

## 1984/Madam Cassandra - 2011 notes

(The pages after this are a pamphlet that I wrote about the song at the time, in 1984. The song is two pages below.)

This song (performed but once!) marked my jug band entree in 1984 (with a masked Marcia, Richard Gibson on guitar and kazoo, and maybe Algis on accordion) in 1984.

If I may say so myself, it would seem I have a natural talent for representing the mentally precarious. Come to think of it, I was simply being myself, since every line *literally* represents an actual occurrence in my examination by Dr. Cassandra T. Brothers.

The exam was ordered at the request of the Bank of America, after I sued them for wrongful termination in violation of public policy, and defamation. I was fired for refusing to agree that a certain expense was not a waste. The public policy complaint was dismissed on the ground that it did not violate public policy for a bank to fire an professional expert for refusing to tell a lie about a multimillion dollar waste - a computer parameter setting that resulted in the bank's vast computers spending 25% of their time in spurious cycles. In the entire US legal system (yes, I took it to the US Supreme Court), one justice alone thought the question - whether it violated public policy for a bank officer to be fired for refusing to lie re millions of dollars -- deserved a hearing. Rose Bird. We know what happened to her.

That left the defamation claim. My job reference was one sentence: "His separation was involuntary and his work was unsatisfactory." Three years after I was fired I discovered that my recommendation re waste had in fact been exactly followed two weeks after I was fired. Ultimately the case was peremptorily dismissed two weeks before trial, without any finding of fact or reason of law ("defendant's motion for summary judgment is granted in full") -- and then I had sanctions of \$400 awarded against me when I dared to ask the court for a reason why it was dismissed.

I digress. To continue with the song. "Psychometry." The judge ordered me to submit to 'psychometric testing,' which I had objected to on the grounds I didn't know what it was. The bank's attorney said he didn't know either, the judge said he didn't know, but that whatever it was, I had to submit to it.

"Your pen put down." The judge had denied my request for a tape recorder, and ordered me to submit to *whatever* Cassandra asked of me. She searched me to make sure I hadn't disobeyed the order by secreting a tape recorder--so much for rapport. So I began to take notes..."What did your parents fight over?" was about the first question. Then she ordered me to put down my pen. She said my taking notes would interfere with rapport. She, of course, took full notes, which only the Bank of America's attorney was allowed to see, it being a work product.

"Heads false, tails true," refers to her allowing me to answer (MMPI) questions by the toss of coin, because I deemed yes/no responses absolutely equal, but was compelled to say yes or no...resulting in a computer print-out, which she said was valid because it said it was valid--without reporting my allowed coin tossing. Besides concluding that I hated my mum precisely because I consistently said she was the best mum in the world, the computer said I had no sense of humor, which I still gives me the giggles. I would have had a line about that, only I didn't have the diagnosis at the time I wrote the song.

This recording is what I actually submitted to her as a prompt response to her post-examination questionnaire.

Believe it or not, the examination turned out to be but the beginning of the legal abuse...I'll skip the interim threats of revealing private matters at trial if I didn't settle, and so on. It ultimately ended with the highest courts of appeal declaring they did not have the jurisdiction to correct even an admittedly fabricated reason for dismissing my appeal against the order that myself I pay \$23,000 for the 12-hour exam (an automatically disallowed cost, since it was the bank's expert witness). During the 12 hours, Madam was present only half time, double-billing other clients, etc. My wages were garnished for years... The fabricated reason for dismissing the appeal was that I had "voluntarily abandoned the appeal"...which not even the bank had dared dream up, in fully answering my appeal brief.

P.S.

I now take pathetic pride in being the only person (I'll bet) who has ever sued the federal regulatory agency (the OCC, which no ordinary mortal had heard of before this financial crisis), for failing to regulate the Bank of America. That was in the early 1980s. FYI, anti-establishment cognoscenti (e.g. Alex Cockburn) now recognize that a singularly stupid 1978 Supreme Court decision (*Marquette*) favoring the OCC's non-regulation of national banks removed a lynchpin that set the dominoes falling, right down to the present crisis. Marquette set aside all state usury (=predatory lending) laws, without replacing them with any federal equivalent.

P.S.S. Oh, I shouldn't omit the fact that Cassandra was a stunning blonde whose tight red dress rode a couple of inches above her knees, as she sat in a low leather couch, facing me, in her Knob Hill hotel suite.



