THE MARSHALL CHRONICLES

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A Fond Farewell To Judge Squires

On December 31, 2011, the Honorable John H. Squires will retire from the bench after 24 distinguished years of service. His presence will be missed and we wish him all the best in his retirement and future endeavors. He will be of counsel to the firm of Springer, Brown, Covey, Gaertner and David LLC.

Judge John H. Squires was appointed as a Bankruptcy Judge for the Northern District of Illinois on January 1, 1988, for a 14-year term. He was reappointed on January 1, 2002, for an additional 14 years.

Judge Squires came to the bench from a private firm in the Springfield area – Brown, Hay and Stephens. During his time at Brown, Hay, Judge Squires served as a Chapter 7 panel trustee. Judge Squires obtained both his undergraduate and law degree from University of Illinois-Champaign Urbana. Judge Squires originally hails from Urbana. Judge Squires also served in the United States Air Force.

During his time on the bench in the Northern District of Illinois, Judge Squires presided over thousands of cases, from uncontested Chapter 7 matters to large complex Chapter 11 cases. Some notable cases included: National Steel Corp., filed in 2002, Midway Airlines, filed in 1991, CMGT, Inc. filed in 2004, Outboard Marine, filed in 2000, Equipment Acquisition Resources, Inc., filed in 2009, and Sentinel Management Group, Inc., filed in 2007.

Judge Squires authored a number of opinions on attorney's fees in both commercial and individual cases and his opinions carefully weigh the rights of the attorneys to be reasonably paid against the dilution of funds to be paid to creditors. Misleading or inaccurate schedules or disclosures were cause to disallow fees or order sanctions, but Judge Squires carefully crafted sanctions to be enough to deter future misconduct while not being excessive.

Having a large caseload necessitated attention to economy, and Judge Squires exhibited remarkable facility, focus and ease in keeping the cases moving forward. Regular participants of Judge Squires' Chapter 13 court calls were all familiar with his "three hearings" rule. Within those three hearings, Judge Squires would review the material facts, determine the applicable law and reach a well-reasoned, understandable and balanced decision.

This office will miss Judge Squires' interest, attention and consideration to the Chapter 13 call. We hope that he will enjoy "banging on his drums all day."

A. Stewart Chapman, Staff Attorney

A Judge Who CAREs

Judge Squires has been instrumental in encouraging other judges and attorneys to participate with him in the CARE (Credit Abuse Resistance Education) Program. The purpose of this program, which is now national in its scope, is to inform high school students and other members of the community as to the dangers of consumer credit and how its proper use can lessen the chance of bankruptcy.

While there are now many participants who contribute their time and expertise to this program, it appears unlikely that we would have had such a program but for Judge Squires' leadership in both introducing this program and keeping it on track these many years.

Bennett A. Kahn, Staff Attorney,
The Office of Tom Vaughn,
Chapter 13 Trustee

THE MARSHALL CHRONICLES

The Editorial Staff: Cheryl Jones, HVB and Dave Latz.

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Newsletter Information:

If you would like to contact us or submit ideas or articles for the newsletter, you can do so by:

- ✓ e-mailing us at newsletter@chi13.com,
- ✓ dropping your submission or idea in the anonymous newsletter folder located in the mail room, or
- ✓ leaving them with Dave Latz.

Please remember when making a submission to the newsletter, it must be:

- ✓ type-written and
- ✓ submitted by the third Wednesday of the month via e-mail, a Word document or an ASCII file.

We also ask that anyone who attends a seminar please be prepared to furnish the committee with a detailed article on its subject.

You may also view this edition of THE MARSHALL CHRONICLES, as well as all the previously published issues, all in full color, on the Chapter 13 Trustee website at http://www.chicago13.com/.

