

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

IN THE SUPERIOR COURT, ROOM 2
SITTING AT EAST CHICAGO

Worshipful
401 S. Union St
/Jan 4/82

655834

IN RE: THE MARRIAGE OF)
)
DONALD A. MILLIGAN AND)
DONNA K. MILLIGAN)

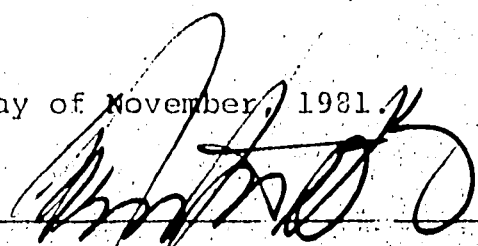
CAUSE NO. 281-0523

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ORDER

The final hearing in this cause resumes this date.
There being insufficient time, however, within which to conclude,
it is now adjourned, to resume on the 24th day of November, 1981.

ALL SO ORDERED this 20th day of November, 1981.



Morton B. Kanz, Judge

The final hearing in this cause continues this date and
is concluded with the final arguments of counsel. The Court,
being duly advised, now finds that:

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
JAN 8 11 53 AM '82
WILLIAM BIELSKA
RECORDER

1. The Petitioner (Donald) and the Respondent (Donna)
have two children: Courtney Lee Milligan born the 6th day
September, 1975, and Kim Seth Milligan, born the 25th day of July,
1977, who is part Korean, part Chinese, and who was adopted by
the parties.

2. Each of the Milligans wishes custody and Donald's
competitiveness in that regard is only the more obvious because
of the intensity he projects as opposed to Donna's restraint
(characterized by the Court-appointed psychologist, Manuel J.
Vargas, Ph.D. (Vargas), who evaluated the parties, as self-dis-
cipline). The children were not interviewed by the Court; they
were, however, by Vargas, and were obviously impressed with
them:

**DULY ENTERED
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File Office
CLERK LAKE COUNTY

2800

"Both children are exceedingly bright, warm, friendly, very open with their thoughts and feelings. They are quite well-adjusted and happy. In short, they are exceptional."

3. The evidence also established their physical health.

4. The children expressed their wish to live with their father. There after, however, Donna reported a conversation with Courtney in which that wish was refuted while, still later, Donald could testify Courtney re-affirmed her earlier choice. The foregoing, of course, emphasizes the ambivalence and suggestibility of children six and four years of age and thus how questionable a criterion such a factor is in this case. In fact, the psychologist himself placed little emphasis on this factor:

"I'm sure they could adjust living with either parent and visiting the other."

Rather, after finding the children loved both their parents, he concluded:

"... either parent would be a good parent. The decision will have to be made on the basis of other information than the psychological unfitness of the parents or the problems of the children."

He then concluded:

"Since both could be good parents, joint custody should be explored."

5. Whatever form the custody might take in a given instance, its basis requirement is two parents who, despite their inability to remain married to one another, have the capacity for great compatibility in the rearing of their children. For all of their fine attributes - and the parties are exceptionally fine individuals - it is manifest from their history they could not accomplish that degree of cooperation. Donna testified, for example, that she and Donald could not discuss things on a rational basis; rather, they would always end up in argument. Consequently, custody must be awarded one parent, a liberal visitation the other.

Donna earns gross annual income from her current employer of \$8,300.00 which translates into a weekly net paycheck of \$130.00.

19. Donna has incurred attorney's fees in this proceeding of \$2,500. She cannot afford to pay them.

20. From all of the foregoing, the Court concludes:

A. Donald was essentially the family breadwinner (his income, derived to a large extent from employment) and their respective contributions from those endeavors must be deemed essentially equal.

B. Donna brought net assets into the marriage at its inception, Donald net liabilities.

C. Donna brought some \$94,000 into the marriage by virtue of her personal injury settlements, monies the purpose of which was intended to compensate her for her injuries and thus make her whole. To her credit, she nonetheless selflessly devoted them virtually to the benefit of her family and others.