1984

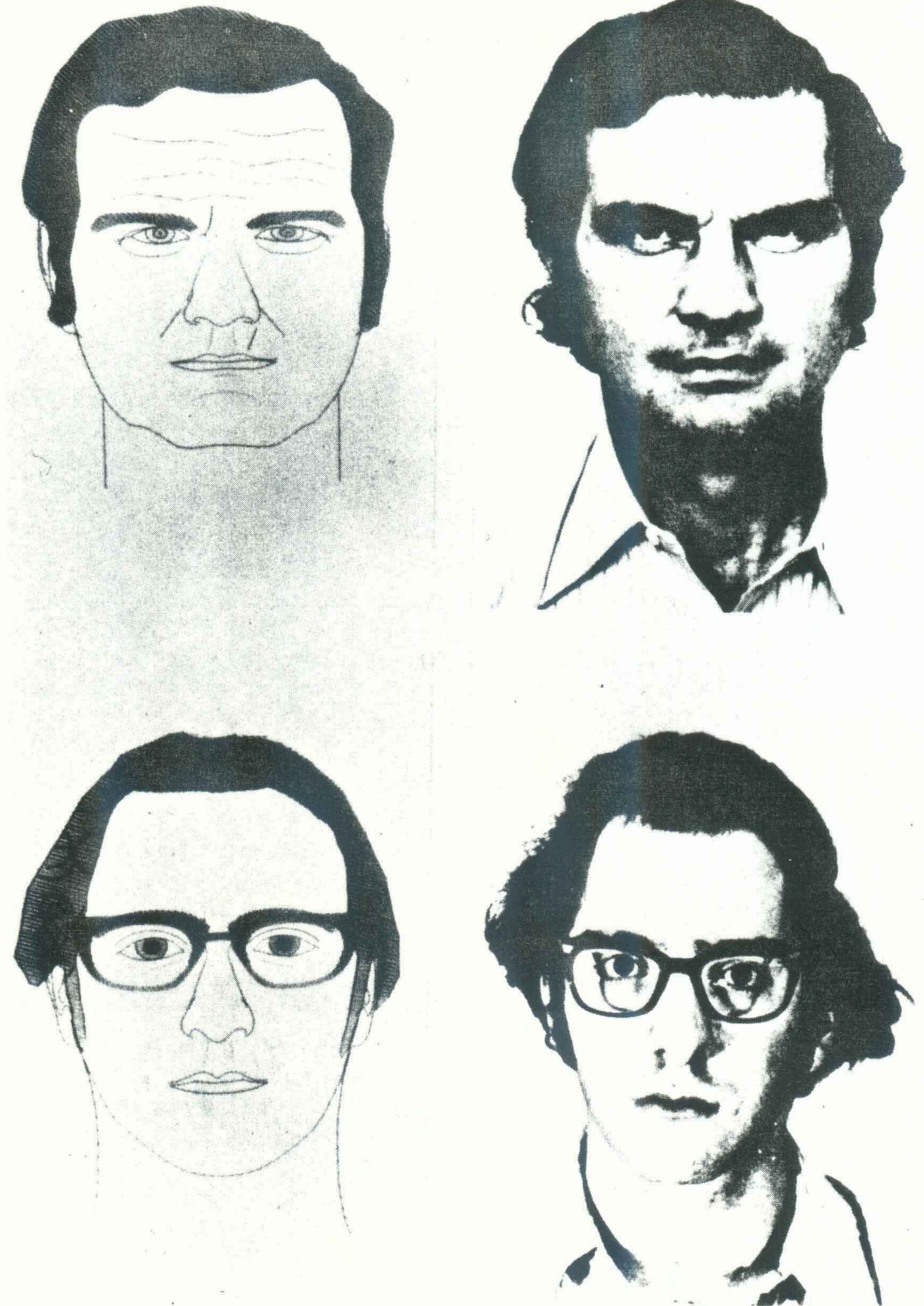


Fig. 3.4 Two faces constructed by assembling patterns



# 1984 / Madam Cassandra

Tune: Lillie Marlene

Regular text = the accused

*Italic* = Madam Cassandra, court-appointed shrink

\* =bell @ =spank + =chuckle % =belch

Madam Cassandra, \* sock it to me!

Madam Cassandra, \* psychometry!

*You are insane.* Measure my pain.

Take my I-Q. I'll show it you!

@ *Bad manners! Madam's mad.* + + +

Madam, a badman's glad.

Madam Cassandra, \* you're my guru:

Madam Cassandra, \* had to be you.

*Your pen put down.* Again you frown,

I can't stay c-c-calm, here is my p-p-p-palm.

@ *Bad manners! Madam's mad.* + + +

Madam, a badman's glad.

Madam Cassandra, \* give it me straight,

Madam Cassandra, \* don't deviate.

*A spade define.* Define 'define'.

Tell me I vex. Ask about **sex**.

@ *Bad manners! Madam's mad.* + + +

Madam, a badman's glad.

Madam Cassandra, \* explore some more.

Madam Cassandra, \* I won't **act** sore.

*Are you a queer?* .... Errr....

I lose my voice. It's Hobson's choice!

@ *Bad manners! Madam's mad.* + + +

Madam, a badman's glad.

*We're not amused and \* you must reply  
with false or true un \* less it's a 'why'.*

*Why the divorce?* Par for the course.

*Did she leave you?* Heads false. Tails true.

@ *Bad manners! Madam's mad.* + + +

Madam, a badman's glad.

Madam Cassandra, \* I do submit.

Madam Cassandra, % judge ordered it.

*Confess intent.* I do repent.

Take down your notes. My ego gloats.

@ *Bad manners! Madam's mad.* + + +

Madam, a badman's glad.

Madam Cassandra, \* who pays the rent?

Madam Cassandra, \* this is no tent.

*I don't need you.* I support **you**.

No don't hang up! I am your pup. psssss

@ *Bad manners! Madam's mad.* + + +

Madam, a badman's glad.

Madam Cassandra, \* I'm black and blue!

Madam Cassandra, \* our hour is through.

*One-way rapport!* Encore! Encore!

Sock it to me - psychometry!

@ *Bad manners! Madam's mad.* + + +

Madam, a badman's glad.

*[Slow verse]*

*He gave His Son to show how much He cared.*

*He was despised, human pain He shared.*

*Surely tomorrow we'll be true.*

*T'was long ago the third cock crew*

*'Cock-cock-a-doodle-doo'*

*for me, and you, and **you**.*

*[Fast march]*

Play 'Play up, play up, \* and play the game'.

Who is forsaken? \* Who has no shame?

Who is the hunter? Who the prey?

Who begged the Question yesterday?

Science the Golden Calf:

Fools durst the heart-call graph.

Madam Cassandra \* a menace is.

Baits and then rates you \* on **Genesis!**

How it began, the Fall of Man.

How greed and Iust brought **dust** to **dust!**

Madam's casehardened eyes

Betray antique disguise.

Madam Cassandra \* got an M.D.

We understands a \* Mental Degree.

There's no record of Freudian fraud.

The unaccused, never confused

Madam lies with the Law.

It's nineteen eighty four!

We all lie with the Law;

our leader an actor;

locks each side of each door;

pus rising through the floor;

prison's what prison's for;

there'll be no Fourth World War;

it's nineteen eighty fouruheeuyouaargiooki..

## POINTS AND AUTHORITIES

This song interprets a psychiatric examination which the Bank of America compelled me to undergo, purportedly to "measure" how much, if any, emotional distress I had suffered on account of my wrongful termination and subsequent defamation by them. Since I had alleged emotional distress as damages, even though I was not seeking a disproportionate sum for them, the Bank had the understandable right to have

- me examined by its own paid psychiatrist on this matter. Their proposed Order to compel six hours "clinical interview" and six hours "psychometric testing" on unlimited subjects, and my emphatic opposition, are Exhibits A and B below. I strongly argued that no "psychometric" examination was warranted, especially since Mark Ross could not tell me what the word meant; that no examination outside the scope of my emotional involvement with my career was warranted; and that I was surely entitled to a tape-recorder during the interview, as confirmed by a previous case. I lost all three arguments.

