

PHOTOCOPY
PRESERVATION

file judge

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For Melanne
Lorreen

LAW OFFICES
OF
WILLIAM L. TAYLOR

2000 M STREET, N.W., STE. 400
WASHINGTON, D.C. 20036

WILLIAM L. TAYLOR
DIANNE M. PICHE*

TELEPHONE
(202) 659-5565

MEMORANDUM

To: Melanne Verveer
From: Bill Taylor *Bill*
Date: September 23, 1997
Re: A Suggestion for the President's Little Rock Speech

It seems to me that the commemoration in Little Rock will give President Clinton an opportunity to make a couple of cogent points about the current attacks on the judges and judicial nominees and the need for an independent judiciary.

1) The Independence of the Judiciary and the Rule of Law. The Supreme Court's unanimous decision after an extraordinary summer hearing in 1958 not to postpone the desegregation of Little Rock public schools because of "extreme public hostility" was the most important affirmation of the rule of law in this century. The Court said "Marbury v. Madison... declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by the Court in the Brown case is the Supreme Law of the land...Every state legislator and judicial officer is solely committed by oath...'to support this Constitution'" Cooper v. Aaron, 358 U.S. 1,18 (1958).

Yet today, almost 40 years later, some members of Congress would impeach federal judges who carry out in good conscience their duty to interpret the Constitution and some members would delay indefinitely the confirmation of judicial nominees who do not pledge to interpret the Constitution in precisely the way the member wants it interpreted. These tactics threaten the independence of the judiciary and indeed threaten the rule of law that has been respected from Marbury through Little Rock and to this day .

2) Judicial Independence and the Rule of Law are not partisan matters. In the Little Rock case, the Court took the extraordinary step of having each justice individually sign the Court's opinion. The Court was almost equally divided between justices who had been Democrats and those who had been Republicans. It included such respected figures as Earl Warren, Harold Burton and John Harlan. What is needed today is a similar bipartisan coalition of people who are prepared to defend the rule of law and the independence of the judiciary. All of us, Democrats and Republicans, liberal, moderates and conservatives, can name court decisions that we think are dead wrong. But there are appropriate ways to seek the correction of error and inappropriate ways. Impeachment threats and nomination delays are inappropriate; worse, they threaten the Courts' role as the bulwark of our liberties.

I hope this is of some help.

cc: Judy Winston

file judges

PAUL M. WEYRICH
717 SECOND STREET, N.E.
WASHINGTON D.C. 20002

Dear Friend,

No one is a better judge of the current state of the American judiciary than Robert Bork!

Judge Bork's analysis of the danger facing our Constitution because of the activist excesses of President Clinton's lifetime appointees to the federal bench deserves your serious attention.

As things stand today, even the most direct grassroots effort by Americans to make our society better may be blocked or overturned by federal judges who have taken unto themselves the role of legislators as well as judges. Unless and until pressure is put on President Clinton to stop naming judicial activists to the federal bench, or the U.S. Senate is made to live up to its duty to "advise and consent" to these nominations, no longlasting conservative change in public policy will survive.

As I write you today, 26 Clinton judicial nominations are pending before the U.S. Senate...we need to act now!

Our Judicial Selection Monitoring Project has, in just five years, already made a dramatic difference in the public debate over the federal judiciary. Our challenge now is to increase dramatically our direct impact on the process of selecting and confirming federal judges.

I deeply hope you will join me and Judge Bork in giving your generous support to this most important project. We are counting on hearing from you soon.

Sincerely,

Paul M. Weyrich
Paul Weyrich

Hon. Robert H. Bork
Former Judge
U.S. Court of Appeals, District of Columbia Circuit

September 9, 1997

Mr. [REDACTED]
[REDACTED]

Fort Worth, TX 76102

Dear Mr. [REDACTED]

Can we afford to give President Clinton a free ride with his judicial appointments over the next three and a half years?

Before you answer that, let me share with you a fact, and an observation:

The fact is that by the time Bill Clinton leaves office, he will have appointed one of every two sitting federal judges.

That sheer number of his appointments to our federal courts means he will have the biggest impact on our judicial system of any President since Franklin Roosevelt.

Over the past four and a half years, the more than 200 Clinton judicial appointments have been drawn almost exclusively from the ranks of the liberal elite. These judges have blazed an activist trail, creating an out-of-control federal judiciary.

To take but a few examples, Clinton appointees have:

- * struck down a Mississippi statute requiring parental consent to abortion;
- * voted to abolish the death penalty in Delaware;
- * voted to create a constitutional right to physician-assisted suicide;
- * voted to overturn a double-murder conviction because a juror had driven past the house where the murders took place;
- * voted to ban student-led prayers at graduation.

Page Two

The list goes on.

For Americans who believe in constitutional "checks and balances" and judicial restraint, the fact that President Clinton is poised to further mold the federal judiciary in his own liberal image is a frightening prospect.

In fact, it is one that should impel us to immediate action.

That is why I am taking the unusual step of sending you the enclosed video from the Free Congress Foundation's "Judicial Selection Monitoring Project." I urge you to take a few minutes to watch the video after you read my letter.

The Free Congress Foundation is a leading public policy institution dedicated to promoting cultural conservatism and traditional values. It is headed by longtime conservative activist Paul Weyrich.

Since 1977, Paul and the Foundation have trained countless grassroots organizations at home and abroad. In 1992, the Judicial Selection Monitoring Project was started, and in 1993 Paul launched the revolutionary NET-Political NewsTalk Network. No individual or organization is doing more to advance conservative ideas and values than Paul and Free Congress.

When Paul Weyrich began the JSMP back in 1992, he believed "constitutional balance of power was threatened by a judicial selection process shrouded in secrecy and tilted firmly in favor of a liberal elite dedicated to judicial activism.

To a degree never envisioned by the Founding Fathers, today literally every aspect of our national life -- on issues from abortion to taxes, term limits to pornography, prayer in schools to same-sex marriage, affirmative action to gun ownership, choice in education to private property rights -- is or soon will be subject to federal court interference.

Every single issue that we as conservatives care about is directly impacted by the federal judiciary.

In recent years, appointed federal judges have taken unto themselves powers that the Constitution meant to be reserved to the people, either directly at the ballot box or through their elected local, state or federal representatives.

Page Three

The JSMP was created to raise awareness of the dangers of judicial activism, put the spotlight of public scrutiny on the closed doors of judicial selection, and build a network of conservatives who would work toward a restrained judiciary.

Over the past five years, Paul Weyrich, JSMP Director Tom Jipping and their staff have been remarkably successful in carrying out the JSMP's mission.

- * The JSMP has become the recognized center for research on the records of judicial nominees on Capitol Hill.
- * Through its *Judicial Selection Monitor*, *Essays on Our Times and Policy Insights*, as well as frequent opinion articles printed in newspapers around the country, the JSMP has brought the whole issue of judicial selection front and center.
- * Through its contacts on Capitol Hill and the media, the JSMP has been able to short circuit the expected nominations of some notable liberals, like Mario Cuomo and Bruce Babbitt, to lifetime judicial appointments.
- * Most importantly, I think, the JSMP has become the focal point of a remarkable, unprecedented grassroots coalition of conservative organizations who are now focusing their resources on judicial activism.

It is this last development that presents the JSMP with a remarkable opportunity to remedy the worst problems we have faced over the past five years -- the uniformly liberal activist nature of President Clinton's judicial appointments and the failure of the United States Senate to block them.

Back in January, Tom Jipping held a news conference in Washington announcing the formation of a coalition, under the direction of the JSMP, designed to put the Administration and the U.S. Senate on notice that grassroots America was committed to see "a more restrained judiciary."

Tom originally hoped at least 100 organizations would join the coalition. He believed that number would force the Senate, the Administration, and the mainstream media to take notice.

Page Four

On January 27th, Tom announced that, far exceeding his expectations nearly 300 organizations -- including pro-family groups, small business organizations, minority and women's groups, representatives of the victims rights movement and law enforcement, property rights groups, and many others -- had joined the coalition!

What's more, talk show hosts whose programs are aired collectively on 3,200 stations have joined our effort to rein in the judiciary.

Now our challenge is to harness this coalition and make its voice heard in Washington.

We have one goal: to expose activist liberal judges.

And we have developed a three-part plan to do it.

To put this plan into action will cost the Free Congress Foundation approximately \$1.25 million over the next year.

I want to outline briefly in my letter our plan for you. We go into more detail in the enclosed Prospectus, which I hope you will review carefully. And as you do, I hope you will consider helping underwrite this expansion of our Judicial Selection Monitoring Project with a contribution of \$1,000, \$2,500, \$5,000 or even \$10,000.

