

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
James Ivan Cohn  
Jimmy Cohn
2. Address: List current place of residence and office address(es).  
(R) Fort Lauderdale, Florida  
(O) Broward County Courthouse  
201 S. E. 6th Street, Room 5760  
Fort Lauderdale, Florida 33301
3. Date and place of birth.  
December 23, 1948, Montgomery, Alabama
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
Married  
Kathleen Komlossy Cohn, Housewife
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
Samford University, Cumberland School of Law  
1971 - 1974  
J.D., 5/25/74  
University of Alabama  
1967 - 1971  
B.S., Commerce and Business Administration, 5/13/71
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were

connected as an officer, director, partner, proprietor, or employee since graduation from college.

1995 - Present  
State of Florida  
Circuit Judge 17th Judicial Circuit  
Fort Lauderdale, Florida

1979 - 1995  
Private Practice  
Fort Lauderdale, Florida

1978 - 1979  
Michael G. Widoff, P.A.  
Fort Lauderdale, Florida

1975 - 1978  
Broward County State Attorney's Office  
Fort Lauderdale, Florida

1975  
Broward County Public Defender's Office  
Fort Lauderdale, Florida

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Alabama Army National Guard (1970-1972)  
U. S. Army Reserves (1972-1975)  
Florida Army National Guard (1975-1976)  
E-4  
Selective Service Number 1-44-48-261  
Social Security Number 424-60-1907  
Honorable Discharge

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

High School Valedictorian, Member of National Honor Society, and AV rating from Martindale-Hubbell

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

Alabama State Bar  
Florida State Bar  
Broward County Bar Association  
National Association of District Attorneys  
Association of Trial Lawyers of America  
Board of Governor's Young Lawyer's Section, Florida Bar  
Academy of Florida Trial Lawyers  
Conference of Circuit Judges  
Criminal Rules Committee  
American Judicature Society  
B'nai B'rith Justice Lodge  
Grievance Committee, 17th Judicial Circuit  
American Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

Exceptional Student Education Advisory Council  
(children with special needs)

Please list all other organizations to which you belong.

University of Alabama Alumni Association  
Temple Bat Yam of East Ft. Lauderdale

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

State Courts of Alabama (Alabama State Bar - 1974)  
State Courts of Florida (Florida Bar - 1974)  
U.S. Court of Appeals, Fifth Circuit (1975)  
U.S. District Court, Southern District of Florida (1976)  
U.S. Supreme Court (1980)  
U.S. Court of Appeals, Eleventh Circuit (1981)

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Lectured at various schools throughout county on "Career Day"

Keynote speaker at B'nai B'rith Justice Lodge Installation Brunch - 1999

Participated as a moderator in Broward County Bar Association, Bench-Bar conference, topic, jury selection - 2001

Speech to Pine Crest High School on importance of integrity - 2002

There is no written text for any of the foregoing speeches. All were extemporaneous.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent  
March 21, 2003

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Appointed Circuit Judge of 17th Judicial Circuit, June, 1995. Elected Circuit Judge of 17th Judicial Circuit, July, 1996, and again in May, 2002. Circuit Court has jurisdiction over all criminal felonies, civil matters involving damages which exceed \$15,000.00, probate, domestic relations, Juvenile and dependency.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

- (1) (i) Sentencing Order, Death Penalty, dated May 16, 1997.  
State v. Blackwood, Case No. 95-1473CF10A. (copy attached)  
 Affirmed by Florida Supreme Court, 777 So. 2d 399 (Fla. 2000).
- (ii) Sentencing Order, Death Penalty, dated March 19, 1999.  
State v. Rimmer, Case No. 98-12089CF10B. (copy attached)  
 Affirmed by Florida Supreme Court, 825 So. 2d 304 (Fla. 2002).
- (iii) Opinion written as an associate appellate judge in  
Community Christian Center Ministries, Inc. V. Plante,  
 719 So. 2d 368 (Fla. 4th DCA 1998). (copy attached)
- (iv) Opinion written as as associate appellate judge in  
State v. Graham, 721 So. 2d 361 (Fla. 4th DCA 1998).  
 (copy attached)
- (v) Order Denying Defendant's Second Amended Motion to Vacate  
 Judgment of Conviction and Sentence, Death Penalty, dated  
 May 25, 2001. State v. Armstrong, Case No. 90-5417CF10B.  
 (copy attached)
- (vi) Order Denying Defendant's Motion to Suppress Physical  
 Evidence, dated October 3, 1997.  
State v. Ruiz, Case No. 97-7797CF10B. (copy attached)  
 Affirmed, 831 So. 2d 199 (Fla. 4th DCA 2002)
- (vii) Order Re: Admissibility of Child Hearsay, dated June 9, 1998.  
State v. Ingrassia, Case No. 97-14712CF10A. (copy attached)  
 Affirmed, 747 So. 2d 445 (Fla. 4th DCA 1999)
- (viii) Order Denying Post Conviction Relief, dated January 29, 2001.  
State v. MannoJini, Case No. 96-7938CF10A. (copy attached)  
 Affirmed, 819 So. 2d 786 (Fla. 4th DCA 2002)
- (ix) Order Denying Motion to Suppress Physical Evidence, dated  
 December 28, 1995. State v. Morris, Case No. 95-14627CF.  
 (copy attached) Affirmed, 681 So. 2d 292 (Fla. 4th DCA 1996)
- (x) Order Denying Defendant's Motion to Declare Florida Statute  
 775.051 Unconstitutional, dated April 13, 2000.

