Withdrawn/Redacted Material
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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Handwritten Note	[Handwritten Notes]	1	N.D.	b6;
002	Report	Final Candidate Report [11 PAGES RELEASED IN PART FOR b(6) ON PRA RE-REVIEW 05/20/2025 JLS]	11	01/02/2003	b6;
003	Report	Supplement to the Final Candidate Report	4	01/16/2003	b6;
004	Letter	[Letter] [Page 1 Only] - To: Alberto Gonzales - From: John Dearman	1	03/07/2003	b6;
005	Letter	[Letter] [Page 1 Only] - To: Brett Kavanaugh - From: Carlos Bea	1	03/07/2003	b6;
006	Letter	[Letter] [With Attachment] - To: Brett Kavanaugh - From: Carlos Bea	6	03/07/2003	b6;

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
Bea, Carlos

FRC ID:
9695

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

A. Closed by Executive Order 13526 governing access to national security information.
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b(1) National security classified information [(b)(1) of the FOIA]
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This document was prepared on Tuesday, September 16, 2025

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013	Letter	[Letter] [with 2 Attachments] - To: Brett Kavanaugh - From: Carlos Bea	3	02/19/2003	b6;
014	List	Endorsements - To: Brett Kavanaugh - From: Carlos Bea	1	02/20/2003	b6;
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019	Letter	[Letter] [with 2 Attachments] - To: Brett Kavanaugh - From: Carlos Bea	3	01/21/2003	b6;
020	Clipping	San Francisco Daily Journal	2	01/31/2003	b6;
021	Letter	[Letter] [with Attachment] - To: Brett Kavanaugh - From: Carlos Bea	3	01/23/2003	b6;
022	Letter	[Letter] - To: Barbara Boxer - From: Walter Johnson	1	02/14/2003	b6;
023	Letter	[Letter] - To: John Burton - From: Carlos Bea	1	02/19/2003	b6;

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024	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/17/2003	b6;
025	Letter	[Letter] [1 PAGE RELEASED IN PART FOR b(6) ON PRA RE-REVIEW 05/20/2025 JLS] - To: Brett Kavanaugh - From: Carlos Bea	1	02/14/2003	b6;
026	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/11/2003	b6;
027	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/10/2003	b6;
028	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/07/2003	b6;
029	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/11/2003	b6;

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030	Letter	[Letter] [with 2 Attachments] - To: Brett Kavanaugh - From: Carlos Bea	4	02/11/2003	b6;
031	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	2	02/21/2003	b6;
032	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	2	02/21/2003	b6;
033	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/22/2003	b6;
034	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/27/2003	b6;
035	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/26/2003	b6;
036	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/24/2003	b6;

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037	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	03/21/2003	b6;
038	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/24/2003	b6;
039	Fax Cover Sheet	Fax Cover Sheet [with Attachment] - To: Chris Bartolomucci	2	02/28/2003	b6;
040	Clipping	[Newspaper Articles] [with Attachment] - To: Brett Kavanaugh - From: Carlos Bea	3	04/15/2003	b6;
041	Folder	[Folder] [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	

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021	Letter	[Letter] [with Attachment] - To: Brett Kavanaugh - From: Carlos Bea	3	01/23/2003	P5; P6/b6;
022	Letter	[Letter] - To: Barbara Boxer - From: Walter Johnson	1	02/14/2003	P5; P6/b6;
023	Letter	[Letter] - To: John Burton - From: Carlos Bea	1	02/19/2003	P5; P6/b6;
024	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/17/2003	P5; P6/b6;
025	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/14/2003	P5; P6/b6;
026	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/11/2003	P5; P6/b6;

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028	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/07/2003	P5; P6/b6;
029	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/11/2003	P5; P6/b6;
030	Letter	[Letter] [with 2 Attachments] - To: Brett Kavanaugh - From: Carlos Bea	4	02/11/2003	P5; P6/b6;
031	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	2	02/21/2003	P5; P6/b6;
032	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	2	02/21/2003	P5; P6/b6;
033	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/22/2003	P5; P6/b6;

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035	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/26/2003	P5; P6/b6;
036	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/24/2003	P5; P6/b6;
037	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	03/21/2003	P5; P6/b6;
038	Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/24/2003	P5; P6/b6;
039	Fax Cover Sheet	Fax Cover Sheet [with Attachment] - To: Chris Bartolomucci	2	02/28/2003	P5; P6/b6;
040	Clipping	[Newspaper Articles] [with Attachment] - To: Brett Kavanaugh - From: Carlos Bea	3	04/15/2003	P5; P6/b6;

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Hearings on Hispanic Judges Caught in Partisan Politics

REPORTER'S NOTEBOOK

■ THE COURTS

PETER BLUMBERG

In the hyperpoliticized arena of federal judicial appointments, Connie Callahan may have just the right stuff to land a lifetime seat on the 9th U.S. Circuit Court of Appeals: no baggage.

In the two months since the Sacramento-based state Court of Appeal justice was tapped by President George W. Bush to become the first female Hispanic on the highest federal court on the West Coast (her birth name is Consuelo Maria), the Senate Judiciary Committee hasn't heard a peep from anyone opposing Callahan's appointment, according to congressional staffers.

The silence surrounding Callahan as she awaits a Senate confirmation hearing contrasts sharply with the bitter partisan wrangling over another Hispanic nominee, Miguel A. Estrada, a partner in the Washington, D.C., office of Los Angeles' Gibson, Dunn and Crutcher whom Bush has nominated to the D.C. Circuit Court of Appeals.

Through the parliamentary tactic of filibustering, Democrats have for two months been blocking a confirmation vote on Estrada by the GOP-controlled Senate, saying they will not let Bush pack the courts with right-wing ideologues.



CALLAHAN



ESTRADA

The Bush administration has refused to turn over memoranda that Estrada wrote during a five-year stint in the U.S. Solicitor General's office under President Bill Clinton, documents Democrats insist they need to evaluate Estrada's legal views because he has never served as a judge.

Republicans, pointing to the need for more Hispanics on the federal courts, have labeled the delaying by the Democrats as both anticonservative and anti-Hispanic.

Callahan's appointment, meanwhile, lacks even a hint of controversy.

She's a half-Mexican, half-Irish former Stockton deputy district attorney who served for four years as a San Joaquin Superior Court judge before Gov. Pete Wilson elevated her to the 3rd District Court of Appeal in 1996.

True to her political stripes as a Republican ex-prosecutor, Callahan rarely sides with criminal defendants. But she hasn't had occasion to address hot-button issues such as abortion, affirmative action, separation of church and state, or the death penalty that are seen as judicial litmus tests. In other words, not much is known publicly about her judicial philosophy.

Critics have had a field day, on the other hand, with Los Angeles Superior Court Judge Carolyn B. Kuhl, a 9th Circuit nominee who once advocated, on separation-of-powers grounds, tax-exempt status for South Carolina's Bob Jones University — an institution tagged as discriminatory against minorities. Kuhl's nomination has been blocked by Democrats since last year.

Callahan's relatively low profile may be why she thus far has neither champions nor critics lobbying the gatekeepers on the Judiciary Committee.

"It all depends on the nominee and how worked up the interest groups are," said Blythe McCormick, a spokeswoman for the committee's ranking Democrat, Sen. Patrick Leahy of Vermont. "Usually we get letters on both sides."

California's two Democratic senators, Barbara Boxer and Dianne Feinstein, have taken no public position on Callahan, although they have voiced no objection to granting her a hearing. Both oppose Estrada.

