



**EMBARGOED TO PUBLIC AND
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SUPPLEMENTAL STATEMENT

of

PAMELA A. BRESNAHAN, CHAIR

**CYNTHIA E. NANCE, EIGHTH
CIRCUIT REPRESENTATIVE**

**LAURENCE PULGRAM, NINTH
CIRCUIT REPRESENTATIVE**

on behalf of the

**STANDING COMMITTEE ON THE
FEDERAL JUDICIARY
AMERICAN BAR ASSOCIATION**

Concerning the Nomination of

**LEONARD STEVEN GRASZ
FOR THE UNITED STATES COURT
OF APPEALS FOR THE
EIGHTH CIRCUIT**

Submitted to

**THE COMMITTEE ON THE
JUDICIARY
UNITED STATES SENATE**

November 13, 2017

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Washington, DC 20036
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Governmental Affairs
Office



Mr. Chairman and Members of the Committee:

My name is Pam Bresnahan. I am the Chair of the American Bar Association's Standing Committee on the Federal Judiciary. I am a senior litigation partner in a firm in Washington, D.C. I have been a lawyer for 37 years and involved in the judicial nomination process for 32 of those years. The evaluators for this nominee were Cynthia Nance and Laurence Pulgram. Professor Nance is a professor at the University of Arkansas Law School and its former Dean. Mr. Pulgram is a practicing lawyer from San Francisco, California who primarily represents corporate defendants. Professor Nance conducted the first evaluation of Leonard Steven Grasz and Mr. Pulgram conducted Mr. Grasz' supplemental evaluation.

It is our tradition and practice in appearing before the Judiciary Committee that evaluators accompany the Chair to explain any Not Qualified rating. The *Backgrounder* that explains the procedures of our Standing Committee reflects this practice. It was our understanding, based on statements of Congressional staff and the Senators at the November 1, 2017 hearing and others, that multiple representatives of the ABA had been invited and expected to attend today. On November 8, 2017, we were advised that the Judiciary Committee was inviting only the Chair of the Standing Committee to appear. We regret this change, as it will likely make it more difficult to respond to some questions by the Senate Judiciary Committee. In order to do what we can to provide more background on the evaluation process, I have included, as part of this statement, the written statements of Professor Nance and Mr. Pulgram.

As we have already submitted a Statement on October 30, 2017, regarding our rating of this nominee, I will endeavor not to repeat what has been previously stated. As the October 30, 2017 statement made clear, it did not purport to lay out every fact on which the Standing

Committee relied. Among the additional information relied upon is that provided by a 14-page document not included in the nominee's SJQ, but discussed below, which we do not know whether the Judiciary Committee has received and reviewed.

I have three (3) further comments to add.

First, since the October 30, 2017 Statement was submitted, the Standing Committee has issued seven (7) more rating letters. As of today, we now have rated a total of fifty (50) nominees in this administration, forty-six (46) Well-Qualified/Qualified and four (4) Not Qualified's. Of the forty-six (46), twenty-nine (29) are Well-Qualified. These ratings are developed only with an immense amount of diligence and attention to the protocols established by our Committee over the course of more than five decades. We estimate that each Standing Committee member will spend 300 to 600 hours on conducting evaluations, reading formal reports and voting this year. I will spend more time than the Standing Committee members. We take great pride in the thoroughness of these evaluations. We believe that the Standing Committee's ratings are helpful to the Senate, the Department of Justice and the White House. We also believe that the public has come to expect that there will be a thorough, independent assessment of a nominee's professional qualifications by their peers in the profession. We also believe that the Standing Committee's performance of this volunteer service has helped instill public trust in the federal judiciary.

