

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Name:** Full name (include any former names used).
ROBERT CHARLES BRACK

2. **Address:** List current place of residence and office address(es).
Residence: Clovis, NM
Work: Curry County Courthouse, 700 N. Main, Suite 14, Clovis, New Mexico 88101

3. **Date and Place of Birth:**
May 2, 1953 Lynwood, California, United States

4. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

I married the former Sheila Kay Massey on May 24, 1975. She is employed with Colonial Real Estate, 4201 N. Prince Street, Clovis, NM 88101, as a realtor.

5. **Education:** List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

1976 - 1978 University of New Mexico School of Law;
Juris Doctor Degree, conferred May, 1978.

1975 - 1976 Tulane University School of Law, New Orleans, LA.

1972 - 1975 Eastern New Mexico University, Portales, New Mexico 88130.
Bachelor of Arts Degree, conferred May, 1975.

1/72 - 5/72 Northern Illinois University, DeKalb, Illinois.

8/71 - 12/71 Texas Tech University, Lubbock, Texas.

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment:

1997 - present State of New Mexico as District Court Judge,
Clovis, New Mexico.

1980 - 1997 **Robert Brack, P. A. - General, Civil Trial Practice**
 906 Colonial Parkway, Clovis, New Mexico 88101

1978 - 1980 **Teddy L. Hartley, Attorney at Law; Staff Attorney**
 906 Colonial Parkway, Clovis, New Mexico 88101

1976 - 1978 **Patrick Chowning, Attorney at Law; Law Clerk**
 3636 Menaul NE, Albuquerque, New Mexico

Summer 1976 **Santa Fe Carloading, Albuquerque, New Mexico; dockworker**

Summer 1975 **Harry Dixon Housepainting, New Orleans, Louisiana; painter**

Non-Employment Affiliations:

2001 - present **Officer & Director; Communities for Christ Crusade; Clovis,**
 New Mexico, 501(C)(3).

1993 - 1994 **Sangre de Cristo Cattle Co., partner**
 a New Mexico general partnership

1990 - present **Trustee of Robert Brack, P.A. Profit Sharing Trust**

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

NO

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

1974 **Eastern New Mexico University**
Pre-Law Award - Tuition Waiver

1975 **Graduated from ENMU with Honors**

1976 **Invited to write for Tulane Law Review. Invitations extended to top**
10% of class at end of first year. I did not write for the Review as I
transferred to the University of New Mexico Law School for my second
and third years.

2001 **Clovis Chamber of Commerce "Heart Award" given for distinguished**
public service.

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups. .

2002 - present	New Mexico State Bar Association Committee on Professionalism Monitoring and Evaluation sub-committee Communications sub-committee
1998 - 2001	New Mexico Chief Judges Council
1997 - present	New Mexico District Court Judges Association
1978 - present	New Mexico State Bar Association
1984 - present	Arizona Bar Association
1979 - present	Texas Bar Association
1979 - mid 90's	American Bar Association

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying:

1995 - 1999	New Mexico Amigos - Ambassador Group; New Mexico businessmen and women - self-funded. The Amigos sponsor a legislator's breakfast annually, at the beginning of the New Mexico legislative session. I have never attended one of these breakfasts, nor did I ever participate in any other lobbying efforts conducted by the Amigos.
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Others:

1990 - 1994	Founding Member, Archdiocese of Santa Fe, Catholic Foundation; Albuquerque, New Mexico.
2001 - present	Chairman, Communities for Christ Crusade, lay-lead, inter-denominational group; Partnership with local churches; Clovis, New Mexico.
1980 - present	Colonial Park Country Club, Clovis, New Mexico.
1989 - 1996	Clovis Chamber of Commerce, Clovis, New Mexico; membership in name of Robert Brack, P.A.

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require

special admission to practice.

1989 Supreme Court of the United States
 1984 Arizona State Courts
 1980 U.S. Court of Appeals for 10th Circuit
 1979 Texas State Courts
 1979 U.S. - District of New Mexico, Bankruptcy Courts.
 1978 New Mexico State Courts

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I haven't been published. I speak occasionally to local civic and religious groups to promote the business of the court and local charitable activities. There are no copies of written speeches because it is my practice to speak from brief outlines that I discard after the event. I'm not aware of any press coverage of any such speeches, nor were they written or videotaped. A short speech given by me at my swearing-in ceremony as a state district court judge in February, 1997 was videotaped, but a recent search for a copy (for purposes unrelated to my nomination) was unsuccessful. A list of public speaking opportunities with approximate dates and subject matter follows. None of my speeches involved constitutional law or legal policy.

