**The original documents are located in Box 20, folder "Judicial Appointments - District of Columbia Charles Halleck (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.**

THE WHITE HOUSE

WASHINGTON

October 6, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS KL

SUBJECT: Judge Halleck

After review of the materials submitted by the Commission on Judicial Disabilities and Tenure, it would appear on the merits that Judge Halleck should not be reappointed to the Superior Court. The following facts support such a conclusion.

Survey. A recent survey of members of the Assistant United States Attorneys Association on the subject of Halleck's qualifications for reappointment (attached at Tab A) reveals that of the 76 present and former Assistant United States Attorneys who responded to the survey, none regarded him as "Exceptionally Well Qualified", 7 percent viewed him as "Well Qualified", 15.5 percent thought him "Qualified" and 77.5 percent regarded Halleck as "Unqualified". While a few of the responding comments conceded that Halleck was "bright", "innovative" and "works hard", the majority of comments clearly suggest that he is not fit for reappointment. These comments, representing over 100 appearances before him in court, describe Halleck as a judge who " . . . berates and coerces defendants and their attorneys . . . often punishes lawyers by making them go to trial on one day's notice . . . disregards the facts and the law . . . has no conception of judicial restraint . . . coerces pleas with threats of jail time . . . shows a patent disregard for accepted procedural rules . . . does only what he wants done, not what the law demands . . . is tyrannical, arrogant, imperious, and rude to everyone . . . is rude, intemperate, and obscene . . . utterly lacks the qualities of reasoned judgment, even-handedness, and judicial dignity . . . is arbitrary, capricious, vindictive, and decidedly bizarre . . . ."

Greene letter. A September 9, 1975 letter (Tab B) from the Executive Assistant U. S. Attorney to the Commission states:

* * *

> "The Code of Judicial Conduct of the American Bar Association, when read in light of Judge Halleck's consistent performance on the bench, represent a veritable catalogue of commandments breached . . . Virtually every transcript submitted to the Commission, as well as numerous decisions of the District of Columbia Court of Appeals, expose Judge Halleck's intemperateness, impatience and partiality, as well as his frequent refusal to be 'faithful to the law' . . . every active and retired judge of the Court of Appeals has joined in at least one opinion condemning Judge Halleck's improper conduct, and ten different judges of the Court have authored such opinions . . . ."

* * *

Court Opinions. Attached at Tab C is a sampling of District of Columbia Court of Appeals opinions (1967 - 1975) reversing Judge Halleck with comments about improper judicial conduct, as well as a synopsis of hearings and trials presided over by Judge Halleck which reveal a complete lack of judicial temperament.

However, in order to respond to the political dilemma which the President faces relative to the Halleck nomination, I would not suggest that the President react negatively to his reappointment. Rather, I would suggest that he forward Judge Halleck's name to the Judicial Selection Commission for consideration along with other potential candidates for appointment to the Superior Court. This would be in accord with the spirit of home rule

and would represent a sound policy for the President to follow.

The rationale for this approach can be summarized in the following manner. The so-called "Home Rule Act" contemplated that, subject to final Presidential selection, the D. C. Judicial Selection Commission would review and screen all interested candidates for the local Superior Court. Although the Commission on Judicial Disabilities and Tenure was designed to protect sitting judges from all of the pitfalls involved in the political process, it could have the effect of entrenching judges who were selected under the procedures which were controlling prior to the passage of the "Home Rule" legislation. Until such time as the Superior Courts are staffed by judges selected by D. C. representatives, the President could refuse to act upon the reappointment of any sitting judge found to be "qualified" (the only classification which triggers Presidential discretion) by the Disabilities and Tenure Commission. The name of any such individual could be routinely referred to the Selection Commission without comment for their consideration in arriving at a slate of candidates to fill the vacancy. Such a policy would promote the concept of "home rule" and would protect the interests of all concerned.

TAB
A

TABULATION OF RESULTS OF

SURVEY OF MEMBERS OF ASSISTANT UNITED

STATES ATTORNEYS ASSOCIATION*

CONCERNING

QUALIFICATIONS OF JUDGE CHARLES W. HALLECK FOR

REAPPOINTMENT AS ASSOCIATE JUDGE, SUPERIOR

COURT OF THE DISTRICT OF COLUMBIA

*The Assistant United States Attorneys Association includes among its membership present and past Assistant United States Attorneys for the District of Columbia. Approximately three-fourths of the membership of the Association comprises former Assistants, most of whom practice law in the District of Columbia.

# I.

# SURVEY RESULTS

# A.U.S.A.A. SURVEY



| | Association Should Take a Position | | | | | Association Should Not Take a Position | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Rating | Exceptionally Well-Qualified | Well-Qualified | Qualified | Un-qualified | No Opinion Stated | Exceptionally Well-Qualified | Well-Qualified | Qualified | Un-qualified | No Opinion Stated | |
| # | | 5 | 9 | 54 | 5 | | | 2 | 1 | | = 76 |

-- Approximately 38% of survey questionnaires were returned.

-- Of those responding to survey (N=76), 96% felt that A.U.S.A.A. should take a position.

-- Of those responding to survey, 7% (N= 5) expressed no opinion on Judge Halleck, for varying reasons. (All of these respondents, however, felt that A.U.S.A.A. should take a position.)

-- Of those respondents who did rate Judge Halleck, their ratings were grouped as follows:

| | |
|---|---|
| Exceptionally Well-Qualified ... | 0.0% |
| Well-Qualified ..... | 7.0% |
| Qualified ..... | 15.5% |
| Unqualified ..... | 77.5% |
| | 100.0% |

8/25/75

II.

ALL COMMENTS RELATING TO

CATEGORICAL RATINGS OF

JUDGE HALLECK

Judge Halleck is Exceptionally Well-Qualified.

* * *

No comments.

Judge Halleck is Well-Qualified.

* * *

Judge Halleck has long been an antagonist to the U.S. Attorney's Office; however, he is bright, works hard, writes well and is fair to the defense bar. I hope the Asst. U.S. Atty. Asso. looks at this issue as fair attorneys and not as angry prosecutors.

Judge Halleck is Qualified.

* * *

Despite an occasional display of eccentricity, his basic instincts are good and legal ability is far above average.

Halleck is an innovative judge. He thinks about the problems before him and he is provocative with his frequently unorthodox opinions. He is also a spot of life on a largely lifeless bench. He also disposes of a large number of cases. He too frequently coerces pleas and tries to bully the parties before him.

While many of us may disagree with Judge Halleck's views, he is probably better qualified than some of those who would replace him.

Judge Halleck is Unqualified.

* * *

The judge berates and coerces defendants and and their attorneys in order to obtain guilty pleas.* If the prosecutor fails to offer what the judge considers a fair plea, the judge will insure the Government does not get fair shake at trial. He continually insults and berates prosecutors and the Court of Appeals. He often punishes lawyers by making them go to trial on one day's notice. The judge is always late, both in the a.m. and at lunch, often keeping people waiting for hours.

* His questioning of defendants often takes less than one minute and it always violates McCarthy and Rule 11.

Judge Halleck totally lacks a judicial temperament; his decisions are controlled more by his personal predilections rather than by the facts and the law. Moreover, he has forgotten that the people that appear before him, either as counsel or parties, are human beings entitled to some respect.

Judge Halleck has no conception whatsoever of judicial restraint. He continually abuses his power in a patent commitment to legislate from the bench. He is frequently intemperate and has apparently not learned to think before he speaks. He interjects himself into criminal cases in a totally unacceptable manner, usually in a blatant effort to coerce defendants into pleading guilty or in an effort to force the prosecution to offer the plea he would like it to offer. He almost never adheres to the requirements of Rule 11.

He totally lacks a judicial temperament; engages in frequent tirades with counsel without just cause; repeatedly acts upon whim and not reason or law; and generally by his blatantly intemperate conduct demeans the administration of justice in the District of Columbia.*

* The writer is impeachable by virtue of conviction by Halleck, J. - later set aside - of contempt of court while prosecuting a case.

Judge Halleck lacks the temperament to carry out any judicial function. I believe any Assistant who has ever appeared before him feels this way. I will be forwarding a copy of my letter listing specific personal experiences which will be sent to the Commission within a few days.

After appearing before Judge Halleck on at least fifty occasions, I have concluded that he lacks proper judicial temperament.