D. Donald's earnings and earnings abilities are greater than Donna's.

E. Donald's economic circumstances are superior to Donna's: His is a respected profession which provides to him all of his temporal (and, significantly, spiritual) needs.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED, that:

1. The Respondent have the exclusive custody of the parties' minor children.

2. The Petitioner enjoy the visitation of his children in the following manner:

a. Every other week from Friday at 5:00 P.M. to Sunday at 5:00 P.M. commencing the 25th day of December, 1981, at 9:00 A.M.

b. One day intervening the alternate weekends, and other than a week-end day or a day immediately preceding or succeeding one, or a regularly scheduled day off of the Respondent, from immediately after school if a school day and from 8:00 A.M. if not, to 7:30 P.M.

c. Each Summer, upon 60 days' notice, for six weeks, either continuously or in such segments as the parties may agree; provided that the Respondent shall have that visitation enjoyed by the Petitioner during the regular course of the year. Commencing in 1985, the Petitioner shall be entitled to a Summer visitation period comprising eight weeks, subject to the same provisions of this Order applicable to the preceding summers. During the period of the Petitioner's Summer visitation, his obligation of child support shall abate during the last half thereof.

d. Holidays shall be alternated annually between the parties, with visitations beginning in 1981 and 1982 as follows:

Christmas Eve - Respondent
Christmas Day - Petitioner
New Years Day - Respondent
Memorial Day - Petitioner
July 4th - Respondent
Labor Day - Petitioner
Thanksgiving - Respondent

e. Commencing in 1982, and alternating annually thereafter, those periods constituting respectively the childrens' school Spring and Christmas Vacations shall be equally divided between the parties, the Petitioner enjoying the first half of each that year; provided, however, Christmas Eve and Day shall be alternated annually in the sequence begun this year. For visitation purposes, Christmas Eve shall be deemed to commence at 5:00 P.M. on December 24th and terminate at 9:00 A.M. on Christmas Day.

f. The childrens' birthdays shall be alternated annually between the parties, commencing in 1982 with the Petitioner.

g. Each parent shall have the children on his

birthday and, as appropriate, Mother's Day and Father's Day.

h. When regular and special visitations conflict, the latter shall control.

When a scheduled visitation cannot occur because of illness and other actual and substantial supervening cause, the parties shall immediately and in good faith arrange an alternate visitation day (or period) as appropriate.

and returning the children.

i. The Petitioner may speak by telephone with his children once each day for a reasonable period of time.

3. The Petitioner pay into the Office of the Clerk of this Court, toward the support of his children, on the 1st and 15th of each month, commencing the 31st day of December, 1981, the sum of \$150.00. Commencing with his first payment, and annually thereafter, he shall pay a clerk's fee of \$10.00. The Petitioner shall be further responsible for all of his childrens' reasonable and necessary medical, dental, and hospital expenses.

4. (A) All right, title and interest in and to the following-described real estate, to-wit:

Part of the Northeast Quarter of Section 4, Township 36 North, Range 7 West of the 2nd P.M., described as beginning at a point on the West line thereof which is 1487 feet South of the Northwest corner of said tract 440 feet; thence South parallel with the West line of said tract 100 feet; thence West parallel with the North line of said tract 440 feet to the West line thereof; thence North along said West line 100 feet to the place of beginning, in the city of Gary, Lake County, Indiana.

of the Petitioner be, and the same is hereby, divested of and from him and vested in the Respondent.

(B) The Clerk of this Court, the Auditor of Lake County and the Recorder of Lake County respectively, shall, with respect to said real estate, timely perform the duties imposed them pursuant to I.C. 6-1.1-5-6 upon payment by the Respondent of the costs to which each is entitled.

(C) As between the parties, the Respondent shall henceforth be responsible for all expenses and obligations attributable to those premises including payment of the mortgage thereon.

5. (A) All right, title and interest in and to the following described parcels of real estate, to-wit:

Parcel 1: A part of the Southeast Quarter of Section 20, Township 4 North, Range 9 East, described as follows:

Beginning at the northwest corner of the northeast quarter of the Southeast Quarter of Section 20; thence north 89 degrees 57 minutes 24 seconds east; along the quarter section line, 219.666 feet to the TRUE PLACE OF BEGINNING thence north 89 degrees 57 minutes 24 seconds along the said quarter section line, 219.666 feet to a fiberglass post; thence south 00 degrees 10 minutes 26 seconds east; 2636.274 feet to a P.K. nail in the center of Chicken Run Road; thence south 89 degrees 46 minutes 28 seconds west along said Chicken Run Road 219.666 feet to a P.K. nail; thence north 00 degrees 10 minutes 26 seconds west, 2636.975 feet to the TRUE PLACE OF BEGINNING, containing 13.30 acres.