<u>Group Addressed</u>	<u>Approx. Date</u>	<u>Subject Matter</u>
Camp Sierra Blanca Commencement Exercise (Branch of Boy's Schoof)	May, 1999 or 2000	Character
NM State Bar Convention Prayer Breakfast	June, 2000	Personal Testimony
Local businessmen and women Cannon Air Force Base, Clovis, NM	July, 2001	Jehoshaphat, 2 Chron. 20, as related to the need for revival in our nation; promoting Oct, 2001 crusade.
Local businessmen and women Portales, NM (Eastern NM University)	July, 2001	Same as above.

Clovis, NM Thursday Noon Rotary	July, 2001	Same as above.
Various churches in Clovis & Portales, NM area	June, July, August September, 2001	Same as above.
Clovis, NM Citywide Memorial Service	September 12, 2001	Prayer
Clovis High School Student Council Award Dinner	Spring, 2002	Character
National Day of Prayer, Portales, NM	May 1, 2002	Personal Prayer Experience
Sacred Heart Catholic Church Adult Study Group (Clovis, NM)	Fall, 2002	Evening with Judge Brack
First Church of the Nazarene (Spoke alongside our city mayor, school superintendent and Wing Commander of Cannon Air Force Base), Clovis, NM	October, 2002	Friends
Knights of Columbus Clergy Appreciation Dinner Clovis, NM	November 24, 2002	Commendations, challenges, considering it all joy
Plains Regional Medical Center Award Banquet	Winter, 2002	Heroes
St. Helen's Catholic Church, Portales, NM	January, 2002 - March, 2003 (approx. 3 times)	Gave the sermon from prescribed readings for the particular Sunday.
Kingswood Methodist Church Clovis, NM	April 8, 2003	Eulogist at funeral for friend
Men's Bible Study, Clovis, NM	April 20, 2003	The Purpose Driven Life
Clovis High School Golf Awards Banquet	May 15, 2003	Character

13. **Health:** What is the present state of your health. List the date of your last physical examination.

Excellent. Date of last physical was March 25, 2003.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1997 - present **State of New Mexico District Judge
(appointed initially, then elected in 1998)**

State trial court - general jurisdiction

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

As a state district court judge, I strive to rule from the bench as often as I possibly can. As necessary, though, the drafting of letter decisions takes the place of more formal "opinions" in my court.

- (1) A synopsis of ten (10) significant cases are listed below:

- A. **State vs. Bernardo Rodriguez**, Curry County, New Mexico. District Court Cause No. D-0905-CR-199700179.
After being on the bench only a short time, I presided over this week-long murder trial. Mr. Rodriguez was accused of killing a rival gang member. At the end of the prosecution's case, concerned about the extent of the proof, I very nearly granted a directed verdict, but determined that there was a theory, if believed, upon which the jury could convict. I let the matter go to the jury which, after extended deliberation, acquitted Mr. Rodriguez.
- B. **State vs. Arnell Van Duyne**, Curry County, New Mexico. District Court Cause No. D-0905-JR-0200100115.
This 15 year old defendant was accused of brutally raping, then beating to death with a baseball bat, the woman who had adopted him after the parental rights of his natural mother had been terminated. Pursuant to a guilty plea agreement, I sentenced Mr. Van Duyne to the maximum

allowed under the agreement.

