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.**

Service to the ideal, "equal justice under the law," has been a central concern of my teaching, writing, speeches, advocacy (prior to my appointment to the bench), and daily life. My efforts in this regard include many of the publications listed above (I. 12), lectures, participation in panel discussions, and litigation.

Institutional activities in my seventeen years (1963-80) as a law faculty member demonstrating a commitment to equal justice include leadership of a Dean-appointed commission at Rutgers (Newark) Law School to increase participation by minorities in all phases of law school life, service on Columbia University's faculty affirmative action review committee, the Academic Advisory Board of Columbia University's Center for the Study of Human Rights, and the Advisory Board of the Columbia Center for the Social Sciences Program in Sex Roles and Social Change.

As a General Counsel to the American Civil Liberties Union (1973-80), a member of the ACLU National Board (1974-80), and a founder of the ACLU Women's Rights Project (1972), I was involved in a range of human rights and public interest activities, and worked in cooperation with a variety of public interest and legal services groups. In addition, I endeavored to advance equal justice and opportunity goals through service in the American Bar Association, the Association of the Bar of the City of New York, and other professional associations.

Prior to my June 1980 appointment to the bench, my activities directed to making legal services fully available included work as an ACLU volunteer attorney, service on the Executive Committee of the Association of the Bar of the City of New York during the period the Association established a public interest law office, and assistance in the organization of Columbia Law School's first legal services clinic.

In addition to activities noted above as a law faculty member and ACLU General Counsel and volunteer attorney, I supported, as a member of the Council of the American Bar Association's Section of Individual Rights and

Responsibilities, ABA resolutions designed to promote wider opportunities for economically and socially disadvantaged people and the physically or mentally handicapped.

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 invidiously discriminates on the basis of race, sex, or religion. Please list all business clubs, social clubs or fraternal organizations to which you belong or have belonged since graduating from law school, and for each such club or organization, please state:

a. the dates during which you were a member and the approximate number of members the club or organization had during that period;

b. the purpose of the club or organization (e.g., social, business, fraternal or mixed), the frequency with which you used the facilities, and whether you used the club or organization for business entertainment;

c. whether, while you were a member of such club or organization, it did or did not include members of all races, religions and both sexes:

d. if the club or organization did not do so,

(1) state whether this was the result of a policy or practice of the club or organization;

(2) if so, describe in full the reasons for this policy or practice and any action you took to change that policy or practice;

(3) if you were a member of such club or organization while serving as a U.S. Circuit Judge, please give your opinion as to whether the club or organization practiced invidious discrimination within the meaning of the ABA Code of Judicial Conduct, and give the reasons for your opinion.

The following are my responses to this question 2:

(a) Woodmont Country Club
Rockville, Maryland
June 1980 - April 1983
approximate number of members: 1,500

Army Navy Country Club
Arlington, Virginia
April 1983 --
approximate number of members: 7,000

(b) Both are social clubs with sports (golf, tennis, swimming) and dining facilities. My spouse, once an avid golfer, has used these clubs weekly in good weather. I have joined him only occasionally, not at all in the current year, and have not used the clubs for business entertainment.

(c) Army Navy Country Club includes members of all races, religions, and both sexes.

Woodmont Country Club ("Woodmont"), while I was a member, had a predominantly Jewish membership. Its stated policy was nondiscriminatory admissions and in fact the membership included women as well as men and one member who was black (a friend and colleague whom I sponsored for membership in 1982).

(d) In April 1983, however, Woodmont announced a change in its by-laws that had the practical effect of strongly discouraging my friend from continuing his membership beyond 1984, and he as a result promptly resigned. I cannot with certainty say that prompting that resignation was the purpose of the by-law change, but the circumstances were, to me, suggestive of that conclusion.

Immediately upon receiving notification of the by-law change I attempted to initiate a reversal of that action. My spouse, who was our family's active user of the club facilities, met the following day with members of Woodmont's Board of Governors. The Board, however, was unwilling to reverse the by-law change and, although the president of Woodmont did confer with my friend in an effort to retain him as a member, that effort did not succeed.

No longer comfortable at Woodmont, I promptly resigned my membership, and joined Army Navy Country Club.

Since the start of the 1970's, it has been my consistent policy to refuse to attend professional or social functions at clubs that do not have nondiscriminatory admission policies. I several times refrained from

attending American Bar Association functions at such clubs in days before the ABA adopted its current position.