Second, one of the reasons we believe that we are able to evaluate thoroughly each federal judicial nominee is because the peers of the nominee who are interviewed are assured that their identities will be kept confidential. As I have consistently stressed as a member and now as Chair of the Standing Committee, that confidentiality breeds candor. While confidentiality is the linchpin of the Standing Committee's process, the Committee, at the same

time, strives to be fair to the nominee with respect to the adverse comments that are received during the course of the evaluation. Therefore, in procedures adopted many decades ago, we will not consider any adverse comment if the underlying basis of the adverse comment would necessarily compromise the promise of confidentiality given to the interviewee, unless the interviewee has waived confidentiality. So, as the Standing Committee's *Backgrounder* states, adverse information is not used in the process unless the nominee has an opportunity to respond.

Third, I want to emphasize that our recommendation is based upon information gleaned from the peer interviews, the writings of the nominee and the interview or interviews of the nominee. We interview people from all aspects of the nominees' professional life. In this case, there was, on many occasions, a reluctance to speak. Yet, the evaluators continued to pursue many individuals and asked them for their views. The evaluators were also told by several interviewees that they did not want their identities revealed. Despite these difficulties, the evaluators obtained sufficient contacts and interviews to make recommendations of Not Qualified. And the members of the Standing Committee then voted unanimously Not Qualified, with one abstention. The vote was, therefore, 13 Not Qualified, with one abstention. (The Chair does not vote, except if there is a tie.)

Statement of Professor Cynthia Nance

My name is Cynthia Nance. As Ms. Bresnahan stated, I am the former dean of the University of Arkansas School of Law, having successfully served in that position from 2006-2011. I currently hold the Nathan G. Gordon Professorship and serve as the Director of Pro Bono & Community Engagement. I have served as the Eighth Circuit member of the Standing Committee since August 2016. I am an elected member of the American Law Institute and the College of Labor and Employment Lawyers, and am a member of its Board of Governors. I

have served on the National Association for Law Placement Foundation Board, as well as that of the Law School Admissions Council, and currently am a member of the Councils of the ABA Legal Education and Admissions to the Bar and the ABA Labor and Employment Law Sections.

I am appearing today solely in my capacity as an appointed member of the American Bar Association Standing Committee on the Federal Judiciary. My university affiliation is provided for identification purposes only; the views expressed are my own and not those of the institution where I am employed.

On August 4, 2017, Nancy Degan, the former chair of the Standing Committee, assigned the evaluation of Mr. Grasz to me as the Eighth Circuit Committee member. Before our interview, I had not met, and did not know, Mr. Grasz or any of the lawyers and judges I spoke with in Nebraska, apart from my colleagues in Legal Education. And, contrary to a report in the Nebraska press, I conducted all interviews professionally and objectively with the sole purpose of gaining a full understanding of the nominee.

Because Mr. Grasz was nominated for the Circuit Court, my outreach to the bench and bar necessarily extended beyond Nebraska. Between the letters and emails I sent out, and the calls I made, I contacted more than 1800 lawyers and judges, and I received 183 responses, 69 of which were substantive interviews, faxes or e-mails.

I reached out to the judicial, legal, and academic communities throughout the states comprising the Eighth Circuit, as well as additional states, otherwise required because of information obtained during the evaluation. My broad outreach is consistent with the procedures of the Standing Committee as described on pages 4 and 5 of our *Backgrounder*. Moreover, because Mr. Grasz was nominated for the Court of Appeals, it was important to solicit input from as many members of the bench and bar in the Circuit as possible. I contacted the attorneys and

judges involved in the cases highlighted on Mr. Grasz' Senate Judiciary Questionnaire and performed a search for Mr. Grasz' most cited cases and contacted those lawyers and judges as well.

Having served as the lead evaluator in two previous evaluations for the Eighth Circuit, I noticed a reluctance on the part of members of the Nebraska Bar to participate in the evaluation here. I had not encountered that situation in my two previous Circuit evaluations, despite the fact that as judges those nominees also would have the ability to directly impact lawyers as litigants. Specifically, the reluctance to participate in the evaluation process was readily apparent for four (4) reasons. First, people I spoke with expressed their concerns about retribution, should their comments be made public. Second, others told me they had reached out to members of the bar and asked them to visit with me, and those persons were afraid to do so. Third, a number of the people I contacted would not return my calls or e-mail messages, including those whose colleagues had given me their names and suggested I call. Finally, several of the individuals who were interviewed with respect to Mr. Grasz' nomination have since stated that they were not contacted by this Committee.