Parcel 2: A part of the Southeast Quarter of Section 20, Township 4 North, Range 9 East, described as follows:

Beginning at the northwest corner of the northeast quarter of the Southeast Quarter of Section 20; thence north 89 degrees 57 minutes 24 seconds east along the quarter section line, 439.332 feet to the TRUE PLACE OF BEGINNING; thence north 89 degrees 57 minutes 24 seconds east along the said quarter section line, 219.666 feet to a fiberglass post; thence south 00 degrees 10 minutes 26 seconds east; 2635.575 feet to a P.K. nail in the center of Chicken Run Road; thence south 89 degrees 46 minutes 28 seconds west along said Chicken Run Road, 219.666 feet to a P.K. nail; thence North 00 degrees 10 minutes 26 seconds west, 2636.274 feet to the T.P. OB., containing 13.293 acres,

The Respondent be, and the same is hereby, divested of and from the Respondent and vested in the Petitioner.

(B) The Clerk of this Court, the Auditor of Jefferson County and the Recorder of Jefferson County, respectively, shall, with respect to said real estate, timely perform the duties imposed upon them pursuant to I.C. 6-1.1-5-6 upon payment by the Petitioner of the costs to which each is

6. Each of the parties have those articles of household goods and appliances in his possession, free and clear of any claim thereto of the other; provided, however, the Petitioner may have and remove from the home of the Respondent, upon reasonable notice, a window air conditioner, table saw, jug lamp, bureau, dining room table and chairs and a prayer desk. Additionally, he may have and remove his son's current bed, provided, however, he immediately replace it with a bed of equal value.

7. As between the parties, the Petitioner have the exclusive ownership of his 1980 Dodge Omni, the Respondent her 1977 Volkswagen Rabbit automobile.

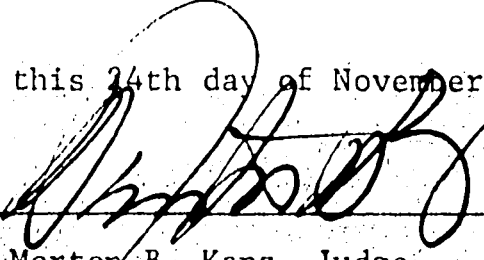
8. The Petitioner immediately endorse over to the Respondent, if he has not done so already, a certain insurance check to which the Respondent is entitled by virtue of a burglary resulting in the theft of certain articles of personalty from her premises.

9. As between the parties, the Petitioner pay the parties' outstanding indebtedness to John Rebeck & Co., Ayres, the expenses of the real estate appraisal had in these proceedings and the expense of the evaluation rendered by Manuel J. Vargas, Ph.D.

10. Richard A. Hanning, the Respondent's attorney herein, have and recover of and from the Petitioner, the sum of \$1,800.00, execution upon which judgment, however, is hereby stayed to the 31st day of March, 1982.

11. All of the costs herein are paid.

ALL SO ORDERED this 24th day of November, 1981.


Morton B. Kanz, Judge

FOOTNOTES

p. 3 1. Donald is an Episcopalian Minister, Donna a doctor's receptionist-secretary.

p. 8 2. It was while she was hospitalized that she met Donald

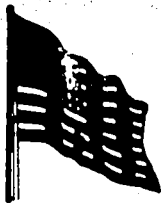
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Richard A. [unclear] 1981
[unclear]

CLERK: Notice pursuant to TR72d. By Sheriff

The United States of America



STATE OF INDIANA, COUNTY OF LAKE, ss:

I, the undersigned, Clerk of the Lake Superior Court of Lake County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify that the above and foregoing is a full, true, correct and complete copy of Court Orders dated November 20, 1981 and November 24, 1981 in Cause Number 281-523 entitled IN RE: THE MARRIAGE OF DONALD A. MILLIGAN and DONNA K. MILLIGAN as fully as the same appears of record in my office as such Clerk.