Re taping the interview, it was blatant that had it been the Bank arguing for a tape recorder, I would still have been the party to lose. The judge (Commissioner Beale) read both memoranda, then asked Mark Ross if he would agree to a tape recorder; the reply was no, because a tape recorder would make an examinee distrustful and thus interfere with "rapport". Completely ignoring my point that it was the examinee in this case requesting the taped record, the judge denied a tape recorder, even though I provided a case substantiating my right to one. The ACLU expressed interest in appealing the denial of a tape recorder, but decided against. (The examination date required me to submit to the test in less than the 10 days allowed to appeal; this shortened time was critical in the ACLU's inability to help me, and further explains Mark Ross's obnoxious insistence on that date, described below.)

As regards being examined on any subject whatsoever, when I stated that the Constitution protected me from revealing information which it was my religious commitment to remain silent upon, Mark Ross, with evident contempt towards my voicing any legal concept, responded: "These examinations are performed all the time, and I'm sure the courts have resolved all constitutional issues." The commissioner, who wouldn't look at me, nodded to Mr. Ross. After this, Mark Ross had the indecency to request that that the order for examination admonish me, which even the commissioner balked at.

As regards my protest that I had no idea what "psychometric" meant, Mr. Ross said he had no idea either. I said, "Will I be required to stand on my head?" Mr. Ross said heatedly to the commissioner: "I will stipulate that he will not be required to stand on his head." (But one psychometric test was the recitation of long numbers backwards from memory.) Finally, I asked the commissioner if he knew what "psychometric testing" was: he said "No", and went on to sign the order requiring me to submit to it a few days later. The only difference between his final order (Exhibit C) and the proposed order was the addition of a denial of a tape recorder.

I later realised that Mark Ross had known perfectly well that the main psychometric test was the MMPI (Minnesota Multiphasic Personality Inventory) test, which I had not heard of then, but he was afraid to tell me in case I read up on it in advance. So he feigned complete ignorance of the techniques, and bullied me into an examination on a date which I had forewarned I could not make due to a hearing in the "Launch on Warning" lawsuit scheduled for the same day. Although a Bank trial date had not even been set, he insisted that the examination could not be delayed even a week or two, and the only logical reasons I could think of for this were that he wanted the improper advantage of perusing details of my personal life before my deposition (scheduled later that month), and that he hoped to get a summary judgment quickly by either getting me certified crazy or (more likely) provoking me into non-cooperation. This was consistent with his consistently misrepresenting - to me - things I had said on the telephone, such as my agreeing to a one-week extension of time for him to respond to a one-sentence interrogatory, and his later stating I had agreed to a two-week extension. Since Madam Cassandra was in the employ of the Bank, and my offer of complete cooperation with an independent court-appointed examiner had been refused, this reasoning is wholly justified. And all the while Mr. Ross argued how necessary it was to establish a trustful "rapport" in the examination! Mr. Ross's insistence on an immediate psychiatric examination came after over four years of inaction.

After the hearing, Mr. Ross asked who the Launch on Warning judge was, and a couple of days thereafter called me to "ask" if I had heard that the hearing had been continued, simultaneously mailing a threatening telegram (Exhibit D). The unexpected last-minute continuation makes me wonder if Mark Ross intervened to get this unrelated matter rescheduled; he certainly kept a strange watch over it instantly he knew my reason for delay was genuine (he had at first jadedly assumed it was false).

The examination was in content, though not in application, as abominable as I had feared. I was interrogated on the most private matters concerning myself, my family and close friends. I was forced to answer "true" or "false" (no other option allowed) to literally hundreds of absurd and sometimes obscene questions, including sexual and religious matters of ultimate intimacy. While acknowledging that Madam Cassandra's administration of the examination was as painless as it could have been, I nevertheless consider it was a gross imposition for the reasons expressed in the song *1984*, each verse of which is based on the real event.

Before the examination, I phoned Dr. Cassandra to ask what "psychometric testing" was- our conversation was taken over in midstream by her assistant, who subsequently told me that a tape recorder would interfere with Madam's "ambiance" (though the psychiatrist he recently worked for had insisted on taping interviews), and that "the most grueling" part of psychometry was the MMPI, which could catch false replies by cross-checking answers. It disgusts me that anyone, let alone a purported scientist, should pretend that a profound assessment of a human psyche can be made by numerical manipulation of 510 yes/no responses to questions often having no yes/no answer, and on distressfully intimate matters. Such "tests" belong in pulp magazines.

The examination began with Madam stating I had waived all rights to confidentiality regarding my responses. I informed her she was wrong. She wasn't. Every detail is available to Mr. Ross who is ignoring letters requesting a statement that he will keep confidential a matter which happened some twenty years ago to someone having nothing to do with the case and who would be embarrassed should the matter become public.

Madam's first question at the examination was "Why are you here?" My reply was "Because the judge ordered it." Her second question was "Are you tape recording this conversation?" My reply was "I resent that question because the judge ordered me not to tape it, and you are implying I am untrustworthy by asking it." We sat facing each other, each with pen and paper; she requested that I put mine down, I said I would do so only if she signed a statement ordering me to do so. She said she wouldn't sign such a statement, and only requested that I not take notes, which nobody else had ever done. I began taking notes, but within 10 minutes she told me to put down my pen because the notes I was taking were too copious; she signed a written statement to this effect (Exhibit E; I altered "requested" to "told" after the event, because that is what it was).

In fact, my notes (Exhibit F) were sparser than hers; they are included to show the unmistakable direction of the examination. It took her about 5 minutes to get cracking on such issues as "Did your parents fight and if so over what?" Asked to describe my mother I responded "The best Mum in the World." Outrageously, she asked why I said that, as though to get to the root of a problem I had with objectivity.

However, some kind of "rapproch" did develop, and the first part of the song reflects a spirit of trying to enjoy something which cannot be enjoyed by making a joke of it, though it is no joke. For example, I refused to respond "true" or "false" to some dozen MMPI questions including "My sex life is satisfactory." Madam Cassandra had an English husband, and most highly approved of education, of which I have had a lot; I am sure these associations helped me out; her response to this particular refusal was "You're so English, my husband would say the same thing." I argued the unanswered questions were so few (a dozen out of 510) that the result would not be affected; she said this was not her understanding, and the test was useless without their completion. I responded that I was familiar with the essential statistical routines (at our final meeting she said she had found out I was correct). But she finally agreed to my completing the questions by tossing a coin.

"I am important"; "My feces are black and tarry more than once a week"; "There is life after death"; "I am sexually attracted to members of my own sex"; are example questions which I answered true or false without objection; it could not be said that I was uncooperative.

