.S. Senate staff member at the request of Sen. Hatch.
- The official reprimand of an engineer who testified for Armour in the Iowa trial — a minor victory for Nard.

Those Nard considers his enemies are: 3rd U.S. Circuit Judge Joseph Weis, of Pittsburgh; federal judges Daniel Snyder and Barron McCune; the former U.S. attorney in Cedar Rapids, Evan Hultman; the Armour & Co. people; the lawyer who tried Armour's case against Nard; the Internal Revenue Service; three judges on the 3rd Circuit who ruled against him; two U.S. attorneys-general who, he feels, did not pay serious enough attention to his cause; Gov. Thornburgh; plus practically everybody who has listened to Nard and dismissed his case as poppycock.

While nearly everybody has trouble understanding Nard's complicated conspiracy theory, not all dismiss him out of hand. His allies are not to be underrated, and those he attacks tend to suffer in silence.

John Nard's Foes Are Numerous; The Web of 'Conspiracy' Intricate

First, here is the background to Nard's court case — the circumstances that have come to obsess Nard:

In 1967 Nard, a former car dealer from Ellwood City, Lawrence County, undertook to build a refrigerated meat processing plant for Armour in the Chartiers Valley Industrial Park in the western section of Pittsburgh. Nard was then the operating partner — the man who oversees the day-to-day company operations — in a firm called Three Rivers Construction Co., and personally had little prior construction experience. He had built one other refrigeration plant, also in the Chartiers Valley Industrial Park, which its present owner, Chuck Lang, says is a flop that could never be used for its intended purpose.

Nonetheless, Nard got the contract with Armour for $6.5 million. There is a difference of opinion about whether there was another bidder. (See accompanying story.)

The contract with Armour was a so-called "design and build" deal with a ceiling price built in. Nard's company was to work on one part of the plant, while other parts were still in design, a scheme that led to untold grief for both parties with change-orders galore.

How Nard, who had little contracting experience, managed to get such a contract in the first place is something of a mystery. He says it came about because he met Armour's then Pittsburgh manager Harry Matthews was impressed with the first Chartiers plant.

In any event, Nard's company landed the Armour contract, and began work. That's when things started going wrong. Armour, says Nard, kept changing plans, failing to make a decision on such elementary things as the size of doors and whether meat would be delivered by rail or truck. These changes forced Nard to spend extra money while Armour, he says, was delaying approvals for new work.

Judge Weis, who was a U.S. District Court judge when he heard the civil suit Armour eventually filed against Nard, spelled out the other side of the coin in his ruling:

"Nard was not a believer in such organizational favorites as progress and manning charts or critical path graphs ... He did not cooperate with the Armour engineers when they sought to plan the project ahead on such bases and instead chose to rely on his own personal supervision without any written schedule. That this would cause conflicts when he was working with a large corporate organization with its customary book of rules and typical bureaucratic regulations seems obvious."

That's an opinion that Nard maintains is wrong on all counts. He points out that the judge wrote his lengthy opinion without benefit of a transcript. The judge replies that this is common and accepted practice and is advocated by the Federal Judicial Center. The Post-Gazette contacted two independent sources familiar with the federal courts; both backed the Weis position on transcripts.

In addition, Nard takes serious issue with five of the judge's findings. (The list is detailed in the accompanying story.)

The upshot of the litigation between Armour and Nard is that both sides lost.

In effect, the judge ruled that both sides were at fault in the botched job, and that they should "start from scratch."

To do that, he ordered Nard's Three Rivers to return to Armour a total of $809,283. The sum included $395,101 that Armour gave to Nard for payments to subcontractors that were never made; $205,900 Armour had paid Nard that Nard had used to construct his Sewickley house; a $36,000 brick work bill on the Nard house; $33,213 for plumbing work at the house. That totals $670,214, and the judge tacked on 6 percent interest, bringing the total to $809,293.

Nard and those who side with him are dismayed by that award, contending that while the judge ruled both sides were at fault, Nard was the only one penalized. It is one of the key points in the Nard argument.

It ignores, however, the implicit penalty in the judge's order against Armour. The company had contracted to build what it thought was going to be a $6.5 million plant. The company ended up paying at least $10 million to finish the facility, and Nard himself says the total is more like $13 million. The judge did not give Armour any of the extra millions it had to pay to finish the job. The payment of the extra money thus became Armour's penalty.

(Armour declined to discuss the case with the Post-Gazette.)

Enter here Michael Hunter, the former aide to Hatch who has been involved with the Nard case off and on for a year and who is very critical of the Weis decision and the courts in this area.

Hunter, 38, with a law degree from the University of Utah, had experience as an assistant U.S. attorney in Salt Lake City, and as a trial lawyer for the Justice Department in Washington.

In a preliminary report written for Hatch, and made available to the Post-Gazette, Hunter criticizes the Weis decision, concluding, "The decision raises a number of questions which require lucid answers if the federal judicial system is to avoid further irreparable erosion."

According to Weis, Hunter never sought those lucid answers from him. Hunter, he says, has never spoken with him. Hunter replies that his report is based "solely on documents and the court records." He contends that the Weis decision lacks a "factual basis" and that if Weis had reasons for how he ruled, he should have put it in the record.

While Hunter has never spoken with Weis, he has, in fact, talked with Nard about the case many times. Nard has repeatedly told the Post-Gazette reporters to "call Mike Hunter" if questions arise.

Hunter also has not limited himself to documents and the court record. He also hints at political intrigue in the introductory paragraph of his report: "Assertions of outside influence in the state and federal courts of Western Pennsylvania have not been uncommon and indeed appear to have some validity.

" Moreover, a person active in Western Pennsylvania politics allegedly indicated that the case in which Armour sued Three Rivers would be decided in favor of Armour because 'necessary arrangements had been made' with the court to obtain such a result."

As evidence of his reference to "outside influence" in the courts of Western Pennsylvania, Hunter cites the forced resignation of U.S. District Judge Herbert Fogel in Philadelphia in 1974; the fight between factions of the Democratic party on the appointment of a U.S. attorney for Pittsburgh in 1978-79 and the argument between former U.S. Attorney Blair Griffith and one of his assistants on how to prosecute the Pierce/Wander blackmail case.

That none of these incidents involves the judiciary of Western Pennsylvania is not explained. Hunter also referred to "alleged improper intrusion into the judicial process by former Sen. Hugh Scott or persons acting for him." He was not specific.

Neither will he name the person in the Armour-Nard case who allegedly made "necessary arrangements" with the court. But the charges of political influence are central to the Nard conspiracy theories.

In an interview with the Post-Gazette, Nard outlined his scenario:

Armour was represented at the trial by Thomas Jackson, of the Downtown law firm of Thorpe, Reed and Armstrong.

The way Nard sees it, Jackson wanted to become a partner in the firm, and the firm was anxious to retain the "lucrative" Armour account.

Nard then says that the firm feared that if it lost the Nard case, it would lose the Armour account.

He was asked, "So they go to people they know are influential in the Republican party?"

"That's right," replied Nard.

The question was then asked, "They say basically, 'Can you put the fix in,' is that what you're saying?"

"That's what I'm saying just as clear as that," Nard replied.

His evidence for this accusation seems thin and circumstantial.

Weis flatly denies any such interference and calls Nard's charges ludicrous, noting that Nard's laywer was also from a Republican firm.

Jackson did not respond to repeated requests from the Post-Gazette for his side of the story.

Here's how Nard explains his charges:

"Well, I had a very good friend of mine, who was with a pretty sizeable company, a very financially sound company in this town, tell me to watch when I go in that courtroom because his company was up to Ligonier and a very top Republican official was around bragging that she had the judges rigged against me."

Nard refused to talk about who this "she" in the Republican party might be just as he refuses, as does Hunter, to name the person behind the conspiracy. .

Nard's theory of political involvement does not stop with Weis. Nard appealed the Weis decision, but by that time Weis had been elevated and was sitting as 3rd Circuit Court judge.

Nobody, not even Nard, suggests that Weis took part in the appellate court decision.

But the way Nard sees things, the appeals court judges were reluctant to overturn the Weis decision for fear of embarrassing their new colleague.

Weis smiles when he hears that accusation, pointing out that he was in fact overturned by his new colleagues on another case. There was no evident embarrassment.

In any event, having lost before Weis in the District court and again in the appeals court, Nard and his Three Rivers partners failed to appeal to the U.S. Supreme Court. However, Nard did go back to the U.S. District Court in Pittsburgh subsequently, and asked for a new trial on the grounds of alleged perjury by Armour witnesses when Weis was on the bench.

The Nard request for a new trial ended up with Judge Daniel Snyder, who turned it down. It's now difficult to determine whether Nard dislikes Weis or Snyder more.

Nard charges that Snyder was told by political officials to rule against Nard. Judge Snyder's son, Daniel, was then an administrative aide to Sen. Scott.

This series of court cases forms the basis for Nard's long term grievances. There are more legal fights, though, most notably with the Internal Revenue Service. More of that later.

In the meantime, Judge Weis has heard through the judicial grapevine what Nard is saying about him. He is frankly angry, but feels helpless to defend himself. He is a public figure and it would be difficult if not impossible for him to win a libel or slander suit against Nard.

Weis is one of Pittsburgh's most prominent federal judges as a member of the 3rd Circuit. Another Pittsburgher, on that bench is Ruggero Aldisert, who was acting chief judge of the circuit recently.

Aldisert had nothing but praise for Weis when the Post-Gazette interviewed him.

"I consider Judge Weis to be one of the outstanding judges in the courts," Aldisert said. "He is a man of great integrity and great ability." That opinion is shared by other judges on the 3rd Circuit, and by lawyers who appear before it.

And although Weis went to the appellate court before the Allegheny County Bar Association began polling its members to rate local judges, Weis always received the highest recommendations from the association as he moved up the judicial ladder.

Respected though Weis might be by some, he is struck by the lack of a forum in which he and Nard can air their respective views.

"He can impugn my integrity however he wants," notes Weis. "I'd love to be able to set him before a committee and get him under oath."

Nard's problems with the federal courts do not stop in Pittsburgh, or with the 3rd Circuit. A case similar to the Pittsburgh suit took place in Iowa over a plant Nard started building for Armour in Sioux City. That 1971 trial ended in a virtual draw, with the jury directing Nard to pay Armour $60,000 and Armour to pay Nard $20,842. Nard now alleges that there was a great deal of perjury in that trial too.

He brought those allegations to the attention of two U.S. attorneys in Cedar Rapids, one being former U.S. attorney Evan Hultman, a Republican who is now a private attorney.

Hultman did in fact investigate the charges and the way Hultman remembers it, the key perjury charge involved testimony from an engineer about the construction of the Sioux City plant.

Hultman brought the issues to the attention of two federal grand juries. The term of one expired before a decision was rendered. The second decided no indictments were in order.

While finding no direct case of perjury, Hultman did refer some evidence on the testimony of engineer William Bossenberger to the Iowa State Board of Engineering Examiners.

Bossengerger was formally reprimanded by the board on May 19, 1972, and told:

"It is the conclusion of the board that your testimony in the case of Armour & Co. v. Nard was simplistic and incomplete. Because of this, your testimony was misleading and a culpable overstatement."

The reprimand carried no penalty and the engineer is still practicing. But it is this reprimand that Nard cites when pressed for evidence of why his conspiracy theories should be taken seriously even though so many different agencies of government have investigated them and come up empty.

There is still another aspect of the case. While Nard and Armour battled before Weis in Pittsburgh, an interested observer was the Internal Revenue Service.

PRO:
Columnist Clark R. Mollenhoff, clockwise from upper left; U.S. Sen. Orrin G. Hatch, R-Utah; Senate Judiciary Committee aide Michael Hunter; James Reynolds, U.S. attorney for Northern Iowa; and Sen. Dennis DeConcini, D-Ariz.

In July of 1973 the IRS went to court. This followed the lengthy investigation the IRS normally undertakes.

"And now comes the United States of America by Richard L. Thornburgh, United States Attorney for the Western District of Pennsylvania . . ." said the bill of particulars that Nard received (after much haggling, he alleges). Therein lies the reason for Nard's bitter feelings toward the man who is now Pennsylvania'a governor.

Thomas A. Daley, one of Thornburgh's assistants, actually handled the case.

Nard was charged by the grand jury with two misdemeanors and one felony. The misdemeanors: he failed to file timely returns for the years 1967 and 1968. The grand jury said his income in 1967 was $37,265 and in 1968 was $110,582.

The felony: in 1968 he attempted to evade tax payments by submittimg a "false and fraudulent income tax return" for the year 1968. The unreported income, it was charged, consisted of the money he received from Armour to pay

house, as per the Weis ruling. Those years, 1967 and 1968, are the same years in which Nard was involved with Armour. The contract for the Armour plant was signed August 21, 1967, and was terminated on Nov. 21, 1968.

Nard implies now that the fact that those two years were investigated by the IRS is hardly a coincidence. It fits neatly into his conspiracy theory — the same people who went to court against him in the civil suit, arranged for the IRS to get him in the tax cases.

The IRS, he says, investigated his returns for the years 1966 through 1969. Nard says the IRS normally prosecutes for the easiest years on which to win a conviction.

"Why did they single out '67?" he asks, answering, "It just happened to be the Armour year."

At the time of the suit, though, Nard did not raise those arguments in court. In fact, he pleaded nolo contendere — no contest — to the evasion charge, and guilty to two charges of failing to file a return.

For that, he was fined $10,000 and given a suspended jail sentence of three years, provided that he pay the fine in 36 monthly installments.

The judge in that case: Barron McCune.

Despite Nard's guilty and no contest pleas, he now yells long and hard about the injustice done to him.

He charges that Thomas Jackson, the lawyer for Thorpe, Reed and Armstrong, "framed" the tax case by secretly paying two of the bills for work on Nard's house "and then telling the Internal Revenue that I paid for it."

Moreover, he charges that Jackson hired an IRS staff investigator as a Thorpe, Reed and Armstrong staffer, sent him back to the IRS to "poison the minds of the people at the Internal Revenue." Again, Jackson was not able to be reached for his side of the story.

Nard's reasons for pleading guilty and no contest vary.

He initially told the Post-Gazette, as as did Senate aide Hunter, that he did it to "protect testimony" he might give to the Hultman grand jury in Iowa.

Pressed on what testimony he might be protecting, Nard came up with another set of reasons — that he was advised by his then attorney David Buerger that McCune was prepared to jail Nard unless he pleaded no contest; that he had difficulty in getting a bill of particulars from the government; and that it would cost him $5,000 to $10,000 in legal fees if the case went to trial and the fine was to be only $10,000.

Nard's gripe with Thornburgh in the IRS case is that while Thornburgh was U.S. attorney he was well aware that his counterpart in Iowa, Hultman, was investigating Nard's complaints there.

"He knew that this case was rigged," Nard complained. "He knew that this case was being investigated by Hultman. He had talked to Hultman."

Thus Nard's conclusion is that Thornburgh should have stopped the prosecution of Nard on the income tax charges, but didn't.

CON:
Gov. Dick Thornburgh, clockwise from upper left, Pittsburgh federal judges Joseph F. Weis, Daniel J. Snyder and Barron P. McCune.

"He knew it was a frame," Nard continued.

Why did Thornburgh do that?

"Because he was pressured into it. The same way Weis was pressured into it."

By the same people?

"By the same people."

In fact, Nard contends that the main reason Thornburgh was elevated to become assistant attorney general of the United States was to squelch the Hultman grand jury in Iowa and continue the coverup of injustices to Nard.

As evidence, he notes that Hultman started out as a strong believer in Nard's complaints, and shortly after Thornburgh took office, went cold.

"That's true. In the beginning I was very strong on it," admits Hultman who is now a private attorney and solicitor for the city of Waterloo, Iowa. "But I became suspicious after I found out he had been indicted for income tax evasion and he had never told me."

He says he is not concerned by the current Reynolds grand jury. "He sold the same bill of goods to this U.S. attorney," Hultman adds.

Of Nard, he says: "They broke the mold with him. He's persistence personified. Once he tracked me down and showed up at a speech I was making in Virginia.

"But if it came down to a question of trust I think my assistants probably would have said *indict* Nard."

Tom Daley, who prosecuted Nard on the tax case, agrees. "His conspiracy grows and grows and when one investigator sees the light and rejects it, he becomes part of the conspiracy too."

During the Post-Gazette interview Nard was asked this question:

"Are you saying that Judge Weis, Judge McCune, Judge Snyder, the three judges on the Third Circuit court and Richard Thornburgh were all influenced by somebody in the Republican party?"

His answer: "Yes siree. It's hard to believe, isn't it?"

(The three Circuit Court judges who heard his case were Francis L. VanDusen; John J. Gibbons and Max Rosenn.)

Nard says he expects a new grand jury — this one working with Democratic U.S. Attorney James Reynolds — to prove his contentions.

(Reynolds admits he has an investigative grand jury in session. What Reynolds is looking into is whether Hultman and the GOP-controlled Justice Department adequately investigated Nard's charges.

(Reynolds hints rather broadly that former Sen. Scott is under his microscope. Asked why a wide range of judges, prosecutors and Thornburgh would all gang up on Jack Nard, Reynolds replies, "There is only one common thread. That being the person who made judges, prosecutors and assistant attorneys general.")

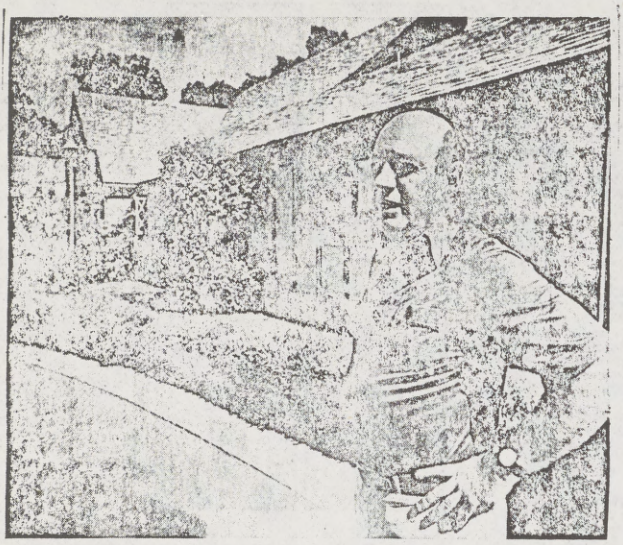
That is an apparent reference to Hugh Scott. Scott says he has never heard of Nard. "I don't know the man or his problems with Armour." The former senator, now a Washington lawyer, said such political accusations about him are "not uncommon."

The Post-Gazette has learned that at least three people have appeared before the Reynolds grand jury. They are Nard, Sen. Hatch and one-time Pittsburgh mayoral candidate John Tabor, who, Nard believes, was in line for the 3rd Circuit judgeship that Weis won.

Thornburgh responded to the KDKA-TV story by noting that the Senate Judiciary Committee had rejected the allegations in 1975 when he was nominated to be assistant attorney general. Hultman also dismissed them, he added.

"Mr. Nard has in the past threatened to 'get me,'" the governor said. "He made a threat in a public place to that effect to my wife Ginny as recently as September of 1978." He called Nard's charges "shopworn and nonsense."

Jack Nard, though, continues to peddle his story to anybody who will listen. And may do. (Tomorrow: Who Jack Nard knows, how he makes his money, and how he makes waves.)



John Nard at ease outside his posh Sewickley Heights home.

Nard Disputes Court Ruling On 5 Points

Here are the five key areas where Jack Nard takes issue with the decision rendered by Judge Joseph F. Weis in the Armour suit:

• Weis said there was another bidder on the Armour job. Nard contends the judge confused the Chartiers Valley project with another Armour project and that Three Rivers Construction Co., Nard's firm, was in fact the only bidder. Weis in his ruling said that evidence indicated that another company bid $2.3 million higher than Three Rivers for the project. But in retrospect, the judge said recently, the exhibit he ruled on is marked "this facility" and did not specify the Chartiers Valley site.

• Weis in many instances, according to Nard, relied upon expert testimony that was not expert. Weis counters that in all of his findings he relied not on any one witness, but on evidence of at least two.

• Weis wrote that although the building was complicated, Nard had no coordinator on the job to insure all parts of the project progressed in concert. Wrong, says Nard, who insists that he hired architect Louis Conturas to do just that. Not so, insists the judge, who points to testimony from Conturas, who said, "My function was primarily nothing more than a tool at the plant." Furthermore, Nard himself testified, "The architect to me is a tool to put the lines in. I could use a draftsman. I don't need an architect. That is what they paid me for, the ideas."

• Weis maintains that Nard had no full-time superintendent on the job. Wrong again, Nard insists. He had a man named Shy O'Hallock to superintend. However, Weis notes that O'Hallock was employed as a general foreman for McCully-Smith, one of the Three Rivers subcontractors. Furthermore, he notes, O'Hallock was dividing his time between the Pittsburgh job and a second plant Nard undertook for Armour in Iowa. That job also led to a court suit, and provides the Iowa connection to the Nard saga.

• Weis wrote that Nard constructed ". . . a lavish house for himself, in part with funds which Armour had thought were being used for its meat plant.

"Whether this practice was fraudulent as the plaintiff (Armour) contends or merely an ill-advised anticipation of profit or, as the defendant (Nard) contends, mere negligence, is not determinative."

Weis said subcontractors on the Armour job "comingled the charges for labor and materials for the two projects at Nard's suggestion."

Nard becomes infuriated at this statement. He rifles through his suitcases and hauls out document after document which, he contends, clearly show that the house — which cost $246,113 — was billed separately. The bills are marked either "Nard's House" or EWA 40 — standing for extra work account.

Weis does not recall bills marked "Nard's House," but he did see the EWA-40 records. Weis said it was never clear that the EWA-40 account — one of several extra work accounts — was for Nard's house.

Jack Nard's Media Crusade Is Financial House of Cards

Second of two parts.

By ALBERT J. NERI and DAVID WARNER
Post-Gazette Staff Writers

Behind John A. Nard lies a web of supporters with overlapping and, in some cases, seemingly conflicting interests.

He has acquired these powerful friends while pursuing his grievances against the federal judiciary, prosecutors, judges and the Internal Revenue Service.

Special Report

Because of who and what he knows in the field of developing new energy uses for coal, he has collected about $100,000 from Pittsburgh's rich, but little-known, Roldiva Inc. in the last three years.

Although he is deeply in debt, he has used part of that money — about $21,000 so far — to fuel his crusade by generating publicity to turn the spotlight on the federal judges he considers to be his enemies.

Nard, who lives in a section called Sewickley Heights Estates in Bell Acres Borough, has given that money to two Washington-based foundations, which have passed it on to two free-lance journalists. The two writers, in turn, have assisted the Gannett chain of 80 newspapers with a project called "Justice on Trial." Not surprisingly, the chain published a lengthy story on Nard's plight.

Nard's political clout is provided by U.S. Sen. Orrin Hatch, the Utah Republican and former Pittsburgher who was Nard's first lawyer in the case that led to Nard's complaints. Moreover, Nard owes Hatch some $25,000 in overdue legal fees and loans.

It's all part of John Nard's crusade. A former contractor and car salesman, he has attempted since 1972 to overturn a federal court decision that stemmed from his construction of a refrigeration plant in the Chartiers Valley Industrial Park for Armour and Co., the meat processing firm, in 1967 and 1968.

He charges that then-U.S. District Judge Joseph Weis, who rendered the original decision, made an unsubstantiated judgment and that a conspiracy tried to hide this misdeed.

The conspiracy, Nard charges, includes other federal judges in Pittsburgh, the Third Circuit Court of Appeals and Gov. Thornburgh, the U.S. attorney in Pittsburgh at the time. Strings were pulled through the Republican Party to fix the judges, Nard alleges.

Nard's crusade has had some victories. The Gannett chain published a favorable story about him; a grand jury has been convened in Iowa to investigate his contentions; a KDKA-TV broadcast in February said Thornburgh was under investigation; Hatch has assigned a staff member to write a report on the matter.

The Gannett News Service — whose Western Pennsylvania outlet is the Valley News Dispatch in Tarentum — published as part of its examination of the judiciary an article called "A Citizen's Case: Did John Nard get a Fair Trial?" The clear implication is that he did not.

Ann Devroy, one of the reporters who wrote that story, said she became aware of the Nard case through reporter-columnist Clark R. Mollenhoff, now a journalism professor at Washington and Lee University in Lexington, Va.

Robert Dubill, executive editor of the Gannett News Service, said reporters approached Mollenhoff because they knew he was knowledgeable about the judiciary. Dubill said Gannett has spotlighted the federal judiciary because of the 152 new federal judgeships created by Congress that the Carter administration will be filling.

Miss Devroy said she spotted the Nard case in some clippings Mollenhoff showed her, and Gannett then pursued the story.

Mollenhoff has written at least two columns dealing with the Nard case and mentioned it in a lengthy article in the Washington Post in April 1978.

Mollenhoff's associate, Greg Rushford, a former congressional aide, said he and Mollenhoff have embarked on a "major, systematic effort to report on the federal bench," as Rushford described it.

POST-GAZETTE: Tues., June 26, 1979

He has worked on a paid, free-lance basis with Gannett on its series, although Dubil stresses that Gannett has done its own investigation, amounting to "hundreds and hundreds and hundreds" of hours

Nonetheless, Dubill said, "He (Mollenhoff) told us that story," referring to the Gannett story on Nard. "He referred us to the Nard case."

Two Washington foundations, the Fund for Constitutional Government and the National Taxpayers Legal Fund, support Mollenhoff and Rushford in their project.

The biggest contributor to the Fund for Constitutional Government is Stewart Mott, the 41-year-old philanthropist who is heir to an $800 million General Motors fortune.

He contributes $200,000 annually, says Anne Zill, the fund's director. Mott has earmarked $10,000 during the last two years for the Mollenhoff-Rushford project, she said.

It is those same two foundations to which Nard has given $21,000, knowing full well that the money is going to Mollenhoff and Rushford.

Mollenhoff said the money actually goes to Rushford, the Washington office and copying expenses.

"I haven't made anything. It has cost me money," Mollenhoff said during a stormy exchange in which he criticized the Post-Gazette for questioning his motives.

Nard, Miss Devroy and Rushford say the Mollenhoff-Rushford project will produce a book.

Nard frequently has told the Post-Gazette that if its reporters need help researching his case, "I'll get Clark to call you."

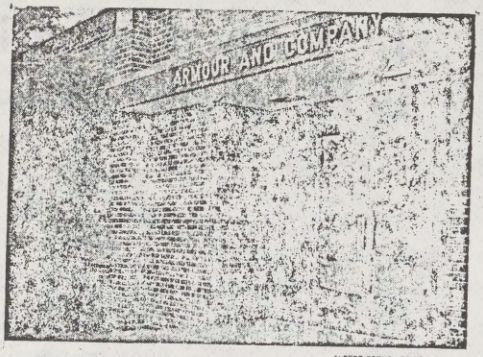
Indeed, Mollenhoff and Rushford visited with Post-Gazette Editor John G. Craig Jr., offering to cooperate in any investigations of the federal judiciary the newspaper might undertake. When the two journalists visit Pittsburgh they stay with Nard.

Mollenhoff and Rushford have lent the clout of Mollenhoff's considerable reputation to Nard's crusade by visiting Sens. Hatch and Dennis DeConcini, D-Ariz., who heads the Subcommittee on Judicial Improvement. In both instances, they talked about the Nard case, and, in one instance, brought Nard to meet DeConcini.

Miss Devroy knew of the Nard contributions to the Mollenhoff-Rushford project, she said, but satisfied herself Mollenhoff was not writing extensively about the case.

Dubill said he also knew of the contributions but added: "What do you do? Do we just ignore the situation (because of the contributions)?"

For the record, Nard said he intends to continue supporting the two foundations for the Mollenhoff-Rushford project.



ALBERT FRENCH/Post-Gazette

A federal judge's ruling against John Nard on the construction of this Armour and Co. plant is the basis for Nard's conspiracy theory.

"Next month," he says, "I'm going to try to raise $100,000 for them."

He disputes any inference of conflict that might be read into his relationship with Mollenhoff, whom he considers to be a close friend.

"Clark wrote about me six years before the donations started," Nard explains.

His relationship with Hatch, his mentor in the Senate, also goes back a long way.

Hatch was his lawyer in the early stages of the Armour case and even appeared in Iowa for him after moving to Utah.

As a result, Nard owes Hatch $25,000 in back legal fees and a personal note. Hatch says he is willing to cancel the debt, but Nard insists he will pay it someday. The debt is noted in the official financial disclosure statement Hatch files as a U.S. senator.

In addition to representing Nard as a lawyer, Hatch once introduced the Pittsburgher to the owners of a mining firm in Utah called the 5M Co.

That company has mining leases on the Kaiparowits Plateau in southern Utah. The way Hatch tells it, he had two clients: 5M, which needed capital, and Nard, who through Roldiva had access to capital.

Thus Hatch, the lawyer, merely introduced them for their mutual good.

Hatch says he got none of the action, but Roldiva ended up buying 50 percent of 5M. The deal, while small, could be significant in opening up much bigger coal reserves.

Following Hatch's election to the Senate, Nard went to see him in pursuit of Nard's complaint about the federal judiciary.

That visit led to what Nard and others persist in saying is a Senate Judiciary Committee investigation of Nard's charges, a contention Nard even included in an affidavit he filed last year in U.S. District Court in Pittsburgh. Nard said, ". . . the Senate Judiciary Committee of the U.S. Senate is in the process of conducting inquiry into possible improprieties by and conflicts of interest among various present and former members of the district court . . ."

A variation of that theme was sounded earlier this year when KDKA-TV reporter Charles Bosworth went on the air saying a Senate subcommittee was investigating Thornburgh's connection to the case.

Bosworth's story, while not naming Nard, dealt with the grand jury investigation and the allegations of a probe by the U.S. Senate subcommittee.

Bosworth stresses that the broadcast did not deal with Nard or his complaints about federal judges, although he did say the story came to KDKA's attention when "Nard called me."

"The story was that there are investigations going on," Bosworth said. "We thought it significant that the governor should be under investigation by a grand jury." Further, he said he considered it to be significant that Hatch and Senate aide Michael Hunter would spend so much time on the case.

Thornburgh concluded that Nard was behind the story, too. He called the allegations nonsense. (The governor has declined to discuss Nard's complaints with the Post-Gazette.)

Bosworth said that after Nard's call he spent about six weeks researching the story while also working on others, common practice in newsrooms.

The reporter said he knew of the relationship between Nard and Hatch. He said he was also aware that at the time Hunter began working on a Nard report, Hunter was on Hatch's staff.

He said he did not speak to Senate subcommittee head Dennis DeConcini directly about the allegations that the subcommittee is investigating the Nard affair. He declined to say if he discussed the story with Mollenhoff.

While the Bosworth story did not mention Nard by name, it did further his crusade: two of the people that Nard considers to be his enemies — Thornburgh and former U.S. Sen. Hugh Scott of Pennsylvania — were put in the KDKA-TV spotlight.

Last year, after being approached by Nard, the Post-Gazette contacted staff lawyers for the Judiciary Committee, asking about the Nard contention, and was told:

"Not only are we not investigating judges, we would be constitutionally unable to do so unless impeachment charges were brought. And as far as we know there are no such charges."

Seemingly, that would end the matter, but the reports of a Senate inquiry persist.

The principals of any such inquiry would be Hatch, DeConcini and Hunter, the former Hatch staff member now working for Sen. Alan Simpson of Wyoming.

DeConcini provides the clearest explanation of the status of the "investigation."

"Orrin Hatch brought Nard to me," DeConcini recalled during an interview in his Senate office.

As Hatch recounts it, he realized that Nard's debt to him "could be misconstrued," so he wanted an independent senator to look at the case. DeConcini, as head of the subcommittee on Judicial Improvement, was chosen. DeConcini's committee is working on a bill to provide for a review of such disputes.

DeConcini, like everyone who hears Nard's story for the first time, was confused by Nard's complex legal situation and even more complex conspiracy theories.

He didn't understand all the ins and outs of the Nard case, so he asked Hatch if someone on his staff could pull the Nard story together.

"You do that and I will take a serious look," DeConcini remembers telling Hatch.

Hatch gave the job to Hunter, who says the report is now near completion.

DeConcini has been waiting — not breathlessly — for the report for about a year now and has yet to see it.

Curiously, though, while DeConcini has never seen the report ostensibly being prepared for him, the Post-Gazette has a copy of a preliminary Hunter report, and so, evidently, do reporters Bosworth and Miss Devroy, because they both quote from it in their stories.

So, if DeConcini's version of events is accurate, the investigation by the subcommittee boils down to one staff member for Hatch being assigned the writing of a report for the chairman of a subcommittee who promises to look at it seriously to see if a further probe is warranted.

Yet Gannett's Miss Devroy and Dubill both rely on the Hunter report and the Senate's interest, citing them as key factors in deciding to write about Nard. Miss Devroy says she knew Nard owed money to Hatch but noted that the senator has consistently said he would dismiss the debt even though Nard won't let him.

"I'm still not sure about that story," Miss Devroy said. "My first reaction when I talked to Nard was that the guy is crazy." But she said that after researching Nard's complaints she concluded, "he didn't get a fair shake."

In the Gannett story, she explains that Nard's overbearing personality has led some investigators to dismiss his allegations as those of a crackpot.

In any event, DeConcini's interest in the case, like Hunter's, is less with Nard's contentions that he has been wronged than with the appearance of a flaw in the federal judiciary appeal process, which could provide ammunition to support a Judicial Tenure Act.

Hatch's interest comes from his feeling that Nard has been "seriously wronged." "I believe there has been perjury and subornation of perjury," Hatch said. "I believe Armour is at fault."

The senator revealed that he testified before the grand jury in Cedar Rapids, Iowa, being conducted by Democratic U.S. Attorney James Reynolds.

The Iowa probe centers on Nard's construction in 1968 of another plant for Armour there, which also ended up at issue in a trial. Nard admits he hopes to use anything turned up by the grand jury in a damage suit he plans against Armour.

Hatch said he told the jury about a conversation he had with the former U.S. attorney for Northern Iowa, Evan Hultman, in 1971. Hultman, according to Hatch, said then that there was "definite perjury in the two (Armour) trials."

As Nard is quick to point out, the grand jury will decide. So far, there has been no official action by the jurors.

While Nard's primary vocation seems to be getting even with those he feels wronged him, he still has to support his fairly lavish lifestyle with no visible income.

"I have no income," Nard said, "just a little bit from life insurance. I haven't paid income taxes in the last three or four years. I darned near starved to death. Orrin had to loan me his tithing money to eat." (Hatch is a bishop in the Mormon church.)

But behind the scenes there is a quiet benefactor for Nard's extensive travels, his opulent mansion in Sewickley Heights, his Cadillac and his pocketful of credit cards.

He is Herbert B. Frayer, head of the Roldiva Co. and longtime adviser to Mellon heiress Cordelia Scaife May.

Frayer and Roldiva have become the primary — perhaps the only — source of Nard's money.

Nard introduced himself to Frayer after first talking with Mellon heir Prosser Mellon and an aide about a business deal. It never went anywhere but, along the way, Nard mentioned that he had information on the death of Mrs. May's husband, former District Attorney Robert W. Duggan.

So Nard was sent to Frayer's office to discuss Duggan's death.

That was in January 1976. The death was never really discussed because, as it turned out, Nard has no more information on it than anybody on the street.

But Nard did have information on something that proved to be very interesting to Frayer — a new energy process called magnetohydrodynamics, MHD for short. It is a process that extracts electricity directly from burning fuel — either oil or coal — without having to produce steam to turn turbines.

Its development, and Nard's role therein, shows a side of the combative court fighter not many people see.

When Frayer, who works for one of the nation's wealthiest women, discovered that Nard knew incredible numbers of people, that led not only to Roldiva getting heavily into the MHD field but to at least two real estate deals as well.

Frayer found that Nard had access to the people in charge of companies that Frayer, even as Mrs. May's representative, did not. Frayer was flabbergasted.

"Jack Nard," Frayer says, "is 90 percent brilliant and 10 percent totally screwed up. And too often the 10 percent runs the rest of him."

To make a long story short, Nard knew two MHD experts then working at Westinghouse Electric. He introduced them to Frayer, who set about locating companies that make the equipment required by the process.

Nard knew the companies, too. The upshot is that Roldiva is heavily into the development of the process, controlling equipment companies, intending to retrofit a generating plant in Long Beach, Calif., and owning coal mining rights in Utah, Hatch's home state.

All thanks to Jack Nard.

In addition, Nard was a catalyst in a deal in which Mrs. May bought Sewickley Heights Estates and had a minor role in Mrs. May's purchase of the former Rockwell estate in Fayette County called the Nemacolin Inn.

The Sewickley Heights deal was one made in heaven. The developers of the upper-crust community had money problems and were about to sell out to another large-scale developer when Nard introduced them to Frayer. That was in 1977.

Frayer's boss, Mrs. May, is a conservationist. She purchased the developers' remaining 600 acres — including the golf course that Nard's house overlooks — for $1.2 million and, to residents' delight, applied for Green Belt designation for the land, indicating she intends to keep it undeveloped.

The purchase is especially significant for Nard. He was expelled a few years back from the Sewickley Heights Golf Club for non-payment of dues and vowed to someday buy the club and evict those who tossed him out. Today, reminded of that story, Nard grins and says: "I bought it, too, didn't I?"

While Nard's consultant relationship with Roldiva is his current meal ticket, it could lead to a lot more.

Frayer explains, "I told him, 'Jack Nard, you're entitled to something down the road, but until you get your act cleared up (a reference to his legal and debt problems), you'll have no authority here.'"

In the interim, however, Roldiva has loaned Nard about $100,000.

Frayer knew of Nard's interest in the Mollenhoff-Rushford project and, in fact, Mollenhoff visited Frayer once to request a $5,000 contribution. Frayer said no because the two foundations through which the money is funneled "are too liberal for us."

Nonetheless, Frayer was not surprised to learn that Nard gives some of the money he gets from Roldiva to the Mollenhoff-Rushford project.

No picture of Jack Nard would be complete without examining his roots and community standing.

Nard is the 11th of 12 children in an Italian immigrant family that settled in Norton, Va., a town of about 4,000 in the southwest corner of the state, about 20 miles from the Kentucky border.

Nard is fond of recalling the days when he cut bushels of wood to help bring in some cash. He still retains traces of that poor, backwoods Virginia heritage in his accent.

His parents, born in the Italian province of Calabria, settled in Norton at a time when immigrant Catholics were disdained by the white, Anglo-Saxon Protestants predominant in the area.

A relative of Nard's says the Ku Klux Klan once torched the family home and the Nardi family then dropped the "i" from its name in an effort to assimilate. Nard says it was because the paymaster for the railroad where his grandfather worked Anglicized the family name.

In any case, Nard came to Pittsburgh as a young man to study engineering at the University of Pittsburgh in the early 1950s. He chose Pittsburgh because an older sister and brother who settled here provided him with a home while he attended classes.

But he quit Pitt before graduating and married in 1951.

He at first worked for a flooring contractor but then became a partner in an Oldsmobile dealership in Ellwood City, Lawrence County. It went bankrupt in 1956.

It was during that partnership that Nard's financial tendency began to emerge.

As his sister-in-law, Ann Nard of the Northside, tells the story, her husband Tony died in an auto accident in 1954, leaving her with three young children to raise.

Tony was the brother who provided Jack with a home part of the time he attended Pitt. Before his death, Tony had lent Jack $8,000.

When Tony was killed, Ann Nard received a settlement from an insurance company as a result of the crash. Soon thereafter, the widow Nard heard from her brother-in-law Jack.

His auto dealership was in trouble and he needed cash in the bank to convince General Motors to deliver cars to him.

He told the widow he would only need the money for a short time. So she gave Nard $10,800 in addition to the $8,000 Tony had given him. Nard signed a promissory note for the money.

A patient woman, Mrs. Nard waited for her money 13 years before filing a lien in Allegheny County Common Pleas Court against her brother-in-law. She is still waiting for her $18,800.

She is in a long line.

Also on file in Common Pleas Court is a list of 33 other creditors. Their claims total more than $650,000.

Some of them are explainable. The big ones — for instance, a $193,707 claim — are owed to contractors who worked on his Sewickley Heights mansion.

Nard says he's not going to pay those debts until it's determined who owns the house, which is the subject of considerable litigation that began with the suit brought by Armour Co.

In the meantime, Nard has not paid taxes on the home, which was built in 1968. The taxmen will be the first to collect when the ownership problem is solved and the house is sold.

In school district taxes alone, Nard owes $24,234, says the Jordan Tax Service, which the Quaker Valley School District has hired to collect against Nard. Nard contends he once made a $5,000 payment on that amount but there is no record of it.

A partial accumulation of the other liens against the property include at least $7,829 for county taxes and $2,278 in taxes to Bell Acres Borough. Both figures do not include the accrued interest and penalty.

Nard explains that he did not pay those debts and taxes because the federal court ruled that he used Armour's money to pay for the house 10 years ago and his partnership returned that money under the judge's order, so how can he still owe money for it?

Other of Nard's debts are not so easily explained. On the debt to his sister-in-law, he says: "My brother gave me that money before he died. I'll give my sister-in-law that money and more to boot. She'll have plenty of money for her old age to take care of her."

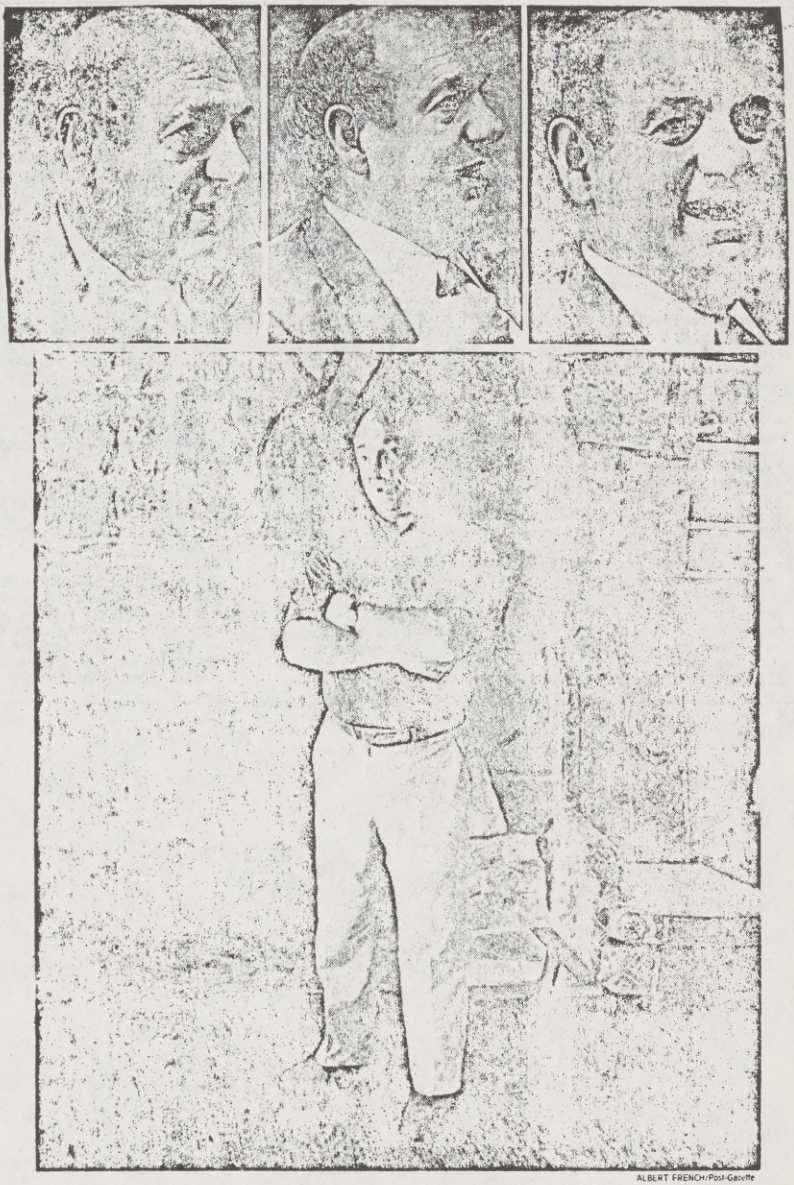
And then there are things like a debt to the exclusive Downtown tailoring firm of Berman Brothers, where Nard bought $1,100 worth of clothing in late 1968 and 1969, and a $1,790 debt to a dentist who treated Mrs. Nard in 1969.

In another case, Nard purchased a $452 motor bike for one of his five children in 1974. The check bounced, and dealer Robert Tracey sought a criminal indictment against Nard. Process servers could not locate Nard, however, and the case is now listed as inactive.

That's not his only bounced check. His nephew Mark, the son of Ann and Tony Nard, got married a few years ago. Jack Nard came to the wedding reception briefly and handed the happy couple a $200 check, which bounced several times before eventually clearing the bank.

Jack Nard is obviously a man with many sides. He's a man who claims poverty but lives in a mansion; a man who can convince powerful people and members of the news media that he is right and that dozens of respected judges and public officials are wrong; a man who pleaded guilty to income tax charges but maintains his innocence; a man who gets relatively little compensation for his scouting work for the Roldiva company but who could end up rich as a result of those efforts.

As Nard himself might drawl: "It's somethin' ain't it?"



ALBERT FRENCH/Post-Gazette

The many faces of John Nard: he claims poverty while standing in his mansion in Bell Acres Borough and maintains his innocence although he has pleaded guilty to income tax evasion charges.

