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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Report	James Virgil Selna [6 PAGES RELEASED IN PART FOR (b)(6) ON PRA RE-REVIEW 09/15/2025 JLS]	6	01/22/2003	b6;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Judges - [Selna, James]

FRC ID:

9631

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]
- 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 advice 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(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
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SUPERSEDED

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**ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT,
AND DELIBERATIVE PROCESS PRIVILEGED**
January 22, 2003

FINAL CANDIDATE REPORT: JAMES VIRGIL SELNA
Candidate for the U.S. District Court for the Central District of California

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

Summary: James Selna is an experienced and well-respected jurist with a record of public service. He has sat on the Orange County Superior Court since 1998. Prior to that he practiced law for 28 years as an associate and later a partner at O'Melveny & Meyers in its Los Angeles and later Newport Beach offices.

Judge Selna graduated from Stanford Law School in 1970. While at Stanford he was the Law Review Article and Book Review Editor and a member of the Order of the Coif. Upon graduation from law school, Judge Selna joined O'Melveny & Meyers as an associate in its Los Angeles office. In 1978, he was made partner, a position he held until his departure from the firm in 1998, the year he became an Orange County Superior Court Judge. Judge Selna served in the United States Army, both on active and reserve duty between 1967 and 1978. He retired from inactive reserve duty in 1978 with the rank of Captain. Judge Selna also sat on the boards for the Newport Harbor Art Museum, later known as the Orange County Museum of Art, and the Orange County Business Committee for the Arts. He was very active in pro bono activities on behalf of the museums and in the overall support of the arts in his community.

Judge Selna is a very reserved individual, but was pleasant and candid in his interview. He indicated that a good federal judge should have an even temperament, and an ability and willingness to work hard. He added that a judge needs to treat people decently and give them a fair hearing. When asked about his own judicial philosophy, he stated that "my role is to apply the law to the best of my ability. A judge is not a legislator, and it is inappropriate for judges to reach out and make new law." He added that, "there are varying judicial philosophies - mine is conservative from a process viewpoint. It is inappropriate to create new questions of law to further one's own political philosophy."

Judge Selna has numerous published writings attributable to him. He noted on his Questionnaire that while an undergrad at Stanford, he worked on the university paper. As such, he wrote hundreds of news stories, and as Editor-in-Chief (1966-1967), wrote all of the editorials. In his interview, he noted that those were "trying times" on college campuses, but stated that he did not discuss the war or advocate drugs in his editorials. He no longer has any copies of his college writings. In addition, while at O'Melveny & Meyers, Judge Selna wrote an informal antitrust newsletter for his clients. None of these publications raised any issues that should be relevant during any confirmation proceedings. Finally, Judge Selna wrote several letters to the editor in support of Newport Harbor Art Museum's lawsuit against the NEA, which alleged that the NEA's anti-obscenity certification requirement violated the First Amendment.

Third party calls were uniformly positive. However, an AUSA in Orange County brought up one issue regarding Judge Selna's attitude toward crime, while acknowledging that he believed Selna to be qualified for the district court. Most individuals mentioned that Judge Selna was very bright, extremely hardworking, and a true gentleman.

I. General Background/Legal Career

James Selna was born in San Jose, California on (b)(6). He attended Stanford University from 1963-1967, where he wrote for the *Daily*, ultimately serving as its editor-in-chief his senior year. Judge Selna graduated with distinction with an A.B. in 1967 and was a member of Phi Beta Kappa. He enrolled at Stanford Law School in 1967, and graduated there in 1970 as a member of the Order of the Coif. He was awarded the Urban Sontheimer Prize in 1970, which is awarded to the individual with the rank of second in the graduating class. He also was awarded the Carl Franklin Prize in International Law.

During law school, Judge Selna was the Article and Book Review Editor on Law Review and also served in the ROTC, where he specialized in military intelligence. Judge Selna went on active duty for a short period in 1971, and served in the reserves from 1971-1974. In 1974, he went on inactive reserve duty, until his retirement as a captain in 1978. Judge Selna was honorably discharged.