Two Hispanic advocacy groups, La Raza of California and the Mexican-American Legal Defense and Educational Fund, were expected several weeks ago to weigh in on Callahan's nomination. But officials with those groups said this week they are still researching her record and gathering feedback from the Sacramento legal community.

See CALLAHAN, Page 6

■ CALLAHAN: Not Much Known of Her Philosophy

Continued From Page 1

San Francisco Superior Court Judge Carlos Bea was nominated to the 9th Circuit just last week, but Bea, who was born in Spain and played on the Cuban Olympic basketball team, already has endorsements from La Raza and MALDEF because he asked for them ahead of time. (Bea may have learned a lesson about getting his ducks in a row early: He had been nominated for the district court by the previous President Bush, but he was not confirmed prior to the change in administrations.)

A Bush adviser in California, Los Angeles attorney Gerald Parsky, has made no secret of the fact that Callahan and Bea were selected, in part, to appeal to Hispanic voters — considered to be critical in next year's election.

While insiders say it's an advantage for Callahan's confirmation process that she's not politically charged, it's unclear how her ethnicity will come into play if the congressional stalemate over Estrada persists.

Jay Bybee, a well-known constitutional scholar from Nevada, easily won Senate confirmation to the 9th Circuit last month even as the Estrada filibuster festered on Capitol Hill. Bybee, who is not a Hispanic, has been serving as head of the Justice Department's Office of Legal Counsel under Attorney General John Ashcroft.

If Bybee can get broad support from Democrats to sit on the nation's most liberal circuit, notwithstanding his staunchly conservative credentials, shouldn't Callahan be a shoo-in?

There's been some speculation that Bybee got special treatment because he formerly taught at Brigham Young University, which is in the home state of Judiciary Committee Chairman Orrin Hatch, R-Utah.

But another theory circulating among Democrats is that GOP leaders may not be in a hurry to let Democrats cast votes in favor of Hispanic nominees, such as Callahan and Bea, while Republicans are busy lambasting the Democrats as anti-Hispanic in the Estrada battle.

After all, Hatch was quoted just last month characterizing the Democratic position on Estrada with harsh rhetoric: "We do not care what we do to this Hispanic man, even though he is highly qualified."

The test of the Democrats' theory will be how quickly the Senate schedules a floor vote for 5th Circuit confirmation of San Antonio District Judge Edward Prado, a Hispanic who sailed through the Judiciary Committee with unanimous support April 3.

Hatch's spokeswoman, Margarita Tapia, said Wednesday that he is trying to move quickly to confirm all of Bush's nominees for vacancies on the circuit courts. Currently, there are 13 in committee and six pending on the Senate floor.

"Senator Hatch is committed to moving the president's nominees through fairly and diligently," she added.

Contact the writer at (415) 252-2443 or peter_blumberg@dailyjournal.com.

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25 calls
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**ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT,
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January 2, 2003**

FINAL CANDIDATE REPORT: CARLOS TIBURCIO BEA
Candidate for the Court of Appeals for the 9th Circuit

**Prepared For The White House Pursuant To
The White House's Request For Views On The Candidate**

Summary: Carlos Bea is an experienced professional who is accomplished in the private practice of law and in government and community service. Judge Bea has sat on the San Francisco Superior Court since his appointment in 1990 by then-Governor George Deukmejian. Judge Bea has been reelected to his position in 1990, 1996, and 2002. Judge Bea had been nominated for the United States District Court, Northern District of California, by President George H.W. Bush in 1991. However, the Senate did not act on his nomination before the end of President Bush's term. Prior to his service on the state bench, Judge Bea ran his own law firm in San Francisco, Carlos Bea, a Law Corporation, from 1975-1990. Between 1959 and 1975, Judge Bea was an associate and later a partner at Dunne, Phelps & Mills, a San Francisco law firm that has since dissolved.

Judge Bea graduated from Stanford Law School in 1958, after which he joined the law firm of Dunne, Phelps & Mills. As noted, he left the firm in 1975 to form his own practice. Throughout his career, Judge Bea has performed pro bono work. He received an award from the California State Bar for his pro bono work in 1989. In addition, he received two decorations from King Juan Carlos of Spain for pro bono work he performed for Spanish and Spanish Basque workers in the United States. As a judge, he continues to do pro bono work by participating in moot courts or teaching at workshops or other programs.

During his interview, Judge Bea was extremely pleasant and candid. When asked about judicial philosophy, Judge Bea indicated that separation of powers is very important. He stated that, "the judicial branch, being un-elected, should be very wary of the exercise of power – it should decide cases and controversies, not issues." When asked whether there were any judges whose judicial philosophy he respected, Judge Bea indicated that on the Supreme Court he admired Justices Scalia, Rehnquist, and Thomas. On the 9th Circuit, he admired Judges Kozinski, Kleinfeld, and O'Scannlain. Judge Bea has published several writings, mostly on trial practice.

Third party calls indicate that most people who have appeared before him believe Judge Bea to be an excellent judge. Judge Alex Kozinski of the 9th Circuit stated that Judge Bea was "smart and conservative" and a "great guy." Senior Judge John Noonan of the 9th Circuit said that Judge Bea was well respected in the community, and would be "a fine addition" to the circuit. Judge Bea has handled numerous, multi-party, extremely complex insurance matters related to environmental cleanup. The attorneys in those cases, both plaintiff and defendant, have high praise for Judge Bea. However, in a 1998 San Francisco Examiner survey (discussed

further below), attorneys complained of Judge Bea's demeanor and temperament in the courtroom. An attorney who worked for the state government indicated that he could be "imperious" – "not the most temperate member of the bench." She stated that her office had a difficult time in "getting him to apply the law in code violation cases," that is, violations of property codes. She believed that he favored landowners. However, Darrel Inoye, a supervisor in the public defender's office stated that he's "always been impressed" with Bea. When asked about the negative comments ascribed to Bea in the Examiner article, Inoye responded that, "in the beginning [of his judicial career] he may have been what he was described, but not now."

In addition, there are several issues, outlined below, that may be relevant in deciding whether to nominate Judge Bea. These include legal opinions, ethics issues that have been publicly raised, and possible discrimination allegations.

I. General Background/Legal Career

Carlos Bea was born in San Sebastian, Spain on (b)(6) to a Spanish mother and Cuban father. He spent time as a youth in both Spain and Cuba, participating in the 1952 Olympics as a member of the Cuban basketball team. He began living in the United States in September 1943, at the age of 9, and became a United States citizen on July 8, 1958. In 1951, Judge Bea matriculated at Stanford University, receiving his BA in 1956. Judge Bea also attended law school at Stanford, where he received his JD in 1958. While at law school, Judge Bea participated in moot court. He won the Moot Court Finals award at Stanford in 1957, and received the award for best brief from the State Bar of California, State Moot Court Finals, in 1958.

After law school, in 1959, Judge Bea joined the law firm of Dunne, Phelps & Mills in San Francisco as an associate. He later became a partner at the firm, which has since dissolved. Judge Bea established his own law firm in 1975, Carlos Bea, a Law Corporation. He practiced on his own for approximately a year, and then took on associates. While practicing law either with Dunne, Phelps & Mills, or on his own, Judge Bea was also involved in the ownership and management of family businesses. From 1959 until 1993, Judge Bea was Vice-President of Radco Construction, Inc. From 1966 through 1999, he was Senior Vice-President and Acting CEO of American Pacific Pipe Company. He is presently, and has been since 1993, the Managing Partner of Mount Olive Storage, a self-storage mini-warehouse facility in Duarte, California. Judge Bea indicated that he plans to continue in his position with Mount Olive Storage, a family owned business. There is a manager on site who handles the day-to-day activities at the warehouse. Judge Bea travels to the property once a month, during the weekend, and spends approximately an hour per week reviewing reports. His activities appear to comply with Canon 5 of the Code of Judicial Conduct.