Mollenhoff Blows Hot, Hotter

By ALBERT J. NERI
Post-Gazette Staff Writer

LEXINGTON, Va. — How does columnist Clark R. Mollenhoff treat his colleagues in the newspaper business?

In my case, the longtime Washington correspondent insisted I sign a statement before interviewing him.

I refused to sign it because it would have precluded questioning the columnist about his relationship with John A. Nard.

The statement read:

To whom it may concern: Mr. Clark R. Mollenhoff has agreed to talk with me on an off-the-record, confidential basis to assist me with an investigation of allegations of corruption and mismanagement in government and in the courts in Pennsylvania. Neither I, nor anyone else on the Pittsburgh Post-Gazette will breach the confidence of my conversations with Mr. Mollenhoff, nor will we quote Mr. Mollenhoff in any manner relative to his investigations or these conversations without first clearing those quotations with him in the context they will be used in print.

It is not my purpose to challenge or question the integrity or the motivations of Mr. Mollenhoff in investigating the court system for I am aware of his longtime record of more than 35 years of investigations of corruption in government, as well as his specific interest in corruption and mismanagement in the federal courts going back at least as far as the investigations of Sen. Estes Kefauver in 1950 and 1951. My only motivation, and the only motivation I have heard expressed by my editors and associates, is to get guidance and perception on evidence indicating mismanagement, corruption and obstruction of justice involving Pennsylvania political figures and others.

It is not my desire to follow up on corruption evidence in the judiciary in Wisconsin, Illinois, Indiana, Ohio, Texas, Alabama, New York, Arizona, California, Utah or any other state outside of Pennsylvania.

Signed and sworn to on May 3, 1979.

Mollenhoff had not told me about the statement in our two phone conversations prior to this meeting at Washington and Lee University here, where Mollenhoff is a professor of journalism.

Despite my refusal to sign and Mollenhoff's insistence that he would not talk otherwise, however, the columnist launched a stormy exchange that answered many of the questions I had intended to pose.

When asked why he has lobbied for Nard in the U.S. Senate and has generated publicity for his friend with the Gannett newspaper chain, Mollenhoff retorted: "My relationship with Nard is as a source. He's helping me go after crooked, corrupt judges."

The columnist was angry that the Post-Gazette was questioning his motives and became livid when asked why Nard contributes to one of Mollenhoff's reporting projects while deeply in debt.

"Since when is a reporter responsible for his source's financial standing?" he bellowed. "That has nothing to do with it. Nard's case stands on its own merits."

By this point, Mollenhoff, a huge man who was captain of his Drake University football team, was standing up, pounding his fist in anger.

He compared the Post-Gazette's inquiry to General Motors' investigation into the sex life of Ralph Nader, a consumer advocate and auto-industry adversary.

Mollenhoff then degraded me, questioning my credentials and journalistic education. At one point, he handed me a list of rules for reporting that he gives his journalism students.

Before I left, I asked one last question: Why hadn't I been told in advance about the form I would be asked to sign? Mollenhoff shot back: "I felt I was dealing with someone in good faith. Besides, I told your editor I wouldn't submit to an interview."

Nard Sues Post-Gazette, 2 Writers for Libel

John A. Nard, the subject of three articles in the Post-Gazette last month, has filed a libel suit against the newspaper and two of its reporters.

Named in the suit are staff writers Albert J. Neri and David Warner whose bylines appeared above two articles on Nard's business and personal activities published June 25 and 26.

In the lawsuit filed late Monday by his attorney, Stanley M. Stein, Nard of Bell Acres Borough charged that the articles contained "false, scandalous, malicious and defamatory statements" that hold him up to "odium, scorn and contempt among his neighbors, business acquaintances and other reputable citizens. . ."

The suit seeks an award for compensatory and punitive damages of at least $10,000. Nard specified two areas in his suit. The first was a statement in one article saying that "far from being wealthy, he (Nard) is deeply in debt." Nard contends the reporters knew otherwise. The second was a caption below a June 26 photo that Nard claims erroneously said he had "pleaded guilty to charges of income tax evasion."

In 1974, Nard pleaded guilty to two counts of failing to file an income tax return for the years 1967 and 1968 and "nolo contendere" to a tax evasion charge stemming from his 1968 tax return. Nard was fined $10,000 and given a three-year suspended prison sentence.

-POST-GAZETTE: Wed., July 4, 1979

July 1, 1977

COPY

Ms. Mary Jane Brittain
Assistant Secretary
Iowa Federal Judiciary Selection Commission
1101 Fleming Building
Des Moines, Iowa 50309

Dear Ms. Brittain:

As per your request in your letter of June 25, I enclose herewith my completed questionnaire for the position of United States Attorney for the Northern District of Iowa.

I plan, as indicated by you, to appear personally at 10:00 a.m. on July 7 for an interview with the Commission.

Sincerely yours,

EVAN L. HULTMAN

ELH:md
Enc.

QUESTIONNAIRE FOR UNITED STATES DISTRICT ATTORNEY

1. Give your full name.

   Evan LeRoy Hultman.

2. State both your office and home addresses:

   Office: 236 Post Office and Courthouse, Waterloo, Iowa
   (P. O. Box 86, Waterloo, Iowa 50704)
   Home: 525 Martin Road, Waterloo, Iowa 50701

3. Give the date and place of your birth.

   July 15, 1925 at Albia, Iowa.

4. Indicate your marital status; if married, the maiden name of your wife; and the names of your children, if any.

   Married 32 years, on October 14, 1976, to Betty Ann Hook.
   Children: Susan, Stevan, Heidi.

5. Indicate the periods of your military service, if any, including the dates, the branch in which you served and your ranke or rate.

   Entered Army in 1943 as a Private in the Infantry, and discharged in 1946 as Captain. Competitively selected from all platoon sergeants of the 42nd Rainbow Division to attend Infantry Officer Candidate School at Fort Benning, Georgia, graduated first in class of 147. Served as Infantry Company Commander in South Pacific Served as Battalion Commander and Judge Advocate General of the 103d Reserve Division; former Commanding Officer 450th Military Intelligence Strategic; served as the Reserve Assistant to the Judge Advocate General of the Army; presently Commanding General of the 103d Support Brigade. Graduated with honors on the Dean's list of the Army Command and General Staff College.

6. List each college and law school you attended, including the dates of attendance, the degree awarded, and your reason for leaving each school if no degree from that institution was awarded.

   Attended Iowa State University, Ames, Iowa, prior to entering Military Service in 1943. Upon return from overseas in 1946, entered State University of Iowa; B.A. Degree, with highest distinction in 1949, grade average 3.79 and awarded Phi Beta Kappa. Entered University

of Iowa Law School and graduated in 1952, Juris Doctor Degree, with distinction, ranked 9th in a graduating class of 83.

7. List all courts in which you are presently admitted to practice, including the date of admission in each case. Give the same information for administrative bodies having special admission requirements.

Iowa District Courts and Iowa Supreme Court, February 1952;
Northern District of Iowa, March 19, 1952;
Southern District of Iowa, 1961;
Eighth Circuit Court of Appeals, 1961; and
United States Supreme Court, March 23, 1961
United States Army Court of Military Review, January 19, 1976
United States Court of Customs and Patent Appeals, Mar. 18, 1977
Various Federal Administrative Agencies.

8. Are you actively engaged in the practice of law at the present time? If you are connected with a law firm, a corporate law department, or a governmental agency, please state its name and indicate the nature and duration of your relationship.

Yes, United States Attorney, Northern District of Iowa (Department of Justice); nominated by the President and confirmed by the United States Senate, and serve at the pleasure of the President. Will complete second four-year term of appointment on December 13, 1977.

9. If in the past you have practiced in other localities or have been connected with other law firms, corporate law departments or governmental agencies, please give the particulars, including the locations, the names of the firms, corporate law departments, or agencies and your relationship thereto, and the relevant dates. Indicate also any period in the past during which you practiced alone.

1952 - 1956, private practice
1957 - 1961, Black Hawk County Attorney
1961 - 1965, Attorney General of Iowa
1965 - 1969, private practice
1969 - present, United States Attorney

In these capacities, I have been associated with approximately 40 lawyers. I was associated with Attorneys William P. Evans and Charles F Hinton at the time of my appointment to the office of United States Attorney, in the private practice under the firm name of Evans, Hultman and Hinton, 612 Mulberry, Waterloo, Iowa.

10. Have you ever been engaged in any occupation, business or profession other than the practice of law? If so, please give the details, including dates.

No.

11. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprise, please give details, including the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If it is not your intention to resign such positions and give up any other participation in the management of any of the foregoing enterprises, please state, giving reasons.

To the best of my knowledge, I hold no such positions.

12. If you receive any compensation other than reimbursement for expenses as an officer, director, or trustee of any nonprofit organization or institution or for other management thereof, please give details, including the name of the enterprise, the nature of the business, the title of your position, the nature of your duties and the term of your service. If it is not your intention to resign such positions and give up any other participation in the management of any of the foregoing enterprises, please so state, giving reasons.

None to my knowledge. I would resign if there were any.

13. Have you ever held office as a public prosecutor, or have you ever been a candidate for such an office? If so, give the details, including the offices involved, whether elected or appointed, and the length of your service.

Trial Judge Advocate on active duty - 2½ years
Black Hawk County Attorney, elected and served two terms - 4 years
Attorney General of Iowa, elected and served two terms - 4 years
United States Attorney, appointed, 1969 to present - 8 years.

14. Have you ever held public office other than as a public prosecutor or have you ever been a candidate for such an office? If so, give the details, including the offices involved, whether elected or appointed, and the length of your service.

Won party primary election for governor in 1964, but was defeated in the general election.

15. Have you ever been arrested, charged, or held by federal, state, or other law-enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of $25.00 or less was imposed.

No.

16. Have you ever been sued by a client? If so, please give particulars.

No.

17. Have you ever been a party or otherwise involved in any other legal proceedings? If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stakeholder. Include all legal proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or a co-respondent, and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness.

The only instance to my knowledge was a State District Court case in Sioux City, where I was the principal witness in a civil suit for damages. While serving as Attorney General, I was driving on Highway 30 in the vicinity of Marshalltown and came upon a multiple-death car accident where I took charge of the accident scene, gave first aid, and artificial respiration to victims until Highway Patrol and ambulances arrived. I then assisted the Patrol.

18. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, please give the particulars.

No.

19. a) What is the present state of your health?

Excellent.

b) If you have ever been hospitalized or prevented from working due to injury or illness or otherwise incapacitated for a period in excess of ten days, please give the particulars, including the causes, the dates, the places of confinement, and the present status of the conditions which caused the confinement or incapacitation.

Have not been hospitalized or incapacitated for such a period.

c) Do you suffer from any impairment of eyesight or hearing or any other physical handicap? If so, please give details?

No.

20. Have you published any legal books or articles? If so, please list them, giving the citations and dates. If not, you may submit a brief, decree or other legal writing.

"Eminent Domain in Iowa," 1961
"Report of Attorney General of Iowa," 1962 and 1964
Assisted American Law Reports Annotated, third series, in the preparation of the annotation on: "The Power of Court to Make or Permit Amendment of Indictment with Respect to Criminal Intent or Scienter." This annotation begins at page 1093 of 16 ALR3d.
United States Attorney Manual, Tax Division, 1977.

21. List any honors, prizes, awards, or other forms of recognition which you have received.

Phi Beta Kappa; Phi Eta Sigma; National Scholastic Honoraries; Delta Sigma Rho, National Speech Honorary; Omicron Delta Kappa, National Leadership Honorary; recipient of the Big-10 Conference Medal for Scholarship and Athletics; received outstanding Vice-President Award by Iowa Junior Chamber of Commerce in 1957; recipient of Distinguished Service Award, Waterloo Jaycees, 1957 and 1959; honored as Waterloo's Young Man of the Year; twice elected member of the Executive Committee, United States Attorneys General Association; Hall of Fame member - East Waterloo High School; elected president of

three councils, Boy Scouts of America; twice appointed Heart Fund Chairman for the State of Iowa, 1968 and 1969 (Volunteers under his leadership raised almost one million dollars.); Citizen Chairman for successful promotion of a multi-million dollar local school bond issue which had previously failed; honored with Boy Scouts of America Silver Beaver Award (1969) and Silver Antelope Award (1977).

22. List all bar associations and professional societies of which you are a member and give the titles and dates of any offices which you have held in such groups. List also chairmanships of any committees in bar associations and professional societies, and memberships on any committees which you believe to be of particular significance (e.g., judicial selection committee, professional ethics and conduct committee, grievance committee).

a) Recently elected nationwide chairman of the twenty-two National Circuit Vice-presidents of the Federal Bar Association

b) National Vice-president, Federal Bar Association, 1975 to present

c) State President, Federal Bar Association, 1974

d) Vice-chairman for Legal Orientation of American Citizenship Committee, Iowa State Bar Association, 1973 to present

e) Executive Committee, U. S Attorney General Association, 1961-1964

f) General Legal Counsel, United States Junior Chamber of Commerce, 1957-1960

g) Member of State Judicial Selection Committee for Supreme Court Justices of the State of Iowa, 1962-1963

h) Member of National Ethics Committee, Federal Bar Association, 1976 to present

i) Member of American Bar Association

j) Member of National Association of Judge Advocates

k) Member of Iowa Trial Lawyers Association

1) Selected by the Department of Justice to appear on its behalf on June 27, 1977 at the Judicial Center in Washington, D. C., before the Speedy Trial Committee appointed by Chief Justice Warren E. Burger

m) Special Prosecutor, Department of Justice.

23. What is the general character of your practice? Indicate the character of your typical clients and mention any legal specialities which you possess. If the nature of your practice has been substantially different at any time in the past, give the details, including the character of such and the periods involved.

Civil and Criminal Trial Practice representing the United States.

My primary interest and experience is that of working up evidence and briefing law in preparation for trial, researching, drafting and arguing appropriate motions, trial of the case, and preparing briefs and arguments, and presenting oral argument in the event the case is appealed.

24. a) Do you regularly appear in court?

Yes.

b) What percentage of your appearance up to the last five years was in:

1) federal courts?

80%

2) state courts of record?

10%

3) other courts?

10%

c) What percentage of your litigation up to the last five years was in:

1) civil?

35%

2) criminal?

65%

d) What percentage of your trials up to the last five years was:

1) jury?

90%

2) non-jury?

10%

e) State the number of cases you have tried to conclusion in courts of record during each of the years up to the past five years, indicating whether you were sole, associate, or chief counsel.

Fiscal 77 -	approximately 9*	Chief or sole counsel
76	14	" " " "
75	23	" " " "
74	11	" " " "
73	26	" " " "

*Two jury trials were extended cases of approximately three months trial and preparation time in each case.

f) Describe the more significant litigated matters which you have handled as a practicing lawyer or prosecutor and give the citations if the cases were reported.

State of Iowa v. McLaughlin
94 N.W.2d 303 (1959)

The defendant had been found guilty of manslaughter for driving his vehicle in a reckless manner. Upon appeal, the Supreme Court held that the prosecution's evidence was sufficient for submission of the case to the jury. The Court further ruled that even though the case was given wide coverage by the news media, the defendant's right to a fair trial had been protected by the trial court's instructions.

State of Iowa v. Bowers
101 N.W. 2d 535 (1960)

The defendant had been convicted of illegal possession of narcotics, in violation of Sections 204.2 and 204.22 of the 1958 Code of Iowa. The Supreme Court reviewed the case, and finding that the clerk's transcript of record disclosed no error, the conviction was affirmed.

A synopsis of this case is found in the Annotations to Section 204.2, I.C.A.

Smith v. Bennett
365 U.S. 708 (1960)

Section 606.15, Iowa Code Annotated, provided that a District Court Clerk was to charge four dollars for filing and docketing a petition. Section 685.3, Iowa Code Annotated required that the Clerk collect three dollars for each appeal filed. The question before the Supreme Court was whether a state could require that statutory filing fees be paid before the indigent's application for writ of habeas corpus or the allowance of an appeal would be docketed. The Court commended the state for its "commendable frankness," but held that these statutes denied the indigent the right to equal protection of the laws.

State of Iowa v. Kulow
123 N.W.2d 872 (1963);
16 A L.R.3d 1085 (1963)

The defendant was charged with false uttering of a bank check. On the day before the trial, the Court permitted the words, "with fraudulent intent" and "in violation of" to be added to the complaint. The defendant was convicted; and, on appeal, the Supreme Court ruled that the original indictment was sufficient and that the amendments had been surplusage which did not harm the defendant. However, the Court held that reversible error had been committed with regard to certain instructions.

The opinion in this case is reproduced at 16 A.L.R.3d 1085 (1963) as an introduction to the annotation "Power of Court to make or permit amendment of indictment with respect to allegations as to criminal intent or scienter."

Davis v. Synhorst
217 F.Supp. 492 (S.D Iowa 1963);
225 F Supp. 689 (S.D. Iowa 1964);
231 F.Supp. 540 (S.D. Iowa 1964).

This case involved a class action suit brought by Iowa residents attacking the apportionment of the State Legislature. In 217 F Supp. 492, a three-judge court ruled that Iowa's apportionment was discriminatory but withheld final adjudication until the electorate had passed upon a proposed constitutional amendment. Next, in 225 F.Supp. 689, the three-judge court held that certain constitutional amendments were invalid but that previously repealed constitutional provisions were not revived. Jurisdiction was reserved by the court. Finally, at 231 F Supp. 540 (1964) the three-judge court approved an interim plan of apportionment enacted by the 60th General Assembly of Iowa.

United States v. Kimball
437 F.2d 921 (8th Cir. 1971)

In the trial court the defendant had been found guilty of interstate transportation of a stolen motor vehicle in violation of Section 2312, Title 18, United States Code. In his appeal, he alleged that the trial court had abused its discretion in denying his pretrial motion for a continuance and that the trial court had erred in denying his motion to suppress certain evidence. The Court of Appeals ruled that both of these allegations were meritless and affirmed the judgment of the District Court.

United States v. Harold William Bartlett Radl
(Harold William Bartlett Radl v. Local Selective Service Board)
No. 20,616 (8th Cir. 1971)

Harold Radl petitioned the United States District Court for an injunction and other declaratory relief to prevent the Local Selective Service Board from ordering him to report for civilian work, in lieu of military induction at Denver General Hospital. The United States District Court for the Northern District of Iowa dismissed the plaintiff's petition, and the plaintiff appealed to the United States Court of Appeals, on the grounds that the Local Draft Board violated its legislative mandate by requiring a conscientious objector to serve in a civilian capacity outside of his home community without first finding that such service was in the national interest. The Government answered this by summarizing the law and the legislative intent of Congress in denying preinduction judicial review. In an unusual order from the bench, the Court of Appeals affirmed the lower court's decision and denied the plaintiff's request for preinduction judicial review.

United States v. Davis
434 F.2d 1108 (8th Cir. 1970)

The defendant had been convicted of transportation in interstate commerce of a forged money order, in violation of Sections 2 and 2314, Title 18, United States Code. The appellant alleged that the venue was improper and that the Government's evidence was insufficient to warrant the jury's returning a guilty verdict. Both of these contentions being without merit, the Court of Appeals upheld the trial court's judgment.

United States v. Eugene M. Brown
No. 70-Cr-4-CR, Northern District of Iowa

The defendant, Eugene M. Brown, was prosecuted for tax evasion. The pleadings were voluminous, including numerous motions filed in District Court; and several applications were made to the Court of Appeals and the United States Supreme Court. After a complex jury trial, the defendant was convicted on all counts.

United States v. Marvin Kent Knudson, et al
No. 70-Cr-3017-W, Northern District of Iowa

This case involved fraud against the United States. The defendants were charged with fraudulently selling low grade meat to the United States Army. Multiple law firms and the noted lawyer, F Lee Bailey, represented the defendants. The Department of Defense and the Department of Justice records disclose that this was the first successful prosecution of this type of case in the United States since 1962 despite numerous complaints of a similar nature.

U. S. v. Doolin, et al
72-Cr-15-CR, Northern District of Iowa

The defendants were charged with the murder of Deputy U. S. Marshal Dick McKinney, after having first robbed him, as he was on duty in Cedar Rapids, Iowa. Judge McManus withdrew from the case and a change of venue was also granted to Sioux City, where three of the four male defendants (one is still at large) were tried. The jury was dismissed after two days and the defendants, including the female defendant, ultimately pled guilty to murder and were sentenced under the Youth Corrections Act.

Gerberding v. U. S.
471 F.2d 55 (1973)

This was a unique case in which two appeals were before the Eighth Circuit at the same time involving an alleged denial of a Section 2255 motion to vacate sentence and the second to set aside the original judgment of conviction on numerous statutory and constitutional grounds. The District Court ruling concerning sentencing which was adverse to the Government was remanded for resentencing as the Government had contended should be done. The judgment of conviction was affirmed.

U S v. Iowa
Civ. No. C75-42, Northern District of Iowa

The United States, on behalf of itself and the Sac and Fox Tribe of the Mississippi in Iowa, asked for judgment determining that the Sac and Fox Tribe own and might exercise the treaty-protected rights to hunt, fish and trap within the exterior boundaries of the Tama Indian Settlement and that the State of Iowa does not have the right to control or regulate those activities by members of the tribe.

In a companion case filed by the Tribe, plaintiff asked for attorney's fees under the Civil Rights Attorney's Fees Awards Act of 1976.

The finding by the court for defendant, the State of Iowa, is being appealed to the Eighth Circuit.

U. S. v. Walsh, et al ("Dubuque 15")
CR 75-1006-1020, Northern District of Iowa

Complaints were filed on April 15, 1975, against fifteen members of the Sheriff's Posse Comitatus, a national taxpayers' protest group, which were successfully prosecuted over the following two-month period. Six individual cases tried by jury resulted in guilty verdicts and the other nine cases all resulted in guilty pleas. All defendants were charged with violation of Section 7205, Title 26, United States Code, for supplying false and fraudulent information concerning their federal withholding statements. In a number of instances, they were claiming as many as fifty exemptions to avoid the payment of federal income tax. The six defendants tried by jury all were sentenced to prison terms and fines.

The successful prosecution of these fifteen cases had a significant impact on blunting the expansion of the nationwide tax-protest movement and served as a forceful deterrent to thousands of sympathetic federal income tax protesters. In one specific instance, hundreds of prospective protesters were deterred from filing false and fraudulent income tax exemption forms.

U. S. v. Richard Edward Berzinski
529 F.2d 590 (8th Cir. 1976)

Defendant was charged and convicted, after jury trial, of willful income tax evasion for the years 1968 through 1971, under 26 U S.C , Sec. 7201, and sentenced to imprisonment for two years, with all but five months suspended, placed on probation for three years and fined $2,500.

Defendant, though he admitted a substantial under-reporting of income, appealed on the basis that (1) the evidence was insufficient to support a finding of the requisite intent to violate the law, (2) the district court erred in instructing on intent and (3) the trial court erred in restricting the scope of cross-examination. The Appellate Court affirmed the action of the district court.

The term of imprisonment for a "white collar" crime served to act as a deterrent, when given coverage in the media, to others with like inclinations.

U. S. v. Butler and Robideau
No. CR 76-11, Northern District of Iowa

This case, transferred to Cedar Rapids on a change of venue from South Dakota, was for the murder of two special agents of the FBI in June, 1975. The defendants, members of AIM, were represented, amongst others, by John C. Lowe of Charlottesville, Virginia, and William Kunstler of New York City. The trial itself extended over five and a half weeks and the jury after being out almost three full days and twice indicating to the judge that they were hopelessly deadlocked, but being instructed by him to continue deliberating, found both defendants not guilty.

U. S. v. Peltier
C77-3003-01, District of North Dakota

This case, transferred to North Dakota from South Dakota on change of venue, at the request of defendant Peltier after he strenuously and unsuccessfully fought extradition from Canada on charge of murder of the same two special agents of the FBI who were the victims in the Butler-Robideau case, resulted in his conviction by jury and sentencing on June 1, 1977 to two consecutive life sentences.

Because of the importance of this murder case, I was requested by both the Department of Justice and the FBI to be the chief prosecutor thereof, even though it was in a distant district from my own, in spite of the acquittal of defendant Peltier's companions, Butler and Robideau.

Defense counsel has indicated that an appeal will be taken.

g) State in detail your experience in adversay proceedings before administrative boards or commissions during up to the last five years.

As the United States Attorney, I am often called to pursue varied legal matters for the United States before many varied federal and state administrative bodies.

25. a) Summarize your experience in court up to the last five years. If during any prior period you appeared in court with greater frequency than during the last five years, indicate the periods during which this was so and give for such prior periods the same data which was requested in question # 24.

From 1952 through 1956 I was actively engaged in general practice and tried a number of civil-plaintiff and criminal-defense cases.

From 1957 through 1960, I served as Black Hawk County Attorney and tried numerous important criminal cases as would regularly arise in the fourth most populous county in Iowa; personally represented the Board of Supervisors and all county officers. I researched, wrote, and defended county attorneys opinions, participated in criminal appeals and secured reversal of a district court ruling in an evidentiary matter of statewide importance to all prosecuting attorneys.

From 1961 through 1965, I personally wrote many significant Attorneys' General opinions, none of which to my knowledge, have been later reversed in the courts. This is not to conclude that these opinions were sage, but only to indicate they were the result of careful research and diligent effort.

In 1965, I began the practice of law once again at the very bottom as a private practitioner. I had lost most of my clientele after being completely out of the private practice for four years in the office of the Attorney General. I had some fine opportunities to leave the practice of law but chose to pick up the pieces after a disastrous political campaign for the office of Governor because of my interest in the field of law.

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In 1969 I was offered the opportunity to broaden my experience in the federal courts as the attorney for the United States. It was for this reason primarily that I accepted this challenge. Since August of 1969, I have personally been responsible for all civil and criminal matters wherein the United States is a party plaintiff or defendant, in the Northern District of Iowa. The type and nature of cases run the complete civil and criminal gamut.

b) Summarize your experience in adversary proceedings before administrative boards or commissions prior to the last five years.

I have personally appeared before most of the state administrative boards or commissions of the State of Iowa, and some federal agencies. My service as the Attorney General of Iowa and United States Attorney, as well as a reserve Judge Advocate General in the military, has afforded me unusual opportunities in the area of administrative law.

c) Summarize your experience in such matters as law office management, general office administration, personnel matters, solicitation and termination of employees or assistants, etc.

As a military commander, private practitioner, County Attorney, State Attorney General and United States Attorney, I have had a broad experience in organizing staffs and then giving guidance and supervision to them in their day-to-day operations.

26. State any other information which you regard as pertinent.

Three significant matters of service as United States Attorney at the Department of Justice level have meant much to me personally. First of all, I served as an advisor to Attorney General Levi and during his tenure completed the tax portion of the new United States Attorneys' Manual. I have been asked by Attorney General Bell to continue serving on this advisory committee. Secondly, all the members of the staff received "outstanding performance" awards during one year. To my knowledge, no other U. S. Attorney's office has been so recognized. Lastly, I have received a number of special case assignments for the

Department of Justice such as the first National Environmental Protection Act (NEPA) negative declaration case and the FBI murder cases. These cases and others similarly assigned to me have been of precedent and high impact to the United States Department of Justice.

One of the most rewarding legal experiences I have had was during 1963 when Attorney General Robert Kennedy requested me to advise him personally and write significant sections of the original Civil Rights Act which was subsequently enacted by Congress.

As an active member of the Judge Advocate General Corps, I have continued my legal education in military law. I am a graduate of the JAG Career Course and a graduate of the Army Command and General Staff Course at Fort Leavenworth, where my academic rating placed me on the Commandant's list. For the past seventeen years, I have served as an instructor in various law courses, and in 1969 was selected as one of thirty-two military lawyers to attend the first Military Labor Law Course at the University of Virginia.

In 1968 I was selected to defend a murder case in Jhe Sahn Viet Nam as a civilian counsel. Trial preparation over a number of months resulted in a reduced charge of manslaughter and a successful conclusion of the case.

27. Will you agree to serve a minimum of twenty-four months if appointed to this post?

I agree to so serve if appointed.

Office of the Attorney General
Washington, D. C. 20530

May 11, 1977

Mr. Evan L. Hultman
United States Attorney
Sioux City, Iowa

Dear Mr. Hultman:

The Director of the Federal Bureau of Investigation and others have informed me of the outstanding work which you did in the recent prosecution of Leonard Peltier who was convicted of the first degree murders of FBI Special Agents Jack R. Coler and Ronald A. Williams. I appreciate this fine example of your work and commend you for the high degree of professionalism displayed by you and your staff.

Yours sincerely,

Griffin Bell

Griffin B. Bell
Attorney General

Assistant Attorney General
Criminal Division

Department of Justice
Washington 20530

April 25, 1977

Honorable Evan L. Hultman
United States Attorney
Northern District of Iowa
Sioux City, Iowa

Dear Mr. Hultman:

I wish to express my deep gratitude to you and your colleagues for the highly professional manner in which you prosecuted the case of United States v. Leonard Peltier. This case demanded both determination and discretion and you were more than equal to the task. It is reassuring to know that we can call upon such dedicated and able members of the Department to discharge such difficult duties.

I particularly appreciate the personal sacrifice you made in undertaking this lengthy prosecution away from your own district, and I extend my thanks to your family for their indulgence.

Very truly yours,

Benjamin R. Civiletti
Assistant Attorney General
Criminal Division

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

April 29, 1977

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U. S. ATTORNEY
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Honorable Evan L. Hultman
United States Attorney
Northern District of Iowa
Court House Building
Post Office Box 1138
Sioux City, Iowa 51102

Dear Mr. Hultman:

On behalf of my colleagues in the FBI, I wish to congratulate you and your staff, Messrs. Robert Sikma, Lynn Crooks, Richard Vosepka, Dale Danneman, and Bruce Boyd, for the successful prosecution in U. S. District Court, Fargo, North Dakota, of Leonard Peltier for the first-degree murders of FBI Special Agents Jack R. Coler and Ronald A. Williams.

The killing of these two Special Agents of the FBI while on official duty in the Indian country on June 26, 1975, were heinous crimes which brought much sorrow and grief to the FBI and members of their families. From the outset of the FBI's investigation, our dedicated employees were on a mission to see that justice was done. I am aware of the close cooperation between you as Special Prosecutor and your staff, attorneys in the U. S. Department of Justice, and Special Agents of the FBI, which culminated in the successful prosecution of Leonard Peltier.

This complex major case involving hundreds of suspects and thousands of items of evidence presented to the investigators and prosecutors a tremendous challenge which ultimately had to be resolved in U. S. District Court. Your perseverance and driving energy as Special Prosecutor insured the ends of justice were met.

Honorable Evan L. Hultman

I personally want to thank you and your staff for the outstanding professional competency afforded this historical case. A copy of this letter is being forwarded to Attorney General Griffin B. Bell to inform him of the excellent results attained in the interest of justice.

Sincerely yours,

Clarence M. Kelley
Director

The Attorney General's Advisory Committee of United States Attorneys has elected its new officers for 1977, Attorney General Griffin Bell announced today.

Victor R. Ortega, U. S. Attorney for the District of New Mexico (Albuquerque), was elected Chairman, Robert B. Fiske, Jr., U.S. Attorney for the Southern District of New York (New York), was elected Vice Chairman, and John E. Clark, U.S. Attorney for the Western District of Texas (San Antonio), was elected Secretary.

Mr. Bell said that the Advisory Committee was formed in September, 1973, to give the United States Attorneys a voice in Departmental policies.

In advising the Attorney General, the Committee conducts studies and makes recommendations with regard to improving management, specifically with respect to relationship between the Department and the United States Attorneys.

The Committee also works to improve liaison with the State Attorneys General for better understanding of a proper sharing of law enforcement responsibilities by state and Federal law enforcement agencies, and to promote better consistency in the application of legal standards across the country and across the levels of government.

Mr. Bell said that the Committee assists, on a continuing basis, in formulating new programs for improvement of the criminal justice system at all levels, including legislation and court rules.

The Advisory Committee meets periodically during the year and has established sub-committees to deal with allocation of resources and case responsibilities, Department of Justice field offices operations, Indian affairs, investigative agencies, legislation and court rules, and professional proficiency and communications.

Mr. Bell reported that the other U.S. Attorneys serving on the Attorney General's Advisory Committee are:

Charles H. Anderson, Middle Tennessee (Nashville)
Lincoln C. Almond, Rhode Island (Providence)
Frederick M. Coleman, Northern Ohio (Cleveland)
Ira DeMent, Middle Alabama (Montgomery)
Evan L. Hultman, Northern Iowa (Waterloo)
Bert C. Hurn, Western Missouri (Kansas City)
H. M. Ray, Northern Mississippi (Oxford)
Robert G. Renner, Minnesota (Minneapolis)
Earl J. Silbert, District of Columbia (Washington)
Samuel K. Skinner, Northern Illinois (Chicago)
Dean C. Smith, Eastern Washington (Spokane)
William C. Smitherman, Arizona (Tuscon).

Would you please give us a little background, Mr. Hultman, on your occupation, where you are currently employed, during what period of time you were the U.S. attorney, and where that was?

Mr. HULTMAN. Yes.

I have been practicing law for—it will be 29 years in February, of which 16-plus of those years have been representing at the local level, at the State level, and at the Federal level in the Department of Justice. I have been a prosecutor 16-plus years of that practice.

The rest of that practice has been, as at the present time, as a private practitioner in small law firms. My practice has been some criminal defense work, but primarily civil damage cases as a referral trial lawyer from other firms.

I served as a local prosecutor from 1956 to 1960. I served as the attorney general two terms from 1960 to 1964. In 1969 I was appointed U.S. attorney and reappointed again by President Ford. Then I served as a special prosecutor to complete the Wounded Knee FBI murder cases after Mr. Reynolds succeeded me. That was a very complex and lengthy case, and the Department felt that I should continue that case to its final fruition.

Since that time, in 1978, I have been back in the private practice of law.

Senator DECONCINI. When did you first have contact with Mr. Jack Nard? Can you give us the circumstances?

Mr. HULTMAN. Let me preface my remarks by saying we are going back on events that are almost 10 years ago. Therefore, I want you to know that my responses will be to the very best of my recollection. This was only one case in many, many cases that I handled during the period of time. It has no special significance other than the nature of the case, which I would indicate at the outset in response to your question.

Sometime in 1971 or 1972—and, again, I can't tell you the exact time, but it would have been after Jack Nard completed his case, the trial, in Sioux City, Iowa; it would be it in that context—John Nard came to the Office of the U.S. attorney and there made an allegation that a specific witness had committed perjury in the course of that civil trial. That was his allegation; that was his accusation; and that was the sum total of it. It went on farther than that one single accusation.

As a U.S. attorney when a party comes with a complaint, you have a responsibility. Therefore, I pursued it further.

However, at the very beginning—and I think this is something that should be noted—it is a case which has a uniqueness different from any other case, frankly, of the hundreds, maybe even thousands, of criminal cases that I have prosecuted and investigated before grand juries. It is a complaint growing out of testimony in a civil case. That puts a prosecutor right away in a very touchy walking-a-tightrope-type situation.

A prosecutor—and I have done my very level best through the years to make certain this doesn't happen—should never use the power of the office, and especially of the U.S. attorney with the power of subpena and grand jury, to in any way allow those processes to be used by a civil litigant to pursue whatever he wishes to pursue in terms of his civil litigation.

Therefore, immediately the Office of U.S. Attorney was faced with this first basic problem. That gave me concern. That influenced from that point on the actions that I took and the manner, in large degree, in which I proceeded.

That, of course, is altogether different from a situation where you have an alleged crime or an allegation out here that has nothing to do with a civil case and there has been no civil proceedings, and so forth.

The second thing was the uniqueness of the fact that the allegation and the accusation is that is it an act of perjury of testimony in that specific case, which is a very narrow issue which involved much legal as well as factual.

Beginning with those two, what you might call, parameters or ground rules, I went ahead and proceeded.

One thing I should also make clear pursuant to your opening statement is this: Grand juries in Iowa are a process where a single case is not brought before them, as is the case in a number of jurisdictions. A grand jury is in session and the U.S. attorney brings before them, or his assistants do, whatever comes up during that period of time. This is because it is a rural area, very spread out, grand jurors come from great distances, witnesses have to come from great distances, and so forth.

What transpired was that, before we could really get into any depth on it, that grand jury ran out. As a result, the matter was presented to the next subsequent grand jury, which comes on again to hear whatever cases come on before that grand jury.

In the course of those proceedings it came to a conclusion on the part—and I'm not going to go into testimony here. I want to make that very clear because I think that would be a violation of the oath of the U.S. attorney and the proceedings that take place there.

Senator DeConcini. We are not asking you to do so. What I would like you to address, if you can, in some detail for the committee is the efforts you took to investigate the allegations of Mr. Nard, including but not limited to the convening of the grand jury.

Mr. Hultman. Yes.

Because of the issue itself, as I say, being that of perjury, I made a very careful analysis of the transcripts and the analysis of the testimony and as Mr. Nard projected it to us, and what his complaint was.

The grand jury concluded that they did not feel that there was a violation of the Federal statute of perjury. We had trouble ourselves on the staff. In fact, what I would call on a small staff my "legal expert," he looked at the legal aspect of it very carefully and he came to that conclusion also.

Senator DeConcini. Is that Mr. Kirshen?

Mr. Hultman. No, not Mr. Kirshen. Mr. Dan—I'll think of his name as we go along here in a moment.

Senator DeConcini. Mr. Sikma?

Mr. Hultman. No; he is the first assistant who handled part of it. I will think of his name in a moment.

This was his only participation in it, to look at a legal issue.

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We concluded that on the legal side of the house—at least it was his feeling—that where you were dealing with an expert and his testimony as an expert, giving a judgment or a conclusion, that you are in a very much different position than you are where somebody is basically in a normal perjury situation testifying to an item of fact or an event and all the ramifications that go with that in terms of its being a material fact and knowing under oath, and so forth.

Senator DeConcini. Mr. Hultman, did you and your legal expert then decide that it was sufficient to take to the grand jury?

Mr. Hultman. Yes; we took it to the grand jury. This was in the process of the analysis itself that I am telling you.

When, in effect, the grand jury did not bring an indictment on this particular professional witness, very frankly, I felt in the early stages that my preliminary analysis was that it was at a level that in my original judgment I felt that perjury had been committed. That is my own personal evaluation as a prosecutor in the early stage.

Senator DeConcini. Did you present that to the grand jury yourself?

Mr. Hultman. That was presented to the grand jury; that is correct.

Senator DeConcini. By you or Mr. Kirshen? Do you recall?

Mr. Hultman. I cannot recall whether or not by each of us individually or both of us.

Senator DeConcini. In any event, to summarize that part of it, you made a decision as the prosecuting attorney that in your judgment there was a good possibility of perjury and you wanted the grand jury to look at it?

Mr. Hultman. Absolutely. We presented everything that we could pull together and everything that Mr. Nard had in terms of presenting anything by way of any information to them.

Now even though the grand jury took the action that it did, I still felt that the allegation was serious enough and there was enough evidence that it should not be just left there. Again, that is something that was troublesome to me at the time because a grand jury has made a determination, but still in my mind it was to a level that something serious in terms of his testimony had happened and, if it didn't rise to the level of perjury, it certainly was something beyond sound testimony or fair testimony.

Therefore, I assisted Mr. Nard at that time in presenting that material, in getting it arranged, and so forth, before a State examiner—and I don't remember the exact name of the committee—before a State agency. I was familiar with that agency as a former attorney general of the State of Iowa.

Senator DeConcini. Would that be the Iowa State Board of Engineering Examiners?

Mr. Hultman. That would be correct, sir.

As a result of that, they did take some action and did make some findings that were adverse to the witness and, in effect, were in favor of John Nard.

Now at this point I would like to interject one other item because, again, this continues from day 1, from the day John Nard came into the U.S. attorney's office, from that day forward. It became very obvious to me—and I'm not critical when I say this because

a person with their cause is going to pursue it, rightfully, as hard as they can—but it became very obious to me that Mr. Nard was using the U.S. attorney's office to secure any type of advantage that he could that would be available to him in his civil case which had been the basis for coming to me.

Interestingly, during this whole period of time John Nard never ever mentioned to me anything about a case in Pittsburgh. I had absolutely no knowledge. In fact, on a number of occasions I continued to visit with him on the basis of what this problem was—that as a prosecutor I was not at liberty to divulge in any way to him what testimony was coming to me or what testimony beyond what he, himself, was presenting. Again, to me this would have been a very clear violation of professional oath.

As I say, I understood what his goals were and what he was seeking, and I had no quarrel with those. I understood them. However, it made it very difficult. That is the point I'm trying to make.

Senator DeConcini. I understand.

Mr. Hultman. It made it very difficult.

Senator DeConcini. Did you ever investigate the events taking place in Pennsylvania?

Mr. Hultman. All right. Now that is the next thing I would like to discuss.

In your statement that you read—I know of no authorization, I never sought any authorization, and I had no reason to seek any authorization to investigate the matters in Pittsburgh. In fact, I made that very clear to John Nard once I learned——

Senator DeConcini. Did he ask you to investigate the matter?

Mr. Hultman. Yes; he certainly did. In fact, he not only asked, but he would press at every level to continue to try to get you involved in any way and in every way in terms of events that had taken place in Pittsburgh.

Senator DeConcini. Can you give me a for instance?

Mr. Hultman. Yes. For example, he would have newsmen constantly call that he had briefed and to whom he had given his side of the story. He had his counsel, which continually changed. It seemed like every time I turned around I had a new counsel with whom I was dealing.

I had difficulty with John Nard from that standpoint because he didn't want you to deal with counsel. He was constantly dealing with you. I mean, he would show up. He would make the phone calls. He would present everything.

The answer is that he continually tried—and I tried to make it very clear to him that only to the extent that items in terms of the allegations of perjury with reference to the Sioux City trial, and where they might intermesh or the factual problems come together, naturally you would pursue those. They would be a normal outgrowth. He constantly was trying to get me involved in all kinds of motions, all kinds of procedures——

Senator DeConcini. When did he first mention Pennsylvania?

Mr. Hultman. It would be sometime during the second grand jury. I would have no way of trying to give you a time or a date.

Senator DeConcini. During the first grand jury you had no knowledge about that from him?

Mr. HULTMAN. Absolutely none whatsoever.

Senator DECONCINI. It was sometime during the second grand jury, which was in our records sometime in March 1973, that he mentioned the Pennsylvania case?

Mr. HULTMAN. In the 1973–74 timeframe is when we get into that.

Senator DECONCINI. Going back just a minute, when did you first assign Mr. Kirshen? Do you remember?

Mr. HULTMAN. Again, I can only give you a sequence.

Senator DECONCINI. That is all that is necessary.

Mr. HULTMAN. One, I had a first assistant named Robert Sikma look at matters in the beginning. Sikma came to a tentative conclusion in his mind that he didn't feel that as a prosecutor the case merited.

Then I assigned Mr. Kirshen. Again, because of my analysis of the case with reference to the expert case, I had an outlook on the case and a feeling about the case which literally no one ever shared with me to that extent at any time during the time that I was in the U.S. attorney's office. I guess you might say that I was continuing to press on because of my first exposure with the first allegation, and the only allegation. Both of those counsel then proceeded.

Mr. Kirshen was the second assistant to delve into the matter. He came into it, if my memory serves me correctly, in the timeframe that we are now talking about. That would be the timeframe in which he with Mr. Nard got into more of the Pittsburgh ramifications of the Sioux City case. That would be sometime, I would think, in 1971, late 1972, in that timeframe.

Senator DECONCINI. Why was Mr. Kirshen later taken off the case? Do you remember the reason for that?

Mr. HULTMAN. He was only taken off the case not in the sense that somebody took him off the case. That sounds like words John Nard has used to me at various times.

Senator DECONCINI. Was he transferred?

Mr. HULTMAN. No.

SENATOR DECONCINI. Did the case just cease or what?

Mr. HULTMAN. No. What happened was he again made his analysis and got to a point where he had some assignments that were placed on him that had to do with some other prosecutions in another jurisdiction by the Department. Again, I don't remember what those were. He would be able, I'm sure, to answer that question for you.

I would say substantially he completed in great depth the items that were to be pursued in terms of specific records from Armour Co. and so forth. Those things, I think, you would have to ask him because he knows the depth and to what extent.

He wasn't pulled off the case in the sense that he wasn't doing the job or that somebody decided something was not going to be pursued or something of that kind. That is preposterous—I mean that allegation by John Nard.

Senator DECONCINI. Any removal or reassignment of Mr. Kirshen had nothing to do with the merits of the case?

Mr. HULTMAN. Absolutely none whatsoever; that is correct, sir.

Senator DECONCINI. That would have been your authority?

Mr. HULTMAN. Yes; and the Department as they would impinge in terms of any assignments. If you will recall, during that course of time we had Wounded Knee go down. My office was one of the primary offices to handle Wounded Knee matters because I had had some Indian trial experience myself personally and because my office was right on the border, so to speak, closer to Wounded Knee than any other jurisdiction.

Senator DECONCINI. When the subject matter of the Pennsylvania problem that Mr. Nard was having came up, was that summarily dismissed by you?

Mr. HULTMAN. No.

Senator DECONCINI. How did you approach it?

Mr. HULTMAN. My constant reminder to him was that, other than as they were extenuations of the specific items in the Sioux City case, those were matters of jurisdiction in Pittsburgh. He is talking about a separate trial, a separate set of events, et cetera.

Senator DECONCINI. Did you ever decide to consolidate any of those matters?

Mr. HULTMAN. Did I—pardon, sir?

Senator DECONCINI. Did you ever decide that they could be consolidated or did you decide not to consolidate them?

Mr. HULTMAN. No, absolutely not. Absolutely not.

