

Memorandum



Subject

Royalty Advance Reported on Justice Rehnquist's Financial Disclosure Report.

Date

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To
John R. Bolton
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Office of Legislative Affairs

From
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There are at least three possible questions that might be raised respecting the "royalty advance" from William Morrow Co. that appears on Justice Rehnquist's financial disclosure reports for 1984 and 1985. We understand that the reported amounts (\$9,000 in 1984 and \$18,000 in 1985) are being paid pursuant to Justice Rehnquist's contract with the Morrow Publishing Company to write a book about his experience as a Supreme Court Justice. We assume that Justice Rehnquist is working on the book on his own time, without the assistance of Court staff or facilities.

1. Honorarium: 2 U.S.C. 441i prohibits government officials, including members of the judiciary, from accepting "any honorarium of more than \$2000 . . . for any appearance, speech, or article." This provision, which is interpreted and enforced by the Federal Election Commission, has not been construed to prevent the acceptance of "stipends" for teaching, or royalties advanced pursuant to a publisher's contract. See FEC Advisory Opinion (AO) 1984 - 56; AO 1979 - 78; 1975-77.

2. Limits on Outside Income: While certain executive branch employees are limited in the amount of outside "earned" income, including royalty advances, they may accept in any given calendar year, see 5 U.S.C. 210, these limits do not apply to judicial branch officials. We are not aware of any statutory or regulatory limit on the amount of income judges and justices may earn from sources other than their government salaries.

3. Canons of Judicial Ethics: We are unaware of any ethical rule barring judges or justices from writing books about their experience on the bench. Indeed, it would seem that some such writing would be affirmatively encouraged by Canon 4, that permits judges to engage in certain "quasi-judicial" activities, including teaching and writing, "to improve the law, the legal system, and the administration of justice," if in doing so "he

does not cast doubt on his ability to decide impartially any issue that may come before him." See ABA Code of Judicial Conduct, Canon 4. The cautionary note in Canon 5 that a judge should "regulate" his "extra-judicial" activities to minimize the risk of conflict with his judicial duties does not apply to "quasi-judicial" activities.