Throughout his career as a practicing attorney, Judge Bea handled trial and appellate work. While practicing with Dunne, Phelps, Judge Bea worked in the area of civil defense, handling cases that involved the Federal Employers Liability Act. His major clients at that time were Southern Pacific Company, Western Pacific Railroad Company, Tidewater Southern Globe Indemnity, and Wausau Insurance Company. When he started his own firm, he handled plaintiff's work for contractors and manufacturers in Federal Labor Relations cases, negotiating

with unions and appearing before the NLRB. Some of his clients during this period included, railroad workers, a Spanish tile making machinery manufacturer, Katy Railroad, and various immigration clients. Judge Bea performed substantial amounts of pro bono work, mostly related to immigration.

In 1990, Judge Bea was appointed to the Superior Court of San Francisco by then-Governor George Deukmejian, and won an election to the position five months later, in July 1990. He has won two re-elections since then, in 1996 and 2002. Judge Bea received a substantial amount of press attention for a series of cases he handled regarding environmental insurance coverage involving billions of dollars. All of the attorneys involved in those cases who were contacted during third party interviews spoke very highly of Judge Bea. One attorney indicated that in the case at issue, it could have been easy for a judge to be "sucked in to what the generally accepted statement of the law says." However, Judge Bea "went through and painstakingly interpreted the contract to the facts of the case." This attorney also indicated that Judge Bea could be "short with counsel, he is very old school . . . . You have to play by straight up rules." He added that, "if you know the law and you have it on your side, you'll get the right result." The attorney noted that Judge Bea disclosed all possible conflicts to the attorneys and allowed them as much time as they needed to determine what they would do.

II. Noteworthy Opinions

Aguilar v. Avis Rent-a-Car, No. 948597 (San Francisco Sup. Ct. 1995).

In *Aguilar v. Avis Rent-a-Car*, Judge Bea granted a prohibitory permanent injunction that enjoined an Avis manager from using any derogatory racial or ethnic epithets directed at or descriptive of the Latino employees of Avis. In the *Aguilar* case, Latino employees of Avis alleged employment discrimination under the California Fair Employment and Housing Act. At the trial level, the jury found for the plaintiff employees, and awarded, according to Judge Bea, a small amount of damages. After the verdict, Judge Bea granted the injunction sought by the plaintiffs, which stated: "Defendant John Lawrence shall cease and desist from using any derogatory racial or ethnic epithets directed at, or descriptive of, Hispanic/Latino employees of Avis Rent A Car System, Inc., and shall further refrain from any uninvited intentional touching of said Hispanic/Latino employees, as long as he is employed by Avis Rent A Car System, Inc. in California." *Aguilar v. Avis Rent-a-Car System Inc.*, 53 Cal. Rptr. 2d 599, 603 (Cal. Ct. App. 1996).

Upon appeal, the appellate court found that the injunction had gone too far because its scope was not limited to the workplace. In addition, the appellate court found that the injunction did not adequately apprise defendants of what language was prohibited. Therefore the appellate court remanded the case with instructions to redraft the injunction so as to limit its scope to the workplace and to include an exemplary list of prohibited words/epithets. The appellate did hold that the injunction did not violate the Constitution. Upon remand, Judge Bea redrafted the injunction and the case went back up to the appellate court, which declined to hear it again. The case was then appealed to the California Supreme Court, which held that the injunction was not a prior restraint on speech, either under the First Amendment of the free speech provision of the California Constitution. 87 Cal. Rptr. 2d 132 (Cal. 1999). The Supreme Court denied cert, with

Justice Thomas dissenting from the denial. 120 S.Ct. 2029 (2000). Justice Thomas indicated that the "unprecedented injunction" likely suppresses protected speech. He argued that there was no showing that a prior restraint, as opposed to the remedy of money damages for future violations, was necessary to regulate the speech of the Avis manager. Justice Thomas added that the injunction was not narrowly tailored, as it applied to a single remark or remarks outside the hearing of any Hispanic or Latino employees.

Kransco v. American Empire Surplus Lines Insurance Co., No. 939603 (San Francisco Super. Ct. 1996).

In this insurance coverage case, Judge Bea granted a judgment notwithstanding the verdict after rejecting the insurer's arguments of comparative bad faith on the part of the insured. He had earlier decided to allow the jury to hear evidence on comparative bad faith. The insured brought an action against the insurer for a breach of the duty of good faith and fair dealing when the insurer had rejected an offer to settle an underlying products liability action. Judge Bea held that the insured's conduct during discovery, which led to the finding of comparative bad faith, was known to all of the parties prior to the offer of settlement within the policy limits. The California Supreme Court expanded the holding, ruling that: (1) a liability insurer cannot assert the comparative bad faith of an insured in an underlying third party litigation as an affirmative defense in a bad faith action by an insured; (2) likewise, the alleged comparative negligence of an insured could not reduce the insurer's liability. 97 Cal. Rptr. 2d 151 (Cal. 2000). The dissenters at the California Supreme Court agreed that the facts in the case did not support a comparative bad faith instruction, but rejected the broader holding of the Court. The case received substantial media attention in California, with most reports noting that Judge Bea was the trial judge. During a third party interview, counsel for the insurer Ric Gass indicated that Judge Bea handled the novel issues that he faced in the case very well. Gass stated that Bea "clearly deserves to be on the Federal bench."

Robertson v. Asbestos Defendants, No. 304714 (San Francisco Super. Ct. 2001).

Judge Bea determined that the statute at issue in this case, as applied to the facts of the case, would lead to an absurd result. Therefore, Judge Bea declined to apply the statute, which would have prevented the plaintiff from bringing its case. The plaintiff in this case earlier had brought an action against the defendants for asbestosis, in which he prevailed. Some years later, the plaintiff developed cancer, and brought a subsequent action under the same California statute. The defendants argued that the action was time barred under the statute, which stated that: "civil actions for injury or illness caused by exposure to asbestos must be commenced within one year of (1) the plaintiff's discovery that he has first suffered a disability *and* (2) that such disability was caused or contributed to by such asbestos exposure." Judge Bea found that the statute did not differentiate between one disability caused by one type of asbestos related disease, and another disability related to another disease. He found that "in what may have been an unintended result, its language *commences* the running of the statute of limitations when that first disability is known to be caused by exposure to asbestos." Judge Bea wrote:

> "It is said that where the language of the statute is clear and unmistakable, a court must apply it to the facts of the case, regardless of the result. That rule of

> statutory application is subject to the exception that when the literal reading of a statute renders an absurd result, the court will not so interpret it. (7 Witkin, *Summary of California Law*, 9th ed., Sec. 94, p. 147 and cases cited therein.) "Absurd" means ". . . ridiculously inconsistent with reason or the plain dictates of common sense; logically contradictory".

Judge Bea then added that, "the court cannot conceive of any reasoned basis for holding that a plaintiff who does not have cancer, and has no knowledge or reason to know that he has cancer, must nonetheless commence an action for damages for cancer within one year of the time he is first caused disability by another disease caused by exposure to asbestos." In addition, a prior California Supreme Court case had interpreted the statute. *Hamilton v. Asbestos Corporation*, 22 Cal.4th 1138 (2000). A concurring opinion noted that very defect in the statute and urged the California Legislature to revisit the issue. Judge Bea indicated that the statement in the concurring opinion was "dictum", and found that the text of the concurring opinion did not address the specific facts of the case before him. Judge Bea therefore denied the defendant's motion for summary judgment, allowing the case to go forward.