The song mentions other specifics such as being asked to define words as mundane as spade and as religious as "Genesis". Madam herself was a startlingly attractive blonde blue-eyes who interviewed in a Nob Hill hotel suite packed with extraordinarily splendid antiques. I resigned myself with the thought that others would pay for what I was receiving for free (albeit in my vacation time). The ambiguous "success" of the interview (she even recommended near its end that I should have children) was offset by the dubious caution that she would be required to testify by her employer, the Bank of America.

Madam concluded the two-day examination convinced there had been a "terrible misunderstanding" and that the Bank would surely settle. I said she was naive (she subsequently attempted to act as a go-between, and learned that she was indeed naive). Incredibly, she asked "What, other than money, would make it all better for you?" With damage staring her in the face, she imagined a smile and a handshake would make everything alright? I had years previously sought little more than a correction of my job reference, which was denied by the Bank with the counteroffer of a "neutral" reference, not mentioning if my work was satisfactory.

In a conclusionary meeting, she informed me that she simply did not understand my situation, saying "It's bigger than me, I don't understand what went on at the Bank". At the time of this writing, I have yet to see what conclusions she presumably has drawn to justify her tees.

Regarding some of the final lines in the song:

"We all lie with the law" - until Madam's interview I felt I had been truthful with respect to my case against the Bank. I wish now I had lied about the aforementioned matter the publication of which would embarrass a person on the other side of the world, even twenty years later.

"Our leader an actor" - in Madam's office was hung a wholesome picture of Reagans and horse; but in the waiting room were antique etchings including Bacchalian scenes in which intoxicated hunters jovially vomited over each other after the day's sport (entitled "One Day's Sport: The Corinthians Making It Up By Showing The Johnny Raws ... How To Grog It").

"Locks each side of each door" - Madam's office had two doors one inch apart, with locks each way; you opened one to be surprised by the second. I suppose this prevented unwanted in- or ex-trusions, but was no protection against the not infrequent telephone calls which interrupted our interview. Madam's assistant, a large man, also represented a measure of security; with San Francisco's rampant crazies, a psychiatrist's lot is not wholly safe, and I wouldn't want any such job. This line of the song reflects the horror of a professional world in which distrust is basic (as with law); Madam rightly did not trust me to obey the judge, and I rightly did not trust her questions, most of which were tricky, indirectly seeking information not explicitly requested. About this she was brazen, stating it would be unethical to reveal techniques so that an examinee could understand what was happening; this was why a tape recorder was prohibited, she said, because it gave away secrets and invalidated the tests. In response, I mentioned this was the historic reason for secrecy advanced by charlatans.

"There's pus coming up through the floorboards, from every pore" is one of the last things said to me by a Vice-President before I was tired by the Bank of America; it had been my hope to avoid such expletive issues at trial, concentrating on the hard technical multimillion dollar issues, but Madam's examination brought back the tilth, and I recently tailed in a motion to suppress such matters as far as possible. In particular, I wrote a 97-page narrative of my employment at the Bank, full of names and quotes and incidents; I am sorry if anybody is embarrassed by it, and regret the Bank has not seen fit to confidentially settle my case, preferring to spend even more money to continue their illegal cover-up.

"Prison's what prison's for" - The Supreme Court this year ruled (*Hudson v. Palmer*, 82-1630) that prisoners were entitled to NO private property, not paper necessary for lawsuits, nor even a photograph of a loved one - the grounds being that prison was for retribution. "The recognition of privacy rights for prisoners in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions (including) ... loss of many significant rights ... as reminder that, under our system of justice, deterrence and retribution are factors in addition to correction" wrote Chief Justice Burger. There's the beef! As for deterrence and retribution ...

"There'll be no Fourth World War" - Einstein said the war after the next world war would be fought with sticks and stones, if anyone was left to tight.

The song *1984* is my response to a voluntary "Social Intake" questionnaire Dr. Cassandra left with me, and an expression of contempt for the court's order prohibiting a taped record of the interview. The abuses which such a psychiatric examination procedure could lead to are profoundly shocking. George Orwell's *1984* made no mention of computers, but extensively treated the "Thought Police"; Madam Cassandra, precisely because of her sincere belief in her methods, is its authentic personification. She was an unwitting pawn of oppressors; I hope she has learned from our encounter enough to understand the wrongfulness of my examination.



EXHIBIT A

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN THE CITY AND COUNTY OF SAN FRANCISCO

3  
4 CLIFFORD J. JOHNSON, )  
5 Plaintiff, ) No. 765624  
6 v. )  
7 THE BANK OF AMERICA )  
8 Defendant. ) (PROPOSED) ORDER FOR  
 ) EXAMINATION BY LICENSED  
 ) CLINICAL PSYCHOLOGIST

9  
10 The motion of Defendant Bank of America N T & S A for  
11 an order requiring Plaintiff to submit to an examination by a  
12 licensed clinical psychologist under C.C.P. § 2032 came on for  
13 hearing before this Court on May 29, 1984. Appearing as  
14 attorneys were: \_\_\_\_\_

15  
16 Satisfactory proof having been made and good cause appearing,

17 IT IS ORDER that:

- 18 1. Defendant's motion be, and it is hereby granted.  
19 2. Plaintiff shall submit to an examination by Dr.  
20 Cassandra T. Brothers, at Dr. Brothers' office located at 1177  
21 California Street, Suite D, in San Francisco, California,  
22 commencing at 9:30 a.m. on June 5, 1983.  
23 3. The scope, conditions and manner of conducting said  
24 examination shall be as follows: The examination shall be of no  
25 more than twelve hours' duration, including up to six hours of  
26 clinical interviewing and up to six hours of psychometric  
27 testing, to be conducted on June 5 and 6, 1984. The examination  
28 shall be a general psychological evaluation and assessment,

1 designed to lead to a diagnostic impression and prognosis of  
2 Plaintiff's condition and designed to elicit the nature, extent  
3 and cause of any psychological or emotional distress or damage  
4 suffered by Plaintiff as alleged in his Second Amended Complaint  
5 in this action. No attorneys, court stenographers, or other  
6 outside persons shall be present during the examination.