Unqualified (continued)

I feel Judge Halleck is completely lacking in judicial temperament. The Association should take the strongest possible stand in this matter. Unfortunately, there is a tendency for the newspapers to portray the Judge as a colorful character. There is nothing colorful about his two and three hour disappearances for "lunch" while keeping counsel, witnesses and courtroom personnel standing about. There is nothing colorful about his taking the bench while obviously intoxicated. There is nothing colorful about his arbitrary rulings. There is nothing colorful about his show of judicial laziness. There is nothing colorful about the petty shows of spite and nastiness which characterize his proceedings. There is nothing colorful about the arrogant manner he so freely exercises.

Totally lacks judicial temperament. More interested in moving his calendar than doing justice. Coerces pleas with the threat of jail time. Likes to play to the galleries rather that simply do his job.

I have tried at least six cases before this judge and appeared before him numerous other times. He has demonstrated a patent disregard for accepted procedural court rules. I believe his initial appointment was politically motivated (connected) and that Judge Halleck has not demonstrated any independent qualifications for retaining his judgeship.

He has repeatedly shown that on the bench, he does only what he wants done, not what the law demands; judicial demeanor is an aberration; continually acts as defense attorney, prosecutor and jury while on the bench.

Although possessed of the requisite intellect, his aberrant behavior and total lack of judicial temperament make him one of the two least qualified judges on the Superior Court bench. He should definitely not be reappointed.

Although Judge Halleck is intelligent and has a great deal of "street" sense, and his sentences are for the most part sensible, he arrogates to himself the authority and prerogatives of both the legislature and the executive by ignoring both the limits on his power and precedent. Moreover, he is tyrannical, arrogant, imperious, and rude to everyone, including attorneys, witnesses, jurors and the public. He should not be reappointed.

Let him be an activist somewhere other than the bench.

Unqualified (continued)

Unfortunately, Mr. Halleck lacks both judicial temperament and wisdom. Because of his immaturity, I presume his capers still are the topic of unfavorable discussion among attorneys in the District of Columbia and elsewhere. (Note: this respondent no longer practices in the Washington area.) A reappointment of Mr. Halleck would certainly be an interesting reflection upon the quality of the legal system in the District of Columbia.

Judge Halleck has a temperament which renders him unfit for the judicial bench. He views the courtroom as a theatre in which he is the principal actor. Unfortunately, most often he proceeds to "act" and his antics hamper, retard and disrupt the administration of justice in his courtroom. Finally, he arrogates to himself the prerogatives of the legislature. He should not be reappointed.

I was assigned to Judge Halleck for several months. While he is not unintelligent, I feel that his lack of any sense of appropriate behavior, his almost incredible rudeness and occasional hostility, and his tendency to unreasoned and frequently irrational decisions render him unfit to serve as a judge.

Judge Halleck is rude, intemperate and abusive toward everyone in his courtroom during virtually all of the proceedings before him. He displays none of the dignity, restraint and legal acumen one would expect from even a minimally qualified jurist.

Judge Halleck has, in my judgment, failed consistently to demonstrate judicial temperament in the discharge of his duties.

Lacks judicial temperament.

I feel he is marginally qualified as a jurist and lacking in necessary demeanor to be reappointed.

Judge Halleck utterly lacks those qualities of reasoned judgment, even-handedness, and judicial dignity which are so absolutely essential as bare minimums for any judge. Lacking these qualities of judicial temperament, Judge Halleck must be deemed "unqualified."

Unqualified (continued)

Halleck's utter lack of appropriate judicial temperament make him unfit for reappointment. His arbitrary, capricious, vindictive, and decidedly bizarre antics diminish the quality of the administration of justice in the District.

He is hopelessly deficient of the proper judicial temperament required.

In my opinion, based upon a number of appearances before Judge Halleck, he has little or no regard for the time of the attorneys who appear before him. He is seldom on the bench when court is to begin; and, once on the bench, he wastes everyones time by continually making asides which have nothing to do with the business at hand. To say the least, Judge Halleck lacks "judicial temperament."

Lacks judicial temperament, displayed in a 10-year probationary period.

Judge Halleck is totally lacking in judicial temperament and intellectual honesty. His record as a judge renders him unqualified for reappointment. Denial of reappointment to Judge Halleck will be an important first step in improving the image and effectiveness of the Superior Court.

The record speaks for itself. Judge Halleck's continued disgraceful courtroom conduct over the past ten years speaks quite forcefully and perhaps better than any comments that can be make as to why he should not be reappointed. The Association should vigorously oppose his renomination!

Comments from respondents not rating Judge Halleck.

* * *

Have not practiced before him so am unable to comment.

He strikes me as rather a nut, but the one case I had before him was correctly decided. If he is bumped I fear we would only get something worse.

Unable to express an opinion, as I have not personally appeared before Judge Halleck, except once for a sentencing.

Since I have not practiced before Judge Halleck or in D.C. since 5/69 I don't feel competent to give an opinion on Judge Halleck's qualifications.

TAB
B

OFFICE OF THE UNITED STATES ATTORNEY

WASHINGTON, D.C. 20001

ADDRESS ALL MAIL TO:
UNITED STATES ATTORNEY
ROOM 3138-C
UNITED STATES COURT HOUSE BUILDING
3RD AND CONSTITUTION AVENUE NW.

IN REPLY, PLEASE REFER TO INITIALS AND NUMBER

September 9, 1975

Mr. Henry A. Berliner, Jr., Esquire
Chairman,
District of Columbia Commission on
Judicial Disabilities and Tenure
Room 212
717 Madison Place, N.W.
Washington, D.C. 20005

Dear Mr. Berliner:

I am writing this letter to respectfully advise you and other members of the Commission as to the reasons for my view that Judge Charles W. Halleck of the Superior Court is clearly not qualified for reappointment to the bench.

It would perhaps be helpful to the Commission at the outset if my views were considered in the perspective of my own legal experience in this jurisdiction. I graduated from Columbia Law School in June, 1966 and have been a member of one or more Bars in this jurisdiction since June, 1967. Following graduation, I worked for one and one-half years as law clerk to Judge William Bryant of the United States District Court before being sworn in as an Assistant United States Attorney for the District of Columbia in January, 1968. Since that time I have served as a trial Assistant in the then-Court of General Sessions (January, 1968 to December, 1968), Deputy Chief of the then-Court of General Sessions Division of this Office (December, 1968 to September, 1969), a trial Assistant in the United States District Court (September, 1969 to November, 1970), Administrative Assistant United States Attorney

(November, 1970 to January, 1972) and since 1972 as Executive Assistant United States Attorney. In these various positions, I tried a number of misdemeanor cases before Judge Halleck in 1968, supervised numerous young trial Assistants in our Office and occasionally appeared before the Judge on their behalf during my supervisory stint in the Court of General Sessions, and have reviewed the transcripts of innumerable proceedings before Judge Halleck over a period of nearly seven years, both in the preparation of a brief on appeal of some 19 cases which he had dismissed (see United States v. Jones, 254 A.2d 412 (D.C. Court of Appeals, 1969)) and to advise the United States Attorney concerning the need to appeal, or seek other relief from, many of his rulings. Finally, as Executive Assistant to the last two United States Attorneys, I have had brought to my attention by numerous Assistants their criticisms and complaints concerning Judge Halleck's conduct.

I am cognizant that to date the Commission has received a very substantial number of comments, both favorable and unfavorable, concerning Judge Halleck's qualifications for reappointment. Because of my personal relationship with numerous Assistants and former Assistants in this Office, and my discussions with them, I am aware of the substance of many of those comments--at least the unfavorable ones--and I do not feel it would be of assistance to the Commission to merely second them here. Because, in my experience, however, those criticisms plainly have great substance, I wish to share with the Commission several concerns.

First, I believe that an appropriate basis upon which to measure the qualifications of any judge for reappointment to the bench is the extent to which during his previous service he attempted with good faith--and in fact did--comply with the Code of Judicial Conduct of the American Bar Association. It is plain to me that

Judge Halleck's conduct during his tenure, as I will discuss below, has not only violated a disturbing number of Canons in that Code, but such violations (1) have been intentional, and (2) have unfortunately not decreased in number or severity as his experience on the bench has increased. Second, I am extremely concerned about the possibility that notwithstanding his record, Judge Halleck might nevertheless be designated as "qualified" by the Commission and thereby, in my view, administer a mortal blow to the future effectiveness of the Commission in maintaining a minimum acceptable level of competence, maturity and integrity in our local judiciary. Finally, I have been particularly distressed to learn of several instances in which Judge Halleck, in advance and during the pendency of his renomination before the Commission, has openly solicited the support of members of the Bar who might in the future appear before him, and has thus compromised at least the appearance of his own integrity and impartiality, as well as the fairness with which justice might be administered to future litigants before him.