Coalition for Healthy and Humane Business Practices v. Never Ending Quails, No. 986059 (San Francisco Sup. Ct. 1998).

In this case, brought by an animal rights group to prevent Chinese markets from keeping, selling, and butchering live animals, Judge Bea made a separation of powers argument. Unlike the opinion cited above, Judge Bea specifically referred to the role of the Legislature as distinct from his role as the judge. In his opinion, Judge Bea found that the applicable Health and Safety Codes did not prohibit the markets' actions. He stated, "[a]ppeals to make conditions for food animals awaiting slaughter more humane, or to impose upon food merchants standards and practices observed in pet stores, *may have a place before the legislature*. But, under the law as it is presently written, such appeals cannot be used to assess criminal responsibility as a predicate to shut down businesses, or to require changes in business practices." (Emphasis added.) The plaintiff's attorney in this case indicated that he "felt like he was being heard, and it was the kind of case where he could easily ignore me – you know, frogs and turtles and such."

This case also received nationwide media attention. The articles pointed out that Judge Bea quoted a passage from the Bible in his decision. Judge Bea did quote the Bible, in the context of a discussion of the plaintiff's argument that the Legislature had adopted an anthropocentric view of the world through the statute in question. Judge Bea then defined anthropocentric, indicating that such a view was most familiarly stated in Genesis, quoting: [the Lord said] Be fruitful and multiply, and replenish the earth, and subdue it, *and have dominion over the fish of the sea, the fowl of the air, and over every living thing that moveth upon the Earth*" *Genesis* 1:28. (Emphasis in original.)

III. Noteworthy Litigation

As a sitting judge for the past 13 years, Judge Bea has not litigated any matters recently. A review of his cases does not reveal any particularly noteworthy or controversial litigation. In 1988, Judge Bea was trial counsel in a series of consolidated cases involving his client, a Spanish

tile making machinery manufacturer, a local manufacturer, and a Swiss banker. The case involved an unpaid equipment sales contract between the local manufacturer and Judge Bea's client, and the banker. The court granted several portions of Judge Bea's summary judgment motions, narrowing the issues for trial. Judge Bea indicated that the case dealt with "novel matters of UCC law regarding what actions constitute the acceptance of goods, when there can be a withdrawal of acceptance of goods after their use, and their hypothecation by the buyer." The case ultimately settled before the end of trial.

Judge Bea handled several cases before the National Labor Relations Board. In one particular case, *American Pacific Concrete Pipe Company, Inc. v. National Labor Relations Board*, he represented Ampac, a family-owned business, at trial and on appeal to the 9th Circuit. 788 F.2d 586 (9th Cir. 1986). Judge Bea indicated that the case presented a matter of first impression in the circuit; whether under the Equal Access to Justice Act, claimants must deduct the accumulated depreciation of assets in arriving at "net worth." Judge Bea argued that claimants could make the deduction, while the government argued to the contrary. Judge Bea prevailed at the 9th Circuit.

IV. Publicity/Public Record

Judge Bea has several published writings attributable to him. Of these, only one is unrelated to trial practice issues. In April 1990, Judge Bea published a "Letter from Havana" in the San Francisco Chronicle. The publication was an essay on Judge Bea's recent weeklong visit to Cuba. He discussed Castro's self-described "socialism" and its impact on the Cuban people. At the time, Russian communism was on the decline and Judge Bea questioned what it meant for Cuba. The piece discussed the hypocrisy of the Cuban government, in that it asked the Cuban people to sacrifice and forego modern conveniences, while government officials and those favored by the government were given special perks.

On May 9, 2002, Judge Bea testified before Senator Schumer's Subcommittee on Administrative Oversight and the Courts of the Senate Judiciary Committee regarding his experience with the federal judicial nominations process in 1991. During his testimony, Judge Bea indicated that he "was suspicious of how certain minority candidates who are not liberals politically are treated. . ." He explained that his concerns spurred him to FOIA his FBI file. He found that there were hearsay statements that had been relayed to the Committee in August of 1991, but not followed up on until September 1992. He indicated that the alleged statements related to his lesbian/feminist opponent in his judicial reelection campaign in 1990. He added that once they were investigated, the accusers recanted, but not in time for a hearing for him. He indicated in his testimony that he sometimes wondered whether the issues weren't followed up on more quickly because he was a minority "not allied with liberal interest groups." Judge Bea was invited to testify by Senator Sessions, the Ranking Member on the Committee.

As noted above, several of the cases handled by Judge Bea on the San Francisco Superior Court received press attention. In addition to those, Judge Bea received nationwide media attention when he overturned a jury verdict and ordered a new trial in a civil case where a cabdriver had used his taxi to pin a purse-snatcher to a wall, breaking his legs. The thief sued the cabdriver from prison, alleging that the use of his cab constituted excessive force. The jury sided

with the thief and ordered the cabdriver to pay $25,000. In granting the cabdriver a new trial, Judge Bea noted, "The Marquess of Queensberry's rules have their place, but it is not in the law of arresting crooks. It is not now nor was it ever the law that before submitting to a lawful arrest, a fleeing felon is entitled to a fair fist fight." The WALL STREET JOURNAL hailed Judge Bea's decision. *The Streets of San Francisco*, WALL ST. J., March 31, 1992.

In 1998, the SAN FRANCISCO EXAMINER conducted a survey on the judges of the Superior Court. The article stated:

> "Evaluated by 199 respondents, Bea was widely considered to be an intelligent, skillful judge - with an attitude problem. His reputation for arrogance and imperiousness is unmatched on the bench. A highly experienced female lawyer who appears in court daily said Bea 'can be condescending and biased against women attorneys.' Other critical comments: 'Elitist fascist pig.' 'Pontificates.' 'Rude (and) imperious.' Bea also received compliments. 'An arrogant son of a bitch - but a good judge,' said one of The City's most prominent and most experienced defense lawyers, a male. Bea's response: 'I do admit that I impose high standards of performance on those practicing before me, as I believe I impose on myself.' 'I don't intend to change these standards, although the comments . . . make me think about finding ways to sustain the same standards in ways perhaps less embarrassing to practitioners.'"

As noted earlier, the vast majority of third party calls were extremely favorable to Judge Bea. Many of the individuals interviewed indicated that a lawyer must be prepared when entering Judge Bea's courtroom, or the lawyer would have problems. An attorney from the public defender's office also explained that many lawyers in San Francisco had become accustomed to the more relaxed courtrooms of other judges. The attorney indicated that Judge Bea took many attorneys to task for their lax standards and that may have earned him his reputation; undeserved in the attorney's opinion.

In September 1992, the San Francisco Examiner published a lengthy article alleging that Judge Bea and his brother unjustly profited from their family company's participation in the California Department of Transportation's Disadvantaged Minority Business Enterprise Program ("MBE"). This issue arose while Carlos Bea was the nominee for a district court seat in 1992. Judge Bea and his brother were co-owners of a closely held family business, the American Pacific Pipe Company ("AMPAC"). The article claimed that the MBE program was limited to firms owned by minorities who are both socially and economically disadvantaged, while Bea and his brother were wealthy individuals.