The comments I gathered during my evaluation came directly from those with whom I spoke or who supplied me with written feedback. From the outset, it was clear that Mr. Grasz is an accomplished attorney who has been involved in a number of important and high profile cases. While he was not well known in the other states in the Circuit, a substantial number of members of the Nebraska bar spoke to the quality and caliber of his legal work, especially as it pertained to appellate work. Similarly, they spoke very highly of his integrity.

However, I also received numerous comments raising concerns about Mr. Grasz' judicial temperament. As we have noted previously, the criteria for temperament is set out on page 3 of

the Standing Committee's *Backgrounder*. The concerns expressed centered on open-mindedness, freedom from bias and commitment to equal justice under the law. These interviewees raised serious doubts that Mr. Grasz would be able to set aside his role as an advocate and his strongly held beliefs, in order to rule impartially as is required of a judge. Others, who were less certain, suggested that this was indeed a valid concern and told me I was asking the right types of questions.

Mr. Grasz was described by the majority of those providing feedback as gracious, even-tempered and easy to work with. While my encounter with Mr. Grasz was consistent with those who described him as even-tempered and polite, I received numerous comments from others during the course of the evaluation that Mr. Grasz had been inappropriately aggressive and that his conduct towards opposing counsel could be difficult, bordering on incivility. Both temperament issues were raised by a number of judges and lawyers, and were consistent in their content. The seriousness and consistency of these concerns contributed to my rating. As provided by the *Backgrounder*, the nominee must meet all of the Standing Committee's criteria, and failure to satisfy any one is sufficient reason to rate the nominee "Not Qualified," even if the other criteria are met.

During my interview with Mr. Grasz, we discussed a wide range of subjects, in accordance with the procedures of our Committee. One of the subjects we discussed was Mr. Grasz' 1999 law review article on partial birth abortion. Mr. Grasz defended his position in that article that "partially born" is not the same as "born" and therefore *Roe* and *Casey* should not control. Mr. Grasz brought our conversation back to this subject later in the interview, when we were discussing statutory construction. Without my inquiring, he explained why he opposed partial birth abortions (describing the procedure). He also noted that when the Supreme Court

upheld a federal partial birth abortion ban later, it did so (applying *Roe* and *Casey*) based on deference to Congress' factual findings.

To address one of Mr. Grasz' comments made during his November 1, 2017 testimony, I asked Mr. Grasz about his pro bono and public service activities, among many other topics. This inquiry is customary for our Committee. He explained his work on the boards of two schools listed on his Senate Judiciary Questionnaire. For one, Grace University, he was asked by a friend to serve. The other school was Concordia Lutheran, which he found particularly meaningful and he volunteered to me that all four of his children graduated from there.

Once I provided my informal report to Ms. Bresnahan and indicated to her that I was going to recommend a "Not Qualified" rating, consistent with our procedure, Ms. Bresnahan appointed Mr. Pulgram as a second evaluator. He received a copy of my report, which was not shared with any of the other members of the Standing Committee at that time. Once both reports were finalized and reviewed by the Chair, they were simultaneously provided to the members of the Standing Committee for their review. As noted above, after the members of the Standing Committee's reviewed the reports and discussed those reports amongst themselves and the evaluators, the Committee voted Not Qualified unanimously, with one abstention.

Statement of Laurence Pulgram

My name is Laurence Pulgram. I have practiced commercial and intellectual property litigation for the last 33 years. I was born and raised in Georgia, but currently live in California, my wife's state of birth. I relocated to California after completing a clerkship for the Hon. Sam C. Pointer, Jr., an appointee of President Nixon, who was Chief Judge of the Northern District of Alabama in Birmingham. I attended law school at Harvard. I am the immediate past chair of the ABA's Section of Litigation. Among other commendations, I was named Best Lawyer's "Lawyer of the Year" for Intellectual Property Litigation, San Francisco, for 2017, reflecting the

highest overall peer feedback in the region. I am honored to serve as one of two representatives for the Ninth Circuit to the ABA's Standing Committee on the Federal Judiciary.

