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NOMINATION OF LYNN C. LEIBOVITZ

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF LYNN C. LEIBOVITZ TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

JULY 26, 2001

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CONTENTS

Opening statement: Page
Senator Durbin 1

WITNESSES

THURSDAY, JULY 26, 2001

Hon. Eleanor Holmes Norton, a Delegate in Congress from the District of Columbia 1
Lynn C. Leibovitz to be an Associate Judge of the Superior Court of the District of Columbia 2
Biographical and financial information 5

NOMINATION OF LYNN C. LEIBOVITZ TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

THURSDAY, JULY 26, 2001

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:35 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Richard Durbin presiding.

Present: Senator Durbin.

OPENING STATEMENT OF SENATOR DURBIN

Senator DURBIN [presiding]. The hearing will come to order. Good morning and welcome to you, and I am going to try to catch my breath here. I just came up the steps. We have problems with elevators over here. The Committee on Governmental Affairs is holding this hearing to consider the nomination of Lynn Leibovitz to be an Associate Judge on the District of Columbia Superior Court.

I would like to, before I go into background, recognize Delegate Norton for her statement.

TESTIMONY OF HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Ms. NORTON. Thank you, Mr. Chairman. It is with both pleasure and pride that I introduce a Washingtonian who comes especially well-prepared, in my judgment, for your consideration for the post of Associate Judge on our D.C. Superior Court, a court on which she clerked and would now serve. Ms. Leibovitz has spent most of her legal career as an Assistant U.S. Attorney, rising to be Deputy Chief and now Acting Chief of the Homicide Division. She has been recognized by the U.S. Attorney for superior performance, and by the Justice Department with special awards. She has been an adjunct professor in trial practice at Georgetown, from which she graduated in 1985. She is a Phi Beta Kappa graduate of Brown University. Ms. Leibovitz has been very active in our local bar and in volunteering to work with children and rebuilding neighborhoods. I strongly recommend her for your consideration, for our Superior Court.

Senator DURBIN. Thank you, Delegate Norton, for that kind introduction, and I am sure Ms. Leibovitz appreciates it, as well. I am sure this is a special day for you, as you contemplate the next

step in your legal career. You have some members of your family with you today; is that correct?

Ms. LEIBOVITZ. Yes, Mr. Chairman, I do.

Senator DURBIN. Would you be kind enough to introduce them for the record?

TESTIMONY OF LYNN C. LEIBOVITZ[1] TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. LEIBOVITZ. I would. Thank you.

Thank you, Congresswoman Norton, for the kind introduction.

First of all, thank you, Senator Durbin, for the privilege of appearing before you today and for scheduling this hearing before the August break. I would like to introduce the friends and family that are with me. I have a number of colleagues from the U.S. Attorney's Office, almost all of whom serve now or have served in the Homicide Section, that I worked in: My good friends, Cynthia and Mark Simonson, are here; retired Sergeant Frank Morgan of the Metropolitan Police Department, is here; and finally, my husband, Ben Hecht, and my mother, Joan Leibovitz, and my father, Judge William Leibovitz from New York, are here.

I also, if I may, would like to take the opportunity to thank President Bush and the D.C. Judicial Nominating Commission for the honor of this nomination.

Senator DURBIN. Well, I am certain that they have chosen well.

Ms. LEIBOVITZ. Thank you.

Senator DURBIN. As this brief hearing will demonstrate, there is little controversy associated with this nomination. I am sure that comes as no great disappointment. There is one peculiarity about the procedure of this Committee, which I will now acquaint you with, and that is that we swear in our witnesses. So I am going to ask you to please stand and raise your right hand. Do you swear the testimony you are about to give before this Committee is the truth, the whole truth, and nothing but the truth?

Ms. LEIBOVITZ. I do.

Senator DURBIN. Thank you. Let it be noted for the record that the witness answered in the affirmative.

Aside from your opening remarks, is there anything that you would like to add at this point?

Ms. LEIBOVITZ. Nothing else. Thank you. I would be happy to answer any questions that you have.

