

THE WHITE HOUSE
WASHINGTON


September 24, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

PHILIP BUCHEN

FROM:

JAMES E. CONNOR 

The President reviewed your memorandum of September 22nd concerning the report from the District of Columbia Commission on Judicial Disabilities and Tenure on the performance and fitness of Judge Charles W. Halleck for appointment to new 15 year term as a Judge of the Superior Court of the District of Columbia. The following notations were indicated:

"I have read report. I expect to reappoint but an FBI report and report from Attorney General seem appropriate."

Please follow-up with appropriate action.

cc: Don Rumsfeld
Douglas Bennett

THE WHITE HOUSE
WASHINGTON

Phil B

I have read
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att. You seem appropriate.

~~THE~~ PRESIDENT HAS SEEN ~~...~~

THE WHITE HOUSE

WASHINGTON

September 22, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN *P.W.B.*

Attached is the original of a report to you from the District of Columbia Commission on Judicial Disabilities and Tenure. It is the report on the performance and fitness of Judge Charles W. Halleck for appointment to a new 15 year term as a Judge of the Superior Court of the District of Columbia.

As a result of this report, which declares the candidate to be "qualified," the matter of submitting his renomination to the Senate is within your discretion.

Prior to your making your final decision on this matter, we will require a F.B.I. check and will require other information customarily provided by a candidate for appointment to a Federal position. In addition, I assume you will want to allow the Attorney General to give you his comments, as he customarily does, for all proposed nominations to judicial or law enforcement positions.

Attachment

**DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE**

717 MADISON PLACE, N. W. (ROOM 212)
WASHINGTON, D. C. 20005

TELEPHONE: (202) 628-1255

Members

Henry A. Berliner, Jr., Chairman
William C. Gardner, Vice Chairman
Erman W. Edgecombe
Hon. Gerhard A. Gesell
Richard K. Lyon
Rt. Rev. John T. Walker
Howard C. Westwood

REPORT TO
THE PRESIDENT OF THE UNITED STATES
THE HONORABLE GERALD R. FORD
ON THE PERFORMANCE AND FITNESS
FOR REAPPOINTMENT
OF
JUDGE CHARLES W. HALLECK

September 19, 1975

The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D.C.

Dear President Ford:

The District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, 87 Stat. 774, Sec. 433(c) provides as follows:

(c) Not less than three months prior to the expiration of his term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of his term of office and shall be filled by appointment as provided in subsections (a) and (b). If a declaration is so filed, the Tenure Commission shall, not less than thirty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be exceptionally well qualified or well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the renomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court.

The terms "exceptionally well qualified", "well qualified", "qualified" and "unqualified" do not lend themselves to easy definition.

The Commission would reserve the term "exceptionally well qualified" for those few judges whose work product, dedication, demeanor, restraint, efficiency and legal scholarship are preeminent on the Bench. "Well qualified" signifies a judge who accomplishes with distinction the judicial function in a manner which consistently reflects credit on the judicial system. To be "qualified" a judge must at least satisfactorily perform his or her assigned duties or be one whose strong positive attributes are materially offset but not overborne by negative traits. "Unqualified" signifies that the judge is unfit for judicial service.

The term of Charles W. Halleck, a Judge of the Superior Court of the District of Columbia, expires on October 20, 1975. He has duly filed a declaration of candidacy for reappointment.

The Commission acknowledges the cooperation which it received from Judge Halleck. In connection with his declaration of candidacy for reappointment, he submitted a lengthy statement of his judicial philosophy and the contribution which he believed had been made by him during his tenure. He also submitted a number of his opinions on a wide range of legal issues. The Commission requested, and received, a full medical report on his health. He appears to be in good health. In addition, Judge Halleck appeared before the Commission accompanied by counsel,

and discussed at length, freely and frankly, his views regarding the areas of concern raised by the Commission and other matters that he deemed pertinent.

The Commission recognizes the duty of a judge to re-examine established doctrine in the light of changing mores and scientific knowledge when novel constitutional issues are presented. A judge should rule in accordance with his conscience and precedent as best he can. The Commission has wholly disregarded objections raised by some who disagree with Judge Halleck's viewpoint expressed through this process in well-reasoned opinions. It is not the function of this Commission to intrude on the independence of the judiciary.

Judge Halleck's record, including but not limited to the material supplied by him, exhibits his concern for the constitutionality of statutes and proper enforcement of the law in the District of Columbia. Moreover, a number of the opinions authored by Judge Halleck display impressive research and legal scholarship. To his credit, he writes opinions more frequently and more fully than do most other judges on his court. In sheer volume of cases disposed of, he has made an enviable record. We commend his success in attacking and reducing backlogs of pending cases. We regard with special approval his demand for a high standard of competence on the part of attorneys appearing before him, and his effort to achieve efficiency in the functioning of the administrative

system in criminal matters. He has been particularly conscientious in the vital area of sentencing. He has been fearlessly independent.

In summary, much of Judge Halleck's tenure has been marked by productive, energetic and creative judicial activity reflecting favorably upon his fitness for reappointment.

Unfortunately, Judge Halleck's record also displays patterns of conduct in several basic areas which reflect adversely upon his fitness for reappointment.