1) The research and educational effort.

Amazingly, of the 202 Clinton judicial nominations that came before the full Senate during his first term, not a single one was defeated. And only 4 of these nominations were seriously debated and confirmed with a roll call vote. The other 198 nominations were rubber-stamped without debate or a roll-call vote under the "unanimous consent" rule.

The only way to change this situation is for the JSMP and our coalition to research the record of liberal judicial nominees, educate Senators about them, and persuade Senators to stand up and vote "no"!

The JSMP needs to add at least two full-time staffers to research the records of Clinton nominees. Other funds are needed to activate coalition members in key states so they can directly educate their Senators during the confirmation process. This is especially important today because 26 judicial nominations are now awaiting Senate action. We must make our voice heard!

Page Five

The 12 month budget for the research and educational component of our expanded JSMP effort has been set at \$219,000.

2) The media effort.

Currently, Tom Jipping anchors "Legal Notebook," a legal affairs program on NET-Political NewsTalk Network, which is aired once a week and is featured on our video.

This year we want to produce a special "stand alone" three-part television series on the dangers posed by judicial activism and Clinton judicial nominees. This series would be available as an educational tool for schools and grassroots organizations. It would also be of a high production quality so that we could offer it to other cable and broadcast networks for airing. This series could reach millions of Americans!

To underwrite "Legal Notebook" and develop our 3-part television series will require an investment of \$641,000.

3) The Coalition-building effort.

What has been lacking in the judicial selection process has been our ability to show the Administration and the Senate that a majority of Americans, from all walks of life and with very different interests, want to see judicial power curbed and a proper constitutional system of checks and balances restored.

Over the next year, we want the JSMP to more than double the number of organizations affiliated with our coalition. We will do this in part by sponsoring meetings, training conferences and strategy forums, in Washington and around the country.

The JSMP will need to hire at least one additional staffer to organize our meetings and conferences, as well as write and produce a coalition newsletter. Significant funds will also be needed for coalition events held outside Washington and improving our interactive communications technology.

The budget for this element of the JSMP plan is \$389,000.

As I mentioned, the total budget to expand the Judicial Selection Monitoring Project this year is nearly \$1.25 million.

This is an enormous sum of money for Free Congress to raise...but the importance of reversing judicial usurpation of our right to self-government deserves a maximum effort.

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I have known and worked with Paul Weyrich for many years, and no one runs a leaner, more efficient organization than he does. Unlike the heads of some organizations, Paul doesn't ask for money when he doesn't need it.

For the Foundation to be able to invest \$1.25 million in the expansion of the Judicial Selection Monitoring Project, we are looking to some committed conservatives, like you, for major support in underwriting our programs.

Paul is hoping some individuals will be able to make contributions of \$100,000 to \$250,000. But we are also counting on contributions in the \$1,000 to \$25,000 range.

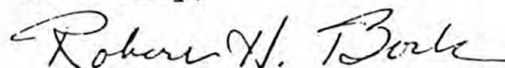
Listed on the Prospectus enclosed with my letter are details about the recognition the Foundation would like to extend to you for your help in underwriting this urgently needed program.

If we cannot improve the selection of judges and curb the imperialist ambitions of the judiciary, I fear for our nation's future. The expansion of the scope and impact of the Judicial Selection Monitoring Project is crucial to that effort. During his first term, President Clinton filled vacancies caused by the death or retirement of Carter appointees. Now, he is starting to replace conservative Reagan and Bush judges...and this trend will explode in the years ahead!

I know you have been remarkably generous in your support of the Free Congress Foundation. I hope you will agree with me that an investment now, in the Judicial Selection Monitoring Project's historic effort to reverse judicial activism, would be the very best investment you could make in our nation's future.

Thank you very much for taking the time to read and consider my appeal to you.

Sincerely,

A handwritten signature in dark ink, reading "Robert H. Bork". The signature is fluid and cursive, with the first name "Robert" and last name "Bork" clearly legible.

Robert H. Bork

P.S. The enclosed video is yours to keep. But please view it as soon as possible, and let us know if you can help us expand our program to expose activist liberal judges. We would deeply appreciate it if we could hear from you by the end of the month.

OUTRAGEOUS DECISIONS FROM CLINTON JUDGES...

Here are details about the records and decisions handed down by some key life-tenured Clinton appointees to Federal judgeships. This information profiles just five of the more than 200 left-wing judges President Clinton has already put on the Federal bench; it is up to the Judicial Selection Monitoring Project (and you!) to put a brake on more nominees like these!

Horror stories like these can be found in every federal court from one end of our nation to the other...*won't you please help the Judicial Selection Monitoring Project restore sanity to our judicial system?*

JUDGE JAMES DENNIS (U.S. Court of Appeals for the Fifth Circuit) wanted to expand a criminal's right to sue police for even minor "psychological" injuries incurred during arrest. He and three other Clinton appointees did so, by unilaterally overthrowing a well-established precedent limiting such suits to significant personal injury.

JUDGE PIERRE LEVAL (U.S. Court of Appeals for the Second Circuit) tried to reduce the sentence of a convicted LSD distributor because he preferred more lenient guidelines suggested by a government commission, instead of those Congress had enacted into federal law.

JUDGE ROSEMARY BARKETT (U.S. Court of Appeals for the Eleventh Circuit) argued that a fifth-grader should be able to sue her school because of the behavior of one of her classmates even though the school was not responsible for the problem. This could expose cash strapped school systems to legal liability.

JUDGE DIANE WOOD (U.S. Court of Appeals for the Seventh Circuit) construed the Constitution's Eighth Amendment prohibition of cruel and unusual punishment to include a prison inmate who said that his constitutional rights were being violated because, as a non-smoker, he was not being "housed" in a "smoke-free" environment!

JUDGE THEODORE MCKEE (U.S. Court of Appeals for the Third Circuit) wanted an illegal alien who had already been convicted of drug charges and deported from the United States to be given a two-year sentence when he was caught illegally attempting to re-enter the U.S., instead of the 15 year sentence that Congress had mandated. He invoked "traditional notions of fairness" as a reason to get around the will of Congress.

JUDICIAL SELECTION
MONITORING PROJECT

Memorandum of Commitment to Paul Weyrich

Dear Paul,

I agree with you and Judge Robert Bork - President Clinton's activist liberal judicial nominees and the out-of-control federal judiciary present a profound and dangerous threat to the constitutional separation of powers. As conservatives, we must take direct action to expose these nominees, educate Senators about their duty to reject activist judges, and build a coalition that can force President Clinton to moderate his judicial appointments!

I want to help expand the work of the Judicial Selection Monitoring Project by:

- _____ Becoming a *Patron* of the Project.
My \$1,000 contribution is enclosed.
- _____ Becoming a *Benefactor* of the Project.
My \$5,000 contribution is enclosed.
- _____ Becoming a *Counsellor* of the Project.
My \$10,000 contribution is enclosed.
- _____ Becoming a *Trustee* of the Project.
My \$25,000 contribution is enclosed.
- _____ I do not wish to underwrite the expansion of the Project in the categories listed above. Instead, my contribution of \$_____ is enclosed.

(All contributions to the Judicial Selection Monitoring Project are tax-deductible. Please make your check payable to: The Judicial Selection Monitoring Project)

- _____ Please do not send me the donor benefits to which my gift entitles me.
- _____ I want to pledge a contribution of \$_____ to the Judicial Selection Monitoring Project over the course of the year. I am enclosing \$_____ today, and I pledge to send the balance by December 31st.

Mr. 
Fort Worth, TX 76102

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1997 PROJECT EXPANSION

PROSPECTUS

The Problem

American government today is dangerously out of balance.

Federal judges, drawn from the liberal elite and empowered with lifetime appointments, have stepped beyond their proper role as impartial umpires of constitutional disputes. They have adapted the Constitution to their own personal, liberal political views, and trampled on the will of the people as expressed through referenda, initiatives and legislation.

More frightening is the fact that by the time he leaves office, President Clinton will have appointed one out of every two sitting federal judges. He has already appointed over 200 federal judges, and another 26 are currently awaiting action by the U.S. Senate. The vast majority of his appointments have been liberal activists.

While President Clinton has been filling the federal courts with liberal activist judges, the U.S. Senate has abdicated its responsibility to "advise and consent" on judicial nominations. 198 of President Clinton's 202 federal judicial appointments in his first term were confirmed without debate or a roll-call vote.

It is now time for citizens to take direct action to rein in the federal judiciary, and restore checks and balances to the federal government.