Senator DURBIN. Well, everyone who goes through this process, as you know, is given a very brief little questionnaire to fill out, which probably took a few days.

Ms. LEIBOVITZ. It did, a few nights.

Senator DURBIN. It takes trying to remember everything that ever happened to you in your life and putting it on the record. I have had a chance to review it, and everything looks excellent. You were recommended by the District's Judicial Nominating Committee. You have been subjected to a background investigation and selected and nominated by the President. Since we have received

[1] Biographical and financial information appear in the Appendix on page 5.

your nomination, you have completed this thorough questionnaire we have referred to, and the staff has reviewed it.

I have spoken to the investigators, and I am just going to ask you some very general questions which obviously do not reflect on your education or skill and professional ability, because I think those are all clear from your record, but some of them are very general in nature. For the record, first, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. LEIBOVITZ. Nothing that I am aware of.

Senator DURBIN. Second, do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. LEIBOVITZ. No reason whatsoever.

Senator DURBIN. Do you know of any reason, personal or otherwise, that would in any way prevent you from serving the full term for the office to which you have been nominated?

Ms. LEIBOVITZ. No, I know of no reason.

Senator DURBIN. I recall—it has been a few years now—practicing before Federal judges in Springfield, Illinois. I suppose the one thing that I noted was the temperament issue, and you may have noted the same in your practice. Could you comment on this issue of judicial temperament, because those who are given either lifetime or long-term appointments occasionally—rarely—but occasionally lapse into some sort of a feeling of elevation and ascendancy that takes them away from the realm of reality. I would like your thoughts on that.

Ms. LEIBOVITZ. Well, I have had the opportunity to observe many judges in action, both professionally and personally, because my father is a judge, and for that reason I think I can keep the position in perspective. I think that the traits that would make the most perfect judge are very hard to come by in one person. However, I think that a great degree of respect for other people, no matter who they are, whether they are professionals or whether they are nonprofessionals, no matter what walk of life they come from, is the most important thing that a judge can bring. A sense of humility is another important trait. Brains and efficiency are two good things to have, and they have to be tempered by a degree of humanity, and those are all traits that I hope I can pull together.

Senator DURBIN. I always hoped that judges would remember when they, too, were just lawyers, and what life was like. I hope that you will have that recollection. Reflect for a moment on your experience in this Homicide Division; what have you learned about the law and yourself in that process?

Ms. LEIBOVITZ. My experience in the homicide practice has been the most exciting and most valuable thing I think I have ever done, other than having children, and what I have learned from it, as I think of all the things I have just described, which is a degree of personal humility in interacting with other people, no matter who they are. We come into contact with a lot of people who come from very challenging personal circumstances, families who have lost loved ones through unspeakable events, and witnesses who themselves have criminal backgrounds, substance abuse problems, lim-

ited education and every other possible kind of difficulty. I have learned that every one of them brings something to the process that I am a part of, and learned that showing respect for them and allowing them to show me what they can do is the most important thing that I bring to the process. It empowers them and it helps me do my job. I think that that is something I would bring to the bench.

Senator DURBIN. You have undoubtedly worked with victims' families and loved ones in this process.

Ms. LEIBOVITZ. Yes.

Senator DURBIN. What do you think the courts can do to be more sensitive to their experience?

Ms. LEIBOVITZ. I think that the courts can, first of all, become more effective at managing the calendars. I think that the families of homicide victims are very much affected by how long the process takes, and I often find myself wishing that I could explain to them why things take so long, other than just to keep on saying court congestion. So I do think that basic management of the calendar is something that the courts can look to, and I also think that the same humanity I have been talking about is something that is important to remember, that the victims and the victims' families look to the court for some degree of solace and resolution, and that a few minutes or a few words by a judge can make a big difference to them.

Senator DURBIN. Thank you. I do not have any further questions. I want to thank you for, obviously, being here today and your responses. They were very appropriate and encouraging. I want to thank your family for joining you. I am sure they are very proud today. I understand you interrupted a family vacation to come back to Washington today.