Judge Bea forwarded the correspondence from the U.S. Department of Transportation and the California Department of Transportation ("Caltrans"). The paperwork indicates that a complaint was filed by Hydro Conduit Corporation ("Hydro") on January 13, 1984, alleging that the minority owners of AMPAC, Carlos and Alvaro Bea, were neither socially or economically disadvantaged. Caltrans issued a final determination on May 30, 1985, denying the Hydro complaint. Hydro appealed the ruling to US DOT in September 1985. In January 1986 US DOT determined that Caltrans had "misinterpreted the requirements of the disadvantaged business

enterprise ("DBE") regulations with respect to the proper standards for determining social and economic disadvantage." US DOT therefore remanded the case to Caltrans, with instructions on the criteria. However, AMPAC and the Beas filed a complaint in the U.S. District Court for the Eastern District of California, arguing that the DBE program did not allow appeals by third parties. They requested that the district court order US DOT to withdraw its January 1986 order and declare the Caltrans decision final. US DOT came to the conclusion that the AMPAC arguments should be given further consideration and withdrew its January 1986 order. Ultimately, in June 1988, US DOT determined that the Bea brothers met the social and economic requirements of the DBE regulations.

When the 1992 San Francisco Examiner article was released, Caltrans conducted another investigation of AMPAC and the Beas' qualifications to participate in the DBE program. They came to the same conclusion; that AMPAC and the Bea brothers qualified.

The 1992 article also alleged that Judge Bea improperly used his judicial stationary in responding to a Caltrans request. Caltrans requested information directly from Judge Bea regarding his relations with AMPAC and Alvaro Bea's construction company. Judge Bea, who was by then sitting on the San Francisco Superior Court, responded on his judicial stationary on April 20, 1990. Judge Bea provided a copy of a letter from the Commission on Judicial Performance, dated January 25, 1993, which found that "further proceedings were not warranted."

V. Miscellaneous Other

- Walter v. Bea (1986-1987): Claus Walter, a German doctor and client of Carlos Bea, sued Bea for malpractice. Bea indicated that he represented Walter in a transaction where Walter loaned money to a limited partnership. When the partnership went under, Walter's only recourse was against the partnership's property and not the individuals. Walter claimed that Bea committed malpractice because he did not advise Walter of what his recourse would be should the partnership fail. Bea indicated that his malpractice insurer settled with Walter in 1987. The FBI should have reviewed this issue in its prior background investigation of Bea.

- Selleck v. American Home Assurance Co. (1989): In an underlying action, Carlos Bea had represented Mr. Selleck, a psychiatrist who was being sued by a woman he had counseled, and with whom he had had a relationship. Mr. Selleck was granted summary judgment in the underlying action. Subsequently, Bea was a cross defendant when the plaintiff sought declaratory relief for attorneys fees expended on the underlying claim that the defendant had refused to defend. The case was settled after the payment of a portion of the attorneys' fees on plaintiff's behalf.

- Law Clerk: In 1999, the San Francisco Recorder reported on Judge Bea's handling of a large environmental insurance coverage cases. The article mentioned that he requested that the parties pay a law clerk to assist him on the cases, and suggested that at least one fellow judge questioned the propriety of Judge Bea's actions. Judge Bea indicated that he had gone first to his presiding judge and asked him whether he could ask the parties to

contribute towards the salary for a law clerk. Once the presiding judge approved, Judge Bea told the parties to take an anonymous vote on whether to do it, and required that it be unanimous in favor to go forward. The parties did hire a clerk, with each of them paying into a fund that the court used to pay the clerk's salary. Each attorney questioned during third party interviews indicated that the practice was not that unusual in very large cases and all had agreed that it was a good idea. More than one attorney indicated that they had paid the salary of a law clerk for the judge in other large cases. One attorney explained that the cases were such a huge burden on the court system, that it was necessary.

- 1990 Audit: In 1990, both Bea in his personal capacity, and Carlos Bea, A Law Corporation, were the subjects of full field audits by the IRS. The IRS found a deficiency in the payment of capital gains taxes. Bea indicated that he then claimed several entertainment and travel expenses that he had not claimed earlier. He stated that the deductions were off set against the claimed capital gains deficiency. He recalled that he paid approximately $5,000 to the IRS for the capital gains deficiency.

- Household Employee Taxes: In October 2001, Judge Bea and the IRS signed a Closing Agreement on Final Determination Covering Specific Matters. In the agreement, Judge Bea acknowledged that he failed to withhold and report the applicable employment taxes for household employees for the period 1977 through 1991. The IRS accepted a compliance fee of $18,886.24 in satisfaction of all tax filing obligations. Judge Bea indicated that he and his wife have not had any household employees since he became a judge in 1990.

- Discrimination: Judge Bea indicated that in 1993, a part-time clerk employed by the Superior Court filed a complaint against him with the California Department of Fair Employment and Housing. Judge Bea's judicial professional liability carrier handled the matter for him. In October 1993, the Department decided not to pursue her claim, closed its file on the complaint letter, and issued her a right to sue letter. The clerk never filed an action against Bea. Judge Bea stated that he did not know what the actual allegations against him were. He indicated that the clerk, a woman, may have been disgruntled because he had asked her to make a reservation at a restaurant for him.

- ABA Rating: According to media reports, the ABA gave Judge Bea a rating of majority Qualified, minority Not Qualified when he was nominated by President George H.W. Bush for the district court. In a letter dated December 31, 1991, the Bar Association of San Francisco's judiciary committee rated Judge Bea "not qualified" for the federal district court. It sent the rating to the then-Chairman of the Senate Judiciary Committee, Senator Joseph Biden (D-DE) The same commission previously had rated Judge Bea "well qualified" for the Superior Court bench.

- Club Memberships: Judge Bea has been a member of the Olympic Club in San Francisco since 1960. According to media reports, the club did not admit its first black members until 1988, after the city of San Francisco sued it for federal civil rights violations. Judge Bea indicated that he resigned in 1990, when he was appointed to the state bench. At that time, the club did not allow women. He indicated that he rejoined the club in 1991 when

they began admitting women. Prior to that time, Judge Bea stated that he had tried to get the all-male policy changed. When asked whether the club admitted minorities, Judge Bea responded that there were African American members. However, the city of San Francisco sued in 1987 to enforce an anti-discrimination ordinance against the club. Again, according to media accounts, the club admitted its first African American members in 1988. Judge Bea was also a member of the Union Benefica Espanola de California. He has not been a member since 1990. The club was established as a social club for Spaniards, but admitted anyone. Judge Bea has been a member of the Federalist Society since 1990.

- Arrest: Judge Bea was arrested in Spain in 1955. The Spanish government, under Franco, claimed that he was a draft dodger. He was able to show that he was a Cuban citizen and not subject to the draft in Spain.

- Foreign Government: Judge Bea was the Honorary Vice Consul of Spain from 1979 through 1993. He indicated that he was given this title because of all of the pro bono work he had done for "Basque shepherds, drunken sailors, and the like." He indicated that his duties mainly involved going to cocktail parties and receptions.

- Pro Bono: Judge Bea has performed significant amounts of pro bono work throughout his career. As mentioned, he spent 10-20 hours per month on pro bono work for Spanish nationals who were referred to him by the Spanish Consulate. As a judge, he participates in moot courts at the local law schools, teaches in the Litigation Workshop Program at Stanford, and gives evening courses for the Queens' Bench (a San Francisco Women's Bar group). From 1995-1997 he appeared weekly on a Spanish language television program that presented information on questions of law and procedure. Judge Bea traveled to Spanish and Latin American countries on behalf of the United States Information Agency giving lectures on the American judicial system.