The Solution

Over the past five years, the Judicial Selection Monitoring Project (JSMP) of the Free Congress Foundation has brought unprecedented attention to bear on the judicial selection process. Through its own publications and frequent articles in national journals and periodicals, the JSMP has become the recognized voice of conservative opposition to activist liberal appointments to federal courts. It has also taken the lead in organizing a historic coalition of state and national organizations committed to fighting judicial activism.

Now, faced with the prospect of President Clinton loading the federal courts with a generation of liberal activists, the JSMP has developed a three-point plan, described below, to dramatically increase its impact on the judicial selection and confirmation process. This plan will cost approximately \$1.25 million.

Opportunities for Support and Recognition

To raise the \$1.25 million needed to expand all aspects of the work of the Judicial Selection Monitoring Project, Free Congress Foundation President Paul Weyrich is looking for major donor support from conservatives committed to exposing the record of Clinton judicial nominees and reining in the out-of-control federal judiciary.

The following giving categories have been created to express the heartfelt appreciation of the Free Congress Foundation for individuals willing to support this historic expansion of the Judicial Selection Monitoring Project. All contributions are tax-deductible.

* *Patrons* (\$1,000) will receive an autographed copy of Judge Robert Bork's recent critically acclaimed book "Slouching Toward Gomorrah," a thought-provoking analysis of the current state of our culture and the role of the activist judiciary in its creation.

* *Benefactors* (\$5,000) will also receive, in addition to an autographed "Slouching Toward Gomorrah," a handsome Judicial Selection Monitoring Project gavel, inscribed with their name.

* *Counsellors* (\$10,000) will receive the benefits of Patron and Benefactor support, as well as invitations to attend periodic private briefings and intimate dinners in Washington with Paul Weyrich, JSMP Director Tom Jipping and leading conservative elected and public figures closely involved with the judicial confirmation process.

* *Trustees* (\$25,000 or more) will, in addition to all the forms of recognition outlined above, be listed on the on-air credits for "Legal Notebook" and the six-part television series on judicial activism. Trustees will also be solicited for their advice and counsel on the direction of the Project, and receive other very special benefits.

Research and education

The JSMP wants to expand its staff to research the records of Clinton judicial nominees, then use the research to aggressively educate Senators about their records. It is entirely appropriate to bring to light the facts about a judicial nominee's writings and rulings, and to educate Senators about their duty to act responsibly as they pass judgment on the President's nominees. The JSMP also intends to educate the grassroots coalition it leads about judicial nominees, so that coalition members in the various states can take action to persuade their Senators to oppose the nominations of liberal judges.

Projected Cost: \$219,000

Media

JSMP Director Tom Jipping currently anchors "Legal Notebook," a weekly legal affairs program on NET-Political NewsTalk Network. As part of the expansion of the JSMP, plans are being developed to create a "stand alone" six-part television series focusing on the constitutional dangers of judicial activism and strategies for bringing the powers of government back into balance.

This series would be available as an educational tool for schools, churches and grassroots organizations. It would be of top professional production quality, and would also be "retailed" to other cable and broadcast networks for airing. NET-Political News Talk Network already reaches thousands of households across America — this series would give us the opportunity to increase enormously the number of individuals we reach with our message!

Projected Cost: \$641,000

Coalition building

The key reason that President Clinton has felt free to nominate more than 200 individuals who share his liberal, activist philosophy to lifetime judicial appointments is that he has not felt pressure from grassroots America to do otherwise. It's that simple.

To change this situation, the JSMP has already enlisted 300 grassroots organizations as members of its coalition dedicated to opposing the nomination and confirmation of activist liberal judges.

We want to double the number of coalition members this year, in part by sponsoring meetings, training conferences and strategy forums, around the country and in Washington, D.C. The purpose of this coalition building effort is two-fold: first, to show President Clinton that a majority of Americans actively oppose judicial activism, and to force him to moderate the nature of his nominations; and second, to have a powerful network of grassroots organizations ready to bring direct pressure to bear on key Senators during the judicial confirmation process.

As part of this process, the JSMP will need to boost its staff to cover conference planning and coalition communications, as well as invest in state-of-the-art interactive communications technology that will keep the entire coalition on top of all breaking developments in judicial nominations and confirmations.

Projected Cost: \$389,000

The Washington Times

WASHINGTON, D.C., TUESDAY, JANUARY 28, 1997 **

The danger of more activist judges

By Thomas L. Jipping

Last week U.S. District Judge Shira Scheindlin declared unconstitutional the new federal law prohibiting the sale of pornography on military bases. President Clinton nominated her, and the Senate unanimously approved her appointment. Two Clinton appointees to the U.S. Court of Appeals have recently ruled that judges requiring drunks to attend Alcoholics Anonymous amounts to an unconstitutional "establishment of religion." The Senate unanimously approved their appointment as well. Remember the infamous U.S. District Judge Harold Baer, the one who threw out 80 pounds of heroin and cocaine evidence? He said it was perfectly natural and not suspicious at all for people to sneak around in the wee hours of the morning and run away as soon as they saw the police. President Clinton nominated him and the Senate unanimously confirmed his appointment.

Mr. Clinton has named an almost unbroken string of activist judges to the federal bench, adding to the many already there. The Senate has offered no resistance, holding only four roll call votes while approving 202 Clinton judges. The Senate approved the rest by unanimous consent, without any debate or a whisper of concern. All of these roll call votes occurred before the Republicans became the majority.

This rubber stamp suggests that it matters little who sits on the federal bench. It matters very much, however, and yesterday the

largest coalition ever to organize in opposition to judicial activism said so. Mr. Clinton and each senator yesterday received a letter signed by 260 national and state grassroots organizations, representing millions of Americans, pledging to "promote judicial restraint and fight judicial activism with whatever tools and resources are legitimately at our disposal." Its members represent crime victims, property owners, women, law enforcement, small business, family advocates, minorities, religious denominations, senior citizens and many others. At least half of these organizations have never previously been actively involved in this cause.

This cause is restoring the federal judiciary to its proper place. Two of the most unique things about America are that it is a system of self-government under a written Constitution. Those features require that the lawmakers be the people themselves or those who the people elect to represent them in the political branches and are accountable to them. When judges have unrestrained power to make up the meaning of our laws, however, they become the lawmakers. In doing so, they violate their own oath of office. Judges, like other public officials, take an oath to support and defend "the" Constitution of the United States. Not "a" Constitution, or "their" Constitution, or "some" Constitution, but the Constitution. They do not have the power to make up the law.

Yet make up the law they do. Activist judges feel free to impose their own preferences or priorities on the country, regardless of what the real lawmakers have done. Judge Thelton Henderson in California thought Proposition 209, which prohibits race and sex discrimination, was a bad idea so he said it violated the Constitution's 14th

Amendment guarantee of equal protection. Most people probably thought banning discrimination was the essence, rather than the antithesis, of equal protection. The Supreme Court thought Amendment 2, a ballot measure that would prohibit quotas and special



rights for homosexuals, was a bad idea. Justice Anthony Kennedy, appointed by a Republican president, said that it too violated the equal protection clause. He completely disregarded the justifications for Amendment 2 offered by the state of Colorado and said he knew the real motivation behind the measure was hatred of homosexuals. That's right, the Supreme Court said that the people of Colorado were not only bigots but had lied about it too and the Court was going to set the record straight.

This kind of judicial arrogance must stop

Thomas L. Jipping, is director of the Free Congress Foundation's Judicial Selection Monitoring Project.

if the American system of self-government and liberty is to survive. It will only happen if those tasked by the Constitution to select federal judges make it happen. Mr. Clinton's political supporters need activist judges because their political agenda often fares poorly in the ordinary political process. Mr. Clinton has heeded their demands and appointed activist judges. The Senate has so far virtually laid down and played dead.

This new coalition, however, has said enough is enough. It contains more organizations opposing the kind of judges Mr. Clinton has appointed than there exist judges Mr. Clinton has appointed. They are joined by talk show hosts whose programs are aired collectively on nearly 3,000 radio stations. Every aspect of the Senate's record in judicial selection will be communicated to this coalition and reported on talk radio. The coalition will work to educate the American people, the media, and the Senate about what judicial activism is and how it threatens self-government and liberty.

The legal establishment and political left are as predictable as tomorrow's sunrise. They will say this threatens the independence of the judiciary. Yet the real threat to judicial independence comes from within the judiciary, not outside it. It comes from judges who act like politicians and philosopher kings, going beyond their proper role and attempting to rearrange society to their liking. The effort to expose judicial activism and bring the judiciary back to its proper place, then, will re-establish rather than threaten true judicial independence. The predictable Chicken Little cry that these efforts threaten judicial independence are nothing but a smokescreen; the left simply wants a judiciary free to run the country in peace.