Senator DECONCINI. I have here a memo prepared by your office and the "Brief in Resistance to a Motion to Compel Answers to Depositions." I will show you a copy of that very shortly.

It says in part on page 3, "Nard continued his demand for investigation and prosecution both at the level of the U.S. attorney's office and in Washington. It was decided"—this is your office saying this—"It was decided that the matter would be consolidated in the U.S. attorney's office in Sioux City to avoid duplication of effort."

Let me give you a copy of that.

Mr. HULTMAN. That is a part that took place in Chicago that Mr. Kirshen handled. That is why I'm saying to you that I basically do not have first-hand knowledge of that. I'm not denying what you are saying here, but, very frankly——

Senator DECONCINI. I am looking at page 3, Mr. Hultman, the last paragraph there, the first two sentences. I just wonder what that consolidation was?

Mr. HULTMAN. First of all, would you indicate to me whose document this is and whose allegation this is?

Senator DECONCINI. This is a document submitted from your Office when you were the U.S. attorney. It is a "Brief in Resistance to a Motion to Compel Answers to Depositions." The statements of facts are set forth on pages 1 and 2. Then over on page 3 the question of consolidation comes up. That is the reason I ask you. In the last paragraph of page 3 you will see the two sentences I read to you, or the last sentence I read to you.

I wonder if that recalls to your memory consolidation and why you would have consolidated or at least why you would have been in the position at that time of indicating that you were going to consolidate.

Mr. HULTMAN. No; it does not, Mr, Chariman. I don't take issue with what is here. However, again I would indicate to you this was

a matter where John Nard had dragged the Department of Justice into the civil proceedings. That is what I am saying constantly. This part was handled by Mr. Kirshen during this timeframe to which I am referring.

I accept this as being a fact if he prepared it, and I have no reason to disbelieve that the document that you are saying doesn't purport to say what it says.

Senator DeConcini. You did not have that understanding? Someone else prepared this.

Mr. Hultman. No; I did not have that understanding. That was not my personal understanding. I know of no document of any kind that I've ever seen or anything that would indicate it. This would undoubtedly be a matter between counsel. Mr. Kirshen at that time, and this very proceeding that he was involved in.

Senator DeConcini. I will submit that question to Mr. Kirshen.

Mr. Hultman. All right.

Senator DeConcini. Were you able to complete your investigation——

Mr. Hultman. Yes; we were.

Senator DeConcini [continuing]. To your satisfaction? What was your final determination?

Mr. Hultman. Yes. Now, again, by your opening statement, it would indicate to me that there were no witnesses called. I don't have the record here, but the record of witnesses subpenaed at the grand jury would clearly indicate key witnesses were brought before the grand jury. In fact, I very carefully, with John Nard, went over specifically with him which witnesses he felt were the most critical and the most significant, and those very witnesses were brought before the grand jury and were questioned before the grand jury.

Here in response to the allegation of John Nard that somebody from Justice pulled me off the case or put some heat on me or some pressure on me, that's total fantasy and preposterous.

Senator DeConcini. You never had any contact with main Justice regarding this case?

Mr. Hultman. I'm not saying that somebody sometime somewhere may not have had a phone call of some kind. It would be very odd if that didn't happen with John Nard and all the places he was going and all the people he was talking to, and so forth. What I am saying is that categorically no one ever talked to me about this case in terms of my getting off of it or any political pressures or anything of that kind or nature. That is absolute fantasy at best and something else at worst.

Senator DeConcini. Do you remember having a call from main Justice regarding the *Nard* case?

Mr. Hultman. The only call that I can recollect that I ever had—and this is procedure. I was the U.S. attorney appointed by the President of the United States and confirmed by the Senate. I felt I was the master of the cases in the Northern District of Iowa. If someone would have tried to interfere in any way in the myriad of cases that were in my district, they would have been in deep trouble very quickly.

Senator DeConcini. Your testimony is that you do not remember any call from main Justice?

Mr. Hultman. Except I recall one call, and I can't tell you—this would be very late. That had to do with a call from the lady that's

here, the second lady back [referring to a lady in the audience later identified as Mary Wagner]. That conversation had to do with after the *Nard* case was closed some questions concerning the case, and then I met with her and someone else—and I don't recall who it was—here in the Department of Justice and went over——

Senator DeConcini. Did you notify Mr. Nard of completion of the investigation?

Mr. Hultman. I absolutely did. In fact, the end day, the last day of the grand jury he was absolutely furious. He accused me of things he had accused many people along the line of, including, "Well, lawyers and judges are all corrupt and a part of the conspiracy." This from day one literally was his thesis. I brushed it aside, as I say, because again somebody with their own cause—and I understand that—they're deeply involved in their own cause. However, it got to the point where it was something beyond just——

Senator DeConcini. He became a nuisance to you?

Mr. Hultman. Pardon?

Senator DeConcini. He became a nuisance to you?

Mr. Hultman. I'm sorry?

Senator DeConcini. A nuisance to you?

Mr. Hultman. Inducements?

Senator DeConcini. A nuisance?

Mr. Hultman. A nuisance? No, not in that sence of the word, except the statements and allegations were totally outrageous. Those are the two things when you got to the end of the case that took me personally from a posture, because of what I had seen in the beginning and honestly felt in my own mind, that perjury had been committed to a point when after the evidence is all in and you then tested John Nard's witnesses and find they don't say what John Nard said they were going to say——

Senator DeConcini. How many witnesses did he suggest to you? Do you have any recollection?

Mr. Hultman. I would say approximately one-half a dozen of very critical, key—again, you are dealing, as I say, with specific testimony concerning very narrow statements.

Senator DeConcini. How many did you call before the grand jury?

Mr. Hultman. That's what I'm saying in response. It was at least approximately one-half a dozen that came before the grand jury. I can't tell you how many others that I may have talked to along the line or that Mr. Kirshen may have talked to along the line or that Mr. Sikma may have talked to.

Senator DeConcini. You are saying that over the three grand juries that you held in this matter that there were six supposedly Nard——

Mr. Hultman. Really two grand juries. The first one was at the very tail end of the grand jury and only the beginning of this.

Senator DeConcini. Do you remember calling a Mr. William Sutton? Mr. Peter Novak?

Mr. Hultman. Those names do not—I'm not saying didn't, but those names do not——

Senator DeConcini. J. E. Watkins?

Mr. HULTMAN. The names themselves don't raise—the best record there would be the actual subpenas that went out and the record at the grand jury in terms of——

Senator DECONCINI. How many witnesses did Mr, Nard suggest that you call? Do you remember?

Mr. HULTMAN. Well, these were the—no, I don't remember. I I'm sure he would have called 1,000 if I would have——

Senator DECONCINI. Did he give you a list of suggested witnesses' names or anything? Do you remember?

Mr. HULTMAN. Maybe he did that. I don't recall. We very carefully went through the witnesses and what those witnesses would say.

Senator DECONCINI. Where did you get those witnesses—from him?

Mr. HULTMAN. From John Nard and from my analysis of the massive transcripts, the books, et cetera; yes. It was a combination of what my analysis was and what John Nard's recommendations were in terms of certain witnesses that would testify to certain things.

When you took that and then coupled it with what I would say would be the lack of confidence in your primary witness, those two things came together and in the end would be the things that would augur on my judgment and I think would be things that augured on the judgment of the grand jury.

Senator DECONCINI. Was Mr. Nard your primary witness?

Mr. HULTMAN. Yes, because most of the things which he was alleging were conversations or items of which he personally had knowledge. If you didn't believe John Nard in his testimony, you were very crippled in what it was you were seeking to accomplish on those specific items.

Senator DECONCINI. I have a list here of witnesses that Mr. Nard claims he gave to you or to your office to call or suggested that they be called.

[The material referred to above follows:]

34

Grand Jury

I. Wm. Sutton - Tom Jackson
THorp, Reed & Armstrong
2900 Grant Building
Pittsburgh, Pennsylvania 15219

Told me in front of Orin Hatch to put in a good word with General Host if they took over Armours. He said He heard I was a friend of Dick Pistel. They have the Armorr account for 30 years. I told Him he was nuts that they were ~~seing~~ seeing me. He said They told Armours they Had no case and I were murder them.

II. Peter Novak
Greyhound House Council.
Greyhound Boilding
~~Phoenix~~ Phoenix, Arizonia

I had Greyhound send Pete out to listen to Zaremba and Drains diposition. The 1st day of Zaremba dip. at the First beak in the Morning. He came over to me and said, "It is very evident that you didn't delay Armour's what is this a.it. - h.ut Then at lunch he

and Gass Had an arm pulling bout which Zaremba witness. Then After Zaremba was through He pull me aSaid, and said "IT is apparent you have some fish in a barrel. what kind of settlement cane we make. He would even ~~stay~~ stay for Drains.

I say him in Chicago next ~~an~~ he said He wrote a meno to Trautman.

J.E. Watkins
1311 South 4 Ave
Maywood Ill. 60153

Refrigation man on Sioux City Job. Gave Gass and Wholle a statement the didnt Put down All of what he said. Then they quoted him out of context in Trial. They have refuse to give him a copy of his on statement after he wrote Trautman Chairman of the Board of Greyhound 2. He can show how Millman lied when he was poositive the ref. load didnt increase

Jess Prosten U.P.
A.M.C.U.
28 North Sheridan Road
Chicago, Ill. 60657
He calle Walter Clark U.P. of about S.C. plant. Clark told him it was safe That, it was only ~~said~~ said in a court case against me

Pat Gorman Secy. Treo.
A.M.C.O.
28 North Sheridan Road
Chicago, Ill. 60657
He sent C.R. Orem pres. of Armor the telegram. Orem was suppos to Answer it in 24 hrs. He Has received no reply of yet.

Stan Lammers Pres
Soo-Prem Packers
Sioux Center, Iowa

This fellow was the plant mgr. in Sioux City when Cox went out and said He didn't know I ~~stard~~ started and He ~~tryed~~ Tried to find out who tollme to start. Stan story could be quite interesting. He can also tell us who the other two men that came out with Cox and Prince He quite Armours.

Mark Rodman
City Building Inspector
Sioux City, Iowa.

He can tell us about Bosenberger not Have Calculations and about eng. He hire to check Building
Also McCully did major negoiations for me.

George Kellar pres.
Kebler Biscuit Co.

Chicago Ill.

He can tell you all about armour engineers and Fry associates report on them. He can tell you about all the other plants they screw up.

C.R. Orem pres
Investors Diversified
" " Building
Minneoplis, Minn

Why he didn't answer Pat Gormans telegram. If Cox told Him He told me to start Souix City.

David Duensing pres
Armour-Dial, Inc.

Chicago, Ill.

Why he said the old Click in Armours was after Me, The ones that got George Kellar.
Why a good friend of His the is a contract said It wasnt worth doing busness with Armours. the didn't no what the were doing

Leslie B. Worthington not
chainman of Board
of U.S.S. Steel.
He is on the Board of Armour and Greyhound
He read Bossenbuegers statement and Cox
Did he bring it up to anybody.

Edward Kock Atty.
~~Thompson Boad Boadhes~~
~~15th Floor~~ Frick Building
1524 Pgh, Pa. 15219
was with me in Chicago when I was going through armours file and Found the documents they had hid under spels' fide. This were to one where they were ploting their scheme. He Heard Gas tell me when I found them "Well I guess you got us know"

Robert Grigsby Atty.
15th Floor ~~Frick~~
Frick Building
Pittsburgh Pa.
He can tell you what sneaks the are. He can keep The boys form Cernal Host of.

Harris J. Asthon chm.
General Host Corp.
~~250~~ 245 Park Avenue
New York, New York

Edwin McAmis
~~Love Joy Lovejoy Was~~
Lovejoy, Wassum, and Asthon

Orin Hatch

Salt lake, City, ~~Utha~~ Utah

Gerald troutman chr.
Greyhound Corp. Greyhound Building
Phoenix, Ariz.

Louis Countoris
Greentree Road

Dainel Zaremba
U.S.S. Steel Building
600 Grant street
Pgh, Pa

He knows all.

Bob Rampa pres
Rampa Marble & tile
Washington Blvd.
Pgh, Pa.

James Dodson pres.
Dodson Engineering
3rd Floor Investment Building
Pgh Pa.

Don Warner pres.
Hornteck Engineering
711 Penn Ave
Pgh, Pa.

Senator DeConcini. I wonder if you looked at it if you would recall any of their names. Would you care to do that for me?

Mr. Hultman. I'd be glad to, Mr. Chairman. I don't think I would be able, as I say, to recall, but I will be very pleased to look at it.

[Witness examines document.]

I don't recognize the document itself. I can say that. Very clearly I don't. I don't recognize some of the information.

[Witness continues to examine document.]

Senator DeConcini. None of those names recall anything——

Mr. Hultman. I recognize the name George Kellar. I cannot recall for certain, again, as I say, which witnesses were called. As I say, the best record of that would be the record.

Senator DeConcini. I understand.

Mr. Hultman. I recognize attorney Robert Grisby, again because of John Nard's allegations constantly concerning the fix and the conspiracy between the Federal judges and the attorneys that were involved. However, I don't recall anything further on Grigsby, or what it is, other than that. He was not called as a witness.

Senator DeConcini. That's fine. Do you remember the name James Levitt or William McKavis?

Mr. Hultman. McKavis?

Senator DeConcini. They are not on this list.

Mr. Hultman. I recognize that name as——

Senator DeConcini. The books that I have here to my left are some of the books that we are advised were turned over to your office. In five of those books James Levitt and William McKavis are mentioned. I wonder if that brought any recollection to you and if you recall bringing them before the grand jury.

Mr. Hultman. No; again, I do not, Mr. Chairman. The best record would be the record itself. As I say, many cases and many events have transpired from this time on, and my knowledge just is not that good. I would have to rely on the record itself. I do recognize the name.

I do recall also—I know this to be a fact—that at no time did John Nard ask me to call Orrin Hatch. I know that to be a fact without any question. The reason I recall that is only because of the fact that attorney Hatch later became a United States Senator. Therefore, the name had a reason to come back to me and recall, plus that John Nard subsequently during the course of the investigation was very critical to me of attorney Orrin Hatch, along with every other counsel that he had had at one time and then went on to other attorneys. He was critical of the fee that he had charged and that the work had not been completed, the typical discussion.

At no time—that I can say without equivocation—I know that at no time, and that's why I would be very hesitant that I was ever given a list of this kind because that I would recognize and would know—at no time did——

Senator DeConcini. Regarding Senator Hatch then, your testimony was that Mr. Nard was certainly upset with his counsel at that time?

Mr. Hultman. He was upset with counsel——

Senator DeConcini. All the time?

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Mr. HULTMAN. Yes, literally all the time, but immediately after he would get new counsel there would be a tirade about the former counsel and how incompetent——

Senator DECONCINI. Mr. Hultman, I realize the protection of 6(e) material from the grand jury, but let me ask you this general question regarding the grand jury.

Was it conducted as you would normally conduct a grand jury investigation?

Mr. HULTMAN. Yes; again, you have to realize the timeframe we are talking about. That would not be true today. In fact, it changed in June 1977, just prior to my leaving the office. That was this:

We didn't have court reporters in the grand juries at that time. Nard's case was no different than any other case. It was treated in no different way.

The reason was, one, that had been the custom, and one which troubled me very much, very frankly. I did everything I could to assist. Later on in 1977 when there was a court order it come out that from that point on there would be a reporter in every grand jury.

Second, there was an event that took place, along with the first two that I mentioned at the outset, that likewise became a very critical condition in the method of operation. That was when I learned that Jack Nard—and this was after I had asked Jack Nard at various times along the line, as I would do with any witness coming before me, a primary prosecutory witness—"Do you have anything in your background or do you have any problems now or any problems ongoing that have to do with the criminal area?"

Again, if you're dealing, one, with a matter that grows out of civil litigation, you have some responsibilities, but once you find out that the individual that you are dealing with as a prosecutorial witness has been indicted and convicted of a serious Federal crime, you now are on another tightrope. At a given time that came to my attention. It came to my attention after I had asked Nard as we progressively went along, and at a given time there isn't any question he had knowledge and his response to my question was not direct, was not forthright, if not something else.

Once that came into being, now I'm in the posture that I have to make doubly certain that on the one hand an investigation in no way assists a party in civil litigation or against another party in civil litigation, but also now that any of the testimony or any of the information that is coming to me is not in any way going to be used to the detriment of Mr. Nard.

Senator DECONCINI. Excuse me. Your primary responsibility was criminal action.

Mr. HULTMAN. That is correct.

Senator DECONCINI. Whether or not there was criminal action.

Mr. HULTMAN. Yes; what I am saying is you can see a very difficult posture to be in with reference to John Nard.

Senator DECONCINI. Yes; I can. I can appreciate that, having been a prosecutor.

Let me ask you this: In the course of that grand jury—or let's first say in the course of normal grand juries—do you at a period of time ask the grand juries if they want to vote for true bills or not?

Mr. HULTMAN. Yes; very definitely.

Senator DeConcini. Do you recall doing that in this case?

Mr. Hultman. Absolutely, and the grand jury's determination was that they would not seek a specific vote on a specific individual or group of people.

Senator DeConcini. Keeping in mind rule 6(e), do you recall prior to going into the grand jury or during the grand jury presentations or during your preparation that your office had a special number of potential targets for perjury, without naming them?

Mr. Hultman. In my judgment it wasn't a great number. It was limited. It was a very limited number.

John Nard made allegations of that kind against numerous individuals, but when we filtered it down and made the analysis it came down to a——

Senator DeConcini. Do you recall, was it more than 2 or less than 12 or less than 10?

Mr. Hultman. Oh, very definitely less than 12, yes.

Senator DeConcini. Less than six?

Mr. Hultman. It would probably be less than six when you came down to this, but I don't recall the exact number. It was a small number.

Senator DeConcini. Your testimony is then that this grand jury, as far as your recollection and operation, was conducted like any other grand jury that you had participated in as a prosecuting attorney?

Mr. Hultman. That is correct; with the same procedures, the same rules, the same approach, the same everything as hundreds of other grand juries.

Senator DeConcini. Mr. Nard has made the allegation that you told him to write Henry Peterson, then assistant attorney in the Criminal Division, in order to give you jurisdiction over Nard's income tax case. Is this your recollection?

Mr. Hultman. Any allegations of any kind that Jack Nard has made concerning any participation by the office of U.S. attorney in the Northern District of Iowa and the criminal prosecution are absolutely total fantasy on his part. In fact, Richard Thornburgh, who was a U.S. attorney in Pennsylvania at the time that I was in Iowa and then later was the division chief of Criminal, and I have never at any time anywhere any place discussed any detail of any kind concerning the prosecution of John Nard.

I think it's very obvious for any of you who have had any experience as a prosecutor to know that would be a first rule and a first basis and a first act of someone in my capacity and someone in Richard Thornburgh's capacity.

Senator DeConcini. Thank you, Mr. Hultman.

Mr. Hultman. There's absolutely no truth of any kind to that allegation.

Sentor DeConcini. That is what I want to find out.

Mr. Hultman. In fact, I would say we stepped over backward, to use a phrase, to make absolutely certain that nothing of that kind did take place. I, very frankly, as I say, was in a very—once I learned that there was criminal prosecution on the part of John Nard, I then am in a very delicate position because here is John Nard providing me with information as a witness, and things that would undoubtedly have ramification on what the criminal matter was.

From that point on I became very, very careful and very selective and explained to him time and time and time again that, "Anything you tell me, you've got to make absolutely certain you understand could be used"—although in no way was I using it or did I ever use it in any way, but I was giving him a warning, so to speak, as a prosecutor—"with reference to any other matters that you're involved in that have anything to do with criminal prosecution."

Senator DeConcini. Mr. Nard also has the contention that you urged him to testify against Judge Weis' nomination for the third circuit.

Mr. Hultman. That is absolutely a total lie. I will brand it exactly as that. That's not a misconception or anything else.

Senator DeConcini. In the course of that, Mr. Nard has a transcript here of a telephone conversation between you and Mr. Nard. I will show you the transcript in a moment. In it there is a lengthy discussion, and then it starts off with Mr. Nard saying, "I think when you get down to the third circuit you'll see that our brother, our old friend Senator Scott, did that because——"

Then you interrupt and say, "Yeah, yeah."

Then Mr. Nard goes on, "He got mad because I testified before the Judiciary Committee."

Mr. Hultman responded, "Yeah, yeah."

Then Mr. Nard said, "You little bastard, you know what I'm going to get—you know I'm going to get in trouble doing all this, and you egged me on."

Then Mr. Hultman said, "No, I'm not. You get in trouble here if you don't get your nose bloodied. In this day and age you know you ain't going to accomplish a God-damned thing."

Mr. Nard responds, "Well, you know me, I don't mind it."

Mr. Hultman responds, "Right. I've noticed that."

Mr. Nard, "Huh?"

Mr. Hultman, "I know that."

Mr. Nard, "I don't mind it a bit."

Mr. Hultman, "Oh, what the hell."

Mr. Nard, "Listen, if——"

Then Mr. Hultman, "If there's anything that the last couple of years have proven, and it's not done yet, Jack, that's hell fires."

Do you recall that conversation?

Mr. Hultman. No; I do not, but that is typical of hundreds of phone calls, literally, that John Nard would give you. Rather than argue with that kind of a conversation, you would just go on and listen and say "Uh-huh" and "that's exactly right." In no way, as you can get from that, is there a conversation on my part to——

Senator DeConcini. You had never at any time, either by this conversation or any other conversation, urged him to get involved with the Weis nomination?

Mr. Hultman. Absolutely not. Absolutely not. John Nard and his MO are constantly using you and other counsel, and in particular the press, to come up with thoughts and suggestions of this kind. Then because you don't react and say absolutely no, then you have just stated what he has stated. That's a technique that he uses.

Senator DeConcini. I take exception to the insinuation of being used by Mr. Nard. Mr. Nard has been pounding around here for

onwards of a couple years now. I have constantly insisted that he give me transcripts. I have constantly insisted that he give me affidavits. I don't know whether or not they are true, but this committee is only making an inquiry, Mr. Hultman.

We are making no accusations toward you or that you did anything wrong. The only way that I can get this cleared up is to ask the questions. Your answers have been most forthright. I appreciate it.

Mr. HULTMAN. I understand.

Senator DECONCINI. This Senator is not being used by Mr. Nard or by anyone else.

Mr. HULTMAN. Mr. Chairman, I didn't mean to infer that. I hope you understand that.

Senator DECONCINI. Yes; that's fine.

Mr. HULTMAN. I was referring specifically to conversations——

Senator DECONCINI. I understand Mr. Nard's shortcomings. I have had to deal with him for months and months here. Only because there are so many unanswered questions did we include his case in the Public Integrity Section. Quite frankly, had we had cooperation from the Public Integrity Section we might very well not have had to go through these hearings.

Be that as it may—this is a sidelight that does not involve you—we have had to proceed laboriously going through and asking and imposing on witnesses and citizens such as yourself to get clear answers. The Public Integrity Section at the Justice Department has refused consistently to cooperate with us.

Therefore, when I ask you these questions, it is not to make any inference that the allegations that you did something or didn't do something are true. It is only to get your statement on the record so that this committee can make a judgment, an objective judgment.

Mr. HULTMAN. I understand, sir.

Senator DECONCINI. Getting back to the grand jury, the judgment of your expert in your office is that perjury may have been committed. Was that the focus of the grand jury?

Mr. HULTMAN. Purely. Purely that, in all my proceeding with the grand jury.

Senator DECONCINI. A court reporter was present?

Mr. HULTMAN. No. That's what I tried to explain.

Senator DECONCINI. I misunderstood what you said.

Mr. HULTMAN. In the Northern District of Iowa up until June of 1977—and this was true in a number of districts—court reporters were not in the grand jury. A primary reason for it was, one, the Department of Justice budget.

We used to go round and round. I was an adviser to the Attorney General during that time. That was one of the problems that we had. Budgetwise a number of us felt that we ought to be recording all grand jury testimony. I feel very strongly about that because many of the questions we are talking about today would be answered by the testimony in the grand jury, the record itself.

It wasn't until June 1977 when we finally got an order from the judge, from the senior judge, who said from this point on all the proceedings will be transcribed.

Senator DeConcini. Just out of curiosity, because I realize many States are different and Federal laws may be, too, you don't need a transcript in a perjury grand jury investigation?

Mr. Hultman. Not from a target, not on those cases where you specifically have a target. I think you can accomplish it.

Again, if you bring the individual in, you now have to live—that's a judgment call at that time—you have to live with what that particular testimony is going to be.

My procedure there at that time would be to bring a grand jury witness from the grand jury itself, or two to three of them, who specifically heard the testimony . That would have been my method.

Senator DeConcini. Mr. Hultman, referring now to the grand jury and the investigation in relation to February 18, 1971, a letter to Judge McManus, did you ever subpena Armour counsel Raymond Gass to ask if the Armour suit was brought in Sioux City strictly for purposes of harassment? Do you recall?

Mr. Hultman. No; I do not. That I do not.

Senator DeConcini. Do you recall why you did not or decided that was not——

Mr. Hultman. Again, as I analyzed the testimony itself, to the best of my recollection, I could not hone in and put anything of that kind specifically together as far as counsel itself.

Now, again, maybe the assistant who dealt primarily with the records and with that phase of it, Mr. Kirshen, he might have some observations on that which I am not capable of giving.

Senator DeConcini. I will just put in the record here the particular letter to which I made reference, and then we will go on to other questions.

[Material referred to above follows:]

February 18, 1971.

Hon. Edward McManus,
Federal Court Building, U.S. District Court,
Cedar Rapids, Iowa.

Dear Sir: In their recent suit against Mr. Nard I was very surprised to learn that Armour & Company had been awarded damages by the jury at Sioux City. In my opinion as the former projcet manager on the subject project in litigation I stated in my deposition in an answer to a direct question that Mr. Nard did not delay that job and I was surprised at the recent verdict since I felt Armour & Company had no basis for a claim of damage against Mr. Nard for delay of the job when all the mitigating circumstances were brought to light.

I would like to bring to your attention two points I feel should be emphasized and to which I had personal knowledge. These two points are as follows:

(1) During one of the negotiations between Armour & Company and Mr. Nard and the attorney representing Three Rivers Company in Pittsburgh prior to November 21, 1968, Mr. Raymond W. Gass, the Armour attorney, made a statement regarding possible suit or termination of the Three Rivers contract in Pittsburgh and at the end of that statement ended with the comment that "and this goes for Sioux City, too."

When I found out we were going to sue Mr. Nard in Sioux City, I asked Mr. Gass why we would take such action since we had a without-cause-termination clause in the Sioux City contract and he stated that he was certain Mr. Nard would sue Armour & Company in Pittsburgh and, therefore, he wanted to sue Mr. Nard first in Sioux City and have the case tried there where there would be a more favorable climate than in Pittsburgh. It was also indicated or implied that this removal of the case from Pittsburgh would entail more expense and trouble for Mr. Nard.

(2) In regard to the November 6, 1968 meeting with Armour representatives and Mr. Nard in Sioux City where complaints are voiced by Armour & Company's project engineer and field engineer regarding insufficient manpower on the job, I

made the statement that perhaps Mr. Nard was extending himself too much financially and that if Armour had paid him within a reasonable period of time (say, 30 days) he would have been better able to prosecute the job by adding additional construction personnel. As I recall, Mr. Nard started work on April 28 or 29, 1968 and did not receive his first payment until the first part of July, 1968.

Another aspect of financial difficulties, or one might say embarrassment, to Mr. Nard was that he would tell his subcontractors or suppliers that Armour & Company would pay them directly for their work from funds Armour & Company had on deposit in a certain Sioux City bank. Upon checking with the bank, they would be informed that no such funds were on deposit and would again contact Mr. Nard who in turn would contact me. I, in turn, would tell Mr. Nard that funds should be in the bank according to my understanding of the payment procedures in the contract. Upon checking with Armour & Company's treasury department, I found out that oft times funds were not on deposit in the bank but only put there a short period of time before actual payments were made. Thus, when Mr. Nard's new suppliers or subcontractors contacted the bank to verify his statements, funds were usually not on deposit.

I trust the foregoing will be of some interest with respect to the litigation that has recently taken place in Sioux City on this subject.

Very truly yours,

D. E. ZAREMBA.

Mr. HULTMAN. To my knowledge, Mr. Chairman, I have never seen this letter before in my life. In fact, I would feel very confident that I've never seen this letter.

Senator DECONCINI. You do not recall having that letter as part of your investigation then?

Mr. HULTMAN. No; I do not recall. This is a letter to Judge McManus, who was the presiding judge in the proceeding. The only thing, to my knowledge, that took place concerning Judge McManus was that Mr. Nard, when he first came to the office, said that he had visited—and maybe this letter is what he had reference to—he said that he had visited with Judge McManus about perjury of an expert witness and that the judge had referred him to me.

The only other occasion was at a time when some specific records were being secured. I needed specific testimony. Specific testimony was secured through the court reporter of that particular case. That court reporter later indicated to me that he was having trouble getting paid. In fact, he had received a check which was a check that would not in normal banking negotiations be honored in order to give us the transcript and the information that I needed from that proceeding.

Those are the only two events of any kind, to my knowledge, that I had anything do do with the court——

Senator DECONCINI. I have just a couple final questions.

To the best of your knowledge, during the grand jury investigation did any the Armour witnesses lie before the grand jury?

Mr. HULTMAN. In my judgment they did not. As I say, in analyzing their testimony against the record as I viewed it, I could not come to that conclusion.

Senator DECONCINI. I have an affidavit which I will submit for the record. We will show you a copy, Mr. Hultman.

[The affidavit follows:]

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } SS:

Before me, the undersigned authority, a Notary Public, personnally appeared PORTER H. SCOTT of Pittsburgh, Pennsylvania, who, being duly sworn according

to law, deposes and says that in 1974 in Cedar Rapids, Iowa, where a Grand Jury hearing involving Three Rivers Company and Armour Company was being held, U.S. Attorney Evan Hultman, in his presence and in the presence of J. A. Nard, said that Armour witnesses lied and gave false testimony in the Grand Jury Room.

PORTER H. SCOTT.

Sworn to and subscribed before me this 9th day of December, 1980.

MARY ELLEN POST,
Notary Public,
Whitehall Borough, Allegheny County, Pa.

My Commission Expires February 7, 1983.

It is an affidavit from Porter H. Scott, being duly sworn, et cetera:

* * * where a grand jury hearing involving Three Rivers Company and Armour Company was being held, U.S. Attorney Evan Hultman, in his presence and in the presence of J. A. Nard, said that Armour witnesses lied and gave false testimony in the grand jury room.

Do you refute Mr. Scott's affidavit?

Mr. HULTMAN. No. I have not seen that until this very moment, Mr. Chairman. Again, Mr. Scott was someone who was deeply involved with Mr. Nard in the financial transaction.

Senator DECONCINI. Did you know Mr. Scott?

Mr. HULTMAN. I think he was in my presence with Mr. Nard on one occasion.

What I would indicate is that Mr. Nard and Mr. Scott wanted to believe a lot of things, and this was many times the subject of the conversation. They would make an observation and, because I would not deliberately contest the statement—again, I felt because of my posture in the grand jury that I should not be doing that because I would be giving testimony to Peter Scott, to John Nard, to counsel, or whoever it was—and because I would not take issue with the statement, thus, a conclusion on his part was then that, well, this is the position that Hultman takes with reference to testimony in the grand jury. It's like the phone conversation alleged to which you referred earlier.

I'm not saying that Peter Scott is saying a lie or anything here. What I am saying is that, to my knowledge, I would not and did not make a statement of this kind.

If this was at an early point, a very early point in the investigation, I may well have made an observation of this kind because in my judgment early on—and I've made that very clear, and that's why I hung with it when everybody else, my assistants were saying, "No, we can't come to that kind of a conclusion"—because the first witness, the first allegation, the first accusation in my judgment had merit, I proceeded on that basis. I came from a different projection and a different point of view. Early on I honestly felt my preliminary conclusion was that there was perjury that had been committed. I make no bones about it.

Senator DECONCINI. I think you made that very clear, that in your opinion, your professional opinion and your office opinion, though there was some discussion on the legal background on it, you did conclude that there was.

I have one final question. Do you recall having conversations with then-counsel Orrin Hatch?

Mr. HULTMAN. Yes. That's in the earlier stages that we're talking about. I do recall that. As I say, the reason I do recall it is because of Mr. Hatch becoming a U.S. Senator. Otherwise, I can't even recall any of the counsel that I dealt with.

Senator DECONCINI. Do you recall in the converastions with then-counsel Orrin Hatch ever indicating that it was your belief that some of the witnesses had lied?

Mr. HULTMAN. I think at that stage that very well I could have said that without any question. At that time that was the feeling, as I said, that I had. It was only later as, one, Nard's credibility but, two, more importantly, specific witnesses saying something very much the opposite of what John Nard said in the books, in his discussion, et cetera—and on which I was relying to a great degree at that stage of the game—it did not come out that way.

From a posture of a preliminary determination and a feeling of that kind, later near the end I come to a different conclusion.

Senator DECONCINI. Mr. Hultman, just to finish up, you felt, even after the grand jury voted not to issue any bill, you testified that there was still perjury there in your own poinion even though the grand jury decided not——

Mr. HULTMAN. No; I did after the "first" full grand jury. That's why I went on and pursued as I did the engineer side of the house.

Senator DECQNCINI. You felt least that there was some more wrongdoing?

Mr. HULTMAN. Absolutely.

Senator DECONCINI. Were you still convinced after the first grand jury that in your professional judgment there was perjury even though the grand jury didn't——

Mr. HULTMAN. Yes; and that's why I continued to pursue it. Very definitely. In my judgment that's why I pursued it. But that is a prosecutor's intuition and feeling at that particular time, a preliminary before you get to a final ending judgment.

Senator DECONCINI. If you can divorce yourself from Mr. Nard and the confrontations that you had with him, do you believe there probably was perjury from a prosecutorial point of view?

Mr. HULTMAN. No. Sitting here in the courtroom today, no. No, sitting here in the courtroom today.

To give you my very fairest, best judgment, after all the evidence, analyzing, talking to the witnesses, having them under oath, I think it was a situation where two parties were trying to take advantage of each other, which quite often happens. They weren't dealing fairly with each other. I don't think either party was dealing fairly with each other.

There were a number of things that troubled me, and very seriously troubled me. However, as I sit here today, in direct response to your question I say to you in all candor, and putting John Nard aside—I mean, I pursued everything even though there were unpleasantries all along the line concerning John Nard. He tracked me down clear in Virginia on one occasion when I was making a speech in Virginia. He constantly invited me to his home. I never did. Maybe there was no ulterior motive at all, but I just don't think prosecutors ought to be in the homes of witnesses who are key witnesses, et cetera.

The bottom line is no, as I sit here today. But I would say, bottom line, there are a number of things that troubled me, and even still trouble me.

Senator DeConcini. Mr. Hultman, we have a number of other questions we would like to submit to you. In due time if you would send those back to us, it would save our going through them now.

Mr. Hultman. I shall.

Senator DeConcini. They're not as in-depth as these were.

I have no further statement. Do you care to make any closing statement?

Mr. Hultman. No, I have no other statement, except to indicate again that I hope you would understand that I feel it was very critical from the beginning of this investigation the conditions, the methods, and the way things went about, that, one, the nature of the charge—where it was coming from, out of a civil proceeding; two, that it was narrow—when I say "narrow," I mean a specific issue of perjury that has to do with specific testimony; third, that in the middle of things all of a sudden the primary witness, the allegator, becomes somebody who has not only been criminally charged, but has pled *nolo* to a serious criminal matter which is tied to the very events that you are dealing with and he has come to you about. Those three factors had what I would call a very important impact on the way that I proceeded.

Where I would normally send investigators, for example, FBI agents, et cetera—and plus the actions of John Nard personally which became very troublesome in that area of contacting reporters, giving them information—those particular items are items that conditioned the way in which I proceeded and made it a very tight-rope-type process for the prosecutor who was involved with it.

I've never been involved with that set of circumstances in thousands of cases, to be very frank about it.

Senator DeConcini. Mr. Hultman, I appreciate your testimony. Again, from the standpoint of having been a prosecutor, I appreciate always trying to decipher perjury when it results out of civil litigation, and most of the time you don't; but when you do decide to take them you feel like it is very, very conspicuous and a good factual basis. I appreciate your being here and your candidness and response to the committee.

Mr. Hultman. Thank you.

Senator DeConcini. Thank you.

Our next witness will be Alan Kirshen, Omaha, Neb., a former assistant U.S. attorney.

Mr. Kirshen, please come forward.

If you have an opening statement, please summarize it for us.

STATEMENT OF ALAN KIRSHEN, FORMER ASSISTANT U.S. ATTORNEY, STATE OF IOWA

Mr. Kirshen. I do not have an opening statement as such.

Senator DeConcini. Tell us your present occupation and address.

Mr. Kirshen. I am an attorney in private practice in Omaha, Neb. My address is 1166 Woodman Tower.

Senator DeConcini. For a while you were an assistant U.S. attorney while living in Iowa; is that correct?

Mr. KIRSHEN. That's correct.

Senator DECONCINI. Can you give us the dates of that?

Mr. KIRSHEN. I was an assistant U.S. attorney from December 1, 1972, through November 30, 1978—excuse me, April 30, 1978.

Senator DECONCINI. You were working for Mr. Hultman?

Mr. KIRSHEN. Then later Mr. Reynolds.

Senator DECONCINI. And then Mr. Reynolds?

Mr. KIRSHEN. That is correct.

Senator DECONCINI. When did you first come in contact with Mr. Jack Nard?

Mr. KIRSHEN. My first involvement with the Nard case was the day that I was sworn in as an assistant U.S. attorney. It was the first case that Mr. Hultman asked me to handle. I assumed the day-to-day responsibilities for that case as of that time.

Senator DECONCINI. Did you ultimately take over the full case?

Mr. KIRSHEN. On a day-to-day basis, yes. The way our office operated, Mr. Hultman placed a great deal of faith in his assistants. When he gave us a case to handle , pretty well with some oversight from him it was our case. If we had any questions or any problems, we were free to consult with him.

One standing order that we had was that if there was anything having to do with Washington or inquiries from Washington or any suggestions of pressure from Washington, we were to contact him and involve him immediately.

Senator DECONCINI. Did you ever have any such contacts or pressure from Washington?

Mr. KIRSHEN. I had a number of contacts with Washington during the course of the case; yes.

Senator DECONCINI. Did you refer all of those to Mr. Hultman?

Mr. KIRSHEN. Yes. A lot of them he was already aware of. These were largely in the latter stages of the case.

Senator DECONCINI. What was the nature of those contacts? Do you recall?

Mr. KIRSHEN. Let's see. The first would have been an inquiry from, I believe, the Congressional Liaison Office. It would have been in late 1974.

When I stated my dates as an assistant U.S. attorney for the Northern District of Iowa, I should largely except from that the dates July 1 of 1974 through sometime in early 1975 when I was assigned by the Department of Justice as Special Prosecutor in charge of the Wounded Knee nonleadership cases. I had my own office in Lincoln. In essence, they set up a one case or one problem office, and I was in charge of that.

I really had no ongoing responsibilities back in Iowa at that time. That is how I happened to leave the Nard case, not because of anything having to do with my handling of the case. I had my own office, my own responsibilities, and I can't do two things at once.

Senator DECONCINI. Who took over that case when you left?

Mr. KIRSHEN. Mr. Hultman took it over himself.

Senator DECONCNI. He took it over himself.

Mr. KIRSHEN. I still had some transitional responsibilities and some after my return to the office. Because of my absence there was a terrific backlog, so Mr. Hultman kept the case largely with some residual input and responsibility on my part.

Senator DeConcini. Were you primarily in charge of that case in the inquiry limited to the investigation of possible perjury in either the Sioux City trial or the Pittsburgh trial?

Mr. Kirshen. I was responsible for the case from the time I was sworn in until the time I left for the Wounded Knee cases in 1974. The original conception was limiting it to the Sioux City allegations, but it was so difficult to extricate Pittsburgh from Sioux City that at some point relatively early on in discussions with Mr. Thornburgh's office in Pittsburgh it was more or less informally agreed that I would also take a look at the Pittsburgh side of it in lieu of a duplication effort. Mr. Thornburgh's office also had an assistant. They also, looking back on it now perhaps, foresaw same problems with conflict of interest in that office.

Senator DeConcini. Do you recall, realizing the 6(e) prohibition of getting into grand jury testimony and evidence, do you recall the number of witnesses that you called regarding the perjury matter in any of these grand juries——

Mr. Kirshen. Now I would like to clarify a point about that as well. You have been referring to a first grand jury and a second grand jury.

Senator DeConcini. How many were there? Were there about three?

Mr. Kirshen. In reality you probably should refer to three grand juries—three, perhaps four. Let me explain that.

Senator DeConcini. Please.

Mr. Kirshen. Mr. Hultman's first grand jury took place, and I think when he was referring to a grand jury and when I'm referring to a grand jury, I'm not referring to a grand jury session but to a grand jury sitting on a particular matter, perhaps over several days, perhaps over several months. I don't know whether the first grand jury was a single-day affair or whether it may have been 2 days back to back. I wasn't there.

What I will call the second grand jury was the grand jury that was sitting when I was sworn in whose term expired in early 1974.

The way our grand juries work in northern Iowa, there were two grand juries that were empaneled, one in Sioux City and one in Cedar Rapids. At various times because of scheduling—being a small office, we tried to schedule those two grand juries in alternate months. Because of some of the necessities of witness scheduling and other things, it ended up that aspects of the Nard matter were presented to both the Sioux City grand jury and the Cedar Rapids grand jury during the period that I was responsible for the case.

Subsequent to my leaving for Wounded Knee is when what Mr. Hultman referred to as the second grand jury took place. That would have been, I believe, sometime in 1975, to my best recollection.

There was multiple grand jury on this. The grand jury with which I am familiar is largely the 1973 grand juries which were the second set of grand juries to look at it. I also had some responsibilities with respect to the third set of grand juries, which were the ones that Mr. Hultman took personal responsibility for.

Senator DeConcini. You talk about all the grand juries. In the course of the grand juries, do you recall how many witnesses you did bring before the grand juries?

Mr. KIRSHEN. In terms of number of subpenas that were issued, my best recollection would be that we brought in approximately 10 to 12 witnesses in total—maybe a few more, perhaps as many as 14.

Senator DECONCINI. In to the grand jury?

Mr. KIRSHEN. But not all of those actually went in to the grand jury. It was my practice routinely to interview grand jury witnesses. Where there weren't any other circumstances involved, I would interview then frequently outside of the grand jury in order to conserve time inside the grand jury for matters that I felt were appropriate either to memorialize or because it was very important that the grand jury hear them. What I was doing in effect was screening the witnesses.

Senator DECONCINI. How many do you remember going in to the grand jury? Was it 6 or less or 12 or less?

Mr. KIRSHEN. To my best recollection, in addition to Mr. Nard who testified before each of the grand juries on at least one occasion, I would say four to five.

Senator DECONCINI. Four to five.

Mr. KIRSHEN. I don't think it was more than six. Again, as Mr. Hultman indicated, because of budgetary constraints at that time it wasn't really possible—we were already way over budget on our court reporters for grand jury.

Senator DECONCINI. Do you recall bringing in witnesses from the Armour Co.

Mr. KIRSHEN. There were some that were brought in by me. There were also some that were brought in to the third set of grand juries, which would have been Mr. Hultman's second set.

Senator DECONCINI. Did you have any employees of Armour from the Pittsburgh problems?

Mr. KIRSHEN. Excuse me?

Senator DECONCINI. From the Pittsburgh problems?

Mr. KIRSHEN. Yes.

Senator DECONCINI. You did?

Mr. KIRSHEN. Well, it was really impossible to extricate them because——

Senator DECONCINI. Were these cases consolidated in your consideration?

Mr. KIRSHEN. I attempted, not on a formal request basis, but I attempted to review Mr. Nard's allegations because they were so interlinked in their totality. Most of the witnesses that we are talking about had things to do with both Pittsburgh and Sioux City. Because I regarded them as so intertwined, very frankly, I didn't really draw any distinctions between Pittsburgh and Sioux City.

Senator DECONCINI. You didn't draw any distinctions. You heard the memo that I mentioned before, "Brief in Resistance to Motion to Compel Answers." Do you recall, is that your work?

Mr. KIRSHEN. It was partially my work and, as I recall, it was partially the work of main Justice and also partially the work of, I think, Tex Griffin who was an assistant in Chicago.

Senator DECONCINI. Now you say main Justice became involved in preparing this?

Mr. KIRSHEN. Because I had been subpenaed to testify, it was under our regulations required that main Justice be apprised of that. You should have somewhere a copy of the memo that I sent to main

Justice at the time that I was subpenaed. I believe Mr. Altier is familiar with that.

Senator DeConcini. Would that have been in August?

Mr. Kirshen. That is correct.

Senator DeConcini. Would you like to put that memo in the record?

Mr. Kirshen. Yes; I believe I would.

Senator DeConcini. Without objection, it will appear in the record.

[Material referred to above follows:]

Department of Justice

MEMORANDUM

August 7, 1973.

To: Mr.——— ———,
Criminal Division—D.J., Room 402—Washington, D.C.

From: United States Attorney, Northern District of Iowa, P.O. Box 1138, Sioux City, Iowa, 51102.