The procedures of the Standing Committee call for a second evaluation if the initial evaluation may cause the Committee to vote Not Qualified. After Professor Nance submitted her recommendation, Ms. Bresnahan requested that I perform a supplemental evaluation. Mr. Grasz is clearly an accomplished attorney, a person of strong personal convictions, and a nominee to an important federal court with life tenure. The Standing Committee's standards call for rigorous and impartial analysis of three areas: competence, integrity and temperament. What follows is an added description of what I undertook.

In my work for significant businesses in California and around the country, I handle matters with substantial stakes for my clients. They depend on me to obtain accurate information and exercise sound judgment. My practice depends on the orderly collection and prioritization of information followed by thorough analysis to develop sound advice for my clients. In that process, I am not asked to make recommendations to my clients based on my personal preferences or my political beliefs. I am not asked to tell my clients what they want to hear. My task, every day, is to provide independent advice to clients, based on the facts I find, my analysis and the standards that govern. That is the same course I pursued here.

I initially reviewed all of Professor Nance's voluminous report, including her summaries of many dozens of interviews with judges and attorneys of all sorts. This review included the nominee's Senate Judiciary Questionnaire, or SJQ, which detailed much of his career work record. I then reviewed additional writings of the nominee, Lexis/Nexis searches for cases in which he was involved, and other search results. Based on this information, it became clear why Professor Nance had focused on judicial temperament as the key issue. Mr. Grasz is generally

perceived as a highly skilled and professionally competent appellate lawyer and lobbyist. His integrity was generally praised as well. Of the three factors on which the Standing Committee focuses, it was judicial temperament that raised repeated concerns in the reviews that Professor Nance collected from his peers.

Under the *Backgrounder's* procedures, the second evaluator's job is to perform a cross-check of the thoroughness of the evaluations conducted by the first evaluator, and to conduct whatever follow-up investigation is warranted, after a thorough review of the first report. I followed up with some of the persons whom Professor Nance had contacted. I contacted additional persons in the bench and bar whom Professor Nance had been unable to reach or who had declined to respond to her inquiries. I contacted additional people identified by the nominee, and additional people whose names I learned in the course of my investigation.

The results of my peer inquiries were similar to Professor Nance's. I spoke to 24 people, in addition to reading the interviews she collected. Many peers believed that the nominee is sufficiently open-minded and would be able to be free from bias. A significant number raised concerns that Mr. Grasz' strongly held social views and/or his deeply rooted political allegiances would make it impossible for him to have an unbiased and open mind on critical issues. There were also some who said that they were impressed by Mr. Grasz' professional competence and acumen; they just did not know about his open mindedness and freedom from bias. Some of these attorneys said this question was exactly the right one to ask about Mr. Grasz and stated that they appreciated the Standing Committee trying to figure out the right answer.

There were also an unusually high number of the people contacted who, despite assurances of confidentiality, refused to return repeated calls and inquiries, or who stated that they and others were not willing to voice opinions. Some stated that this reluctance was because

Mr. Grasz was very closely connected with and sponsored by the most powerful politicians in the state; that those politicians deeply valued loyalty; and, that they have the ability to cause serious repercussions to those who speak out.

To recap his background, Mr. Grasz was right hand man to the former Attorney General (now State Treasurer) Don Stenberg, from 1989 to 2001. Mr. Grasz then entered private practice. He applied for nomination as Chief Justice of the Nebraska Supreme Court in 2006 and was not nominated by the Judicial Nominating Commission. From 2007 to 2013, Mr. Grasz served as general counsel to the Republican Party. From 2013 on, he served as a senior official in the Ricketts for Governor Campaign, and thereafter on the transition team and in screening judicial candidates. From 2013-2017, he also was legal counsel for the Jean Strothert for Mayor Committee. His many other roles have included projects such as leading a successful litigation of a ballot initiative the Governor supported. This initiative resulted in reinstating the death penalty in 2016, after the state Legislature had overridden the Governor's veto of its elimination of that penalty.