VII. Confirmation Issues

Although there is no reason to believe that any individual or group would actively oppose Judge Bea's nomination, some issues (also described above) should be considered with regard to the nomination and confirmation process:

Temperament/Demeanor: The 1998 San Francisco Examiner survey and comments of several attorneys in San Francisco indicate that Judge Bea can be somewhat "imperious" in the courtroom. However, many attorneys indicated that Judge Bea has no problems with attorneys who come to his courtroom prepared.

Tax Issues: Opponents might raise the issue of the 1990 Audit and more recently, the Beas' settlement with the IRS related to the back payment of household employee taxes.

Discrimination: Judge Bea belonged to the Olympic Club in San Francisco at the time that it did not have any minority (African American) members and did not allow female members. However, Judge Bea himself is a minority – Hispanic – and was permitted to join the club.

Justice Anthony Kennedy also was a member of the Olympic Club. It was a matter of contention during his nomination. Similarly, membership in the Olympic Club was an issue in District Judge Vaughn Walker's nomination. Like Kennedy, Walker resigned his membership from the club in 1989 while the Senate considered his nomination. People for the American Way had tried to use the Walker controversy to urge the Senate to establish a policy of disqualifying members of discriminatory clubs who had not given up their memberships or taken "meaningful" steps to change the club's practices.

A part-time clerk filed a complaint against him with the California Department of Fair Employment and Housing. In October 1993, the Department decided not to pursue her claim, closed its file on the complaint letter, and issued her a right to sue letter. The clerk never filed an action against Bea. The records on this matter are sealed and it has never been made public because the clerk never filed a complaint in court. However, it must be disclosed on his Senate Questionnaire.

Examiner Article on Minority Business Enterprise Classification: Although this issue already received substantial media attention when it was written in 1992, opponents could raise it again. However, the US DOT and Caltrans rulings clearly indicated that the Beas qualified under the program.

Miscellaneous Other: Opponents may bring up Judge Bea's Bible quotations, or other unorthodox statements he has made in his orders, such as the taxi driver case. Likewise, when testifying before the Senate Judiciary Subcommittee in 2002, he indicated that he "was suspicious of how certain minority candidates who are not liberals politically are treated. . . ."

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Bea, Carlos

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] [Page 1 Only] - To: Alberto Gonzales - From: John Dearman	1	03/07/2003	P5; P6/b6;

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Letter	[Letter] [Page 1 Only] - To: Brett Kavanaugh - From: Carlos Bea	1	03/072003	P5; P6/b6;

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Letter	[Letter] [With Attachments] - To: Brett Kavanaugh - From: Carlos Bea	6	03/07/2003	P5; P6/b6;

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2017-0345-F

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] [with Attachment] - To: Alberto Gonzales - From: John Dearman	4	03/07/2003	P5; P6/b6;

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COLLECTION:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
Bea, Carlos

FRC ID:
9695

OA Num.:
2165

NARA Num.:
2076

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] [with Attachments] - To: Brett Kavanaugh - From: Carlos Bea	6	02/07/2003	P5; P6/b6;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Book	California Courts and Judges [Pages 108-109]	2	02/21/2003	P5; P6/b6;

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"Charnes, Adam" <Adam.Charnes@usdoj.gov>
11/21/2002 10:29:43 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: FW: FW: ABA and Age

As you requested.

-----Original Message-----
From: Anderson, Carl A
Sent: Thursday, November 21, 2002 10:29 AM
To: Charnes, Adam; Keefer, Wendy J
Cc: Benedi, Lizette D
Subject: RE: FW: ABA and Age

Sheila had this information.

Gurfein: WQ, confirmed (8/22/74), age 66
Sarokin: WQ, confirmed (10/4/94), age 65
Russell: WQ, confirmed (4/21/71), age 65
Kilkenny: EWQ, confirmed (9/12/69), age 68 (ABA no longer gives EWQ)
Poole: WQ, confirmed (11/26/79), age 65

-----Original Message-----
From: Charnes, Adam
Sent: Wednesday, November 20, 2002 5:08 PM
To: Keefer, Wendy J; Anderson, Carl A
Subject: FW: FW: ABA and Age

Please see Brett's question below.

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, November 20, 2002 4:40 PM
To: Charnes, Adam
Subject: Re: FW: ABA and Age

did these guys get WQ's or Q's?

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] [with 2 Attachments] - To: Brett Kavanaugh - From: Carlos Bea	4	02/19/2003	P5; P6/b6;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
List	Endorsements - To: Brett Kavanaugh - From: Carlos Bea	1	02/20/2003	P5; P6/b6;

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Handwritten Note	[Notes]	1	02/05/2003	P5; P6/b6;

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FAX from . . .

Senator Dianne Feinstein

of California

331 Hart Senate Office Building
Washington, DC 20510
(202) 224-3841

DATE: 12/6/02

TIME: _____

TO: Brett Kavanaugh

FROM: Mark Kadesh

COMMENTS:

Re: 9th Circuit

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 8

NOTE: The information contained in this facsimile is confidential. If you receive this transmission in error, please notify the sender immediately.

SF Examiner
Sept. 27, 1992

Judge profits from poverty program

Multimillionaire Bea up for promotion

By Seth Rosenfeld
OF THE EXAMINER STAFF

Carlos Bea, a multimillionaire San Francisco Superior Court judge nominated by President Bush for a federal judgeship, has profited handsomely from a federal program meant for economically disadvantaged minorities, public records show.

And when his company's participation in the program was questioned in 1990, the judge used official Superior Court stationery to respond to state officials.

Bea, 58, is a politically well-connected lawyer whose family holdings included a pine tree farm, a shipping business and three houses in northern Spain, including a 10-bedroom family home in San Sebastian, according to records and his associates.

Bea came to California as a boy, attended private schools, graduated Stanford Law School, and developed his own successful San Francisco law firm. Along the way, he acquired a $1.1 million Pacific Heights mansion, a $130,000 Bolinas house and a half interest in a Southern California storage company worth $800,000. He holds half-interest in three houses in San Sebastian, Spain, worth $500,000, quarter-interest in a pine tree farm in Spain worth $250,000, and $4.2 million in securities.

In June, in response to a questionnaire from the U.S. Senate Judiciary Committee, Bea put his personal net worth at $6.83 million.

And since the early 1980s, Bea has taken part in the state Department of Transportation's Disadvantaged Minority Business Enterprise Program, intended only for firms owned by minorities who are both socially and economically disadvantaged.

Through that program, the concrete pipe company owned by Bea and his older brother, Alvaro Bea, has received millions of dollars in construction contracts. The firm, American Pacific Concrete Pipe Co., Inc. (AMPAC), is currently working on contracts worth more than $1 million.

As of 1986, minority contracts accounted for 25 percent of AM-PAC's business and some of its most profitable contracts, Bea has said in court records.

Bea's wealth and his involvement in the disadvantaged business program are among the contrasting images that emerged from an Examiner review of his public record. Neither his business role nor the details of his personal finances are widely known.

A complete statement of his finances became public only in June with his response to the U.S. Senate. Algerine McCray, chief of Caltrans' office of civil rights, which oversees the program, said she didn't know Bea's net worth but added that being rich can be cause for disqualification.

Robert Ashby, the federal official who wrote the program's rules, said the presumption that a member of a minority group is economically disadvantaged can be dissolved by showing "they're extremely rich."

Bea's role in the disadvantaged business program apparently didn't come up in his June 1990 Superior Court election, and he didn't mention it in his answers to a U.S. Senate questionnaire after being nominated to federal court.

