

III. GENERAL (PUBLIC)

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

Between 1993 and 1995, I served as a member of the Board of Governors of the Chicago Council of Lawyers, one of whose principal objectives is to ensure that the legal system serves the disadvantaged. I attended regular meetings of the Board and also participated in various Board-sponsored projects, such as the evaluation and rating of candidates for elective judicial office. While in Chicago, I also provided pro bono assistance to an attorney filing a petition for certiorari in a voting rights case (African American Voting Rights Legal Defense Fund v. Villa). Finally, I note here, although it did not involve work for the disadvantaged, that I served for about nine months between 1994 and 1995 as pro bono counsel to the Bulletin of Atomic Scientists, a non-profit organization; in this capacity, I did 10 or fewer hours of legal work, relating to a small legacy to the organization.

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

No.

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

As far as I am aware, there is no selection commission in the District of Columbia to recommend candidates for nomination to the U.S. Court of Appeals for the District of Columbia Circuit. I discussed my interest in this vacancy, as well as my background and qualifications, with various members of the White House staff, principally in late 1998. I was informed in late March 1999 that a decision had been made to send my name to the FBI and ABA for evaluation. I was informed in June 1999 that a decision had been made to send my nomination to the Senate.

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

No.

5. **Please discuss your views on the following criticism involving “judicial activism.”**

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

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

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

Judges must approach their job with an understanding of its proper limits and a commitment not to usurp the prerogatives of more democratically accountable institutions. Judges have a responsibility to focus on the cases before them and to answer the questions presented there (and only those questions) in accordance with governing law. They should be predisposed in all cases to proceed incrementally and speak narrowly; they should leave undecided any questions not necessary to the resolution of a case or more appropriately considered by the people and their elected representatives in the States or Congress. Perhaps most important, judges should have a strong sense of the judicial branch’s limitations -- of its capacity to make mistakes and produce unintended consequences and of its distinctive inability to speak for, or in a way that is accountable to, the American public.

These principles explain a broad set of doctrines rightly fundamental to the American judicial system: that courts should refuse to hear cases when a controversy is moot or when it has not sufficiently ripened for decision; that they should refuse to hear cases brought by a person with no real stake in the controversy; that they should avoid deciding constitutional questions; that they should not issue advisory opinions; and that they should be highly protective of their own precedents. A strong view of these doctrines appropriately limits the role of the judiciary and assists in preventing undue incursions into the sphere of democratically responsible institutions.