- C. Paul Young vs. Children, Youth & Families Dept., Curry County, New Mexico. District Court Cause No. D-0905-CV-0200200245. In a companion case to State vs. Arnell Van Duyme, above, the widower of the woman beaten to death, sued the New Mexico Children, Youth and Families Department for failing to disclose, in the adoption process, knowledge of Mr. Van Duyme's dangerous, explosive tendencies gained from psychological examinations done of the young man. On motion of the State, I dismissed the complaint, finding no safe harbor for the plaintiff in our tort claims act. The matter is on appeal.
- D. State vs. Lloyd Sperry, Curry County, New Mexico. District Court Cause Nos. D-0905-CR-0200100115 and D-0905-CR-0200100200. Mr. Sperry, an elementary school teacher, was charged with twenty-two (22) counts of criminal sexual contact of a minor involving young female students ages 9-12. Given a range of sentences in an Allord plea agreement, I sentenced Mr. Sperry to the maximum in one of the highest profile cases in our district in some time.
- E. Charles R. Ranch LLC vs. Eduardo Montoya, et al., San Miguel County, New Mexico. District Court Cause No. CV-98-150. Sitting by designation in this out-of-district case, I presided over a fascinating land grant case involving title to real property hundreds of years old dating to Spanish royalty. After significant motions practice over several years, the parties finally settled the case in February, 2003.
- F. Campos de Suenos, Ltd. vs. County of Bernalillo, et al., Bernalillo County, New Mexico. District Court Cause No. D-202-CV-9705106. Sitting by designation in this out-of-district case, I presided over a breach of contract case between local developers and the county government. Extensive motions practice resulted in my dismissing all but one of the numerous counts. On appeal, my decision not to dismiss the remaining count was reversed. Case reported at 130 N.M. 563, 28 P.3d 1104, 2001 NM App. LEXIS 36 (CA, 2001), cert denied 130 N.M. 484, 27 P.3d 476, 2001 NM LEXIS 203 (2001).
- G. State vs. Allen Hicks, Jr., Curry County, New Mexico. District Court Cause Nos. D-0905-CR-97-65 and D-0905-CR-97-214. Within days of my taking the bench, this defendant, who had multiple prior convictions, sought to be released on his own recognizance on charges including aggravated robbery with a firearm. I denied his request. One week later, he asked that I reconsider, citing a jail-house

conversion that made him more trustworthy. I congratulated him on his new life, but let my previous ruling stand. He said "F___ you" and went back to jail.

- H. In the Matter of Jerry Martinez, a child, Curry County, New Mexico. District Court Cause No. D-0905-JR-97-236.
This juvenile was caught in the act of breaking into a dry cleaners with his father. His father, who had several priors, was showing his son some tricks of the trade. I developed a wonderful relationship with the son over the course of several hearings and he quickly became one of my favorites. When he finally was sent to the Boy's School, Jerry and I corresponded regularly and whenever he was in Clovis, he would come by to see me. This exceptionally bright, handsome, quick-witted young man was murdered on July 11, 1999.
- I. Christian Children's Home vs. John E. Vestal, Roosevelt County, New Mexico. 125 N.M. 426, 962 P.2d 1261, 1998 N.M. App. LEXIS 81 (CA, 1998).
Mr. Vestal, convicted of criminal sexual penetration of a 13 year old girl, asserted his parental rights to the child conceived as a result of the criminal act. Under a state statute that dispenses with the requirement of notice to, or consent from, "a biological father of an adoptee conceived as a result of rape or incest," I denied Mr. Vestal's petition for custody and allowed the adoption of the child to go forward. The Court of Appeals affirmed my decision.
- J. State of New Mexico vs. Richard Swopes, Curry County, New Mexico. District Court Cause No. D-0905-CR-02-03.
In one of my most recent high-profile cases, the defendant was charged with nineteen (19) counts of sexual misconduct with children. The matter was resolved by plea and I am awaiting a diagnostic evaluation before sentencing Mr. Swopes to a period of not less than thirteen (13) years and not more than forty-one (41) years.
- (2) In my six years as a state judge, I have been appealed approximately 40 times. I have been reversed 5 times. Copies of the unpublished or memorandum opinions are attached.
- (3) As a state district judge, my involvement with constitutional issues is limited, for the most part, to habeas and search and seizure matters. I don't believe that any of my decisions or corresponding appellate decisions could be said to have involved "significant" constitutional issues.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

NONE

17. **Legal Career:**

- (a) Describe chronologically your law practice and experience after graduation from law school including:

- (1) whether you served as clerk to a judge, and if so, the name of the judge, the court and dates of the period you were a clerk;

NO

- (2) whether you practiced alone, and if so, the addresses and dates;

I practiced law as a solo practitioner from 1980-1997, with the exception of periods during which I had one associate, at 906 Colonial Parkway, Clovis, New Mexico 88101.