State v. Brawley, Case No. 99-18204CF10A. (copy attached)  
 Affirmed, 815 So. 2d 789 (Fla. 4th DCA 2002)

- (2) In reference to reversals, I have categorized errors as follows: sentencing errors, errors in summary denial of post conviction claims, evidentiary errors, and miscellaneous errors. It should be noted that I presided over in excess of 750 felony jury trials in slightly less than eight years. For the past five years, I have been assigned only repeat offender cases. Florida has enacted statutes creating various repeat offender sentencing designations. Sentencing designations are dependant upon a defendant's criminal history and last date of release from prison. Some designations require mandatory minimum sentences, and all designations subject the defendant to enhanced penalties. This is an area of Florida law that is constantly changing and is being tested in the appellate courts. The five district courts of appeal have disagreed with respect to their interpretations of these laws. In many instances certain dual designations and sentences were found by the district court of appeal violative of constitutional double jeopardy prohibitions only to be reinstated by the Florida Supreme Court. This would be reflected as two reversals when in actuality the Supreme Court found no trial court error. In addition, in 2000, the Florida Supreme Court sustained a constitutional challenge to the 1995 sentencing guidelines based on a violation of the single subject rule. This necessitated the reversal and resentencing of numerous cases.

Sentencing Errors (Conviction Affirmed - Remand for Resentencing only)

Brady v. State, 2003 WL 729036 (Fla. App. 4 Dist.)  
Brooks v. State, 2003 WL 355412 (Fla. App. 4 Dist.)  
Rivera v. State, 837 So. 2d 569 (Fla. 4th DCA 2003)  
Ross v. State, 831 So. 2d 817 (Fla. 4th DCA 2002)  
Eugene v. State, 828 So. 2d 1055 (Fla. 4th DCA 2002)  
Inman v. State, 824 So. 2d 218 (Fla. 4th DCA 2002)  
Cadet v. State, 816 So. 2d 1202 (Fla. 4th DCA 2002)  
Salters v. State, 802 So. 2d 501 (Fla. 4th DCA 2002)  
Oberst v. State, 796 So. 2d 1263 (Fla. 4th DCA 2001)  
Anderson v. State, 792 So. 2d 679 (Fla. 4th DCA 2001)  
Roberts v. State, 793 So. 2d 133 (Fla. 4th DCA 2001)  
Thomason v. State, 790 So. 2d 1189 (Fla. 4th DCA 2001)  
Johnson v. State, 789 So. 2d 1235 (Fla. 4th DCA 2001)  
Wright v. State, 782 So. 2d 1007 (Fla. 4th DCA 2001)  
Brown v. State, 784 So. 2d 527 (Fla. 4th DCA 2001)  
Henderson v. State, 780 So. 2d 319 (Fla. 4th DCA 2001)  
Underwood v. State, 780 So. 2d 320 (Fla. 4th DCA 2001)