7 Dated: \_\_\_\_\_

8  
9 \_\_\_\_\_  
10 Judge, San Francisco County  
11 Superior Court

ENDORSED  
FILED  
San Francisco County Superior Court

MAY 21 1984

DONALD W. DICKINSON, Clerk  
BY: Martin P. Anaby Deputy Clerk

1 Clifford J. Johnson,  
2 Spruce Hall,  
3 Stanford,  
4 CA 94305.  
5 Tel: (415) 497-0167

6 Plaintiff in pro per.

7  
8 CALIFORNIA SUPERIOR COURT  
9 SAN FRANCISCO COUNTY

10  
11 Clifford J. Johnson,  
12 Plaintiff,  
13 vs.  
14 Bank of America,  
15 Defendant.

NO. 765 624

VERIFIED MEMORANDUM OF POINTS  
AND AUTHORITIES OPPOSING  
PLAINTIFF'S UNRECORDED  
EXAMINATION BY DEFENDANT'S  
PSYCHIATRIST USING UNKNOWN  
TECHNIQUES AND OF UNLIMITED  
SCOPE. (Discovery)  
May 29, 1984, 9:00 AM, Room 469

16  
17  
18  
19  
20  
21 I. INTRODUCTION

22 Hereinafter, "emotional distress" is synonymous with "extreme anger".

23 Plaintiff has not opposed Defendant's request that he submit to a mental  
24 examination by Defendant's psychiatrist on the issue of emotional damages suffered on  
25 account of his pretextual termination and subsequent defamation by Defendant. On the  
26 contrary, Plaintiff clearly agreed to an appropriate examination as evidenced in Exhibits  
27 A and B (the correspondence which Defendant presents is confusing, comprising two  
28 letters which crossed in the post).

1 Plaintiff did raise specific objections to the stipulation proffered by Defendant  
2 (Exhibit B of Defendant's memorandum) and offered alternative arrangements, but  
3 Defendant would not negotiate a single detail other than the date. Plaintiff offered to  
4 submit fully to an examination by an independent court-appointed psychiatrist; Defendant  
5 would not consider this. Plaintiff offered to submit to an interview by Defendant's  
6 psychiatrist provided it was recorded and did not probe issues unrelated to Plaintiff's  
7 emotional involvement in his career and reputation; Defendant would not consider this.

8 II. PLAINTIFF'S OBJECTIONS

9 Defendant demands that Plaintiff submit to six hours of "psychometric testing"  
10 and six hours of "clinical interviewing". Plaintiff's objections are as follows:

11 1. Plaintiff objects to all and any "psychometric testing" because he does not  
12 know what it is, and Defendant refuses to provide an explanatory declaration by the  
13 physician defining the techniques to be applied, providing only the "definition":

14 "Psychometric testing - this is the measurement of the psyche  
15 through testing; that is testing in order to determine intelligence  
for personality traits." (Exhibit C, Defendant's memorandum.)

16 Will electrodes and/or vocal stress analyzers be used? Will Plaintiff be required to  
17 respond to unusual stimuli? Will subliminal techniques be applied? Defendant's definition  
18 provides no clue. Plaintiff has a right to know the meaning of words he signs to,  
19 especially when his signature subjects him to intimate probing on distressful matters.  
20 Plaintiff's demand for such a declaration is consistent with CCP Section 2032(a), which  
21 requires that an order for examination must specify the manner, conditions, and scope of  
22 the examination. Defendant's proposed tests are so extraordinary that Plaintiff is  
23 genuinely uncertain as to their manner, conditions, and scope, and it would clearly  
24 violate Plaintiff's obligation to mitigate damages were he to authorize them without this  
25 information. (See this court's Discovery Manual, Section 381B, regarding the need for a  
26 physician's declaration re extraordinary tests.)

27 2. Plaintiff objects to all and any "psychometric testing" because it purports to  
28 evaluate personality traits, and not emotional distress, and is therefore irrelevant.

EXHIBIT B



1 3. Plaintiff objects to all and any examination seeking to identify "causes" of his  
2 emotional distress; rather, the examination must be limited to the evaluation of the  
3 degree of distress relating to the facts alleged in the complaint. The examiner is  
4 incompetent to identify "causes" because they lie in Defendant's tortious conduct which  
5 is not before the examiner. Any attempt to identify such "causes" in the Plaintiff's  
6 psyche by the examiner would improperly pre-empt the job of the jury, and also be  
7 necessarily biased against Plaintiff's case. For example, Plaintiff might truthfully state  
8 "20 people were out to get me"; but psychiatry, which is founded on deviations from  
9 average, will interpret such a statement as indicative of mental problems ascribed to  
10 Plaintiff. Defendant will then justify Plaintiff's termination and explain Plaintiff's distress  
11 in terms of this fictional problem which the examiner "diagnosed" by improperly  
12 presuming the improbability of Plaintiff's admittedly extreme, yet true, allegations. To  
13 permit a psychiatrist to pass any causal opinion regarding Plaintiff's distress opens up  
14 psychiatric examination procedures to gross abuse because it constitutes an obscene  
15 "fishing expedition" in an injured party's mind, and enables parties whose case has no  
16 merit to invent arguments out of thin air. In Section III below, Plaintiff argues that this  
17 is indeed the veiled purpose of Defendant's proposed examination.

18 4. Plaintiff objects to any "clinical interview" which is unrecorded because the  
19 examiner is Defendant's agent, because Defendant refused an independently appointed  
20 examiner, and because Defendant's attorneys represent only management. A psychiatric  
21 examination depends critically upon a rapport between examiner and subject, which will  
22 be destroyed by Plaintiff's grounded distrust and hostility towards Defendant's agent,  
23 who no doubt wants future commissions. Permitting unrecorded examination in such  
24 circumstances would expose psychiatric examination procedures to grave and  
25 irremediable abuses, for the examiner would have total control of the record of  
26 examination. A tape recording of the examination is acceptable to Plaintiff, and this  
27 compromise fully meets all Defendant's objections regarding the interference introduced  
28 with a third-party, and is consistent with such cases as *Ebel vs. Superior Court* (1974) 39

Ex. B

1 Cal App3d 934:

2 "Physical and Mental Examination of Persons - Use of Tape  
3 Recorder. The use of any mechanical device, such as a tape  
4 recorder, during a court-ordered medical examination, is  
5 permissible in order to insure that an injured plaintiff will have  
6 an accurate and complete record of the proceedings"

7 5. Plaintiff objects to any examination probing intimate and private matters  
8 unrelated to his emotional involvement with his professional career and reputation. An  
9 injury to the foot gives no grounds for an examination of the ear, nor does Plaintiff's  
10 natural distress caused by damage to his career and reputation give grounds for an  
11 examination of his entire psyche. (Details of his personal relationships outside of work  
12 and his political convictions are example "untouchable" issues.) Plaintiff's primary  
13 emotional distress is anger, and this could be exacerbated beyond control by  
14 interrogation on intimate extraneous matters by Defendant's agent. This would not only  
15 cause Plaintiff further unnecessary distress, but would drastically skew all the  
16 psychiatrist's observations, and could conceivably result in unrestrained conduct on the  
17 part of a Plaintiff whose tolerances have already been overly taxed. Plaintiff duly  
18 notifies this court that irrelevant probing in the course of his psychiatric examination  
19 may result in destructive actions, wholly within the scope of an examination intended to  
20 generate evidence of distress, for which he could not be held accountable.