The Code of Judicial Conduct of the American Bar Association, when read in the light of Judge Halleck's consistent performance on the bench, represents a veritable catalogue of commandments breached. Other attorneys in this office have directed to the Commission's attention numerous transcripts of court proceedings over which Judge Halleck has presided, and I shall make reference below to those transcripts, to others enclosed herewith, and to decisions of the District of Columbia Court of Appeals, as well as to the American Bar Association's Criminal Justice Standards. (Relevant portions of the Code and Standards are appended as an attachment to this letter.)

1. Virtually every transcript submitted to the Commission, as well as numerous decisions of the District of Columbia Court of Appeals, expose Judge Halleck's intemperateness, impatience and partiality, as well as his frequent refusal to be "faithful to the law."

See Canon 3A(1) and A.B.A. Standards, Function of the Trial Judge, 1.1(b) (Conduct of proceedings "with unhurried and quiet dignity" and with "decisions...based on the particular facts" of each case), 1.5 (Duty to maintain impartiality) and 6.4 (Judge's responsibility for self-restraint). Compare United States v. Crickenberger, 275 A.2d 232, 234 (D.C. Ct. App. 1971) (criticizing Judge Halleck for losing "sight of the need for a detailed and objective factual inquiry" and for his "disposition to find against the Government under any circumstance"); United States v. Yates, 279 A.2d 516, 517, n. 4 (D.C. Ct. App. 1971) (indicating that "[t]he highly leading nature of his [Judge Halleck's] questions suggests a quest for testimonial basis to justify facts desired to be found"); United States v. Moses, 339 A.2d 46, 49 (D.C. Ct. App. 1975) (criticizing Judge Halleck for relying "upon [his] own observations as providing the evidentiary basis for most of the conclusions in [his] opinion"); United States v. Miller, 298 A.2d 34, 36 (D.C. Ct. App. 1972) (commenting that "[i]t is unfortunate that this trial court judge has again permitted his personal reactions to the manner in which a search warrant is executed to cloud his thinking and decision," and concluding that the transcript revealed that "the trial judge's intervention in the proceedings below, to the point of saturation, regrettably indicates an apparent prejudgment of both credibility and facts where certain law enforcement activities are concerned").

2. Judge Halleck's recurrent public criticisms of other judges for their alleged tardiness and other deficiencies notwithstanding, it is well known among attorneys who practice in the Superior Court that he is among the worst offenders of those few judges who often fail to appear in court when scheduled and who keep attorneys, litigants, witnesses and court personnel waiting as a matter of course. See Canon 3A(5) and A.B.A. Standards, Function of the Trial Judge, 1.4 (Obligation to use judicial time effectively). Compare United States v. Ernest L. Wray, Sup'r Ct. Cr. No.89765-74, Jan. 21, 1975, transcript at p. 9 (suggesting that no United States District Judges and only one other Superior Court Judge work after 3:30p.m.); United States v. James Thomas, number unknown, Dec. 18, 1969, transcript at pp. 8, 11, 12, 15, 17 (criticizing the calendaring practices, working hours, sentencing practices, length of trials

and luncheon breaks in the District Court); United States v. Seegers, No.36161-69 (Ct. of Gen'l Sess'ns), Nov. 25, 1969, transcript at pp.5-6 (criticizing "District Court judges" for allegedly being "either unwilling or unable to perform").

3. Judge Halleck's actions not only have been frequently critical of his brethren on the trial bench (see ¶2, supra) and on the District of Columbia Court of Appeals (see ¶7, infra), but he has refused to cooperate with other judges of the Superior Court to "facilitate the performance of the administrative responsibilities of other judges...." See Canon 3B(1). Compare United States v. James R. McCloud, Sup'r Ct. Cr. No. 66653-74, Oct. 25, 1974, transcript at p.4 (setting a criminal trial at 9 a.m. in order to compel counsel already scheduled for a 9:30 a.m. trial before another judge the same day to appear in his court).

4. Judge Halleck's lack of courtesy, civility and consideration for those who appear before him is distressingly manifested in almost every transcript of proceedings over which he has presided. See Canon 3A(3) and A.B.A. Standards, Function of the Trial Judge, 1.1(c)(Fairness and courtesy to counsel). Compare e.g., United States v. Yates, supra, 279 A.2d at 518, n.9 (criticizing Judge Halleck for seeking "to embarrass appellee's counsel by questions regarding whether he had passed the District of Columbia bar examination" and for subjecting counsel to "a most demeaning public diatribe of criticism for ineptitude....totally out of place and unbecoming the bench and bar"); United States v. Oliver, 297 A.2d 778, 780 (D.C. Ct. App. 1972)(commenting on Judge Halleck's "rather unwarranted, if not heated, exchange with the prosecutor"); United States v. Cummings, 301 A.2d 229, 232 (D.C. Ct. App. 1973)(holding "arbitrary and unreasonable" Judge Halleck's dismissal order in a case where, after six defense continuances on dates when the pregnant complaining witness appeared, she was ill and failed to appear on the seventh date); United States v. John Hazel, Sup'r Ct. Cr. No. 77619-74, Jan. 31, 1975, transcript at pp.23-25 (repeatedly interrogating an Assistant U.S. Attorney about his sexual conduct and feelings); United States v. Melvin Ray, No. 36706-70 (Ct. of Gen'l Sess'ns), Oct. 30, 1970, transcript at p.5 (threatening an attorney with contempt if his religious obligations precluded him from attending a Saturday session of court).

5. Judge Halleck's willingness to dispose of matters in a highly improper, ex parte fashion has been reflected in at least one case of which I have been made personally aware. See Canon 3A(4) and A.B.A. Standards, Function of the Trial Judge, 1.6 (Duty to prevent ex parte discussions of a pending case). Compare United States of America v. Stephen Harris Collins, U.S. No. 42511-69B (Ct. of Gen'l Sess'ns), "Motion to Correct Illegal Sentence and to Correct Sentence Imposed In an Illegal Manner" (appended hereto).

6. Judge Halleck has repeatedly indicated his refusal to be bound by the law as established by the District of Columbia Court of Appeals, and has frequently and publicly berated judges of that Court. See Canon 3A(1). Compare United States v. Foster, 226 A.2d 164, 166 (D.C. Ct. App. 1967), (suggesting that trial judges "confine themselves to their judicial duties and refrain from ex cathedra attempts to 'reform' those practices of the office of the United States Attorney which have been sanctioned by appellate tribunals"); United States v. Yates, supra, 279 A.2d at 517 (noting that this case "is not the first time this problem [of Judge Halleck's improper conduct of a pretrial hearing] has presented itself"); United States v. Mack, 298 A.2d 509,511 (D.C. Ct. App. 1972)(again criticizing Judge Halleck for making a decision that was properly for the prosecutor to make); United States v. Charles W. Rucker, Sup'r Ct. Cr.No. 56024-74, Dec. 27, 1974, transcript at p. 8 (criticizing an Assistant U. S. Attorney for citing "every insulting case the Court of Appeals has sent down telling a trial judge how not to conduct his courtroom"); United States v. Terrence Moore, Sup'r Ct. Cr.No. 78807-74, Dec. 9, 1974, transcript at p.129 (criticizing the District of Columbia Court of Appeals for not recognizing the problems of trial judges and not having "the experience or the knowhow" to deal with them); United States v. John Hazel, supra, transcript at pp.22-23, 26-27 (questioning the legislative justification for a statute although cognizant that the District of Columbia Court of Appeals had rejected such an argument); United States v. Paradis, supra, vol. I of transcript, pp. 6, 23-25, 34-36, 44 (criticizing the District of Columbia Court of Appeals for its alleged personal bias against him, its allegedly being "Nixon-stacked", "ridiculous," "bizarre" and "absurd," and its "mickey-mouse judgment orders," as well as questioning the intellectual honesty of the Court and indicating that one of its

opinions criticizing his conduct--United States v. Owens, 332 A.2d 752, 755, n.9 (D.C. Ct. App. 1975)--"doesn't mean a thing to me").

7. As frequently reflected in both appellate decisions and transcripts of proceedings before him, Judge Halleck has repeatedly demonstrated undue interference, impatience and excessive participation in the examination of witnesses and has injected into most proceedings an air of impatience indignity, and partiality. See Canons 3A(3) and (4), and A.B.A. Standards, Function of the Trial Judge, 6.4 (Judge's responsibility for self-restraint). Compare United States v. Crickenberger, supra, 275 A.2d at 234 (criticizing Judge Halleck for "repeatedly interrupt[ing] the questioning of the witness with comments and leading questions calculated to put words in the mouth of the officer"); United States v. Yates, supra, 279 A.2d at 517, n.4 (criticizing the "highly leading nature" of Judge Halleck's questions); United States v. Oliver, supra, 297 A.2d at 782 (criticizing Judge Halleck's "unnecessary, vain and somewhat argumentative tone"); United States v. Willie Munn, Sup'r Ct. Cr.No. 29263-73, Feb. 7, 1975, transcript at pp. 11-12, 20 (repeated threats by Judge Halleck to hold an Assistant in contempt and a statement by the Judge that the Assistant does "not represent the Government of the United States in this case"); United States v. Terrence Moore, supra, transcript at pp. 29, 39-41, 71, 88, 90, 93-94, 115-117, 124, 126 (Judge Halleck's criticism of the motives of the prosecutor and repeated attacks on the competency of defense counsel).