After his graduation from law school in 1970, Judge Selna joined the Los Angeles office of O'Melveny & Meyers as an associate. Throughout his career with O'Melveny & Meyers, Judge Selna did a large amount of antitrust work. Other significant practice areas included trade regulation, trade secret law, construction law, and the handling and management of complex litigation. Mr. Selna described some of the major cases in which he was involved throughout his career. He indicated that from 1972-1979, he was a member of the defense team for IBM in private antitrust suits in California, as well as the U.S. Government's suit against IBM. From 1980-1983, he represented the National Football League, defending antitrust claims brought by the Los Angeles Memorial Coliseum Commission and the then Los Angeles Raiders. In 1989 he became involved in the defense of various claims arising out of the grounding of the EXXON VALDEZ in Prince William Sound, Alaska. His participation in the case continued until his appointment to the Superior Court in 1998. He served as Chief of Staff for the trial and had brief, in court appearances. In the years prior to his appointment to the Superior Court, Judge Selna's practice consisted of preparing and litigating complex commercial disputes, typically involving high technology issues and companies. Presently Judge Selna serves in the division that handles only complex civil cases. Orange County Presiding Judge Frederick Horn indicated that it was his decision to place Judge Selna in the complex civil division. Judge Horn stated that Judge Selna was one of the "top 3 judges in Orange County." He added that Judge Selna "was unparalleled in his ability to handle complex civil matters - they couldn't do any better than him - he's top drawer." Judge Robert Jameson, the supervisor of the complex civil panel, also took credit for soliciting Judge Selna to come to the complex civil panel. Judge Jameson described Judge Selna as "outstanding."

II. Noteworthy Opinions

Opinions of the Superior Court judges in California are not published, however, Judge Selna provided several of his opinions and discussed others in his Senate Questionnaire. His opinions were generally concise and well-reasoned. His approach to statutory interpretation is unclear, as none of the unpublished decisions provided involved such issues.

Judge Selna presided over the preliminary hearing in a murder case that presented a novel issue concerning the trial judge's authority to grant immunity to a witness. *People of the State of California v. Parra*, No. 01CF0285 (Orange Co. Super. Ct. 2001). At the preliminary hearing, the defendant requested that the court grant immunity to his girlfriend, who was present at the scene of the crime, and allegedly could provide exculpatory evidence. The girlfriend had invoked her rights under the Fifth Amendment and refused to testify. At the time, the prosecutor had not charged the girlfriend with a crime, but was still able to do so. Judge Selna analyzed numerous federal cases discussing whether "a trial court had the authority to make a unilateral grant of use immunity to a witness where due process required the testimony of a witness refusing to testify on the basis of the witness' Fifth Amendment rights." He held that there was no statutory authority for the court to grant immunity, adding that, "as a matter of separation of powers, the Court does not believe that the Court should create for itself the power to grant immunity."

In *Rohrig v. Carbon Canyon Church*, Judge Selna addressed a case where a former pastor and director of a church, brought suit to be reinstated as a church member and director. No. 01CC13335 (Orange Co. Super. Ct. 2002). Judge Selna's opinion discusses the First Amendment limitations on the powers of a civil court to adjudicate internal church affairs. Under the church bylaws, the former pastor was dismissed from the board based exclusively on ecclesiastical grounds. As such, Judge Selna ruled that, based on well-established First Amendment doctrine, "the Court does not believe that it has the power to reinstate Pastor Rohrig as a director or member given the faith-based tests for these positions."

Judge Selna has been reversed only once, in *People ex rel. Department of Transportation v. The Clausner/Wells Partnership*. 95 Cal. App. 4th 1066 (2002). The case involved the Department of Transportation's eminent domain action against an auto salvage business. The sole issue litigated at trial was the valuation of defendant's business inventory. At trial, Judge Selna excluded the testimony of plaintiff's valuation expert on the ground that his valuations methodology did not comport with eminent domain law. The Court of Appeals found that Judge Selna had abused his discretion in finding that the plaintiff's expert's testimony lacked sufficient evidentiary foundation.