The Senate must make both procedural and substantive changes as it pursues its constitutional duty of advice and consent. Procedural changes include taking roll call votes on judicial nominees. In fact, start-

ing with the 105th Congress the coalition will consider unanimous consent approval of nominees as affirmative votes for nominees. The Senate should also separate consideration of judicial nominees from either the legislative process or its consideration of executive branch nominees. It should no longer trade judges—who are far more important than legislation because they have the power to define and, therefore, to make legislation—for legislative favors. It should no longer treat nominees to the judicial branch, who serve during good behavior and must only decide legal cases, with the same deference as nominees to the executive branch, who serve at the pleasure of the president and deal with policy issues.

Substantively, the Senate should use judicial philosophy as its basic criterion for evaluating nominees. As Senate Judiciary Committee Chairman Orrin Hatch put it in a speech to the Federalist Society Nov. 5, 1996, "a judicial activist . . . is not . . . qualified to sit on the federal bench." Every senator should take the same pledge that Sen. Hatch made in that speech: "Those nominees who are or will be judicial activists should not be nominated by the president or confirmed by the Senate, and I personally will do my best to see to it that they are not." They should not only take this pledge, they should keep it, for in Washington talk is not even cheap, it's free.

Nothing less than self-government and liberty are at stake in the choice between judicial activism and restraint. This unprecedented grassroots coalition made a clear and unmistakable statement of its choice and what it expects. The unprecedented size of this coalition is only the beginning; efforts to bring more grassroots organizations and talk radio into this coalition will continue indefinitely. As it says in the Gospel of Matthew, he that hath ears to hear, let him hear.

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

LEGISLATIVE AND EXECUTIVE CALENDAR

ONE HUNDRED SECOND CONGRESS

FIRST SESSION { CONVENED JANUARY 3, 1991
ADJOURNED NOVEMBER 27, 1991
SECOND SESSION { CONVENED JANUARY 3, 1992
ADJOURNED OCTOBER 8, 1992

JOSEPH R. BIDEN, JR., *Chairman*



FINAL EDITION

JUDGE
DALZELL
INFO

CALENDAR OF NOMINATIONS—Continued

U.S. DISTRICT COURT JUDGES—Continued

CAUTHRON, ROBIN J., of Oklahoma, to be U.S. District Judge for the Western District of Oklahoma (new position).

Feb. 7, 1991—Referred.

Mar. 13, 1991—Full Committee hearing.

Mar. 21, 1991—Approved by the Committee and ordered favorably reported.

Mar. 21, 1991—Reported to the Senate by Mr. Biden.

Mar. 21, 1991—Confirmed by the Senate.

CLEMENT, EDITH BROWN, of Louisiana, to be U.S. District Judge for the Eastern District of Louisiana, vice Charles Schwartz, Jr., retired.

Oct. 1, 1991—Referred.

Nov. 14, 1991—Full Committee hearing.

Nov. 21, 1991—Approved by the Committee and ordered favorably reported.

Nov. 21, 1991—Reported to the Senate by Mr. Biden.

Nov. 21, 1991—Confirmed by the Senate.

COLLIER, LACEY A., of Florida, to be U.S. District Judge for the Northern District of Florida (new position).

July 24, 1991—Referred.

Nov. 5, 1991—Full Committee hearing.

Nov. 15, 1991—Approved by the Committee and ordered favorably reported.

Nov. 15, 1991—Reported to the Senate by Mr. Biden.

Nov. 15, 1991—Confirmed by the Senate.

CONWAY, ANNE C., of Florida, to be U.S. District Judge for the Middle District of Florida, vice George C. Carr, deceased.

July 24, 1991—Referred.

Nov. 14, 1991—Full Committee hearing.

Nov. 21, 1991—Approved by the Committee and ordered favorably reported.

Nov. 21, 1991—Reported to the Senate by Mr. Biden.

Nov. 21, 1991—Confirmed by the Senate.

COVELLO, ALFRED V., of Connecticut, to be U.S. District Judge for the District of Connecticut (new position).

Apr. 1, 1992—Referred.

Aug. 4, 1992—Full Committee hearing.

Aug. 12, 1992—Approved by the Committee and ordered favorably reported.

Aug. 12, 1992—Reported to the Senate by Mr. Biden.

Aug. 12, 1992—Confirmed by the Senate.

DALZELL, STEWART R., of Pennsylvania, to be U.S. District Judge for the Eastern District of Pennsylvania (new position).

July 24, 1991—Referred.

July 31, 1991—Full Committee hearing.

Sept. 12, 1991—Approved by the Committee and ordered favorably reported.

Sept. 12, 1991—Reported to the Senate by Mr. Biden.

Sept. 12, 1991—Confirmed by the Senate.

DAVIS, LAWRENCE O., of Missouri, to be U.S. District Judge for the Eastern District of Missouri (new position).

Mar. 20, 1992—Referred.

DAVIS, LEONARD E., of Texas, to be U.S. District Judge for the Eastern District of Texas (new position).

June 3, 1992—Referred.

DeMENT, IRA, of Alabama, to be U.S. District Judge for the Middle District of Alabama, vice Truman M. Hobbs, retired.

Nov. 14, 1991—Referred.

Mar. 4, 1992—Full Committee hearing.

Mar. 12, 1992—Approved by the Committee and ordered favorably reported.

Mar. 12, 1992—Reported to the Senate by Mr. Biden.

Mar. 13, 1992—Confirmed by the Senate.

Judiciary S521-38.2

OSTEEN, William L., Sr., nominee to be Judge, U.S. District Court, Middle District of North Carolina, p. 19-21, 108-178.

JOHNSON, Sterling, Jr., Special Narcotics Prosecutor, NYC; nominee to be Judge, U.S. District Court, Eastern District of New York, p. 190-191, 256-272.

SCHLESINGER, Harvey E., Magistrate Judge, U.S. District Court, Middle District of Florida; nominee to be Judge, U.S. District Court, Middle District of Florida, p. 200-201, 273-319.

NIMMONS, Ralph W., Jr., Judge, Florida District Court of Appeal, First District; nominee to be Judge, U.S. District Court, Middle District of Florida, p. 201-202, 320-381.

BRODY, Morton A., Associate Justice, Maine Supreme Judicial Court; nominee to be Judge, U.S. District Court, District of Maine, p. 407-417, 499-568.

GAITAN, Fernando J., Jr., Judge, Missouri Court of Appeals, Western District; nominee to be Judge, U.S. District Court, Western District of Missouri, p. 410-417, 569-593.

BENSON, Dee V., U.S. Attorney, District of Utah; nominee to be Judge, U.S. District Court, District of Utah, p. 653-656, 707-605.

LEGG, Benson E., nominee to be Judge, U.S. District Court, District of Maryland, p. 656-660, 806-866.

GRAHAM, Donald L., nominee to be Judge, U.S. District Court, Southern District of Florida, p. 660-664, 867-884.

Statements and Discussion: Views on issues involved in designated positions.

S521-38.3: Circuit Court Nominees.

Witnesses: **ROTH, Jane R.**, Judge, U.S. District Court, District of Delaware; nominee to be Judge, U.S. Circuit Court, Third Circuit, p. 188-190, 193-198, 203-255.

HAMILTON, Clyde H., Judge, U.S. District Court, District of South Carolina; nominee to be Judge, U.S. Circuit Court, Fourth Circuit, p. 401-406, 418-498.

LUTTIG, J. Michael, Assistant Attorney General, Office of Legal Counsel, Department of Justice; nominee to be Judge, U.S. Circuit Court, Fourth Circuit, p. 410-417, 594-629.

KLEINFELD, Andrew J., Judge, U.S. District Court, District of Alaska; nominee to be Judge, U.S. Court of Appeals, Ninth Circuit, p. 650-653, 665-706.

Statements and Discussion: Views on issues involved in designated positions.

S521-37 CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS, Part 5.

July 24, 29, 31, Sept. 26, 1991.
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CIS/MF/9

Item 1042-A; 1042-B.

S. Hrg. 102-505, pt. 5.

*Y4J89/2:S.hrg.102-505/pt.5.

MC 92-20867.

Committee Serial No. J-102-7. Continuation of hearings, in this volume to consider 13 nominations to Federal district and circuit court judgeships.

S521-37.1: Nominees Support.

Witnesses: **FORD, Wendell H.**, (Sen, D-Ky), p. 1-10.

