

**HOUSE OF REPRESENTATIVES
House Judiciary Committee (10-10-95)**

I. INTRODUCTION & BACKGROUND (2 min.)

A. Personal

1. Graduate of Hood College, B.A. French Literature (1967)
2. Work History: Brussels (2 years); Washington DC (2 years); Paris (9 years) and Philadelphia area (13 years) employed as a translator, secretary or commercial researcher. Published magazine article writer and foreign correspondent (Paris).
3. Independent investor for 20 years
-have had a securities account with Merrill Lynch, Pierce, Fenner & Smith, Inc., since 1981).

B. Professional

1. Current Profession: French Commercial and Literary Translator
Began a sole proprietorship business called *The French Connection*, in 1985, for corporate clients in the U.S. and France.

II. WHY I NEED MY TRUST FUND (3 min.)

1. Background: My father died on 5-26-86, leaving a "Revocable Trust Agreement" dated 11-13-78; an irrevocable Mellon trust fund was established in June, 1986.
 - Father's will appointed Mellon Bank and my two older brothers as trustees.
As a "non-trustee" beneficiary, I have no authority over my trust fund's contents or equity allocations. All my purchase, sale, or reallocation requests must be pre-approved by Mellon and my two older brothers (first by phone, then in writing).
 - I can receive monthly deposits from the trust fund, but can withdraw principal only as long as there is at least \$250,000 left in the trust. Even if I consider Mellon's trust fund management, customer services and investment selections to be mediocre at best, neither my brothers nor I can transfer the fund to another administrator without costly and time-consuming court procedures which none of us are willing to undertake at this time. We are therefore virtually "stuck" with a bank trust administrator which we would not have chosen for ourselves.
2. Without trust income, I would have to give up my dream of maintaining my small business, because I still experience occasional (and hopefully temporary) monthly cash-flow problems related to business income. I currently receive a maximum yearly income from my trust fund of \$9,600 (\$800/month). I will discuss Mellon Bank trust administration fees in a moment.

III. EXPERIENCE WITH MY BANK TRUST FUND

(15 min.)

A. Trust Officer "Musical Chairs"

8 different trust officers have handled my Mellon Bank trust fund account since June of 1986.

B. Increasingly formal bureaucratic customer relations

1. During the first few years of my experience with Mellon trust officers, they were cooperative, and fulfilled most of my purchase/sale requests by phone, usually in a timely way. With each passing year, bank formalities in this respect have increased, as has the delay between my requests and any action taken.
2. This formality not only prohibits timely decisions, it distances the beneficiary from the bank's trust department employees. The beneficiary is never asked to share his fund allocation preferences, or personal financial goals. But the bank might benefit from finding out what these preferences are and from offering investment vehicles that both answer client needs and provide competitive yields, like those available from some brokerage house money market or conservative stock growth funds, etc.

C. Limited knowledge of immediate market developments

When I call my trust officers about a stock market event directly impacting my portfolio, I have often found them unaware of these developments and seemingly unable to immediately confirm—or act—to take advantage of them. This lack of current market awareness has caused losses in my fund. I get more accurate and timely relevant market data from my SCHWAB and PRODIGY free equity-tracking computer programs! Of course, I am unable to realize any immediate profit or to avoid losses (an imminent merger, or acquisition, defective product scandal, devastating earnings report, etc., or FDA approval of a history-making drug, etc.), since I cannot act quickly to buy or sell trust fund equities:

D. What Timing?

1. Since 1986, my trust officers have never called to warn me of market events likely to negatively—or positively—impact my fund, or to recommend timely action I could take to increase or preserve its value. This silence has resulted in quantifiable losses in my fund, for ex.:
 - a. My brothers and I had shares of IBM in our individual funds. IBM's sudden price plummet in 1991-1992 was not brought to our attention by our respective funds' trust officers; as a result, my brother John suffered major losses in his account.
 - b. In June of 1994, Mellon Bank authorized the sale from my account—and without my knowledge—of such stocks as MICROSOFT (50 shares), ROYAL DUTCH PETROLEUM (100 shares), WARNER LAMBERT (100 shares) and NYNEX (200 shares) to buy Mellon bank bond and stock funds.* I protested strongly by fax and mail many days later, when I finally received a copy of Mellon's sale request approval form, only after my brothers had signed and returned their approval form, believing that I had requested the sale! This kind of mishap can occur whenever a bank administrator does not bother to contact the fund beneficiary by phone or fax, as well as by mail.