III. Noteworthy Litigation

Judge Selna, while practicing law, had been involved in several high-profile cases. However, he personally was not mentioned in media accounts of the cases. Judge Selna has tried approximately 20 cases to verdict, approximately three-quarters of which were in federal court. In addition, he was named on two Supreme Court briefs, although he did not participate in the oral argument. In the first case, *Bryant v. Yellen*, he represented a class of landowners contesting

the Department of Interior's application of the 1902 Reclamation Act. His client's petition for cert was granted and the case was resolved in favor of his clients. 477 U.S. 352 (1980). In 1984, he participated in the brief writing opposing a grant of certiorari in *Forro Precision, Inc. v. International Business Machines*. The Supreme Court denied cert.

Judge Selna has served on the Board of Trustees of the Newport Harbor Art Museum since 1985. He undertook, pro bono, a constitutional challenge to federal funding restrictions in the 1989-1990 appropriations for the NEA, as the restrictions related to the Newport Harbor Art Museum. *Newport Harbor Art Museum v. National Endowment for the Arts*, 754 F.Supp 774 (C.D. Cal 1991). The funding restrictions required that that grant recipients certify that funds awarded would not be used to promote or produce obscene material. The court held that: (1) the requirement was unconstitutionally vague under Fifth Amendment, and (2) the requirement violated the First Amendment.

Judge Selna was a member of the defense team for Exxon in *In re Exxon Valdez*. The case was a series of private class actions stemming from the 1989 grounding of the Exxon Valdez in Prince William Sound. Judge Selna served as chief of staff for the 6-month jury trial that began in 1994. While Judge Selna indicated that he had limited courtroom appearances for the trial, he was responsible for issues relating to the clean up of the spill. All of the attorneys contacted who had worked on the Exxon Valdez case – both co-counsel and opposing counsel, spoke very highly of Judge Selna. They all noted that Judge Selna was extremely bright, diligent, and respectful.

In another high-profile case, *Los Angeles Memorial Coliseum Commission v. National Football League*, Judge Selna represented the NFL in a Sherman Act Antitrust action. Judge Selna was associate counsel for the NFL, and was part of the courtroom trial team. He argued a "single-entity defense" – that it took the combined efforts of all members of the NFL to create its product, an NFL football season, therefore the NFL should be treated as a single entity. Judge Selna indicated that his principal witness was Don Shula, then the head coach of the Miami Dolphins. The first liability trial in 1981 resulted in a mistrial, while the second trial resulted in a verdict for the plaintiffs.

IV. Publicity/Public Record

Other than the publications previously discussed, Judge Selna published a note in Stanford Law Review on intermodal shipping. It did not discuss any controversial issues. Judge Selna has given numerous speeches, mostly prior to joining the bench. The speeches were on the topics of antitrust and trade secrets litigation. As a judge, he has given presentations on federal trial practice and arbitration.

Judge Selna was named or mentioned in three malpractice suits while practicing law. In February 1998, James Selna, his partner, and his law firm, O'Melveny & Meyers ("OMM") were sued for malpractice by a former client, Wayne Reynolds and the American Academy of Achievement (collectively "AAA"). *American Academy of Achievement v. O'Melveny & Meyers, LLP*. AAA alleged that Selna and OMM committed malpractice by failing to inform AAA of the benefits of arbitration, as opposed to the pursuit of litigation in a dispute related to a

retirement agreement. Selna indicated that Wayne Reynolds retained OMM to bring suit against AAA's retired founder, his father Brian Reynolds, to enjoin the father from attending AAA's annual meeting. According to Selna, the younger Reynolds became dissatisfied when the preliminary injunction was denied. Selna stated that he was the supervising partner on the case, and was not involved in the day to day handling of the matter. Ultimately, OMM decided to settle the case. Pursuant to the settlement agreement, OMM returned the fees that AAA previously had paid, approximately \$23,565.