McCONNELL, Mitch, (Sen, R-Ky), p. 10-11.

BRADLEY, Bill, (Sen, D-NJ), p. 12-13.

LAUTENBERG, Frank R., (Sen, D-NJ), p. 13-17.

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HATFIELD, Mark O., (Sen, R-Oreg), p. 206.

PACKWOOD, Bob, (Sen, R-Oreg), p. 206-207.

MACK, Connie, (Sen, R-Fla), p. 207-209.

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GLENN, John, (Sen, D-Ohio), p. 415-416.

McEWEN, Bob, (Rep, R-Ohio), p. 416-419.

D'AMATO, Alfonse M., (Sen, R-NY), p. 420.

GRAMM, Phil, (Sen, R-Tex), p. 421-424.

ARCHER, Bill, (Rep, R-Tex), p. 424.

Statements: Support for various judicial nominees.

S521-37.2: Circuit Court Nominees.

Witnesses: **SILER, Eugene E., Jr.**, Director, Baptist Hospitals; nominee to be Judge, U.S. Court of Appeals, Sixth Circuit, p. 28-29, 37-79.

BATCHELDER, Alice M., Judge, U.S. District Court, Northern District of Ohio; nominee to be Judge, U.S. Circuit Court, Sixth Circuit, p. 426-428, 438-485.

DeMOSS, Harold R., Jr., nominee to be Judge, U.S. Circuit Court, Fifth Circuit, p. 428-430, 486-542.

Statements and Discussion: Views on issues involved in designated positions.

S521-37.3: District Court Nominees.

Witnesses: **BASSLER, William G.**, Judge, New Jersey Superior Court; nominee to be Judge, U.S. District Court, District of New Jersey, p. 29-32, 80-131.

SOLIS, Jorge A., Judge, Texas District Court, 350th District; nominee to be Judge, U.S. District Court, Northern District of Texas, p. 32-34, 132-153.

TRIMBLE, James T., Jr., Magistrate Judge, U.S. District Court, Western District of Louisiana; nominee to be Judge, U.S. District Court, Western District of Louisiana, p. 34-36, 154-204.

HOGAN, Michael R., Magistrate Judge, U.S. District Court, District of Oregon; nominee to be Judge, U.S. District Court, District of Oregon, p. 209-212, 228-254.

HIGHSMITH, Shelby, nominee to be Judge, U.S. District Court, Southern District of Florida, p. 212-216, 255-295.

BARTLE, Harvey, III, nominee to be Judge, U.S. District Court, Eastern District of Pennsylvania, p. 217-220, 296-328.

JOHN, William H., Jr., Judge, Montgomery County, Pa., Court of Common Pleas; nominee to be Judge, U.S. District Court, Eastern District of Pennsylvania, p. 222-225, 329-362.

DALZELL, Stewart R., nominee to be Judge, U.S. District Court, Eastern District of Pennsylvania, p. 371-413.

DOHERTY, Rebecca F., nominee to be Judge, U.S. District Court, Western District of Louisiana, p. 430-434, 543-563.

HURLEY, Denis R., Judge, Suffolk County, N.Y., Court, nominee to be Judge, U.S. District Court, Eastern District of New York, p. 434-437, 564-605.

Statements and Discussion: Views on issues involved in designated positions.

S521-38 CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS, Part 8.

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Item 1042-A; 1042-B.

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MC 92-20867.

Committee Serial No. J-102-7. Continuation of hearings, in this volume to consider 17 nominations to Federal district and circuit court judgeships.

S521-38.1: Nominees Support.

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GRAHAM, Bob, (Sen, D-Fla), p. 366.

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Statements: Support for various judicial nominees.

S521-38.2: District Court Nominees.

Witnesses: **LONGSTAFF, Ronald E.**, Magistrate Judge, U.S. District Court, Southern District of Iowa; nominee to be Judge, U.S. District Court, Southern District of Iowa, p. 13-15, 27-51.

CAULFIELD, Barbara A., Senior Counsel, Pacific Bell Co.; nominee to be Judge, U.S. District Court, Northern District of California, p. 16-19, 52-83.

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MEANS, Terry R., nominee to be Judge, U.S. District Court, Northern District of Texas, p. 25-26, 119-157.

COLLIER, Lacey A., Judge, Florida Circuit Court, First Judicial Circuit; nominee to be Judge, U.S. District Court, Northern District of Florida, p. 181-185, 242-269.

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Years Too Late?" 62 George Washington L. Rev. 501,
1994 and "One Cheer for the Guidelines" 40 Villanova
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ties Union v. Reno (first decision regarding Congressio-
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Executive Assistant City Solicitor Pittsburgh 1963-70. Instructor in Criminal Law and Criminal Procedure to Minor Judiciary University of Pittsburgh 1965-66. Member Allegheny County and Pennsylvania Bar Associations. Corporal U.S. Army 1951-53. Democrat. Director and President Pittsburgh Athletic Association 1974-88.

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DEL SOLE, Joseph A. (*Judge, The Superior Court of Pennsylvania*) Elected to term beginning Jan 1984. Retained by election Nov 1993, current term expires Jan 2004. Born Pittsburgh Pennsylvania Nov 16, 1940. Roman Catholic. Educated at Carnegie Mellon University

not as a general rule." "I don't recall that he has departed from the guidelines, but he's a pretty reasonable sentence." "He would be in the middle, to just below the middle, of the guidelines in sentencing." "Sentencing is not anything that, as a defense attorney, you would have to worry about, but he's not so lenient that the prosecutor gets upset either."

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Academic Positions Visiting Lecturer in Law, Wharton School, Univ. of Pennsylvania, 1969-70; Executive Committee (1994-present), President (1997-present), Univ. of Pennsylvania Inn of Court

Professional Associations A.B.A.; Pennsylvania Bar Assn.; Philadelphia Bar Assn.; International Assn. of Defense Counsel

Pro Bono Activities Reading Terminal Market Preservation Fund, 1988-91; Episcopal Diocese, Standing Committee, 1980-90, Mission Endowment Committee, 1985-90; Thomas Skelton Harrison Foundation, 1973-91; Director, Member Executive Committee, The Clay Studio, 1980-90

Honors & Awards Spicser Award

Publications *Client Service in a Defender Organization: The Philadelphia Experience*, 117 U.Pa.L.Rev. 448 (1969) (co-author); *The State Preemption Doctrine: Lessons from the Pennsylvania Experience*, 33 U.Pitt.L.Rev. 205 (1971); *Torts in the Courts—Is There Any Hope?* Risk Management, March 1988; *Torts in the Courts—Yes, There's Hope*, Risk Management, Sept. 1988; *Is the Twenty-Seventh Amendment 200 Years Too Late?*, 62 Geo. Washington L. Rev. 501 (1994); *One Cheer for the Guidelines*, 40 Villanova Law Review 317 (1995)

Noteworthy Rulings 1992: After the government of Portugal sought to extradite a naturalized United States citizen who allegedly committed a crime in Portugal in 1985, Dalzell declined to apply Section 11 of the International Narcotics Control Act of 1990—a law which amended thirty-four treaties—retroactively. Dalzell held that to do so would force him to conclude that the law was unconstitutional. *Gouveia v. Vokes*, 800 F.Supp. 241 (1992). 1994: Dalzell held that a landlord's unexecuted threat to evict a disabled tenant and failure to replace an elevator which was often defective did not constitute disability discrimination prohibited by the 1988 Fair Housing Amendments Act in view of the landlord's regular repairs of the elevator and offers to move the tenant to the ground

floor. *Congdon v. Strine d/b/a Media Real Estate*, No. 93-4107, 62 U.S.L.W. 2779 (5-24-94)

1994: Dalzell held that punitive damages are an appropriate remedy for intentional violations of section 504 of the Rehabilitation Act of 1973. *Kedra v. Nazareth Hospital*, 686 F.Supp. 733 (E.D. Pa. 1994). The Sixth Circuit followed this holding in *Mareno v. Consolidated Rail Corp.*, 63 F.3d 1404 (6th Cir. 1995), noting that Kedra was the first district court to hold after the Supreme Court's opinion in *Franklin v. Gwinnett County Public Schools*, 503 United States 60 (1992).