Bea declined several requests by The Examiner for an interview, saying it would be "inappropriate" while his nomination was pending.

If the U.S. Senate confirms his nomination to the lifetime post, Bea would exert broad power in criminal and civil cases throughout Northern California. He would become its second Hispanic judge, and one of the region's wealthiest.

He applied for nomination to the federal bench in October 1990, through then-Sen. Pete Wilson, R-Calif. Wilson initiated the process of recommending Bea to President Bush, and his senatorial successor, Seymour, agreed to complete it, said Seymour spokesman H.D. Palmer.

Bea picked up support from the influential National Hispanic Bar Association and from powerful Democrats like his former client and co-counsel, Assembly Speaker Willie Brown, Assemblyman John Burton and San Francisco Superior Court Judge Jack Berman.

Lowest ABA rating

But his nomination has languished in the Democrat-controlled Senate Judiciary Committee. A majority of the American Bar Association's standing committee on the federal judiciary rated Bea "qualified," but a minority rated him "not qualified," the lowest possible passing rating.

Last week the Senate committee held its last judicial confirmation hearings of this fall, and Bea was not among the judges considered. But he will likely be confirmed if Bush is re-elected.

Bea (pronounced Bay-uh) was born April 18, 1934, in San Sebastian, in the Basque region of Northern Spain, to a Spanish-born mother and Cuban-born father, he [illegible] Caltrans records.

More than a generation before, Bea's family became rich in the Cuban sugar industry, enough so that Bea's father and uncle were independently wealthy — or "born retired," said Berman, who has known Bea since 1959 and has visited his home in Spain.

When Bea was 3 years old his family left Spain, lived briefly in France and moved to Cuba. Bea has said in records he filed with Caltrans. In 1943, he came to the United States.

Bea graduated from Stanford Law School in 1958. In campaign literature for his June 1990 Superior Court re-election, Bea claimed he was the "first Hispanic graduate of Stanford Law School."

But Constance Hellyer, the law school's director of publications, said that is not true. She said graduates with Hispanic surnames date to the 1930s.

After law school, Bea joined a downtown San Francisco law firm. By 1975, he had opened his own firm specializing in civil matters.

Bea earned a reputation as a well-prepared and fierce litigator for construction firms, real estate developers and injured plaintiffs. He also represented the San Francisco 49ers and Wilkes Bashford, a society clothier from whom The City sought hundreds of thousands of dollars in back rent.

Along the way, Bea picked up a title from the Spanish government: In 1979 it named him honorary vice consul of Spain in San Francisco, and in 1980 King Juan Carlos I presented him with the Knight's Cross of Isabel la Catolica.

Bea was a member of the Olympic Club, joining in 1960. The exclusive San Francisco athletic club that did not admit its first black members until 1988, after the city of San Francisco sued it for federal civil rights violations. It continued to ban women from membership until recently. Bea said he had worked to open the club to women, but resigned after then-Gov. George Deukmejian appointed him to the Superior Court in January 1990.

CARLOS BEA

- **AGE:** 58
- **JOB:** San Francisco Superior Court judge.
- **BIRTHPLACE:** San Sebastian, Spain.
- **FAMILY WEALTH:** Derived from sugar industry in pre-Castro Cuba.
- **YOUTH:** Arrived in the United States in 1943, at age 9, with a governess. Attended private Catholic grade school, Stanford University, Stanford Law School. Played basketball for Stanford, and on Cuba's 1952 national team.
- **PERSONAL WEALTH:** Estimated by Bea at $6.83 million. Current home is Pacific Heights mansion purchased in 1986 for $1.1 million, with $350,000 down payment. Paid another $400,000 for antique furnishings, including a Louis XVI canopy bed.

EXAMINER GRAPHICS

Bea has also made personal investments. He bought a home in North Beach in 1970, and by 1982 he had invested $100,000 cash in 394 Associates, a limited partnership that owned and operated a building at 394 Pacific Ave. valued at more than $5 million.

Bea became an active Republican, working to elect Nixon governor and then president. Between 1981 and 1991 he gave $5,450 to Republicans, including $1,500 to Pete Wilson, according to the National Library on Money & Politics.

Personal legal battles

Some of Bea's hardest-fought legal cases have been on behalf of his own firm, American Pacific Concrete Pipe Co. Bea and his brother each own 42 percent, according to Caltrans records, and Bea last year valued his share at more than $1 million.

Since AMPAC's founding in 1966, Bea has been its secretary and a director, and until he joined the Superior Court he also was its lawyer. Four of the 10 litigated cases he listed on his Senate questionnaire as most significant in his career involved AMPAC.

But his questionnaire did not mention his fiercest and most significant case for AMPAC: a fight to prove he and his brother qualified for construction contracts set aside for socially and economically disadvantaged minorities.

In 1984, Hydro Conduit Corp., one of AMPAC's competitors, filed a challenge with Caltrans.

"The Bea brothers cannot establish that they are socially disadvantaged," Hydro's lawyer charged. "The Beas have had every advantage associated with the American Dream."

Hydro claimed the Beas were highly educated, socially prominent and financially successful, and owned investment properties in San Francisco and homes in San Marino and elsewhere.

AMPAC had millions of dollars in business each year and $4.58 million in assets — including three Cadillacs, three Mercedes, a Porsche and two classic Rolls-Royces, Hydro said.

Caltrans found there was reason to believe the Beas were not socially and economically disadvantaged, and proposed to remove them from the program.

Carlos Bea demanded an informal hearing at Caltrans headquarters and, during the hearing, denied he was socially or legally prominent. He agreed his title of honorary vice consul of Spain was "a rare distinction," but said he got it simply because he'd done free work for the Spanish consul, helping Basque shepherds with immigration problems.

Caltrans officials pressed Bea to show how he had personally suffered discrimination.

His reply: the nuns at his elementary school pressured him to anglicize his name. Later, the parents of some of his dates would give him "a bit of interrogation," asking, " 'What kind of a guy are you ... Bea, what are you, Cuban?' ... I was accused of having bad blood because I have a Spanish surname."

Bea admitted those incidents didn't harm his business opportunities. But he claimed he'd been discriminated against because he was never invited to join the Bohemian Club, the American College of Trial Lawyers, a national honorary legal association, or a concrete industry association. He said he had no evidence that was because of his ethnicity.

'Minnow among whales'

At one point in the hearing Bea demanded: "Does anybody have any evidence ... that we are socially advantaged? Where is the evidence that I belong to sociable and fashionable clubs?"

Bea did not mention his membership in the Olympic Club.

At another point he stated: "I don't have any investment properties in San Francisco."

And in a subsequent legal brief he again denied that he or his brother "have substantial assets consisting of business properties, investment properties in S.F. (and) residential properties."

Bea did not mention his $100,000 investment through the 394 Association partnership in a Pacific Avenue building, an investment he held at the time, according to a manager of the partnership.

Compared to its competitors, Bea added, AMPAC was "a minnow among whales," and he argued that under federal rules he didn't have to prove he was disadvantaged unless it was first shown that he had not maintained his identity as a Hispanic.

Caltrans reversed itself and agreed with his legal argument. Bea wouldn't have to prove he was disadvantaged.

Caltrans' ruling noted that although Hydro had "some evidence," it wasn't enough to prove the Beas were not disadvantaged.

The U.S. Department of Transportation affirmed the ruling, reasoning in part that Bea's purported prominence in the legal field was "more mundane than would appear at first blush."

The Beas had denied owning substantial business and investment properties in San Francisco, the federal agency pointed out, and "there was no basis in the record to question their denial."