21 6. Plaintiff will under no circumstances reveal information which his spiritual  
22 convictions or ethical commitments require he remain silent upon.

23 III. DOUBTLESS DAMAGE NEEDS NO BAD FAITH BOILERPLATE

24 Defendant's papers twice state that Plaintiff demands \$1,250,000 general and  
25 \$3,000,000 punitive damages. Defendant does not state that Plaintiff demands, for his  
26 emotional damages, only an amount equal to his actual lost earnings, which is about  
27 one eighth of his general damages. The rationale for this demand is simply that  
28 Plaintiff's losses were substantially exacerbated by the intentionally inflicted distressful  
circumstances. They computed to \$160,423 as of November, 1983 (see Exhibit C, which

1 was mailed to Defendant).<sup>1</sup> Since Defendant cannot get the case dismissed merely on  
2 account of these damages, and since the formula for their computation is not  
3 unreasonable, why does Defendant so suddenly insist on an immediate examination on  
4 general issues by his own psychiatrist and on conditions not open to negotiation?

5 Insistence on a "general" examination whose scope includes the determination of  
6 "causes" presumed to reside in Plaintiff rather than in Defendant raises the Orwellian  
7 spectre of a Defendant artfully planning to have a Plaintiff labelled mentally unstable, or  
8 likewise derogated, in order to justify Defendant's conduct and discredit Plaintiff. In fact,  
9 Plaintiff's sanity is not at issue: on the contrary, wrongful termination of employment  
10 followed by defamatory job references normally does cause distress; and in the present  
11 case, the obvious evidence of distress is embarrassingly gross, a polite example being a  
12 Senior Vice-President's testimony that he had sentenced Plaintiff to work "under the  
13 Sword of Damocles".<sup>2</sup> Is expert opinion really needed to establish the kind of emotional  
14 damages sought by Plaintiff given the lay comprehensibility of such evidence?

15 Further, the examination can be construed as a power play in the game of  
16 litigation, devised to assert Defendant's superiority and to conjure confusing evidence  
17 diverting attention away from the hard, central facts of multimillion dollar waste and  
18 unsafe operations knowingly covered-up by Plaintiff's termination. Such intents would  
19 clearly be a bad faith, and therefore prohibited, exercise of the examination right  
20 otherwise guaranteed by law, and would typically be evidenced by rigid adherence to  
21 unread boilerplate stipulations.

22  
23  
24 <sup>1</sup> For example, consider the component of damages comprising pay for uncompensated  
25 overtime performed on account of promise of career advance. The actual or cash-  
26 equivalent value of this "loss" is taken to be 1.5 times Plaintiff's salary; this is  
27 doubled on account of the distress associated with his termination, making the total  
28 overtime damages \$42 per hour, which approximately equals Plaintiff's regular contract  
programming rate, and is less than a third of Defendant's attorney's rates. The  
doubling is perfectly justified by the fact that Plaintiff's career was positively  
retarded in proportion to his efforts.

<sup>2</sup> Plaintiff had protested the insult "arrogant" in his personnel file, and these words  
were used at a disciplinary session in which Plaintiff was placed on probation and  
the protest dismissed.

EX. B

1 On April 27, 1984,<sup>3</sup> immediately on receipt of Defendant's stipulation, Plaintiff  
2 telephoned Defendant and asked: "What does psychometric mean?". The reply was "A  
3 test of some kind, it's a standard format for stipulation .. er .. I don't know, I will get  
4 you a definition." When asked the meaning of "clinical interview", the reply was a flat  
5 "I don't know."

6 When asked if Plaintiff's sanity was at issue, Defendant answered "I'm not sure I  
7 even know what insanity means". It is to be noted that Defendant did not answer "No"  
8 to the last question, thereby subjecting Plaintiff to an insidious condemnation and threat.

9 Defendant is well aware that Plaintiff's emotional distress may be aggravated by  
10 probing examination, and therefore the sudden issuance and uncompromising insistence  
11 on a boilerplate stipulation purporting to evaluate merely a small proportion of damages  
12 claimed was reckless and should be regarded with distrust.

13 Respectfully submitted,

14 SIGNED Clifford Johnson  
15 Clifford Johnson,  
16 Plaintiff in pro per.

DATED 5/19/84

17  
18 VERIFICATION

19 I, Clifford Johnson, am the Plaintiff in this action. I have read the foregoing  
20 Memorandum and know the contents thereof. The same is true of my own knowledge,  
21 except as to those matters which are therein alleged on information and belief, and, as  
22 to those matters, I believe them to be true.

23 I declare under penalty of perjury that the foregoing is true and correct.

24 SIGNED Clifford Johnson  
25 Clifford Johnson.

DATED 5/19/84

26  
27  
28 <sup>3</sup> Incorrectly recorded as April 24 in Defendant's letter of April 30 (Exhibit C of  
Defendant's memorandum).



SCHACHTER, KRISTOFF, ROSS, SPRAGUE & CURIALE

ATTORNEYS AT LAW  
333 MARKET STREET, SUITE 3300  
SAN FRANCISCO, CALIFORNIA 94105  
(415) 391-3333

VICTOR SCHACHTER  
ROBERT P. KRISTOFF  
MARK S. ROSS  
ROBERT N. SPRAGUE  
RICHARD J. CURIALE  
NORTON B. ORENSTEIN  
ALAN B. BERSKOWITZ

THOMAS E. ORTDT  
JOANNE DELLAVESSON  
JOHN A. RICCA  
SUSAN OBODY RUBEN  
PATRICIA S. RADEZ

May 14, 1984

Mr. Clifford Johnson  
Technical Support Services  
Cypress Hall  
Stanford, California 94305

Re: Johnson v. Bank of America

Dear Mr. Johnson:

This letter is responsive to your correspondence dated May 10, 1984.