In January 1999, Montrenes Financial Services, Inc. ("MFS") filed an amended complaint including James Selna in its malpractice claim against OMM. *Montrenes Financial Services, Inc. v. O'Melveny & Meyers, LLP*. The complaint alleged that OMM failed to advise MFS of the filing requirements for the seller assisted marketing plans MFS planned to market throughout the United States. As a result, MFS alleged that it had been in violation of various states' laws after it had contracted with agents across the United States. Mr. Selna indicated that he was not involved in the representation of MFS at any time. According to Selna, he was familiar with the elder Montrenes, who indicated to him that his son needed some assistance with areas of labor law in setting up a new business. The younger Montrenes was the owner of MFS. Mr. Selna stated that his only involvement was to introduce the younger Montrenes to lawyers at OMM who handled labor law. By the time that Mr. Selna was named in the amended complaint, he had already left OMM to sit on the Orange County Superior Court. Mr. Selna stated that he did not know how the case was resolved.

In December 1997, OMM was sued by its former client, David Miller. *Miller v. O'Melveny & Meyers, LLP*. Mr. Selna was not personally named as a defendant in the complaint, but his actions were discussed at some length. During the period of 1995-1996, James Selna was co-lead counsel for Mr. Miller in a case brought against him by the Redevelopment Agency of the City of Indio ("Indio"). Mr. Miller had entered into a contract with Indio in which Indio was to condemn land surrounding the Indio Fashion Mall. Mr. Miller, who was the owner of the mall, was to purchase the land and expand the mall. After numerous delays in the condemnation proceedings, Miller had attempted to terminate its participation in the mall project. The lawsuit was brought by Indio as a result of Miller's attempt to breach what was called the "owner participation agreement."

The malpractice complaint indicated that Mr. Selna was not the first OMM partner assigned to Mr. Miller's case. According to the complaint, Miller objected when Selna was assigned as lead counsel, questioning Selna's "skills and his ability to be their trial counsel." Miller alleged that OMM breached its fiduciary duty by failing to determine whether Miller had insurance that would cover the costs of litigation. Miller later disclosed to OMM that it had three insurance policies, one with CIGNA. According to Mr. Selna, OMM immediately told Miller that CIGNA was also a client and therefore OMM would be unable to represent him in pursuing any claims against CIGNA. Miller also alleged that OMM breached its fiduciary duty to Miller by failing to inquire whether Miller was insured by CIGNA. In addition, Miller alleged that Mr. Selna and his co-lead counsel were "unpersuasive, dull and uninspiring" at trial. Because Mr. Selna was never named as a defendant in the suit, he was not aware of how it was resolved.

V. Miscellaneous Other

(b)(6)

- Everyone contacted, with the above exception noted, uniformly praised Judge Selna, particularly for his intellectual abilities and demeanor. One adversary in a case stated that Judge Selna was the "highest caliber you would expect to see in a lawyer – always civilized, incredibly smart, just a bright guy – I only have the highest praise for him." Joseph Cotchett, Senator Boxer's appointment to the Parsky Commission, stated that he found him to be "exceptionally well-qualified." Other comments included: "he has independence and clarity of thinking"; "intellectually honest", and; "I respected him as an adversary".
- In California, state judges are not permitted to be active members of any bar association. However, Judge Selna had been a member of the following bar associations: ABA; Federal Bar Association, LA County Bar Association; and, the Orange County Bar Association.
- Judge Selna is admitted to the following Bar and Courts: California Bar; U.S. Supreme Court; DC Court of Appeals; 8th Circuit Court of Appeals; 9th Circuit Court of Appeals; and, all District Courts of California.
- In addition to his pro bono work with the Orange County Museum of Art, Judge Selna was on the Board of Directors of the Phoenix House from 1983-1985. Phoenix House is a non-profit substance abuse treatment organization for teens.

VI. Confirmation Issues

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

Malpractice Claims: Judge Selna was named in two malpractice claims and mentioned in one other. Any such claims might be considered troubling during the confirmation process.