The federal agency also warned that Caltrans had a duty to investigate cases where it appeared firms were not truly disadvantaged.

Used court stationery

In late 1989, Caltrans asked Bea to send a letter explaining his affiliation with AMPAC, his San Francisco law firm, and Radco Construction Inc., a firm owned by his brother that also was in the program for disadvantaged minority businesses. The program accounted for as much as 50 percent of Radco's business in the mid-1980s, Bea said in court records.

Caltrans wanted the information to determine whether the firms were affiliated and whether their combined income exceeded the program's limit on income.

Four months passed without answer from Bea, according to Caltrans files, and a Caltrans official threatened to disqualify Radco from the program.

On April 20, 1990, Bea — who by then had become a Superior Court judge — wrote Caltrans on official court stationery saying he saw "nothing" in federal regulations that allowed Caltrans to request the information.

"This sort of ultimatum and demand is extremely distressing, and totally without basis as far as I know," he said, sending a copy of the letter to the official's boss.

Bea's letter pointed out that he no longer represented Radco because in January 1990 he'd been sworn in as a Superior Court judge.

The letter appears to conflict with the State Code of Judicial Conduct, according to Stephen Gillers, a professor of legal ethics at New York University Law School. The code says judges must avoid even the appearance of impropriety in all their activities.

"Judges should not lend the prestige of their office to advance the private interests of others," it says. 'Nor should judges convey the impression that they are in a special position to influence them."

Caltrans' Los Angeles office eventually concluded that Radco's income exceeded the program's limit, and in 1990 Radco's certification expired. AMPAC remains in the program.

(Embedded
image moved "Charnes, Adam" <Adam.Charnes@usdoj.gov>
to file: 11/20/2002 02:27:13 PM
pic13067.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: FW: ABA and Age

Brett, below is both information about (1) ABA review of judges' ages and (2) judges over age 65 appointed to ciruit courts. You have to read a couple of messages to get all this info, since I am lazy and didn't consolidate.

If you need more research, please just let me know. I just realized that the research went back to 1965 -- I can send them back earlier if you think it would be helpful.

-----Original Message-----
From: Keefer, Wendy J
Sent: Wednesday, November 20, 2002 1:01 PM
To: Charnes, Adam
Cc: Benedi, Lizette D; Anderson, Carl A
Subject: RE: ABA and Age

Here are the ages when confirmed and the date of confirmation:

Gurfein 66 (8/22/74)
Sarokin 65 (10/4/94)
Russell 65 (4/21/71)
Kilkenny 68 (9/12/69)
Poole 65 (11/26/79)

-----Original Message-----
From: Charnes, Adam
Sent: Wednesday, November 20, 2002 12:47 PM
To: Keefer, Wendy J
Cc: Benedi, Lizette D; Anderson, Carl A
Subject: RE: ABA and Age

Could I please get the ages of the five circuit nominees when nominated (or confirmed)? Thanks

-----Original Message-----

From: Keefer, Wendy J
Sent: Wednesday, November 20, 2002 11:41 AM
To: Charnes, Adam
Cc: Benedi, Lizette D; Anderson, Carl A
Subject: ABA and Age

Based on research conducted by Carl and Paul:

The ABA does not explicitly take age into account when evaluating nominees. According tot he ABA's Standing Committee on Federal Judiciary, age is not considered when evaluating the qualifications of a nominee. However, the health of a nominee can be considered. More specifically, "[i]f information concerning the health of the nominee arises during the investigation, the Committee's evaluation of the candidate may take that information into consideration." The ABA Standing Committee on Federal Judiciary, What It Is and How It Works, p. 7.

With regard to the history of older nominees:

Only 5 circuit court nominees since 1965 have been confirmed at age 65 or older: Murray Gurfein (2nd Circuit), H. Lee Sarokin (3rd Circuit), Donald Stuart Russell (4th Circuit), John F. Kilkenny (9th Circuit), Cecil Poole (9th Circuit). Of course when the 5th circuit split into the 5th and 11th in 1981, a number of 5th circuit judges who were then recommissioned were over 65 but they were not over 65 at the time of their original confirmation.

Let me know what other information you may need.

Wendy J. Keefer
Senior Counsel and Chief of Staff
Office of Legal Policy
(202) 616-2643

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] [with 2 Attachments] - To: Brett Kavanaugh - From: Carlos Bea	3	01/21/2003	P5; P6/b6;

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Kavanaugh, Brett - Subject Files

FOLDER TITLE:
Bea, Carlos

FRC ID:
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OA Num.:
2165

NARA Num.:
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FOIA IDs and Segments:
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RESTRICTION CODES

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Clipping	San Francisco Daily Journal	2	01/31/2003	P5; P6/b6;

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Letter	[Letter] [with Attachment] - To: Brett Kavanaugh - From: Carlos Bea	3	01/23/2003	P5; P6/b6;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] - To: Barbara Boxer - From: Walter Johnson	1	02/14/2003	P5; P6/b6;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] - To: John Burton - From: Carlos Bea	1	02/19/2003	P5; P6/b6;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Lertter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/17/2003	P5; P6/b6;

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Carlos Bea
#514, 400 McAllister Street
San Francisco, California
94102, USA
FAX 1-415-551-3934.
Tel. 1-415-551-3788
cbea@ix.netcom.com

14 February 2003

Mr. Brett Kavanaugh
(202) 456-5104.

Here is San Francisco Daily Journal article about Justice Callahan's nomination, with a brief mention about me.

La Raza Lawyers Association (both San Francisco and state-wide) has already endorsed me.

Monday is a holiday, so you can reach me either at home (b)(6) or on the cell phone (b)(6).

Best regards,

Carlos Bea

Carlos Bea

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/11/2003	P5; P6/b6;

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Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/10/2003	P5; P6/b6;

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COLLECTION:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
Bea, Carlos

FRC ID:
9695

OA Num.:
2165

NARA Num.:
2076

FOIA IDs and Segments:
2018-0016-P
2017-0345-F

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Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/07/2003	P5; P6/b6;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/11/2003	P5; P6/b6;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] [with 2 Attachments] - To: Brett Kavanaugh - From: Carlos Bea	4	02/11/2003	P5; P6/b6;

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Office of Legal Policy
United States Department of Justice
10th and Constitution Ave. NW
Washington, D. C. 20530

TO: Brett Kavanaugh **FAX:** 456-5104

FROM: S Toy

VOICE: (202) 514-1607
FAX: (202) 616-3180

Total Pages (including this cover): __

Additional Message: Part II

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	2	02/21/2003	P5; P6/b6;

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Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/26/2003	P5; P6/b6;

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Letter	[Letter] - To: Brett Kavanaugh - From: Carlos Bea	1	02/24/2003	P5; P6/b6;

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P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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B. Closed by statute or by the agency which originated the document.
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Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Fax Cover Sheet	Fax Cover Sheet [with Attachment] - To: Chris Bartolomucci	2	02/28/2003	P5; P6/b6;

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COLLECTION:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
Bea, Carlos

FRC ID:
9695

OA Num.:
2165

NARA Num.:
2076

FOIA IDs and Segments:
2018-0016-P
2017-0345-F

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Clipping	[Newspaper Articles] [with Attachment] - To: Brett Kavanaugh - From: Carlos Bea	3	04/15/2003	P5; P6/b6;

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COLLECTION:
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SERIES:
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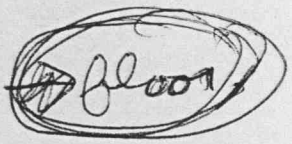
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– not ideological
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