3. 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). List all interviews or communications you had with the White House staff or the Justice Department regarding this nomination, the dates of such interviews or communications, and all persons present or participating in such interviews or communications.

Until Friday, June 11, 1993, I received no communication from the White House staff or any other government office or officer regarding my nomination. On the morning of June 11, while I was attending the D.C. Circuit Judicial Conference at the Tides Inn, Irvington, Virginia, I received a telephone message from the White House Counsel's Office asking me to return the call. I did so, and was asked where I would be in the course of the weekend. I responded that my husband and I had plans to attend a Saturday, June 12 wedding in Shaftsbury, Vermont, and to return home to Washington, D.C. on Sunday, June 13. I gave White House Counsel's Office the telephone number of the Manchester, Vermont hotel at which I could be called.

The evening of June 11, my husband and I traveled to Vermont and stayed overnight in Manchester. On Saturday morning, June 12, around 9:30, I received a call from White House Counsel Bernard Nussbaum asking if I could return to Washington, D.C. later that day or early the next morning to meet with his staff. Mr. Nussbaum followed up with a call around 1:00 p.m. requesting that I take the first available flight back the next morning.

My husband and I returned home on Sunday, June 13, around 8:30 a.m. About an hour later, Mr. Nussbaum and several members of the White House staff, including Ricki Seidman, Ron Klain, and Vincent Foster, together with consultants James Hamilton and Ronald Lewis, arrived at my apartment to interview me and to review our income tax and social security returns and my financial records and reports. Shortly after 11:00 a.m., Mr. Nussbaum escorted me to the White House to meet the President. Close to 11:30 a.m., I met the President. We had a conversation, with no other person present, that continued until 1:15 p.m. Mr. Nussbaum and I then walked back to my apartment, where the interview with his staff and consultants continued until close to 5:00 p.m.

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After 11:00 that evening, Mr. Nussbaum called to tell me the President would call within the half-hour. The President did, twice, because the initial connection was poor. Some time before midnight, the President told me of his intention to nominate me, and I accepted.

4. Has anyone involved in the process of selecting you as a judicial nominee (including but not limited to a member of the White House staff, the Justice Department, or the Senate or its staff) discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully. Please identify each communication you had during the 6 months prior to the announcement of your nomination with any member of the White House staff, the Justice Department, or the Senate or its staff referring or relating to your views on any case, issue or subject that could come before the United States Supreme Court, state who was present or participated in such communication, and describe briefly what transpired.

I repeated on June 14, 1993, just after the President announced his nomination for the Supreme Court vacancy, that a judge is bound to decide each case fairly, in accord with the relevant facts and the applicable law. The day a judge is tempted to be guided, instead, by what "the home crowd wants" is the day that judge should resign and pursue other work. It is inappropriate, in my judgment, to seek from any nominee for judicial office assurance on how that individual would rule in a future case. That judgment was shared by those involved in the process of selecting me. No such person discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

During the six months prior to the announcement of my nomination, I had no communication with any member of the White House staff, the Justice Department or the Senate or its staff referring or relating to my views on any case, issue or subject that could come before the United States Supreme Court.

5. Please discuss your views on the role of the judiciary in our governmental system and 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.

Throughout its history, the Federal Judiciary has been attacked repeatedly for exceeding the bounds of its authority. Criticism of the courts, and similarly criticism of other branches of government, should not be resented. Rather, it should be accepted with good grace and considered thoughtfully. For judges who are lifetime appointees, reasoned criticism has a special importance. It helps maintain on the bench healthy attitudes of humility and self-doubt.

While the Federal Judiciary should be exposed fully to diverse views on its performance, judges must avoid capitulating to result-oriented criticism. Courts must root decisions in laws enacted by elected representatives, constitutional provisions ratified by representatives of the people, precedent, tradition, and reason. It is a reality that individuals and groups, reflecting virtually every position on the political spectrum, have sometimes attacked the Federal Judiciary, not because judges arrogated authority, but because particular decisions came out, in the critics' judgment, the wrong way. Chief Justice Marshall set the pattern for the appropriate response to criticism of that genre. *Worcester v. Georgia*, 31 U.S. (6 Pet.)-536 (1832), is among the most celebrated examples. See Gunther, Some Reflections on

the Judicial Role: Distinctions, Roots, and Prospects, 1979 Wash. U. L. Q. 817, 824. Most federal judges, I believe, have maintained that courageous stance. A judge steps outside the proper judicial role most conspicuously and dangerously when he or she flinches from a decision that is legally right because, as Justice Rehnquist put it, the decision is not the one "the home crowd wants." Rehnquist, Dedicatory Address: Act Well Your Part: Therein All Honor Lies, 7 Pepperdine L. Rev. 227, 229-30 (1980).