The Judge Matters

Judge Squires is one of four Judges assigned to hear our Chapter 13 cases. In the office it is common for us to refer to the Judges respectfully as "My Judge." I am extremely grateful for the training and direction given in court, which we value as legal professionals. I do not know if Judge Squires realized how much he was depended on to train and mentor my staff attorneys. Several of the attorneys have worked with in him in the CARE program and express the same admiration for his teaching and mentoring skills shown to young people, as well. Our office will miss him greatly and will always think of him as "my Judge,"

Marilyn O. Marshall, Standing Trustee,
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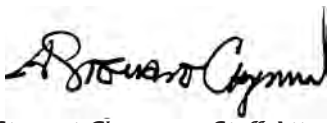

A. Stewart Chapman, Staff Attorney,
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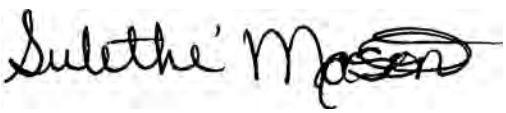

Suleth Mason, Paralegal,
Office of the Chapter 13 Trustee

Farewell to Judge Squires

We, the members of his staff, would like to thank Judge Squires for our years together, and we wish him the best in his retirement. We have enjoyed the many years working for him, and we will miss his congenial presence. He has always demonstrated thoughtfulness, kindness, politeness and respect in both Chambers and in his Courtroom. Judge Squires has treated each of us as an integral part of the Chambers team. We will miss his smile, gentle nature, and sense of humor. We feel blessed to have worked for him. He is simply the BEST.

Althea Askew, Linda Montano and Susan Pistorius


"I Just Wanna Bang on the Drums All Day"

Judge John H. Squires

Summaries Of Selected Opinions

In re Michael and Lynn Smith, 1992 WL 100818, 91 B 21904, April 27, 1992

The Court held that the plan was not proposed in good faith by failing to schedule the largest unsecured creditor who was involved in state court litigation with the debtor. However, dismissal was not necessary since the secured creditor had already modified its stay. The Court allowed time to file an amended plan to provide for the creditor. The Court set forth a review of the Seventh Circuit good faith decisions of Rimgale, Smith, Schaitz and Love.

In re Layton, 138 B.R. 219, 92 B 00929, Mar 17, 1992

The debtor had entered into a contract for the deed of real property instead of a mortgage. The seller of the real property had terminated the contract before the Chapter 13 case was filed. The Court held that the debtor could not reinstate her contract for deed and cure the arrears of that contract in the Chapter 13 case. The Court analogized the case to Chapter 11 cases where a lease had been terminated pre-petition or where a foreclosure sale had occurred.

In re Standfield, 153 B.R. 528, 93 B 00683, Mar 18, 1993

The Court held that the filing of a "simultaneous Chapter 20 case" where a Chapter 13 case was filed while a prior Chapter 7 case was still open was indicative of manipulation of the bankruptcy process. The mortgage lender had obtained relief from the automatic stay in their pending case and instead of appealing that order, filed a new bankruptcy case. Dismissal of the subsequent case with a bar to refiling was proper. The Court also imposed sanctions against the debtors and awarded the creditor their attorney's fees.

In re Clifford, 182 B.R. 229, 94 B 11425, May 25, 1995

The debtor's Chapter 13 bankruptcy was dismissed prior to the confirmation of her plan. The Illinois Dept. of Revenue served a notice of levy on the Trustee for the funds that the debtor has paid to the Trustee during the term of the case. The Court found that the tax levy did not relieve the Trustee of returning the funds under §1326(a)(2). The Court determined that the Ill. Dept. of Revenue had a valid lien against those funds, which could be pursued in state court.

In re Herrera, 194 B.R. 178, 96 B 02069, Mar 28, 1996

The Court held that the town's post-petition actions in obtaining a state court order requiring an inspection were not in violation of the automatic stay. The inspection was part of the exceptions to the automatic stay for exercise of the town's regulatory powers affecting health, welfare and safety. The case was also dismissed with a year bar to refiling for being filed not in good faith under the totality of the circumstances, as it was the fourth case filed within one year, did not list the largest secured creditor, there was no evidence of a change in circumstances, and the case was filed in order to frustrate the collection actions of the debtors' creditors. The debtor was also cautioned against the unauthorized practice of law by signing documents on behalf of the joint debtor.

In re Halko, 203 B.R. 668, 96 B 09796, Dec 31, 1996

A creditor moved to vacate the confirmation of the plan with new attorneys, stating that the prior attorneys did not have authority to enter into the settlement that resulted in the confirmation of an amended plan. The Court denied the motion and referred the matter to the U.S. attorney for investigation of the testimony of the creditor.