Ms. LEIBOVITZ. Yes, I did.

Senator DURBIN. I know how anxious you and the court are to have you confirmed and vested in office, and I am glad that we could work this hearing in before we do break in just a week or two. The next step in the process will be the prompt consideration of your nomination in the full Committee markup in the near future and reporting to the full Senate for final action. I am going to encourage Chairman Lieberman to move as quickly as possible on this, and I hope that we do not have to interrupt your vacation again to bring you back for any reason. But I thank you for coming today and for everyone's support and encouragement.

With that, this hearing is adjourned.

[Whereupon, at 9:45 a.m., the Committee was adjourned.]

APPENDIX

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS
COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL & PROFESSIONAL INFORMATION

1. Name: Lynn C. Leibovitz

2. Citizenship: U.S.

3. Current office address and telephone number:

Office of the United States Attorney for the District of Columbia
Homicide Section
555 Fourth Street, N.W.
Room 3229
Washington, D.C. 20001
(202) 514-7469

4. Date and place of birth: 5/8/59, New York City

5. Marital status:

Married, Bennett L. Hecht
Occupation: Attorney, non-profit manager
President and Chief Operating Officer
One Economy Corporation
1899 L Street, N.W.
Suite 600
Washington, D.C. 20036

6. Names and ages of children. List occupation and employer's name if appropriate:

---

7. Education. List secondary school(s), college(s), law school(s) and any other institutions of higher education attended; list dates of attendance, degree received, and dates each degree was received. Please list dating back from most recent to earliest.

Georgetown University Law Center
Fall 1982-Spring 1985
J.D., 1985

Brown University
Fall 1977-Spring 1981
B.A., magna cum laude, 1981

Buxton School
Fall 1973-Spring 1977
High School Diploma, 1977

8. Employment record. List all jobs held since college, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest.

March 1990-present: Assistant United States Attorney, Office of the United States Attorney for the District of Columbia, 555 Fourth Street, N.W., Washington, D.C. 20001

September 1997-present: Adjunct Professor of Trial Practice, Georgetown University Law Center, 600 New Jersey Avenue, N.W., Washington, D.C. 20001

September 1986-March 1990: Staff Attorney, Senior Attorney, United States Securities and Exchange Commission, Division of Enforcement, 450 Fifth Street, N.W., Washington, D.C., 20549

August 1985-August 1986: Judicial Law Clerk, Honorable Robert I. Richter, Superior Court of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001

September 1984-May 1985: Law Clerk, Proskauer Rose Goetz & Mendelsohn, 1233 20th Street, N.W., Suite 800, Washington, D.C., 20036

June 1984-August 1984: Summer Honors Program, United States Department of Justice, Civil Division, Federal Programs Branch, 10th & Pennsylvania Avenue, N.W., Washington, D.C., 20530

September 1983-May 1984: Law Clerk, International Union of Bricklayers, 815 15th Street, N.W., Washington, D.C., 20005

June 1983-August 1983: Summer Associate, Guggenheimer & Untermyer, 80 Pine Street, New York, NY, 10011

January 1982-August 1982: Paralegal, District Attorney for New York County, One Hogan Place, New York, NY, 10013

September 1981-January 1982: Receptionist and part-time English instructor, Wall Street Institute of Language, Piazza Independenza 28, Florence, Italy

9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

1981: Awarded B.A. degree magna cum laude; elected to Phi Beta Kappa.

1995-1996: U.S. Department of Justice Special Achievement Awards. These awards are conferred by the United States Attorney upon Assistant United States Attorneys in recognition of superior performance of duty.

1996: Executive Office for United States Attorneys Director's Award for Superior Performance as an Assistant United States Attorney. This is an award conferred by the Director of the Executive Office for United States Attorneys, U.S. Department of Justice, to Assistant United States Attorneys in recognition of prosecutive efforts in important cases.

1997-1998: Selected to serve as Senior Litigation Counsel, Office of the United States Attorney for the District of Columbia. This award is given to approximately five Assistant United States Attorneys each year, in recognition of their litigation experience, and their efforts to mentor and assist other attorneys.