Willis v. State, 782 So. 2d 445 (Fla. 4th DCA 2001)  
Martin v. State, 777 So. 2d 461 (Fla. 4th DCA 2001)  
Simeon v. State, 778 So. 2d 455 (Fla. 4th DCA 2001)  
James v. State, 778 So. 2d 457 (Fla. 4th DCA 2001)  
Bromwell v. State, 777 So. 2d 438 (Fla. 4th DCA 2001)  
Weire v. State, 776 So. 2d 1088 (Fla. 4th DCA 2001)  
Green v. State, 776 So. 2d 993 (Fla. 4th DCA 2001)  
Watson v. State, 774 So. 2d 902 (Fla. 4th DCA 2001)  
Yehowshua v. State, 773 So. 2d 654 (Fla. 4th DCA 2000)  
Joseph v. State, 771 So. 2d 1293 (Fla. 4th DCA 2000)  
Gatto v. State, 768 So. 2d 1169 (Fla. 4th DCA 2000)  
Willis v. State, 769 So. 2d 1072 (Fla. 4th DCA 2000)  
Braham v. State, 766 So. 2d 297 (Fla. 4th DCA 2000)  
Jones v. State, 765 So. 2d 942 (Fla. 4th DCA 2000)  
Lewis v. State, 764 So. 2d 874 (Fla. 4th DCA 2000)  
Johnson v. State, 765 So. 2d 773 (Fla. 4th DCA 2000)  
Corinthian v. State, 761 So. 2d 1180 (Fla. 4th DCA 2000)  
Mendez v. State, 761 So. 2d 438 (Fla. 4th DCA 2000)  
Robinson v. State, 757 So. 2d 1267 (Fla. 4th DCA 2000)  
Collins v. State, 754 So. 2d 140 (Fla. 4th DCA 2000)  
McFadden v. State, 775 So. 2d 965 (Fla. 4th DCA 2000)  
Oliveira v. State, 751 So. 2d 611 (Fla. 4th DCA 2000)  
Powell v. State, 719 So. 2d 963 (Fla. 4th DCA 1998)  
Thompson v. State, 707 So. 2d 1191 (Fla. 4th DCA 1998)  
Noel v. State, 705 So. 2d 648 (Fla. 4th DCA 1998)  
Miller v. State, 744 So. 2d 460 (Fla. 4th DCA 1997)  
Forbes v. State, 681 So. 2d 911 (Fla. 4th DCA 1996)

Almost all repeat offender defendants file motions for post conviction relief irrespective of whether their case was tried before a jury or they entered a plea. The vast majority of these motions are summarily denied because the record reflects no entitlement. Most motions allege ineffective assistance of counsel as a basis for relief. The district court of appeal has found this to be a fertile area for reversals finding that almost any unresolved factual issues would require an evidentiary hearing.

Post Conviction Motions - Summary Denials Reversed for Evidentiary Hearing

Kijewski v. State, 831 So. 2d 757 (Fla. 4th DCA 2002)  
English v. State, 830 So. 2d 240 (Fla. 4th DCA 2002)  
Harris v. State, 829 So. 2d 381 (Fla. 4th DCA 2002)  
Jackson v. State, 831 So. 2d 722 (Fla. 4th DCA 2002)  
Heard v. State, 824 So. 2d 965 (Fla. 4th DCA 2002)

Griggs v. State, 821 So. 2d 1139 (Fla. 4th DCA 2002)  
Wilson v. State, 812 So. 2d 591 (Fla. 4th DCA 2002)  
Ford v. State, 814 So. 2d 1121 (Fla. 4th DCA 2002)  
Cameron v. State, 807 So. 2d 744 (Fla. 4th DCA 2002)  
 (2 cases, same issue)  
Thornton v. State, 809 So. 2d 37 (Fla. 4th DCA 2002)  
Lacy v. State, 805 So. 2d 72 (Fla. 4th DCA 2002)  
Harris v. State, 804 So. 2d 457 (Fla. 4th DCA 2001)  
Louis v. State, 797 So. 2d 1281 (Fla. 4th DCA 2001)  
Boyd v. State, 801 So. 2d 116 (Fla. 4th DCA 2001)  
Williams v. State, 789 So. 2d 1112 (Fla. 4th DCA, 2001)  
Hoyt v. State, 785 So. 2d 672 (Fla. 4th DCA 2001)  
Daniels v. State, 777 So. 2d 1133 (Fla. 4th DCA 2001)  
Brown v. State, 777 So. 2d 1131 (Fla. 4th DCA 2001)  
Mannolini v. State, 760 So. 2d 1014 (Fla. 4th DCA 2001)  
Stringer v. State, 757 So. 2d 1226 (Fla. 4th DCA 2001)  
Thomas v. State, 745 So. 2d 468 (Fla. 4th DCA 1999)  
Griggs v. State, 744 So. 2d 1145 (Fla. 4th DCA 1999)  
Debonis v. State, 712 So. 2d 844 (Fla. 4th DCA 1998)  
Wilkey v. State, 712 So. 2d 847 (Fla. 4th DCA 1998)

#### Evidentiary Errors

Kimbrough v. State, 2003 WL 1027760 (Fla. App. 4 Dist.)  
 Insufficient predicate for admission of statement as  
 a past recollection recorded.

Smith v. State, 837 So. 2d 567 (Fla. 4th DCA 2003)  
 Hearsay evidence alone can not constitute basis for  
 a finding of violation of probation.

Palmer v. State, 739 So. 2d 644 (Fla. 4th DCA 1999)  
 Response to jury question could have been construed  
 as a comment on defendant's failure to present evidence.

McDougle v. State, 828 So. 2d 454 (Fla. 4th DCA 2002)  
 Taped statement should have been suppressed based on  
 appeal's court finding that the defendant was in custody  
 for purposes of Miranda.