Subject: *Armour & Company* v. *Nard.*

Since speaking to you this afternoon, I have learned that I will be served with a subpoena tomorrow morning to have my deposition taken here in Sioux City on Tuesday, August 14th. As I related to you over the phone, this subpoena is in a private civil action in the Eastern District of Pennsylvania entitled Armour & Company v. Nard. This was an action brought by Armour for alleged breach of contract in the construction of a meat packing plant by John A. Nard for Armour & Co. in Pittsburgh in 1967 and 1968. This was a cost-plus contract, and as one element of damage, Armour alleged that Nard had included in the costing out certain materials and subcontractors fees for a house that Nard constructed on his own behalf at the same time. Nard, in turn, counterclaimed for breach of contract by Armour and for wrongful termination. In this action, the Court ruled that both parties were in material breach of contract and gave no award to either, but did award Armour some $280,000 as damages for costs that Nard wrongfully included, stemming from his house construction. The matter was appealed by Nard and the Third Circuit affirmed.

Simultaneously, Armour commenced suit in the Northern District of Iowa against Nard for breach of contract in the construction of a packing plant here in Sioux City. Again Nard counterclaimed for breach of contract. Here, the Court awarded Nard some $160,000 on its claims, and Armour some $120,000 netting Nard approximately $40,000. This action was appealed to the Eighth Circuit, which affirmed the Court's ruling.

After the two Court rulings, Nard came to this office and to the office of the U.S. Attorney in the Western District of Pennsylavnia, alleging that Armour had perjured itself and had suborned perjury in connection with these two cases. Specifically, he alleged that Armour had, upon penalty of discharge or transfer, caused its employees to commit perjury with respect to their testimony about Nard's performance on the job. Nard also alleged that various subcontractors were induced to commit perjury upon penalty of not getting paid for the period prior to Nard's termination, with compensation being their retention on the job and work in addition to that originally specified for amounts far greater than would be ordinarily reasonable. Before this office would even consider Nard's allegations, we required extensive documentation of his allegations. This was duly provided by Nard over a period of approximately 18 months, and now consist of approximately ten large notebook binders.

After examining this documentation, it was the decision of this office, after consultation with the Department and the U.S. Attorney's office at Pittsburgh, to proceed to a grand jury investigation. This investigation was, in addition, induced by complaints which Nard had made directly to the Department of Justice and allegations made at the congressional level, primarily in the hearing considering the nomination of Judge Joseph Weis, the Judge in Nard's Pittsburgh case, to the Third Circuit.

Before proceeding with a full-fledged grand jury, it was our decision to issue a grand jury subpoena for Armour's complete set of documents, so that it could be determined what the further scope of grand jury inquiry would be. Accordingly, a subpoena was issued to Armour on March 14, 1973, returnable on March 21, 1973, for all documents pertaining to Nard's allegations. After consultation with

Armour's attorneys, it was agreed that, rather than having voluminous documents transported to Sioux City, I would be permitted to travel to Pittsburgh, Chicago, and Phoenix, to do a document search and then bring such documents as might prove interesting, back to Sioux City for further consideration. This trip was approved by the Executive Office for U.S. Attorneys and in early April I viewed approximately 40 file drawers of documents in the three cities mentioned and Sioux City. From these documents, I culled out approximately 8 boxes which are presently in my office.

From examination of these documents, particularly the ones obtained in Pittsburgh, it has now become apparent that Jack Nard was extremely selective in which documents he showed us. Armour's attorneys were very open with me and were most anxious to let me see all the documentation in this matter, in the apparent belief that they would be completely vindicated in so doing. In the course of this examination, I came to learn that the Internal Revenue Service had made some attempt to view these documents earlier, but had been rebuffed.

Upon my return to Sioux City, I inquired of the Internal Revenue Service in Pittsburgh whether they had anything ongoing with respect to Jack here. Approximately May 17, 1973, I learned that they not only had a matter ongoing, but were soon going to seek an indictment of Mr. Nard for failure to file income tax returns and for tax evasion. This tax evasion stemmed from the construction of Nard's house, for which Amour paid under the precedure previously described. At this point, it was determined that our grand jury would be held in abeyance pending further developments in Pittsburgh, for indictment would certainly cast grave doubts upon the credibility of our complainant, and we began to wonder whether Nard was perhaps attempting to set up a smoke screen for his own misconduct. On July 26, 1973, Mr. Nard was indicted by a Federal grand jury in Pittsburgh, Pennsylvania on two counts of failure to file income tax returns and one count of tax evasion. This action is presently ongoing, and will most likely be going on for omnibus procedures relatively soon.

While this has all been going on, Nard has continued his litigation with Armour even past the appeal. After our grand jury subpoena produced 40 file drawers of documents from Amour, Nard claimed in his civil proceeding that Amour had willfully withheld documents during discovery in that proceeding which it had provided to us, and alleged that there was newly discovered evidence which would permit reopening the case under FRCP 60. There have been two hearings on this Rule 60 motion already, and the instant subpoena is in connection with a third hearing which is to take place late next week. From other sources, I have learned what Nard is seeking to determine by subpoena: the number and nature of Armour documents in the Sioux City grand jury, the nature of the subpoena directed by the grand jury to Armour, the number and nature of documents applicable to each of Nard's law suits, and the number and nature of documets that we retrieved at each location.

It is my strong recommedation that none of this information be provided to Mr. Nard, particularly in view of the pending criminal proceedings on the Western District of Pennsylvania. Documents which we produce may unduly assist Mr. Nard in his defense going well beyond what would be required under the Federal Rules of Criminal Procedure. Furthermore, nondisclosure would seem to be required in order to preserve the secrecy of the grand jury process and to insure in future cases the fully cooperation with the grand jury that makes that body so effective. If grand jury documents were allowed to be produced in any civil proceeding, the efficiency and integrity of the grand jury would be greatly compromised.

It is submitted that there are several grounds upon which we can refuse disclosure. The most obvious, of course, is the fact that the documents are grand jury documents, and come under the umbrella of grand jury secrecy. Second of all, as an officer of that grand jury, I would argue that I am not permitted to disclose anything of the grand jury proceedings or any matters disclosed to the grand jury, including documentation. Third of all, I would assert that the Court in the Western District of Pennsylvania has no jurisdiction over a Federal grand jury in the Northern District of Iowa. I would next assert that the proceeding under which the subpoena is sought has no further viability, due to the fact that the appeal in the Third Circuit is over and the proceeding is terminated. Finally, I would assert that the Federal prosecutor has an absolute discretion to disclose or not to disclose materials in his custody, under the same doctrine of executive privilege presently being raised in Washington.

I think that the U.S. Attorney's office in the Western District of Pennsylvania ought to be consulted as to how we ought to proceed, in view of the fact that

any disclosures that we might make here in Iowa may jeopardize their criminal proceeding. Furthermore, since the subpoena is issued out of the United States District Court for the Western District of Pennsylvania, that office may be caught in something of a conflict, as may this office be caught in a conflict between any possible criminal prosecution and having to defend itself against this kind of unwarranted intrusion into the affairs of its grand jury. Although tou have advised me to proceed, for the time being, at my own discretion, I would very much appreciate having the Department's assistance in this matter pursuant to the provisions of 28 CFR Section 16.28, and would at this time request instruction as to how to proceed, as well as consideration of the possibility of representation in this matter. What I intend to do immediately is move to quash the subpoena on the basis that Section 16.23(c) has not been complied with, and that no statement by the party seeking the testimony has been filed setting forth the summary of that testimony for submission by me to you. This should buy us a few days in which some determination as to how to further proceed can be reached. Although I visited with you about the possibility of seeking to resist Nard's motion for a subpoena, it is apparent that subpoena has now been issued, and a motion to quash would be in order. Unless I hear from you otherwise, I shall take further steps on the 14th as I deem necessary, including the refusal to answer any questions put to me at that time.

Please let me know as soon as possible how you wish me to proceed in this matter.

———— ————,
Assistant U.S. Attorney.

P.S. Since dictating the above, I have had a telephone call from Robert Tyler of Winston and Strawn in Chicago. He is Armour's Attorney in this matter, and informs me that he has been subpoenaed for Monday, August 13, 1973, to testify about the same points sought from me. Mr. Tyler was with me during the Grand Jury document search, and was equally privy to the information turned over to the Grand Jury by Armour. In the belief that Mr. Tyler's disclosures would procure for Nard by indirection what he could not obtain directly, and that they would likewise come under the umbrella of grand jury secrecy, I have, on my own authority, requested that if Armour approved the decline to answer questions with respect to Armour's testimony before the Grand Jury or Armour's disclosure of documents to the Grand Jury. Mr. Tyler agreed not to answer, such that Nard will have to obtain a Court Order in the Northern District of Illinois (where Tyler's deposition is to be taken) to compel Tyler's testimony. This should give us time to make a determination as to what steps ought to be taken, if any, to protect Mr. Tyler's testimony. In this regard, it is my strong recommendation that we take all necessary and appropriate steps to protect the Grand Jury and the Pittsburgh criminal action by guarding Mr. Tyler's testimony as well as my own. Armour agrees with this, apparently, and I would therefore ask Departmental direction as to how to proceed in this regard, as well as whether to proceed in these premises.

Forgive the terrible typing on this last page. The girls are at lunch and I wanted to get this out.

Attachment.

Alan H. Kirshen was interviewed on August 28, 1979 by Michael F. Murphy and David H. Noznesky at Creighton University Law School, Omaha, Nebraska. He furnished his home address as 1114 South 97th Street, Omaha, Nebraska, telephone 402–397–1661.

Kirshen advised he started with the United States Attorney's office in Cedar Rapids, Iowa, in November of 1972. Evan Hultman was the United States Attorney. Hultman gave Kirshen the Jack Nard case to look into his allegations. Hultman felt the case should be done inside the U.S. Attorney's office. However, Kirshen did talk to the FBI in Sioux City. Although Kirshen does not remember the FBI agent he talked to, he did recall that he was told the FBI couldn't get interested in Nard's allegations. The agent told Kirshen that the FBI looked into it before when Nard came to them. They didn't see anything in it.

Kirshen's inquiry was primarily concerned with perjury during the Sioux City trial involving the civil litigation between Armour Company and Nard. Nard prepared notebooks and gave them to Kirshen showing the perjured testimony and the fact to refute that testimony. Nard testified before the Federal Grand Jury at his (Nard's) insistence. Nard was given a chance to tell his story

to the Grand Jury in 1972 or 1973. Nard claimed he couldn't get access to documents that would prove his story. Among other documents, Nard claimed Armour withheld daily reports.

At the beginning, Kirshen believed Nard's story looked plausible. He advised documents were subpoenaed from Armour, and they cooperated fully.

Kirshen recalled receiving inquiries from different Department of Justice offices. Those inquiries were centered around determining what the story was regarding Nard because Nard had come to their offices making allegations.

The Department of Justice gave Kirshen approval for travel to Chicago, Pittsburgh, and Phoenix to review Armour documents. Most of the documents in each of the three cities were duplicates of those in the other cities. Further, Kirshen believed the manner in which these documents were stored would make it very difficult for Armour to conceal any documents. Kirshen was looking for specific things per Nard but they never materialized. Much of Nard's documents or notebooks were determined to be taken out of context. Much of the information that was alleged could be neither proved nor disproved.

Kirshen began seeing things were "a little screwy" after he left Pittsburgh where he was reviewing Armour files. Allegations made by Nard were just not checking out. In fact, Kirshen believed the documents he saw made him begin to cast doubt on Nard's credibility. During Kirshen's review of Armour files, the missing documents were never found. Armour gave full cooperation and literally opened their filing system and allowed Kirshen free access.

When Kirshen came to Hultman in Cedar Rapids, Kirshen and Hultman talked about the case. They both agreed the case should be dropped. Hultman, with Kirshen in agreement, concluded they should go through the entire Grand Jury process due to the nature of Nard's allegations. Hultman thought it was important in the interest of justice and in the interest of complete and fair treatment.

Kirshen recalled that Armour told the U.S. Attorney's office about the criminal tax case about Nard. IRS people had been looking over Armour records. Kirshen called IRS and asked what they were doing. IRS officials would not tell him the details and referred him to Assistant U.S. Attorney Tom Daley in Pittsburgh.

Kirshen advised that he called Daley and filled him in on the Grand Jury inquiry. Daley filled in Kirshen on the details of the tax case. Daley also sent Kirshen a copy of the indictment. There was no discussion of the indictment during the first call. Therefore, Kirshen could not be certain whether the case against Nard was about to be presented or had been presented to the Grand Jury in Pittsburgh on the date of the call. Kirshen called Daley a second time and told him about "additional stuff" Armour documents may show against Nard. He was referring to documents he had seen during his review at Armour facilities in Chicago, Pittsburgh, and Phoenix. He recalled that Daley told him it wasn't necessary, the case they had he felt was "rock solid".

Kirshen insisted there was no discussion or agreement with Daley regarding the tax case plea. The only person he talked to about the tax case and its impact on the Grand Jury was Nard himself. Nard asked Kirshen if they had to tell the Grand Jury about the tax case. Kirshen recalled telling Nard that he thought it should be disclosed. Nard alleged to Kirshen that Richard Thornburg and Tom Daley had concocted the tax case to discredit him for what he was doing in the Iowa Grand Jury. Nard also told Kirshen that he had pled nolo in the tax case to get it out of the way before the Grand Jury inquiry. Kirshen could not recall what if anything was told to the Grand Jury about the tax case.

Kirshen became involved in Wounded Knee in June of 1974 through January of 1975. The Nard Grand Jury inquiry was left hanging. When he came back, he stated he didn't get into the case as deeply as he did at the beginning. Hultman primarily handled the case.

Kirshen believed the Grand Jury didn't understand the case the first time they heard it. The second time they appeared to be very negative. Kirshen stated the Grand Jury believed Nard had no credibility and that he was "a nut". All of the witnesses that were subpoenaed to testify before the Grand Jury were at Nard's suggestion according to Kirshen. Kirshen said Hultman and he told Nard, "Give it your best short." This meant providing names of witnesses who could provide good documents that would support his allegations. Witnesses came, but Kirshen stated they didn't prove anything. Kirshen concluded that he did not believe the U.S. Attorney could have gotten a conviction on anyone of the individuals Nard made allegations against.

Kirshen insisted that there was never any influence from the Department of Justice or anyplace else to shut down the Grand Jury inquiry. When it was shut

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down, Kirshen concluded with Hultman that the case had no merit. Kirshen drafted a "form of letter of declination" to Nard, but Kirshen didn't know if Hultman signed and sent it out. Since no investigative agency referral was involved, this letter was considered like a declination letter. Kirshen claims he saw no influence or pressure of any kind brought against Hultman regarding the Nard matter from anyone including Richard Thornburg.

Kirshen could not recall a court reporter at the Grand Jury during the Nard inquiry. At that time, only Burton Boudreau was being used. Kirshen claims he never saw any real perjury or any conspiracy to get Nard by Armour or anyone else. He recalled Nard telling him "all would cave in" when the case went to the Grand Jury. It didn't. Kirshen recalled a Grand Juror commenting if anyone should be indicted, it should be Nard. Kirshen concluded by repeating that, in his opinion, he doesn't believe they could have gotten any kind of a conviction on anyone regarding Nard's allegations.

Mr. KIRSHEN. There were two other later memos, but we have not been able to come up with any copies of them.

Senator DECONCINI. This particular brief in resistance, to your recollection, was not prepared by you?

Mr. KIRSHEN. The original draft was done by me but, as I recall, there were changes made after it left my office. I don't know what the final draft as filed—I think that was Northern District of Illinois——

Senator DECONCINI. There is refernce here it was decided that the matter would be consolidated in the U.S. attorney's office in Sioux City to avoid duplication of effort.

Mr. KIRSHEN. That was what I referred to before. That was informally decided, not as a formal decision but kind of implicit in what was discussed.

Senator DECONCINI. When you were making reference in this memorandum here, how much consolidation were you talking about or did you anticipate?

Mr. KIRSHEN. Consolidated to the extent that I didn't draw any distinction between Pittsburgh and Sioux City. I was just looking at the totality of it because I considered what happened in Pittsburgh to to be relevant to Sioux City.

As I recall, there were some aspects of Sioux City that were possible to compartmentalize, but there were many aspects of it that were impossible to deal with—largely, as I recall, McKavis and Levitt—that it wasn't really possible to separate out Sioux City and Pittsburgh.

Senator DECONCINI. Our understanding of the facts is that Armour sued Nard for delay in Sioux City and delay in Pittsburgh under the contracts that he had with them. Did you ever find any Armour correspondence relating to either job where Armour complained of Nard's performance prior to termination of the contract? Do you recall?

Mr. KIRSHEN. May I have that question again, please?

Senator DECONCINI. Yes. Did you find any Armour correspondence in your investigation in preparation for going to the grand jury relating to either the Pittsburgh or the Sioux City contracts between Armour and Nard where Armour complained of Nard's performance prior to the termination of the contract?

Mr. KIRSHEN. Where Nard complained of Armour's performance?

Senator DECONCINI. No, where Armour complained of Nard's performance. Did that come up at all?

Mr. KIRSHEN. To my recollection, I think it did, but I honestly can't remember at this point. There was a voluminous amount of documents that I looked at. I spent a total of 7 days largely just going through documents just to identify the ones that deserved more of a look. Then I spent several weeks wading my way through those. However, this was 6 years ago; my recollection is fairly hazy.

Senator DECONCINI. I can appreciate that.

Do you concur with Mr. Hultman that, to your recollection, you felt there was perjury there and it should be taken to the grand jury?

Mr. KIRSHEN. I looked at the case another way. The question that I had to decide, that I was charged with deciding, was whether not only was there perjury—it is really immaterial to say was there or wasn't there—the problem that I was faced with was, is there something upon which we could indict and obtain a conviction?

Looking at all of the documents and subsequent developments, my conclusion was that I really couldn't say whether or not there had been perjury. There were some things that appeared to give the possibility that there may have been perjury, but nothing that I could say beyond a reasonable doubt or argue to a jury beyond a reasonable doubt.

Senator DECONCINI. Even a grand jury?

Mr. KIRSHEN. A grand jury or a petty jury. I don't believe it's appropriate to bring an indictment where you can't prove the offense to a conclusion at trial.

There was nothing there that I felt that I could in good conscience present to a jury, either grand or petty, particularly petty, and obtain a conviction.

Senator DECONCINI. The decision then to go to the grand jury was not yours?

Mr. KIRSHEN. Excuse me?

Senator DECONCINI. The decision to go to the grand jury was not yours?

Mr. KIRSHEN. No; that was partially my decision. The second set of grand juries was my decision.

Senator DECONCINI. You decided to go ahead and go even though you felt that way?

Mr. KIRSHEN. When I say "go to the grand jury," what I'm referring to is asking them to vote on a true bill. I felt there was enough there to warrant a full grand jury investigation. Actually, that wasn't my decision; that was my charge—to use the grand jury mechanism along with our other investigatory mechanisms to determine whether and where we should go. At the end it was my conclusion that there may have been some substance to Mr. Nard's allegations.

Senator DECONCINI. All of the grand juries in which you participated, were they conducted as other normal grand juries?

Mr. KIRSHEN. They were.

Senator DECONCINI. Were there votes on whether or not to issue true bills?

Mr. KIRSHEN. Not in a formal sense, no.

Senator DECONCINI. Not in a formal sense?

Mr. KIRSHEN. No.

Senator DECONCINI. How?

Mr. KIRSHEN. There was, however——

Senator DECONCINI. How was it done differently than in a formal sense?

Mr. KIRSHEN. The question before one grand jury—well, I'm not sure if I'm getting into 6(e) material, but it never came down to the question of a formal vote.

Senator DECONCINI. Without telling us or referring to any of the evidence, can you just give us the procedure that occurred? Tell us generally about the grand jury.

Mr. KIRSHEN. What I would do is present the case to the grand jury and then at certain points during the presentation—now bear in mind this took place over a period of time—I would ask the grand jurors for their consensus as to their feelings of the credibility of some of the witnesses and whether the grand jury, which is the investigative body itself, wished to pursue and what it wished to pursue.

In other words, the function of the U.S. attorney in the grand jury as I regard it is not as a leader but as an adviser. I was trying to seek the sense of where the grand jury wished to go with this without actually——

Senator DECONCINI. In actuality, that isn't how grand juries work, is it?

Mr. KIRSHEN. Sometimes they do.

Senator DECONCINI. They do? Is that how these worked? You didn't——

Mr. KIRSHEN. I didn't feel in this type of investigatory situation that it was my—I'm not telling the grand jury what to do. They're supposed to tell me what to do if they are to be meaningful.

To some extent, I had a prosecutive decision to make somewhere along the line, but at the same time so does the grand jury. The grand jury is not a rubberstamp for the U.S. attorney.

I was really very much concerned in this particular case with making sure that the grand jury had a maximum amount of freedom to pursue it—in addition to the way that I wanted to see it pursued—in the way that they wanted to see it pursued.

Senator DECONCINI. How did that relate to having any votes on whether or not to issue bills?

Mr. KIRSHEN. At various times I would ask the grand jury, "Based on the testimony you've just heard, what other witnesses would you like to hear? Are you satisfied with the completeness of the presentations?"

Senator DECONCINI. Mr. Kirshen, is that the way you conducted most grand juries, letting them ask you questions——

Mr. KIRSHEN. Not on most types of cases, no.

Senator DECONCINI. On perjury cases?

Mr. KIRSHEN. In cases which are investigatory as opposed to the more routine criminal cases, where the grand jury is filling a much more—the same type of function that this committee is filling.

Senator DECONCINI. Was this in your sense more of an investigative grand jury?

Mr. KIRSHEN. Yes; it was. It was much more of an investigative grand jury than most of the cases that we had before us.

Senator DECONCINI. During the course of your involvement with the *Nard* case; did you ever have the impression that Mr. Nard was selective in what documents that he was providing your office?

Mr. KIRSHEN. Very much so, not at first but after a while, when I started getting into the notebooks particularly.

Senator DECONCINI. Can you elaborate a little bit on anything that comes to mind?

Mr. KIRSHEN. What I did, at first I started in—I don't even remember how they were numbered any more, but I started in on one of the notebooks and started going through with the documents attempting to prove out the specific allegation or the general allegation that Mr. Nard was making to determine whether in this specific instance there was anything that was capable of indictment, much less conviction.

Because of the volume of the material, I then, in addition to going through a block of them, went through them at random after that—all of them. Then, in addition to that, I went to specific things to which Mr. Nard directed me.

In no instance did I come out with a feeling that there was something there that was capable of indictment, capable of conviction. At best, things came through very fuzzily. At worst, it appeared that the materials had been very selectively edited to make it look like there was something when in fact——

Senator DECONCINI. Excuse me. Is this the material that was in the books that Nard gave you?

Mr. KIRSHEN. This is what I am referring to largely, augmented by other materials that he would bring in from time to time and, of course, augmented now by the Armour documents, of which I had—I don't remember how many cases of documents we had in our office.

Senator DECONCINI. You felt that the Nard books—I think there were eight altogether—that were turned over to you had been edited and you found that out by the other evidence that you had that you looked at?

Mr. KIRSHEN. That's right. Things had been taken out of context. There were certain documents there when other documents that were relative to the same question were not there.

Mr. Nard was a very effective advocate for himself and has been. This is the impression that I got.

However, when you started trying to look at it objectively, trying to determine whether there was anything there that should result in an indictment, should result in taking it to a trial, I just couldn't come up with anything.

Bear in mind, I'm talking about the second set of grand juries largely. Mr. Hultman largely handled the third set, although I did come in and give them the background from the previous session of the grand jury.

Senator DECONCINI. In your investigations, if you were investigating whether or not Armour had withheld documents or subpeaned information, did you ever advise Armour counsel not to answer questions regarding the existence of various files that you were attempting to determine?

Mr. KIRSHEN. Did I ever advise Armour counsel not to answer questions?

Senator DECONCINI. Right.

Mr. KIRSHEN. About the existence of files?

Senator DECONCINI. Yes.

Mr. KIRSHEN. Absolutely not. I told them—and I made it clear from the outset—that I wanted to see everything that Armour had, Pittsburgh——

Senator DECONCINI. Do you think they gave you everything? Are you satisfied?

Mr. KIRSHEN. I am reasonably satisfied because in looking at the volume of documents Armour had such a wide dissemination of just about everything.

Senator DECONCINI. Did you ever make any reference to Armour counsel that they should not disclose any of this information to Nard or his counsel?

Mr. KIRSHEN. Anything that was subpenaed to the grand jury would have been grand jury material. At that point anything that we had in our possession as opposed to anything that Nard had in his possession I did not feel it was appropriate to disclose because of the normal grand jury——

Senator DECONCINI. Even if it had not been presented to the grand jury?

Mr. KIRSHEN. Mr. Nard was going to use the Armour proceeding against the Government as a means of obtaining things in his criminal case that he could not obtain through the normal procedures in a criminal case.

Senator DECONCINI. Did Mr. Nard ever give you a list of documents that he thought Armour was withholding?

Mr. KIRSHEN. Yes, he did.

Senator DECONCINI. Did you subpena any of those?

Mr. KIRSHEN. Yes, I did. That was part of the general subpena. I made a specific effort to look for those particular documents.

Senator DECONCINI. Were in fact some of them on the list?

Mr. KIRSHEN. The only ones that I found, to my recollection, were a set of the daily reports. One set of reports—I think pertained to the Pittsburgh side—ran a couple of days beyond what Nard had claimed that Armour had provided to him. I don't know what had been provided.

Senator DECONCINI. Did you subpena all of the ones that were on the lists? Do you recall?

Mr. KIRSHEN. I didn't subpena them specifically that way, no. The subpena was for all documents pertaining to the entire Nard matter which would have included those.

Senator DECONCINI. Then when you did get the documents that you subpenaed from Armour, did you compare them to the list?

Mr. KIRSHEN. Yes, I did.

Senator DECONCINI. How many were there? Do you recall?

Mr. KIRSHEN. Just those few daily reports. Looking at that, I regarded that as relatively innocuous—again, nothing that was capable of bringing to trial.

Senator DECONCINI. The list I have here is some 17. Just one of them is Mr. Watkins' statements which they had him sign. That was one of them.

Another was all purchasing department files of equipment and purchases from Pittsburgh.

Do you recall, did those kinds of things come in the subpena?

Mr. KIRSHEN. The only thing I can say at this point is that I was looking specifically—assuming the list you have in front of you is the same list that I had, which I cannot say——

Senator DECONCINI. I will give you a copy of the list to refesh your memory.

Mr. KIRSHEN. I made a specific effort to look for those items. At that time I felt the best way of doing that was not to disclose to Armour what I was looking for. I felt that if I gave them a list of specific documents that I was looking for, assuming there was some truth to what Mr. Nard was saying, then in all probability to cover themselves, if those documents hadn't already disappeared, they would disappear.

Senator DECONCINI. Do you want to look at that and just see if you recall if that does appear to be the list?

[Witness examines document.]

Mr. KIRSHEN. It appears similar. I cannot say at this time whether it is the same.

Senator DECONCINI. You don't remember?

Mr. KIRSHEN. Unless I had a file, which I do not, I cannot at this time say. I'm pretty sure, however, that the list at that time—let me look at this again.

[Witness examines document.]

Senator, to my best recollection, I cannot pin this down specifically. I believe this is not the same list.

Senator DECONCINI. You do not think that is the same list?

Mr. KIRSHEN. No. That is just a general feeling that I have.

Senator DECONCINI. Do you recall any of the specifics of the particular allegations prior to going to grand jury of Mr. Nard as to the potential perjury counts as to Armour relating to the reason that Armour conceled their agreement or terminated their agreement?

One of them was that Mr. Nard failed to have a constant number of employees toward the last several days. Do you recall that particular incident at all?

Mr. KIRSHEN. Very vaguely.

Senator DECONCINI. Very vaguely.

Mr. KIRSHEN. I do recall it. I think that's what the daily reports were all about.

Senator DECONCINI. Yes. Do you recall Mr. Nard suggesting to you that you ask for those daily reports?

Mr. KIRSHEN. Yes. That was one of the things that was on the list. I don't think that——

Senator DECONCINI. There are some daily reports requested there.

Mr. KIRSHEN. No. 11. However, as I recall, the list was talking about daily reports from Pittsburgh, not Sioux City. As I recall, the refrigeration file, which is No. 20 on this list, was something that was added later in my own handwriting in a phone call from Nard to me. So I believe this is not a copy of—just looking at these things, I just get the feeling this is not the exact same list, although it is somewhat similar.

Senator DECONCINI. I really want to find out whether or not you did subpena the daily reports. Do you recall?

Mr. KIRSHEN. I did not subpena them specifically. My subpena was deliberately general because I wanted to avoid tipping Armour off to what we were looking for.

Senator DeConcini. Would that have included all daily reports?

Mr. Kirshen. Yes; it would have.

Senator DeConcini. In your judgment, did it include all daily reports?

Mr. Kirshen. Did the subpena include all daily reports?

Senator DeConcini. I mean, when you got the material, what you received, were they all there?

Mr. Kirshen. I cannot say for certain. There was one set out of about five or six that contained several days beyond what the other sets contained.

Senator DeConcini. Did you have any feeling that they were not all there?

Mr. Kirshen. No. It just appeared at that time from the looks of the daily reports that things were starting to peter out and that they just more or less stopped.

Senator DeConcini. Not to get into the depth of the case involved, but Armour apparently used as its basis for termination the fact that the crews were not at a constant level and were decreasing; yet, the daily reports that we have here show that the crews were constant the last several days and, as a matter of fact, the last day they were higher than the 2 days before.

Do you recall, was that part of the general area of perjury that you were investigating or considering?

Mr. Kirshen. It was, even though it was relevant to us only insofar as the entire Pittsburgh thing bore on the perjury of the same personnel in Sioux City. We didn't have, of course, in our district the ability to indict for what took place in Pittsburgh. That would have had to have been referred back to the U.S. attorney's office in Pittsburgh.

Had we found anything that was worthy of doing that, it would either have had to have been done on the basis of my communicating to the U. S. attorney's office in Pittsburgh or on the basis of the grand jury returning a report referring the matter to the grand jury in the Western District of Pennsylvania.

Senator DeConcini. Mr. Kirshen, I have no other questions, but I will submit some in writing. They are more detailed. If you can answer those for us, we would appreciate it.

Do you have any statement you care to make?

Mr. Kirshen. Yes, I do. There are a couple things that came up during Mr. Hultman's interview with you that perhaps need a little amplification inasmuch as I was on a day-to-day basis involved with this probably largely to the exclusion of Mr. Hultman except on an as-required basis during the period that I state.

The discussions that Mr. Hultman had with you would relate to the period prior to December 1, 1972 and then largely to the period subsequent to 1974. When I was done with this case and by the time I was on the Wounded Knee special assignment, I had spent 5 or 6 weeks anyway worth of manhours going through those notebooks. Going through documents, going through I don't even know how many things.

I would like to express to you, sir, that I felt in all conscience, and and still feel, that these allegations that Mr. Nard made to us—and I did not limit them to Sioux City—were fully explored. Regardless of

any opinions that anybody might have as to whether there was, in fact, perjury, I could not say at that point that I had an abiding conviction that there was not. I was of the opinion, and still am of the opinion, that there was absolutely nothing on which I would feel in all good conscience capable of asking a grand jury to return an indictment or taking to a petty jury and asking for a conviction.

The matter subsequently was almost reopened by Mr. Hultman, gone through again in great detail. Again the same conclusion was reached. This is all without reference to what happened to Mr. Nard in his tax case.

The question you asked Mr. Hultman about Mr. Levitt andMr. McKavis, to my recollection Mr. McKavis did testify before the grand jury. I am not sure about Mr. Levitt. However, both of them were fully interviewed by me. I was satified that if they had committed perjury or if anyone else in the Armour organization had committed perjury, that there was no available testimony there to support that. I just didn't have those witnesses. If you don't have the horses, you can't make a case go.

I talked to enough of what I considered to be the key witnesses in this case that there was just on that basis, in addition to documents, no basis to do anything with the case other than close it down and say, "We're sorry, but this case is not provable." That's where we ended up.

I hope that clarifies Mr. Hultman's role with respect to Levitt and McKavis. That was largely my area of responsibility.

The best I could say to you, sir, is that if there was any testimony that wasn't 100 percent pure, it wasn't perjury; it was simply, as many witnesses do, answering in a way to make them look good as they can and to make the adverse party look as bad as they can.

If you were to ask me the same question you asked Mr. Hultman, I personally don't feel there was any overt perjury under the legal definition as such.

Senator DeConcini. Did you feel that way all the time prior to going to the grand jury?

Mr. Kirshen. I deliberately did not reach a conclusion or attempt to reach a conclusion. At first I really believed what Nard was telling me. I was really excited by this. I was a new prosecutor. As I got more and more into it, as it got more and more murky, as Mr. Nard's credibility began to crumble, but not his persistence, my final conclusion was, having investigated this fully and having spent hours and hours and hours with those files, hours with Mr. Nard, hours with the Armour documents, and hours with the witnesses—nothing.

Senator DeConcini. You had a disagreement then professionally with Mr. Hultman?

Mr. Kirshen. Mr. Hultman ultimately reached the same conclusion that I did.

Senator DeConcini. But not at the time?

Mr. Kirshen. Not at the same time. He didn't really get into the depth of detail that I got into until he went over it again after I was done. That's really when he made his conclusion.

Senator DeConcini. He testified I think today that he obviously was convinced that even though the grand jury had not decided to issue and true bills, that he took it on to——

Mr. KIRSHEN. That was the first grand jury.

Senator DECONCINI [continuing]. Or suggested that it go on to a State board.

Mr. KIRSHEN. Right. That had already taken place at the time that I came on board. That was the first grand jury. Mr. Hultman expressed those same sentiments to me.

At first, listening to Mr. Nard—and I think a lot of other people have fallen into the same trap—when you first hear Mr. Nard, he sounds completely credible. The notebooks gave enough credence, in addition, to make you really believe there was something to what he was saying.

However, the more we got into it, the more detail I got into it, I realized that none of this stuff would hold water. That's where I ended up first and where Mr. Hultman ended up afterwards.

Senator DECONCINI. Thank you, Mr. Kirshen.

Our next witness is Mary Wagner, former Department of Justice employee.

Ms. Wagner, please raise your right hand.

Do you swear the testimony you are about to give the committee is the truth, so help you God?

Ms. Wagner. Yes; I do.

Senator DECONCINI. Do you have any opening statement, Ms. Wagner?

STATEMENT OF MARY E. WAGNER, FORMER DEPARTMENT OF JUSTICE EMPLOYEE

Ms. WAGNER. No; I don't.

Senator DECONCINI. Would you tell us your profession and residence now, please?

Ms. WAGNER. I am practicing law in Washington with the firm of Hill, Christopher, and Phillips.

My residence is 4824 Dexter Terrace NW., Washington, D.C.

Senator DECONCINI. When did you work for the Department of Justice? What was your position?

Ms. WAGNER. I first worked for the Department of Justice in the fall of 1974. My position at that time was attorney adviser in the Office of Policy and Planning, which was part of the Office of the Deputy Attorney General. In about April 1975 I became Special Assistant to the Deputy Attorney General, who was Harold Tyler. I remained in that position until, I think, March 1977.

Senator DECONCINI. When were you assigned to investigate or were you assigned to investigate or participate in the Nard case?

Ms. WAGNER. I was assigned to participate in the Nard matter. I believe that was in June 1976.

Senator DECONCINI. Can you tell us how that came about?

Ms. WAGNER. As best I can recall now, Steve Blackhurst of the Office of Professional Responsibility in the Department contacted me with regard to Mr. Nard. I think Mr. Nard had been in contact with the Office of Professional Responsibility.

His allegations went beyond the jurisdiction of that Office. It was decided that the deputy's office should handle the matter. At that time I think it was Mr. Blackhurst who first contacted me.

Senator DeConcini. Do you know why the Criminal Division did not handle the case?

Ms. Wagner. I was told—and I don't recall by whom—that the Criminal Division didn't handle the case because some of the allegations concerned Mr. Thornburgh who at that time was Assistant Attorney General in charge of the Criminal Division. In that kind of situation you don't have Criminal Division employees——

Senator DeConcini. That is the reason that was given to you?

Ms. Wagner. That was the reason it was given to me that it's not appropriate for people to report——

Senator DeConcini. Yes; I can appreciate that.

When you were asked to take over this case or get involved in it, were there any qualifications or limitations discussed with you or were you to just review it? What exactly were you supposed to do with it?

Ms. Wagner. There were no qualifications or restrictions as to what I was to do with Mr. Nard and his allegations. I don't believe there are any specific directions as to what I was to do with it, either-

Senator DeConcini. What did you feel was the thrust of your investigation? Did you have a plan to run down the various complaints that he had or how did you approach the investigation?

Ms. Wagner. I approached it not as an investigation per se. My understanding of an investigation, as used by the Department of Justice, is something where you might subpena the witnesses. You might have sworn testimony——

Senator DeConcini. You did not do any of that?

Ms. Wagner. You might subpena documents. You might get the FBI involved. I did not do that.

I regarded my task as meeting with Mr. Nard, trying to ascertain what his allegations were, and reviewing the materials he submitted to me, perhaps going beyond that if necessary.

Senator DeConcini. Did you do that?

Ms. Wagner. My review was kind of an initial review to see whether there was anything that might merit investigation.

Senator DeConcini. Did you do that?

Ms. Wagner. I did that.

Senator DeConcini. On several occasions or one occasion with Mr. Nard?

Ms. Wagner. I recall meeting with Mr. Nard on one occasion.

Senator DeConcini. Did he give you information and material?

Ms. Wagner. He gave me information and material. He gave me, as I recall, a footlocker full of documents. He gave me a large suitcase full of documents and I believe other documents.

Senator DeConcini. What did you do with all that?

Ms. Wagner. I and another assistant, another special assistant to Judge Tyler who was also present in the meeting with Mr. Nard, first attempted after our meeting to—well, during our meeting—to pin him down on what the allegations were.

We had no difficulty in determining whom he had made charges against, but we had more difficulty determining what the charges were.

After the meeting we divided up the documents he had left in my office and we read through all the documents submitted. In addition,

we looked at other departmental files concerning some of the allegations Mr. Nard had made. I and Ms. Gevlin, the other special assistant, spoke with several departmental employees.

Senator DeConcini. That was the extent of the review of the material? From that did you prepare any documents, any memoranda?

Ms. Wagner. From that I prepared a letter to Mr. Nard telling him of my conclusions.

Senator DeConcini. Which were?

Ms. Wagner. Which was that there was no reason to hold an investigation.

Senator DeConcini. Is that the only——

Ms. Wagner. That is, his charges I found were unsubstantiated on the basis of what he gave me.

Senator DeConcini. Was that the only document you prepared?

Ms. Wagner. I'm sure—well, I know I had handwritten notes.

Senator DeConcini. Did you have any interoffice memoranda to anyone regarding this?

Ms. Wagner. I don't specifically recall writing any interoffice memoranda.

Senator DeConcini. You didn't consider this an investigation; you considered it an assessment of whether or not it was worthwhile to proceed "on an official investigation." Is that fair to say?

Ms. Wagner. That's exactly right.

Senator DeConcini. Is that the normal way? Had you been involved in these types of cases before where there were complaints and people turned over evidence?

Ms. Wagner. I have been involved in some complaint situations.

Senator DeConcini. Is that the normal way you handle it? Do you first review what is there and make some kind of a decision whether or not there is a basis to proceed on an investigation?

Ms. Wagner. That's right. I think that's the normal way to proceed in these cases.

Senator DeConcini. What persons did you talk to besides Mr. Nard? Do you recall?

Ms. Wagner. I recall some of them. I'm not sure I will be able to recall all of them.

I spoke with Mr. Cono Namorato in the Tax Division of the Department of Justice because Mr. Nard had some complaints concerning his prosecution on the tax charges.

I may or may not have spoken with Myron Baum or Scott Crampton, who were Deputy Assistant Attorney General for Tax and Assistant Attorney General for Tax at the time.

I spoke with someone in the special prosecutor's office because Mr. Nard at one time had taken some of his allegations over there.

I spoke with Mr. Hultman. I may or may not—I believe I spoke with Mr. Thornburgh, but I have no specific recollection of that. I believe I spoke with one of Mr. Hultman's assistants, Mr. Kirshen, who just testified, but I don't really have any specific recollection of that, either.

I can't right now recall whether I spoke with anyone else or not.

Senator DeConcini. Did you keep a file on the investigation? Did you open up a file?

Ms. WAGNER. I certainly would have kept a file in which I would have inserted my notes as I went along.

Senator DECONCINI. Do you know, does a file still exist, to your knowledge?

Ms. WAGNER. I have been told that the Department has been unable to find a file on Jack Nard if, indeed, such a file existed, and I'm not sure whether I ever would have sent such a file for permanent storage.

Senator DECONCINI. Would you have opened a file on this type of case?

Ms. WAGNER. I would have had at least a looseleaf file in which I would have inserted my notes, just to keep them all together. There certainly would have been a file copy of my letter to Mr. Nard. I don't know whether that would have been in a Jack Nard file or whether that would have been just in a general file somewhere else.

Senator DECONCINI. Was it common for files not to be located when you were there?

Ms. WAGNER. It's not unusual.

Senator DECONCINI. When Mr. James Reynolds, the U.S. attorney for the Northern District of Iowa, asked for your file—did he ask for your file? Do you recall?

Ms. WAGNER. Well, he certainly asked for any documents that I had or that were in the Department.

Senator DECONCINI. Did he talk to you?

Ms. WAGNER. Yes; he did speak with me.

Senator DECONCINI. Did he ask you for whatever file you had on the subject matter?

Ms. WAGNER. I believe he did, to my best recollection.

Senator DECONCINI. Did you send him anything? Do you remember?

Ms. WAGNER. I sent him what I had, which was very limited.

Senator DECONCINI. Which were basically your notes?

Ms. WAGNER. No. He got in touch with me after I had left the Department. I didn't take any departmental files with me. What I had available to me were my chronological files, which contained copies of letters I had written—which should have contained copies of all letters I had written and all memoranda I had written. My chronological file would not have contained handwritten notes.

I had those files in my possession. Those were copies of files, memos, and letters that should be on file at the Department.

I went through my chronological file and gave Mr. Reynolds what I had in my possession. Mr. Reynolds later informed me that he had attempted to gain access to my files that were still at the Department, or that should have been at the Department or in storage. He's the one who told me that the Department has been unable to locate them.

Senator DECONCINI. Did Mr. Reynolds ever subpena you to appear before the grand jury?

Ms. WAGNER. Yes, he did.

Senator DECONCINI. Did you?

Ms. WAGNER. Yes, I did.

Senator DECONCINI. Realizing the prohibition of giving evidence on that particular appearance, have you had any experience before a grand jury before as a prosecutor?

Ms. WAGNER. No.

Senator DECONCINI. When you were interviewed by investigators from the U.S. attorney's office in Iowa, I presume that was prior to appearing before the grand jury?

Ms. WAGNER. That's correct.

Senator DECONCINI. Did you refuse to answer any questions at that interview? Do you recall?

Ms. WAGNER. Not that I recall. That's my best recollection.

Senator DECONCINI. Were you asked by anyone in the U.S. attorney's office in Iowa while you were still with Main Justice to be interviewed?

Ms. WAGNER. To be interviewed in connection with my handling of the Nard matter?

Senator DECONCINI. Right. Did you give any interviews, in other words, to anyone in the Iowa U.S. attorney's office?

I am trying to find out if they have files or just where the files are and what information there is. We have very skimpy information on what you did and what Justice did in reviewing Mr. Nard's complaint.

Ms. WAGNER. The only interview I gave prior to appearing in front of the grand jury and after was to some Secret Service agents that Mr. Reynolds had gotten involved in his grand jury investigation of some of Mr. Nard's allegations.

Senator DECONCINI. That is outside of the grand jury? That had nothing to do with the grand jury?

Ms. WAGNER. I thought it did. I thought it was in connection with the grand jury investigation.

Senator DECONCINI. It was in connection with the Nard case. You gave some testimony to Secret Service agents?

Ms. WAGNER. That's correct.

Senator DECONCINI. I see.

Ms. WAGNER. After I had left the employ of the Department.

Senator DECONCINI. Yes.

Do you know a Mr. Jay Waldman?

Ms. WAGNER. Yes, I do.

Senator DECONCINI. Can you tell us who he is?

Ms. WAGNER. At the time I knew him he was a Deputy Assistant Attorney General in the Criminal Division at the Department of Justice. He was there when I was there.

He now holds the position in State government in Pennsylvania as either Governor Thornburgh's executive assistant or some such capacity. I shouldn't say he now—the last I heard he was holding that kind of position.

Senator DECONCINI. Did you have conversations with him regarding the Nard matter?

Ms. WAGNER. Yes.

Senator DECONCINI. While you were in Justice?

Ms. WAGNER. I believe so; yes. In fact, he may have been one of the people I spoke with in connection with the Nard allegations.

Senator DECONCINI. Do you recall what he said about the Nardc ase?

Ms. WAGNER. No. He certainly was familiar with the case, but I can't recall anything specifically he said. He's very familiar with the Nard case.

Senator DeConcini. Do you recall talking to him about the tax prosecution of Mr. Nard?

Ms. Wagner. I recall trying to reconstruct wth him—and this was not when I was employed at Justice; this was afterwards in connection with trying to refresh my recollection before I went to speak with Mr. Reynolds in Iowa—trying to reconstruct either Mr. Nard's allegations about what various departmental officials had done wrong with regard to the tax matter or what the actual tax case itself was. I believe he wasn't personally familiar with any of that information, although he referred me to someone I think.

Senator DeConcini. You do not recall the specifics?

Ms. Wagner. No.

Senator DeConcini. Did you return all of Mr. Nard's material?