10. Business relationships. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

September 1997-present: Adjunct Professor of Trial Practice, Georgetown University Law Center, Washington, D.C.

1997- Present: Jubilee Enterprise of Greater Washington, Volunteer consultant regarding neighborhood safety issues, Washington, D.C.

11. Military Service: None

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

1987-present: Member, District of Columbia Bar Association.

1994-present: Member, United States District Court for the District of Columbia, Committee for Non-appropriated Funds.

1997-present: Member, D.C. Bar delegation to D.C. Coalition Against Drugs and

Violence. In 1998 served as Chairperson of the Government Task Force.

1998-present: Member, D.C. Bar Committee on Civility Implementation, Subcommittee on Civility in the Courtroom. 2000-present, co-Chair of training materials working group.

2000-present: Member, ex officio, Mayor's Serious Incident and Fatality Review Committee, charged with reviewing deaths of mentally retarded wards of D.C., with a view to improving oversight of City agencies and group homes.

2000-present: Member, ex officio, District of Columbia Child Fatality Review Committee, charged with reviewing the deaths of D.C. residents under the age of 18.

13. Other Memberships. List all memberships and office currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 12. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex or religion.

1993-present: Member, Parents' Association, Georgetown Day Lower/Middle School.

1996-present: Member, congregation, Temple Sinai, District of Columbia

1981-present: Member, Phi Beta Kappa

None of these organizations, or any listed in response to question 12, discriminates or has ever discriminated on the basis of race, sex, or religion. Temple Sinai is a religious congregation itself, however.

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

New York State Bar
Appellate Division, Third Department
June 3, 1986

District of Columbia Court of Appeals
Bar No. 408567
March 4, 1987

United States Court of Appeals
for the District of Columbia Circuit
November 30, 1990

15. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written or edited.

Sturc, J., Leibovitz, L., "Issues Concerning the Acquisition and Use of Information by the Government During Parallel Civil and Criminal Proceedings, Practicing Law Institute, Securities Enforcement Institute, 1988 (copy attached).

Assorted handout materials, Georgetown University Law Center, Trial Practice Seminar, Fall 2000 (copies attached)

16. Speeches:

None.

17. Legal Career:

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

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

August 1985-August 1986: Judicial Law Clerk, Honorable Robert I. Richter, Superior Court of the District of Columbia.

2. Whether you practiced alone: N/A

3. The dates names and addresses of law firms or offices, companies or governmental agencies with which you have been employed.

March 1990-present: Office of the United States Attorney for the District of Columbia, 555 Fourth Street, N.W., Washington, D.C. 20001.

September 1986-March 1990: United States Securities and Exchange Commission, Division of Enforcement, Staff Attorney; Senior Attorney, 450 Fifth Street, N.W., Washington, D.C. 20549

1997-present: Georgetown University Law Center, Adjunct Professor of Trial Practice, 600 New Jersey Avenue, N.W., Washington, D.C. 20001.

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

March 2000-present: Supervisor of a trial section; supervised and personally handled criminal prosecutions of murder cases in the District of Columbia.

June 1998-March 2000: Administrative work as member of Senior Executive staff of the United States Attorney responsible for training and staffing.

March 1990-June 1998: Criminal prosecution in the D.C. Superior Court and the United States District Court for the District of Columbia; also briefly acted as appellate counsel representing the United States in D.C. Court of Appeals and D.C. Circuit.

September 1986-March 1990: Securities regulation; civil enforcement of the 1933 and 1934 securities laws.

August 1985-August 1986: Superior Court judicial law clerk in criminal, landlord-tenant and family court assignments.

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

Because of the nature of my work as a government attorney, I have had no individual clients during any of these periods.

d. Describe the general nature of your litigation experience, including:

1. Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court has varied during this period, please describe each such variance, giving dates thereof.

March 2000-present: Appear in court fairly frequently, including trial of a murder case in February 2001.