Alfaro v. State, 837 So. 2d 429 (Fla. 4th DCA 2002)  
 Improper exclusion of non-hearsay statement that a  
 passenger told a witness that he owned van which was  
 subject of alleged theft.

Kiner v. State, 824 So. 2d 271 (Fla. 4th DCA 2002)

Detective's comment that the defendant after giving oral statement refused to go on tape until provided with a lawyer was an improper comment on defendant's right to remain silent.

Gilbert v. State, 817 So. 2d 980 (Fla. 4th DCA 2002)

Evidence was insufficient to prove market value of stolen property exceeded \$300 thus precluding a grand theft conviction.

Johnson v. State, 808 So. 2d 1276 (Fla. 4th DCA 2002)

Hearsay alone is insufficient to violate defendant's probation.

Otero v. State, 807 So. 2d 666 (Fla. 4th DCA 2002)

Convictions for armed robbery, extortion and false imprisonment were affirmed. Conviction for burglary was reversed due to insufficiency of the evidence as defendant was a business invitee when he entered the structure.

Brown v. State, 787 So. 2d 136 (Fla. 4th DCA 2002)

The trial court's curative instruction to disregard evidence of the witness' prior convictions was insufficient to overcome the prejudice to the defendant.

Roberts v. State, 778 So. 2d 512 (Fla. 4th DCA, 2001)

Use of a single photograph of defendant to refresh eye-witness recollection was impermissibly suggestive. In addition, the probative value of photograph of defendant's girlfriend lying in a hospital bed after a beating was outweighed by substantial prejudice of showing her battered condition.

Brown v. State, 764 So. 2d 741 (Fla. 4th DCA 2000)

State presented insufficient evidence to prove the "knowledge" element of the crime of felony driving with a suspended license. Driving record alone fails to show knowledge.

McTelus v. State, 762 So. 2d 940 (Fla. 4th DCA 2000)

Admitting undercover officer's unresponsive, prejudicial

hearsay testimony that crime reporting service received numerous alerts about the defendant constituted reversible error.

Felton v. State, 753 So. 2d 640 (Fla. 4th DCA 2000)

Uncorroborated anonymous tip that the defendant had a gun did not give rise to reasonable suspicion to conduct investigatory stop. Motion to suppress should have been granted.

Shores v. State, 756 So. 2d 114 (Fla. 4th DCA 2000)

Presence of defendant's fingerprints on box of ammunition in drawer that was ransacked by burglar was insufficient to support a conviction.

Hogan v. State, 753 So. 2d 570 (Fla. 4th DCA 1999)

State should not have been permitted to comment on the failure of the defendant to produce a witness when there was no evidence of a "special relationship" between the witness and the defendant.

White v. State, 734 So. 2d 484 (Fla. 4th DCA 1999)

Defendant's motion for mistrial should have been granted in prosecution for possession of drug paraphernalia after the officer testified that during surveillance of defendant's home, immediately prior to execution of the search warrant, he observed a narcotics transaction. This created an inference that the defendant was guilty of other crimes for which he had not been charged.

Span v. State, 732 So. 2d 1196 (Fla. 4th DCA 1999)

Evidence was insufficient to support conviction for trafficking in cocaine and possession of marijuana. State failed to make prima facie showing of constructive possession.

Arroyo v. State, 705 So. 2d 54 (Fla. 4th DCA 1997)

Evidence insufficient to support conviction for interference with a minor. Presence of the defendant without evidence of assistance or encouragement in the commission of the crime are insufficient as a matter of law.

Brown v. State, 684 So. 2d 265 (Fla. 4th DCA 1996)

Evidence was insufficient to support finding that the defendant violated his community control by committing loitering and prowling. State witnesses were unable to point to specific and

articulable facts to warrant the conclusion that either breach of peace or threat to the public safety was imminent.

Miscellaneous Errors

Graham v. Jenne, 837 So. 2d 554 (Fla. 4th DCA 2003)

Writ of habeas corpus issued where court found improper involuntary commitment of incompetent defendant.

Piccioni v. State, 833 So. 2d 247 (Fla. 4th DCA 2002)

Failure to instruct on lesser included offense of trespass.

Giles v. State, 831 So. 2d 1263 (Fla. 4th DCA 2002)

Instruction on forcible felony was misleading and therefore prejudiced defendant's right to fair trial.

Partlow v. State, 813 So. 2d 999 (Fla. 4th DCA 2002)

State v. Partlow, 28 Fla. L. Weekly S148 (Fla. Feb. 20, 2003)

Sexual offender registration is a collateral consequence of plea and defendant need not be informed of same in plea colloquy. Supreme Court of Florida agreed with my interpretation and reversed the district court of appeal.

Gary v. State, 806 So. 2d 582 (Fla. 4th DCA 2002)

Failure to give Chicone instruction stating that guilty knowledge was an essential element of the crime and that the state was required to prove that the defendant knew of the illicit nature of the substance was not harmless error even though the defense was that the defendant never had the drugs.