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your connection with each;

**Ted L. Hartley, Attorney at Law, Associate Attorney, 1978-1979;
906 Colonial Parkway, Clovis, New Mexico 88101.**

**Robert Brack, P.A. (professional association), 1980-1997;
906 Colonial Parkway, Clovis, New Mexico 88101.**

- (b) (1) What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1978 - 1997, General civil trial practice with business emphasis.

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

A representative sample of my former clients would include multiple financial institutions (Western Bank of Clovis; First National Bank of Clovis), a convenience store chain of 350 stores (Allsup's Convenience

Stores, Clovis, New Mexico); our local community college (Clovis Community College, Clovis, New Mexico), a regional telephone cooperative (Eastern New Mexico Rural Telephone Cooperative), several car dealerships (including at one time the Chrysler, Plymouth, Dodge, Nissan, Jeep, Eagle, Mitsubishi, Chevrolet, GM & Ford franchises); oil and gas distributors (Gary Cook Oil Company) and regional highway/paving contractors (K. Barnett & Sons, Clovis, New Mexico.)

- (c) (1) Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, providing dates.

I appeared in state courts frequently.

- (2) What percentage of these appearances was in:

- (A) federal courts; 5%
 (B) state courts of record; 95%
 (C) other courts.

- (3) What percentage of your litigation was:

- (A) civil; 98%
 (B) criminal; 2%

- (4) State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried approximately 100 cases to verdict, usually as sole counsel, always as lead counsel.

- (2) What percentage of these trials was:

- (A) jury; 20%
 (B) non-jury; 80%

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
 - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
 - (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- (1) **Burns vs. State of New Mexico** - D-0101-CV-89-1314, represented the named plaintiff and approximately 9,000 additional federal retirees against the state Taxation and Revenue Department for illegal, unconstitutional taxation of federal retirement benefits. Federal Supremacy Clause, 11th Amendment issues confronted/overcome. At the time (1990), New Mexico did not allow an opt-out-type class action so we were required to deal, individually, with all 9,000 plaintiffs. We prevailed on summary judgment in the State District Court, Santa Fe County, and the State chose not to appeal resulting in tax refunds to our clients in excess of \$20 million. I was lead counsel in briefing and arguing the case. District Judge Steve Herrera, now deceased, presided. James F. Hart (908 Colonial Parkway, Clovis, New Mexico 88101, 505-762-7748) and Lisa Cronin, my associate at the time (3744 N. Sandrock Pl, Tucson, AZ 85750, (520) 546-0233), acted as co-counsel. Mr. Frank Katz (1300 Canyon Rd., Santa Fe, NM 87501-6162, (505) 982-4342) represented the State of New Mexico.
 - (2) **Kenny Thomas vs. NCAA** - CV-95-09054, represented, as lead counsel, a freshman, star basketball player at the University of New Mexico ruled ineligible by the NCAA. Tried case in Bernalillo County District Court, Albuquerque, New Mexico, before the Honorable W. Daniel Schneider, now a federal magistrate, in October/November 1995 on a preliminary injunction. Prevailed after 3 days of trial in what was reported at the time as the first court loss ever suffered by the National Collegiate Athletic Association. My co-counsel, was Pete V. Domenici, Jr. (6100 Seagull St., NE, #205, Albuquerque, New Mexico 87109, (505) 883-6250). Mr. Paul Bardacke (P.O. Box 35670, Albuquerque, NM 87176-5670, (505) 888-4300), represented the NCAA.
 - (3) **Strebeck vs. Chrysler Insurance** - I represented, as lead counsel, my lifelong friend and client, Sid Strebeck, against the defendant insurance company for non-payment of a fire claim resulting from the destruction of one of his auto dealerships. The case was tried, to the court, the Honorable Justice Stanley Frost, retired, sitting by designation, over 9 days in January, 1997. We prevailed. Opposing counsel was Mr. Ed Chapin, representing his firm from San Diego, California, 3405 Kenyon, #402, San Diego, California 92110, (619) 718-7540. I was not able to defend the appeal as I took the bench just weeks after the trial. The appeal is reported at 127 N.M. 603, 985 P.2d 1163 (1999). My brother, Brian Brack, (505) 243-3500, assisted at trial and defended the appeal.