*In my opinion, selling MSFT at that moment was pure folly, as it had just split 2-for-1 and had strong market support. RD had been a dependable and high-yield stock.

c. Since the establishment of our Mellon trust funds, my brothers and I have each had to act as "our own brokers," without investment advice from Mellon Bank.

2. Any change I wish to make in my trust fund's contents or allocation must be preapproved during a phone conversation between my trust officer and each of my brother trustees BEFORE any action can be taken. The bank also requires their signed approval of a mailed Mellon confirmation form. This policy prohibits timely equity decisions, and has negatively impacted my fund's market value. In fact, a trust administration employee told me (quote): **"Timing is not taken into account in stock purchases or sales for trust funds."** Can you imagine any non-bank equity account manager's reaction if he were obliged to work under this limitation? How could he guarantee optimal returns on his clients' investments? Neither will Mellon accept a "carte blanche" letter from my brothers as trustees, authorizing me to be allowed to make my own decisions, with their follow-up (formality) approval in writing. Even Mellon's own bond and stock funds can only be sold or purchased at month's end!

E. Limited investment vehicles and flexibility (Mellon vs. Merrill)

1. Many of the bank's bond funds pay low interest and are not competitive.

In my current Merrill Lynch cash management account, and other brokerage accounts I've had, equity sales and purchases can be made any time and quickly, maximizing market opportunities. Why shouldn't this be possible for bank trust funds?

2. I can only buy equities which Mellon offers its clients, or has purchased, or would consider purchasing. Wouldn't Mellon benefit from more investment product diversification?

3. At Merrill Lynch, I can buy individual bonds of my choice and know in advance all details relevant to their due date and expected expiration value. Mellon trust funds consist only of Mellon bond funds, which can lack "definition" (definite value when coming due) and "permanence," (definite time coming due). Thus, there is a real risk of unexpected loss of principal. There is also a potential for "double-dipping"—when trust fund customers pay duplicate fees: once to the bond fund's managers, and again to bank trust fund administrators.

F. Mellon Bank Trust Administration Fees

1. At least once in the last 5 years (mid-1992), the United States District Court in Philadelphia determined that "sweep" fees charged to Mellon Bank trust customers since 1981 were excessive. The U.S. Court of Appeals may have since reversed that decision, but—

a. My trust fund monthly statement claims that I receive 5% annual interest on my \$250,000 minimal account. But I a trust fund employee informed me recently that I am currently paying .016% of the fund's total market value (about \$4,000) to Mellon for various administration fees and taxes. In that case, my actual net income interest earned is 3.84% per year (\$9,600)—less than the current inflation rate, and also less than I could earn on most bank CDs or money market funds excluding trust funds!

- b. Comparatively speaking, I get more helpful services from my Merrill Lynch cash management and IRA account executive (for which I pay a combined total administration fee of only \$180/year!). But the Merrill Lynch account executive:
- (1) informs me of major market conditions likely to impact my portfolio;
 - (2) alerts me to opportunities for optimally increasing or preserving my account's market value;
 - (3) demonstrates more knowledgeable about late-breaking market events, and is ready and willing to act quickly to profit from changing market conditions.

IV. CONCLUSION

A. Business - Competition = A Profit-Only Attitude

The law now in effect prevents trust fund beneficiaries such as myself from being able to transfer their account to another trust administrator whom we may feel could do a better job of preserving and optimizing the fund. Why, then, should Mellon—or any bank trust department be concerned about customer satisfaction? The bank has a captive audience—a “cash cow”—in fee-based, non-transferable trust funds such as mine.

If any business is guaranteed generous profits regardless of its performance, what motivation does it have to improve client satisfaction or to do anything but collect profits? Competition is critical to ensure a successful, client-service business. The existing law that we are asking you to change perpetuates mediocre trust administration performance because it eliminates any need to compete.

Please keep in mind that beneficiaries nationwide are paying exorbitant fees to bank administrators whose services are minimal and who have already demonstrated indifference to their clients' personal financial welfare and decidedly stronger interest in increasing bank profits. No beneficiaries should be stripped of legal right to alternative lawful recourse in such a situation. And many elderly beneficiary's lives literally depend upon their trust fund income. This need will become increasingly acute as Baby Boomers age, companies default on pension plan benefits, and Social Security payments dwindle.

I urge you to pass **House Bill 326** because I believe that it is a democratic and reasonable step in the right direction. Please protect our natural right to transfer our trust funds to administrators whom we feel are best suited to increase and preserve our assets for this—and future—generations.

Thank you, Honorable Chairman, Representatives, and Fellow Panelists, for giving me this opportunity to speak.

- Carol C. Macomber 10/10/95