Robinson v. State, 804 So. 2d 451 (Fla. 4th DCA 2001)

Designation of defendant as a "sexual predator" did not bear a relationship to the purpose of the sexual predator classification statute.

Otero v. State, 793 So. 2d 1115 (Fla. 4th DCA 2001)

Record did not reflect that the trial court had subject matter jurisdiction to revoke alleged probation in light of the fact that the order of probation had been lost.

Davis v. State, 778 So. 2d 1096 (Fla. 4th DCA 2001)

Trial court was premature, without conducting a juror interview, in concluding the juror's nondisclosure of his altercation with the defendant did not warrant a new trial.

Simeon v. State, 778 So. 2d 455 (Fla. 4th DCA 2001)

Enhancement of sentence for petit theft to a first-degree misdemeanor based on prior conviction for grand theft was improper since the prior theft was not alleged in the information.

Stokes v. State, 773 So. 2d 1236 (Fla. 4th DCA 2001)

Aggravated Assault is not necessarily a lesser included offense of Aggravated Battery. There must be an allegation in the information that the defendant placed the victim in fear. There was no such allegation in Stokes. Therefore, the conviction for aggravated assault is reversed. The armed burglary conviction, a life felony, was affirmed.

Gaschler v. State, 804 So. 2d 333 (Fla. 4th DCA 2002)

Net weight of hydrocodone as opposed to gross weight of pills must be used in determining whether aggregate amount exceeds the minimum for trafficking. Conviction for Trafficking in Oxycodone was affirmed.

Dejarosa v. State, 757 So. 2d 1284 (Fla. 4th DCA 2000)

Conflict of interest was presented by virtue of defense counsel having information bearing on the voluntariness of the defendant's confession. Trial court failed to inquire about conflict and seek waiver from the defendant.

Rosen v. State, 757 So. 2d 1236 (Fla. 4th DCA 2000)

The defendant was convicted of first-degree organized fraud. The trial court found that the crime charged was subject to application of the "continuing offense doctrine" and thereby tolled the statute of limitations. The district court of appeal disagreed finding that each predicate criminal act was separated in time and unrelated to one another, therefore the doctrine did not apply and the statute ran.

State v. Viatical Services, Inc., 741 So. 2d 560 (Fla. 4th DCA 1999)

Writ of Certiorari issued and trial court was directed to issue search warrant in accordance with the conditions set forth in the opinion. The trial court had conducted an adversary hearing and had limited the scope of the search warrant to files where fraud had been found. The concern being the confidentiality of records pertaining to primarily aids patients who had purchased viaticals. The district court of appeal agreed to the extent that the insured's medical records would be sealed until a post-seizure hearing could be held on the issue of privacy.

Brown v. State, 733 So. 2d 1128 (Fla. 4th DCA 1999)

State's striking of black juror was reversible error where white juror made similar comments regarding police being racially biased and was not stricken.

Kilgore v. State, 736 So. 2d 87 (Fla. 4th DCA 1999)

Revocation of probation reversed where Alabama conviction used as basis to violate defendant's probation was appealed and defendant entitled under Alabama law to a trial de novo.

Jenkins v. State, 732 So. 2d 1185 (Fla. 4th DCA 1999)

Defendant was entitled to an evidentiary hearing on his motion for new trial and a jury interview to determine whether, at time of trial, the defendant had knowledge of his wife's conduct in the presence of the jury venire. The wife allegedly yelled at the defendant in the venire's presence accusing the defendant of an extramarital affair. The defendant did not move to strike the panel or inquire of the venire at that time. The trial court ruled the defendant waived his right to object on this ground.

Thomason v. State, 732 So. 2d 1122 (Fla. 4th DCA 1999)

Evidentiary hearing required on motion to withdraw plea due to allegations made by the defendant against his attorney.

Miller v. State, 723 So. 2d 353 (Fla. 4th DCA 1999)

Error to instruct the jury that the defendant raising the defense of entrapment must prove by a preponderance of the evidence that his criminal conduct occurred as a result of the entrapment.

Hebb v. State, 714 So. 2d 639 (Fla. 4th DCA 1998)

It was error to revoke defendant's probation when term of

probation had expired at the time of sentencing.

State v. Smith, 697 So. 2d 889 (Fla. 4th DCA 1997)

Notice to one governmental agency of the State of Florida can not be imputed to another for purpose of the running of the statute of limitations.

Affirmance with Criticism

Blackwood v. State, 777 So. 2d 399 (Fla. 2000)

Justice Anstead, who concurred in part and dissented in part, wrote that the trial court conceded in its order that it could find no single aggravator cases involving comparable circumstances where the Florida Supreme Court has approved the imposition of the death penalty. Note, this was a strangulation death and the jury voted 9 to 3 for imposition of the death penalty. In this court's opinion, the aggravating factor outweighed the mitigating factors.