In re Johnson, 213 B.R. 552, 97 B 09972, Oct 21, 1997

The Court confirmed the Chapter 13 plan which provided for the bifurcation of the secured motor vehicle claim under §506(a) and provided for the release of the lien at the payment of the secured claim, not the discharge of the case. The lien was against the value of the collateral and after that amount was paid, the creditor could be required to release the lien.

In re Famisaran, 224 B.R. 886, 97 B 30285, Sept 28, 1998

The Court sustained the objections to the plan of the creditor and dismissed the case for cause. The Court imposed sanctions against the debtors for filing false and misleading schedules. After a hearing, the Court found that the debtors had transferred assets to their daughter and that the joint debtor had spent considerable sums gambling. "The Court will not condone nor excuse or overlook the filing of false, inaccurate and misleading Schedules." The income was materially misstated, transfers were omitted and line items on Schedule J were unsupported. These misstatements were for an improper purpose and sanctions were appropriate.

In re Loren Dunkley, Shearer v. Dunkley, 97 B 34514, 97 A 01793, May 21, 1998

The Court held that the debt owed to the ex-spouse of the debtor was non-dischargeable and modified the stay to allow the creditor to pursue collection on that debt. The debtor, in a prior Chapter 7 case, had entered into a consent judgment that determined the debt was not dischargeable in that prior Chapter 7 case or in any other subsequent bankruptcy cases. As the issue of dischargeability had not been litigated in the prior case, the Court held that the debtor was not collaterally estopped from supporting dischargeability of the debt in this case. However, judicial estoppel could prevent the debtor from asserting an inconsistent position in the prior case than in this case. The Court exercised its discretion and judicially estopped the debtor from taking "a second bite at the dischargeability apple."

In re Forkin, 1998 WL 838890, 98 B 03491, Nov 3, 1998

The Court held that the IRS' claim could be bifurcated into secured and unsecured portions under §506(a). The Court rejected the debtors' assertion that the entire claim was unsecured as that assertion was unsupported by authority.

In re Chapman, 223 B.R. 137, 98 B 04892, July 28, 1998

The debtor exempted a claim under the "personal bodily injury" exemption. The Court determined that the allegations in the lawsuit did not constitute "bodily injury" and sustained the Trustee's objection to that exemption.

In re Lane, Lane v. Lane, 1999 WL 423029, 98 B 32553, 99 A 00118, June 18, 1999

The Court imposed sanctions against the creditor's attorney by awarding the debtor his attorney's fees. The creditor had filed a procedurally incorrect adversary complaint under §727(a) instead of filing an objection to confirmation. "The entire legal theory of the complaint was wholly inapposite and inapplicable to a Chapter 13 case" and the debtor was entitled to recover his attorney's fees for defending against it.

In re Jackson, 1999 WL 703093, 98 B 15483, Sept 9, 1999

After the confirmation of their plan and after the passing of the claims bar date, the debtors filed a lawsuit in District Court against one of their creditors for alleged violations of the Fair Debt

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Judge John H. Squires

Summaries Of Selected Opinions

Collection Practices Act. The Court modified the stay in order to allow the creditor to file affirmative defenses, but did not allow modification of the stay in order to file a counterclaim. The counterclaim might "prejudice the debtor or impact her performance under the Plan."

In re Rudyard P. Stevens, Rudyard P. Stevens v. Homeside Lending, Inc. 98 B 15966, 00 A 01082, May 31, 2001

The Court ordered Homeside Lending, Inc., to return $2,547.67 to the debtor but denied the request for an accounting. A turnover action is "not intended as a remedy to determine disputed rights of parties, rather it is intended as the remedy to obtain what is acknowledged to be property of the bankruptcy estate." The Court found that the debtor had overpaid the mortgage lender for forced placed insurance during the Chapter 13 plan and required a refund to the debtor directly.