June 1998-March 2000: Appeared in court infrequently because of administrative assignment.

March 1990-June 1998: Appeared in court almost daily.

September 1986-March 1990: Almost never appeared in court; conducted

depositions and assisted trial attorneys in infrequent matters in court.

August 1985-August 1986: As law clerk, did not appear in court.

2. What percentage of these appearances was in

(a) Federal court (including Federal courts in D.C.).
(b) State courts of record (excluding D.C. Courts).
(c) D.C. courts (Superior Court and D.C. Court of Appeals only)
(d) Other courts and administrative bodies.

Approximately 75% of my court appearances have been in the District of Columbia Superior Court and 25% have been in federal court in the District of Columbia.

3. What percentage of your litigation has been

(a) Civil.
(b) Criminal.

100% of my litigation has been criminal since 1990. Prior to that, during my employment with the Securities and Exchange Commission, 100% was civil, although I personally did not enter an appearance in any matter.

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

I have tried approximately 38 cases to verdict, including conspiracy, murder and narcotics offenses and a RICO case in which the trial lasted for six months. I served as sole/lead counsel on all but three of these. This figure does not count numerous misdemeanor, non-jury-demandable trials I handled in 1991 in the D.C. Superior Court.

5. What percentage of these trials was

(a) Jury.
(b) Non-Jury.

Excluding the above described misdemeanor, non-jury trials, all of my trials but one were jury trials.

18. Describe the five most significant litigated matters which you personally handled.

Provide the citations, if the cases were reported or the docket number and date if unreported. Give a capsule summary of the substance of each case, and a succinct statement of what you believe was of particular significance about the case. Identify the party or parties whom you represented, and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of the representation, (b) the name of the court and the name of the judge before whom the case was tried; and (c) the names and addresses and telephone numbers of co-counsel and of principal counsel for the other parties.

1. United States v. Geraldine Kelly
   Criminal Number F-6366-98
   The Honorable Judith Retchin
   Superior Court of the District of Columbia
   Unreported.

On January 9, 1997, defendant Geraldine Kelly persuaded her 16-year-old son, Jerry Watkins, to murder Gene Kelly Jr. Gene Kelly was Geraldine Kelly's husband and was Jerry Watkins'step-father. Over the preceding six months, Geraldine Kelly had developed a plan to murder her husband so that she could receive the benefits from his $70,000 life insurance policy and also so she could be free to live with her lover, Noah McNair, a man fifteen years younger than her husband. Watkins fatally shot Gene Kelly at his mother's direction, as the victim sat at the wheel of his car in the 2900 block of Sherman Avenue, N.W., in the District of Columbia. After the murder, Geraldine Kelly attempted to collect her husband's insurance proceeds, and bore Noah McNair's child.

I became involved in the investigation of this murder in 1998 and worked with detectives to secure arrest warrants for Geraldine Kelly and Jerry Watkins. The case was assigned to other attorneys during the remainder of the investigation. Jerry Watkins later pleaded guilty to one count of second degree murder while armed and agreed to cooperate with the government and testify at trial. I became re-involved in the prosecution when I prepared and tried the case along with a more junior lawyer in February 2001. I gave the opening statement and the rebuttal closing argument. I presented Jerry Watkins' testimony against his mother, as well as the testimony of about half of the remaining witnesses in the government's case. The jury found Geraldine Kelly guilty of conspiracy to commit murder, first degree premeditated murder and related weapons offenses. She was sentenced on May 12, 2001, to a term of thirty years to life in prison.

Co-Counsel: Rachel Carlson Lieber
Assistant United States Attorney
555 Fourth Street, N.W.
Washington, D.C. 20001
(202) 305-1388

Opposing Counsel:

Ronald Horton
Public Defender Service
633 Indiana Avenue, N.W.,
Washington, D.C. 20004
(202) 626-8336

2. United States v. Daniel Pendleton
Criminal No. F-7742-95
The Honorable Truman Morrison
Superior Court of the District of Columbia
Unreported.