Miljan v. State, 764 So. 2d 860 (Fla. 4th DCA 2000)

Judge Shahood dissented. Attorney was held in contempt for engaging in an altercation with another attorney in the courthouse hallway in the presence of several people including a juror. Justice Shahood wrote that he would reverse the judgment because the evidence was insufficient to show the defendant had the requisite specific intent to hinder the court in its orderly administration of justice.

Rimmer v. State, 825 So. 2d 304 (Fla. 2002)

Justice Pariente, in her dissent, found the trial court's admission of a detective's testimony regarding his visual acuity with and without glasses to rebut the defense's expert testimony that the defendant wore eyeglasses and without them he would be considered legally blind to be erroneous. She found the testimony irrelevant and the error in its admission was exacerbated by the fact that the rebuttal testimony was provided by a police officer.

- (3) Although many decisions made by me address both federal and state constitutional issues, there have been no significant appellate opinions regarding these issues.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

17. Legal Career:

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

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

NO

2. whether you practiced alone, and if so, the addresses and dates;

YES

1983 - 1995  
315 Southeast Eleventh Street  
Fort Lauderdale, Florida 33316

1979 - 1983  
315 Southeast Seventh Street  
2nd Floor  
Fort Lauderdale, Florida 33316

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1/75 - 7/75  
Broward Public Defender  
Asst. Public Defender  
201 S. E. 6th Street  
Fort Lauderdale, Florida 33301

8/75 - 3/78  
Broward State Attorney

Asst. State Attorney  
201 S. E. 6th Street  
Fort Lauderdale, Florida 33301

6/95 - Present  
State of Florida  
Circuit Judge  
201 S. E. 6th Street  
Fort Lauderdale, Florida 333301

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

General trial practice with emphasis in criminal law through 1983. Subsequently, emphasis shifted to personal injury and medical negligence.

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

Typical clients were injured in an accident or as a result of a professional's negligence, charged with a crime or had marital problems.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Regularly

2. What percentage of these appearances was in:  
(a) federal courts;  
(b) state courts of record;  
(c) other courts.

Federal Courts 2%  
State Courts of Record 96%  
Other Courts 2%

3. What percentage of your litigation was:  
(a) civil;

(b) criminal.

Civil 75% (1985-1995)  
25% (prior to 1985)

Criminal 25% (1985-1995)  
75% (prior to 1985)

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

125 - always sole counsel  
in cases tried

5. What percentage of these trials was:  
(a) jury;  
(b) non-jury.

Jury 80%  
Non-Jury 20%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;  
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and  
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- (i) State v. Endicott - 79-5867CF  
Fla. 17th Circuit - Judge Coker - 2/80  
Represented defendant charged with first Degree murder. Jury returned verdict of not guilty by reason of insanity. It was reported to be the first such verdict in Broward County in over 15 years. Sole counsel for defendant. State represented by Mark Springer, 201 S. E. 6th Street,

Fort Lauderdale, Fl. 33301, (954) 831-6955  
Shows diverse experience.

- (ii) Corts v. Novotny et al. 81-25203CZ  
Fla. 17th Circuit - Judge Weissing - 9/83  
Sole counsel for plaintiff. Automobile accident involving a defendant who was driving under the influence. Plaintiff suffered minor injuries. Jury awarded substantial sum in punitive damages in light of relatively minor injury sustained by the Plaintiff. Defendants represented by J. Lane Middleton, 9100 S. Dadeland Blvd., Suite 905, Miami, Fl 33156-7815 (305)670-1122 and Burton Burdick, 4367 N. Federal Highway, Suite 200, Ft. Lauderdale, Fl 33308-5213 (954) 493-8081. Shows diverse experience.
- (iii) State v. Chestnut 76-679CF  
Fla. 17th Circuit - Judge Futch - 9/76  
Prosecuted man for sexual battery of an elderly woman. Defendant was convicted on largely circumstantial evidence and sentenced to 75 years in prison. Sole counsel for State. Defendant represented by Robert Makemson, P.O. Box 746, Stuart, Fl.34995-0746 (561)288-5570. Shows diverse experience.
- (iv) Gardner v. Gardner - 86-23616  
Fla. 17th Circuit - Judge Fischer - 7/88  
Sole counsel for father who was awarded custody of his minor son. 545 So. 2d 239 (Fla. 4DCA 1989). Numerous experts testified providing opinions as to the best interests of the child. Mother represented by Hugh T. Maloney, 600 S. Andrews Avenue, Suite 600, Fort Lauderdale, Fl 33301 (954)522-1700. Shows diverse litigation experience.
- (v) State v. Thorne - 82-5225CF  
Fla. 17th Circuit - Judge Kaplan - 2/83  
Sole counsel for defendant charged with attempted first degree murder of a Hollywood police officer. The officer was stabbed by the defendant. Defendant asserted self defense. Jury found defendant not guilty. State represented by Carl Weinberg, 746 Mamaroneck Avenue, Apt. 1205, Mamaroneck, N.Y.

