

M E M O R A N D U M

TO: Beverly Hills Bar Association
FROM: Kenneth G. Petrulis
DATE: September 19, 2005
RE: Bar Brief: Focusing on the Rule of Law

I end my year as I began it, with a focus on the Rule of Law. Yesterday confirmation hearings for John Roberts as Chief Justice of the U.S. Supreme Court began with areas of questions with special interest groups reminding Senators of each groups' most important issues. The American public, however, and, indeed, the Senators, themselves, must find a broader yardstick, some way to put into perspective just where Judge Roberts stands. One way to do this is to create a scorecard for him. While judicial temperament and articulate reasoning create an image, it is more important to know what he has done and the circumstances under which he has done it. Here, then, I provide for you my scorecard on which you may judge the Honorable John Roberts or any public official:

Grade the judge on how effectively the judge's rulings promote these five elements of the Rule of Law. Give a maximum of 4 points for each area. 14 points total equals a passing grade (70%).

Fair laws. Laws are public, clear and reasonable when applied to human experience (for example, we know that women need access to reasonable and safe abortion procedures. Has the judge, by his writings or decisions supported laws that do not respect women's rights and issues are therefore not fair);

Fair enforcement. The administrative branch, prosecutors, and police, are reasonably fair, competent, and efficient (Has the judge shown vigor in discouraging racially based traffic stops?);

Fair courts. The courts exhibit tolerance and integrity. They are competent, and efficient. Judges are impartial and independent, randomly assigned, and not subject to political influence or manipulation (Has the judge taken any jaunts with likely advocates or parties who may appear before him?);

Access. The justice system is reasonably open and available to all, and

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does not impose oppressive burdens on the participants (Has the judge supported the right of access); and

Everyone is subject to the law. Government officials including the President, Supreme Court and the Congress, consent to be subject to the law (Does the judge discourage personal attacks by members of Congress and defend members of the judiciary from personal verbal or physical attacks?).

Questions to the judge should cover all five areas and we should highlight how many of these areas he is deficient in. It allows the public to quantify just how he measures up and whether he should be given a passing grade.

What we hope for in our judges is the ability to see the balance point of fairness in the midst of the partisan fight. These judges often end up on the losing side of a decision and become known as great dissenters when the reason and understanding that come with time overtake the passion of the present and their dissents become majority opinions. Support of fair laws may, for example, demand that a judge rebuff attacks from both the left and the right.

A good example of the difficulty of being an independent jurist is the gay marriage issue. The right would deny to gay and lesbian partners a civil union on a par with marriage. The left would deny those same civil union rights to non-sexual couples. Most people will empathize with one group or the other and based on that empathy, make their decision. The independent judge and dissenter carries out his or her highest responsibility to think and consider life's decisions for themselves, to add to the body of law by acting independently even in the face of criticism based on his or her own personal principles. Had we only obedient, empathetic judges, we would never find that rational place of integrity and fairness.

As President of the Bar, I have tried to bring what I have learned in life to the Bar. While I am grateful for having had that opportunity, if anything, I have, during the course of the year, learned more than I have given. For this I thank those that I have learned from, the people who worked with me. Steve, thank you for teaching me the value of life-long commitment. Cindy, I appreciate what I have learned from you about building and using relationships. Larry, your insight into complex situations brings a fresh and useful perspective to issues. Marc, your ability to win friends and influence people is impressive. Nancy, you have taught me the value of a fresh perspective, new approach and new resources. Tom, you are a great example of how to stand by your

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convictions even when outnumbered. Who could not learn from Irena's dauntless enthusiasm and love for her art.

I also know that the heart of our Bar is our Executive Director, Marc Staenberg, and his terrific staff. It is a tribute to them that none of my time has been spent worrying about the execution of events and programs. I, and all of our members, merely come, learn and enjoy. It allows us to build upon what has gone before and move into the future as will my successors, Cindy Pasternak and those who follow her.

KGP/ct

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