Order Book 92

Pages 515, 516, 517, 518, 519, 520, 521, 522 and 523

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at my office in East Chicago, Indiana in the said County, this 6th day of January, A. D., 1982

Edward A. Lukowski

Clerk Lake Superior Court

By Steve Lukowski Deputy

6. Each of the parties is employed;¹ but Donald, however, because of the nature of his calling, has by far the more irregular schedule: He does not, as he testified, engage in "clock-punching". Thus, while his primary criticism of a maternal custody is an excess of baby-sitter care, his schedule, which he acknowledged as "perhaps" irregular, takes him to hospitals, pastoral home visits, private Bible reading and prayer sessions, church bulletins, church calls, leading various church groups and meeting with parishioners. Additionally, he takes trips for weekend-conferences (occasionally out-of-town) and has frequent evening activities including occasions away from home and the evening meal.

Donna works from 10:00 A.M. to 3:00 P.M. on Monday, Tuesday, Thursday, Friday, and two hours on Saturday. Additionally, she attends Indiana University (the Northwest Campus) 5:30 P.M. to 8:30 P.M. each Tuesday.

Courtney is in school 8:00 A.M. to 3:00 P.M. daily and must wait for her mother at the home of a girlfriend perhaps fifteen minutes. Kim is in a nursery school from 9:00 A.M. to 11:30 A.M. Monday, Wednesday and Friday and, when not, is cared for by a neighbor-friend of Donna who has a boy his age.

Donna does not question Donald's love of his children. She does question, however, his relative fitness for custody. Thus, she testified when she returned to work in the Summer of 1979, he had agreed to watch the children and did so - for three weeks, after which a sitter was hired because the children had gotten in his way and he could not get his work done. Donna described his time with the children since as "breezing in and out of the house" : three or four nights a week at meetings, with dinner together but two times a week, at most. She had no reason to believe his schedule had since changed. Similarly,

it was her testimony that Donald would discipline the children only when they would bother him; otherwise there was a lack of discipline on his part. Consistent, perhaps, with such an attitude, he would not appear to otherwise notice what they did and would not watch closely enough, an example of which she cited was an occasion this Summer when one child wandered off at the beach, Donald left the other to find the former. There is evidence too of the children's bed room. As Donna's testimony that the children were not accustomed to being around their father very much and he has seen them since the separation more than ever before (it was clear from the undisputed testimony of each that he had, and enjoyed, substantial visitation). By way of rebuttal, however Donald stated that with respect to the pre-separation, while his is a "demanding" vocation, he would "make-up" to the children for his time away by spending as much of his free time with them as possible. Three of Donald's new neighbors who testified in this trial found him, variously, a "very loving father", who demonstrates "warmth and closeness" and who "disciplines in a very loving way".

Donna, as homemaker, reared the children and has had their continuous custody since the separation.

7. Vargas found Donald:

"a very intelligent man... (who) tries an extremely rational approach to control problems and emotional issues... (but who) nevertheless... carries a great deal of anxiety and insecurity tightly controlled within. He wants closeness very much and feels very vulnerable to rejection."

Still,

"There is a strong identification with the vulnerability, needs, and softness of children. Because of his vulnerability and the consequent tight rational control he at times lacks empathy (i.e., feeling-understanding) with some of the subtle aspects of human relationships. He can build up hurt into resentment and powerful anger. He can take a position and be very adamant and forceful."

In this latter respect, Donna pointed out that at the time Kim's adoption proceedings were pending, the parties were having marital difficulties and she suggested counseling, to which Donald's response was that the problems were her fault and that if she wanted counseling she should go ahead. Dr. Vargas concluded:

... gets
... exhausted, unhappy.
... as little of the fun or joy of
... living in his life. He needs a woman to
give him a foundation, self-confidence,
and emotional balance.

"With all the above we find a man who is very giving of his time, energy, and knowledge. Father Milligan holds very tight rein on himself with his vocation, and words very hard - self-sacrificially.

"He loves his children very much, and feels an overwhelming need for them. He is, of course, very socially responsible and constructive. He would make a good parent."