1996: Dalzell sat on a panel of three judges specially convened to review the federal Communications Decency Act, a law intended to make the Internet safe for children by banning "indecent" or "patently offensive" content. The panel, in an opinion written by Dalzell, overturned key parts of the law, and declared it "unconstitutional on its face" and "profoundly repugnant." Dalzell wrote, "Just as the strength of the Internet is chaos, so the strength of our liberty depends upon the chaos and cacophony of the unfettered speech the First Amendment protects." The Justice Department was enjoined from enforcing the Act and from investigating any alleged malfeasance. Dalzell wrote, "As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from governmental intrusion." The three-judge panel spent weeks learning their way around the Internet, guided by experts, searching for online pornography and testing software that allows parents to screen out offensive material. They concluded that the government had failed to meet its burden of regulating speech by the least restrictive means. Dalzell wrote, "There is no evidence that sexually oriented material is the primary type of content on this new medium." and "Communications over the Internet do not 'invade' an individual's home or appear on one's computer screen unbidden." The panel let stand prohibitions against obscenity and child pornography, which are excluded from Constitutional protection of free speech. Time, June 24, 1996.

1995-96: All federal civil rights suits involving the 39th Police District in Philadelphia were assigned to Dalzell for consolidated management and rulings. The civil rights cases against the city stemmed from the indictment of six former Philadelphia police officers for concocting false arrest and search warrants and stealing \$100,000 from about 40 suspected drug dealers. The officers pleaded guilty to civil rights and other charges. A review of over 1,400 arrests in which the officers were involved has resulted in 137 cases being overturned, including those of people who have spent time in prison. The civil rights suits, in which the plaintiffs alleged that the city condoned "a pattern and practice" of misconduct and is thus liable for damages, were being handled by different judges when Chief Judge Edward Cahn ordered their consolidation and assigned them to Dalzell. National Law Journal, February 5, 1996.

Settlement was achieved in forty-four damage suits, and an agreement was reached between the city and the NAACP and Police-Barrio Project, avoiding litigation with the civil rights groups. Dalzell was assigned responsibility to ensure that the terms of the agreement are met. Philadelphia Inquirer, September 5, 1996.

1996: All civil suits and bankruptcy appeals stemming from the 1995 bankruptcy of the Foundation for New Era Philanthropy, which the government has alleged to have been a Ponzi scheme involving in excess of \$300 million, were assigned to Dalzell. Dalzell took an active role in resolving litigation against Prudential Securities, which agreed to pay \$18 million to be distributed to creditors of

the failed foundation. The litigation against Prudential stemmed from its role as New Era's investment broker.

Attorneys involved in the Prudential litigation praised Dalzell's settlement efforts. "He was the one who kept calling us back. He just wouldn't get out of your face," said one lawyer involved in the settlement talks. Attorney William H. Eastburn 3d said of Dalzell, "He used his competence and his very quick understanding of the case, and also took the time and effort to use his own office for what at some point became almost nonstop meetings." *Philadelphia Inquirer*, November 16, 1996

Media Coverage 1996: Dalzell's opinion overturning parts of the Communications Decency Act, a federal law intended to regulate "indecent" material on the Internet, was hailed in publications such as *Newsweek*, *Time*, *U.S. News & World Report*, and *The New Republic*, and was referred to as the *New York Times v. Sullivan* of cyberspace. An editorial in the *New York Times* praised the opinion as "an eloquent decision that honors free speech." Each judge wrote an individual opinion in support of the panel's unanimous decision, but Jeffrey Rosen of *The New Republic* described Dalzell's as "the best of the three."

Lawyers' Evaluation Lawyers interviewed said Dalzell treats lawyers professionally, and is bright and scholarly in his legal abilities. "He can get very theoretical and very professional." "He's very academic." "His legal ability is very good." "He's very good in terms of intelligence." "He has a quick mind." "He's very well-prepared as to the facts, and the law and his ability is good." "He's very bright." "He's eager and his ability is good." "He has excellent abilities." "He's very bright." "He's fairly new, and for that reason he doesn't have the experience and his opinions aren't carefully reasoned, but he's bright."

Most lawyers said Dalzell's judicial demeanor is very good. "He treats lawyers very professionally and he's very courteous." "He's a very nice man." "He treats lawyers with respect." "He is what I would expect a federal judge to be like. He's formal without being aloof." "His demeanor is good." "He's easy-going and not very stern." "If you take reasonable positions, he treats you fairly well." "His treatment of lawyers is very good. He doesn't pick on anyone." "He's very easy to deal with." "His treatment of lawyers is very professional." "If you take positions that are not accurate or tenuous, he gets on you pretty hard." "He has a quick temper." "He seems to be more impatient in the afternoon."

Dalzell keeps the case moving, and controls the courtroom, but does not take the case from the attorney, according to lawyers interviewed. They said he will ask questions, including hypothetical questions, and expects direct answers. "He runs a very good courtroom. I like being before him." "He works on a very theoretical level in terms of the issues and questions he asks." "He's very orderly in how he runs things." "He moves things along. There is no dilly-dallying around in his courtroom." "He lets you know what he wants. He really controls his courtroom. He will say, 'You come up here and tell me this', then he'll tell you to sit down and call someone else up and have them tell him what he wants to know." "You need to get to the point as quickly as possible with him. It's very important to answer his question and not try to skirt it. So answer with a 'Yes' or 'No' and then explain, but answer him first." "He asks a lot of questions." "He would like everything to be presented to him beforehand, in memo form so he has a chance to see the issues and can address them." "He interjects more than some judges, but for the

most part he's pretty easy to try a case with if you're moving along. If you're moving and making progress, he's quite happy to let you go and run things." "He has a quick mind, so he's ready to keep moving, and can be impatient. But in the normal course of things he's easy to deal with in the courtroom."

Lawyers interviewed said Dalzell is not generally active in settlement discussions. "He hasn't been involved in settlement in any case I've had with him." "He hasn't initiated settlement discussions." "He's not active in settlement." "If you ask, he's very good." "He's a very bright man and he can be helpful in settlement."

Civil litigators said Dalzell is evenhanded in civil matters. "He cares about doing the right thing." "He's neutral in everything." "He's very fair-minded." "I don't think he has any leanings." "He's right down the middle in everything that comes before him." "He doesn't have an agenda that guides him." "He has no leanings. In civil matters, I think he's middle of the road."

Lawyers practicing criminal law said Dalzell makes sure criminal defendants get a fair trial. "I think he's pretty fair, overall." "A defendant will get a fair shake." "In criminal matters he evaluates both positions fairly, and rules accordingly." "It's going to be a fair trial with Dalzell." "He's pro-government, but generally fair." "He probably agrees with the government positions more, but in criminal matters he's pretty balanced."

Dalzell will explore all the options available for sentencing, according to lawyers interviewed. "His sentencing is appropriate." "He will ask a lot of hypothetical questions, and asks questions in sentencing to see where he can go and with regard to the interpretation of the guidelines, especially regarding restitution, and fines." "He will take the risk of being very lenient, but in other cases he's willing to be a hard-hitter." "It's not a nice easy courtroom for either side in sentencing." "He forms opinions when he thinks the defendant is remorseful, and capable of being rehabilitated, but he's not going to brook any nonsense when he thinks the defendant doesn't seem genuine." "He has his own ideas regarding sentencing, and he'll try to use them." "He sentences within the guidelines."

Miscellany Before joining the federal court, Dalzell was active in Pennsylvania Republican politics. He was counsel and campaign advisor to Sen. John Heinz (R.-Pa.) from 1976 until Heinz' death in 1991. He was a Republican Committeeman in Philadelphia from 1970-78, and co-chairman and chief spokesman of the Committee to Protect the Charter, a 1978 campaign to retain the Philadelphia City Charter.

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SENATE PANEL APPROVES 3 AREA MEN AS U.S. JUDGES

Friday, September 13, 1991

Section: LOCAL

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By Joseph A. Slobodzian, Inquirer Staff Writer

The U.S. Senate Judiciary Committee yesterday approved and recommended to the full Senate the nominations of a Montgomery County judge and two Center City lawyers to fill vacancies on the U.S. District Court in Philadelphia.

The nominations of William H. Yohn Jr., Harvey Bartle 3d and Stewart R. Dalzell were among 13 approved unanimously by the committee, said Dan McKenna, a spokesman for Sen. Arlen Specter (R., Pa.), a committee member. McKenna said he expected a "pro forma" voice vote by the Senate within two weeks.

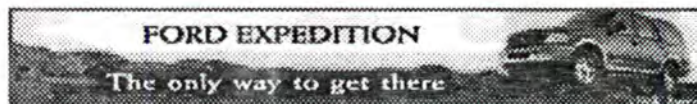
Following confirmation, the three would be sworn in for active service on the federal court as soon as convenient for them and the federal judges.

Yohn, 55, has been a Montgomery County Common Pleas Court judge since 1981 and was a state legislator representing the Pottstown area for 12 years.