10543-1987, (914)946-0400 Shows experience and versatility as a trial lawyer.

- (vi) State v. Wigley - 83-7088CF  
 Fla. 17th Circuit - Judge Kaplan - 5/84  
 Sole counsel for defendant charged with first degree murder in the rape, strangulation killing of a motorist who experienced car problems on the turnpike. Defendant was convicted as charged, but jury recommended by vote of 12 to 0 that life sentence be imposed. Judge followed jury's recommendation. State represented by Robert Carney, 201 S.E. 6th Street, Room 1010A, Fort Lauderdale, Fl 33301 (954)831-7642. Shows experience and versatility.
- (vii) U.S. v. Haughey - 79-6069-CR-NCR  
 U.S. District Court, Southern District  
 Judge Roettger - 6/80  
 Sole counsel for defendant charged with conspiracy to distribute, possession with intent to distribute and distribution of Cocaine. Defendant was convicted as charged. Opposition - Bruce Zimet, 1 Financial Plaza, Suite 2612, Ft. Lauderdale, Fl 33394-0026 (954)764-7081. Shows experience and versatility.
- (viii) State v. Mathis - 91-15898CF  
 Fla. 17th Circuit - Judge Streitfeld - 1/93  
 Sole counsel for defendant convicted of first degree murder arising from a robbery shooting of a bar patron. Jury recommended by a 12 to 0 vote that life sentence be imposed. Judge followed recommendation. State represented by Brian Cavanagh, 201 S.E. 6th Street, Ft. Lauderdale, Fl 33301 (954)831-7923. Shows experience and versatility.
- (ix) State v. Nelson - 77-1186CF  
 Fla. 17th Circuit - Judge Coker - 5/77  
 Prosecuted and convicted defendant of second degree murder. Sole assistant state attorney trying case. Reversed on judge's failure to instruct on excusable homicide. 371 So. 2d 706 (Fla. 4th DCA, 1979) Opponents were Bruce

Zimet, 1 Financial Plaza, Suite 2612, Ft. Lauderdale, Fl 33394-0026 (954) 764-7081 and Hilliard Moldof, 1311 S.E. 2nd Avenue, Ft. Lauderdale, Fl 33316-1809 (954)462-1005 Shows experience and versatility.

- (x) Estate of Charles Couch v. KAM Cars of America, Inc. - 93-911(07)  
Fla. 17th Circuit - Judge Luzzo - 10/93  
Sole counsel for estate and surviving parent of 14 year old bicyclist killed by a speeding motorist. Jury determined minor child to be comparatively negligent thus reducing award, however, judgment and other monies tendered prior to trial pursuant to high-low agreement provided adequate compensation to plaintiffs. Opponents - Kevin O'Connor and William Lemos, P.O. Box 149022, Coral Gables, Fl 33114-9022 Shows experience and versatility.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

- (i) Estate of Savarese v. Pearl M.D., et al.  
Palm Beach County - 1983  
Represented wife and children of decedent. Decedent collapsed in doctor's office following injections of steroids for back pain. Doctor provided substandard CPR resulting in decedent's death. Case settled.
- (ii) Estate of Bliss v. School Board of Broward County  
Broward County - 1985  
Represented parents of 8 year old boy who was struck and killed by school bus. This was a case of aggravated liability in light of gross negligence of bus driver and driver's poor prior driving record which School Board knew or should have known. Driver was not suitable to transport children. Case settled.
- (iii) Abelove v. Holmes Regional Medical Center, et al.  
Brevard County - 1989

Represented guardian of 13 year old girl who was moderately injured as a result of auto-pedestrian accident. Surgery for repair of ligament damage was uneventful. Subsequently, while still in hospital, child developed sepsis which went undiagnosed for three days. Child suffered ischemia and spiked 108 degree fever. Result, both legs amputated and severe brain damage. Case settled. Two other attorneys worked jointly with me on this case.