In re McNichols, 249 B.R. 160, 99 B 18035, May 25, 2000
In re McNichols, 254 B.R. 422, 99 B 18035, Oct 26, 2000
In re McNichols, 255 B.R. 857, 99 B 18035, Dec 14, 2000, rehearing denied
In re McNichols, 99 B 18035, Jan 11, 2001

Confirmation of the debtor's plan was denied as the debtor was not committing all of her disposable income to the plan. While the debtor's non-filing spouse could not be "forced to contribute his excess income…it is not sufficient for the purposes of the good faith plan requirement…for the debtor to reap the benefits" without increasing the payments to her unsecured creditors. The Court found that the "debtor was engaging in a flagrant manipulation of the disposable income requirement." The amended plan was also denied confirmation as also not being proposed in good faith. The Court then denied a motion for rehearing, and allowed additional attorney's fees for the debtor's attorney.

In re John and Helen Larios, 00 B 31483, March 22, 2001

The Court held that the debtors could bifurcate their home mortgage loan because the mortgage granted a security interest both in the debtors' residence and the personal property of the debtors' company. Therefore, the creditor was not protected by 11 U.S.C. §1322(b)(2) and its lien could be divided into both secured and unsecured portions.

In re Sebastian and Marcella Palladino, 01 B 00972, October 4, 2001

The Court allowed attorney's fees in an amount less than requested. The Court could determine what a reasonable amount of time an attorney should spend on a case. The Court held that certain charges should have been included in the flat fee agreed to by the parties. The Court "enforce[d] the ban on fee splitting" and did not allow for fees charged by other attorneys not addressed in the retainer agreement.

In re Leo Rasberry, 01 B 13281, July 10, 2001

Wages withheld pre-petition pursuant to a wage garnishment order are not property of the bankruptcy estate, but wages earned post petition and pre-confirmation are property of the estate and protected by the automatic stay. The debtor's employer requested that the Court provide the employer with direction as to what to do with funds withheld from the debtor's wages. The Court held that once a wage deduction order is entered, the debtor no longer has any interest in those withheld wages and they belong to the judgment creditor and the debtor cannot exempt or avoid the lien on those wages. After the petition date, those wages are property of the bankruptcy estate under §1306(a)(2).

In re Joyce Owens, 01 B 25898, November 27, 2001

The debtor was entitled to exempt her homestead interest in her property in Illinois even though she currently lived and worked in Louisiana. The debtor was temporarily in Louisiana caring for an ailing parent. Even though her absence from the state was indefinite, she had not abandoned her homestead because she intended to return to Illinois.

In re Richard and Carol Bare, 02 B 03767, November 12, 2002

The automatic stay was lifted to allow the IRS to apply the debtors' tax refund to the outstanding pre-petition tax debt. The Court held that "confirmation of a debtor's plan…does not extinguish prepetition setoff rights." Because the plan did not provide for payment in full of the priority tax claim, it was invalid in that respect and res judicata did not apply. *Note:* The version of the plan confirmed in this case was different in its treatment of unscheduled secured claims that the current Model Plan in use.

In re Donald P. Lasica, 02 B 09026, May 19, 2003

The Court disallowed portions of the debtor's attorney's fee. The Court is authorized "to assess the reasonable value of" attorney's fees under 11 U.S.C. §329(b). "If the court determines that the fees charged…are excessive…then it may cancel any compensation agreement." The debtor's confirmed plan did not provide for any payment of attorney's fees. The Court found that the confirmation of the plan bound all parties to its terms, including the debtor's attorney, and the plan provided for attorney's fees of zero. The amount of fees requested would also render the plan unfeasible. The "fees and expenses cannot be properly paid out of the post-confirmation estate at the expense of the other creditors."

In re Marlvin & Glairretta Drew, 02 B 49482, June 23, 2005
In Re Lawana Ashby-Fox, 03 B 09476, June 23, 2005

The Court granted the Trustee's motions to amend the plan in two consolidated motions based on lump sum cash payments received by the debtors as part of residential refinancing. The Court found that "the portions of the refinancing proceeds intended by the debtors to be paid to complete their confirmed plans [were] part of the bankruptcy estate" under §541 and §1306.

In re Kimberle Andreas, 03 B 39826
In re Irene Cegin, 04 B 37642

The Court found that the debtor's attorney received excessive and unauthorized fees that were ordered disgorged and returned to the debtors. The Court found the debtor's attorney in civil contempt of the Court's prior order limiting attorney's fees in each case. The Trustee was allowed attorney's fees and costs for bringing the §329 motion.

Finally, the Court referred the matter to the U.S. Attorney, to the Chief Judge of the Northern Dist. of Illinois and the ARDC.