Ms. Wagner. Yes, I did, to him.

Senator DeConcini. To him personally?

Ms. Wagner. To him.

Senator DeConcini. Do you know a Mr. Chuck Ruff?

Ms. Wagner. Yes, I do.

Senator DeConcini. Who is he?

Ms. Wagner. He is now a U.S. attorney for the District of Columbia

Senator DeConcini. Where was he at the time that you were doing the Nard case?

Ms. Wagner. I'm not exactly sure where he was. He's held many, many offices in the Department of Justice.

Senator DeConcini. Did you contact him during your investigation?

Ms. Wagner. I don't believe so.

Senator DeConcini. Not investigation, but during your——

Ms. Wagner. He may have been in charge of the Special Prosecutor's office at that time. He was in charge of the Special Prosecutor's office at one time.

Senator DeConcini. You don't recall having any conversations with him about this case?

Ms. Wagner. I recall—not about the case while I was involved in handling it. I did have a conversation with him later on after I left the Department.

Senator DeConcini. In the course of reviewing the information that Mr. Nard left with you, did you listen to any tapes of telephone conversations? Was that part of the information that he left with you?

Ms. Wagner. I don't believe that he left me anything other than documents, not to my recollection.

Senator DeConcini. What about transcripts?

Ms. Wagner. Transcripts—he left me numerous transcripts of various things, but I don't recall———

Senator DeConcini. Do you remember transcripts of phone conversations?

Ms. Wagner. Not specifically; no.

Senator DeConcini. Do you know Mr. Steven Blackhurst?

Ms. Wagner. Yes, I do.

Senator DeConcini. You said you talked to him about the case?

Ms. Wagner. Yes, because he had spoken with Nard a few times before I got involved.

Senator DeConcini. Going back to Mr. Ruff, you indicated you don't recall having any specific conversation about him. Do you

recall informing him that you were going to be interviewed by the Secret Service?

Ms. WAGNER. Yes.

Senator DECONCINI. Why would you have done that? Was he your supervisor?

Ms. WAGNER. No. I was not employed by the Department at the time.

Senator DECONCINI. Oh, you just called——

Ms. WAGNER. There is a departmental regulation which requires that all employees or former employees, when subpenaed to testify or when a demand is made for information, be in touch with the Department and get clearance prior to revealing any information.

Senator DECONCINI. You were doing that?

Ms. WAGNER. That's correct. At the time that I got in touch with Mr. Ruff he was Associate Deputy Attorney General in the Deputy Attorney General's office and would be the person that I logically went to.

Senator DECONCINI. Did you have to do that in order to come to this hearing, before coming to this hearing?

Ms. WAGNER. That's correct, to comply with departmental regulations.

Senator DECONCINI. For how long a period of time?

Ms. WAGNER. Excuse me?

Senator DECONCINI. For how long a period of time does that bind you to do that after you've left their employ? Do you know? Forever?

Ms. WAGNER. Forever, as far as I know. It applies to former employees.

Senator DECONCINI. Twenty years from now if you are asked to testify, you would have to call? Do you have to get clearance or do you just advise them that you are going to testify?

Ms. WAGNER. You advise them and you just get departmental clearance.

Senator DECONCINI. Pardon?

Ms. WAGNER. You must get departmental clearance. That's provided by the regulation.

Senator DECONCINI. If they say no, you are supposedly prohibited from testifying?

Ms. WAGNER. That is correct.

Senator DECONCINI. Even under subpena?

Ms. WAGNER. That is correct. It's 28 CFR 1621.

Senator DECONCINI. They seem to make a big impression on that matter.

Ms. WAGER. I used to handle such requests when I was working in the Deputy's office. People would call me when they were subpenaed and request clearance.

Senator DECONCINI. Going back to Steven Blackhurst, did he give you any advice or directions regarding the Nard case?

Ms. WAGNER. I don't believe so.

Senator DECONCINI. Did you seek any advice from him on what to do with the case or how to handle it?

Ms. WAGNER. I don't believe so.

Senator DECONCINI. Outside of Mr. Waldman and the people you mentioned here, do you recall anyone else that you talked to outside of

the Government in relation to the complaints that Mr. Nard had left with you as far as the validity of those complaints?

Ms. WAGNER. You're talking about at the time that I was actually conducting my review?

Senator DECONCINI. Yes.

Ms. WAGNER. Not that I can recall right now.

Senator DECONCINI. Thank you.

Do you have any statement you care to make?

Ms. WAGNER. No, I don't.

Senator DECONCINI. Thank you very much for your time today.

Ms. WAGNER. Thank you.

Senator DECONCINI. We appreciate your being here.

Our next witness will be Mr. Thomas Henderson, former chief of the Public Integrity Section, Department of Justice.

Mr. Henderson, you have a statement here. We will insert it in the record as if read in full if you care to highlight that for us.

STATEMENT OF THOMAS H. HENDERSON, FORMER CHIEF, PUBLIC INTEGRITY SECTION, DEPARTMENT OF JUSTICE

Mr. HENDERSON. Mr. Chairman, I would make a request that I be allowed to read it in full, if I may. I would very much like to do so.

Senator DECONCINI. Does the statement have anything to do with the Nard case?

Mr. HENDERSON. Mr. Chairman, these were called as Public Integrity oversight hearings. I think it tells the background of the Public Integrity Section, how cases are handled. I think it would be illuminating to this committee. I would very much appreciate reading the whole statement, if I could.

Senator DECONCINI. Mr. Henderson, we intend to get into the overall part of the Public Integirty Section, as you know. Only due to time, I am interested in trying to get to the Nard matter today. We will be returning and hopefully will have you testify before us. Therefore, I am more than happy to put the statement in the record in full.

Mr. HENDERSON. Mr. Chairman, may I read——

Senator DECONCINI. Pardon?

Mr. HENDERSON. As a compromise, may I read the last half of it?

Senator DECONCINI. Yes, sir; that would be fine. Let the record show that the full statement will appear at the end of your oral testimony.

Mr. HENDERSON. Thank you.

Mr. Chairman, I do appreciate the opportunity to be here today and to submit this statement.

The major focus of this committee appears to be cases where we ultimately declined prosecution. For understandable reasons there has been considerable confusion and misunderstanding regarding our decisions to decline prosecution, and this confusion and misunderstanding have apparently engendered the controversy which precipitated these harings.

Phil Heymann, in his supplemental remarks to this committee on April 23, 1980, explained with great clarity the reasons for these misunderstandings and the unfairness to the section that arises

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therefrom. I strongly endorse Mr. Heymann's words and recommend them to all who have an interest in this subject.

In the interest of brevity I will not repeat Mr. Heymann's words, but I do want to speak for a moment on the general subject of declinations. In every matter referred to us—that being the Public Integrity Section—someone thinks the subject committed a crime. In many cases referred to us but not prosecuted, the subject committed acts that are unethical, immoral, and at best lacking in judgment. In some cases referred to us but not prosecuted, the subject might even have committed criminal acts of which we are unable to obtain sufficient evidence.

Because of this reality, the press, the public, and occasionally Members of Congress, quite understandably, are disturbed when we decline prosecution of a matter. This disturbance not infrequently translates into criticism and suspicion of our motives. Needless to say, almost every decision to prosecute a public figure is met with equally strident criticism. We have recognized the inevitability of this negative reaction throughout our existence and have, nonetheless, endeavored to call every case on its merits regardless of consequences.

A decision not to prosecute does not necessarily mean we approve of the questioned behavior. A decision not to prosecute does not necessarily mean we personally believe the subject is innocent. A decision not to prosecute does not necessarily mean we disbelieve the accuseds. A decision not to procecute may mean only that the available admissible evidence is insufficient, factually or legally, to warrant a successful criminal prosecution.

In order to convict an individual, the Constitution requires we submit to a jury legally admissible evidence sufficient to prove our case beyond a reasonable doubt. Crafted on this constitutional requiremant is the general Department policy of not returning an indictment, even when the evidence is legally sufficient, when there is little likelihood of conviction. This is a fair, sensible rule which insures that limited resources are diverted from hopeless causes and guarantees that individuals will not be put through the burden and stigma of criminal trial unless we have the quantum of evidence needed to convict. The credibility of the Department of Justice demands no less.

The practical effect of these rules and policies is that a great many cases have been declined by the section where the subjects might well have been guilty or at least critics are justified in believing they were guilty. It does not, should not, and cannot follow, however, that the decision not to prosecute was made for improper reasons. This charge, while easily made by critics, is virtually impossible ro rebut because of the appropriately strong secrecy obligations on a Federal prosecutor. But make no mistake about it, the charge of coverup, whitewash, or fix is a most grave one that can spell capital punishment to a prosecutor's reputation and professional future.

It has been obviously distressing to me that I have been wrongly subjected to these charges. It is even more distressing that the dedicated young attorneys—past, present, and future—who must handle these cases on the line are being subjected to such charges. In all my 13 years in the Department of Justice, and particularly my tenure with the Public Integrity Section, I have never seen an improper motive enter into any decision not to prosecute or investigate. I would not tolerate

such interference and I am absolutely confident that none of the line attorneys who work these cases would sit quietly by were their decisions and recommendations second-guessed for improper reasons.

A fix or coverup by a prosecutor is, in my mind, one of the most serious criminal abuses of the public trust imaginable. The Public Integrity Section was created in the wake of Watergate. I and all the section attorneys were drawn to the section because we wanted to fight that sort of abuse of power, not because we want to repeat or emulate it.

It is entirely appropriate that the Senate Judiciary Committee be vigilant in its oversight of the Department to insure that abuses of the prosecutorial powers do not take place. I question, however, whether there has been a sufficient predicate brought to this committee to justify the present scope of these oversight hearings.

As an example, the subject matter of the hearing today has been represented to be oversight of the Public Integrity Section in its handling of the so-called John Nard matter. A cursory examination of Mr. Nard's contacts with the Department of Justice would clearly reveal that the Public Integrity Section's involvement with this matter was tangential at best. It is difficult to imagine what legitimate oversight function could be served in reviewing a situation in which the section had such minimal involvement.

For the record, I also feel compelled to state my concerns as to the manner in which this committee has pursued its present oversight objectives regarding the Public Integrity Section. Even assuming a sufficient predicate for the sort of oversight the committee is engaged in, the procedures followed in this instance have proven unnecessarily prejudicial to the reputations of individuals who were subjects of the questioned investigations.

Both before and after obtaining access to section files, numerous articles have appeared in the media, invariably based on material derived from this committee, which state, directly or indirectly, that various public officials wrongly escaped prosecution even though evidence indicates their guilt. The unfairness and damage to these individuals from these leaks is immeasurable. While the press has a right and indeed, an obligation to report matters of official wrongdoing, this committee, when pursuing the important task of overseeing sensitive criminal prosecutions, has a solemn obligation to assure fairness to all concerned.

In conducting future oversights of this type, I would urge the committee to institute greater controls over information obtained. The power of a prosecutor in our system to obtain information in pursuit of wrondoing is awesome. With this power comes an overriding obligation of discretion in the use of this information, and a full panoply of procedural rights come into play once charges are publicly made. If this committee chooses to exercise its oversight power in a way that utilizes this information with no regard for the rights and reputations of affected individuals, then I question the utility of this exercise.

On a more personal note, the manner in which these hearings have proceeded has proven extremely prejudicial to myself and other Department officials who have endured an unwarranted cloud cast

over their heads for many months with little or no promise of resolution. The following chronology of my own situation illustrates this problem:

One, in January 1980, after a 12-year career in the Justice Department, I accepted a Presidential nomination to be special counsel of the Merit Systems Protection Board. I accepted the nomination only after considerable contemplation because it meant giving up a position I had enjoyed and which I felt was extremely important.

Two, in February, I began cooperating with the Senate Governmental Affairs Committee which had responsibility for my nomination and confirmation hearings.

Three, in March, the Federal Times printed articles alleging the "mishandling" of 12 cases by the Public Integrity Section during tenure. The Privacy Act and other legal strictures, such as the regulations of the Department of Justice, prohibited my responding to these charges. Suffice it to say that the charges of mishandling as to each of the 12 cases were unfounded, and a careful examination of the files makes clear that each questioned case was handled professionally and honestly.

Four, in April, Senator Hatch of this committee asked that I appear before the Senate Judiciary Committee at the Justice Department authorization hearings, but a policy decision was made by the Criminal Division which kept me from testifying. The decision was based on the fact that the Division felt testimony at such an authorization hearing should be provided by higher ranking officials. I was then and I remain willing to testify regarding any matter under my stewardship at Public Integrity.

Five, in May, after several discussions between Justice Department officials and Judiciary Committee personnel, the Department agreed to permit me to testify in person.

Six, in early June, at the request of the Judiciary Committee—or so I was told by the chief counsel of the Senate Governmental Affairs Committee—the Senate Governmental Affairs Committee agreed to delay my confirmation hearings until oversight hearings could be held by Judiciary. The Governmental Affairs Committee, whose staff had already reviewed most of the questioned cases, assured me that Judiciary had agreed to be expeditious.

Seven, on June 9, I received a letter from you, Mr. Chairman, requesting me to appear as a "witness" in oversight hearings on the Public Integrity Section to be held by the Judiciary Committee.

Eight, on June 11, I appeared, in response to that request, before the committee along with Assistant Attorney General Heymann at this very table and in this very room. At that time several Senators publicly repeated allegations which had appeared about me and the section in the press. After several Senators had spoken, Mr. Heymann requested an opportunity to respond, but was refused. The committee then adjourned without the benefit of testimony from either Mr. Heymann or me. As a result, I was not given the opportunity to answer any of the charges that had been made in spite of having been specifically called before the committee as a "witness."

Nine, on June 24, this committee and the Justice Department agreed on committee access to Public Integrity Section investigative files, and virtually all requested files have since been made available

to committee staff. On that date Senators Kennedy and Thurmond wrote that "Senators directly involved will be able to proceed expeditiously with the oversight hearings and Mr. Henderson's nomination."

Having obtained access to the files in June, the committee has since shown limited interest in reviewing the material provided. Despite complaints that the Department was delaying and stonewalling the committee's efforts, all the files have yet, to this day, to be reviewed by the committee staff.

Ten, 171 days have now passed since the agreement and there have been no oversight hearings although negative articles regarding the section citing Senate sources have continued. The failure of the committee to hold such hearings has meant that my nomination has died without my ever being allowed to respond publicly to the baseless and often scurrilous allegations that were made against me and the attorneys in the Public Integrity Section. Moreover, the position for which I had been nominated has remained vacant for almost 1 year.

I remain confident that once the questioned cases are objectively and carefully reviewed by the committee, no questions will remain regarding the section's performance. I only hope that if the committee intends to continue its efforts in this regard it do so expeditiously with due regard for the rights of all concerned. I remain willing and eager to cooperate in this regard and stand ready to answer any and all questions this committee might have.

Thank you very much, Mr. Chairman.

Senator DeConcini. Thank you, Mr. Henderson. As I said, the full statement will appear following your oral testimony.

With regard to your reference on page 13 to the June 24 agreement between the committee and the Department, are you familiar with that agreement?

Mr. Henderson. Yes, sir, I am. I don't have a copy of it before me, but I'm familiar with it.

Senator DeConcini. Is it accurate to say that the agreement restricted the Judiciary Committee to only two counsel, one representing the majority and one representing the minority, to review any of the files?

Mr. Henderson. That's correct. I think that's absolutely correct.

Senator DeConcini. Approximately how many files would you say are involved in the some 21 cases for which the Judiciary Committee initially asked?

Mr. Henderson. Let me explain that, if I may, Senator.

On June 11, you sent a letter to the Department of Justice—I think I have a copy with me—in which you listed 15 cases.

Senator DeConcini. Right.

Mr. Henderson. You said that you intended to hold Judiciary oversight hearings on the Public Integrity Section. I would like to point out at this time that two of those cases, Robert Frye and Judge Fogel, have never been connected in any way, shape, or form with the Public Integrity Section.

Senator DeConcini. I think we were advised of that.

Mr. Henderson. There were only 13 cases. As of June 24, the access to those 13 or 15 cases, the 15 there, were made available to the Senate Judiciary Committee staff.

Senator DeConcini. To whom on the staff?

Mr. HENDERSON. Well, Senator, if you are interested, I have with me today logs which are now public records, because they were given out under the Freedom of Information Act last week, which show every time a Senate Judiciary Committee staff person came to the Department of Justice, logged in and took out a file, what time it took. It is all here.

Several cases have never been looked at by the Senate Judiciary Committee staff although it's been 171 days since the agreement to give those files over.

Senator DECONCINI. How many cases have been looked at according to that log?

Mr. HENDERSON. I think all but four.

Senator DECONCINI. All but four cases?

Mr. HENDERSON. Yes. Obviously, Senator, as you know, the Vesco case has been looked at extensively. This is a thick file, but most of this is the Vesco case.

Senator DECONCINI. Most of that deals with the Vesco case.

Mr. HENDERSON. Yes; that's right.

Senator DECONCINI. How may files would you just estimate were involved in the 21 cases less the two that were not in the Public Integrity Section that we had asked about? How many physical files would you say were involved?

Mr. HENDERSON. Are you asking me the size of them?

Senator DECONCINI. Yes.

Mr. HENDERSON. Like a cabinet full?

Senator DECONCINI. Yes.

Mr. HENDERSON. Oh, I don't think that it would be —I don't know, but I don't think it's an overwhelming amount. It's not rooms full of documents.

Senator DECONCINI. Is it a closet full?

Mr. HENDERSON. I think it's kept in a closet, in a filing cabinet in the closet of the Deputy Assistant Attorney General.

Senator DECONCINI. One file?

Mr. HENDERSON. I don't know, Senator. That's roughly correct but I really don't know the answer to that. I do not have control——

Senator DECONCINI. Did you have anuything to do with making the agreement or negotiating the agreement as to who could see them on the Judiciary Committee?

Mr. HENDERSON. No, sir. I have had nothing to do—as you know, Senator, since June 2 I have not been connected with the Public Integrity Section.

Senator DECONCINI. Do you feel it was reasonable to restrict it to two lawyers from the Judiciary Committee, one from the minority and one from the majority?

Mr. HENDERSON. I don't know, Senator. The Senate Judiciary Committee agreed to that.

Senator DECONCINI. Only because that's the only thing that the Justice Department would agree to, Mr. Henderson.

Mr. HENDERSON. I wasn't in the negotiations, Senator; I'm sorry.

Senator DECONCINI. During that 171 days, are you aware of the efforts that the Subcommittee on Improvements in Judicial Machinery has conducted on the Vesco matter?

Mr. HENDERSON. Oh, I've read about it in the paper, Senator.

Senator DeConcini. Are you aware that there have been some 8 days of hearings and many other days of depositions?

Mr. Henderson. Yes, I am. Senator, in June, if I may respond to that——

Senator DeConcini. Certainly.

Mr. Henderson. In June I appeared before the committee, and it wasn't limited to the *Vesco* case. Senators —not you, Senator DeConcini, but other Senators on this committee—read from newspaper articles repeating allegations against me personally. I was not allowed on June 11 to answer any questions about that. I was prepared. I had all my books here and I was prepared to answer those questions.

Senator DeConcini. I regret you were not allowed to do so, but I have to say, Mr. Henderson, that had your superiors not blocked you from testifying in April, maybe that would not have occurred. We asked that you come and testify.

Mr. Henderson. That's correct.

Senator DeConcini. As you testify here, the policy decision was made by Criminal Division "which kept me"—meaning you—from testifying.

Mr. Henderson. That lasted for about a month.

Senator DeConcini. Nevertheless, it was certainly an indication somebody did not want you to testify, and it was not us.

Mr. Henderson. Well, that was a policy decision by the Criminal Division. I say nothing about that other than I've been here and available since June 11.

Senator DeConcini. Then when you did testify in May——

Mr. Henderson. I've never testified, Senator.

Senator DeConcini. No. When did you testify before the Senate Governmental Affairs Committee?

Mr. Henderson. I never did. They held off at the request of the Senate Judiciary Committee. They've never given me confirmation. Obviously my nomination has died because of the change in administration, because I was never given a confirmation hearing, because they were asked to hold off until the Senate Judiciary Committee held its expeditious oversight hearings. That's what I was told by the chief counsel of the Senate Governmental Affairs Committee.

Senator DeConcini. Did you ever hear those words "expeditious oversight hearings" from the Senate Judiciary Committee?

Mr. Henderson. Yes; I did, Senator. On June 24, Senators Thurmond and Kennedy in a letter to the Justice Department said that, and I quoted them in my statement—that it would be expeditious oversight hearings and we could proceed with Mr. Henderson's nomination. That came from Senators Kennedy and Thurmond.

Senator DeConcini. Did you think that had some bearing on the feeling that you would be able to testify when asked in April to testify?

Mr. Henderson. This is June 24, Senator.

Senator DeConcini. Right.

Mr. Henderson. I had already appeared before the Senate Judiciary Committee 2 weeks before that, so I obviously was prepared to appear at any time.

Senator DeConcini. Isn't it fair to say, Mr. Henderson, that the Justice Department prevented you from testifying in April before this committee?

Mr. HENDERSON. It is fair, on a policy decision. That's a fair statement. By May they had agreed to let me testify as to anything that the Senate Judiciary Committee——

Senator DECONCINI. Do you think the fact that we had issued a subpena for you and were ready to go to court had some bearing on the Justice Department changing their mind?

Mr. HENDERSON. I don't know, Senator. You would have to ask the people who made the decision.

Senator, I have these logs. If you are interested, I will be happy to give them to you.

Senator DECONCINI. We will be glad to have them. We will put them in the record.

[The documents mentioned above were not submitted to the subcommittee by Mr. Henderson at presstime.]

Referring now to the oversight hearings that we are expeditiously conducting on Mr. Nard, might I say I am very dispapointed, too, Mr. Henderson, that we have not been able to do this sooner.

Mr. HENDERSON. So am I, Senator.

Senator DECONCINI. This case with Mr. Nard has been here far too long, but with limited resources that I have on the subcommittee that has taken on this thing it is the best I could do.

Can you tell us when you first became involved in the Nard case, or did you become involved in the Nard case?

Mr. HENDERSON. No, sir, I didn't become involved. I can tell you what contacts I had about it.

Senator DECONCINI. Would you tell us what contacts you had regarding the *Nard* case?

Mr. HENDERSON. The first thing that I can remember was that we were referred a letter from Judge Bell that had been sent by Mr. Nard. This is the first thing I remember. There may be something before this, but it is the first thing I remember.

One of my deputy section chiefs assigned it to one of our line attorneys to prepare a response for Judge Bell or prepare a response for the Assistant Attorney General, who would then send it on to Judge Bell to see whether he wanted to meet.

The letter requested a meeting. It was from Mr. Nard. To my recollection, it requested a meeting with Senator Hatch, Senator Nunn, Mr. Nard, and Judge Bell. He wanted to make some charges against certain Department of Justice officials.

That was assigned routinely to one of our line attorneys who did some background on the situation to find out what stance we should take in the matter,

Mrs. Brinkman—and you have a copy of this memo, Senator—recommended to me that we send a letter for Judge Bell to sign to send to Mr. Nard saying that it would not be possible to have a meeting. That's what we did. Judge Bell sent such a letter. I think he revised it, but he sent such a letter.

Senator DECONCINI. Were you involved in that decision as to the reasons not to meet with Mr. Nard?

Mr. HENDERSON. Well, only so far as I was the chief of the section and responsible for everything that comes through the section. This was a citizen letter that the Attorney General's office had sent to us to respond to.

The memo obviously came through me. I reviewed it and approved it and sent it on along with a draft letter.

Senator DeConcini. Now did the complaint involve employees in the Justice Department?

Mr. Henderson. I think it just said generally that that's what he wanted to talk about.

Senator DeConcini. What was the reluctance, to your knowledge, to at least talk to him about it?

Mr. Henderson. Well, the line attorney in the Public Integrity Section who did some background checking found that Mr. Nard had been indicted in Pittsburgh and had plead guilty to income tax charges. He had later, so I was informed, tried to withdraw his guilty plea. When the judge refused to do that, he appealed to the Third Circuit Court of Appeals, which affirmed the district court judge's decision not to let Mr. Nard withdraw his plea of guilty.

Mr. Nard obviously had lawyers representing him. They had the court system. They could make whatever complaints they had through the court system.

I think another factor, Senator—there were several factors here. I think just one factor was that here was a private citizen writing to the Attorney General saying that he wants to bring two U.S. Senators with him to a meeting at the Justice Department. I am sure the U.S. Senator can, if he wants, get an appointment with the Attorney General——

Senator DeConcini. I agree.

Mr. Henderson [continuing]. Much quicker than a private citizen. Had Senator Hatch or Senator Nunn wished—that was a factor.

Senator DeConcini. Were there any specifics as to Mr. Nard's complaint at that time regarding anyone in the Department of Justice or in the Government?

Mr. Henderson. I don't have a copy of that letter Senator, with me.

Senator DeConcini. Were there allegations that Mr. Thornburgh had acted improperly?

Mr. Henderson. That may have been the—I think, if you will just bear with me 1 second, I may have a copy of that.

[Witness examines documents.]

Senator DeConcini. Mr. Henderson, I am going to have to go to the floor and vote.

Mr. Henderson. I don't think I do have a copy of it.

Senator DeConcini. I will be back within 7 minutes. If you want to look for that, we will take a 10-minute break at this time.

[Recess taken.]

Senator DeConcini. The committee will reconvene.

Did you want to review the letter?

Mr. Henderson. Senator, I don't happen to have it with me. However, I would like to have the memo from Mrs. Brinkman to me made a part of the record as to the reasons why we prepared such a letter.

Senator DeConcini. Do you have it?

Mr. Henderson. I do, Senator.

Senator DeConcini. If you will give us a copy, we will make it part of the record, without objection.

Mr. HENDERSON. Thank you, Senator.

[The memorandum mentioned above was not submitted to the subcommittee by Mr. Henderson by presstime.]

Senator DECONCINI. Were you here when Ms. Wagner testified?

Mr. HENDERSON. Yes, sir, I was.

Senator DECONCINI. Was she part of the Public Integrity Section?

Mr. HENDERSON. No, sir.

Senator DECONCINI. Were you surprised at all to hear her indicate that she had heard that the file on Mr. Nard could not be found?

Mr. HENDERSON. I wasn't surprised or not surprised, Senator. I don't know anything about them. The files that were in the Deputy's office, if there ever were any files, I really don't have knowledge or information about that.

Senator DECONCINI. Did you meet with U.S. Attorney Reynolds regarding the *Nard* case?

Mr. HENDERSON. Yes, sir.

Senator DECONCINI. Do you recall when that was, approximately?

Mr. HENDERSON. No, Senator, I really don't, but I remember what he asked me to do.

Senator DECONCINI. Can you tell us the nature of that meeting?

Mr. HENDERSON. Yes. He told me he was investigating this matter in Iowa. He said he wanted to find the investigative file that had investigated Mr. Nard's charges about departmental officials. I told him I didn't know anything about it. He said, "Would you try to get it for me?" I said, "I ll be happy to."

I assigned one of my line attorneys to attempt to find such a file. In fact, it took quite some time. I think he wrote me a letter later saying, "You never got the file for me." That was true. We had some trouble finding it because we didn't exactly know what we were looking for.

Senator DECONCINI. When you say you didn't know what you were looking for, you knew you were looking for ——

Mr. HENDERSON. We were looking for the investigative file, but we didn't know where it was.

Senator DECONCINI. On Jack Nard.

Mr. HENDERSON. That's correct, Senator.

Sentor DECONCINI. It was not in the Public Integrity Section?

Mr. HENDERSON. No, sir; it never was.

Senator DECONCINI. You were having someone look in other areas?

Mr. HENDERSON. In other parts of the Department of Justice, in other divisions of the Department of Justice.

Finally, the line attorney came and told me that he had found some files. Therefore, I wrote Mr. Reynolds a letter and said, "The next time you're in Washington, please come by. We have a file, or the file. It's everything we could find."

Mr. Reynolds did so. He came into the Public Integrity Section. My recollection is he looked at the file and then he came into my office and was very unhappy over what he had seen. He said, "This is not what I was looking for."

I said something to the effect, "Well, I don't know what else there is." I directed him to the Deputy's office to see if he could find something. Maybe the Deputy's office could help him.

The only connection with the Public Integrity Section and Mr. Reynolds was that we were trying to do him a favor in collecting what-

ever file we could find in the Department of Justice and making it available to him.

Senator DeConcini. You did not have any idea what was in the file——

Mr. Henderson, Oh, no, sir.

Senator DeConcini [continuing]. That you finally found?

Mr. Henderson. That we showed Mr. Reynolds?

Senator DeConcini. Yes, that you showed him.

Mr. Henderson. I don't recall what was in it, Senator. The line attorney found it. He told me he had it. It wasn't a case in the Public Integrity Section.

Senator DeConcini. I understand,

Mr. Henderson. We were doing a favor for the U.S. attorney in the Northern District of Iowa.

Senator DeConcini. I understand.

Mr. Henderson. I wrote him and said, "Please come in." I never looked at it.

Senator DeConcini. You never looked at it——

Mr. Henderson. No, sir.

Senator DeConcini [continuing]. To know what was the nature of the information that was in there?

Mr. Henderson. He may have told me and I've forgotten, but I don't really recall what was in the file that Mr. Reynolds looked at.

Senator DeConcini. Mr. Reynolds displayed some distress about what was or was not in the file?

Mr. Henderson. Well, he said, "This is not what I wanted to see. This is not the right file," or something to that effect. He was not happy with what we had gathered.

Therefore, I said, "Well, the best thing for you to do is to go right to the Deputy's office and find whatever they have because we didn't conduct the investigation."

Senator DeConcini. Did Mr. Reynolds talk to you about the case at all?

Mr. Henderson. Not in detail, maybe very generally the allegations. I don't recall specifically anything about it, but I never got into the details. I have heard some of the details this morning and they did not ring a bell with me.

Senator DeConcini. He didn't mention any accusations of misconduct by someone in the Justice Department?

Mr. Henderson. Oh, yes.

Senator DeConcini. He did?

Mr. Henderson. Yes; but when I say "details," I mean the details of the Armour case, and that I don't know.

Actually he mentioned the name of Senator Hugh Scott.

Senator DeConcini. Did your line attorney or you contact Mary Wagner then? Do you know?

Mr. Henderson. Not that I know of.

Senator DeConcini. You do not know? You never talked to her about it?

Mr. Henderson. Not that I recall, Senator.

Senator DeConcini. Therefore, as far as you know, you do not know if there is a file that Mary Wagner put together?

Mr. Henderson. No, sir.

Senator DeConcini. Certainly it was never in the possession of the Public Integrity Section?

Mr. Henderson. To my knowledge, that's correct, Senator.

Senator DeConcini. Did you participate in the meeting in August of 1979 with John Keeney, Phillip Heymann, and U.S. Attorney Reynolds?

Mr. Henderson. Well, I don't know whether I participated; I was present at the meeting.

Senator DeConcini. You were present?

Mr. Henderson. Yes, I was.

Senator DeConcini. Can you tell us what went on in that meeting?

Mr. Henderson. To the best of my recollection, the meeting was called by Mr. Heymann. He invited me to come over to the meeting, and I attended.

The issue was whether and in what manner Mr. Reynolds would continue the grand jury investigation out in Iowa. There was some discussion by Mr. Reynolds on what he had done and what he was about to do. My recollection was that Mr. Heymann said, "Fine. Go ahead."

Senator DeConcini. If I informed you that we believe Mr. Reynolds is going to testify that there was a great deal of pressure brought to bear not to proceed with that, would you say that's not your recollection?

Mr. Henderson. Well, Senator, I happened to read the statement that Mr. Reynolds submitted to the committee. I don't think that he said there was pressure. I think there was a discussion and he was allowed to continue.

There was a discussion of whether the subpena for Mary Wagner was appropriate. I don't recall what the resolution of that was. I think Mr. Reynolds explained his viewpoint as to why he did what he did.

Senator DeConcini. How long did the meeting take place?

Mr. Henderson. I don't recall, Senator.

Senator DeConcini. Were you there for all of it?

Mr. Henderson. I don't recall whether I was or not.

Senator DeConcini. Was your opinion sought?

Mr. Henderson. I don't recall ever giving my opinion. I probably was asked to relate some facts that the Public Integrity Section had about the matter. However, I don't recall ever giving my opinion as to whether or not the investigation should go another 2 months, another 6 months, or whether witness X or Y should be called. I don't recall having much to say at the meeting.

I was called over by Mr. Heymann and I attended. I don't recall giving an opinion of it.

Senator DeConcini. Would you say that there was any pressure applied to Mr. Reynolds?

Mr. Henderson. I wouldn't say there was pressure. I would say there was a discussion of whether the investigation was proceeding in a correct manner. Mr. Reynolds explained his position. My recollection is that at the end of the meeting Mr. Heymann said, "Well, go ahead." He did so, as far as I know.

Senator DeConcini. Was there any recommendation or discussion there about not going ahead?

Mr. HENDERSON. Not that I recall.

Senator DECONCINI. By Mr. Heymann or Mr. Keeney?

Mr. HENDERSON. Not that I recall.

Senator DECONCINI. Did you ever have opportunity while working for the Department of Justice to hear complaints about the Reynolds investigation of the Nard matter? Did you ever have any discussions with anybody on that subject matter?

Mr. HENDERSON. If you have a particular instance in mind, Senator——

Senator DECONCINI. No, I don't. I was just asking the general question.

Mr. HENDERSON. I am sure that it may have come up. I don't recall any specific instance right now. Once again, this was not a case in the Public Integrity Section, so it was not as great an interest to me as cases in the Public Integrity Section were. This case was being handled in the Northern District of Iowa.

Senator DECONCINI. At the meeting with Mr. Heymann and Mr. Reynolds and Mr. Keeney that you were in on in August, do you recall Mr. Heymann's statement complaining about the Reynolds investigation of the Nard matter?

Mr. HENDERSON. At the meeting?

Senator DECONCINI. At the meeting.

Mr. HENDERSON. I don't recall.

Senator DECONCINI. What about before or after the meeting?

Mr. HENDERSON. I don't recall.

Senator DECONCINI. Have you had any discussions with Phil Heymann regarding the Reynolds investigation of the *Nard* matter other than that meeting?

Mr. HENDERSON. I may have, but I don't recall a specific meeting, Senator.

Senator DECONCINI. What about prior to today's hearing—did you discuss it with Mr. Heymann?

Mr. HENDERSON. I got permission from him to come up here today. I called him.

Senator DECONCINI. Did you talk to him about this case?

Mr. HENDERSON. No; I didn't talk to him about the facts of this case. I just told him that I was going to send you a letter asking to appear before this committee on Monday and would that be all right with him. He said yes. That's what I did.

Senator DECONCINI. You have not talked to him about the *Nard* case?

Mr. HENDERSON. About the facts of this case? No, I haven't.

Senator DECONCINI. Did you have any conversations with the U.S. attorney in the Western District of Pennsylvania, Mr. Griffith, regarding the *Nard* case?

Mr. HENDERSON. Telephone conversations?

Senator DECONCINI. Either.

Mr. HENDERSON. Well, Senator, you announced at the beginning of this hearing today that you wanted to keep the Judge Weis matter separate. Are you including the Judge Weis matter in this then?

Senator DECONCINI. Well, I am just asking you whether or not you had any conversation with Mr. Griffith. I have not asked you about Mr. Weis yet.

Mr. HENDERSON. I received a letter from Blair Griffith about the Weis matter, in which he discusses Mr. Nard and his characterization of Mr. Nard's charges.

Senator DECONCINI. Did you talk to Mr. Griffith about the *Nard* case?

Mr. HENDERSON. I don't recall ever discussing that with Mr. Griffith.

Senator DECONCINI. You don't?

Mr. HENDERSON. I don't recall it.

Senator DECONCINI. Would you have had a discussion about the *Weis/Nard* case or *Nard/Weis* case or any——

Mr. HENDERSON. Oral discussion?

Senator DECONCINI. Yes.

Mr. HENDERSON. I don't recall it. I got the letter and we reacted to the letter on paper. I can make those documents available to you, Senator.

Senator DECONCINI. You don't recall having any discussion with him where supposedly you indicated the *Nard* case had been thoroughly investigated?

Mr. HENDERSON. To Mr. Griffith?

Senator DECONCINI. Yes.

Mr. HENDERSON. I saw that in a newspaper article about me, Senator. I don't ever recall making a statement like that. I wouldn't have any knowledge of whether it was investigated thoroughly or not. I didn't conduct any investigation.

Senator DECONCINI. You would not have any knowledge from your own investigation. You would only have knowledge if someone in the Department had told you.

Mr. HENDERSON. Someone may have characterized it as that and I may have repeated that, but I don't recall that.

Senator DECONCINI. However, you would have had knowledge also from the fact that you were at the meeting with Mr. Reynolds and Mr. Heymann——

Mr. HENDERSON. Oh, this was much later.

Senator DECONCINI. Oh, that's right.

Mr. HENDERSON. Yes; that's much later.

Senator DECONCINI. That's right. Before that you had no meetings with anyone regarding the *Nard* case?

Mr. HENDERSON. It may have been mentioned in passing, but, no, not official meetings such as the meeting in Mr. Heymann's office. That was an official meeting.

Mr. Nard testified against Mr. Thornburgh, so I had known his name since—I knew who he was.

If you would like, I'd like to tell you about the one time I met Mr. Nard.

Senator DECONCINI. Sure. Go ahead. Tell us.

Mr. HENDERSON. I think it was in 1978 that I attended a dinner here in Washington, D.C. It was called the White House Press Correspondents' Dinner. It was about 1,500 people at the Washington Hilton Hotel.

I was sitting at a table with about 10 other people. I felt a tap on my shoulder. When I turned around, it was a man standing there. He had his finger pointed at me and he said, "Are you Henderson?"

I said, "My name is Tom Henderson." He said, "Well, my name is John Nard and you're going to be hearing from me." With that, he turned around and walked away. That was the first time I'd ever met Mr. Nard. I never really met him. I never shook hands with him.

Senator DeConcini. Do you recall having a meeting with a journalist by the name of Greg Rushford in February of 1978 or any time?

Mr. Henderson. Yes. I believe he's associated with Mr. Nard.

Senator DeConcini. What association does he have with Mr. Nard? Do you know?

Mr. Henderson. Mr. Rushford told me that Mr. Nard helps to pay his salary.

Senator DeConcini. Do you recall telling Mr. Rushford that "the *Nard* case had been thoroughly and exhaustively investigated"?

Mr. Henderson. No, I don't recall saying that, Senator.

Senator DeConcini. Mr. Henderson, I can't remember if I put you under oath or not. Do you have any objection to taking the oath and having it retroactive to your statement?

Mr. Henderson. I have no objection, Senator.

Senator DeConcini. Would you please raise your right hand?

Do you swear the testimony you have given to this committee is the truth, so help you God?

Mr. Henderson. I do.

Senator DeConcini. Thank you. I have no further questions at this time, Mr. Henderson. If you have any statement you want to make in closing, please do so.

Mr. Henderson. Well, I have one final comment, Senator.

I only hope that this committee, if it is going to look into and review the rest of the cases of the Public Integrity Section, that it do so expeditiously because the rights of people are being affected. I urge the committee to move expeditiously.

Senator DeConcini. Mr. Henderson, as I have told Judge Renfrew, this would be expedited if we had the ability to have our staffs, more than just one attorney from each side. I wish you would convey that back to Mr. Heymann and to Mr. Renfrew.

We would be glad to send down several people to review those files. It takes hours and hours and hours to prepare testimony and questions to hold an oversight hearing like today's, particularly when you are limited to only one lawyer on each side.

If they would reconsider that, it would be very helpful to us.

Mr. Henderson. Thank you, Senator.

Senator DeConcini. Thank you.

[The prepared statement of Mr. Henderson follows:]

Prepared Statement of Thomas H. Henderson

Mr. Chairman, I appreciate the opportunity to submit this statement to the Committee. There has been a great deal of confusion and misunderstanding in the press and elsewhere regarding the role of the Public Integrity Section and the handling of some of its cases. As Chief of the Public Integrity Section from its founding in 1976 through June 2 of this year, I am extremely proud of the efforts and accomplishments of the Section and its attorneys. I thus welcome this opportunity to state my position for the record.

I would briefly like to explain the background of the Public Integrity Section and describe how it has operated over the last four years.

The Public Integrity Section was formed in 1976, during the Ford Administration, under the direction of Assistant Attorney General Richard Thornburgh.

I was greatly honored when Mr. Thornburgh selected me to head the new Section. I had joined the Criminal Division of the Justice Department immediately after law school in 1966 and my experience over ten years had been extremely rewarding and meaningful. I thus welcomed the challenge of directing a section whose mission was to investigate and prosecute public corruption, an area too often overlooked in the past. In the first few months I recruited and hired seven attorneys, making every effort to hire the most qualified and experienced people then available. It was not then and never has been difficult to find bright and aggressive attorneys eager to work in this most important and challenging field.

Benjamin Civiletti became Assistant Attorney General in 1977 and like his predecessor was totally supportive of the mission and efforts of the Public Integrity Section. Under his leadership, the Section doubled in size to 16 attorneys and was assigned progressively more cases and more responsibility, including the entire Korean bribery investigation. Since Phil Heymann took over in mid-1978 as Assistant Attorney General, the Section has grown to 28 attorneys and has continued to handle professionally scores of significant corruption cases throughout the country.

The attorneys in the Section have been hired solely on the basis of merit—specifically, academic credentials and legal experience. We have never hired a political referral and I have no idea what, if any, political affiliations Section attorneys have. The attorneys represent a rather impressive cross-section of backgrounds—geographic, racial, social and experiential and I can assure this Committee that each and every one deeply and justifiably resents any notion that they have been anything but professional and impartial in their duties.

In furtherance of your oversight responsibilities, this Committee has chosen to focus on approximately 15 matters handled by the Section during the last four years. While all matters handled by the Section are important, I should point out that these 15 matters constitute only a small fraction of the Section's business. Since the Committee is studying the performance of the Section, I feel it is appropriate to review briefly some of the Section's accomplishments.

1. Operationally, the Section has handled thousands of matters, including several hundred investigations, and approximately a hundred indictments. We have investigated, tried and convicted corrupt officials ranging from United States Congressmen to Ambassadors to high Executive Branch officials, to State legislators and executive officials to mayors and to police chiefs. These cases are invariably difficult, legally and factually, and in every case they are very visible to the public. A complete listing of Section prosecutions is set forth in our annual reports to Congress which I would be glad to make available. The prosecution record of the Section is one we are extremely proud of and demonstrates, I believe, a high level of competence, perseverance and courage.

The nonoperational responsibilities of the Section are no less important:

2. Section attorneys have processed almost all matters falling under the Special Prosecutor provisions of the Ethics in Government Act of 1978.

3. Section attorneys, in conjunction with attorneys from the Fraud Section and agents from the White Collar Crime Section of the FBI, have conducted six highly successful week-long seminars for over 500 federal prosecutors and investigators on substantive and procedural methods for combatting corruption and fraud.

4. Section attorneys monitor and approve all federal election investigations nationwide.

5. Section attorneys regularly advise a wide range of federal agencies on corruption matters.

6. Section attorneys provide ongoing advice, support services and operational assistance to most United States Attorneys' offices on corruption matters.

7. Section attorneys participated in numerous Department of Justice and congressional legislation initiatives affecting the corruption area, including the Federal Criminal Code and the various amendments to the Federal Election Compaign Act.

8. Along with the Fraud Section, the Public Integrity Section has actively participated in the institution and operation of the newly formed Economic Crime Enforcement Program.

9. Section attorneys have participated in the training and advising of the newly-appointed Inspectors General and their aides on corruption matters.

10. Section attorneys have been involved in ongoing efforts to monitor major corruption problems and initiatives in order to assist the Attorney General in setting nationwide investigative and prosecutive priorities.

11. Section attorneys have responded to or provided information for responses to over a thousand pieces of correspondence addressed to the Department of justice from other executive agencies.

In sum, the accomplishments of the Public Integrity Section have, in my not unbiased opinion, been impressive, particularly considering its recent origin and relatively small size. While each of the matters the Committee is looking into was handled properly and professionally, in considering your oversight, I sincerely hope this Committee will not lose sight of the fact that they represent only a small percentage of the Section's work.

Turning to the subject matter that is of direct concern to the Committee, I would like to discuss generally how cases are handled in the Public Integrity Section. Each case is assigned to a line attorney who is primarily responsible for conducting the investigation. The line attorney reports regularly to a deputy chief, who is an experienced, tested prosecutor.

Periodically, all matters are reviewed by the chief. At some point after receipt of a matter, a prosecutive decision must be made. With a great many matters, no amount of investigation could produce a successful prosecution and such matters are closed quickly. The more substantial matters are investigated either by the FBI or some other investigative agency at out direction. The direction and scope of each investigation is inherently discretionary. Reasonable, experienced prosecutors can and do often pursue similar investigations differently. When the investigation has run its course. a prosecutive recommendation is rendered by the line attorney, usually in the form of a memo, after consultation with a deputy chief and/or the chief.

Since 1978, in every case where prosecution was recommended and in some cases where no prosecution was recommended. an indictment review committee was convened consisting of four to six of the most experienced attorneys in the Section. They challenge every aspect of the proposed prosecution or declination and afford the responsible line attorney an opportunity to defend his recommendation. This process insures that the prosecutive decisions of the Section have the benefit of the informed judgment of its most senior professional members.

Proposed indictments and recommended declinations in close or significant cases are then sent to the Deputy Assistant Attorney General for review and input. In the most significant cases the recommendation is also reviewed by the Assistant Attorney General.