- (4) Gilman vs. McCrary - I represented the plaintiff in a Hatfield vs. McCoy-type boundary dispute that found its way to our Supreme Court on at least two occasions. Reported at 97 N.M. 376, 640 P.2d 482 (1982). I was sole counsel. Richard Rowley (305 Pile, Clovis, NM 88101, (505) 763-4457) represented the defendant. District Judge Reuben Nieves, now deceased, presided. The issues were interesting, but paled in comparison to the personalities involved. Allegations of gun play and murder remain unresolved to this day.
- (5) White vs. Huttenbauer - United States District Court, New Mexico. Cause No. CV-79-197. Fresh out of law school (1979-1980), I represented, as lead counsel, our client, Mr. Ken White, a New Mexico cattleman, against Mr. Sam Huttenbauer, who had defaulted on a land sales agreement. We prevailed in the district court and later at the 10th Circuit. Mr. Harry Patton (I believe Mr. Patton lives in the Clovis, NM area, but my attempts to locate an address or telephone number were unsuccessful) represented Mr. Huttenbauer. The case was tried before the Honorable Santiago E. Campos.
- (6) Jacklin vs. Dudley - I represented a troubled young mother in an extended custody battle concerning her children, against her own parents. My client's parents convinced her to give them guardianship of her 2 small girls "just until you get on your feet". Immediately upon securing the guardianship, her parents cut my client off completely from any contact with her children. After several years of litigation, my client was restored to custody of her girls. The case was tried in Curry County, New Mexico District Court to the Honorable Fred T. Hensley. The case is reported at 101 N.M. 34, 677 P.2d 1070 (1984). Mr. Hal Greig (P.O. Box 1080, Clovis, NM 88101, (505) 763-4428) represented the Jacklins.
- (7) Richardson vs. Ford Motor Co. - (1984) I represented a young farmer who was horrifically burned in a motor vehicle accident. My client's Ford pickup truck t-boned a lady's vehicle which had run a stop sign. The lady died in the accident, but my client's injuries would have been limited to a broken arm had it not been for the burns he received when the fuel vapors, escaping from an in-cab fuel tank, ignited. After extensive discovery but pre-trial, Ford settled the case. The case was filed in Curry County, New Mexico district court. Ford was represented by the law firm of Snell and Wilmer, Phoenix, Arizona. I don't recall the name of counsel from that firm.
- (8) State vs. Oscar Gilman - (1980) Roosevelt County, New Mexico District Court case, the Honorable Reuben Nieves, now deceased, presiding. In my only criminal jury trial case, I defended Mr. Gilman accused of aggravated assault with a deadly weapon on Mr. McCrary (see # 4, Gilman v. McCrary). Mr. Gilman had assured me, before trial, and the jury at trial, that he was not guilty

in that he had picked up a stick not a shotgun as Mr. McCrary, who was legally blind, believed. A surprise, rebuttal witness, a passing motorist, was allowed to testify, over my objection, that he had in fact seen Mr. Gilman holding a shotgun at the time of the incident. Leslie Williams (P.O. Box 674, Clovis, NM 88101, (505) 769-0687) was the prosecuting attorney.

Embarrassed before the jury, I argued that Mr. Gilman may have lied to them about the shotgun, but that the state had still failed on the proof in that no evidence was presented that the gun had been pointed at Mr. McCrary or that he had been placed in fear. The jury acquitted Mr. Gilman, who has since disappeared and has never been seen or heard from again.

- (9) Young vs. Rural Electric Cooperative - (Early 80's) I represented the surviving widow of Mr. Charles Young, who was killed when he attempted to rescue a farm laborer who had lifted an irrigation pipe which contacted a transmission line that was hung below statutory minimums. The case was settled after extended discovery. The case was filed in Quay County, New Mexico district court and assigned to the Honorable Stanley Frost, District Judge, now deceased. The Honorable Alan Torgerson, now a U.S. Magistrate (P.O. Box 25687, Albuquerque, NM 87125-0687, (505) 842-1950), represented the Coop.
- (10) Spiteri vs. Foulkes - Curry County, NM Cause No. 81-CV-28245. I represented a minor child and his parents seeking recovery for profound injuries sustained by the child when he was run over by a passing motorist. The plaintiffs prevailed in what was described, at the time, as the largest civil jury verdict ever rendered in our district. The Honorable Reuben Nieves, now deceased, presided. Dan B. Buzzard, now deceased, represented the defendant.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In addition to those matters described in response to Question 19, some of which involved litigation that did not ultimately go to trial, other significant legal activities pursued during my practice would include:

- A. representing a chain of 350 convenience stores where I was involved in land acquisitions, lease negotiations, contract work with vendors, and development of employee policies;
- B. representing a large, progressive telephone cooperative at a very exciting time in the industry characterized by transition from land-based telephone systems

to cell and wireless technology, and a move into the Internet service provider business;

- C. representing a local community college which transitioned from a branch of a 4-year college institution to being an independently-chartered community college. Following the transition, the college has experienced exponential growth and is looked upon as a tremendous asset to our community;
- D. representing a NCAA division-I basketball coach in negotiating the buy-out of the remainder of his contract when he was unexpectedly and unceremoniously fired by the University of New Mexico after posting several back-to-back 20-win seasons.
- E. New Mexico Bank and Trust (formerly First National Bank of Clovis (NM). I was hired the day my clients purchased this very-troubled financial institution in 1982 and represented the bank until I took the bench. In my 15 years of representation, as my good friend and former owner/president of FNB was fond of saying, I never lost a case involving the bank. Dan Hardisty, former President, now lives in Ruidoso, New Mexico and can be reached at (915) 497-2445 or (505) 378-8376.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Having served in the New Mexico judiciary for over 5 years, I have accrued and vested retirement benefits that can be taken as a lump sum after my leaving the bench or in monthly payments beginning at age 62. Also, I recently liquidated a small portion of my pension plan.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

Historically, I have resolved questions of potential conflicts of interest by making a full disclosure of any prior relationship, knowledge or involvement with a party, counsel or issue, on the record, followed by an indication of my belief whether I can, in spite of the potential conflict, continue impartially. As a federal judge, I will follow, in all

circumstances, the Code of Conduct for U.S. Judges and the requirements of 28 USC §455 and all other recusal statutes.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain:

NO

4. List sources and amounts of all income received during the calendar year preceding your nomination and, for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

A copy of my financial disclosure report is attached.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

NO

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.

During my trial practice, I was regularly appointed to represent indigent respondents in abuse and neglect cases, which I considered pro bono work. I also regularly provided legal assistance, on a pro bono, non-compensated basis, to my church, local charities, and other disadvantaged clients.

2. The American Bar Associations Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you 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).

In September, 2002, Nelson Franse, an Albuquerque attorney and lifelong friend, called to advise me that two positions were soon to be available on the U.S. District Court and to encourage me to consider putting my name in the hat. After much thought, I made some preliminary calls to friends and potential supporters, including Pat Rogers, an Albuquerque attorney, New Mexico State Land Commissioner Pat Lyons, and Pete Domenici, Jr., an Albuquerque attorney and former co-counsel.

In January, 2003, I wrote to Senator Pete V. Domenici indicating my desire to be considered for one of the positions available. I met with Pat Rogers, U.S. District Chief Judge Parker, and Albuquerque attorney, Bill Kelcher, to discuss the possibility of my nomination. On January 31, 2003, I met with Senator Domenici in his Washington D.C. office for an interview. On February 1, I met with Senator Jeff Bingaman for breakfast in Las Cruces, NM to discuss his support of my nomination.

On February 12, 2003, I was interviewed by a Deputy Counsel to the President and a representative from the Department of Justice at the White House. The interview lasted approximately 45 minutes. On March 5, 2003, I was told that the President intended to send my name to the Senate pending FBI checks and other due diligence. Thereafter, I was interviewed by agents from the FBI and representatives from the Office of Legal Policy at the Department of Justice.

On April 28, 2003, my name was sent to the Senate by the President.

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:

1. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
2. 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;
3. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
4. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
5. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In our system of separation of powers, the power to legislate is left exclusively to the legislative branch. The judicial branch exists to say what the law is, not what it should be. The courts exist to decide cases and controversies, not to sit as super legislatures. When the judiciary crosses the line from interpreting policy to making policy, our constitutional scheme is perverted and endangered.

The doctrine of stare decisis demands, particularly of the lower courts, that decisions of the superior courts be followed in order to promote stability and prevent chaos.

If federal judges are to remain faithful to their oath to uphold the Constitution and decide according to law and if the public trust vested in an independent judiciary is to be upheld, judges must restrain themselves in the use of the extraordinary power granted them in their positions.