The same attorney represented each debtor in separate Chapter 13 cases. Each debtor refinanced property during the pendency of the Chapter 13 case. In each refinancing statement, an additional fee to the debtor's attorney was included. In the Andreas case, the additional fee was $3,500. In the Cegin case, it was

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Judge John H. Squires

Summaries Of Selected Opinions

$5,262.21. The attorney did not request approval for these additional fees in either case. The Trustee received on the first page of each closing statement, while the fees paid to the attorney were contained on the second page of the document. This kept the additional fee hidden from the Trustee and the Court.

The Court held that the additional fees were "blatantly excessive for the work performed," and the attorney offered no justification for the additional fees. The Court held the attorney in civil contempt because the attorney had entered into a flat fee agreement of $2,700.00, and the order allowing her fees was limited to that amount.

In re Arguin, 04 B 40369

The debtors could not modify their plan post-confirmation under §1329 to surrender a vehicle and reclassify the debt secured by that vehicle from secured to unsecured status. The confirmation order fixed and determined the value of the secured claim, the debtors could not collaterally attack that value post petition.

In re Bivens, 04 B 2032

The Court determined that a 7% interest rate for a vehicle was appropriate given that the debtor had submitted to payroll control for her plan, that she was regularly employed, and the plan was otherwise feasible and could be confirmed.

In re Grant, 04 B 35827, May 24, 2010

The Court dismissed the debtor's case for the term of the plan, finding that "the decision to allow continued payments after five years is left to the Court's discretion." The Court declined to follow the line of cases which allowed, under certain factors, for a Chapter 13 case to run more than 60 months. The Court found the factors potentially allowed "Chapter 13 plans to run an unlimited duration." The Court followed the line of cases which required dismissal after 60 months if the case had not been completed.

In re Tewell, 06 B 06677, Oct 23, 2006

The Court ordered modification of the automatic stay based on the violation of the due on sale clause to a mortgage. The debtor had received the property via a quit claim deed and maintained payments on the original mortgage. After the mortgage lender commenced foreclosure proceedings, the debtor filed a Chapter 13 bankruptcy case. The Court held that the violation of the due on sale clause was cause to modify the stay under §362(d). The debtor's defenses of laches, estoppel and waiver were rejected by the Court.

In re Blanco, 06 B 13223, March 12, 2007

The debtor could not surrender property in full satisfaction of a creditor's claim. An unsecured deficiency claim would be allowed. The "hanging paragraph" of §1325(a)(9) prevents bifurcation of a vehicle claim purchased within 910 days of the filing of the bankruptcy case. The surrender does not dispose of that full claim. Once the vehicle was surrendered, the value of the creditor's claim would be determined by state law. In Illinois, a creditor is allowed to liquidate the asset and retains an unsecured claim for the deficiency.

In re Ross, 07 B 051388, Sept 13, 2007
Motion to reconsider granted, Oct 31, 2007

The Court confirmed a plan that paid creditors in full but failed to pay interest to those creditors when the debtor was an above the median debtor and did not pay his full disposable income into the plan or propose a 60 month plan. In an above the median income debtor, Schedule J does not determine the debtor's projected disposable income. The debtor was not required stay in the plan for 60 months if the creditors would be paid in full prior to that date. The debtor was not required to pay interest to unsecured creditors.

In re Gage, 07 B 06876, Sept 17, 2008

The Court found that while there were errors and omissions in the debtor's attorney's Rule 2016(b) statement, the attorney had already refunded all of the fees and additional sanctions were not warranted. According to the 2016(b) disclosure, the attorney accepted $3000 for services in contemplation of or in connection to the bankruptcy case. The Court found that the attorney was using a separate engagement letter to obtain fees in excess of the $3000 listed in the Rule 2016(b) disclosure. "Complete and accurate disclosure of all fees paid or agreed to be paid to a debtor's attorney in a case is central to the integrity and transparency of the bankruptcy process." However, the attorney had already returned all fees in the case and no further sanctions were warranted.