In all but a few cases. the Section's recommendation is accepted with little or no change by the front office. If and when the front office rejects our position, we are given full opportunity to express our disagreement. In each of the handful of matters where the front office has reversed our recommendation in the last four years, the difference was purely on the merits and I believe the prevailing position was, in every instance, reasonable and impartial. In the entire life of the Public Integrity Section, not once has a prosecutive decision been made based on political or partisan factors.

The major focus of this committee appears to be cases where we ultimately declined prosecution. For understandable reasons there has been considerable confusion and misunderstanding regarding our decisions to decline prosecution, and this confusion and misunderstanding have apparently engendered the controversy which precipitated these hearings. Phil Heymann, in his supplemental remarks to this Committee on April 23, 1980, explained with great clarity the reasons for these misunderstandings and the unfairness to the Section that arises therefrom. I strongly endorse Mr. Heymann's words and recommend them to all who have an interest in this subject.

In the interest of brevity I will not repeat Mr. Heymann's words, but I do want to speak for a moment on the general subject of declinations. In every matter referred to us. someone thinks the subject committed a crime. In many cases referred to us but not prosecuted, the subject committed acts that are unethical, immoral, and at best lacking in judgment. In some cases referred to us but not prosecuted, the subject might even have committed criminal acts of which we are unable to obtain sufficient evidence.

Because of this reality, the press, the public, and occasionally members of Congress, quite understandably are disturbed when we decline prosecution of a matter. This disturbance not infrequently translates into criticism and suspicion of our motives. Needless to say, almost every decision to prosecute a public figure is met with equally strident criticism. We have recognized the inevitability of this negative reaction throughout our existance and have nonetheless endeavored to call every case on its merits regardless of consequences.

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A decision not to prosecute does not necessarily mean we approve of the questioned behavior. A decision not to prosecute does not necessarily mean we personally believe the subject is innocent. A decision not to prosecute does not necessarily mean we disbelive the accusers. A decision not to prosecute may mean only that the available admissible evidence is insufficient, factually or legally to warrant a successful criminal prosecutiou. In order to convict an individual, the Constitution requires we submit to a jury legally admissible evidence sufficient to prove our case beyond a reasonable doubt. Crafted on this Constitutional requirement is the general Department policy of not returning an indictment, even when the evidence is legally sufficient, when there is little likelihood of conviction. This is a fair, sensible rule which insures that limited resources are diverted from hopeless causes and guarantees that individuals will not be put through the burden and stigma of criminal trial unless we have the quantum of evidence needed to convict. The credibility of the Department of Justice demands no less.

The practical effect of these rules and policies is that a great manycases have been declined by the Section where the subjects might well have been guilty or at least critics are justified in believing they were guilty. It does not, should not, and cannot follow, however, that the decision not to prosecute was made for improper reasons. This charge, while easily made by critics, is virtually impossible to rebut because of the appropriately strong secrecy obligations on a federal prosecutor. But make no mistake about it, the charge of coverup, whitewash, or fix is a most grave one that can spell capital punishment to a prosecutor's reputation and professional future. It has been obviously distressing to me that I have been wrongly subjected to these charges. It is even more distressing that the dedicated young attorneys, past, present and future, who must handle these cases on the line are being subjectedjto such charges. In all my 13 years in the Department of Justice, and particularly my tenure with the Public Integrity Section, I have never seen an improper motive enter into any decision not to prosecute or investigate. I would not tolerate such interference and I am absolutely confident that none of the line attorneys who work these cases would sit quietly by were their decisions and recommendations second-guessed for improper reasons.

A fix or coverup by a prosecutor is, in my mind, one of the most serious criminal abuses of the public trust imaginable. The Public Integrity Section was created in the wake of Watergate. I and all the Section attorneys were drawn to the Section because we wanted to fight that sort of abuse of power, not because we want to repeat or emulate it.

It is entirely appropriate that the Senate Judiciary Committee be vigilant in its oversight of the Department to insure that abuses of the prosecutorial powers do not take place. I question, however, whether there has been a sufficient predicate brought to this Committee to justify the present scope of these oversight hearings.

As an example, the subject matter of the hearing today has been represented to be oversight of the Public Integrity Section in its handling of the so-called "John Nard matter." A cursory examination of Mr. Nard's contracts with the Department of Justice would clearly reveal that the Public Integrity Section's involvement with this matter was tangential at best. It is difficult to imagine what legitimate oversight function could be served in reviewing a situation in which the Section had such minimal involvement.

For the record, I also feel compelled to state my concerns as to the manner in which this Committee has pursued its present oversight objectives regarding the Public Integrity Section. Even assuming a sufficient predicate for the sort of oversight the Committee is engaged in, the procedures followed in this instance have proven unnecessarily prejudicial to the reputations of individuals who were subjects of the questioned investigations.

Both before and after obtaining access to Section files, numerous articles have appeared in the media, invariably based on material derived from this Committee, which state, directly or indirectly, that various public officials wrongly escaped prosecution even though evidence indicates their guilt. The unfairness and damage to these individuals from these leaks is immeasurable. While the press has a right and, indeed, an obligation to report matters of official wrongdoing, this Committee, when pursuing the important task of overseeing sensitive criminal prosecutions, has a solemn obligation to assure fairness to all concerned. In conducting future oversights of this type, I would urge the Committee to institute greater controls over information obtained. The power of a prosecutor in our system to obtain information in pursuit of wrongdoing is awesome. With this power comes an overriding obligation of discretion in the use of this information and a full panoply

of procedural rights come into play once charges are publicly made. If this Committee chooses to exercise its oversight power in a way that utilizes this information with no regard for the rights and reputations of affected individuals, then I question the utility of this exercise.

On a more personal note, the manner in which these hearings have proceeded has proven extremely prejudicial to myself and other Department officials who have endured an unwarranted cloud cast over their heads for many months with little or no promise of resolution. The following chronology of my own situation illustrates this problem:

1) In January 1980, after a 12-year career in the Justice Department, I accepted a Presidential nomination to be Special Counsel of the Merit Systems Protection Board. I accepted the nomination only after considerable contemplation because it meant giving up a position I had enjoyed and which I felt was extremely important.

2) In February, I began cooperating with the Senate Governmental Affairs Committee which had responsibility for my nomination.

3) In March, the Federal Times printed articles alleging the "mishandling" of 12 cases by the Public Integrity Section during my tenure. The Privacy Act and other legal strictures, prohibited my responding to these charges. Suffice it to say that the charges of mishandilng as to each of the 12 cases were unfounded, and a careful examination of the files makes clear that each questioned case was handled professionally and honestly.

4) In April, Senator Hatch asked that I appear before the Senate Judiciary Committee at the Justice Department authorization hearings, but a policy decision was made by the Criminal Division which kept me from testifying. The decision was based on the fact that the Division felt testimony at such a hearing should be provided by higher ranking officials. I was then and I remain willing to testify regrading any matter under my stewardship at Public Integrity.

5) In May, after several discussions between Justice Department officials and Judiciary Committee personnel, the Department agreed to permit me to testify in person.

6) In early June, at the request of the Judiciary Committee,the Senate Governmental Affairs Committee agreed to delay my confirmation hearings until oversight hearings could be held by Judiciary. The Governmental Affairs Committee, whose staff had already reviewed most of the questioned cases, assured me that Judiciary had agreed to be expeditious.

7) On June 9, I received a letter from Senator DeConcini requesting me to appear as a "witness" in oversight hearings on the Public Integrity Section to be held by the Judiciary Committee.

8) On June 11, I appeared before the Committee along with Assistant Attorney General Heymann. At that time several Senators publicly repeated allegations which had appeared about me and the Section in the press. After several Senators had spoken, Mr. Heymann requested an opportunity to respond, but was refused. The Committee then adjourned without the benefit of testimony from either Mr, Heymann or me. As a result, I was not given the opportunity to answer any of the charges that had been made in spite of having been specifically called before the Committee as a "witness."

9) On June 24, this Committee and Justice agreed on Committee access to Public Integrity Section investigative files and virtually all requested files have since been made available to Committee staff. On that date Senators Kennedy and Thurmond wrote that "Senators directly involved will be able to proceed expeditiously with the oversight hearings and Mr. Henderson's nomination." Having obtained access to the files in June, the Committee has since shown limited interest in reviewing the material provided. Despite complaints that the Department was delaying and stonewalling the Committee's efforts, all the files have yet to be reviewed.

10) One hundred seventy-one days have now passed since the agreement and there have been no oversight hearings although negative articles regarding the Section citing Senate sources have continued. The failure of the Committee to hold such hearings has meant that my nomination has died without my ever being allowed to respond publicly to the baseless and often scurrilous allegations that were made against me and the attorneys in the Public Integrity Section. Moreover, the position for which I had been nominated has remained vacant for almost one year.

I remain confident that once the questioned cases are objectively and carefully reviewed by the Committee no questions will remain regarding the Section's

performance. I only hope that if the Committee intends to continue its efforts in this regard it do so expeditiously with due regard for the rights of all concerned. I remain willing and eager to cooperate in this regard and stand ready to answer any and all questions this Committee might have.

Senator DeConcini. Our next witness will be Mr. James Reynolds, U.S. attorney in Iowa from Cedar Rapids.

Mr. Reynolds, would you raise your right hand, please?

Do you swear the testimony you are about to give this committee is the truth, so help you God?

Mr. Reynolds. I do.

Senator DeConcini. Do you have any opening statement, Mr. Reynolds?

STATEMENT OF JAMES H. REYNOLDS, U.S. ATTORNEY, STATE OF IOWA

Mr. Reynolds. If I could, I would like to incorporate my letter which I previously sent to this committee as part of my statement.

Senator DeConcini. Without objection, it will appear in the record.

Mr. Reynolds. That pretty well details my involvement here.

Senator DeConcini. Would you give us background as to what your occupation is, where you reside, and how long you have been in that office?

Mr. Reynolds. Yes. I am a practicing attorney in the State of Iowa. I started out my first 2 years as the prosecutor for the county attorney's office and thereafter joined the law firm of Reynolds, Kenline, Rodell, Brightbach & McCarthy in Dubuque, Iowa. I practiced law there as a trial lawyer for 12 years.

In 1977 I was appointed by President Carter as U.S. attorney for the Northern District of Iowa.

Senator DeConcini. You are serving in that position now?

Mr. Reynolds. I am serving in that capacity at the present time.

Senator DeConcini. When did Mr. Nard first contact you, Mr. Reynolds?

Mr. Reynolds. He first contacted me the day before I was sworn in in November 1977 in a telephone conversation. He called me at my home and made his allegations regarding the handling of his charges against Armour & Co. and the two lawsuits in Pittsburgh and Sioux City and their investigation by the then U.S. attorney, soon to be the former U.S. attorney, Evan Hultman, in his office.

Senator DeConcini. Did he give you any names, witnesses, or persons that could verify any of his allegations?

Mr. Reynolds. Yes; he did. He gave me the name of Senator Orrin Hatch who had been a personal witness to some of the matter. Particularly, at that time Senator Hatch had been a private practicing attorney in Pittsburgh, Pa., and had represented some subcontractor—one in particular I believe was Mr. Nard's brother-in-law—in regard to the Armour suit in Pittsburgh and that he had some personal knowledge and also had had some conversations with U.S. Attorney Hultman and had been told by Mr. Hultman that indictments were forthcoming and never were.

Also, he said that Clark Mollenhoff had had such conversations and that he was an investigative reporter, a Pulitzer Prize-winning

reporter from the Des Moines Register, which is our statewide newspaper, with whom I was also familiar. He said he would also verify this.

Senator DeConcini. Did you talk to all of those people?

Mr. Reynolds. Yes. The first thing after I was sworn in we had a U.S. attorneys' meeting here in Washington. Both of those persons were talked to.

I first went to the Department and explained my situation to then Associate Attorney General Mike Egan, who referred me to Ben Civiletti's office, who was then head of the Criminal Division. He wasn't in, so they sent me to Tim Baker's office.

I told Mr. Baker the allegations that had been made to me. He referred me to Tom Henderson. I then met with Tom Henderson.

Tom indicated that he was generally familiar with the allegations regarding Senator Scott. He indicated that there were some matters that he was familiar with, that he was familiar with an investigation that had been made, that it had been made by Mary Wagner, and that he would see that her investigative files would be obtained.

I also indicated that I was going to talk to Clark Mollenhoff and to Mr. Nard and Senator Hatch. He indicated that it might not be a good idea to do that until I had obtained the files, that Mr. Nard was kind of a crank.

I then left. The next day I did have breakfast here at the Senate with Senator Hatch. He explained his personal involvement and his conversations with Mr. Hultman. He confirmed some of the allegations that Mr. Nard had been making.

I then later on got a telephone call at the hotel, where I was staying, from Clark Mollenhoff, in which he then verified again his involvement in it. From his involvement here in Washington I felt that Mr. Mollenhoff had been a most knowledgeable person about Washington. I was totally ignorant of anything. That was the first time I had ever been here. He had been a special consultant to the White House and President Nixon. I knew what he had done in his investigative work. I thought he probably knew the situation well.

He confirmed the allegations. Therefore, at that point I felt I had predicate enough to press on to get the files.

Senator DeConcini. Did you say you met with Mr. Civiletti or tried to do so?

Mr. Reynolds. I tried to, but he then was not available. Therefore, I saw Tim Baker. In fact, ironically, I saw him as Mr. Marston was coming out from talking to him. I went in and talked to him right after that about Pittsburgh.

Senator DeConcini. Did Mr. Baker indicate anything in particular that the Justice Department was doing about the *Nard* case?

Mr. Reynolds. No. He thought that Tom Henderson knew something about it, and he didn't really know anything about it. He referred me to Henderson. He basically was a conduit, as Mike Egan was. Neither one of them was familiar with it.

Senator DeConcini. Mr. Henderson did not know much about it, either?

Mr. Reynolds. Well, he indicated that he at least was aware of the fact that there had been some sort of an investigation of Jack Nard's charges by the Justice Department.

Senator DeConcini. Did he tell you who had done that investigation?

Mr. Reynolds. As I recall, I think he even gave me the name of the person who did it because later on in my correspondence—I think that's where I got the name Mary Wagner from. Then I tried to find out where she was and if she was still at the Department. I found out she wasn't. I made a call to her and talked to her on the phone.

I then told Mr. Nard that I was going to limit my investigation simply to whether or not the Department had investigated his complaints. I wasn't going to go back and retry the two perjury cases. I was not going to go back and do Mr. Hultman's investigation again. I was simply going to investigate whether or not his charges had been properly investigated.

Senator DeConcini. Now your testimony is that Mr. Henderson referred you to Ms. Wagner, to your recollection?

Mr. Reynolds. He said that he would get her files for me. I asked him if he would and he said he would.

Senator DeConcini. Then you left town?

Mr. Reynolds. Then I left town. On the 19th of December I then wrote to him after I had waited 30 days. That was the 19th of November. I waited 30 days. I had not received them. I wrote him a letter, which is also attached to my statement. Nothing happened. I had no response.

Then, as you recall, the Marston matter became quite a matter of public concern. The Attorney General felt that, rather than be surprised by investigations of high prominent officials, he wanted all of us in the field that were doing such things to consolidate by sending notification of that to Mr. Tyson, our director.

I did that, and in the letter I mentioned that particular case and these people that were the subjects of Mr. Nard's complaint, all being prominent persons, filling the criterion that Judge Bell had set forth. In the final paragraph I asked him if additionally they could get me these files so that I could verify these allegations so that I would be able to close up the file.

Thereafter I then got a call from Tom Henderson saying that the files had been found and that they would be made available to me. I told Tom that I would be in the U.S. attorneys' meeting in March and that I would stop in his office at that time and review the files. He followed it up with a letter, which is also attached.

Thereafter, I did show up negotiating through the line attorney at Public Integrity named Eric Holder. I came over then to the Public Integrity office. They produced a file which was basically part of Jack Nard's tax file, his criminal prosecution part. I looked at that.

I went back to Tom and said, "This is not Mary Wagner's file. This is something else. I don't know what this is. This is part of the the tax file. I didn't want that."

He said, "I don't know where it might be. It might be over at the Department."

Therefore, I went over to the Justice Department, the main justice. The Criminal Division at that time, his office, was in another building.

I went over there and talked to Judy Woolley who had been Mary Wagner's secretary, She indicated that there was a file. She recalled it. It was, I think she said, an inch or an inch and a half thick and that she thought it had been put away in dead storage up in the upper level of the Justice Department.

I then went with her up there and met with a lady supposedly in charge of these records. We looked for the rest of the day to try to find these files and could find nothing.

I found one file which was Maureen Gevlin's, the other lady with Mary Wagner who made the investigation. It was a simple yellow sheet of paper in a file and a couple little notes on it, and that was it.

I went back to Tom Henderson at the end of the day and said, "I've been over there. There are no files. Whatever it is is gone. Nobody can find it."

He said, "Well, I don't know what to do. Why don't you just write and ask Mary Wagner to send you a letter telling who she saw and what she did in her investigation. You can verify four out of five of those and you can reconstruct the file."

I said, "That sounds like about all I can do."

I went home and wrote a registered letter to Mary Wagner asking her to do that. I did not receive a response. She did call back and said she would do that.

I waited 30 days. Nothing happened. I waited another 60 days. Nothing happened. I then started calling her. It seemed to me that I was getting a runaround. She was always in conference, at lunch, or something. She never would call me back.

I started to become concerned. I discussed it with my staff. We came to the conclusion that I guess all I had left to do was to subpena her to the grand jury so that she would answer my letter.

I did subpena her to the grand jury. She called me upon being served and indicated that she was pregnant and that her doctor would not let her travel.

I said, "Well, all I wanted, Mary, was for you to answer my letter. If you'll do that and send me a letter from your doctor, I will excuse you from testifying on the date," which was about 7 days away.

The time for the appearance came and went. I still had not received her letter. I never received a letter from the doctor. I had the Marshall's office call to see where she was. She was at home. She indicated that she was confused and thought that the date to appear was Thursday rather than Tuesday and that she was not going to appear. She thought that the letter from her doctor had gone out and she would send a letter in response to my letter. She apparently hadn't sent that yet.

I went back and discussed it with Chief Judge McManus, as to whether or not I should cite Mary for contempt for failing to show up. After thinking it over myself, I thought it was an internal Justice Department matter. At that point nothing had been in any press and nobody had heard anything.

I felt that very important people were involved and some reputations were at stake, as Mr. Henderson said, and I wanted to be sure that this had not gotten into any public record where anyone could have access to it. No one knew about it. I had strictly discussed it only within the Department and with people who I thought should know.

At that point if I had sought the citation for contempt of a former Justice Department official of Mary's stature, it would have caused concern.

Therefore, I called Griffin Bell and talked to Phil Jordan of his office, who indicated he would check on it and see what would happen. He called me back. He said, "I'll get Mary to write you the letter."

I said, "Well, I've been trying to get it done. If you can do it any better than I can, OK, fine."

I still hadn't received the letter from the doctor. We were supposed to get the letter from Judge Bell on Wednesday. I still hadn't gotten it by that Friday. Finally, it came across on our teletype appearing to have been delivered that Friday.

This letter basically said—and I believe there is a copy of it attached—that if there ever was a file, here's who I talked to. It appeared very clearly that she had not done any investigation other than maybe talking to a few people.

Therefore, I felt at that point I had to do the investigation of Mr. Hultman's investigation. That's when I commenced with the grand jury.

Senator DeConcini. Your own investigation?

Mr. Reynolds. That's correct.

Senator DeConcini. Did you give up on asking Mr. Henderson to help you? Did you decide just to deal with Mary Wagner or did you continue to try to get Mr. Henderson to help you?

Mr. Reynolds. Really, after his suggestion in March, that was the last—he suggested to get the letter written. I never went back to him to try to get him to get the letter written. The next person I talked to at the Department was the Attorney General himself.

Senator DeConcini. Was there any reason you did not go back to Mr. Henderson?

Mr. Reynolds. No. It just hadn't crossed my mind to go back and try again. I had not been successful in the past there.

Senator DeConcini. When did you start the investigation yourself?

Mr. Reynolds. Well, I had started it on November 19. I was hoping to get Mary's filing. This all got into July. When I finally came to the end of the line and found out with the letter that——

Senator DeConcini. That there was no investigation.

Mr. Reynolds. Yes; or that whatever it was, was pretty cursory. It appeared to be that she had talked to Mr. Hultman and Mr. Hultman had explained what had happened, and that was the end of it.

Senator DeConcini. Were you ever under the impression that the Justice Department had, indeed, conducted an investigation?

Mr. Reynolds. I really thought there had been an investigation when I first got into it.

Senator DeConcini. Who left you with that impression?

Mr. Reynolds. Mr. Henderson.

Senator DeConcini. Mr. Henderson did?

Mr. Reynolds. In November when I talked to him, he indicated that there had been an investigation of these very charges that Mr. Nard had made, that they weren't meritorious, that somebody in the Department had it, that those files would be made available to me, and that I shouldn't even bother talking to Mr. Nard.

Senator DeConcini. Ms. Wagner testified—I don't know if you were here this morning——

Mr. Reynolds. Yes; I was.

Senator DeConcini. She left anything but the impression that there was any investigation. It was merely reviewing some of the evidence that Mr. Nard had left and talking to two or three people and then writing a letter back saying that there is nothing grounded.

Just in your professional opinion, Mr. Reynolds, would you consider that an investigation?

Mr. Reynolds. I was left with the impression there was an investigation up until her letter, which then started to characterize her activities as an inquiry. The distinction between inquiry and investigation, as I understand it, is something that only came to my attention in the recent FBI charter where they have started making that distinction between inquiries and investigations.

Senator DeConcini. Mr. Henderson had used the word "investigation"——

Mr. Reynolds. Right.

Senator DeConcini [continuing]. In the sense of some extensive interviews and seeking out information and verification; is that right?

Mr. Reynolds. It had been characterized as an investigation. The word of art "inquiry" as opposed to "investigation" came up, I understood it, chronologically in later times anyway.

Senator DeConcini. Now you are talking about what—July 1978?

Mr. Reynolds. Yes.

Senator DeConcini. You are in the process of doing your investigation?

Mr. Reynolds. Correct.

Senator DeConcini. Where did that lead you?

Mr. Reynolds. At that point I had to try to consider how I would make an investigation of such a nature. Since the claims were possible involvement by high Justice Department officials and there was also an allegation of maybe it lapped over into the FBI, I felt that just to be sure that we did not have any question about how the investigation was conducted that I would not even use Justice Department officials; namely, the FBI.

I checked with Ben Civiletti at that time. He indicated that it would be proper, it would be all right, to use another department's agencies. I had had quite a bit of success with the Secret Service and was confident in their capabilities, especially in light of their dealing with the protective service they had acquired an ability to deal with high officials, to do it with a modem of decorum and yet do what they had to do.

Therefore, I asked the Treasury Department if they would assign me two agents to make an investigation. They did. I had agents Noznesky and Murphy, who then conducted investigations for me and presented evidence to the grand jury.

Senator DeConcini. Now you brought in the Secret Service and continued the investigation. Did you go to the grand jury or was this just an investigation within your own office?

Mr. Reynolds. No; we had grand jury testimony, but it became very apparent that the grand jury was a very cumbersome vehicle

to do this kind of an investigation. I had to have foot troops. That is why I used the Treasury Department to go out into the street and do the investigation.

Senator DeConcini. During the course of this investigation did you coordinate it with anybody in main Justice?

Mr. Reynolds. No; I didn't think I had to.

Senator DeConcini. Did you have any contacts with anybody in main Justice?

Mr. Reynolds. I had been constantly in contact with the Executive Director, Mr. Tyson, who was aware of what I was doing. In fact, he had indicated that he had checked around the Department and had felt that I had touched all the bases—I think that is the way he put it—and that I should proceed in the manner that I had determined, which was to use a grand jury. That had not been questioned until later.

Senator DeConcini. Then when did you finish your investigation?

Mr. Reynolds. I finished it with the end of the grand jury in, I believe it was, June 1980.

Senator DeConcini. 1980?

Mr. Reynolds. Yes.

Senator DeConcini. What did you do with the results of that investigation?

Mr. Reynolds. The investigation was closed at that point. The grand jury came to the conclusion that there was not a sufficient case in which to present an indictment in regard to the handling of the investigation by Mr. Hultman's office.

Senator DeConcini. I see. Your investigation was only as to whether or not it had been properly pursued by your predecessor?

Mr. Reynolds. Yes. I limited my investigation to that. I didn't go back into anything else.

Senator DeConcini. You did not go into Mr. Nard's accusations or anything?

Mr. Reynolds. No. I guess they have been characterizing it as Nard 1, 2, and 3. Three was my investigation of Nard 2, which was the investigation by Mr. Hultman, and the original one would be the Armour litigation. I never got beyond Nard 3.

I felt the statute of limitations had run, for instance, on the perjury and that the only thing that I would have had jurisdiction of would have been whether or not somebody had either improperly influenced Mr. Hultman or Mr. Kirshen or whether or not they had been deceived.

Senator DeConcini. You were satisfied that was not the case?

Mr. Reynolds. I was satisfied that we were not able to establish those allegations.

Senator DeConcini. Now there was a meeting when you were in Washington in August of 1979 where you met with John Keeney, Phillip Heyman, and I think Mr. Henderson. Do you recall that meeting?

Mr. Reynolds. Yes. My investigators were completing their work. One of the last persons they were to talk to was Mary Wagner. They had indicated to me that because of the prior conduct that they were a little suspicious of Mary's conduct and wanted to know whether or not they could serve her with a subpena if at the end of their conversations with her they did not feel that they were comfortable with her

testimony. They went and interviewed her and at that time then served her with a subpena after the interview.

Subsequently I was contacted by Bob Olgren, a partner in her law firm, who indicated that he wanted to negotiate her appearance and wanted to know if there was any other way of doing it because she and he were going to be on separate holidays. There were vacation periods and they wanted to know whether they could do it at some other time.

I told them I'd try to check it out from the date on the subpena. I told them I'd get back to them at 12 o'clock, by noon on Monday. I got to them at noon and I said, "I'm sorry; I've got 24 Iowa grand jurors who are going to be just as inconvenienced as you are. If I have to inconvenience them as opposed to you, I'm going to inconvenience you. You and your client will have to show up. Mary Wagner will have to show up on the date," which would be the next week, a Tuesday.

By 5 o'clock that evening I was called by Mr. Heymann, Phil Heymann, to come to Washington to explain the case. In the phone conversation I thought I was coming out to discuss whether or not the ethics bill might apply because the persons involved might have been persons involved in the ethics bill.

I asked if I could bring someone with me. I brought Mr. Murphy, Mike Murphy, the Secret Service agent, to the meeting. He and I attended the meeting. In fact, it was the day that Ben Civiletti was sworn in.

We were supposed to meet earlier in the day. They delayed it until later on. We met about 4 o'clock in the afternoon until 7 that night in Mr. Heymann's office with Jack Keeney, Mr. Murphy, myself, and Mr. Henderson.

Senator DeConcini. What took place during that lengthy discussion?

Mr. Reynolds. I was surprised when I was told that there had been many complaints about my handling of the investigation by U.S. attorneys.

I had been in contact with Bob Cindrich, the U.S. attorney in Pittsburgh. He had told me to conduct the investigation. He wanted to work with me. He thought I should do it because it would bring less publicity on people out there. It was better to do it outside of Pennsylvania.

I talked to Mike Hawkins, the U.S. attorney in Arizona, because of the fact that Phoenix had been the site of some of the records. They had to go down there.

I coordinated with every U.S. attorney where my investigators had ever been. They were all familiar with the case and what I was doing. I was astounded to find out that anyone had objected to it and that they were going to take the investigation away from me.

Senator DeConcini. Did he tell you who had objected?

Mr. Reynolds. I forgot to ask him; I was so surprised.

Senator DeConcini. From what you knew, the attorneys you had talked to thought you were doing the proper thing and were encouraging you. Is that fair to say?

Mr. Reynolds. Yes. In fact, Mike Hawkins had even told me that if I needed extra personnel he would send some of his people up to help me.

Senator DeConcini. What did Mr. Heymann want you to do about it?

Mr. Reynolds. He wanted to take the investigation over and assign, I think, one or two or three other U.S. attorneys to handle it from there on out.

Senator DeConcini. What reason did he give you?

Mr. Reynolds. Apparently because of these complaints. Then I explained to him that it was all right with me if he wanted to take it over, but he would have to explain it to Senator Hatch, who was very interested in the case and was on the Senate Judiciary Committee and did hold the purse strings for the Department and ought to be treated gently, and also Clark Mollenhoff, who was an investigative reporter who no doubt would write something about *it*.

I thought it would be best if I could complete my investigation.

Senator DeConcini. What did Mr. Heymann say then?

Mr. Reynolds. After some discussion, they agreed that would be the case and that maybe we shouldn't talk to a couple additional witnesses that we felt we had to talk to who were former Department personnel.

Mike Murphy, my Secret Service agent, said that he didn't think we could complete the investigation unless we did. Finally, at the end of that discussion they agreed that we'd complete the thing within 30 or 60 days, the investigation of those departmental personnel. That was done then at that time.

At the end of the meeting everything was agreed upon. I did get to complete the investigation. A time limit was set. That was all that occurred at the meeting.

Senator DeConcini. Was Mr. Henderson a participant or just an observer?

Mr. Reynolds. I think his characterization as being an observer was probably correct. He basically sat there. At one point he was asked a question and he responded. That's the only thing I remember.

Senator DeConcini. Mr. Reynolds, would you consider it accurate to say, being told that there were complaints against the way you were investigating it and that it should be taken over by main Justice, that you felt any pressure?

Mr. Reynolds. I've always thought that the U.S. attorney had enough power as a Presidential appointment to do what he had to do in spite of the fact that another Presidential appointee was trying to tell him otherwise.

I know that is within the rules and regulations of the Justice Department, that the head of the Criminal Division can give direction regarding criminal investigations. However, I felt that it was in my power so I didn't feel intimidated, no.

Senator DeConcini. You felt that you should persist in your desire to continue the investigation and then pointed out some political realities to Mr. Heymann?

Mr. Reynolds. Right. I felt that I had conducted a good investigation. I kept it as quiet as I could. I had no press on it in my district at all. What press it had gotten had been press that had come out in Pennsylvania, which apparently was the result of Mr. Nard's talking to the press. I felt that I had conducted it properly and was quite surprised to find out that anyone was objecting to it.

Senator DeConcini. Did you explain to Mr. Heymann the lack of any investigation by his own Department?

Mr. Reynolds. I went through and we spent 3 hours talking about the chronology. Everything that I explained in that letter was explained to Mr. Heymann, I think at the end of it then he finally came to the conclusion that everything had been done properly.

Senator DeConcini. Everything had been done properly in your point of view?

Mr. Reynolds. On my point of view.

Senator DeConcini. Not necessarily on previous "investigations" or the Justice Department.

Mr. Reynolds. No conclusion had been made in that regard as to what had happened prior.

Senator DeConcini. Did you find that greatly disturbing to you just as a professional prosecutor, that the Justice Department had not conducted an investigation or in fact had told you that they had?

Mr. Reynolds. Well, I came to the conclusion I think after it was all over that, like most big organizations, it is easily attributed to lack of coordination and the right hand not knowing what the left hand was doing as to any kind of evil intent. It bothered me a little bit, but it was more that the Government doesn't work any better, but I guess maybe it's part of the problem.

Senator DeConcini. I want to thank you for continuing the investigation because I am satisfied from the testimony we have had today we would never have had an investigation had you not continued.

Going back to your investigation, what files, notes, and documents did you find of Mr. Hultman's investigation of the *Nard* case?

Mr. Reynolds. Mr. Hultman ran an office out of—Sioux City was his headquarters, but he also had an office in Waterloo. Records were found in both locations.

Initially the files were found under another name, the name of the engineer who had been looked into on the perjury question. That was found in a separate file drawer out in the hall away from the other files for some reason.

The other files I found were those files of Mr. Hultman which were found in Waterloo in a file cabinet after the power change had occurred between his office and mine. We were collecting some of those records.

Between the two of them, that consists of the files in my office of the investigation of the *Nard* case. Plus, Mr. Nard had been returned volumes of material. There is a list—I believe the committee counsel has it—of things that were returned to Mr. Nard. Then Armour & Co. were returned three boxes of files. That would have been the total of what our files consisted of.

Senator DeConcini. Did you find the filing of this case any different than any other cases that Mr. Hultman and his office had handled?

Mr. Reynolds. Only in the fact that the records were not in the normal file drawer and I had a great deal of difficulty trying to find them.

Part of the problem would have been this: I suspect, if I had gone directly to Mr. Hultmen and asked him all about the case, I probably

could have discovered it, but I suppose I was using the prosecutor's caution of not going to the accused and asking him whether he did it or not. It may have been the wrong way to do it inasmuch as Mr. Hultman and I have had good relationships and I respected Mr. Hultman not to do it, but I felt that was the way to do it.

We have never discussed the case. Even to this day we have never discussed it other than through the Secret Service agent. I felt that was the way to conduct the investigation. It may have been more cumbersome and therefore made the record discovery not as accurate as it might have been.

Senator DeConcini. When you could not find any file at main Justice of substance, did you ever inform anybody of that other than Mr. Henderson? Did you talk to any of your superiors, Mr. Heymann or anyone?

Mr. Reynolds. Well, at that meeting then, of course.

Senator DeConcini. That's it? What was Mr. Heymann's response when you showed him the letter, that apparently the file had been lost?

Mr. Reynolds. He indicated that apparently within the Department it was not unusual for files to be lost for a period of time, but did admit that it was unusual for a file never to be found. Files were missing, I guess, as in any large operation.

He did indicate that he didn't feel that there was anything significant in the fact that the file was missing or in the fact that this was a perjury charge.

Senator DeConcini. Did you have to obtain permission or clearance to appear today?

Mr. Reynolds. Yes.

Senator DeConcini. Did you have any problems securing that?

Mr. Reynolds. No.

Senator DeConcini. Was that done by letter or telephone? A combination?

Mr. Reynolds. It was done by telephone. I called Mr. Tyson, our Director. He indicated that the legislative liaison was handling the matter. They referred me to Jack Keeney. I talked to Mr. Keeney about it and made arrangements for the delivery of my files as subpenaed and regarding my testimony.

Senator DeConcini. Going back to your investigation, you indicated it was only as to the proceedings of your predecessor. Was your investigation of that matter sufficient in depth for you to form an opinion with regard to the diversion of funds theory as indicated and alleged by Mr. Nard?

Mr. Reynolds. I came to the conclusion from what I have investigated to date, not having gone fully into the matter of whether Mr. Nard had some evil intent in building his house out of the proceeds that Armour was paying him.

It was my conclusion that diversion of funds was a tactic that had been developed as theory for defense of the lawsuit, as was shown by the fact that the original lawsuit was amended to include the diversion of funds although the fact that Mr. Nard was building his house was

quite well known by Armour officials before that time. Therefore, I was of the opinion that Mr. Nard's characterization of the diversion of funds as a legal tactic was probably correct. In light of subsequent talking to the attorneys for the subcontractors who signed various statements regarding the diversion of funds and in getting lien waivers, including Senator Hatch, I came to the conclusion that probably was a tactic used by counsel for Armour.

Senator DeConcini. In your review of the matter, were you able to form an opinion as to whether or not you thought as it related to the *Nard* case and allegations of perjury regarding the *Nard/Armour* case and the supporting documents, that there was sufficient evidence to indicate some perjury? Did you look at that at all?

Mr. Reynolds. Yes, I felt there was. Some other things that we discovered, that I discovered in my investigation—for instance, that the engineer had been paid for his discipline time before the Disciplinary Commission by Armour; they had paid for his lawyer who appeared to defend him at the Disciplinary Commission—things like that indicated to me that the testimony was very suspicious.

Senator DeConcini. Notwithstanding that, you felt that there was no impropriety on your predecessor's handling of the case?

Mr. Reynolds. I suppose it's two prosecutors looking at the same case and wondering whether you can convict on the evidence. I don't dispute Mr. Kirshen's view if he went into it to the depth that he went into far more than I ever got into it. He came to a contrary conclusion.

I came to the same conclusion that Mr. Hultman did early on, that it appeared that there was perjury.

Senator DeConcini. Any of us who have had contact with Mr. Nard realize he is very persistent and sometimes, indeed, can become in some terms of some people perhaps a nuisance.

Did he approach you consistently, press you, call you, and write you as he has, it has been testified here, almost everyone else who has had any contact with him?

Mr. Reynolds. Definitely; almost on a daily basis. However, I've always taken the attitude in any of the cases that I've ever had that you ignore the complaint and then you take the complaint and do it on the merits of the complaint.

Senator DeConcini. Mr. Reynolds, let me compliment you for just that attitude because I think that is what should prevail, and obviously has with you. Your reputation nationally is known just for that not only in this case, but in other cases. You care enough, notwithstanding the personality of someone, to review it and do what you think is right. I am only saddened that other people in the Justice Department do not do the same thing. That will be a story that we will continue to unveil in the future I believe.

Mr. Reynolds, we might submit some other written questions here. Due to time, I am going to have to close these hearings shortly.

Thank you very much. Do you have any other statements you care to make?

Mr. Reynolds. None.

[The prepared statement of Mr. Reynolds, with enclosures, follows:]

U.S. DEPARTMENT OF JUSTICE, U.S. ATTORNEY,
NORTHERN DISTRICT OF IOWA,
Cedar Rapids, Iowa, September 24, 1980.

Hon. ORRIN G. HATCH, and
Hon. DENNIS D. DECONCINI,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATORS HATCH and DECONCINI: In response to a request from this Committee and with the permission of the Department of Justice, I am writing to give you my recollections and what my files and records reveal concerning an article about Thomas Henderson in the Federal Times of March 17, 1980, by Inderjit Badhwar and Sheila Hershow [1] and the Department of Justice's oral testimony and written summaries,[2] in response to this Committee's inquiry into the facts of the Federal Times article.

1. I believe it best to start with the allegations regarding the missing investigative files relating to John A. Nard's complaints to the Justice Department about former United States Attorney Evan Hultman, my predecessor in this office. Mr. Nard first approached me with his complaint against Mr. Hultman's investigation by phone the day before I was sworn in as United States Attorney, November 10, 1977. He briefly explained his charges against Armour & Company and his attorneys, along with certain Government officials. He indicated that his charges against these people were mismanaged by Mr. Hultman, which could be verified by Clark Mollenhoff, a Pulitzer Prize-winning investigative reporter, and United States Senator Orrin Hatch of this Committee, a witness to some of the matters complained of by Mr. Nard.

While in Washington on November 16, 1977, I met with and explained Mr. Nard's complaints to Michael Egan, then Associate Attorney General, who referred me to Benjamin Civiletti, at that time head of the Criminal Division. Mr. Civiletti was not available, so I met with his assistant, Tim Baker, who referred me finally to Thomas Henderson, the head of the Department's Office of Public Integrity. I explained Mr. Nard's complaints to Mr. Henderson who indicated he was somewhat familiar with the matter, which had been investigated by other Department personnel. Mary Wagner had been assigned the complaint because of the possible conflict with the Deputy Attorney General's side of Justice, and the complaint against Hultman and others had been assigned to the Associate Attorney General's side and to Ms. Wagner under the then Associate Attorney General, Judge Tyler. Tom Henderson agreed to see that Ms. Wagner's files were obtained for me so that I might verify that she in fact had investigated Nard's complaint against Hultman and others as she had stated in her letter of July 26, 1976.[3] He also advised me against my planned first face-to-face meeting with Mr. Nard and later with Senator Hatch. (Senator Hatch had represented one of the sub-contractors in the underlying Armour contract dispute involving Mr. Nard.) Henderson warned that Nard was to be treated skeptically and assured me that although former Senator Scott, who Nard included in his charges, was about to be indicted on an unrelated income tax matter, the Department had found no basis for Nard's complaints after a thorough investigation.

Clark Mollenhoff confirmed that evening to me his personal belief in the substance of Nard's complaint against Hultman as did Senator Hatch in our breakfast meeting the following morning.

Upon my return to Iowa a review of matters in the United States Attorney's office heightened Nard's credibility and the possibility his complaints were true.

I waited until December 16, 1977, and when I had not received Ms. Wagner's files as promised from Henderson, I wrote to Tom Henderson about his promise of November 16, 1977, to produce these files for me.[4] When the David Marsten case caused Attorney General Griffin Bell, in January of 1978, to issue an Order to all United States Attorneys to report to him, through Bill Tyson of our Executive Office, any pending investigation of prominent persons so as to avoid future

[1] Attached is a Xerox copy of a portion of the article pertinent to the Nard case.
[2] Xerox portions of the Summaries and "facts" and "allegations" are attached.
[3] Wagner's letter to Nard of July 26 attached.
[4] Attached is my letter of 12/16/77 to Tom Henderson.

Marsten affairs, I sent a letter on January 25, 1978, to the Department of Justice detailing the subjects of Nard's complaints and, in the final paragraph, asking the Attorney General's help in obtaining the files Tom Henderson had promised.

On February 16, 1978, Tom Henderson called and told me that the files would be available, and I indicated that I would examine the files while in Washington on other business in mid-March of 1978. Henderson followed this up with a letter to me of February 22, 1978.[6] Approximately a week before my meeting on March 15, 1978, I contacted Eric Holder as directed, but he was unavailable and I talked to Tom Henderson who indicated that the materials I was requesting would be at the front desk when I arrived. On March 15, 1978, I went to Public Integrity, where I received only Nard's tax files, not Ms. Wagner's investigative files. I then asked to talk to Tom Henderson and discussed with him the matters of Ms. Wagner's files. He suggested I go over to the Main Justice Building and check at Mary Wagner's former office at the Associate Attorney General's section. I did this and discussed the files with Ms. Wagner's former secretary, Judith D. Woolley, who said she remembered the Nard matter and that a thick file of Mary's extensive investigation should be "around somewhere". We then proceeded to the record storage area in the Main Justice Building and searched for several hours with the record custorian, Dorothy A. Kluge. Finally, at the end of the day, I returned to Tom Henderson's office and told him Mary Wagner's files were missing. He suggested then that the only way to reconstruct Ms. Wagner's investigation was to have her detail out to me who she had talked to and for me to check with those people to confirm that she had and thereby satisfy myself that Justice had given Mr. Nard's complaints a full hearing. The need to obtain Ms. Wagner's files was due to the fact that after my November, 1977, first meeting with Tom Henderson I had told Mr. Nard that my investigation would be limited solely to satisfying myself of her work by review and verification that she had done what she said she had in her letter. (Refer to fn. 3.) Nard had predicted I would never find any files and that no investigation had in fact ever been conducted.

On March 14, prior to going to Tom Henderson's office, I had talked to Ms. Wagner at her private law office and she indicated she would check her phone logs concerning the claim by Nard and Senator Hatch that his attemps to contact her during the investigation had met with no response. On April 4, 1978, after returning from Washington, I called Ms. Wagner about her missing files and she indicated that it was "a little strange" but that she could not now find her phone logs and that there may not be much of a file, so may not have been much missing. I indicated to her that I was going to write to her requesting that she detail for me her investigation so that I might be able to verify it.

I wrote to Ms. Wagner at her law firm for information on the investigation.[7] The letter was returned by the Postal Service indicating the addressee had moved and the letter was not forwardable. On April 19, 1978, I called Ms. Wagner by phone and she confirmed the address of her law firm at 1900 "M" Street, and I re-mailed the letter to her.

During this period of time I also was informed from confidential sources that the Federal District Judge involved in Nard's complaint had allegedly paid money to a U.S. Senator for his position. I immediately conveyed that information to Tom Henderson and on May 8, 1978 was told that the matter had been investigated and determined that the statute of limitations on the allegation would have run but that the matter had been turned over to the Judicial Conference and the Bar Association.

After a month of not hearing from Mary Wagner concerning my letter, I began to call her from approximately the 25th of May on through the end of May. I did contact her, and she confirmed that she had received the letter and although busy would respond before the end of the month of May. When I did not receive Ms. Wagner's promised response I attempted to contact her by phone without success and was left with the impression she was avoiding me. On June 12, 1978, I subpoenaed Mary Wagner to a Federal Grand Jury in Sioux City, since she would not respond and I had no other alternative. On June 14, 1978, Ms. Wagner called indicating that she was to have a baby in three weeks and would be unable, under doctor's orders, to travel to Iowa to the Grand Jury scheduled for June 20, 1978. She indicated she had been attempting to find her files, both at home and

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[5] My letter of January 25, 1978, to Attorney General Griffin Bell attached.
[6] Thomas Henderson's letter of February 22, 1978, to me attached.
[7] My letter of April 4, 1978, to Mary Wagner.

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at the Department and had been unable to do so and promised she would respond to my letter of April 4, 1978, by the end of the week (June 16, 1978). I told her she would not have to attend the Grand Jury on June 20, 1978, if she would respond to my letter by the date of the Grand Jury and if I would receive a letter from her doctor before that time indicating she was not able to appear. She indicated that she would do both things by that time.

On June 20, 1978, I had neither received the letter from Ms. Wagner nor from her doctor. The United States Marshal Service called Ms. Wagner, who was at home and who indicated she was not going to appear and claimed that she thought the date of appearance was June 22 (Thursday) rather than Tuesday. She had no explanation as to why the doctor's letter had not been received. I contemplated a request for citation for contempt for failing to appear or respond; however, instead I called Attorney General Griffin Bell on June 23, 1978, when I still had not recieved any of the promised letters.