8. Judge Halleck has repeatedly attempted to frustrate appellate review of his decisions by ruling on grounds not raised by counsel, "acquitting" a defendant before his trial began, and generally seeking to put issues before him in a posture where appellate review would be precluded. See Canons 3A(1) and (4). Compare United States v. Yates, supra, 279 A.2d at 517 (criticizing the "obvious ploy" in Judge Halleck's findings calculated "to require an appellate decision on the predicate that [the police officer's] protection was not the purpose of the seizure"); District of Columbia v. Dixon, 230 A.2d 481, 482 (D.C. Ct. App. 1967) (refusing to sustain Judge Halleck's finding of "not guilty" entered before trial began and after he refused to permit

an Assistant Corporation Counsel to enter a nolle prosequi in a case); United States v. Mack, supra, 298 A.2d at 510-511 (criticizing Judge Halleck for dismissing a case on speedy trial grounds at the conclusion of a hearing on a motion to suppress evidence where the defendant asserted no speedy trial claim); United States v. William Bridges, Sup'r Ct. Cr. No. 74834-71, Jan. 3, 1972, transcript at p. 42-48 (reflecting Judge Halleck's successful attempt to goad a defendant, who had filed a motion to suppress evidence, into instead stipulating as to the facts in order that Judge Halleck could find him "not guilty" and thereby avoid appellate review of an order granting the motion to suppress evidence).

9. In sum, the administration of justice in Judge Halleck's court has again and again been characterized by his own idiosyncracies and his disposition to gain public attention and affection at the expense of courtesy, patience, fairness and impartiality. He has been called to task by the District of Columbia Court of Appeals on no fewer than fifteen separate occasions for improper conduct.*

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*See Brandon v. United States, 239 A.2d 159 (D.C. Ct. App. 1969); District of Columbia v. Dixon, supra; United States v. Crickenberger, supra; United States v. Cummings, supra; United States v. Farmer, 297 A.2d 783 (D. C. Ct. App. 1972); United States v. Foster, supra; United States v. Graham, 250 A. 2d 689 (D.C. Ct. App. 1969); United States v. Jefferson, 257 A.2d 225 (D.C. Ct. App. 1969); United States v. Jones, 254 A.2d 412 (D.C. Ct. App. 1969)(nineteen cases); United States v. Mack, supra; United States v. Miller, supra; United States v. Moses, supra; United States v. Oliver, supra; United States v. Owens, supra;

(footnote continued on page 9)

It is difficult to find another active judge of the Superior Court who has been the subject of similar criticism on more than one or two occasions. Judge Halleck's disregard of the Canons of Judicial Conduct is matched by a comparable absence of concern for other prevailing standards concerning the administration of criminal justice. He repeatedly accepts pleas of guilty, giving little or no attention to advising defendants of the consequences. See A.B.A. Standards, Function of the Trial Judge, 4.2 (Acceptance of pleas of guilty or nolo contendere). Compare United States v. Tommy Poole, Sup'r Ct. Cr. No. 7717-75, March 11, 1975, transcript at p. 34 (Judge Halleck's virtual coercion of guilty plea without compliance with Rule 11 of the Sup'r Ct. Criminal Rules); United States v. Wallace, number unknown, March 25, 1975, transcript at pp. 2-5 (taking of guilty plea without compliance with Rule 11). He permits waiver of jury trials without ascertaining the circumstances of the defendant's waiver. See A.B.A. Standards, Function of the Trial Judge, 4.3 (Waiver of right to trial by jury). Compare United States v. Linwood Pledger, No. 27252-70 (Ct. of Gen'l Sess'ns), Dec. 1, 1970, transcript at pp. 3-4. and United States v. Tommy Poole, supra (no ascertainment by Judge Halleck of circumstances surrounding waiver of jury trial). He often refuses to permit counsel to present objections to adverse rulings. See A.B.A. Standards, Function of the Trial Judge, 5.7 (Duty of judge on counsel's objections and requests for rulings). Compare United States v. Mack, supra, 298 A.2d at 511 ("[W]e note that when the prosecutor attempted to be heard for the record the court refused...");

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(footnote continued from page 8)

United States v. Yates, supra. It warrants emphasis that the above cases do not represent opinions of the traditional kind by an appellate court reversing a trial court decision erroneous in law but rendered in good faith; rather, they explicitly condemn improper conduct by Judge Halleck. While the focus of my concern is not those cases in which Judge Halleck has been reversed solely on the basis of his legal errors, a number of such opinions have been handed down. See, e.g., in the past two years, United States v. Johnson, 333 A.2d 393 (D. C. Ct. App. 1975); United States v. Davis, 330 A.2d 751 (D. C. Ct. App. 1975); United States v. Dumas, 327 A.2d 626 (D. C. Ct. App. 1974); United States v. Cozart, 321 A.2d 342 (D. C. Ct. App. 1974); United States v. Carson, 319 A.2d 329 (D. C. Ct. App. 1974).

United States v. Cummings, supra, 301 A.2d at 232 ("There was a refusal to consider or even seriously listen to the protestations of the prosecutor when advised that there had been five previous defense continuances..."). He repeatedly intrudes on the fundamental responsibility of the executive branch to decide whom to bring charges against and what charges to bring. See A.B.A. Standards, Prosecution Function, 3.4 (Decision to charge). Compare United States v. Foster, supra, 226 A.2d at 166 (criticizing Judge Halleck's "ex cathedra attempts to 'reform' those practices of the office of the United States Attorney which have been sanctioned by appellate tribunals"); Brandon v. United States, supra, 239 A.2d at 161 (admonishing Judge Halleck that the "separate functions of the court and the prosecutor should be strictly observed"); United States v. Jefferson, supra, 257 A.2d at 227 (criticizing Judge Halleck's concern with "matters of prosecutorial discretion"); United States v. Oliver, supra, 297 A.2d at 780 (criticizing Judge Halleck's "continuing misunderstanding of prosecutorial authority"); United States v. Mack, supra, 298 A.2d at 511 (reminding Judge Halleck that "[w]hether or not a defendant should be prosecuted...is of course for the prosecutor to determine, not the court"). Finally, some of Judge Halleck's conduct has violated precepts so fundamental as to require no reference to canons or standards beyond basic fairness and integrity--the rendering of a verdict without a trial (see District of Columbia v. Dixon, supra), the sentencing of a 22-year-old defendant under a statute that precludes sentencing 22-year-olds (see United States v. Tommy Poole, supra), and the public announcement of what sentences he will impose for certain offenses before individual cases even come before him (see United States v. Kay Ballard, et al., number unknown, March 11, 1975, transcript at p. 1.)

Judge Halleck's conduct during his tenure on the Superior Court bench has not only differed in degree from that of his brethren; it has differed in kind, reflecting repeated intentional breaches of canons of both the law and judicial conduct.. His occasional protestations that certain judges of the District of Columbia Court of Appeals are involved in some manner of vendetta against him plainly do not stand up in the face of the record; every active and retired

judge of that Court has joined in at least one opinion condemning Judge Halleck's improper conduct, and ten different judges of the Court have authored such opinions (Judges Cayton, Fickling, Harris, Hood, Kelly, Kern, Nebeker, Quinn, Reilly and Yeagley).

The record of Judge Halleck's demonstrated lack of qualifications is, in my view, overwhelmingly plain, and I respectfully submit that a determination by the Commission that Judge Halleck is other than "not qualified" for reappointment would represent approval by the Commission of the kind of conduct that permeates the transcripts of proceedings before him--and appellate opinions reviewing those proceedings--during his entire tenure on the bench. Such a determination not only would afford the District of Columbia judiciary unlimited license to seriously and repeatedly abuse judicial authority without effective sanction, but would deprive the citizens of this city of any confidence that the Commission will act, where necessary and proper, to assure that only judges who perform with fairness, competence, impartiality, maturity and integrity are reappointed to the bench.