Bartle, 50, a partner in the Center City law firm of Dechert, Price & Rhoads, was Pennsylvania's insurance commissioner and then its attorney general during the Thornburgh administration. He is the brother of Montgomery County Commissioners Chairman Paul B. Bartle.

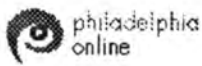
Dalzell, 47, a partner in the Center City firm of Drinker, Biddle & Reath, was a close friend and political adviser of the late U.S. Sen. John Heinz, the Pittsburgh Republican who was killed April 4 in a plane crash near Philadelphia.

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LETTERS TO THE EDITOR

Friday, August 16, 1991

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SKEPTICISM AND EXCITEMENT FOR SCHOOL PROPOSAL

The proposed "radical restructuring" of the Philadelphia school system demonstrates again the ineptness of our professional educators. That Superintendent Constance Clayton's top deputies can seriously propose adopting this harebrained scheme leaves me with a feeling of total frustration.

Instead of taking the opportunity to lead, educators continue to follow the trendy, expensive line of least resistance. In the entire article there was no explanation of why children would be able to read or write or do arithmetic better because we are no longer going to tell them what grade they are in or whether or not they are failing. The main objective of the new structure as far as I can tell is for children to feel better about themselves even though they still aren't learning anything.

The report is typical of educators. Words like stigmatize, straitjacketing and lockstepping are used where the layman might use words like flunking, discipline and study habits.

I agree with Ms. Clayton's statement that "it is important that we have children succeed," but I think it is more important that they learn first; success will follow. Unfortunately if this report represents the future neither is likely.

Harry Wirth

Conshohocken

A THRILLING CONCEPT

I was thrilled to read Dale Mezzacappa's report of Aug. 4 on the School District of Philadelphia's proposal to restructure traditionally graded schools into learning clusters of students and teachers.

As a parent who is sacrificing to send my child to a private Montessori school because I would not consider placing her in a traditional public school, I am given hope that we may participate in public education in the future.

As the partner of a public school teacher who has been ground down by the struggle to meet the needs of his poor, African American students within a school system at odds with their needs, I am heartened that support for his commitment may be forthcoming.

Let's let go of our images of schools from our pasts and rally behind Superintendent Constance E. Clayton's task force. It will take the backing of the whole community to make this radical plan work. Let's go for it!

Marie C. Fitzpatrick

Philadelphia

TRY THESE CHANGES FIRST

As parents of an elementary-school student in the Philadelphia public school system, we read the Aug. 4 article on new curriculum ideas with great interest.

At first reading, it all sounds great - at last, Philadelphia in the forefront! But after some thought, we have doubts.

Before proposing and possibly implementing a sweeping, radical (and expensive) change, why not continue to develop and encourage autonomy of individual schools? Also, if the school board wants to be radical, how about a year-round school calendar (approximately three months in school, three weeks off, etc.). Students would retain skills and ideas better over a shorter vacation than they do now over a 12-week vacation. Teachers wouldn't burn out as badly as they do under the traditional calendar and would therefore be able to help all students better.

We would like to see these ideas put into practice before having our children taking part in a risky curriculum experiment.

Erika Flory, Michael Hauptman

Philadelphia

THIS WRIGHT VOTED NO

With three Wrights in the Pennsylvania House of Representatives, I have become accustomed to the name confusion with mail, issues and voting. But this time I must clear the confusion between the "Wrights" and reaffirm that I voted no on the Pennsylvania budget and tax package.

Matthew N. Wright

House of Representatives

Harrisburg

*

(Mr. Wright, a Republican, represents the 142d District, in Bucks County.)

INTEGRITY IN CONFIRMATION

Your Aug. 2 article about Sen. Arlen Specter's halt of the judiciary nominating process throughout the country missed the essence of what the commotion was about.

Sen. Specter's support for the immediate appointment of Stuart Dalzell to the U.S. District Court for the Eastern District of Pennsylvania was made out of respect for the wishes of the late Sen. John Heinz.

Mr. Dalzell's nomination, the first of three made by Sens. Heinz and Specter, was held up so later nominees could have seniority. This was contrary to Sen. Heinz's desires. Sen. Specter is fighting to have Sen. Heinz's wishes carried out, not his own.

While at first glance it appeared to be a story of obstinance, it's a story about integrity. Arlen Specter's integrity.

Abraham H. Frumkin

Philadelphia

THE GREAT WETLANDS GIVEAWAY

And now the Bush administration relaxes guidelines for wetlands development, so that builders can destroy what's left of our natural waterways. This brazen giveaway was achieved over the protests of the Environmental Protection Agency administrator!

Real estate developers were major contributors to the Reagan-Bush election campaigns. They continue to collect on their investment and make a sham of our democracy.

H. Phelps Potter Jr.

Haverford

NOT MERELY WOMEN'S PLIGHT

Once again Ellen Goodman has missed the mark in her Aug. 3 article, "A summer of fear for women."

Respect for life has diminished in all phases of our society, and sadly Ms. Goodman can only see the plight of women. How can she say that it is only women who are being affected by more violence? Children are being hit by stray bullets or aborted because they are an inconvenience. Innocent men are being assaulted or killed, such as those men who were returning from a midday birthday celebration, getting money from a MAC machine or walking in Society Hill.

Violence toward women is only symptomatic of a larger problem, that is, the declining respect for all human life.

Pat and Jim Duffy

Cherry Hill

DAY-CARE BUREAUCRACY WOES WORSEN

The Aug. 2 article "Protesting for day-care funding" by Martha Woodall could have been more appropriately titled "Day-care tragedy imminent for hundreds of Philadelphia families." All Pennsylvania day-care centers were hit hard by the delay in passing a budget for 1991-92.

In Philadelphia day-care centers have received a double hit by the stranger-than-fiction administrative handling of their funding through the Urban League and its subsidiary organization, FIND. In explaining why one day-care center received only a partial payment for June, the final month of the last fiscal year, FIND's director, Greg Martin, coolly noted that his agency realized "they placed more children than they could afford." The incompetence implied by the consequences of this statement should not go unnoticed. For not only were Philadelphia's day-care centers not paid during the budget fiasco, but also they did not receive proper payment for services provided during the last fiscal year when there was a valid budget.

How are nonprofit day-care centers supposed to make up the \$500,000 FIND deficit? Is the deficit being spread "equitably" among all centers? Will supplemental funding from 1991-92 be applied against the amount FIND shortchanged Philadelphia's day-care in June?

Is this the reason the waiting list has been frozen since mid-May? Openings have steadily increased through the summer months. Families are waiting for care as day-care providers are waiting with openings. Providers spend dollars they can never recoup, shouldering fixed costs while under-enrolled.

Under these conditions, I as board president of a Philadelphia day-care center must ask: Will FIND and the Urban League be rewarded for its performance with a renewal of its \$1.4 million contract to "expedite" day-care administration in Philadelphia? Philadelphia's day-care centers cannot afford much more bleeding for the Casey administration to get the message that the experiment with FIND is bankrupting the finest day-care centers in the city.

James Martin

Philadelphia

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Remember cruising the strip? Remember being the envy of all your friends?
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SPECTER, UPSET OVER PROCEDURE, STALLS VOTE ON JUDGES

Friday, August 2, 1991

Section: LOCAL

Page: B04

By Paul Anderson, Inquirer Washington Bureau

Nominations to fill 13 federal judgeships and four U.S. attorneys' posts were stalled yesterday after U.S. Sen. Arlen Specter, a member of the Senate Judiciary Committee, objected to the handling of a nominee from Pennsylvania.

The list of nominees was to have reached the Senate floor for confirmation votes today, the last day of business before the monthlong summer congressional recess. Now, unless a quick compromise can be reached, the Senate will not vote until after Labor Day to fill the posts.

Judiciary Committee aides said Specter (R., Pa.) wanted a speedy vote on the nomination of Stewart Dalzell, a close friend and political adviser to the late Sen. John Heinz. Dalzell is a nominee to sit on the U.S. District Court for Eastern Pennsylvania.

Quick action on Dalzell's nomination would stray from congressional tradition. Normally, the process calls for three weeks to review files on a nominee, and a week between the hearing and the confirmation vote to answer any questions by senators, committee spokesman David Lavalley said.

In Dalzell's case, his background questionnaire reached the Judiciary Committee only eight days ago and his hearing before the committee - at which Heinz's widow, Teresa, testified on Dalzell's behalf - was held Wednesday.