I talked to Attorney General Bell's aide, J. Phillip Jordon, who indicated he would check with Messrs. Tyson, Civiletti and Egan and get back to me concerning the situation. Ten minutes before 5 o'clock p.m. on June 26, 1978, Mr. Jordon called to inform me that he had talked to Mary Wagner and she indicated that she had talked to Evan Hultman and some others and that she would respond to my letter of April 4 by Wednesday, June 28. I waited until Wednesday and heard neither from the Attorney General's office nor from Ms. Wagner. Finally, on Friday, June 30, 1978, at 19:30 I received a teletype from Phillip Jordon of a letter to me dated June 29, 1978, from Mary Wagner sent on the Justice Department teletype. Finally, on Monday, July 3, 1978, I received Ms. Wagner's response to my letter of April 4.[8]

The letter questioned the existence of her files, which I had previously been assured existed and had spent almost seven months looking for. The letter also listed persons contacted in her investigation. It appeared that the people questioned were only peripherally engaged in the complaint and that Ms. Wagner had relied mostly on Mr. Hultman's explanation of his difficulties with the Nard investigation. She did confirm, however, that Mr. Hultman had found perjury, as claimed by Mr. Nard, but he had been unable to prove it.

I then decided I needed to expand my investigation of Mr. Nard's complaints. I also had in the course of attempting to reconstruct Ms. Wagner's files found that Mr. Nard had previously given information to the Watergate Special Prosecutor's office, which had resulted in the indictment and conviction of a major corporation, Greyhound, Inc.[9] With this background, I decided to conduct my own investigation of Mr. Nard's complaints against Mr. Hultman and his claimed mismanagement of Nard's complaints against Armour, its attorneys and other public officials.

2. My access to the Watergate Special Prosecutor's files at the National Archives was for the purpose of investigating Mr. Nard's complaints which included allegations against former Senator Hugh Scott. The records at the National Archives were checked by the archivist and showed that none of Hugh Scott's investigative records were among those that were turned over by the Watergate Special Prosecutor to the National Archives. The reason given to the archivist for this was that the Scott investigation involved income tax matters and due to the law on non-disclosure of tax material, these materials could not be turned over to the National Archives with the Watergate matters. The Scott materials, I believe, were handled by the Watergate Special Prosecutor, the Justice Department Tax Division and are now at the Internal Revenue Service in Washington.

The Watergate Special Prosecutor's files, therefore, do not appear to be missing but would be at the Internal Revenue Service. I have never verified that, since Scott's income tax matter was not directly material to the Nard complaint. Nard complained that Senator Scott in his position as one of the most powerful members in the United States Senate Judiciary Committee during his party's years of administration allowed him, due to the advice and consent requirement, to be in a controlling position on all Justice Department personnel requiring advice and consent and Federal judges of all levels and most particularly those relative to the State of Pennsylvania. The circumstantial evidence was established for such an allegation; however, the only allegation directly relating to Mr. Nard's complaint was that in regard to the allegations previously mentioned which have been referred to Tom Henderson's office, which had indicated the statute of limitations had run on the facts concerning that allegation. Tom Henderson also

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[8] Letter to me from Mary Wagner of June 29, 1978.
[9] Watergate Special Prosecutor's material attached.

confirmed that this allegation had been thoroughly investigated to Assistant Attorney General Philip Heymann and others in my presence in a subsequent meeting in August, 1979.

3. I decided to conduct my investigation at first by calling certain witnesses before a Federal Grand Jury in Sioux City, Iowa. After initially calling a number of witnesses it appeared that the Grand Jury method of investigation was cumbersome and that the Grand Jury could do their work better by utilizing investigative agents of the Grand Jury.

As a result I contacted the Department of Treasury, Secret Service. In a previous discussion with then Assistant Attorney General Civiletti I had been told that the United States Attorney had the discretion to utilize any investigative agency he saw fit, no matter the traditional jurisdictional boundaries of investigative agencies. I chose the U.S. Secret Service for the reason that I had great confidence in their investigative abilities, my previous experience that the Service's dual duties of protective service and investigation made them most comfortable with persons of high rank and they would be unswayed by the position of the person they were investigating or interrogating. The Secret Service agreed to assign two agents to the matter, after confirming the matter with an undersecretary of the Treasury, Richard Davis, and theDepartment of Justice. Agents Michael F. Murphy and David H. Noznesky then conducted the interviews of 33 people, which interviews were conveyed to the Grand Jury in narrative form.

As part of their investigation Agents Murphy and Noznesky interviewed Ms. Mary Wagner. In making arrangements for her interview, Ms. Wagner indicated for the first time that she could not discuss the matter without Justice Department approval. Although this is a standard regulation, Ms. Wagner had not raised the issue until this time. Agents Murphy and Noznesky cleared the interview with appropriate Justice Department personnel and interviewed Ms. Wagner on August 7, 1979. Prior to the interview, arrangements had been made with Agents Murphy and Noznesky to have in their possession a Grand Jury subpoena which they were authorized to serve on Ms. Wagner if they felt at the completion of the interview that it would be better for her to have made her statements under oath before the Grand Jury. At the completion of the interview of Ms. Wagner, they served her with the Subpoena to appear before the Grand Jury at Sioux City, Iowa, on August 20, 1979.

On August 10, 1979, I received a telephone call from Robert Ogren, representing Ms. Wagner, who indicated that due to her and Mr. Ogren's vacation schedules he would like her appearance before the Grand Jury to be delayed. I indicated to him that I would consider the matter and get back to him by Tuesday, August 14. At 11:00 a.m. (CDT) August 14 I contacted Mr. Ogren and indicated to him that I could not inconvenience my 24 Iowa grand jurors for the convenience of two Eastern lawyers and, therefore, would have to require Ms. Wagner to appear as subpoenaed. Mr. Ogren became quite upset and inquired whether or not I had received approval for Miss Wagner's appearance as provided by 28 CFR 16.21. At 5:55 p.m. (CDT) that same day I received a call from Phillip Heymann inquiring about my subpoena of Mary Wagner. I briefed Assistant Attorney General Heymann on the nature of the investigation and he indicated that I should come to Washington to discuss the matter. I asked to bring along my investigator, Michael Murphy, and Heymann agreed.

On August 16, 1979, the day Attorney General Civiletti was sworn in, Agent Murphy and myself met with Assistant Attorney General Heymann, Tom Henderson, Deputy Assistant Attorney General John C. Keeney. Tom Henderson was present during the entire meeting from approximately 3:00 in the afternoon until 7:30 p.m. During the meeting Agent Murphy and I briefed those present on the investigation and the necessity for interviewing other former members of the Justice Department besides Mary Wagner. Questions were raised concerning the amount of time which had been taken up in this investigation and the necessity for continuing and interviewing additional people in light of the fact that we had been able to substantiate Mr. Nard's claims at that time. Assistant Attorney General Heymann indicated that authority would be given to interview former Assistant Attorney General Richard Thornburgh, former Assistant United States Attorney Alan Kirshen, former United States Attorney Evan Hultman, and other former departmental personnel.

We also agreed to attempt to complete these interviews within thirty to sixty days. During this conference Mr. Henderson was present and participated by giving his version of various matters that had transpired and his recollection of departmental activity.

The investigation of Mr. Nard's complaints was finally completed in June of 1980 in the final session of the Sioux City Grand Jury. The Grand Jury had previously indicated in the Fall of 1979 that they did not wish to hear any more evidence unless I felt there were additional matters which should be brought to their attention. I did this in June of 1980 and, following that presentation to the Grand Jury again, agreed they wanted to take no further action on Mr. Nard's complaints nor would they recommend any further investigation nor bill of indictment be presented for discussion or vote.

4. The Department has furnished a written item called "Summary" concerning the Nard matter. The summary is basically correct, with certain important exceptions:

(a) The whole genesis of the payments for Nard's house by Armour & Company are not as certain as stated in the Summary for the reasons that:

(i) The manner of billing by subcontractors to Nard for his house was immaterial until the Armour contract was terminated, since it was a design and build contract with a fixed fee maximum. Payments by Armour to Nard's partnership under the contract were without regard to the sub-contractors' billing, but only were in proportion to the percentage of the completion of the project as certified by Armour personnel and Nard.

(ii) Once the contract was terminated Armour directed the sub-contractors were to be paid only after their bills were audited. The audit was not done and the sub-contractors were paid for items including Nard's house which was carried as EWA 40.

(iii) The payments by Armour for Nard's house appeared to be intentional by Armour. This would substantiate Nard's charges that Armour payments were made to make Nard look like a crook and then make him a crook when the Internal Revenue Service discovered (Nard maintains Armour involved the IRS to discredit him) and prosecuted Nard for "constructive receipt" of the house through Armour payments which Armour now maintains were made in error.

(iv) Judge Joseph Weis, then of the United States District Court of Pennsylvania, now of the Third Circuit Court of Appeals, ordered restitution by Nard to Armour for the house payments claimed and made by Armour, however, some of the sub-contractors still have liens against Nard's house for those claimed payments, which the Nard partnership repaid to Armour. This matter was still being litigated as recently as 1979 in the Federal courts in Pennsylvania.

CONCLUSION

The four items listed above appear to be mistaken statements of the facts concerning the Federal Times article. There are some files missing; there are some files not where they might be expected; there was a meeting at Justice in which the investigation was questioned and authorized to continue; there would appear to be some factual basis for Nard's initial complaints against Armour & Company and its personnel. The conclusion of my office's investigation, however, of Mr. Nard's complaints against my predecessor, former United States Attorney Evan Hultman, and his Assistant, Alan Kirshen, have not been able to be verified to the degree required with the presentment of a criminal indictment against them or any other accused. I feel that although Mr. Nard's charges have not been able to be verified, they are not such as to make either my investigation or that of Mr. Hultman and Mr. Kirshen frivolous or a waste of time. They do establish one matter which I believe the Senate Judiciary Committee should examine and adapt measures to protect against, and that is that the advice and consent role as exercised by the Senate Judiciary Committee does not become one of formality only, stifled by senatorial custom and courtesy, or subject to abuse in any manner. This investigation has raised some serious questions about some of the very basic structures of our governmental system. They have convinced me of the necessity for a free and independent investigator-prosecutor. Serious concern must be given to the structure under which we investigate claims of abuse against those who have been given the most sensitive levers of power in our society. I could not substantiate the claims that judicial and justice system had been tampered with, but my investigation did confirm in me the belief that without a better system of checks and balances, more than just circumstances which indicate abuse will exist. I believe Watergate has indicated how little our society can afford the actual corruption of the justice system.

I am,

Very truly yours,

JAMES H. REYNOLDS.

Enclosures (9).

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., July 26, 1976.

Mr. JOHN A. NARD,
Woodcock Road
Sewickley, Pa.

DEAR MR. NARD: This is to inform you that we have completed our review of your various allegations and the materials which you have furnished this office as support for your claims. You have alleged that improprieties occurred relating to the adjudication of civil actions between you and the Armour Company in the Western District of Pennsylvania and in the Northern District of Iowa, a tax prosecution which resulted in your pleas of guilty and nolo contendere, respectively, to two charges, and several other matters.

As I informed you during our meeting of June 29, 1976, it is not our intention to determine whether there is evidence which would support the prosecution of private individuals for perjury, which you allege occurred during the two civil actions. The United States Attorney for the Northern District of Iowa has already conducted a thorough and extensive grand jury investigation into your charges of perjury in the civil litigation, and concluded that prosecution was not warranted.

Regarding your allegations concerning the conduct of various public officials and employees, we have concluded that there is neither any evidence supporting your claims nor anything which would indicate that further investigation of your charges is warranted.

As I stated above, our review has been concluded. I do not believe that anything could be gained from further discussion of these matters with you. The materials which you provided may be called for at your convenience.

Very truly yours,

Mary E. Wagner,
Special Assistant to the
Deputy Attorney General.

DECEMBER 19, 1977.

Re: Nard Complaint.

THOMAS H. HENDERSON, Jr.,
Chief Public Integrity Section,
U.S. Department of Justice,
Washington, D.C.

DEAR MR. HENDERSON: When I talked to you on November 16 I indicated to you that I felt I must pursue the complaint of Mr. Jack Nard of Sewickley, Pennsylvania, concerning Mr. Evan Hultman's handling of the Grand Jury investigations of Mr. Nard's complaints of perjury and possible judicial corruption in Federal suits in Iowa and Pennsylvania. At that time I indicated that I would like to have the Justice Department file of investigation into the complaints that were handled by either your office or that of Mr. Sheheen. To date I have not received any of the material that I requested. I would appreciate it if you might obtain for me the Department file and the materials upon which the Department wrote its opinion concerning Mr. Hultman's handling of the case. If there is difficulty in getting the file out to me here in Iowa, I would be glad to come to the Department to review with you any of the materials you may have on this matter.

My continuing investigation of the complaints of Mr. Nard to date have not been resolved to my satisfaction one way or the other, and I am hoping that production of the Department files will lead to a satisfactory resolution of Mr. Nard's inquiries.

Hoping to hear from you in the near future, I am

Very truly yours,

JAMES H. REYNOLDS,
U.S. Attorney, Northern District of Iowa.

U.S. Department of Justice,
Washington, D.C., January 25, 1978.

To: Holders to U.S. Attorneys' Manual Title 1.
From: United States Attorneys' Manual Staff Executive Office for U.S. Attorneys.
For the Attorney General
Re: Notice of Subjects of Investigations.
Note:

1. This policy directive is issued by the Attorney General and does *not* expire pursuant to USAM 1–1.550. It will be incorporated into the United States Attorneys' Manual as printing time permits.
2. This material is disclosable under FOIA.
3. Distribute to Holders to Title 1.
4. Insert in front of USAM 1.5–600.

Affects: USAM 1.5–600.

Immediate Directive to All United States Attorneys and All Heads of Offices, Divisions, Bureaus, and Boards of the Department of Justice

SUBJECT: NOTICE OF SUBJECTS OF INVESTIGATIONS

It is the policy and practice of the Department of Justice to keep appropriate officials, including the Assistant Attorney General of the Criminal Division, the Associate Attorney General, the Deputy Attorney General and the Attorney General, advised of sensitive criminal investigations, particularly those in which public figures or entities are subjects of the investigation. The purposes for this policy and practice are to avoid inadvertent embarrassment, the unintended disclosure of information pertinent to an unidentified investigation, and the possible appearance of impropriety in the event such subjects meet or communicate with these officials in the regular course of the conduct of the business of the Department of Justice. To assure that information is brought promptly to the attention of these Department officials, I direct the following procedures be followed closely and be effected immediately.

1. This notification procedure shall in no way interrupt, alter or delay the normal conduct and pursuit of any investigation.

2. If a public figure or entity is the subject of any criminal investigation in the Department of Justice in Washington, D.C., the responsible prosecuting or investigating attorney shall promptly advise the Assistant Attorney General of the Criminal Division of (a) the name of the subject, (b) a brief synopsis of the nature of the investigation and the subject's role, and (c) the current status of the investigation. The information may be communicated to the Assistant Attorney General orally, where necessary, but should be followed *immediately* by a written memorandum signed by the reporting attorney. The Assistant Attorney General shall transmit the same information to the Associate Attorney General, the Deputy Attorney General and the Attorney General as soon as possible.

3. If a public figure or entity is the subject of any criminal investigation in a United States Attorney's Office, the responsible United States Attorney shall promptly advise the Director of the Executive Office for United States Attorneys of (a) the name of the subject, (b) a brief synopsis of the nature of the investigation and the subject's role, and (c) the current status of the investigation. This same information may be communicated orally, where necessary, but should be followed immediately by a written memorandum signed by the reporting United States Attorney. The Director of the Executive Office for United States Attorneys shall transmit the same information to the Assistant Attorney General for the Criminal Division, the Associate Attorney General, the Deputy Attorney General and the Attorney General as soon as possible.

4. A "subject" of an investigation is a person or entity whose conduct is within the scope of the investigation, i.e., one whose conduct has been called into question by an investigation as distinguished from a witness or a person or entity as to whom merely an unverified allegation or complaint has been received.

5. To preserve the integrity and efficacy of all investigations and to avoid the possibility of unfair and prejudicial publicity to any person or entity who is only the subject of an investigation, the reporting notice should be as brief as possible and should be kept absolutely confidential.

6. The notices provided for in this directive will not be a basis for investigative or prosecutive evaluation or review. Investigative and prosecutive evaluations and reviews shall be performed in the same manner as in all cases. That is, all determinations and decisions shall be made on the merits in the regular and normal manner as prescribed by applicable law, regulation and policy.

GRIFFIN B. BELL,
Attorney General,

January 25, 1978.

FEBRUARY 7, 1978.

Personal and confidential—open by addressee only

Re: Attorney General's Directive for Notice of Subjects of Investigations, per teletype of 1/25/78.

WILLIAM P. TYSON,
Deputy Director,
Exective Office for U.S. Attorneys,
Washington, D.C.

DEAR MR. TYSON: This date the directive of Attorney General Griffin Bell of January 25 has come to my attention concerning procedure for notice to him of the subjects of public figures or entities under investigation.

This letter is to inform you and the Attorney General that I have received a complaint that former Senator Hugh Scott of Pennsylvania had directly or indirectly impeded the course of justice in civil litigation in Iowa and related litigation in Pittsburgh, Pennsylvania. and also subsequent investigation of the criminal aspects of those matters.

The subjects of the complaint are former Senator Hugh Scott; Elsie Heilman; Peter F. Flaherty, former Deputy Attorney General; Richard L. Thornberg, former United States Attorney for the Western District of Pennsylvania and former Assistant Attorney General in Charge of the Criminal Division; Judge Joseph F. Weis, Jr. of the Third Circuit Court of Appeals; and my predecessor, Evan L. Hultman, former United States Attorney for the Northern District of Iowa.

The basic complaint is that Senator Scott, through the auspices of his office, influenced and encouraged the perjured testimony in civil litigation involving John Nard and Armour & Company, a subdivision of Greyhound, a prominent client of Senator Scott's law firm. The complaint claims that due to Senator Scott's influence on the Federal judiciary and the Justice Department, due to his power on the Senate Judiciary Committee he was able to involve Peter F. Flaherty, Richard L. Thornberg, Justice Joseph F. Weis, and Evan L. Hultman, among others, in a conspiracy to obstruct justice. Conspiracy includes subsequent investigation by Grand Juries in Iowa in 1973, 1974 and 1975, of the alleged perjured testimony and undue influence.

On November 16, 1977, while personally in Washington, I requested Thomas Henderson, Assistant Attorney General in Charge of the Public Integrity Unit of the Justice Department, to provide me with the investigation file made by the Department of these same charges and investigated by Mary Wagner of Judge Tyler's office at that time. On December 19, I again wrote to Mr. Henderson the enclosed letter, again requesting such investigative file so that I might satisfy myself that a full investigation of this matter had been completed by the Justice Department. To date I have as yet to receive anything. Through my own efforts I have been able to trace Ms. Wagner, who is now in private practice, and have a brief oral report of her investigation which, if true, may have been complete, but concerning which I have some questions due to the independent incidents.

I would appreciate it if the Department might be able, through your auspices, to provide me with the Department's investigative file of this matter and also any additional information of other investigations being conducted by other United States Attorneys of Senator Scott and the uses or abuses of his office in criminal matters.

Please excuse my delay in responding, caused by the delay in transmitting Judge Bell's teletype due to the transfer of the office form Sioux City to Cedar Rapids with the teletype to me in Sioux City.

Thanking you for your prompt attention, I am

Very truly yours,

JAMES H. REYNOLDS,
U.S. Attorney,

Enclosure.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., February 22, 1978.

Re: Complaint of John Nard

Hon. JAMES H. REYNOLDS,
U.S. Attorney,
Northern District of Iowa,
Sioux City, Iowa.

DEAR MR. REYNOLDS: Pursuant to your request of December 19, 1977 we have assembled, and are now prepared to make available to you, the investigative file concerning the complaint filed by Mr. Nard. Please forgive the amount of time it took to respond to your request but we did encounter some problems in gathering this material.

In any case, the file is now in the possession of this Section and we will make it available to you here in Washington at your earliest convenience. Please contact Eric Holder, an attorney in this Section, who will make whatever arrangements are necessary.

Sincerely,

BENJAMIN R. CIVILETTI,
Assistant Attorney General,
Criminal Division.

APRIL 4, 1978.

Re: Jack Nard Complaint of June 29, 1976.

Ms. MARY E. WAGNER,
Washington, D.C.

DEAR MS. WAGNER: As I indicated to you in our phone conversation today, I was unable to obtain from the Justice Department any material concerning your investigation of Mr. Nard's complaint upon which you reported on behalf of Judge Tyler on July 26, 1976, to Mr. Nard. It is necessary then for me to attempt to reconstruct and check your investigation to resolve matters for myself.

Please, therefore, detail for me the following:

1. The nature of the complaint to you by Jack Nard;
2. What statutory or generic crimes Mr. Nard was claiming had been committed;
3. The names of the subjects of the complaint by Mr. Nard;
4. What course your investigation took, including the names and present where abouts, if you know, of those you contacted, the manner and duration of your contact, and what information, if any, you received from those you contacted concerning your investigation of the persons complained of by Mr. Nard.

If you are able to get me this material as soon as possible, I will attempt to verify that the investigation was conducted as you indicate and that the conclusion that there was no evidence to support the claims and no need for further investigation of Mr. Nard's charges are as you stated in your letter to Mr. Nard of July 26, 1976.

Thank you for your help and candor in this matter. I am,

Very truly yours,

JAMES H. REYNOLDS,
U.S. Attorney.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., June 30, 1978.

JAMES H. REYNOLDS, Esq.,
U.S. Attorney, Northern District of Iowa,
Sioux City, Iowa.

DEAR JIM: Enclosed is the letter from Mary Wagner which you and I discussed a few days ago. I hope you find it helpful.

Let me know if I can be of further assistance in any way.

Best wishes.

Sincerely,

J. PHILLIP JORDON,
Special Assistant to the Attorney General.

Re Jack Nard Complaint of June 29, 1976.

JAMES H. REYNOLDS, Esquire,
U.S. Attorney, Northern District of Iowa,
Sioux City, Iowa.

DEAR MR. REYNOLDS: This letter is in response to yours of April 4, 1978, which arrived in this office on April 24, 1978, concerning Jack Nard.

Since you have told me that you have been unable to obtain from the Justice Department any files concerning my review of Mr. Nard's complaint, I have not made an attempt to obtain access to such files, if they exist. As I told you in one of our early telephone conversations some several months ago on this matter, I took no Departmental files with me when I left the Department, but had all my files, other than currently active ones, transferred to storage. Therefore, I have no documentary aids in attempting to reconstruct the course of my review of Mr. Nard's claims.

In one of our telephone conversations subsequent to your attempt to locate any files I might have left at the Department, you indicated that it would be sufficient if I attempted to list, as best I could remember, the Department of Justice officals I spoke with, and other efforts I made in the course of my review of Mr. Nard's various claims. As best I can recall, I spoke first with Mr. Steven Blackhurst of the Department's Office of Professional Responsibility. Mr. Blackhurst had been speaking with Mr. Nard and it was determined that, since Mr. Nard's allegations included allegations against officials outside the Department, as well as Departmental officials, it was not appropriate for his office to conduct a review since his office dealt with allegations of impropriety or misconduct by Departmental officials. It was also inappropriate for the Criminal Division to conduct a review of the allegations since the allegations included charges against Mr. Richard Thornburgh who was then Assistant Attorney General of the Criminal Division. It was for that reason that I was asked to review Mr. Nard's claims.

I believe my next contact was with Mr. Nard himself. I recall at least one meeting with him at which I and Ms. Maureen Gevlin, Special Assistant to the Deputy Attorney General, who was assisting me in the Nard matter, attempted to elicit from Mr. Nard a statement of his precise allegations and the names of the parties he had accused. While we were able to obtain an enumeration of the parties he was charging, I recall we had some difficulty in determining the precise nature of his allegations, aside from the fact he accused numerous people of "covering up" evidence of violations of law and of unjustly maintaining a tax prosecution against him.

Among those included in Mr. Nard's allegations were: Mr. Richard Thornburgh, in his capacity as United States Attorney for the Western District of Pennsylvania; at least one of Mr. Thornburgh's Assistant United States Attorneys whose name(s) I do not recall; Mr. Evan Hultman, then United States Attorney for the Northern District of Iowa; at least one of Mr. Hultman's Assistants, whose name(s) I do not recall; Senator Hugh Scott of Pennsylvania; I believe a judge in Pennsylvania who convicted Mr. Nard on a tax fraud count, and the entire Third Circuit Court of Appeals, which he alleged had been "bought" or were controlled by either Senator Scott or other Pennsylvania politicians; and perhaps one or more individuals in the Tax Division of the Department of Justice. It is likely charges were made against other individuals, but these are the ones I currently recall.

Ms. Gevlin and I reviewed every document in the files which Mr. Nard brought to my office, which files, as I recall, were contained in a trunk and one or more large suitcases and which consisted largely of transcripts of a trial in Pennsylvania involving the Armour Company, as well as legal briefs relating to the case. Mr. Nard claimed, inter alia, that various witnesses committed perjury at that trial and that neither the U.S. Attorney's office in Pittsburgh nor the U.S. Attorney's office in the Northern District of Iowa had prosecuted such witnesses, even though the alleged perjury had been brought to their attention by Mr. Nard. Our review of the materials submitted to us by Mr. Nard took several days.

I specifically recall requesting records from the Tax Division as they related to Mr. Nard and reviewing all the records as to his claim that he was unfairly prosecuted. His allegations also included charges against the judge who found him guilty of tax fraud. I also recall meeting with Mr. Cono Namarato, head of the Tax Division's Criminal Section, on the Nard allegations. I believe I also spoke with Mr. Mike Baum, Deputy Assistant Attorney General for the Tax Division, in this regard, although I am not absolutely positive about this.

Mr. Nard told me he had had one or more lengthy discussions with a lawyer in the Special Prosecutor's Office about his allegations. He further told me that that lawyer had told him there seemed to be some merit to his case. Nevertheless, the Special Prosecutor's Office did not act on his allegations. I made contact with this lawyer (whose name, I believe, was John Lydick), and met with him in his office to discuss Mr. Nard's allegations. He indicated to me that the Special Prosecutor's Office took an interest in the case due to the allegations against Senator Scott and others in Pennsylvania, but that the office was unable to develop anything out of Mr. Nard's charges.

Ms. Gevlin and I interviewed Mr. Hultman in my office one day in July, when Mr. Hultman was in town for a U.S. Attorneys' meeting. We discussed with him the efforts his office took to substantiate Mr. Nard's allegations, and his evaluation of these allegations. Mr. Hultman stated something to the effect that he believed that it was possible perjury had occurred in one of the underlying cases that Nard had brought to his attention, but also stated that he felt it could not be proven. He also stated that Mr. Nard had promised him certain information that was not forthcoming. He also indicated his frustrations in dealing with Mr. Nard as a credible witness and indicated that after the grand jury in Iowa had heard some of Mr. Nard's testimony, they were on the verge of indicting Mr. Nard himself.

At some point, I spoke briefly with Mr. Rudolph Giuliani, then Associate Deputy Attorney General, about the Nard allegations and my conclusions, and at that point wrote my letter of July 26, 1976 to Mr. Nard. I doubt I would have shown this letter to Deputy Attorney General Harold R. Tyler before I sent it, but at some point I probably sent him a copy of the letter, just to keep him informed as to what I had done in this matter.

I regret I cannot recall more specifically or thoroughly my effort in the Nard matter, but trust that this letter, together with our various telephone conversations over the last six months, will suffice for your present purposes.

Very truly yours,

MARY E. WAGNER.

U.S. GOVERNMENT, DEPARTMENT OF JUSTICE,
August 17, 1973.

MEMORANDUM

To: Files.
From: John G. Koeltl.
Subject: Greyhound Corporation.

On August 13, 1973, John Nard, of Pittsburgh [redacted], phoned to report what he believed to be a possible campaign violation by Greyhound Bus Corporation. Nard has been sued by Armour, a subsidiary of Greyhound, in federal court in Iowa. Nard claims that there was extensive perjury at the trial and that the United States Attorney in Iowa, Evan Hultman, is presently examining that problem. Nard also indicates, however, that since the original trial he has been indicted for income tax violations.

Nard received an anonymous phone call saying that Greyhound had made cash contributions to the Committee for the Re-Election of the President.

I checked the Rosemary Woods list and the GAO computer and learned that there were no pre-April 7 contributions by the President, Chairman, and Vice President in Charge of Armour. However, post April 7, each of those officers (Gerald Trautman, R. F. Shaffer, and Clifton Cox respectively) contributed $1,000. The amount involved does not appear to warrant further inquiry.

U.S. GOVERNMENT, DEPARTMENT OF JUSTICE,
August 23, 1973.

MEMORANDUM

To: Campaign Task Force File No. 356.
From: John G. Koeltl. Attorney, WSPP.
Subject: Greyhound Corporation.

John Nard of Pittsburgh, who telephoned on August 13, 1973 to report a possible corporate contribution by Greyhound Corporation, called again. He indicates that he is under active IRS investigation and thinks Greyhound is the cause of this government interest. He intends to send a copy of a personal letter to all the corporate officials of Greyhound asking whether they have contributed to FCRP and he will send us a copy of that letter and any information he obtains.

WATERGATE SPECIAL PROSECUTION FORCE,
DEPARTMENT OF JUSTICE,
December 3, 1973.

MEMORANDUM

To: File No. 356.
From: John G. Koeltl.
Subject: Greyhound Corp.-Armour.

John Nard-[redacted]—called on November 28. Nard had called before with allegations concerning Armour Company which had been acquired by Greyhound Corporation. The essence of Nard's charges were that Armour and Greyhound had been persecuting him with the knowledge and consent of the Internal Revenue Service. He claimed he had been put through trials in which there had been a great deal of perjury and that this was being condoned by the government. He charged that all of this was because of possible contributions by Greyhound Corp. to F.C.R.P. Nard indicated that Bob Arnold of the Wall Street Journal was extremely interested in the case and had interviewed him several times, and that Landauer was also becoming interested in the case. He indicated that he would send whatever material he had on the case to this office.

WATERGATE SPECIAL PROSECUTION FORCE,
DEPARTMENT OF JUSTICE,
July 31, 1974.

MEMORANDUM

To: Leon Jaworski.
From: Thomas F. McBride, Robert L. Palmer.
Subject: Greyhound Corporation.

This memorandum summarizes the facts and staff recommendations concerning illegal payments totaling $32,080 made in connection with the President's re-election campaign by the Greyhound Corporation and its Chairman and Chief Executive Officer, Gerald H. Trautman. The factual presentation is based on office interviews with Trautman, Raymond Shaffer, Greyhound's President, and its General Counsel, Louis Miller, in addition to grand jury appearances by Shaffer and five other senior corporate officials.

I. FACTS

A. *Background.*—Greyhound is the parent corporation for a large and diversified corporate enterprise headquartered in Phoenix, Arizona. Principally identified as a transportation company, Greyhound is by a substantial degree the country's largest operator of bus lines. The transportation side of the business also includes significant leasing operations. Several years ago, Greyhound acquired Armour and Company, the food-processing outfit, and its prinicpal subsidiary, Armour-Dial, which manufactures cosmetics and other sundries (e.g., Dial soap). For 1973, Standard and Poor's set forth that the combined entity had over 88,000 employees and enjoyed sales in excess of $5.3 billion.

Gerald H. Trautman became Chief Executive Officer of Greyhound in 1966. He was first named President of the Company, then President and Chairman of the Board, and at present is Chairman. Prior to coming with Greyhound, Trautman was in private practice with the San Francisco office of the California law firm of McCutcheon, Doyle, Brown & Enersen.

B. *Early solicitation approaches by FCRP.*—In early March 1972, a Greyhound Vice President received a letter from James O'Connor, the Phoenix lawyer who represents Kalmbach, pointing out that Kalmbach would be stopping over briefly in Phoenix and suggesting a meeting between Kalmbach and Trautman to discuss a contribution to the Nixon campaign. The letter recited Kalmbach's important role in the fundraising efforts then underway and his status as the President's personal attorney—"a completely trustee right arm of the President." The letter stressed the desirability of making a contribution through Kalmbach or Stans with the attendant assurances of anonymity.

Trautman rejected the idea of a meeting with Kalmbach, then or ever, and insists he has never met Kalmbach.

In April 1972, Stans visited Phoenix to give a fundraising speech to local business executives. At that time a meeting was arranged by Frank Middleton, a local Republican official, between Stans and a number of Greyhound officials, including

Greyhound's President, Ray Shaffer. The meeting was ostensibly to discuss possible contributions to the Nixon campaign, but according to Shaffer, Stans never got to deliver his pitch because the entire meeting was taken up with Shaffer's complaints to Stans about the poor treatment Greyhound had received from the Administration.

C. *August visit by Keaton, Firestone and Middleton.*—In mid-summer 1972, Verne Middleton, Vice President for Trade Relations of a Greyhound subsidiary, Greyhound Lines, Inc., was contacted by Frank Middleton (no relation) and asked to set up a meeting between high-level Greyhound officials and several Republican fund raisers who were to visit Phoenix. Verne Middleton consulted with Shaffer, who refused to participate and discouraged Middleton from asking Trautman. Shaffer did leave Middleton free to attend such a meeting. On August 11, 1972, Verne Middleton and Robert Goche, another Greyhound Vice President, met with Darius Keaton, Frank Middleton and a third person—probably Brooks Firestone, son of Leonard Firestone. Both Verne Middleton and Goche described this meeting to the grand jury as quite an explicit solicitation of corporate funds. Keaton did most of the talking and allegedly described how there were "clubs" being established for corporations that contributed large amounts, e.g., $250,000; $100,000. Such contributions would entitle representatives of the corporation to participate in high-level activities with senior Administration officials, including the President. At the $250,000 level, the corporation would also be entitled to the use of the Presidential yacht if not otherwise in use. When the Greyhound participants said they could not possibly raise that amount of corporate money, Frank Middleton suggested that Keaton spell out ways the money could be raised. Keaton then described how the money could not only be raised but also be taken as a business expense. As an example, Keaton suggested that Greyhound might invest funds in a "dry hole"— a fictitious drilling operation by some oil company that would serve as a cover for the transfer of funds to the campaign.

These two employees reported back to Shaffer on the meeting. Shaffer was firm that no corporate money could be contributed and discouraged them from approaching Trautman on the subject. Verne Middleton communicated to Frank Middleton that no contribution would be forthcoming.

D. *September meeting.*—In mid to late September, Verne Middleton was again contacted by Frank Middleton who renewed the request for a large contribution. Verne Middleton offered to set up a meeting with his superior, James Kerrigan, President of Greyhound Lines, Inc. Kerrigan and the two Middletons met on September 22, 1972, at which time Frank Middleton again stressed the desirability of being "on the team" in terms of contributions. Kerrigan responded with a litany of complaints Greyhound had against the Administration, including the FDA's decision to order all Dial soap containing hexachlorophene removed from the market without warning, something that had caused the company a loss of several million dollars, and the Administration's refusal to endorse legislation authorizing wider buses on interstate highways. Middleton responded by pointing out that Greyhound was not on the team but that he was sure some of Greyhound's problems could be cleared up if there was at least a $100,000 contribution. It was left that Kerrigan would consult with Trautman about a contribution.

Trautman has told us that Kerrigan came to him quite exercised about the need to provide a sizable contribution. Trautman recalls Kerrigan suggesting that Trautman need know none of the details, which could be handled through Kerrigan's company, Greyhound Lines, Inc. Trautman immediately killed the idea of such a corporate contribution and instructed Kerrigan not to meet further on the idea.

We are conducting further investigation to determine whether the nature of the solicitations by Keaton, Middleton and Firestone were such as to warrant a prosecution.

E. *October solicitation.*—In October, Trautman received a telephone call from someone, probably Russell Deane, at FCRP urging him to have Greyhound participate in FCRP's group solicitation program. According to Trautman, Deane seemed unaware of the earlier approaches that had been made to Trautman and Greyhound. Trautman suggested that Deane forward the FCRP solicitation package and said he would consider using it at Greyhound.

When the FCRP package arrived, Trautman discarded it because he felt that while it purported to be an impartial solicitation, nevertheless it was "loaded" too heavily in favor of the President. Instead he substituted a letter of his own which he considered less overtly partisan. This letter is reproduced in an appendix.

While the tone of Trautman's letter was nonpartisan, it was not altogether neutral on the desirability of contributing to one of the candidates. The letter emphasized "the importance of this election to our business" and requested that all contributions be funnelled through Trautman "and thereby maximize the candidate's recognition of our support." Since Trautman was leaving on a trip abroad, he asked Shaffer to handle the contributions as they came in and to maintain a list of who contributed and how much.

The letter was sent to just over 200 executives of the company at the $25,000+ salary level. Fifty-four of these responded with contributions totaling $15,040. Trautman himself had earlier contributed $1,000 of personal funds through a transportation group, bringing the total for Greyhound group to $16,040.

F. *Understanding as to reimbursement.*—At present we have no evidence that Trautman promised reimbursement to anyone or even discussed the possibility of reimbursement with any of those who contributed. Shaffer also insists he has no memory of any discussions about possible reimbursement with anyone; however, two other executives, the financial Vice President and the General Counsel, recall conversations in which Shaffer alluded to the possibility of reimbursement through bonuses. Nevertheless, their descriptions of the conversations suggest that at most Shaffer expressed the hope that Trautman would keep the contributions in mind at bonus time.

G. *Bonus reimbursement.*—Shortly after the contributions were collected, Trautman looked at the list Shaffer had compiled out of curiosity but gave it back to Shaffer. Then in February, in connection with his consideration of Greyhound's annual bonus program, Trautman indicated to both Shaffer and to Louis Miller, the General Counsel, that he planned to take the contributions into account in computing bonuses for the contributors. The conversations with Shaffer consisted of little more than a request for the list of contributors kept by Shaffer with an indication that it would be used in computing bonuses. With Miller, at the end of a conversation about other things, Trautman in passing observed that he had in mind taking the contributions into account in arriving at bonuses for the year and asked if Miller saw any legal problems with that. Miller, who had been general counsel of Amour before the merger and had advised Billy Wood Prince on section 610 matters when he ran the company, thought briefly about it and told Trautman he saw no problem with giving consideration to the fact an individual made a contribution so long as there had been no prior understanding or expectation of reimbursement.

By this time Trautman had complied a master list of bonus recommendations for company employees and one or more separate lists reflecting supplemental bonus awards based on some particularly worthy or useful activity by selected individuals. Trautman elected to take account of the earlier contributions by preparing an additional sheet of supplemental awards which listed each contributor including himself, together with an amount double his contribution. This list, along with the other regular and supplemental bonus lists, was sent to the controller of the corporation. Rather than prepare a single master list lumping an individual's regular and supplemental awards, the controller simply issued separate sets of checks for each list. This meant that each individual received, in addition to his regular bonus check, a separate check based on an amount, less deductions, of twice his earlier contribution. In one instance, one of the executives we have interviewed explained that he did not realize he was being reimbursed for his contribution by the additional check since all his Greyhound checks are forwarded directly to the bank and he was unaware of the separate checks. All the other executives interviewed were aware of the separate checks and assumed they were based on the earlier contribution.

The total amount of the corporate funds spent is $32,080. Trautman insists he chose the 2–1 ratio for the supplemental bonuses arbitrarily and did not do so in order to provide enough money at least to reimburse the contributions after deductions. Indeed he says he considered and rejected giving supplemental bonuses of exactly the same amount because he did not want it to appear that he was reimbursing the contributions. It is more likely, of course, that Trautman intended and in fact those who received the separate checks for the most part assumed, that the amount was to enable them to recover their contribution after deductions.

H. *FBI Interviews.*—At our request, an FBI agent conducted a series of interviews with selected Greyhound personnel earlier this year. In connection with these interviews a variety of corporate records were made available by Trautman and others, including complete records relating to the bonus situation. In this respect, the FBI received full cooperation from the company and the individuals.

In addition, Trautman and the others all told stories that were essentially accurate in that they conveyed the facts that Trautman had taken the contributions into account in arriving at bonuses and that separate bonus checks had been received. The one particular in which the stories were not accurate was that no one admitted to having been reimbursed by the corporation. In some cases the agent's questions on this seem to have been turned aside by offers to let him examine personal financial records. In other cases, including Trautman, the individuals insist that the bonus money they received was not actually corporate in source because it came from funds earmarked for employee bonuses.

II. LAW

18 U.S.C. section 610 makes it unlawful for any corporation to make a contribution or expenditure in connection with any election at which Presidential or Vice Presidential electors . . . are to be voted for.

Corporations that violate section 610 can be fined up to a maximum of $5,000. Corporate officers or directors who "consent" to an illegal contribution are liable to a maximum fine of $1,000 and imprisonment for one year; or, if their violation was "willful" a maximum fine of $10,000 and imprisonment for two years. The law defines "contribution or expenditure" as "any direct or indirect payment . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section."

The theory of a prosecution based on the reimbursement of Greyhound officials for their 1972 contributions would necessarily be that the supplemental bonus in 1973 constituted an expenditure of corporate funds which were designed to reimburse contributions by individuals to political committees and were therefore an indirect payment to such committees even though there does not appear to have been any prior understandings as to reimbursement.

The problem with this approach is of course that it does not fit neatly into the verbal framework of the statute, in the sense that the notion of an "indirect payment" to a political committee most naturally implies some sort of conduit arrangement such as was involved in the American Shipbuilding and AMPI situations—which in turn usually rest on prior understandings as to reimbursement. Counsel for the corporation can be expected to rely heavily on this kind of argument in two ways: one, to establish that there in fact has been no violation of section 610 because there were not promises of reimbursement; and second, assuming there was a technical violation, to justify a decision not to prosecute both because it is a close legal question and Trautman sought and received advice from his general counsel that he could take account of the contributions in arriving at bonuses.

III. RECOMMENDATION

Greyhound Corporation should be prosecuted for a violation of section 610. Trautman and the other executives involved should not be prosecuted individually.

To accept the view that corporate reimbursement of individual contributions are lawful so long as not preceded by promises or understandings as to reimbursement would open up an unjustifiable loophole in the statutory coverage. As counsel for Greyhound have recognized, the necessary implication of such an interpretation of the statute would be to give every corporation at least one "bite-at-the-apple" in terms of rewarding employees for political contributions. And, as a practical matter, corporations would probably not be limited to a single bite; if liability were made to rest on explicit prior understandings as to reimbursement, it would mean that in every section 610 case where the proof consisted of a prior pattern of bonus reimbursement, rather than direct evidence of promises or understandings as to reimbursement, there would be a jury issue as to whether the prior pattern was so blatant that the corporate official responsible for the reimbursement must have realized that executives had come to expect reimbursement. This would be plainly inconsistent with the abundant legislative history showing that section 610 was designed both to prevent corporate domination of political campaigns and to protect the interests of shareholders in preventing the expenditure of corporate funds for political purposes of which they disapprove.

The facts of this case are an illustration of sorts of the kind of danger that would be created. Here the Chairman and Chief Executive Officer of the Corporation solicited top management to make political contributions. While his

letter of solicitation is on its face impartial as to whom should receive the contributions, it is not neutral on the desirability of contributing to someone. Most of those executives interviewed have conceded the practical reality that a letter such as Trautman circulated does create some pressure, particularly on those who work most closely with Trautman, to go along with the boss's "suggestion."

The facts here also show that explicit assurances of reimbursement are not always necessary to create the desired climate. Trautman has told us that part of his rationale in agreeing to undertake the solicitation was the thought that it might alleviate what he viewed as the previous unpleasant pressure Greyhound employees had been subjected to by FCRP fund raisers. Several of the executives interviewed have told us they were aware of the prior apparently illegal approaches and realized their contributions might help the corporation out of a difficult situation. They also state that they understand that everything they do on behalf of the corporation is taken into account in arriving at their bonuses and were not surprised to learn that Trautman had given appropriate weight to their contribution. At least three of the nine executives interviewed had explicit conversations in which the possibility of recouping their contributions at bonus time was discussed. In our view this case involves a reimbursement mechanism that violates section 610 as well as a factual pattern that warrants prosecution.

The decision to recommend against prosecution of any individuals rests on practical considerations rather than upon an assessment of theoretical legal liability. The only viable defendant, obviously, would be Trautman, who takes the firm position that he felt then and still feels that there was nothing illegal in what he did. As a theoretical matter neither this belief, nor the fact that Trautman casually consulted with his General Counsel about the situation would necessarily bar his prosecution. The illegality of corporate contributions had been brought home with force in connection with the Keaton/Middleton solicitations; and the fact that he felt the need to consult Miller, the General Counsel, shows that he realized that he was treading close to the line with his own bonus reimbursement scheme. He would not, in our view, have a viable "advice of counsel" defense since that defense assumes that there has been a full disciosure of all the relevant facts to a disinterested attorney for his careful appraisal; and here all Trautman did was to inform Miller casually that he planned to give "consideration" to the fact that individuals had contributed, without telling him that what he intended was a 2:1 reimbursement ration that was rather transparently designed to provide reimbursement plus enough money for taxes, etc. In short, even conceding that Trautman mistakenly thought he was within the law, at most this would reduce his violation to a "nonwillful" misdemeanor.

On the other hand, it must be recognized that if Trautman were unwilling to plead guilty to a misdemeanor (and he has so indicated), there is more than a small chance he would win an acquittal. He is an appealing witness who can point to his evident resistance to earlier blatant attempts to extract corporate funds from Greyhound. Moreover, there is virtually no evidence of consciousness of guilt as to the bonus reimbursement; Trautman and the other executives gave reasonably accurate accounts to us and to the FBI; they have provided all relevant documentary materials, and they continue to maintain their innocence of wrongdoing. This is significant both because it highlights the absence of the aggravating feature of obstructionist tactics such as have characterized so many of our other cases; and also because it points to the likely acceptance of his contention that he believed he was acting legally, which might well lead a jury or a judge to conclude that he should not be forced to accept personal liability despite the legal niceties.