In this regard, Donna concluded her husband had sacrificed his family for his work. She was particularly critical that the relationship he now enjoys with his children was all "fun and games". While Donald denied such a characterization and presented a typical schedule of his time with the children, it is understandable that Donna, as the parent who has had the continual day-to-day responsibility for the rearing of her children, is associated in their minds as the disciplinarian.

8. Vargas found Donna, like her husband, "very bright".

He further found:

"She can use her mind and feelings to get understanding of people and can use humor to advantage. She is very hard working, achievement oriented, very dutiful, and rather severe with herself. She is generally a conformist. There is a lack of inner freedom and spontaneity. She feels the heaviness of responsibility and works hard to get the rewards of approval.

She strongly wants security and can be threatened by criticism and loss of security. She also has a very strong protective instinct for her children and her things."

She explains her concern for security is quite understandable in the circumstances - Donald is trying to take everything from her; moreover, she has only a part-time job (of questionable duration) and two years of training ahead of her toward a degree; rather, "going along with rules and regulations". She describes her lack of freedom and spontaneity as a function too of her current circumstances - difficult when "all this is hanging over your head" and there is an insufficiency of both money and time.

9. From the foregoing, it is apparent, as Vargas concluded, either party could be a good custodial parent. Donna, however, as the parent who has continuously raised the children and has, in so doing, provided a predictable, secure presence, impresses this Court as that parent who can best provide the necessary stability in their lives - a stability supported historically in a willingness to discipline certainly, to be there even when the going inevitably gets difficult. As equally fine a person as Donald is, the duties of his larger flock are such that he cannot provide the constancy of care that Donna can. While it is obvious from the Vargas report that each parent must contend with certain emotional baggage, it is the Court's clear impression that there is an intensity about Donald, reflected too in the Vargas observations concerning his potential for "resentment and powerful anger", and to "take a position and be very adamant and forceful", that suggests a calmer, less pressured nurturing by Donna.

On balance, then, in the opinion of this Court, the best interests of the children are served in their mother's custody, subject to liberal visitation rights in their father.

10. The children were baptized in the Episcopalian Church and had attended regularly so, ^{until} at some point after the separation, their mother stopped taking them. Donna was not an Episcopalian at the time of this marriage and she did not indicate her feelings as to the children's religious training. Donald, however, expressed a strong desire that they be raised in his church. While it is clear as a matter of statutory law the custodial parent "may determine the childrens' ...religious training", this is a case where, obviously, the custodial parent should defer in such matters to the father.

11. Donald was ordained an Episcopalian priest on the 15th day of September, 1973, and has continuously so served, initially for several years in Massachusetts and then, beginning in mid-1978, at his present pulpit: St. Barnabus, in the Miller section of Gary. But for some modest furnishings and a vehicle, he brought no property into the marriage. He had, however, seminary debts of some \$4,000.00 and a balance due on that vehicle. After their first year of marriage, he turned his regular paycheck over to Donna, who handled the family finances and who placed the money in a joint account ^{out} of which the family expenses were paid. Donald has since maintained a personal checking account into which is placed a monthly "discretionary" check he receives from his congregation as well as any honorariums received for weddings and the like, and upon which, as well as the family ^{account}, he draws as he wishes. His earnings during the marriage total virtually \$130,000.

The Milligans moved into their present home in July of 1978, and from that time to the separation, he (with the unpaid assistance of others) rendered the improvements: paneling of a playroom; installation of a new roof and a garage door; repair to the back porch; and the painting of trim. Without any foundation other

than its mere assertion, he estimates the value of those efforts at between \$15,000 and \$20,000. While the Court does not doubt the sincerity of his opinion, there is certainly grave question as to its value.

12. (A) Donna began her current employment in June of 1979, having last worked for an airline until her impending pregnancy in December of 1974 terminated that employment. At the time of [redacted] although doing [redacted] she is, however, 38 years-old. She thus has limited skills and if the doctor fails to return her future employment plans are indefinite. She is, however, a freshman at Indiana University, and hopes to begin Nurses Training next Fall (a two-year endeavor).