To be clear, each of these and many other roles Mr. Grasz has played represent substantial achievements by a highly effective and diligent lawyer and lobbyist. (Mr. Grasz stated in his SJQ at page 45 and during our interview that lobbying comprises approximately 50% of his time.) His relationships do, however, help in understanding the reluctance of many to speak, as well as the expressed concerns of peers that Mr. Grasz would not be able to separate his decision-making from these close allegiances.

I interviewed Mr. Grasz on October 9, 2017. Because a second reviewer is only appointed if there is a possibility of a Not Qualified rating, Mr. Grasz was aware of that status before I arrived. At the interview, I reiterated to Mr. Grasz what I told him some days earlier

when scheduling the interview: concerns had been raised by peers about whether he would be able to distance himself from his strongly held social views and political affiliations to decide cases without bias, with an open mind, and in keeping with the law. Both at the beginning of the interview, and at its conclusion, he responded to these concerns. For over three hours, we talked a lot about those particular issues. The concerns expressed by his peers were the subject of my focus. I also mentioned that concerns had been raised about his aggressive approach on certain matters, and we talked about those issues as well. And we also talked about numerous other topics in the wide-ranging discussions that the Standing Committee undertakes as we attempt to get to know each nominee.

During Mr. Grasz' testimony before the Senate Judiciary Committee on November 1st, he said a number of things that cast the interview in a one-sided way, and which the press has since embellished or misstated. I will address a few of those items here.

First, Mr. Grasz stated that I asked him "what school his children attended," a question that he stated "kind of surprised" him and he could think of no possible reason for. Subsequent press reports have changed his words to claim, for example, that I asked him "what kind of school his children attend." What actually happened was that I was asking Mr. Grasz about a standard subject of our Standing Committee and one that is also subject number 25 of the Senate Judiciary Questionnaire: pro bono and public service activities. He said he had not done a lot of pro bono work. But he said that he had been involved in community service. On the SJQ he had listed the Concordia Lutheran School three times, on pages 3, 7 and 58. I asked him about that. He said that he was on the school's board, and that there were three schools spanning grades K - 12. I asked him if his children attended Concordia, to follow up on how he got involved on the board, as my wife and I had each joined boards of schools our children attended. He said that

his children did attend for high school. And then we moved on. Mr. Grasz' statement that he was surprised by this subject is hard to understand. Professor Nance reports above that in her interview, they had already had a similar discussion of Concordia and his children's attendance there, reaching the topic in the same manner (pro bono and public service).

Second, Mr. Grasz said in his testimony that I repeatedly made references to "you people" in a negative way, and that when he asked what "you people" meant, I said "conservatives and Republicans." This exchange is incorrect. In fact, in his response to Senator Sasse's post-Hearing questions posted November 13, 2017, Mr. Grasz implicitly recanted his testimony that I ever used the words "you people." The only discussion that these comments bring to mind was in relation to an article Mr. Grasz had written for the Federalist Society. In it, Mr. Grasz critiqued Nebraska's non-partisan merit selection process for judges, in which four Democrats and four Republicans comprise a Judicial Nominating Commission. Mr. Grasz asserted that the process was slanted, and that trial lawyers (on the plaintiffs' side) had more influence than anyone else. I asked him why. He said because "they care more." I then asked why that would be unfair, as "you guys are entitled to care just as much." Mr. Grasz sat up and asked me "what do you mean 'you guys?'" (He also made a note at this moment during the interview, which makes his November 1, 2017 testimony that I said "you people" concerning.) He seemed to think that I was somehow siding with the plaintiffs' lawyers. I am not a plaintiffs' lawyer. I most regularly represent corporations as defendants, sometimes very large ones. I told Mr. Grasz that by "you guys" I meant anyone who was against the plaintiff lawyers' agenda, which could include Republicans or conservatives, or anyone who could "care more" if they wanted. I also told Mr. Grasz that my question was not arising from any allegiance on my part. I told him I would have asked the same question to someone on the other side of the issue if he