The Federal Judiciary, in recent decades, has indeed become involved in far-reaching orders extending to large classes of individuals and resolution of problems far broader than those presented by the traditional bipolar dispute between individual persons or entities. Most commentators agree on the initial impetus for such unconventional adjudication on a grand scale. It was the formidable task faced by the lower federal courts in attempting to implement faithfully the Supreme Court's school desegregation mandates. For most federal judges, I believe, the supervisory, administrative, and oversight chores entailed in the school cases, and institutional (prison, mental hospital) litigation that came later, are uncongenial and unwelcome. Had state and federal legislatures and administrators assumed the implementation burden, the managerial jobs the courts took on, generally with reluctance and misgivings, could have been avoided, or at least substantially curtailed.

Most urgently needed, I think, is clear recognition by all branches of government that in a representative democracy important policy questions should be confronted, debated, and resolved by elected officials. Legislating clear standards, principles, and guidelines, for example, in areas where science and technology are advancing rapidly, is an enormously challenging undertaking. But the highly general law in a frontier area commits to administrators or courts responsibility for filling large gaps. Such a law may call upon judges to perform unaccustomed assignments and render them vulnerable all the more to criticism for excessive or abusive exercise of power.

In sum, I believe that legislators can and should react positively to criticism of overreaching on the part of the Federal Judiciary by making the hard, sometimes controversial decisions necessary to equip judges with clearer policy directions and standards. The Federal Judiciary, while it must not decline to determine cases properly before it, complex and controversial as they may be, must also retain clear vision of its place in the constitutional

scheme and appropriate skepticism concerning the remedial competence of jurists.

With particular reference to class action litigation, a judge is not free to ignore the mandate of Congress authorizing litigation in that form, or to distort the applicable Federal Rules. The core article III requirement, of course, must be met. A case must present a genuine, substantial controversy between contending parties actively pressing antagonistic demands. No federal judge is at liberty to issue an advisory opinion at the request of a petitioner who has suffered no injury, and the sensible guidelines Justice Brandeis supplied in *Ashwander v. TVA*, 297 U.S. 288, 356-48 (1936) (concurring opinion), remain vital in constitutional adjudication.

As to "judicial activism," the term seems to me much misperceived, a label too often pressed into service by critics of court results rather than the legitimacy of court decisions. Beyond question, a judge has no authority to upset decisions of legislators or executive officials based upon the jurist's own ideas about enlightened policy or a personal moral view on what content an ambiguously phrased legal text should have. At the same time, the Constitution does impose upon judges a duty to assure that government, when it impinges upon the property or liberty interests of individuals, does so by processes that are fair. In addition, the Constitution places basic individual rights beyond government authority to eradicate even by democratically elected representatives employing processes open and fair. Courts have an important role to play in adjudicating those rights. They must do so with a clear eye on the text, history, and structure of the Constitution. Even then, however, all questions of interpretation will not have ready answers. Doubt of one's own wisdom and a willingness to articulate fully the reasoning process behind a judgment (Justice Harlan, who served from 1955 until 1971, was a model in that regard) should attend judicial decision making in areas of uncertainty.

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6. Approximately how many individuals have been employed by you as law clerks and support staff since you have been a United States Circuit Judge.

State separately the numbers, and describe briefly the duties of (1) women, (2) blacks, (3) members of other racial minority groups, whom you so employed.

In total:

Law Clerks	39
Secretaries	4
Interns	14

All of my secretaries, eleven of my law clerks, and six of my interns are women. Three of my interns and one of my clerks are Asian-Americans.

AFFIDAVIT

I, Ruth Bader Ginsburg, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 29, 1993

Ruth Bader Ginsburg
(NAME)

Janet M. Harrigan
(NOTARY)

My Commission Expires October 14, 1995