These areas are as follow:

1. He has used his courtroom to criticize and disparage fellow members of the judiciary including the District of Columbia Superior Court, the District of Columbia Court of Appeals and the United States District Court for the District of Columbia.
2. He has been impatient, undignified and discourteous in his treatment of litigants, attorneys and witnesses, subjecting them to harassment, sarcasm and ridicule.
3. He has interfered with the conduct of trials, denying parties their full right to be heard, in a number of instances requiring that cases be reinstated and retried after reversal by the Court of Appeals.
4. He has improperly attempted to dispose of cases in

such a way as to achieve a preconceived result while impeding or precluding appellate review.

5. He has inquired into the personal and sexual conduct and attitudes of individuals appearing before him although such inquiry had no bearing on any judgment he was required to make.

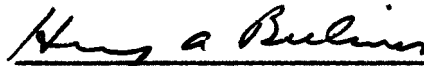
The Commission considers the foregoing conduct to be violations of Canon Two A and Canon Three A(2), (3) and (4) of the Code of Judicial Conduct.

In considering the qualification and fitness of a sitting judge special attention must be paid to the manner in which the judge conducts his day to day business in open court. In large metropolitan courts such as the Superior Court, judges confront overloaded dockets, inadequate facilities, insufficient supporting help and must frequently deal with inexperienced or ill prepared lawyers and other frustrating conditions. If a judge permits these conditions to undermine his necessary restraint and impartiality he serves the administration of justice badly and if he cannot place his exasperations under control he should not remain in office. Litigants, witnesses, lawyers, court personnel and others present in court soon lose respect for justice when a judge interjects his personal views unduly into litigation or resorts to sarcasm, banter, rudeness and other unjudicial conduct. An atmosphere of prejudice and favoritism is created which undermines the integrity of the system.

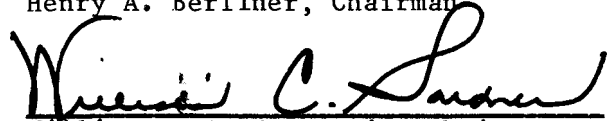
In spite of the substantial negative aspects of Judge Halleck's judicial performance, his strong positive attributes lead us to determine that he is "qualified" for reappointment.

Respectfully submitted,

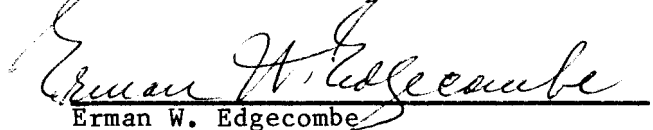
COMMISSION ON JUDICIAL DISABILITIES
AND TENURE



Henry A. Berliner, Chairman



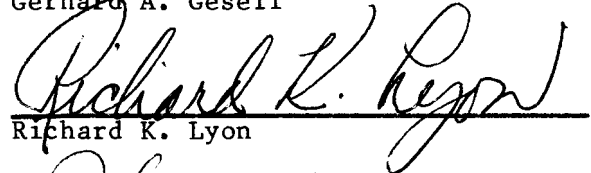
William C. Gardner, Vice Chairman



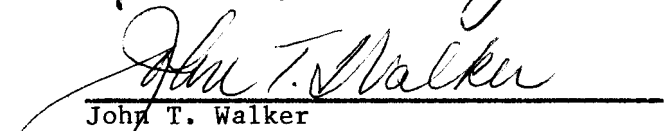
Erman W. Edgecombe



Gerhard A. Gesell



Richard K. Lyon



John T. Walker



Howard C. Westwood

cc: Judge Charles W. Halleck

THE WHITE HOUSE
WASHINGTON

To be resubmitted on President's
return

Jim -

Day before yesterday
Thym Smith was looking
for this --- I could not
locate anything in the
White House.

The President does
not indicate his decision
----- What should we
do with this now.

Perhaps he verbally
told Mr. Buchen something?

Trudy

THE PRESIDENT HAS SEEN...

THE WHITE HOUSE

WASHINGTON

September 18, 1975

Handwritten initials: MB

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN

Handwritten initials: P.W.B.

Henry A. Berliner, Jr., Chairman of the Commission on Judicial Disabilities and Tenure, reported to me this morning that the Commission will have its written evaluation concerning Superior Court Judge Charles W. Halleck ready for delivery to me in your behalf about the middle of Friday afternoon, September 19. Shortly thereafter, the Commission wants to give a copy to Judge Halleck and to announce to the press that the Commission determines this candidate for reappointment to be qualified for another term.

If the Tenure Commission were to have found that the candidate was exceptionally well-qualified or well-qualified, then his term would be automatically extended. In the case of an unqualified determination, he would not have been eligible for reappointment.

However, in the case at hand, you have the option of whether or not to nominate the incumbent for reappointment, and if you do so, his nomination will be subject to consent of the Senate.

The candidate's term expires on October 20, 1975, and you should make your decision on the question of whether to nominate or not before that date. A prompt decision should be made, however, on whether to release to the press a copy of the Commission's submission to you. I understand it will be about four pages and will state wherein the Commission has found the candidate to have performed competently but will also relate instances where he appears to have violated the judicial canons of ethics.

Mr. Berliner recommends that we release copies of this submission promptly. He points out that otherwise the candidate himself may issue copies and in any event Members of the Commission may very well talk about its contents in a fragmented way to the press.

As you know, this Commission is not a Presidential Commission inasmuch as you appointed only one of seven members; although, your appointee was elected Chairman.

On balance, I would concur in Chairman Berliner's recommendation for immediate release of the submission to you.

APPROVE RELEASE _____

HOLD UNTIL MY RETURN FOR
SUBSEQUENT DECISION _____