In re Kowalski, 08 B 02290, Mar 24, 2009

The Court sustained the objections to the attorney's fees and allowed only that which the attorney agreed to in his Rule 2016(b) statement. The Court also ordered the attorney to disgorge the post petition payment he received from the debtor as well as a $1000 sanction for his false and inaccurate Rule 2016(b) statement. The attorney alleged that his retention was on an hourly basis, not on a flat fee. However, the Rule 2016(b) statement inaccurately listed the fees received prior to the filing of the case and failed to state the hourly fee.

In re Mortakis, 08 B 14401, April 29, 2009

The debtor's attorney entered into a fee agreement that was not the Model Retention Agreement (as was in effect at that time). The Court held that the retainer paid by the debtor was a security retainer and not an advance payment retainer, which becomes the lawyer's property at the time it is paid.

In re Harrison, 08 B 14865, Oct 14, 2008

The Court held that the debtor may modify the interest rate paid to a secured creditor holding a motor vehicle lien less than 910 days old. "However, such modifications shall have no post-bankruptcy effect and any remaining amount due under the terms of the Contract shall be due pursuant to state contract law." The debtors were ineligible for a discharge in this case, having obtained a Chapter 7 discharge less than 4 years before. The debtors have the power to modify the rights of a secured creditor under §1322(b)(2), regardless of whether they will receive a discharge in the case. However, after the term of the plan is over, the debtor will still be liable for the unpaid balance of the claim.

In re Trimarchi, 09 B 30547

The Court held that the marital adjustment deduction on line 19 of the debtor's B22C Means Test form were improper. The debtor deducted housing and utilities on her Means Test form according to the local and national standards. The debtor also deducted the mortgage and pool expenses paid by her non-filing spouse for the house that the debtor lived in. The Court held that the standard deduction was proper, but the marital deduction for the non-filing spouse's mortgage payment and pool expenses were household expenses not allowed under the deduction.

Famous Bankruptcies

Test your knowledge with this quiz on famous people who declared bankruptcy.

1. He was born in Abbott, Texas, in 1933 and has become one of the most famous country singers in the USA. He had a $16.7 million IRS debt in 1990.
2. She was an Olympic Gold winner in figure skating who even had a hair style named for her. In 2004 she filed for bankruptcy protection.
3. When individuals file for bankruptcy in the USA, they file under this section of the Bankruptcy Code.

   ❏ Chapter 19 ❏ Chapter 7 ❏ Chapter 11 ❏ Chapter 13
4. This very popular actor, born in Michigan in 1936, attended Florida State University on a football scholarship. Who is this former stuntman who had a debt of $10,000,000 in 1996?
5. Although he never filed for bankruptcy, this very smart and very great American President left a $107,000 debt for his heirs.

   ❏ Thomas Jefferson ❏ George Washington

   ❏ Woodrow Wilson ❏ Abraham Lincoln
6. This blond beauty, born in Athens, Georgia, in 1953, made millions as a movie star but went bankrupt due, in part, to her purchase of the entire town of Baselton, Georgia.

   ❏ Kim Bassinger ❏ Carole Lombard

   ❏ Kay Douglas ❏ Stella Stevens

7. She was an actress famous for her role in "Moulin Rouge." She is even more famous for her marriages, her sisters, and for being arrested for battery. Who is this actress who was forced into bankruptcy in 1994?

   ❏ Lil Kim ❏ Magda Gabor ❏ Zsa Zsa Gabor ❏ Eva Gabor
8. She was a very popular singer with many corporate sponsorships. Her open antagonism to homosexuals led to the loss of these sponsorships and singing success.

   ❏ Anita Bryant

   ❏ Vanessa Williams

   ❏ Cyndi Lauper

   ❏ Amy Winehouse
9. This man (along with his half-brother) tried to corner the world's silver market. His failure led to his bankruptcy.

   ❏ William C. Durant ❏ George Bannister

   ❏ Sam Walton ❏ Nelson Bunker Hunt
10. All of these great athletes declared bankruptcy: Billy Sims, Leon Spinks, Lawrence Taylor, Johnny Unitas, Sheryl Swoopes. ❏ True ❏ False

The Answers:

1. Willie Nelson.
2. Dorothy Hamill.
3. Chapter 13.
4. Burt Reynolds.
5. Thomas Jefferson.
6. Kim Bassinger.
7. Zsa Zsa Gabor.
8. Anita Bryant.
9. Nelson Bunker Hunt.
10. True.