were complaining about Republicans caring more about judicial nominations. My question was simply seeking to understand why he perceived a process to be unfair because one group, any group, cared more and was more active than another.

Third, I want to clear up a report in a Nebraska newspaper that one of the partners at Mr. Grasz' firm said "the evaluators who interviewed him were clearly liberals who were out for blood." Although this quote refers to multiple "evaluators," I did not interview this person.

During our interview, Mr. Grasz was often forthcoming with information. But, as also sometimes happens in investigations in my ordinary practice, certain information was not volunteered. As for some examples, (1) when I asked Mr. Grasz if he could give me a list of Attorney General's Opinions in which he had given recommendations against the interests of his political allies, he said he had a list of over a dozen but had been advised not to provide it because a list could be used against him. Nonetheless, he did identify a couple of opinions to review. (2) When I asked him about his work as general counsel for the Republican Party, he said he handled just one litigation, which he identified as the *Moats* case. It involved defending the party against claims of unfair campaign statements. I later learned that Mr. Grasz was also lead counsel in a short-lived case he took up to the Nebraska Supreme Court in 2012 seeking to strike Senator Bob Kerrey's name from the ballot for failing to be a Nebraska resident. *Nebraska Republican Party v. Gale*, 283 Nebraska 596 (2012). (3) Mr. Grasz said he understood he did not need to list his application to obtain a nomination from the Nebraska Judicial Nominating Commission in the SJQ. As I understand from Professor Nance, it was not mentioned in the first interview. (4) Mr. Grasz also initially did not give forthcoming answers about the incident of the 14 page document described below.

Mr. Grasz and I had lighter discussions on a number of topics where we seemed to

connect. He positively lit up when I told him that Professor Nance had shared their conversation about adopted children. We had an animated discussion about what it was like in his family, as I told him about my adopted daughter. We also had interesting discussions about land conservation (his farm is a dedicated preserve, and he wrote a law review article on the topic). Following up on our discussion about what it had been like for Native Americans in Western Nebraska while he was growing up, he sent me an unsolicited email three days later (before his “Not Qualified” rating) about an interesting presentation he had attended about Native American heroes in Nebraska.

Because of his peers’ concerns about Mr. Grasz’ ability to be objective and open-minded as a judge, I reviewed his pre-nomination writings as a potential indicator. His writings evidenced a high level of emotional commitment to his strongly held views. They include Opinions he had written for the Attorney General, which are provided to legislators and others in government to provide them objective advice. Because he has not served on a trial court, these are the closest Mr. Grasz has come to writing neutral rulings. Such Opinions included:

- Statements that the “legal question presented [by proposed abortion legislation] is so utterly divorced from moral or rational foundation that it undermines the credibility of the legal system, and necessarily exposes the moral bankruptcy which is the legacy of *Roe v. Wade*.” While anyone may legitimately agree or disagree with the *Roe* and *Casey* decisions as a matter of policy, to opine, as advice from the Attorney General, that Supreme Court jurisprudence is “morally bankrupt” raises questions of ability to assess issues neutrally and free of bias.
- Statements that “sexual orientation” in a statute prohibiting hate crimes may be overbroad, because “this term [sexual orientation] could conceivably include all

orientations of a sexual nature (bigamy, pedophilia, etc.).”