- (iv) Patti v. HBA Management, Inc., et al.  
Broward County - 1990  
Represented an elderly lady who was the victim of nursing home negligence. As a result, she fell and broke her hip and subsequently developed severe decubitus ulcers on her back and buttocks. Case settled.
- (v) Estate of Michael Garcia v. Kentucky Western Truck Lines  
Broward County - 1992  
Represented the children of decedent whose car was struck while parked under an overpass on Interstate 95. The decedent was killed instantly. His two minor children were living with his former wife in Pennsylvania at the time of death. Case settled.
- (vi) Member of the Criminal Rules Committee and Grievance Committee of Florida Bar for the 17th Judicial Circuit.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

The only anticipated receipt of income is rental income from Loughren & Doyle, P.A., a month to

month tenant, and Florida Retirement System Pension Plan.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I would recuse myself from any matter which presents a potential conflict. In addition, I would also recuse myself from any case in which a party was represented by my tenants, the tenant was a party to or the tenant had a stake in the outcome of the litigation. If I held stock in a company which was a party, I would recuse myself. I would follow the Code of Judicial Conduct.

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

No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Net Worth Statement

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Campaign Treasurer for State Attorney, Michael J. Satz, in election years 1980, 1984, 1988 and 1992.

## FINANCIAL STATEMENT

NET WORTH  
AS OF 5/06/03

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	3,827	0 0	Notes payable to banks-secured	0	0 0
U.S. Government securities-add schedule	0	0 0	Notes payable to banks-unsecured	0	0 0
Listed securities-add schedule	603,716	0 0	Notes payable to relatives	0	0 0
Unlisted securities-add schedule	0	0 0	Notes payable to others	0	0 0
Accounts and notes receivable:	0	0 0	Accounts and bills due	0	0 0
Due from relatives and friends	0	0 0	Unpaid income tax	0	0 0
Due from others			Other unpaid income and interest	0	0 0
Doubtful	12,938	0 0	Real estate mortgages payable-add schedule	60,000	0 0
Real estate owned-add schedule	1,099,000	0 0	Chattel mortgages and other liens payable	0	0 0
Real estate mortgages receivable	0	0 0	Other debts-itemize:	0	0 0
Autos and other personal property	45,000	0 0			
Cash value-life insurance	0	0 0			
Other assets itemize:					
Deferred Compensation	65,018	0 0			
Franklin - Denver	5,000	0 0			
Boston Financial Apts	390	0 0	Total liabilities	60,000	0 0
			Net Worth	1,774,889	0 0
Total Assets	1,834,889	0 0	Total liabilities and net worth	1,834,889	0 0

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As of 05/06/03

**Schedule of Listed Securities**

<b><u>Non-IRA</u></b> -	Applied Materials	\$ 60,320.
	EMC	19,420.
	Intel	57,060.
<b><u>IRA</u></b> -	Price Science & Technology	131,156.
	Vanguard 500 Index	92,534.
	Vanguard Capital Appreciation	188,181.
	Vanguard Value Index	55,045.

**Schedule of Real Estate**

Residence		
Fort Lauderdale, Florida	\$ 450,000.	
*Office Bldg.		
Fort Lauderdale, Florida	500,000.	
**Condominium		
Hollywood, Florida	149,000.	
*Gross rental income	\$ 38,160/yr.	

\*\*Parents live in condominium

Franklin-Denver & Boston Financial Apartments are partnerships  
in which the applicant is a limited partner

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	NO	Are any assets pledged? (Add schedule)	NO
On leases or contracts	NO	Are you defendant in any suits or legal actions?	NO
Legal Claims	NO	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	NO		
Other special debt	NO		

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As an attorney, I represented indigent individuals in both criminal and domestic relations cases on a pro bono basis periodically throughout my career.

In a non-legal capacity, I have been active in helping children with special needs through the Exceptional Student Education Advisory Council and serving on rating committees for summer programs for children with special needs.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes.

I was first interviewed by the Florida Federal Judicial Nominating Commission on July 11, 2001, and was selected as one of three finalists whose names would be advanced to the White House. I was first interviewed in the White House on July 27, 2001.

Following the announcement of a new vacancy, I was

next interviewed by the Florida Federal Judicial Nominating Commission on February 27, 2002, and was again selected as a finalist whose name would be advanced to the White House. Prior to being interviewed at the White House, the White House requested three additional names be submitted. I was interviewed at the White House on June 20, 2002.

A third vacancy was noticed in December, 2002. By virtue of a rule change, my name automatically advanced to the White House along with ten other finalists. I was interviewed for the third time at the White House on February 5, 2003. On March 14, 2003, I was notified by the White House of my selection to fill the newly created seat on the United States District Court for the Southern District of Florida. On May 1, 2003, I was nominated for the position.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem- solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our Constitution created three independent branches of government, each with separate powers. A recognition and strict adherence to the doctrine of separation of powers is essential to the orderly administration of governmental affairs. Judges should adjudicate only those issues presented without extending a ruling to matters not properly before them. In interpreting the law, a judge should first look to the plain meaning of the law. If that is not readily apparent, then a review of the legislative history may be necessary to ascertain the intent of the legislative body. A judge must uphold the doctrine of stare decisis and follow precedent.