On September 3, 1995, at approximately 9:00 a.m., Daniel Pendleton entered the home of his 78-year-old grandmother, Doris Jackson, at 10 Rhode Island Avenue, N.W., armed with a revolver. There he fired a single bullet into the head of Rickey Martin, who served as a legal guardian of Ms. Jackson, and who lived at Ms. Jackson's residence with his wife and baby daughter. Pendleton then fired three additional shots at Ms. Jackson, who was ill and confined to a wheel chair, and who witnessed Mr. Martin's murder from her bed. Both victims died of their injuries. Pendleton committed the murders believing that he thereby could gain ownership of numerous real estate properties owned by his grandmother.

I participated in the investigation of the murder with homicide detectives and obtained an indictment charging Pendleton with two counts of first degree murder while armed and related offenses. I tried the case to a hung jury in Summer 1996 and retried it in October 1996. On November 7, 1996, the defendant was found guilty by jury of all counts, for which he received a sentence of two consecutive terms of life imprisonment without possibility of parole on February 5, 1997.

Opposing Counsel:

Roy Conn
Department of Justice
Patrick Henry Building
601 D Street, N.W.
Room 5340
Washington, D.C. 20004
(202) 514-4164

3. United States v. Michael Boone, United States v. Harold Stone
Criminal Nos. F-3723-94; F-3751-94
The Honorable Susan R. Winfield
Superior Court of the District of Columbia
Affirmed, Nos 96-CF-1047, 96-CF-1097, slip op. (D.C., March 29, 2001)

On December 20, 1992, at approximately 2:30 a.m., Harold Stone and Michael Boone lured Carlos Kemper Jr. to an alley running parallel to the 1500 Block of Seventh Street, N.W., where they shot Kemper six times and fled the alley. Kemper died of his wounds. Stone and Boone committed the murder to retaliate against Kemper, who was suspected of earlier robbing their drug supplier. Trial began in April 1996 and concluded in May 1996 when both defendants were found guilty by a jury of first degree premeditated murder while armed and related offenses. As the sole prosecutor of the case at trial, I handled all phases of the government's presentation. I presented the testimony of three cooperating witnesses, including the drug supplier whose robbery was the motive for the murder and who ordered the killing, and two associates of the defendants who were ear witnesses to admissions by the defendants. Because the murder arose out of a conspiracy to retaliate for a drug-related robbery, the case required litigation of a number of complicated evidentiary issues surrounding the admission of statements under the co-conspirator statement exception to the hearsay rule and evidence of "other crimes" committed by the defendants. In July 1996 each was sentenced to a term of thirty-five years to life imprisonment.

Opposing Counsel:

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(202) 939-3350

HAROLD STONE

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Rochon and Roberts
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Washington, D.C. 20003
(202) 546-1500

4. United States v. Mark Hoyle, et al.
Criminal No. 92-284 (TPJ)
The Honorable Thomas Penfield Jackson
The United States District Court
for the District of Columbia
Affirmed, 122 F.3d 48 (D.C. Cir. 1997), cert. denied, 523 U.S. 1036 (1998); Motions for new trial pending.

This case arose from the investigation of a violent, narcotics trafficking organization known as the "Newton Street Crew," that operated in the District of Columbia from 1987 until July 1992 when the organization was shut down with the arrests of more than twenty defendants. The trial of Hoyle and four other leaders of the organization was the final trial of four narcotics conspiracy cases arising from the Newton Street investigation, of which I tried three as associate counsel. The Hoyle trial began in April 1994 and concluded in October 1994, with the convictions of four out of the five defendants on charges of narcotics conspiracy, RICO conspiracy, operating a continuing criminal enterprise (CCE), and numerous counts of murder and CCE murder. All four defendants are serving life sentences.

I served as third chair of three prosecutors in this case. I filed written responses to many defense motions, argued numerous pretrial motions, presented dozens of witnesses at trial, including cooperating accomplices who testified pursuant to plea agreements with the government, expert witnesses in the fields of forensic pathology and materials and fiber analysis, and police and civilian witnesses to numerous homicides and drug transactions. I offered into evidence hundreds of trial exhibits, and litigated the sentences imposed by the Court pursuant to the United States Sentencing Guidelines.

