

QUESTIONS AND ANSWERS

RESPONSES OF ROBERT BRACK
 TO FOLLOW-UP QUESTIONS FROM
 SENATOR RICHARD J. DURBIN

- 1 On your Senate questionnaire addendum, you noted your involvement with the organization OneMillionDads.com as follows:

ONE MILLION DADS.com. Internet-based service which keeps subscribers alerted to family issues in the media. Encourages members to contact legislators regarding specific issues. It occurred to me shortly after I became aware of the service that it might not be appropriate for me to use my state-owned computer for personal lobbying so I have not responded to any requests since.

- A What personal lobbying efforts did you engage in using your state-owned computer? Please describe them.

What I described as "personal lobbying" in my questionnaire was limited solely to responding to requests for action from OneMillionDads.com (OMD). These requests typically sought an e-mail addressed to companies that advertised on, or otherwise supported, prime-time television programs which contained content believed by OMD to be inappropriate. My responses to such requests did not reference my judicial position, were few in number (5 or less) and ceased altogether when I considered the computer-use question.

- B. Do you think it is appropriate for a state or federal judge to engage in personal lobbying of any sort? If so, what types of lobbying do you believe are appropriate?

I believe that judges should follow the law and the canons of judicial ethics when determining whether to engage in personal lobbying of any kind. In New Mexico, pursuant to §21-700(A) of the Code of Judicial Conduct, "a judge may engage in political activity on behalf of the legal system, the administration of justice, measures to improve the law and as expressly authorized by law or by this Code." Relative to non-political activity, a judge shall conduct all of his extra-judicial activities so that they do not:

- (1) cast doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office;

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- (3) interfere with the proper performance of judicial duties;
or
- (4) violate the judge's oath and obligation to uphold the laws and constitution of the United States and the State of New Mexico. §21-500(A), New Mexico Code of Judicial Conduct.

I have endeavored to follow the Code during my years as a state district court judge and I will strive to similarly follow the Code of Conduct for United States Judges, if confirmed.

2. The organization OneMillionDads.com is run by the American Family Association. One of the goals of the AFA is to - in their words - expose the misrepresentation of the radical homosexual agenda and stop its spread through our culture."

- A. Do you support this goal of the AFA? If so, please explain why you support it, and what you believe the "radical homosexual agenda" to be.

I am not a member of the American Family Association (AFA) and I don't believe I have ever read the stated goals of the organization. I am not sure what the AFA means when they use the phrase you noted and, therefore, could not be said to support it. The Constitution, as interpreted by our courts, defines the rights of all Americans, including gays and lesbians, and all such rights deserve the protection of our courts.

- B. In last week's Lawrence v. Texas decision, there were several opinions issued. Which of these opinions - the majority, the concurrence, or one of the two dissents - most reflects how you would have ruled in this case had you been a member of the Supreme Court?

I have not read the Lawrence v. Texas decision, and thus, I could not tell you which of the opinions reflects how I would have ruled. Even if I had read the decision, the separate Lawrence opinions were informed as the result of enormous time, study and briefing which I haven't spent or considered. Additionally, the New Mexico Code of Judicial Conduct, §21-700(B)(b) & (c) indicates that judges "shall not:

- (b) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court;

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- (c) announces how the candidate would rule on any case or issue that may come before the court."

The official commentary to the cited sections makes it clear that Rule (B)(4) applies to statements made to legislative bodies confirming nominations. Thus, I believe that it would be inappropriate for me to comment on the opinions except to state that, if confirmed, my duty as a federal district judge would be to follow the law, including all precedents of the Supreme Court and the 10th Circuit, as I have sought to do during my 6 1/2 years as a state court judge.