Sincerely yours,

Henry E. Greene
Executive Assistant United
States Attorney

Enclosures

(Additional copies of this letter, along with the Attachment and enclosures, have been enclosed for the convenience of the Commission.)

ATTACHMENT

I. Relevant Canons of the Judicial Code of the American Bar Association

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Canon 3: A Judge Should Perform the Duties of His Office Impartially and Diligently

A. ADJUDICATIVE RESPONSIBILITIES

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate . . .

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(5) A judge should dispose promptly of the business of the court.

Commentary: Prompt disposition of the court's business requires a judge to devote adequate time to his duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with him to that end.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions . . .

Commentary: Temperate conduct of judicial proceedings is essential to the fair administration of justice . . .

B. ADMINISTRATIVE RESPONSIBILITIES

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

II. Relevant Standards of the American Bar Association Relating to the Administration of Criminal Justice--The Function of the Trial Judge

1.1(b) General responsibility of the trial judge

The trial judge should require that every proceeding before him be conducted with unhurried and quiet dignity and should aim to establish such physical surroundings as are appropriate to the administration of justice. He should give each case individual treatment; and his decisions should be based on the particular facts of that case. He should conduct the proceedings in clear and easily understandable language, using interpreters when necessary.

1.1(c) The trial judge should be sensitive to the important roles of the prosecutor and defense counsel; and his conduct towards them should manifest professional respect and be courteous and fair.

1.2 Adherence to standards.

The trial judge should be familiar with and adhere to the canons and codes applicable to the judiciary, the code of professional responsibility applicable to the legal profession, and standards concerning the proper administration of criminal justice.

1.4 Obligation to use judicial time effectively.

The trial judge has the obligation to avoid delays, continuances and extended recesses, except for good cause. In the matter of punctuality, the observance of scheduled court hours, and the use of working time, the trial judge should be an exemplar for all other persons engaged in the criminal case. He should require punctuality and optimum use of working time from all such persons.

1.5 Duty to maintain impartiality.

The trial judge should avoid impropriety and the appearance of impropriety in all his activities, and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. He should not allow his family, social or other relationships to influence his judicial conduct or judgment.

1.6 Duty to prevent ex parte discussions of a pending case.

The trial judge should insist that neither the prosecutor nor the defense counsel nor any other person discuss a pending case with him ex parte, except after adequate notice to all other parties and when authorized by law or in accordance with approved practice.

4.2 Acceptance of pleas of guilty or nolo contendere.

(a) Whether or not the plea is tendered as a result of a plea agreement, the trial judge should not accept a plea of guilty or nolo contendere from a defendant without first addressing the defendant personally and determining that

(i) the defendant understands the nature of the charge;

(ii) the defendant understands that, by pleading guilty or nolo contendere, he waives certain constitutional rights, primarily his right to persist in a plea of not guilty and remain silent, his right to a trial by jury and his right to be confronted with the witnesses against him;

(iii) the plea is voluntary; and

(iv) unless the trial judge's concurrence in a plea agreement prior to acceptance of the plea renders it unnecessary, the defendant understands the maximum possible sentence on the charge (including that possible from consecutive sentences), the mandatory minimum sentence, if any, on the charge, and, when applicable, that a different or additional punishment is authorized by reason of a previous conviction or other factors which may be established, after his plea, in the present action.

(b) Notwithstanding the acceptance of a plea of guilty, the trial judge should not enter a judgment upon such a plea without making such inquiry as may satisfy him that there is a factual basis for the plea.

(c) In addition to complying with the foregoing standards, the trial judge should be aware of and comply with local requirements. If the plea is not accepted, the judge should state the reasons. The judge should require a verbatim record of the proceedings to be made and preserved.

5.6 Right of judge to give assistance to the jury during trial.

(a) The trial judge should not express or otherwise indicate to the jury his personal opinion whether the defendant is guilty or express an opinion that certain testimony is worthy or unworthy of belief.

5.7 Duty of judge on counsel's objections and requests for rulings.

The trial judge should respect the obligation of counsel to present objections to procedures and to admissibility of evidence, to request rulings on motions, to make offers of proof, and to have the record show adverse rulings and reflect conduct of the judge which counsel considers prejudicial. Counsel should be permitted to state succinctly the grounds of his objections or requests; but the judge should nevertheless control the length and manner of argument.

6.4 Judge's responsiblity for self-restraint.

The trial judge should be the exemplar of dignity and impartiality. He should exercise restraint over his conduct and utterances. He should suppress his personal predilections, and control his temper and emotions. He should not permit any person in the courtroom to embroil him in conflict, and he should otherwise avoid conduct on his part which tends to demean the proceedings or to undermine his authority in the courtroom. When it becomes necessary during the trial for him to comment upon the conduct of witnesses, spectators, counsel, or others, or upon the testimony, he should do so in a firm, dignified and restrained manner, avoiding repartee, limiting his comments and rulings to what is reasonably required for the orderly

progress of the trial, and refraining from unnecessary disparagement of persons or issues.

4.3 Waiver of right to trial by jury.

The trial judge should not accept a waiver of right to trial by jury unless the defendant, after being advised by the court of this right, personally waives his right to trial by jury, either in writing or in open court for the record.

The Prosecution Function

3.4(a) Decision to charge.

The decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor.

TAB
C

C. District of Columbia Court of Appeals opinions reversing Judge Halleck with comments about improper judicial conduct, chronological order, 1967-1975.

1. United States v. Foster, 226 A.2d 164 (1967) (reversing Judge Halleck's dismissal of a criminal charge for want of prosecution and admonishing him that trial judges should "confine themselves to their judicial duties and refrain from ex cathedra attempts to 'reform' those practices of the Office of the United States Attorney which have been sanctioned by appellate tribunals", where Judge Halleck had rejected a prosecutors nolle prosequi of two charges, ordered the prosecutor to proceed, and when the prosecutor declined, entered a verdict of not guilty on two charges although no jury had been impaneled and no witnesses had testified)

2. District of Columbia v. Dixon, 230 A.2d 481 (1967), vacated on other grounds, 129 U.S. App. D.C. 341, 394 F.2d 966 (1968) (refusing to sustain Judge Halleck's finding of "not guilty" entered before trial began without any witnesses being sworn or evidence presented, and after the Judge refused to permit an Assistant Corporation Counsel to nolle prosequi a case due to the court's denial of a continuance because of a sick witness)

3. Brandon v. United States, 239 A.2d 159 (1968)(reversing

Judge Halleck's excessive sentence imposed by the court on a defendant designated as a "repeat offender" at the Judge's suggestion, and admonishing Judge Halleck that "it is for the prosecution alone to determine on what charge a defendant will be tried ...[T]he separate functions of the court and the prosecutor should be strictly observed")

4. United States v. Graham, 250 A.2d 689 (1969) (reversing Judge Halleck's dismissal with prejudice of a criminal case where through oversight of the clerk a case was not listed on the prosecutor's calendar and the court "refus[ed] to give the prosecutor a reasonable opportunity to ascertain if the government was ready for trial")

5. United States v. Jones, 254 A.2d 412 (1969) (reversing Judge Halleck's dismissals in 19 separate cases where the Judge had arbitrarily suggested that he would accept a motion to dismiss any misdemeanor charge filed ten days after the grand jury ignored a felony charge and where there was no statutory, constitutional or other legal ground to sustain any of the dismissals)

6. United States v. Jefferson, 257 A.2d 225 (1969) (reversing Judge Halleck's dismissal of a criminal case for lack of a speedy trial and cautioning the trial court not to "concern itself with matters of prosecutorial discretion")

7. United States v. Crickenberger, 227 A.2d 232 (1971) (reversing Judge Halleck's pretrial order suppressing evidence and ordering a new hearing before another judge to "maintain an aura of impartiality" where Judge Halleck had ruled "prematurely", "repeatedly interrupted the questioning of the witness with comments and leading questions calculated to put words in the mouth of the officer", "lost sight of the need for a detailed and objective factual inquiry", and revealed "a disposition to find against the Government under any circumstances")

8. United States v. Yates, 279 A.2d 516 (1971) (reversing Judge Halleck's pretrial order suppressing evidence and finding that (1) he resorted to an "obvious ploy" to restrict appellate review, (2) his questioning of witnesses "suggests a quest for testimonial basis to justify facts desired to be found", (3) his criticism of police tactics "reflected myopic hindsight or total confusion as to his function", and (4) his "demeaning public diatribe" against defense counsel "was totally out of place and unbecoming the dignity of bench and bar")