Co-Counsel:

G. Paul Howes
Milberg Weiss Bershad Hynes & Lerach
600 West Broadway
San Diego, California 92101
(619) 231-1058

Jeffrey R. Ragsdale
Chief, Fifth District Community Prosecution Section
Office of the United States Attorney
555 Fourth Street, N.W.
Washington, D.C. 20001
(202) 514-7425

Principal Opposing Counsel:

MARK D. HOYLE 92-284-01

Jensen Barber, Esquire
400 Seventh Street, N.W.
Suite 400
Washington, D.C. 20004-2206
(202) 737-8511

JOHN W. McCOLLOUGH 92-284-02

William J. Garber
717 D Street, N.W.
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(202) 638-4667

ANTHONY M. GOLDSTON 92-284-03

John J. Carney
Carney & Carney
601 Pennsylvania Avenue, N.W.
South Building, Suite 900
Washington, D.C. 20004
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5. United States v. Wayne Byfield
Criminal No. 89-332 (JHG)
The Honorable Joyce Hens Green
United States District Court
for the District of Columbia
Affirmed in an unreported decision of the D.C. Circuit

On August 18, 1989, Wayne Byfield enlisted the services of then 13-year-old Sherly Lherrison to help him transport cocaine base from New York City to the District of Columbia by Amtrak train. Byfield packed the drugs in a shoe box and instructed Lherrison to carry the shoe box in a small duffel bag from New York to the District of Columbia. Byfield remained separate from Lherisson on the train and as they walked through Union Station, until both were stopped by drug interdiction officers who had observed them. Lherrison pleaded guilty as a juvenile in D.C. Superior Court and was sentenced to probation. Byfield was tried by another prosecutor in December 1989 in United States District Court before the Honorable Joyce Hens Green. The sole evidence at that trial was the conduct of defendant Byfield inside Union Station, as it had been observed by the officers; Ms. Lherisson was outside the jurisdiction by the time of the trial and unavailable to testify. After a jury found the defendant guilty of possession with the intent to distribute cocaine base, Judge Green entered a judgment of acquittal notwithstanding the verdict for insufficiency of the evidence. The United States appealed, and the case was reversed and remanded, 928 F.2d 1163 (D.C. Cir. 1991).

I was assigned to prosecute the retrial of the case in 1992. The defendant waived a jury trial in light of the Court's previous entry of a judgment of acquittal for lack of sufficient evidence. On the eve of trial, after searching in several states and employing the assistance of detectives in a number of jurisdictions, I located Ms. Lherisson and arranged for her to fly to the District of Columbia. She was then sixteen years old. Ms. Lherisson testified compellingly to the packaging of the drugs by the defendant and to the instructions he gave her with respect to transporting the drugs and remaining separated from him during the trip to the District of Columbia. On December 6, 1992, Judge Green found the defendant guilty of all counts. After she testified, I arranged for Ms. Lherisson to be relocated, along with her small baby, as the result of threats by associates of the defendant. The defendant was sentenced to a term of twenty years in prison.

Opposing Counsel:

Jensen Barber
400 Seventh Street, N.W.
Suite 400
Washington, D.C. 20004-2206
(202) 737-8511

19. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney client privilege:

In addition to the litigation experience described in response to question 18, my practice at the Securities and Exchange Commission involved a large number of non-public civil investigative matters. My principal responsibilities were to investigate violations of the anti-fraud provisions of the securities laws. In doing so I analyzed corporate transactions, conducted investigative depositions, coordinated investigations with foreign securities authorities and assisted litigation of civil injunctive actions in United States District Court. I participated in investigations which led to the filing of SEC v. Nahum Vaskevitch (insider trading); SEC v. Blinder Robinson & Co. (penny stock fraud) and SEC v. Drexel Burnham Lambert (stock parking).