In his article entitled “Roberts Jeopardizes Legitimacy of High Court,” Mr. Grasz wrote that Chief Justice “Roberts will go down in history not as the disinterested umpire he promised to be, or the advocate of judicial restraint his supporters believed him to be, but rather as the one who ushered in the ultimate transfer of limitless power to the federal government.” In our interview, Mr. Grasz acknowledged that asserting an “ultimate transfer of limitless power to the federal government” was not literally true. But Mr. Grasz explained his exaggeration as a reaction to his sense of betrayal by a Supreme Court Justice whom he had publicly supported.

Because peers had expressed concerns about his ability to apply precedent faithfully, we also discussed his article on partial birth abortion that raised this issue. Mr. Grasz continued to defend its conclusions in his interview with me and, as noted above, with Professor Nance, who also inquired about it. I will not repeat the content of the Standing Committee’s statement of October 30, 2017, on this subject. But I will add two things.

First, what is further concerning about this article—in addition to its suggestion that a trial court should view abortion doctrine as “word games” to avoid application of precedent that it finds “questionable”—is what it shows about Mr. Grasz’ lack of self-awareness. Mr. Grasz insisted in our interview that his personal views did not, and could not, affect his rulings on the bench, nor his position in his article. He was, he said, just applying the law, with judicial restraint, unaffected by his personal beliefs. But regardless of whether one views his legal approach as right or wrong, one thing that is clear is that his fervently held views are having an impact on that approach. His inability, even in 2017, to see the impact his personal views have on his analysis validates a concern expressed by his peers: that it would be extremely difficult for him to evaluate objectively cases at areas of core political tension.

Second, it is important to understand that this observation is not a question of whether Mr. Grasz is “too conservative” or “too pro-life” to be a good judge. Not at all. The Standing Committee makes no such value judgment. Whether a nominee’s views are pro-life, pro-choice, pro-Democrat or pro-Republican does not matter. Our Standing Committee has recommended as qualified or well-qualified the vast majority of this administration’s nominees. The question presented, in the unusual circumstances when a nominee’s peers raise it, is whether an individual nominee is able to detach decision-making from whatever agenda there may be. Can he or she decide critical issues in an open-minded and unbiased way?

Finally, as noted in the Standing Committee’s October 30, 2017, statement, that statement did not describe every incident that suggests allegiances too strong for Mr. Grasz to be independent. Another important incident is described in a 14-page document that Mr. Grasz provided after our interview that was not included in his SJQ. It reflected his efforts to intervene, in his own name, using information that was confidential, to change an outcome of a non-partisan Judicial Nominating Committee (“JNC”) process, in order to provide the Governor an opportunity to appoint a preferred candidate. Mr. Grasz recently described this as “support of a friend” in his post-Hearing answers to Senator Sasse. In our interview and a follow-up call, he acknowledged that he used information that was confidential to the JNC under Nebraska law. And he acknowledged that he had earlier discussed his friend’s candidacy with either the Governor or “the Governor’s people.”

When I first asked Mr. Grasz about this subject, he said he was “surprised it came up, it was supposed to be confidential.” He asked who told me about it. He then speculated out loud about who would have revealed it and their motives. And, for the record, I never described Mr. Grasz’ acts as any kind of “plot.”

We do not know whether Mr. Grasz has also provided this document to the Committee Majority and Minority staffs. Mr. Grasz has requested that we keep certain facts discussed in the document as confidential. We can say, at this time, that this incident raised particular concerns because it involved the process of the selection of a non-partisan judiciary. In the Standing Committee's view, it again substantiated peers' concerns that Mr. Grasz' judgment may be overcome by his political and ideological allegiances.

When presented with the record of Mr. Grasz' qualifications as a whole, the Standing Committee on the Federal Judiciary concluded unanimously (with one abstention) that he lacked the traits necessary to warrant a "Qualified" rating; this is the sole time out of over 50 nominees from this administration that the Standing Committee has reached this conclusion based on lack of open-mindedness and freedom from bias.

* * * *

We look forward to responding to your questions on Wednesday, November 15th. If anyone on the Committee wishes to send us questions beforehand, we would be delighted to review them and respond, prior to or during the hearing. The evaluators will be present in the hearing room, as well. The evaluators are a resource to both the Chair and the Senate and I believe it is important to have them present because of their first-hand knowledge regarding this nominee.