(B) While a stewardess, and prior to this marriage, Donna was seriously burned in June of 1972.² She received Workman's Compensation benefits, then a lump-sum payment. Subsequently, a products liability suit was initiated, culminating in a settlement of \$90,000 in early 1977. At the time of the marriage, Donna's assets consisted of household furnishings (those essentially the parties used) a Volkswagen automobile and some \$4,000 in savings. She was then still employed by the airline, though not as a stewardess, and earning slightly in excess of \$10,000 a year. Those savings paid the balance of his education loans, while her first settlement paid the balance due on his Volkswagen bus.

(C) But for the \$90,000, which was placed by Donna in an account in the joint names of the parties (despite advice to the contrary by an investment counselor friend of hers) the Milligans could save no money: Their debts simply exceeded their income. Nor was Donna profligate. In fact, she always discussed her purchases in advance, while her husband did not. Donald estimated his wife's contribution to the marriage as approximating \$125,000.

(D) The \$90,000, intended to compensate Donna for her extensive injuries, was exhausted rather quickly. None of it was dissipated. But Donna was generous, almost to a fault. Thus, \$500.00 gifts each were made to Donald's brother, Donna's parents and a priest, while \$200.00 was contributed to a project, and another \$500.00 donated for a stockade fence around the Church Rectory. \$5,000 was spent in the purchase of her 1977 Volkswagen Rabbit automobile, \$10,000 for his GMC "Jimmy" (vehicle). The former was discussed, the latter not - he simply withdrew the monies and made the purchase.

(E) In 1977, they purchased a "patch of land" - 26.6 acres of wooded land in Southern Indiana - for either \$16,500 or \$17,500. The purchase was induced by Donald, who saw in it a tax shelter as well as a site for future retirement. While Donna's parents and her sister's family live nearby, she advised him nonetheless that she would never wish to live there. It has been "on the market" for over three years without takers.

(F) With some embarrassment, the parties testified to their 1978 investment in a gas well which "bombed-out", following the advice of a friend back East. Of the \$3,600 sunk in the well, \$2,500 came from the joint-savings account, the balance via a joint loan.

(G) Kim's adoption, the cost of which approximated \$2,000, came virtually from the joint savings account.

(H) The parties' home was likewise purchased from the proceeds of the \$90,000. A home was necessitated by the fact that the Church has no Rectory. Accordingly, at the time, Donald proceeded to this area and, while accompanied by Donna's brother-in-law, selected the home, unseen by Donna (and, according to her, neither pre-appraised nor pre-inspected). It was purchased on the 22nd day of June, 1978, for \$49,000 and closing costs of \$318.50 - the total of which was paid in cash. However, in order to fund certain improvements (a water heater, gas furnace and heating) they obtained a mortgage loan of \$8, 125.20, of which

there is a current balance of approximately \$4,000. The parties submitted as their joint exhibit an appraisal which establishes the current market value of their home to be \$50,000.

13. Donald has removed most of the personal property from the family home he wishes, except for the following: a window air conditioner, table saw, jug lamp, bureau, dining room table and chairs, and prayer desk. Donna has no objection to his having any of them or any of the property currently in his possession. However, he also wishes the bed currently used by Kim (because it belonged to his father) and Donna has no objection, provided he replaces it with one of equal value.

14. Shortly prior to the commencement of the final hearing, Donna suffered a burglary of items, none of which are those in which Donald has expressed an interest and he acknowledged her exclusive entitlement to the \$1,163.00 insurance proceeds thereof.

15. Donald and his Church are the joint owners of his 1980 Dodge Omni automobile he uses. Donna continues to drive the 1977 Volkswagen-it is paid for and title exclusively rests in her name.

16. At the separation, Donald owned certain policies of life insurance which he cashed for \$2,300 and used for living expenses.

17. Of the parties' debts, Donald has been both paying and using the Sears and Ayres accounts and has indicated that he will continue to do so as he will as well pay the expenses of the real estate appraisal and Dr. Vargas.

18. Donald earns through his church \$1,520 gross monthly income, consisting of an annual salary of \$11,720.00, a housing allowance of \$4,600.00 and a gasoline allowance of \$2,000. Additionally, he is reimbursed for the purchase price installments on his vehicle. He also does substitute teaching: thus, in 1980, he received gross income from the Gary School System of \$3,047.00 and from the Portage System \$1,245.00. Finally, as earlier indicated, he earns intermittent honorariums.