So as to avoid any misunderstanding on this point, let me again reiterate that my client is ready, willing and able to proceed with your psychological examination without the necessity of unnecessarily burdening the court with a hearing on the pending Motion For Order Requiring Examination. Accordingly, if we can agree on reasonable dates for your examination, and if that is the only issue separating us, please contact me as soon as possible. However, absent word from you to the contrary, we will assume that the other issues over which we have disagreed continue to divide us and will leave it to the court to resolve those disputes.

Suffice it to say, your prior insistence on waiting until July for the examination simply because you feel the need to educate and prepare yourself for it is unacceptable. Indeed, it evidences a desire on your part to obtain information on psychometric testing and the clinical process which could then be used to skew the results of this examination. We do not believe that your education and preparation for this examination is a reasonable basis for delay of the exam. We, therefore, propose to proceed with it at the earliest possible date.

As for your depositions of the "mystery expert" and Lew Kious, I can only say that I am deeply troubled by your sudden unilateral change in their deposition dates. Indeed, contrary to the erroneous statements in your May 10 letter, we did confirm the dates for the depositions of both Kious and the "mystery expert". Moreover, never have I informed you that we would not produce Kious or the "mystery witness". Nor have I ever informed you that these depositions would not be conducted as previously

Mr. Clifford A. Johnson  
May 14, 1984  
Page -2-

scheduled. Rather, I have attempted to understand why you deem it necessary to depose these individuals and indicated my preference that you to conduct discovery in a cost and time efficient way and that you hold the number of depositions down to a reasonable minimum.

We have scheduled these witnesses for depositions at your request and at considerable inconvenience to them and to the Bank. I have also adjusted my schedule to meet these time frames. Accordingly, your last minute change in the deposition schedule constitutes but another inconvenience for the Bank, its employees and me. If it is your intention to inconvenience us, I can assure you that you are succeeding. I can also assure you, however, that if you continue to abuse the discovery process in this way, we will take the steps necessary to limit your discovery and to protect the Bank and its employees against abusive discovery.

Kindly contact me with a selection of firm dates on which you propose to depose Kious and the "mystery witness." Upon receipt of these firm dates, I will determine their availability as well as determine my own availability for your taking of these depositions.

Very truly yours,



Mark S. Ross

MSR/et

- EXHIBIT A -

SCHACHTER, KRISTOFF, ROSS, SPRAGUE & CURIALE

EX-  
B

Clifford Johnson,  
Spruce Hall,  
Stanford,  
CA 94305.  
Tel: (415) 497-0167

Mark Ross,  
333 Market St., Suite 3300,  
San Francisco,  
CA 94105.

May 18, 1984

Dear Mr. Ross,

Re: JOHNSON V. BANK OF AMERICA, CALIFORNIA SUPERIOR COURT #765624

In response to your letter dated May 14, let me again reiterate that I am perfectly willing to submit to a recorded interview on relevant topics by your proposed psychologist. I think it a shame that you must burden the court with your unreasonable and non-negotiable demands that I be examined by unknown techniques on irrelevant matters.

Regarding the depositions of the "mystery agent" and Lew Klous, I can only say that I am deeply troubled by your sudden unilateral agreement to the depositions after you told me in your previous letter that if I did not contact you within one working day you would seek a protective order regarding them. Is this your idea of "confirmation"? As you well know, you previously FIRMLY scheduled these depositions and twice called them off only a couple of days before they were due, at considerable inconvenience to myself and my stenographer; and now you regard as "firm" the dates you set tentatively while threatening a motion for a protective order to prevent them! I suggest that henceforth we CONFIRM depositions at least 10 days before they are due, and only change them if TRULY necessary in the future. Do you understand this? Are you capable of keeping to this arrangement? Your last minute changes and decisions constitute wholly unnecessary confusions for me and my stenographer. If it is your intention to inconvenience us, I can assure you that you are succeeding. I can also assure you, however, that if you continue to abuse our tolerances in this way, I shall take steps to have sanctions imposed to limit your pretences and evasions. Kindly make and keep FIRM dates in the future.

The enclosed Notice re Depositions is essentially a duplicate of the one firmly agreed to by the Bank last January, which was slated for Monday January 23, and which Ms. Gardner called off by calling me from work on Friday January 20 stating that she would be sick on the Monday. (Please note that I did not accuse her of abusive conduct either on this occasion or when they were next called off, which proves the offensive nature of your response to my calling off, some 10 days in advance, a schedule so tentative that it would have been unfair to commit my stenographer to it - especially in view of your written threat of a motion for a protective order. Why did you threaten this if you did not mean it? Is all you say a vacuous game?) Any day from June 19 through July 1 will be acceptable to me; I suggest June 19 on the Notice.

Sincerely,



Clifford Johnson.

- EXHIBIT B -

RE: JOHNSON VS. BANK OF AMERICA, SUPERIOR COURT CASE #765624

DAMAGES/SETTLEMENT STATEMENTS BY PLAINTIFF - NOVEMBER, 1983

I. DAMAGES STATEMENT

(The following list of demands may be modified before trial, and will probably be revised and argued by professional counsel in the event of a trial.)

1. I demand a personnel record and a "To Whom It May Concern" job reference reflecting satisfactory work. This requires the correction of Exhibit A by altering the box checked in response to the question "Was work satisfactory?", and of Exhibit B by replacing the word "unsatisfactory" with "satisfactory".
2. For earned sickness benefits, I demand \$3,656. (Costed at termination salary applied to sickness benefit days earned.)
3. For uncompensated overtime performed on account of unfulfilled promises, I demand \$59,567. (Costed at 1.5 times termination salary applied to overtime performed.)
4. For loss of earnings during unemployed period, I demand \$67,500. (Costed at re-advertised job salary of \$45,000.)
5. For loss of earnings to date since employment at Stanford, I demand \$29,700. (Costed at difference between re-advertised and Stanford salaries.)
- \*6. For emotional distress, I demand a sum equal to the above damages 2-5, that is \$160,423. (On the rationale that said distress makes these losses count doubly.)
7. For case costs to date, I demand \$186,170. (Comprising attorney fees of \$26,000, plus general expenses of \$6,250, plus my time billed at my standard contract rate of \$40 per hour and totalling \$153,920.)
- \*8. For general and future reputational damages, I demand \$750,000.
- \*9. In addition, I demand \$3,000,000 punitive damages.