In addition to an extensive trial practice, my work at the United States Attorney's Office has included a brief period in 1990 and 1991 when I served as appellate counsel before the D.C. Circuit and the D.C. Court of Appeals. As Deputy Chief, and now Acting Chief of the Homicide Section of the Office, I also have many litigation responsibilities in matters which do not proceed immediately or, in some cases, ever, to trial. These include consulting on investigations of open homicides by law enforcement officers and agents. I review warrants for searches and arrests in homicide cases, submitted by members of law enforcement for legal sufficiency and approval or declination prior to their being submitted to the appropriate judicial authority. I supervise Assistant United States Attorneys with respect to cases they are prosecuting, and my responsibilities include recommending cases for indictment, approving plea offers and other dispositions, consulting on investigative strategy and providing guidance and direction with respect to ethical issues and the attorneys' disclosure obligations in particular cases.

20. Have you ever held judicial office? No.

21. Have you ever been a candidate for elective, judicial or any other public office? No.

22. Political activities and affiliations.

a. List all offices with a political party which you have held or any public office for which you have been a candidate or applicant.

None.

b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

$100 contribution to Maryland State Senatorial campaign of Brian Frosh in 1998; $100 contribution to Maryland House of Delegates campaign of Brian Frosh in 1994.

23. Have you ever been investigated, arrested, charged, held or convicted by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No.

24. Have you or any business of which you are or were an officer ever been involved as a party in interest in any other legal or administrative proceedings.

No.

25. 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 or professional association, disciplinary committee, or other professional group? If so, please provide details.

Although my conduct personally never was the subject of such a complaint, I was associate counsel in the 1994 trial of United States v. Mark Hoyle, described above, which became the subject of an investigation by the Office of Professional Responsibility of the Department of Justice ("OPR"). The investigation, which was nonpublic, concerned certain conduct by cooperating witnesses who testified at the trial and also conduct by one of the other prosecutors, who no longer is employed by the Office of the United States Attorney. OPR informed the United States Attorney by letter in 1988 that it concluded that I and one of my two co-counsel had committed no misconduct.

II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer, business firms, business associations or business organizations if you are confirmed?

Yes, except that I plan to continue in my position as an adjunct professor at

Georgetown University Law Center.

2. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with your law firm, business associates, or clients.

Other than current salary and federal employee benefits, none.

3. Indicate any investments, obligations, liabilities or other relationships which could involve potential conflicts of interest.

None.

4. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest.

None.

5. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law and public policy.

None.

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

I intend to continue teaching as an adjunct professor at Georgetown University Law Center.

7. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

If any actual conflict of interest arises, I will recuse myself.

8. If confirmed, do you intend to serve out your full term?

Yes.

III. FINANCIAL DATA

The financial portion of the answers to this questionnaire are retains in the files of the Committee.

IV. DISTRICT OF COLUMBIA QUESTIONS

1. Are you a citizen of the United States?

   Yes.

2. Are you a member of the Bar of the District of Columbia?

   Yes.

3. Have you been a member of the bar of the District of Columbia for at least five years?

   Yes.
   Bar No. 408567
   Admitted March 4, 1987

4. If the answer to Question 3 is "no" –

   a. Are you a professor of law in a law school in the District of Columbia?

   b. Are you a lawyer employed in the District of Columbia by the United States or the

District of Columbia?

c. Have you been eligible for membership in the bar of the District of Columbia for at least five years?

d. Upon what grounds is that eligibility based?

N/A

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five years.

February 1995-present:

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7. Have you maintained an actual place of abode in such area for at least five years?

Yes.

8. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Nominating Commission?

No.

9.Have you been a member of either of these commissions within the last 12 months?

No.

10. Please provide the committee with four copies of your Judicial Nomination Commission questionnaire. (See attached)

AFFIDAVIT

Lynn Leibovitz, being duly sworn, hereby states that she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 23rd day of May, 2001

(Notary Public)

JAY D. FARRIS
Notary Public, District of Columbia
My Commission Expires July 31, 2003