9. United States v. Oliver, 297 A.2d 778 (1972) (reversing Judge Halleck's dismissal for want of prosecution of a criminal case and ordering a new hearing before another judge, finding that Judge Halleck's "basis for dismissal was an erroneous view of

the law rejecting bail in cases of government appeals", and revealing "a continuing misunderstanding of prosecutorial authority" in a decision delivered in "an unnecessary, vain, and somewhat argumentative tone")

10. United States v. Farmer, 297 A.2d 783 (1972)(reversing Judge Halleck's order suppressing evidence, noting his "repeated references to (1) what he himself believes to be the general practice of the police ...[and](2) the facts of other cases than the one pending before him", and admonishing Judge Halleck that "evidence, not 'personal views', must undergird an order if it is to be valid")

11. United States v. Miller, 298 A.2d 34 (1972)(reversing Judge Halleck's order suppressing evidence, finding that "this trial court judge has again permitted his personal reactions to the manner in which a search warrant is executed to cloud his thinking and decision", and concluding that the "trial judge's intervention in the proceedings below, to the point of saturation, regrettably indicates an apparent prejudgment of both credibility and facts where certain law enforcement activities are concerned")

12. United States v. Mack, 298 A.2d 509 (1972)(reversing Judge Halleck's dismissal of a criminal case for lack of speedy trial where the defendant asserted no speedy trial claim and the court made no findings that a speedy trial had been denied, the Court of Appeals concluding that (1) Judge Halleck refused to allow the prosecutor to be heard, (2)failed to exercise the "delicate judgment" and "sensitive balancing process" called for in his ruling, and (3) usurped the prosecutive function by claiming that since the defendant was detained on another charge "the citizens of the District of Columbia aren't losing much"--a matter, said the Court of Appeals, "for the prosecutor to determine, not the court")

13. United States v. Cummings, 301 A.2d 229 (1975)(reversing five different cases in which Judge Halleck had ordered dismissals for want of prosecution, holding "arbitrary and unreasonable" Judge Halleck's dismissal order in one of the cases where, after six defense continuances on dates when the pregnant complaining witness appeared, she was ill and failed to appear on the seventh date, and finding, inter alia, that Judge Halleck relied on "irrelevant consideration[s]" in interfering with the decision of "whether an offense should be prosecuted")

14. United States v. Moses, 339 A.2d 46 (1975) (reversing Judge Halleck's dismissal of a soliciting prostitution charge, finding that 65% of the statements and questions in the trial transcript were made or propounded by the trial judge and

concluding that the record did not support the trial judge's finding which "relied upon its own observations as providing the evidentiary basis for most of the conclusions in its opinion")

D. Transcripts of hearings and trials presided over by Judge Halleck.

1. United States v. Poole, No. 7717-75, March 11, 1975 (Judge Halleck accepted a plea of guilty without asking defendant any questions required by Rules of Criminal Procedure and Supreme Court decisions to protect his rights (Tr.34) and, without a presentence report, illegally imposed a Youth Act sentence though informed the defendant was statutorily ineligible. His response: "Do you want to mandamus me?" (Tr. 34))

2. United States v. Kay Ballard et al, (No number), March 11, 1975 (Judge Halleck, contrary to controlling appellate precedent and ABA Standards, publicly announced fine to be imposed for plea of guilty to certain offenses, regardless of circumstances of particular offense and defendant's prior record. (Attached is Memorandum demonstrating Judge Halleck's implementation of his announcement.))

3. United States v. Bridges, Nos. US 74834, 74836-71, January 3, 1972 (Before disposition of pretrial motion to suppress, Judge Halleck coerced prosecution to decide whether to waive its right to jury trial upon pain of contempt ("Did you bring some money with you?") (Tr. 4-7), and gave defense counsel a choice whether to have motion granted --with the result that the government would appeal--or motion denied with "case over and done with now?" Defense chose denial of motion, and Judge Halleck found the defendant not guilty. (Tr. 42-48))

4. United States v. Lomax, No. 23861-69A, August 19, 1969 (Where the defendant was charged with attempted procurring, during his cross-examination in a jury trial (Tr. 27-43), Judge Halleck humiliated him and made the trial a mockery, asking wholly unrelated questions concerning the defendant's care of his wife and children, the location of prostitutes and why it had moved, and a Pancake House that had nothing to do with the offense charged.)

5. United States v. Settles, et al., No. 1854-72, July 30, 1973 (Remand following appellate court reversal of Judge Halleck in United States v. Cummings, (See C.13 above). Judge Halleck granted motion to dismiss for want of speedy trial, criticizing the government for appealing his dismissals and the Court of Appeals for "footdragging" and writing an opinion that looked like it was written by a law clerk in the prosecutor's office or that his "15 year-old son could have written in two hours" (Tr. 8, 17-20, 23, 33-39, 51-52, 63-64).

6. United States v. Gethers, No. 43007-72, October 25, 1972 (During mental competency hearing of defendant, Judge Halleck harangued

prosecutor about maintaining dossier of transcripts on him and attempted intimidation of judges by U. S. Attorney's Office where the Justice Department and the President nominates judges. (Tr. 102-105, see also 65, 68-69))

7. United States v. Seegers, No. 36161-69, November 25, 1969 (Judge Halleck claimed District's federal judges "either unwillling or unable to perform" (Tr. 6), criticized Attorney General for prosecuting unrelated offense, dismissed charge and told prosecutor to "take that up to the Court of Appeals or send it down to 10th and Pennsylvania Avenue." (Tr. 10-11))

8. United States v. Paradis, No. 3717-75, March 26, 1975 (Judge Halleck suggested a defendant take Youth Act Sentence in place of his motion to dismiss since he has no chance of prevailing against "Nixon stacked D.C. Court of Appeals" (Tr. 5-6). He further accused prosecution of May Day tactics (Tr. 19-21), described his own protest activities (Tr. 22), claimed the Court of Appeals took a "personal slam" against him, and called a particular decision "ridiculous", "bizzare", "absurd" (Tr. 24-25). He said the court in it's opinion worked "typical ploys" and entered a "Mickey Mouse judgment order" (Tr. 34-35); and he challenged the appellate court's intelligence and integrity (Tr. 35-36), and expressed a desire to be U. S. Attorney. (Tr. 30))

9. United States v. Munn, No. 29263-73, February 7,1975 (Judge Halleck ordered a presentence study for a defendant under the Narcotic Addict Rehabilitation Act though the defendant was clearly ineligible (Tr. 13). When he learned the study was delayed because the prosecution might challenge the order in the Court of Appeals, Judge Halleck threatened the prosecutor with contempt and jail (Tr. 4, 20), suggested the prosecutor read Psalm 119 (Tr.8), claimed certain judicial functions "sure as hell aren't subject to review by prosecutor," (Tr. 9-10), and insisted on a "Yes" or "No" answer from a prosecutor to his question on pain of contempt. (Tr. 12))

10. United States v. (A Number of Defendants), December 18, 1969 (Judge Halleck, in front of a jury, said he would not put a premium on trying cases "that the District Court is either too lazy, too inefficient, or the case is too lousy to try over there." (Tr. 9-11). He expressed his intention to take long lunch hours and quit early and take vacations in California like District Court judges (Tr. 15-16, 20). When his authority to continue a case was challenged under the Court Rules, Judge Halleck threatened contempt- "You will do it by stepping back behind that door ." (Tr. 18))

11. United States v. McCloud, et al., No. 66653-74, October 25, 1974 (Judge Halleck preempted a case set already by another judge at 9:30 a.m. by requiring defense counsel in that case to be present in his courtroom at 9:00 a.m. without notice to the

other judge (Tr. 4, 11). To avoid delay caused by defense counsel's schedule, he threatened to set defendant's bond at $25,000 (Tr. 11))

12. United States v. Hazel, No. 77619-74, January 31, 1974 (In the non-jury trial of a male defendant for sexually soliciting a female police officer, Judge Halleck interrogated a male Assistant U. S. Attorney about whether he had ever been solicited and about his personal reactions (Tr. 23-25). When asked for an opportunity to have the Court of Appeals resolve the legal issue, Judge Halleck stated the court had its opportunity in a specific case and did not. "They sent it back here with some little one-liner that didn't amount to anything." (Tr. 26))

13. United States v. Wray, No. 89765-74, January 31, 1975 (Judge Halleck, commenting on the work habits of other judges, stated: "You can go out ... and fire a cannon through the judge's parking lot at 3:30 in the afternoon and catch two cars every day, and that's all ... mine and [one other judge]." (Tr. 9). He also accused the United States Attorney's Office of charging "the rest of that trash that comes through here. 3,000 cases last year of that garbage, ..." (Tr. 14))

14. United States v. Ray, No. 36706-70, October 30, 1970 (When a defense attorney advised Judge Halleck that he would not be able to be in court to try a case on Saturday, because of his religious persuasion, Judge Halleck stated, "Then, you will be in the dungeon on Sunday." (Tr. 5))

15. United States v. Moore, No. 78807-74, December 9, 1974 (Judge Halleck on a Monday denied a joint motion for continuance of a felony trial he had set on the previous Friday. He held both counsel in contempt, (Tr. 31), attacking the motives of the prosecutor (Tr. 29) and the competency of defense counsel (Tr. 39-41, 71, 88, 90, 93-94, 115-117, 124, 126). He complained that contempt citations are not sustained by the Court of Appeals because its judges "didn't recognize the problems we have here. And either don't have the experience or the know how to deal with it." (Tr. 129.))