\*Items forgone in Plaintiff's settlement offer below.

- EXHIBIT C -

EX. B



ENDORSED  
FILED  
San Francisco County Superior Court

MAY 29 1984

DONALD W. DICKINSON, Clerk  
BY: Martin P. Anabu  
Deputy Clerk

1 MARK S. ROSS  
2 SCHACHTER, KRISTOFF, ROSS,  
3 SPRAGUE & CURIALE  
4 333 Market Street, Suite 3300  
5 San Francisco, California 94105  
6 (415) 391-3333

7 Attorneys for Defendant  
8 BANK OF AMERICA NATIONAL  
9 TRUST AND SAVINGS ASSOCIATION

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN THE CITY AND COUNTY OF SAN FRANCISCO

12 CLIFFORD J. JOHNSON, )  
13 Plaintiff, )  
14 v. )  
15 THE BANK OF AMERICA )  
16 Defendant. )

No. 765624

ORDER FOR EXAMINATION BY  
LICENSED CLINICAL PSYCHOLOGIST

17 The motion of Defendant Bank of America N T & S A for  
18 an order requiring Plaintiff to submit to an examination by a  
19 licensed clinical psychologist under C.C.P. § 2032 came on for  
20 hearing before this Court on May 29, 1984. Appearing as  
21 attorneys were: Mark S. Ross for Defendant and Clifford Johnson,  
22 in propria persona. Satisfactory proof having been made and good  
23 cause appearing,

24 IT IS ORDER that:

- 25 1. Defendant's motion be, and it is hereby granted.  
26 2. Plaintiff shall submit to an examination by Dr.

27 Cassandra T. Brothers, at Dr. Brothers' office located at 1177  
28 //

1 California Street, Suite D, in San Francisco, California,  
2 commencing at 9:30 a.m. on June 5, 1983.

3 3. The scope, conditions and manner of conducting said  
4 examination shall be as follows: The examination shall be of no  
5 more than twelve hours' duration, including up to six hours of  
6 clinical interviewing and up to six hours of psychometric  
7 testing, to be conducted on June 5 and 6, 1984. The examination  
8 shall be a general psychological evaluation and assessment,  
9 designed to lead to a diagnostic impression and prognosis of  
10 Plaintiff's condition and designed to elicit the nature, extent  
11 and cause of any psychological or emotional distress or damage  
12 suffered by Plaintiff as alleged in his Second Amended Complaint  
13 in this action. No attorneys, court stenographers, or other  
14 outside persons shall be present during the examination, nor  
15 shall it be recorded by tape recorder.

16 Dated: MAY 29 1984

17  
18 ROBERT BEALE

19 Commissioner Robert Beale  
20 San Francisco County Superior Court  
21  
22  
23  
24  
25  
26  
27  
28

ORDER FOR EXAMINATION BY  
LICENSED CLINICAL PSYCHOLOGIST

EXHIBIT C

MARK S ROSS, SCHACHTER KRISTOFF  
333 MARKET ST SUITE 3300  
SAN FRANCISCO CA 94105 01AM

Western Union Mailgram



4-0569485153003 06/01/84 ICS IPHMTZZ C8P 8F08  
2 4153913333 MGH TDHT SAN FRANCISCO CA 06-01 0441P EST

MR CLIFFORD JOHNSON, TECHNICAL SUPPORT  
SERVICES  
CYPRESS HALL  
SANFORD CA 94305

THIS IS A CONFIRMATION COPY OF A TELEGRAM ADDRESSED TO YOU:

RE: JOHNSON V BANK OF AMERICA

DEAR MR JOHNSON,

I AM INFORMED BY MY SECRETARY THAT YOUR STATUS CONFERENCE FOR JUDGE WILLIAMS HAS BEEN POSTPONED, THEREFORE, THERE IS NO LONGER A SCHEDULING CONFLICT WHICH PRECLUDES YOU FROM CONTINUING YOUR EXAMINATION ON JUNE 6 AS REQUIRED IN COMMISSIONER BEALE'S ORDER, WE EXPECT YOU TO APPEAR FOR YOUR EXAMINATION BEGINNING ON JUNE 5 AND CONTINUING AS MANDATED BY THE COMMISSIONER ON JUNE 6. YOUR FAILURE TO DO SO WILL LEAVE US NO ALTERNATIVE BUT TO SEEK JUDICIAL RELIEF.

VERY TRULY YOURS,

MARK S ROSS, SCHACHTER KRISTOFF E THREETH  
333 MARKET ST SUITE 3300  
SAN FRANCISCO CA 94105

16143 EST

MGHCUMP

EXHIBIT D

EXHIBIT E

DECLARATION OF DR. CASSANDRA T. BROTHERS

I, Dr. Cassandra T. Brothers, do hereby declare under penalty of perjury that I expressly ~~barred~~ Clifford Johnson ~~from~~ using pen and paper to make notes recording his June 5/6 psychiatric examination <sup>as it interferes with spontaneity.</sup>

SIGNED Dr. C. T. Brothers DATED \_\_\_\_\_  
Dr. Cassandra T. Brothers

WITNESSED BY: Clifford Johnson DATE: \_\_\_\_\_

~~reported~~ 18th to stop



EXHIBIT F

Q. Why am I here?

A. The judge's order

Q. Privilege to confidentiality is waived. !!!!!!!

A. Confirmed she refused the tape recorder.  
I don't to disturb.

Q. Am I recording it.  
I repeat question  
I am following the order.  
No record by her either.

Interview first.

Come tomorrow.

Birth

19/10/48 London  
Father's profession - clerk.  
Rent collector.

His personality?  
Not shy. would stand up for himself -  
teetotaler, Christian.  
Differ over opinions of how close to each other.

C of E - Christian lives - how often attend church.  
What more - did they fight and over what?

A successful marriage.  
50 years.

only marriage.

Late 30s when I was born.

~~that~~ Mother  
flower shop, no career.  
Best Mother in the world.  
Because it's true.  
Put others before herself.