Thank you for the opportunity to present our remarks to the Senate Judiciary Committee.

Pamela A. Bresnahan

Pamela A. Bresnahan is a senior partner at Vorys, Sater, Seymour and Pease LLP in their Washington, DC office. She is the Chair of the Litigation Group in that office. Ms. Bresnahan represents lawyers, law firms, insurers, financial professionals and other professionals. She has been a trial and appellate lawyer since 1980. She is a Fellow of the American College of Trial Lawyers and is listed in Best Lawyers in America in three categories: Professional Liability, Professional Responsibility and Ethics and Commercial Litigation. She is admitted to practice in Maryland, the District of Columbia, New York, California and Illinois. Ms. Bresnahan is an honors graduate of the University of Maryland School of Law (1980) and graduated Phi Beta Kappa with General Honors from the University of Maryland College Park (1976). She is married to Peter F. Axelrad, also a lawyer. She lives in Annapolis, Maryland with her husband and their two Labrador Retrievers.

Additional information is available at: <https://www.vorys.com/bresnahan>

Cynthia E. Nance

Cynthia E. Nance (Cyndi), Dean Emeritus, Nathan G. Gordon Professor, and Director of Pro Bono and Community Engagement at the University of Arkansas School of Law earned her B.S. degree, magna cum laude, from Chicago State University. She holds a J.D., with distinction, from the University of Iowa College of Law and an M.A. from the University of Iowa College Of Business, and is admitted to practice in Iowa. She served as dean of the law school from 2006-2011. She teaches Labor and Employment Law, Torts and Poverty Law. Nance is a Fellow of the College of Labor and Employment Lawyers, and was elected in November 2016 to its Board of Governors. She is also an elected member of the American Law Institute and The Labor Law Group, and serves on the Arkansas Advisory Committee to the United States Civil Rights Commission. She has been recognized as one of Diverse Issues in Higher Education magazine's "25 Women Making a Difference," as a "Woman of Influence" by Arkansas Business, and featured as one of Arkansas' 12 Most Powerful Women by AY Magazine and Talk Business Quarterly.

Additional information is available at: <https://law.uark.edu/directory/directory-faculty/uid/cnance/name/Cynthia+Nance/>

Laurence Pulgram

Laurence Pulgram was born and raised in Atlanta, Georgia. He attended Duke University, graduating *summa cum laude* and Phi Beta Kappa in 1979. He worked for a year as a legislative assistant for Hon. Wyche Fowler, Jr., a Georgia congressman. In 1983, Mr. Pulgram graduated *magna cum laude* from Harvard Law School. Following law school, Mr. Pulgram clerked for the Hon. Sam C. Pointer, Jr., Chief Judge of the Northern District of Alabama, in Birmingham, Alabama. He then moved to California, the home state of his wife, Kathleen Ann (Kelli) Murray and her family, in 1984.

For 33 years, Mr. Pulgram's practice has focused on commercial and intellectual property litigation. He is a partner in the San Francisco office of Fenwick & West LLP, one of the leading law firms representing technology and life sciences companies. His practice group is ranked in the national top tier. His client base has included many of the leading technology companies, large and small, in Silicon Valley and around the country.

Mr. Pulgram has been recognized for excellence as a lawyer in numerous publications and surveys. Most recently, he was named *Best Lawyer's* "Lawyer of the Year—Intellectual Property—San Francisco" for 2017, an award to a single lawyer with the highest peer reviews. Mr. Pulgram is immediate past chair of the American Bar Association's Section of Litigation, the largest Section in the ABA, with nearly 50,000 lawyers. He has served on numerous boards, including the Board of Visitors of the Sanford School of Public Policy at Duke University. He and Kelli have two children, an aging cocker/poodle mix, and a young mutt of uncertain origin rescued at the demand of their daughter.