THE WHITE HOUSE
WASHINGTON

10.9.75

TO: Ken Lazarus

For Your Information: ✓

For Appropriate Handling: _____

Ltr to Doug Bennet

Robert D. Linder

October 6, 1975

The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D. C. 20500

Dear Mr. President:

I am writing this letter to urge the reappointment of Judge Charles W. Halleck to the position of Associate Judge of the Superior Court of the District of Columbia.

I followed, with some interest, the press accounts of the proceedings before the District of Columbia Commission on Judicial Disabilities and Tenure concerning Judge Halleck's renomination and am aware that their recommendation leaves the decision of his renomination to the President. Based on my personal knowledge of his judicial abilities, I recommend that Judge Halleck be reappointed to the bench.

Judge Halleck was first appointed to the bench in 1965, the year I began practicing law in the District as a criminal defense counsel. I first appeared before him during that year, and continued to do so for the next seven years as an Assistant U. S. Attorney for the District of Columbia. In addition to appearing in his courtroom, I had many dealings with Judge Halleck while exercising my supervisory responsibilities as Deputy Chief and Chief of the Superior Court Division of the U. S. Attorney's Office. I have found the Judge to be bright, industrious, innovative and worthy of his profession.

It seems that the major complaint of his detractors is that he lacks judicial temperament and injects himself too much into proceedings before him. Perhaps that is so, but his motives for doing so are good. I would suggest that if he has a fault it is that <u>he cares too much</u>.

In short, his record and my professional experiences with him indicate that he is an asset to the bench and our system of justice.

I urge his reappointment.

Very truly yours,

Charles R. Work
Deputy Administrator
for Administration

Halleck, Judge Charles

THE WHITE HOUSE

WASHINGTON

October 8, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Judge Charles Halleck/D. C. Superior Court Appointment

This is to present certain background information and available options relative to your consideration of the possible nomination of Judge Charles Halleck for reappointment to a fifteen-year term on the Superior Court of the District of Columbia.

## Background

On September 19, 1975, the D. C. Commission on Judicial Disabilities and Tenure reported to you that they found Judge Halleck to be "qualified" for reappointment. Only in instances where a sitting judge is found to be merely "qualified" do Presidential options arise. These are discussed below.

The controlling statute (the so-called "Home Rule Act") anticipates that you will reach a decision on your available options within a period of thirty days from the date of receipt of the report of the Tenure Commission. However, you are under no legal compulsion to act within this time frame and Judge Halleck will continue to serve until a successor is confirmed and appointed.

In the event you choose not to renominate Judge Halleck, the D. C. Judicial Nomination Commission [an entity independent from the Tenure Commission noted above] will present a slate of three candidates from which you will select a nominee to fill the vacancy.

## Available Options

There are three options available to you to resolve this matter:

1. submit to the Senate for advise and consent the renomination of Judge Halleck;

2. reject Judge Halleck and so advise the Judicial Nomination Commission; or

3. express no opinion on Judge Halleck and advise the Judicial Nomination Commission of your desire that he be considered for recommendation for appointment along with other candidates.

The last option noted above is not expressly provided by the "Home Rule Act". Indeed, as a matter of law, even if you were to reject a "qualified" candidate for reappointment, the Judicial Nomination Commission would not technically be barred from including his name in the slate of three candidates from which you would fill the vacancy. It is a viable alternative, however, in that it would likely ensure some consideration of the individual by the Judicial Nomination Commission while the second option would likely preclude any consideration.

## Discussion

The arguments in support of the three options which are identified above may be summarized as follows:

1. Renominate Judge Halleck.

   a. The Tenure Commission concluded that, " . . . in spite of the substantial negative aspects of Judge Halleck's performance, his strong positive attributes lead us to determine that he is qualified for reappointment."

   b. It is generally conceded that Judge Halleck is bright and innovative and, during his ten years on the bench, has been efficient in moving his caseload.

   c. Judge Halleck is supported by the predominantly black Washington Bar Association, the Legal Aid Society, the Public Defender Service and the two local newspapers.

d. Judge Halleck has also become something of a symbol of justice to certain liberal elements of the political community in Washington.

2. Reject Judge Halleck.

a. The Tenure Commission found that Judge Halleck frequently violated various Canons of the Code of Judicial Conduct by: (i) disparaging fellow members of the D. C. judiciary; (ii) subjecting litigants, both prosecution and defense, to harassment and ridicule; (iii) interfering with the orderly conduct of trials; and (iv) inquiring into the personal and sexual conduct of witnesses appearing before him.

b. A 1974 investigation conducted by the Department of Justice revealed that Judge Halleck made an open display of affection in the court house toward a prostitute on trial before him and engaged in promiscuous behavior in his chambers.

c. The reappointment of Judge Halleck could raise morale problems within the Department of Justice. A recent survey of the Assistant U. S. Attorneys Association shows that approximately 80% of the Departmental attorneys who have appeared before him consider him unfit for reappointment.

d. Every active and retired judge on the D. C. Court of Appeals has joined in at least one opinion condemning Judge Halleck's improper conduct. Ten different judges have authored such opinions.

3. Refer Judge Halleck's Name to the Nomination Commission.

a. This position would further the concept of "home rule" in that it would maximize local control over judges appointed prior to the 1973 Act.

b. It would likely result in the removal of Judge Halleck while removing you from the center of the political controversy.

(i) It is unlikely that the Nomination Commission will include Judge Halleck's name in the slate of candidates to be referred to you.

(ii) Even assuming that Judge Halleck's name will be included in the slate, he will likely pale in comparison to the other candidates.

c. As to sitting judges appointed prior to the 1973 Act, you could be consistent in following this policy. Harry Alexander is the only other D. C. judge who is likely to receive a "qualified" rating. His term expires next year and his reappointment will raise similar political problems.

Action

Although you are not under any legal time constraints, I would recommend you reach a decision on this matter prior to October 20, the date on which Judge Halleck's term expires.

| Options | Approval |
|---|---|
| 1. Nominate Judge Halleck | _____ |
| 2. Reject Judge Halleck | _____ |
| 3. Refer to Nomination Commission | _____ |

DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE
717 MADISON PLACE, N. W. (ROOM 212)
WASHINGTON, D. C. 20005

TELEPHONE: (202) 628-1255



October 9, 1975

The Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Buchen:

At its meeting of October 8, 1975 the District of Columbia Commission on Judicial Disabilities and Tenure considered the question raised by you as to the availability of material submitted to the Commission concerning Judge Halleck.

The Commission is of the view that such material should be made available to the President of the United States or his authorized representative, if requested, trusting that confidentiality as to source may be maintained.

Please advise in the event any such information is required.

Sincerely,

Henry A. Berliner, Jr.
Chairman

Thursday 10/9/75

6:20 Henry Berliner asked me to give you the following message:

"I am sending to Mr. Buchen a letter from the Commission, and I wanted to have him know what it said. The Commission took up the matter as to what availability we should make of the data we have on Judge Halleck and the Commission is of the unanimous view that if the President or his representative want any of the data that we have on Judge Halleck, we are going to turn it over to them.

Short story: If there is anything you want that we have in our files with respect to Judge Halleck, we would be glad to turn it over to them.

My secretary will know where she can get hold of me if it is important. I will be going out of town and will be back in the office on Tuesday."

Halleck, Judge

DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE
717 MADISON PLACE, N. W. (ROOM 212)
WASHINGTON, D. C. 20005

TELEPHONE: (202) 628-1255



October 9, 1975

The Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Buchen:

At its meeting of October 8, 1975 the District of Columbia Commission on Judicial Disabilities and Tenure considered the question raised by you as to the availability of material submitted to the Commission concerning Judge Halleck.

The Commission is of the view that such material should be made available to the President of the United States or his authorized representative, if requested, trusting that confidentiality as to source may be maintained.

Please advise in the event any such information is required.