Finally, the law enforcement purposes of this prosecution—to establish the illegality of any corporate reimbursement of political contributions, whether or not accompanied by promises or understandings as to reimbursement—can adequately be fulfilled by a prosecution of the corporation, whether in a trial or in a disposition that sets forth the essential facts.

Appendix

"October 10, 1972.

"The Greyhound Corporation,
"*Greyhound Tower,*
"*Phoenix, Arizona.*

"To Senior Executives of the Greyhound Organization: All of you have undoubtedly noted the message in the last dividend notice pointing out to our Greyhound shareholders the importance of this election to our business and urging our shareholders to vote for those candidates who will best serve them and their company.

"I have now been asked to make it possible for the senior Greyhound executives to make a contribution in support of the candidate of his choice and a form for doing so is enclosed herewith. If you care to make a contribution will you please return your check and the pledge card to me as soon as possible so that I may forward all contributions in a group, and thereby maximize the candidate's recognition of our support.

"In conclusion I want to emphasize that this solicitation is on a non-partisan basis and that whether you make a contribution or not is strictly your decision.

"Very sincerely yours,

"GERALD H. TRAUTMAN,
"*Chairman and Chief Executive Officer.*

"Enclosure".

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

(Criminal No. (18 U.S.C. Section 610) Information)

UNITED STATES OF AMERICA v. GREYHOUND CORPORATION, *Defendant*

The Special Prosecutor charges:

COUNT ONE

1. At all times material to this Information the defendant, the Greyhound Corporation, was a corporation established under the laws of the State of Delaware.

2. On or about November 7, 1972, a general election was held pursuant to the Constitution and Laws of the United States at which Presidential and Vice Presidential electors were voted for.

3. From on or about October 10, 1972, to on or about February 28, 1973, in the District of Columbia and elsewhere, the defendant, the Greyhound Corporation, made payments totalling sixteen thousand forty dollars ($16,040) to various political committees organized to promote the candidacies of Richard M. Nixon and George McGovern in the aforesaid general election, to wit: by encouraging senior officials of the defendant, the Greyhound Corporation, to contribute personal funds to the Presidential candidate of their choice; and by thereafter awarding to each executive that made a contribution supplemental bonuses in an amount twice the amount of the previous contribution.

All in violation of Section 610, Title 18, United States Code.

LEON JAWORSKI,
Special Prosecutor,
Watergate Special Prosecution Force.

MEMORANDUM

To: Senators DeConcini and Hatch.
From: Kim Pearson.
Date: October 8, 1980.
Re: Future hearing in re *Nard* Case.

I have reviewed the following material over the period of the past several months:

(1) DOJ Nard file for PIS investigation.
(2) DOJ responses to 1979, 1980 Committee inquiries in re Nard.
(3) Notes of conversations with U.S. Attorney Reynolds.
(4) U.S. Attorney Reynolds' letter to Senators DeConcini and Hatch, 9/24/80.
(5) Mike Hunter's report, 10/7/80.
(6) FOIA documents supplied by Nard.
(7) Nard/Armour litigation material.
(8) Secret Service interviews of principals involved from U.S. Attorney Reynolds' investigation (supplied by DOJ).
(9) Nard/Hultman taped telephone conversation.
(10) Material supplied to U.S. Attorney Hultman by Nard for purposes of Hultman's grand jury investigations.
(11) Various Nard correspondence with Government officials.
(12) Peter D. H. Stockton memo to Senators DeConcini and Hatch, 10/2/80.

It is my conclusion that a hearing is warranted to ascertain the merits of Nard's allegations. Initially, I believe the hearing should encompass the scope and results of the three previous Nard investigations by the various offices of the Department of Justice.

Following the taking of depositions or interviewing by staff, if desired and if possible, I suggest the following witnesses appear before the Subcommittee on Improvements in Judicial Machinery:

First, the initial investigation of Nard's complaints by the U.S. Attorneys' Office in Cedar Rapids, Iowa.

(1) Former U.S. Attorney Evan Hultman—The Subcommittee should ascertain the focus and jurisdiction of his investigation. There are several discrepancies involved concerning what Mr. Hultman says he did, what he actually did, and what he should have done.

(2) Former Asst. U.S. Attorney Alan Kirshen—The Subcommittee should ascertain Mr. Kirshen's reasons why he resisted disclosure of the nature and quantity of Armour documents for Nard's Rule 60(b)(3) hearing when Kirshen was ostensibly investigating Armour for having hidden those very documents.

Second, the Department of Justice investigation of the Hultman investigation conducted by the Deputy Attorney General's Office:

(1) Mary Wagner, former Special Asst. to the Deputy Attorney General—Nard's complaints were referred to this Office from the Office of Professional Responsibility. The Subcommittee should ascertain the scope and depth of Ms. Wagner's inquiry to determine how the Department handles such requests.

Third, U.S. Attorney Reynolds' investigation of the first two investigations:

(1) U.S. Attorney Reynolds—The Subcommittee should follow up on the issues raised in Mr. Reynolds' letter to Senators DeConcini and Hatch dated 9/24/80.

I also suggest that it would be helpful to conduct interviews, if not take depositions, of various principals involved in the original Nard/Armour controversy. It should not be the intention of the Subcommittee to retry Nard's case in Congress; however, Nard has maintained vehemently that those officials that looked into his case never asked the right people the right questions.

For example, Daniel Zaremba, the Armour project manager on both the Pittsburgh and Sioux City jobs, was called to testify before the Iowa grand jury twice, in 1972 and 1973. In the 1972 grand jury he was the only witness who testified. Zaremba told the Secret Service that Hultman only asked him background information and that he never felt perjury was the focus of the inquiry. In the 1973 grand jury, Zaremba sat outside the grand jury hearing room for several days but never was called to testify. He was not recalled for the third grand jury. Nard says Zaremba's testimony before the grand jury would have shown that:

(1) Armour knowingly paid for work on Nard's house, thus refuting Armour's diversion of funds theory.

(2) Armour's Pittsburgh counsel, Thomas Jackson, knowingly turned Nard in to the IRS using the fake diversion of funds issue.

(3) Armour could not provide Three Rivers/Nard with the correct information necessary to complete the Pittsburgh and Sioux City projects.

(4) Armour counsel Raymond Gass said Armour was going to sue Nard in Sioux City to break him financially to preclude Nard's participation in litigation in Pittsburgh.

(5) Following initiation of suit by Armour, Jackson asked Zaremba where Nard had breached the contract and Zaremba told him that Nard had not.

(6) Nard did have a superintendent and a design coordinator on the job in Pittsburgh.

(7) Zaremba saw McKavis' handwritten note cancelling pipe for the job ordered by Nard, thus preventing commission being paid to Nard.

Other individuals whose statements would be beneficial to the Subcommittee prior to a hearing include:

(1) Judge Joseph Weis—presided over the Pittsburgh breach of contract trial; to answer those issues raised in Part II of the Hunter Report.

(2) Bob Sikma—former Asst. U.S. Attorney to Evan Hultman as to conflicting statements he has made with regard to the Nard investigation.

(3) John Davis—Three Rivers' former accountant who provided information to the IRS on Nard's tax evasion case as to where he got the figures; i.e. did he get them from Armour counsel Thomas Jackson.

(4) John Taber—former Republican candidate for Mayor of Pittsburgh who allegedly lost the nomination to the 3rd Circuit when Judge Weis threw the Nard case.

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(5) Robert Cindrich—U.S. Attorney in Pittsburgh. He was called by U.S. Attorney Reynolds and asked if he was upset with Reynolds' investigation after Phillip Heymann told Reynolds "three" U.S. Attorneys had complained of Reynolds. Cindrich said he was not. (Cindrich would have been the most logical Office to complain.)

(6) William McKavis—Armour project manager at the Pittsburgh project, as to the existence of the daily and weekly reports and his contradictory testimony before Judge Weis at trial and Judge Snyder at the fraud trial.

(7) Several other possible statements may be desirable in light of facts ascertained by the above witnesses.

Senator DeConcini. Very good.

We now have three gentlemen: Paul A. Manion, president, Allegheny County Bar Association; David Fawcett, president, Pennsylvania Bar Association; and David Buerger, former counsel to Mr. Nard.

Gentlemen, I am advised that you want to testify or make some statement here regarding Judge Weis. Is that correct?

Mr. Manion. Yes; in relationship to the subject matter of this hearing.

Senator DeConcini. Please be seated.

As you can see, we have not developed or done anything in depth as to allegations regarding Judge Weis. That perhaps will come with the new Judiciary Committee, assuming that they continue the oversight hearings. That was one of the cases that we had on the list. For that purpose, I would ask you to limit your remarks to the *Nard* case as such.

If you have full statements, they will be printed in the record as if totally read following your oral presentations. I would suggest that you brief them and keep you remarks as brief as possible.

STATEMENT OF PAUL A. MANION, PRESIDENT, ALLEGHENY COUNTY BAR ASSOCIATION

Mr. Manion. We will try to do that, Senator.

Senator DeConcini, if I may at the outset, my name is Paul Manion.

Senator DeConcini. Let me ask you whether or not I should swear you. Do you have testimony relating to the case?

Mr. Manion. I have statements to make concerning the investigation. I would just as soon be sworn.

Senator DeConcini. Fine. Would you all raise your right hands?

Do you swear the testimony you are about to give the committee is truth, so help you God?

Mr. Manion. I do.

Mr. Fawcett. I do.

Mr. Buerger. I do.

Senator DeConcini. Thank you. Please proceed.

Mr. Manion. Senator DeConcini, notwithstanding your noble efforts to keep Judge Weis and the proceeding on Pittsburgh out of this hearing, it developed very early this morning that the proceedings in Pittsburgh and criticism of Judge Weis are inextricably intertwined in the Iowa proceeding and in the Justice Department investigation.

As you sat here today and heard Mr. Hultman testify, throughout the course of his investigation Mr. Nard endeavored to tie the Pittsburgh proceeding to his grand jury proceeding in Iowa. Mr. Kirshen testified that not only did he attempt to tie the two together, but that efforts were made to initiate proceedings in Pittsburgh and to conduct a grand jury investigation with respect to what happened in Pittsburgh.

I have submitted a statement which I understand will be made part of the record.

Senator DECONCINI. Without objection.

Mr. MANION. I would like to add to that a newspaper article dated October 29, 1980, printed in the Valley News Dispatch of New Kensington, Tarentum, and Vandergrift, Pa.

[The article referred to above follows:]

[Valley News Dispatch, New Kensington, Tarentum, Vandergrift, Pa., Wednesday, Oct. 29, 1980]

JUSTICE DEPARTMENT ACCUSED OF COVERUP

(By Roger Medges)

WASHINGTON.—The Justice Department is accused of conducting a massive cover-up of inside wrongdoing in two reports prepared for a subcommittee of the Senate Judiciary Committee.

The two reports plus one by a U.S. attorney who said his attempts to investigate the affair were thwarted by his superiors, prompted Sen. Dennis DeConcini, D-Ariz., to announce Monday that his Subcommittee on Improvements to the Judicial Machinery will hold hearings on the case before the end of the year.

The reports tend to support the claims of Pittsburgh contractor John Nard that he was railroaded by the federal courts and the Department of Justice after he tangled with Pennsylvania's power structure a decade ago.

If the recommendations of the investigators are followed, the subcommittee will question current and past Justice Department officials about the handling of the Nard case.

Nard's story about his loss of a breach of contract suit, his subsequent conviction on tax charges and his inability to get the Justice Department to act on his complaints was featured last year in the Gannett News Service series, "Justice on Trial," a detailed examination of the federal and state judicial systems.

The three new investigative reports, copies of which were obtained by Gannett News Service, call into question some acts by Pennsylvania Gov. Richard Thornburgh, former U.S. Sen. Hugh Scott, R-Pa., Federal Appeals Judge Joseph Weis of Pittsburgh, Assistant U.S. Attorney General Philip Heymann and Thomas Henderson, head of the Justice Department's Office of Public Integrity, which investigates complaints of official wrongdoing.

Peter Stockton, a special investigator hired by the subcommittee to look into Nard's allegations, reported: "I conclude that Nard was probably the victim of an incriminating conspiracy in which an initial act of wrongdoing by a federal judge was compounded by a series of cover-ups. There is evidence that Judge Weis dealt unjustly with Nard, possibly as a political favor."

In a separate report, James Reynolds, U.S. attorney in Cedar Rapids, Iowa, told the subcommittee of what he said were Justice Department roadblocks he ran into while trying to investigate part of Nard's story and an effort made to keep him from talking to Nard or Sen. Orrin Hatch, R-Utah, who once was Nard's attorney. Hatch, a member of DeConcini's subcommittee, was the first senator to agree to investigate the Nard case.

During a 1977 meeting in Washington with Henderson of the Public Integrity Office, Reynolds wrote, Henderson, "advised me against my planned first face-to-face meeting with Mr. Nard and later with Sen. Hatch. Henderson warned that Nard was to be treated skeptically and assured me that although former Sen. Scott was about to be indicted on an unrelated income tax matter, the department had found no basis for Nard's complaints after a thorough investigation."

Although Reynolds' report does not detail the results of his efforts to determine whether there was a "thorough investigation," Stockton makes his opinion clear in his report.

"The Department of Justice went to great lengths to cover up the fact that there had been no investigation" Stockton wrote. "When Jim Reynolds, the current U.S. attorney in Iowa, was looking into the Nard case he was subjected to a bizarre DOJ (Department of Justice) runaround. He finally had to subpoena a former Justice Department attorney to determine what the department had done on the Nard case. Justice Department lawyers explained to Reynolds that most of the relevant records had disappeared."

The Nard case had its beginning in 1967, when Nard contracted to build a plant for Armour and Co. in Pittsburgh. Before that plant was completed, he signed another contract to build a second plant for Armour in Iowa. Construction was continuing on both plants when Armour canceled its contracts.

Both Nard and Armour sued for breach of contract in Pittsburgh and in Iowa. The Iowa case was heard first and a jury awarded Nard about $90,000 and Armour $60,000. In Pennsylvania, the case was heard by Weis, then a district court judge.

He found that both Nard and Armour had breached the contract, and ordered Nard to pay the meat packing company abut $700,000. There was no penalty for Armour.

By the time Nard's appeal reached the 3rd Circuit Court of Appeals, Weis had been elevated to the appellate bench. He took no part in the ruling against Nard's appeal.

The third report submitted to DeConcini's subcommittee was written by Michael Hunter, a former Justice Department attorney who worked for the subcommittee until early this year. His report is based on a yearlong study of the evidence and the more than 1,000 pages of testimony from the trial in Judge Weis' court. He noted that Weis wrote his opinion before he had received the typed transcript.

"The court's opinion and additional findings of fact provide substantial confusion as they appear to be contradictory, if not incompetent, in essence and in conclusion," Hunter wrote. "A comprehensive inquiry is warranted to determine whether prior reviews of Nard's allegations have been conducted adequately and impartially in furtherance of the administration of justice."

One of the underlying themes of Nard's allegations is that Armour employees were coerced into giving perjured testimony during the Iowa trial and that former U.S. Attorney Evan Hultman of Iowa was pressured by someone in the Justice Department to drop his perjury probe.

Both Hunter and Stockton say in their reports that Hultman dropped his investigation after a visit in Washington with Thornburgh, who was head of the Justice Department's Criminal Division at the time. Thornburgh, now the governor of Pennsylvania, was U.S. attorney in Pittsburgh when Nard was indicted on three income tax charges in connection with money he received from Armour. The reports say there is evidence that Thornburgh based his charges on evidence provided by Armour attorneys.

Reynolds said he was summoned to Washington by Assistant Attorney General Heymann to explain his pursuit of the case just a few hours after his investigators served a grand jury subpoena on Mary Wagner, the former Justice Department attorney who claimed she thoroughly investigated Nard's charges and found them groundless.

I would submit that to the committee at this time because that provides further reason why this 8-year attack, the vilification of an outstanding Federal judge, has become a part of this proceeding.

That newspaper article indicates that the very day you, Senator DeConcini, announced that there would be a hearing on this matter the Gannett News Service had obtained copies of three reports suggesting this hearing. Those reports involve in great detail—as a matter of fact, out of the 64 pages in the so-called Hunter-Pearson report, 54 pages are devoted to the case and the proceedings in Pittsburgh, Judge Weis' handling of it.

Let me just, if I may, refer to certain of the comments. The so-called Hunter-Pearson report commences with that this is an investigation concerning the weaknesses of the Federal judicial machinery. At page 2 there are questions about court decisions. At page 15—this is of the

first phase of the report—this case presents a case study of the Federal judicial system. Questions are being raised about the actions of the courts. Then there's a 29-page purported analysis of Judge Weis' decision.

Senator DeConcini, I may be a very demanding trial lawyer, but if a first-year law student working for our law firm had engaged in such an analysis, he would be discharged in a week. The accusations contained in that segment of the report are directed against Judge Weis.

Senator DeConcini. Have you seen the report? I haven't seen it.

Mr. Manion. The only way you can get it is through the news media.

The article that I quoted says the following:

> Two reports, plus one by a U.S. attorney who said his attempts to investigate the affair were thwarted by his superiors, prompted Senator DeConcini to announce Monday that his Subcommittee on Improvements to the Judicial Machinery will hold hearings.

Later on there are accusations the John Nard was railroaded by the Federal courts and the Department of Justice.

Senator DeConcini. Who wrote that?

Mr. Manion. This is by Roger Hedges of the Gannett News Service.

Senator DeConcini. Who is he with the Gannett News? What bearing does that have with this committee? I do not see the relevance.

Mr. Manion. The reports which are the subject matter of the article are making accusations about Judge Weis.

Senator DeConcini. Maybe Judge Weis ought to sue the newspaper or something. I have not read those reports. If they're inaccurate, he certainly has a right to object to it.

Mr. Manion. The point of the matter, Senator, is that for 8 years an outstanding Federal judge with an impeccable reputation for honesty and integrity has been attacked periodically. Every year, every 2 years there's an article of this caliber in the Pittsburgh newspapers, in the national news media. This man is an oustanding Federal judge.

Senator DeConcini. Mr. Manion, I am not here to judge whether or not Mr. Weis is an outstanding Federal judge. That is your opinion and the record will so show it. I have no reason to doubt you believe that he is an outstanding Federal judge.

If you want to talk about the *Nard* case, that is what we are here for. I am not here to listen to you tell me that Mr. Weis is an outstanding Federal judge. I will make that judgment when I get into the complaints.

We have allegations that lead you to believe that he is not an outstanding Federal judge, but we are not taking those allegations up today. If you want to come and refute those allegations when we get into them, if the new chairman of the Judiciary Committee continues this oversight, then that is the proper place to do it.

Mr. Manion. Senator, the subject matter of the reports which are the subject of the Gannett News Service article relate to Judge Weis and Judge Weis' handling of the Pittsburgh Armour——

Senator DeConcini. This hearing is on Mr. Nard. Now if there is a relation between Nard and Weis, we have barely scratched that surface, not because I am not going to do it, I hope this committee is going to do it, but because we wanted to do the oversight hearings on the public integrity section and the Iowa U.S. attorney's in-

volvement with the *Nard* case. That is what we are trying to do today.

When we get to the Weis allegations as they relate to the Hunter report or any other report, then of course we will proceed with that. I hope the committee next year will continue these oversight hearings.

Mr. MANION. Senator, I appreciate that, but the fact of the matter is that these articles are appearing not only in the Pittsburgh media, but in the national news media. They talk about hearings concerning Judge Weis' handling of the case.

Senator DECONCINI. Those hearings have not yet been held. Do you agree about that?

Mr. MANION. Which hearings?

Senator DECONCINI. The hearings on Weis, the allegations against Weis.

Have you heard testimony today about allegations against Weis?

Mr. MANION. Oh, yes, throughout the morning from the first witness, Mr. Hultman, and the efforts of Mr. Nard to initiate proceedings in Pittsburgh, and Mr. Reynolds, the last witness, discussing the——

Senator DECONCINI. Do you think the thrust or even the major part of these hearings has been as to any allegations against Judge Weis?

Mr. MANION. I said at the outset, Senator, I commend you for trying to keep Judge Weis out of this, those aspects of the investigation which involve him. The point of the matter is that these reports, the Hunter report, 54 pages out of it deal with the Pittsburgh proceeding.

Senator DECONCINI. I understand that. Eventually I hope this committee will address those complaints and allegations in the Hunter report and hold some hearings. However, they are not the hearings today.

Mr. MANION. I understand that.

I would just say this, Senator: If any citizen of this country is asked to serve on the Federal judiciary, it will be impossible for your committee and the Government to get qualified and capable people to act as judges if they have to undergo the kind of scurrilous and vicious campaign of innuendo and vilification that Judge Weis has had to undergo.

Senator DECONCINI. Well, Mr. Manion, let me disagree with you. Judges are like anybody else and they are subject to public scrutiny and public criticism. If it is scurrilous, it will come out that it is scurrilous. If it is not, they ought to be subject to the same standard as anyone else as far as this Senator is concerned.

I hate to get on a barnstorming speech right here, but I get so tired of pillars of the professional community coming down to this Judiciary Committee and constantly telling us how tough it is to get people to be good Federal judges. I have had no trouble at all in the State of Arizona getting some of the finest judges that I think that State has ever had. I am not talking about Mr. Weis.

For you to sit here and tell me that people do not want to be Federal judges, that is a lot of bunk and you know it. I'll bet you know 40 dozen lawyers—good, qualified lawyers—that would love to be Federal judges today if they could.

Mr. MANION. If they have to undergo what Judge Weis has had to undergo for 8 years, Mr. Chairman, I know of no one in my acquaintance who would ever subject himself to something like that.

Senator DECONCINI. Well, if the bar association and Federal judges would have supported a judicial discipline act, maybe those things could be resolved, instead of just handling them through the good old boy system.

Mr. MANION. I understand, Senator, that an act was passed.

Senator DECONCINI. That is right—a very weak one, too, I can tell you that.

Mr. MANION. Well, that's the responsibility of the Senate.

Senator DECONCINI. Yes, and I take responsibility. I am ashamed it is so weak, but it is the Federal judges who kept it as weak as it is—I can tell you that—and many of the pillars of the American Bar Association.

Mr. MANION. Senator, that act was passed by the U.S. Congress. That's all I have to say.

I appreciate the opportunity to appear here.

I suggest to you that the staff reports themselves indicate you cannot separate the proceedings in Iowa from the proceedings in Pittsburgh. What is involved primarily is the attack on Judge Weis.

Thank you.

[The prepared statement of Mr. Manion follows:]

PREPARED STATEMENT OF PAUL A. MANION

INTRODUCTION

Mr. Chairman and members of the committee, my name is Paul A. Manion and I am President of the Allegheny County Bar Association, which is headquartered in Pittsburgh, Pennsylvania. I appear here today to urge an end to the most baseless and scurrilous attack upon a federal judge and the federal judicial system that I have ever witnessed. This eight-year campaign has been carried on by John A. Nard, a disgruntled litigant who has pleaded guilty to two counts of failure to file income tax returns and nolo contendere to one count of tax evasion. At the hearing on the acceptance of those pleas, the Government filed a memorandum showing that he had failed to file income tax returns for a period of twelve years. Mr. Nard's attack is made all the more outrageous because it is directed at Judge Joseph F. Weis, Jr., a judge whose reputation for honesty and integrity is impeccable. Judge Weis' outstanding legal ability and his judicial temperament and fairness caused him to be rated "exceptionally well qualified" in hearings before this very Committee, which recommended his confirmation to a seat on the United States Court of Appeals for the Third Circuit 1 year after the trial of the case which has given rise to this hearing, notwithstanding that Mr. Nard appeared to testify against his confirmation.

When reports appeared in the national and Pittsburgh news media 6 months ago that this Committee was conducting an inquiry into this case, I wrote to each member of this Committee expressing the outrage of the Allegheny County Bar Association at Mr. Nard's libelous and baseless attacks on Judge Weis. David B. Fawcett, Jr., the distinguished President of the Pennsylvania Bar Association, wrote a similar letter of protest. The day after my letter, I received a wholly unsolicitated telephone call from David B. Buerger, Esq., who had been counsel to Mr. Nard in the litigation which has given rise to this hearing. Mr. Buerger commended me for my letter and he volunteered to appear and testify against this baseless attack on Judge Weis at any time and at any place. Both Mr. Fawcett and Mr. Buerger are present here today to so testify.

Several members of this Committee responded to Mr. Fawcett's and my letter, advising that they had no knowledge of any inquiry being conducted by the Committee on this matter. On October 6, 1980, I received a telephone call from Counsel to the Committee advising that Mr. Nard's charges concerning Judge Weis had been found to be so utterly wanting in merit that the Committee would

not pursue them any further. Yet a few weeks ago, reports again appeared in the media that the Committee had scheduled a hearing on this matter for today. This led us to request an opportunity to appear here today, and we are grateful to you, Senator DeConcini, for granting our request.

SCOPE OF MY REMARKS

For my own part, acknowledging Judge Weis' outstanding reputation for honesty and integrity, the focus of my remarks shall be the utterly groundless nature of Mr. Nard's request for an investigation by the Justice Departmnet of Judge Weis' decision in an eight-year old lawsuit between Mr. Nard and his associates and Armour & Co.

I point out, first, that, following Judge Weis' decision, Mr. Nard took advantage of his right to have that decision reviewed by the Court of Appeals. That Court, consisting of three esteemed appellate judges, considered and rejected each and every one of Mr. Nard's arguments.

Mr. Nard then sought to have the judgment reopened in the district court. Again, a fourth federal judge fully considered and rejected his motion.

Simultaneous with these efforts, Mr. Nard sought to have the United States Attorneys in the Western District of Pennsylvania and in Iowa institute a criminal investigation of his charges. Not only did the United States Attorney in Pittsburgh conclude that his charges were groundless but, based in part upon his own testimony in the trial of the *Armour* case, he was indicted on the income tax charges to which he has pleaded guilty and nolo contendere, respectively.

It appears that it took the United States Attorney in Iowa longer to reach the same conclusion that Mr. Nard's charges were baseless but, after initiating a grand jury investigation of them, he came to the same conclusion.

I submit that it is in this factual and legal setting that Mr. Nard's request for a Justice Department investigation of his charges must be considered. I submit further that, considered in the light of the source, nature and character of these charges and the lack of any substantive basis for them, there was and is not rational justification for them.

The news media has reported that certain reports submitted to this Committee suggest that the Justice Department did not adequately investigate Mr. Nard's charges and that this is the reason for today's hearing. Although these reports were obtained by the Gannett Newspaper chain sometime ago, I have just had an opportunity to review them. Staff counsel has advised that we may submit at a later date any written response to these reports which we believe to be appropriate. Because of my limited opportunity to review them and the limitations of time at this hearing today, I offer only the following comments at this time and request leave of the Committee to submit a more definitive written statement at a later time.

Without in any way passing upon what the Justice Department did or did not not do in response to Mr. Nard's demand for an investigation, I submit that the reports themselves demonstrate that there simply is no basis for them.

THE HUNTER-PEARSON REPORT

The principal report which I have been furnished has been labeled by the media as the Hunter-Pearson Report. The first 15 pages of this 64 page document consist of a so-called "Summary Of the Evidence And Proceedings Involved In The Case Of John A. (Jack) Nard." There then follows a 29 page purported analysis of Judge Weis' decision in the *Armour-Nard* case. An additional 10 pages are devoted to Mr. Nard's efforts to vacate Judge Weis' judgment. Only 6 pages are devoted to a summary of the federal criminal tax case against Mr. Nard. Thus, at least 54 pages of this 64-page report are devoted to a summary and critique of Judge Weis' decision. I submit that, in these circumstances, any suggestion that this investigation does not involve an attack upon Judge Weis is patently absurd.

The criticism of Judge Weis' decision in the report appears on its face to be based, not upon an analysis of the evidence of record in that case, but upon Mr. Nard's own version of his case. Time does not permit a detailed commentary upon this critique, but I believe a few of the glaring fallacies in it deserve brief mention.

The most overriding fallacy in the critique is that it purports to set forth as established "facts" what is Mr. Nard's version of those facts and not the facts as found by Judge Weis on the basis of the record evidence. Further, the critique

ignores the fact that Mr. Nard had a full opportunity to and did present his allegations of erroneous factual findings to a reviewing court which affirmed Judge Weis' decision in all respects.

Next, the critique fails to mention that Judge Weis found numerous facts in favor of Mr. Nard which resulted in the denial of Armour's principal claim for damages for breach of contract. Indeed, the sole award which Judge Weis made in favor of Armour was premised upon accepted principles of restitution based in large part upon substantial evidence that Mr. Nard had caused Armour to pay for construction work, not on the Armour construction project, but for work performed in constructing Mr. Nard's family mansion in Sewickley Heights, Pennsylvania. Indeed, a reading of Judge Weis' opinion by any fair minded, objective person demonstrates that the judge, with his characteristic judicial temperament and restraint, did not characterize Mr. Nard's actions as fraudulent, notwithstanding that the record would have fully supported such a conclusion. Rather, Judge Weis based his decision that Mr. Nard and his associates should make restitution to Armour for these and other diversions of funds upon well-established equitable principles.

As merely illustrative of the artifice used by Mr. Nard to accomplish this diversion of funds, I have attached to my written statement a copy of one of the invoices for an Extra Work Authorization admitted in evidence in the case, under which Armour paid $38,270.49 for work on the Armour plant which actually involved work on Mr. Nard's residence.

The Hunter-Pearson Report suggests that Judge Weis erred in law in rendering his decision. But surely if anything was resolved by the Circuit Court's affirmance of Judge Weis' decision seven years ago, it was that the judge made no error of law in his decision.

The report also criticizes Judge Weis for rendering his decision before the testimony had been transcribed. But as any experienced trail lawyer or judge can attest, it is a recommended practice in our federal courts that judges not await a typed transcript before rendering a decision in a non-jury trial, especially where, as here, the judge has made extensive notes of the evidence as it unfolded at the trial, including—as the written transcript never does—the fact-finder's own evaluation of the testimony, particularly the credibility of the witnesses as they testify from the stand. Indeed, as the report fails to mention, the judge's notes of the testimony were more accurate than the stenographer's transcript, as was pointed out in the oral argument before the Court of Appeals.

Only brief mention need be made of the report's critique of the Circuit Court's affirmance of Judge Weis' decision. The report does not challenge the decision of the Court of Appeals on its merits. Rather, it attempts to make something of the fact that the Circuit Court had directed the parties to devote their oral arguments to a particular point raised on appeal but, at oral argument, the Court had asked questions on other points. The report fails to mention that the briefs of the parties had in fact been devoted to all of the issues raised on the appeal.

The report also criticizes the Circuit Court for rendering its decision after counsel for Armour had made an authorized, post-argument submission to the Court but before a similar submission by counsel for Mr. Nard had been received. It fails to mention that the post-argument submission by counsel for Armour had no bearing whatsoever on the decision of the Court.

THE REYNOLD'S LETTER AND THE STOCKTON MEMORANDUM

Neither Mr. Reynold's letter of September 24, 1980 nor the Stockton Memorandum of October 2, 1980, both of which are addressed to Senators Hatch and DeConcini, add anything of substance to Mr. Nard's charges against Judge Weis. Rather, both appear to be directed primarily to the Justice Department's handling of Mr. Nard's charges against Armour. Judge Weis is mentioned only briefly in these documents and then only in the context of the libelous and groundless charges which Mr. Nard has circulated concerning Judge Weis since he decided Mr. Nard's case adversely to him.

MR. NARD'S MISUSE OF SENATOR HATCH

Among the persons Mr. Nard has misused and abused in pursuit of his ulterior purpose is his former counsel, Senator Orrin G. Hatch, who serves on this Committee. Indeed, the Hunter-Pearson frankly acknowledges that this matter was referred to Senator Hatch by Mr. Nard following his election to the Senate, and that he has been actively involved in pursuing Mr. Nard's charges. In the

light of their baseless character and the lapse of eight years since the trial of the *Armour-Nard* case, any fair minded observer must ask whether these charges could have reached this stage without Mr. Nard's misuse and abuse of Senator Hatch and this Committee.

Conclusion

For eight years an outstanding and courageous federal judge has been subjected to a baseless attack by a disgruntled litigant who has circulated false accusations against him. Among other things, this campaign of vilification has involved the attempted manipulation of the national and Pittsburgh news media. The charges have been found to be groundless by everyone who has investigated them and has knowledge of the person making them and the person against whom they have been made.

The campaign has now reached the stage that this Senate Committee is being used to place an imprimatur of legitimacy on these baseless charges. We submit that you should not permit yourself to be so demeaned.

Attachment.

McCully-Smith Associates, Inc.
GENERAL CONTRACTORS
421 BOGGS AVENUE
PITTSBURGH, PA. 15211

Invoice 116-7

SOLD TO Three Rivers Co.
295 W. Steuben St.
Pittsburgh, Pa. 15205

March 31, 1968

TERMS—NET CASH

Frank Bryan, Inc.		2,758.34	
Crafton Lumber & Supply Co.		.47	
"		2.95	
Knickerbocker Russell Co.		103.88	
George L. Wilson & Co.		119.10	
Truck rental:			
1 Dump truck	8 hr. @ 3.50	28.00	
1 Pick-up "	168 " 2.50	420.00	
Use of miscellaneous tools		150.00	
Trailer rental		150.00	
Tamper "		180.00	
Labor: Per attached breakdown		2,557.82	
Insurance and taxes (15% of 2,314.36)		347.15	
		6,817.71	
	Overhead - 10%	681.77	
		7,499.48	
	Profit - 10%	749.95	
			$8,249.43
	B.W.A. - 6	249.36	
	" 8	462.33	
	" 10	218.31	
	" 13	983.16	
	" 15	512.17	
	" 33	1,026.90	
	" 34	1,092.12	
	" 36	2,675.44	
	" 39	2,037.25	
	" 40	33,270.49	
	" 43	123.42	
	" 46	1,163.50	
	" 50	2,571.33	
	" 51	79.53	
	" 52	204.33	
	" 53	2,902.93	
	" 54	8,875.88	
	" 55	4,456.89	
	" 56	6,549.49	
	" 57	334.24	74,839.6
			$83,089.0

INVOICE RECD. 4-17-68
APPROVED:
GOODS RECD.
COST TERMS $308.90
EXTENSIONS
ACCT. # 50
AMT. VOUCHERED 83,089.05
DATE VOUCHERED 4-17-68

McBully-Smith Associates, Inc.
GENERAL CONTRACTORS
421 BOGGS AVENUE
PITTSBURGH, PA. 15211

B.M.A. - 40

Three Rivers Co.
295 E. Sixteenth St.
Pittsburgh, Pa.

March 31, 1968

SOLD TO

TERMS—NET CASH

	EXTRA: Carpentry labor and lumber					
	Bennett Lumber & Mfg. Co.				9,691.91	
	"				6,215.51	
	E. J. Baggio				7,047.33	
	Gulf Oil Corporation				29.02	
	Knickerbocker Russell Co.				159.00	
	"				112.36	
	"				224.72	
	"				159.00	
	Ugite Gases Inc.				113.95	
	Pella Sales Inc.				4,780.00	
	Labor:					
849 hr.	Carpenters	@ 5.65	4796.85			
	Welfare Fund, etc.	@ .25	575.62			
	Travel	@ 1.00 day	107.00	5479.47		
611 hr.	Laborers	@ 3.90	2383.90			
" "	Welfare Fund, etc.	@ .425 hr.	259.63			
	Travel	@ .75 day	59.25	2701.83		
8 hr.	Cement Mason Foreman	@ 6.02	48.64			
½ "	" " " (O.T.)	@ 9.12	4.56			
48 "	" "	@ 5.68	272.64			
7½ "	" " (O.T.)	@ 8.52	63.90			
			330.74			
	Welfare Fund, etc.	@ 8%	31.18	420.93	8,602.22	
	Insurance and taxes (15% of $7,569.49)				1,135.42	
						$33,270.

Senator DeConcini. Mr. Fawcett?

STATEMENT OF DAVID FAWCETT, PRESIDENT, PENNSYLVANIA BAR ASSOCIATION

Mr. Fawcett. I'm Dave Fawcett. I'm from Pittsburgh, Pa. I'm president of the Pennsylvania Bar Association.

The *Nard* case itself started in 1972. It was a nonjury case in our Federal District Court for the Western District of Pennsylvania. The lawyers in the case decided to go nonjury in front of Judge Weis.

The plaintiff, Armour Corp., was represented by an excellent lawyer and a good firm from Pittsburgh. Mr. Nard and his company

were represented by Mr. Buerger, to my right, from the Buchanan & Ingersoll firm, one of the finest firms in my city. Mr. Buerger is one of the outstanding trial lawyers in our city.

The case was tried. Judge Weis rendered his opinion. The case was appealed to the court of appeals. A three-judge panel of VanDusen, Gibbon, and Rosen affirmed what Judge Weis did. Mr. Nard tried to open the proceedings in front of Judge Snyder, who is now deceased.

There were further criminal proceedings against Mr. Nard in front of Judge McCune of our Federal district court.

I submit to you that he had his day in court. Not only did he have his day in court, but he was always represented by outstanding lawyers. He was disappointed.

As a trial lawyer my clients are either happy or disappointed. We all know that. However, there has to be an end to the process.

I can represent to you that Mr. Nard certainly was protected by able people at every stage. What he did and the tack that he took was not unusual. He said that all judges who did not decide in his favor were politically influenced against him and that's why he lost, that he didn't lose because of the facts or he didn't lose because of anything he did; he lost because everybody was politically influenced against him.

Then he made attacks on Judge Weis and all the Federal judges. He reported in the media that he said that all Federal judges in Pennsylvania were subject to political influence and they were all a bunch of crooks. This was the tack that he took.

Now that presents a tremendous problem to the profession and to the judiciary. We have an excellent judicial system in comparison to any country that I am aware of.

I have worked hard and long, and so have you and so have most of the people in this room, to maintain the competence of our judicial system. Let the people know that they get a fair shake when they go to court from independent judges who are fair and reasonable.

When the whole system itself is attacked by a disappointed litigant who has the opportunity of having that verbalized by the media, all types of media, then the judges are in a position where they don't have the ability to protect themselves. Under the Code of Judicial Ethics it becomes the responsibility of the bar to support the bench when comments like this are made.

I believe that the members of the bar, all of us that are trial lawyers, represent the very same public and clients in front of all these judges. It is our function as an association and as a profession, whether we belong to the bar association or whether we are a member as a lawyer of the judicial system, to know about our judges. We are evaluating them all the time. We know whether they are men of integrity, whether they are competent, whether they have judicial temperament, because we have to make decisions when we appear in front of these judges.

Now I am going to be very brief in my comments because I know that you have tolerated me, but I would like to say this: The U.S. District Court for the Western District of Pennsylvania is one of the best district courts in the United States. Judge McCune, who has been attacked by Jack Nard, is held up as the epitome of what a Federal judge should be. Judge Snyder, who is now deceased, also had an excellent reputation.

The court of appeals judges that were attacked—VanDusen, Gibbon, and Rosen—are admired by all the lawyers in Pennsylvania. You don't hear any bad comments about these people.

Judge Weis was an outstanding trial lawyer. He was a war hero during World War II. He worked as a trial lawyer. He was elected through the political process to the Court of Common Pleas of Allegheny County, which is one of the best metropolitan courts in the United States.

Soon he was appointed to the district court. He went through this very committee. He was found to be well qualified for the position. Two years later, because of problems that former Governor Shafer and the former attorney general of Pennsylvania were unable to get through this committee, Judge Weis was nominated for the court of appeals. He was found exceptionally well qualified by the American Bar. Certainly the only criticism that I ever heard about him was from Mr. Nard, who testified at the confirmation hearing before this committee.

Now the strange thing about all these allegations is that the judges who are being accused of all these things are our best judges. Certainly the system isn't perfect. You know that and I know that. We have judges of different degrees of ability. However, these judges are among the best we have. I have never heard any lawyer or any litigant other than Jack Nard say one bad word about Joe Weis.

I venture to say that people would really want to have him hear nonjury cases because he has a reputation of being fair. He's proud of his job. He's a good American citizen. He's been serving his country by being on the bench, He's not complaining about his position. He's not asking to go back to private practice. He feels he has a splendid opportunity to serve his country, and he really has done it well.

Now what I think is unfortunate about the whole Nard situation is that his actions and the comments as reported in the paper give an appearance of legitimacy to these broad-reaching complaints that affect all the judges and make the citizens feel that when they lose the case—and there's always one or the other that loses—that they lost because the judges were rigged. Now that's not true.

The bar has the obligation to speak up loud and clear if we are going to maintain the freedom and integrity and the independence of the judiciary.

I was one of the original persons involved in setting up judicial inquiry boards. I am a former judge. The voters turned me out of office through their wisdom. I believe in that movement. We have a fine judicial inquiry board under our constitution in Pennsylvania.

I'm aware of what you mentioned earlier to Mr. Manion concerning the efforts here in the Senate. I have long advocated a system where judges are evaluated and, if we have problems with Federal judges, they are like anybody else. We cannot tolerate people who are unable to act properly. I have no disagreement with your comments about that.

Again, to say that all judges are crooks and politically influenced is really a baseless and groundless attack. It really does do grave injustice to our judicial system. I submit to you the Federal judicial system is the best that I'm aware of. I'll continue to work, and I know you'll continue to work, to improve the system, but I felt duty bound to speak out about the circumstances and the unfortunate circumstances involved in this situation.

Thank you very much.

Senator DeConcini. Thank you, Mr. Fawcett.

Let me assure you I feel the same way about the judiciary, about the standards they have to meet, and that we do have overall a very outstanding judiciary.

Mr. Buerger, I am going to have to leave in about 4 or 5 minutes to go cast a vote on the floor.

Mr. Buerger. That will be enough time, sir.

Senator DeConcini. All right, sir.

STATEMENT OF DAVID BUERGER, ATTORNEY, BUCHANAN, INGERSOLL, RODEWALD, KYLE & BUERGER, FORMER COUNSEL TO JACK NARD

Mr. Buerger. I'm the attorney who represented Mr. Nard in the suit against Armour in both Sioux City and Pittsburgh and in his income tax case. It's my duty to tell the committee that the Department of Justice cannot have been derelict in its investigation because there was nothing to investigate.

Mr. Nard contracted to build a plant in Pittsburgh for $6 million. It cost Armour $10 million. Armour sued Mr. Nard for $4 million and got a judgment for only $600,000, about 15 percent of Armour's claim. The cost overruns of $4 million were to a very large extent due to the incompetence of Armour engineers.

Judge Weis found that Nard was also incompetent, that he didn't properly manage the construction. As to Mr. Nard's ability, there was testimony both ways.

I felt that Mr. Nard was telling the truth, but the judge could certainly believe contrary witnesses without himself being dishonest. Certainly Mr. Nard's arrogant attitude on the witness stand did not help him.

Judge Weis concluded that both parties had breached a contract and awarded no damages. This saved Nard and his partners about $3 million.

The judge ordered Mr. Nard to return to Armour $400,000 received from Armour to pay subcontractors and not used to pay subcontractors. Armour had not paid Nard as much as it should have, but it was also true that Nard had not used the money to pay the subcontractors.

Judge Weis also ordered Nard to pay back $200,000 of Armour money used by Nard to build his own personal residence. His explanation that he was merely anticipating expected profit was not one that I was very happy with.

In determining the amount, the judge accepted the testimony of an expert accountant who I thought was wrong, but he was an honorable accountant from a fine firm, and accounting testimony could go either way.

On appeal to the court of appeals the decision of Judge Weis was affirmed. I thought I wrote a convincing brief. Many of the pages of the Stockton report are simply copied from my brief and do not contain any further analysis.

In certain respects I disagreed with Judge Weis. I might have decided differently if I were the judge. However, I'm not merely 100 percent sure, I'm 1 million percent sure, that Judge Weis was

absolutely honest and fair. There is no one more highly or more deservedly respected. It is outrageous for Nard to be dissatisfied with an 85 percent victory in the case and to accuse Judge Weis of anything.

Mr. Nard has also complained that the judge wrote his opinion before he had the transcript of testimony, but the judge took exceedingly careful notes and we had not asked that the transcript be typed until we had decided if we were going to appeal.

He also complains that he was indicted for income tax fraud. There's no doubt he filed income tax returns years after they were due. On that alone he was clearly guilty. By having the Government prosecute him for fraud and merely pay a fine, Mr. Nard was kept out of a possible jail term. Whether Armour attorneys informed on Nard, as he claims, I do not know, but Judge Weis was not involved and Judge McCune certainly had a right to accept the guilty plea.

Since the case was completed I've seen Mr. Nard perhaps a dozen times, usually chance meetings at airports. At those meetings he has violently, noisily, and incoherently complained to me of the dishonesty of the courts. I've repeatedly asked him for any scrap of evidence against Judge Weis or any other judge. He's always told me, "Well, the grand jury in Iowa will find the evidence." I'm positive there can be no evidence, and I'm compelled, to put it most charitably, to say that Mr. Nard is not thinking clearly.

Senator DeConcini. Thank you, Mr. Buerger. Thank you, gentlemen.

The hearing will stand in recess, subject to the call of the chairman.

[Whereupon, at 2:10 p.m., the hearing recessed, to reconvene at the call of the Chair.]

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