Sincerely,

Henry A. Berliner, Jr.
Chairman

THE WHITE HOUSE

WASHINGTON

Halleck
Judge

October 10, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: PHILIP W. BUCHEN

FROM: JAMES E. CONNOR JEC

SUBJECT: Judge Charles Halleck/ D. C. Superior Court Appointment

The President has reviewed your memorandum of October 8 on the above subject and has approved the renomination of Judge Halleck on the Superior Court of the District of Columbia.

cc: Don Rumsfeld
Douglas Bennett

ber 9, 1975

MEMORANDUM FOR: DOUG BENNETT

FROM: JACK MARSH

I am cognizant of some of the factors in addition to those stated that agrue for the re-appointment of Judge Halleck; however, the objections set out under item 2 as to why this appointment should not be made cause me to recommend the third choice which is referring his name to the Nominating Committee.

In light of his conduct in the first ten years of service, I do not see how much better can be expected once he knows he has a 15 year appointment.

The Alexander case should not be ignored. It may well be that the President may wish to follow the same procedure of selection by a Nominating Committee on the Alexander case, but this may be more difficult if Halleck is re-appointed.

JOM/dl

Halleck, Judge

Tuesday 9/23/75

4:50 Checked with Mr. Buchen about returning Mrs. Fornum's call; he said to tell her that he cannot accept verbal statements about Judge Halleck and would prefer that she write a letter. 338-3969

Mrs. Fornum had requested the Commission to send her a copy of the letter she sent them; when she gets that, she will send it to Mr. Buchen.

Thursday 10/9/75 Judge Halleck

6:20 Henry Berliner asked me to give you the following message:

"I am sending to Mr. Buchen a letter from the Commission, and I wanted to have him know what it said. The Commission took up the matter as to what availability we should make of the data we have on Judge Halleck and the Commission is of the unanimous view that if the President or his representative want any of the data that we have on Judge Halleck, we are going to turn it over to them.

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THE WHITE HOUSE

WASHINGTON

November 26, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: BOBBIE GREENE KILBERG

SUBJECT: Judge Halleck Nomination

I received a phone call today from Rudy Giuliani, an aide to Deputy Attorney General Tyler. Tyler wanted us to be aware of the fact that Senator Eagleton plans to call one and possibly two Assistant U.S. Attorneys from the District at his hearings on Halleck's nomination on Wednesday, December 3. Giuliani only knew the name of one of the witnesses, Harry Greene who presently is Executive Assistant to Earl Silbert and evidently retains the title of Assistant U.S. Attorney. Both Greene and the other individual had submitted negative position papers on Halleck to the Commission on Judicial Disabilities and Tenure.

According to Giuliani, Tyler believes the two Assistant U.S. Attorneys should be permitted to testify, and he simply wants you to be aware of the pending testimony. I told Giuliani that you would be in touch with Tyler if you wished to discuss the questions further.

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

THE WHITE HOUSE

WASHINGTON

October 22, 1976

MEMORANDUM FOR: PHIL BUCHEN ✓
DOUG BENNETT

FROM: BARRY ROTH BR

SUBJECT: Judge Charles Halleck

Attached is a copy of the letter to the President from the District of Columbia Judicial Nomination Commission requesting that the President communicate to the Commission his intentions with respect to Judge Halleck. I do not believe that a recess appointment is an option since Halleck can clearly continue to serve until a successor is appointed. The Justice Department, the Corporation Counsel's office, and Nomination Commission Chairman Duncan have informally advised me that no vacancy exists unless the President elects not to renominate Halleck.

Accordingly, will you please advise how you wish to proceed in this regard. As I indicated to you previously, if the President intends to resubmit Halleck's nomination, we should contact Senator McClellan before we respond to the Commission's letter or send the nomination to the Hill.

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DISTRICT OF COLUMBIA
JUDICIAL NOMINATION COMMISSION

2935 Upton Street, N.W.
Washington, D. C. 20008

October 20, 1976

The President of the United States
The White House
Washington, D. C.

Attention: Barry Roth, Esquire

Dear Mr. President:

As you know, the last session of Congress adjourned on October 2, 1976 without taking final action on your nomination of Judge Charles Halleck to a fifteen-year term as an Associate Judge of the Superior Court of the District of Columbia. The members of the D. C. Judicial Nomination Commission are uncertain as to the action they should take, if any, under this circumstance. It can be argued that a "vacancy" within the meaning of Sec. 431(a) et seq., P.L. 93-198 (December 24, 1973), the relevant statute, exists as of the date of the adjournment of Congress. It is also a plausible view that no vacancy exists because no final action has been taken in the process which the statute sets forth for reappointment of sitting judges.

In order to avoid possible embarrassment to you, Judge Halleck, and the D. C. Judicial Nomination Commission, it would be helpful if you could communicate to the Commission your intention with respect to Judge Halleck. It seems that at least three options are available: a declaration by you of intention to renominate Judge Halleck when Congress reconvenes; the making of a recess appointment of Judge Halleck; and a declaration by you of a vacancy, in the sense that you do not intend to renominate him. Under the first two options, the Nomination Commission would, of course, take no action; under the third, it would submit three names to you within thirty days of the declaration of vacancy.

In making this request, the Commission expresses no preference with respect to the course of action which you may elect to take. Indeed, the Commission in no sense wishes to interfere with your option to reappoint Judge Halleck or to presume that there is a vacancy when one may not exist. The sole concern of the Commission is that it discharge its statutory obligation when appropriate and in a timely fashion.

Thank you for your consideration of this matter, and please let me know if I can supply additional information.

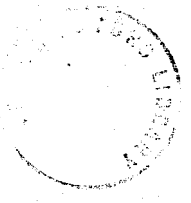
Respectfully yours,

Charles T. Duncan

Charles T. Duncan
Chairman

Members:

Frederick B. Abramson
Clifford L. Alexander
Judge Oliver Gasch
John W. Hechinger
Willie L. Leftwich
William Lucy



1 Page — The Washington Post — 10/22/76 Date

# Controversy Slows Filling Of Judgeship

By Eugene L. Meyer and Stephen Green
Washington Post Staff Writers

The reappointment of Harold H. Greene to continue

have Greene, who is white, replaced by a black judge.

The theory behind this, according to sources, is that foes of Newman believe the citizens nominating panel wants a black judge to head one court and a white judge to head the other.

Several members of the D.C. judicial nominating sources confirmed yesterday that no decision has yet been made on whether Greene should be reappointed chief judge. Critics of Greene outside the commission have characterized him as a brilliant judge

stead, panel members have admitted, new forces are at work.

Charles T. Duncan, commission chairman, told a D.C. Council budget committee recently that partisan politics is not a factor but racial and sexual balancing is. "Yes, we deal with politics in that context," he said.

Another commission member said yesterday that Duncan's remarks were directed at the composition of the courts and not at who should be their chief judges. He and another commissioner said race has not been discussed in the current selection proc-

THE WHITE HOUSE

WASHINGTON

October 18, 1976

MEMORANDUM FOR: PHIL BUCHEN
DOUG BENNETT

FROM: BARRY ROTH BR

SUBJECT: Status of Judge Halleck

Charles Duncan, Chairman of the D.C. Judicial Nominations Commission, called me today to indicate that the Commission has spent several meetings discussing the status of the nomination of Judge Halleck. All nominations not considered by the Senate were returned to the White House at adjournment.

The members of the Commission elected not to declare a vacancy in Judge Halleck's seat at this time. They also rejected a proposal that they send the President a letter listing three candidates to succeed Halleck in the event the President determines there is a vacancy. Instead, the Commission will send the President a letter asking how he plans to proceed, i.e., will he resubmit Judge Halleck's nomination when the 95th Congress convenes.

Both Duncan and I feel that failure of the Senate to confirm Halleck did not create a vacancy. I am also seeking OLC's opinion on this issue. In the meantime, we can assume the President will have the choice of resubmitting Judge Halleck's nomination or indicating that he wishes to select someone else. If the former option is chosen, Jack Marsh and/or Phil Buchen should request Senator McClellan to remove his "hold" on the nomination.

I will continue to keep you advised.

Wednesday, Oct. 27, 1976 THE WASHINGTON POST

# Halleck Takes Bench Fight to Court

By Eugene L. Meyer
and Timothy S. Robinson
Washington Post Staff Writers

Judge Charles W. Halleck, his future on the D.C. Superior Court in serious doubt, went to U.S. court yesterday in an effort to keep his judicial

Clellan told him the date of the pending proceeding, "a fact then presumably known only to (Halleck) and to members and/or employees of the commission." The hearing date was not reported in the Post story.

The disciplinary action involved three incidents, two of them previ-