At an executive session yesterday morning, Sen. Edward M. Kennedy (D., Mass.) moved for a delay on the Dalzell vote. Then Sen. Howard M. Metzenbaum (D., Ohio) moved to delay the nominations of two other Pennsylvanians - Harvey Bartle 3d and William H. Yohn Jr., also nominees for the Eastern District bench - in what he believed was a courtesy to Specter, aides said.

Metzenbaum said he believed that Specter wanted the two other nominations decided after Dalzell so that Dalzell would have seniority over them, the aides said.

But Specter reacted angrily, saying in effect that if his state's nominations couldn't move to the Senate floor, nobody else's would, either, according to his aides.

As a member of the committee, Specter has the power to delay a nomination for a week.

"When Sen. Kennedy insisted on observing the six-day wait, my only recourse was to stop the whole group," the senator said later, adding that Kennedy was "standing on a hypertechnical rule that makes no sense."

Specter's action baffled other senators who had been pleading for help in their busy court districts.

"You've got to be kidding," Sen. Bob Graham (D., Fla.) said when told of the delay of two South Florida nominees. "I want to talk to Sen. Biden and see if maybe there's any way to salvage this before the weekend." Joseph R. Biden Jr. (D., Del.) is chairman of the committee.

Specter will drop his objection if Kennedy agrees to waive the rule, according to Specter spokesman Dan McKenna. "There's still time to work this out," McKenna said.

But Democratic aides said late yesterday that it appeared unlikely that an agreement could be reached.

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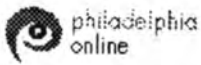
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SPECTER RECOMMENDS 4 AS U.S. JUDGES

Thursday, May 2, 1991

Section: LOCAL

Page: B07

By Emilie Lounsberry, Inquirer Staff Writer

U.S. Sen. Arlen Specter has recommended the appointment of two suburban Common Pleas Court judges and two Center City lawyers to federal judgeships.

Carl Feldbaum, Specter's chief of staff, confirmed yesterday that Specter, a Republican, had sent four names to President Bush "a few days ago" for his consideration. Feldbaum declined to identify any of those recommended, saying Specter wanted to be sure first that the President had received the notification.

But political and court system sources said that the four, who would fill new positions on the court, included Montgomery County Judge Anita B. Brody, Chester County Judge J. Curtis Joyner and Center City lawyers John R. Padova and Eduardo C. Robreno.

The recommendations - if accepted by the President and confirmed by the full Senate - would bring to the federal bench in Philadelphia something that many in legal and political circles have said was needed here: more diversity.

Since the Republicans won the White House and Specter was elected in 1980, 13 U.S. District Court judges have been appointed, and all but one have been white, male and Republican.

Joyner, 43, who was the first black judge in Chester County, joined the county bench four years ago after 12 years in the Chester County District Attorney's Office, where he was first assistant, chief deputy and an assistant district attorney.

In a brief telephone interview yesterday, Joyner, who grew up in Camden, said he was thrilled about the recommendation. "It's an exciting time in my career and I look forward to it," he said.

Brody ran unsuccessfully for the Pennsylvania Supreme Court in 1989, and she has been on the Montgomery County bench since 1981. If nominated and confirmed, she would become the first woman appointed to the district court here since Norma L. Shapiro in 1978.

Brody said through an aide yesterday that she would have no comment, though she previously acknowledged to acquaintances that she was under consideration, courthouse sources in Norristown said.

Padova, 55, is a partner in the Center City firm Padova & Hinman and was a member of the Disciplinary Board of the Supreme Court of Pennsylvania from 1985 until April 1990. He would not comment yesterday.

Robreno, who is with Fox, Rothschild, O'Brien & Frankel, did not return phone calls.

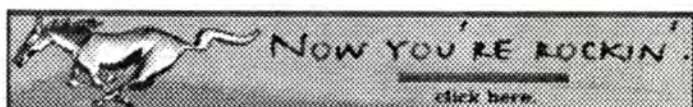
Specter, who has emerged as the most powerful Republican to know if you want to become a federal judge, has been especially criticized for failing to recommend a woman for the bench, prompting the courthouse observation that there are more Kellys on the bench - two - than women.

Three other judgeships on the Eastern District bench remain unfilled, though three candidates were recommended by Specter and the late Sen. John Heinz to the White House but were not yet nominated.

They are lawyer Harvey Bartle, brother of Montgomery County Commissioners Chairman Paul B. Bartle; Montgomery County Judge

William H. Yohn Jr., and Stewart Dalzell, a lawyer who was Heinz's campaign treasurer.

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SLAIN GIRL'S PARENTS WANT DISTRICT JUDGE IMPEACHED JUDGE DALZELL SHOULD BE INVESTIGATED FOR FREEING THE WOMAN CONVICTED IN THEIR DAUGHTER'S DEATH, THEY SAY.

Published on 09/20/97, Article 1 of 15 found.

PHILADELPHIA INQUIRER

SOURCE: ASSOCIATED PRESS

DATELINE: WASHINGTON

The parents of Lancaster County murder victim Laurie Show are asking Congress to investigate a federal judge who freed the woman convicted in their daughter's slashing death.

Hazel and John Show visited 11 legislators from Pennsylvania, bearing petitions signed by about 37,000 county residents who want U.S. District Judge Stewart Dalzell impeached and federal courts reformed.

(PHILADELPHIA INQUIRER

, 386 words.)

[Complete Article](#)

LAWYER WHO GOT CONVICTED KILLER FREED IS AT IT AGAIN SHE HAS FILED AN APPEAL IN ANOTHER LANCASTER COUNTY CASE. SHE CLAIMS PROSECUTORIAL AND POLICE MISCONDUCT LED TO THE CONVICTION OF THE DRIVER IN A FATAL CRASH.

Published on 09/07/97, Article 2 of 15 found.

PHILADELPHIA INQUIRER

Published on 08/01/97, Article 5 of 15 found.

PHILADELPHIA INQUIRER

SOURCE: By Rich Henson, INQUIRER STAFF WRITER

Republican U.S. Rep. Joseph R. Pitts of Pennsylvania yesterday introduced legislation that would limit when federal judges could set free convicted criminals and bar their retrials in state courts.

"Federal judges are given much authority and responsibility in their roles," Pitts said yesterday. "However, there must be a threshold past which they cannot wander."

(PHILADELPHIA INQUIRER

, 433 words.)

[Complete Article](#)

LISA LAMBERT CASE STIRS ANGER. VERDICT TOSSED, LAWYER IS SCORNE

Published on 07/28/97, Article 6 of 15 found.

PHILADELPHIA INQUIRER

SOURCE: By Rich Henson, INQUIRER STAFF WRITER

DATELINE: LANCASTER

There was a time when the most reviled woman in this land of tobacco fields, dairy farms and outlet malls might well have been Lisa Michelle Lambert, sentenced to life in prison in 1992 for stabbing another teenage girl to death.

But when her conviction was overturned last April in federal court, the mantle passed to another: Christina Rainville, the Philadelphia lawyer who won Lambert her freedom.

(PHILADELPHIA INQUIRER

, 1662 words.)

[Complete Article](#)

REVERSAL SOUGHT OF WOMAN'S RELEASE A U.S. JUDGE OVERTURNED HER MURDER CONVICTION. THE PA. ATTORNEY GENERAL SAID HE WENT TOO FAR.

Published on 07/23/97, Article 7 of 15 found.

PHILADELPHIA INQUIRER

SOURCE: By Jim Strader, ASSOCIATED PRESS

DATELINE: HARRISBURG

Pennsylvania Attorney General Mike Fisher and his counterparts from five other states have asked a federal appeals court to reverse a judge's decision to free a woman who had served five years for a murder conviction, Fisher announced yesterday.

Fisher argued in a brief filed Monday that Lisa Michelle Lambert, 24, should have completed state appeals before taking her case to

SOURCE: By Rich Henson, INQUIRER STAFF WRITER

Christina Rainville has lit the fuse on another Lancaster County bombshell.

Rainville, the Philadelphia attorney who recently won freedom for a Lancaster County woman who had been convicted of murder, has filed an appeal in another high-profile criminal case there, claiming the widely publicized conviction was gained through prosecutorial and police misconduct.

(PHILADELPHIA INQUIRER

, 1080 words.)

[Complete Article](#)

MAN JAILED IN FATAL CRASH ALLEGES POLICE CONSPIRACY

Published on 09/06/97, Article 3 of 15 found.

PHILADELPHIA INQUIRER

SOURCE: By Rich Henson, INQUIRER STAFF WRITER

A Lancaster County man convicted of third-degree murder for running a red light and killing a family of three claims in a new appeal that prosecutors and police conspired to frame him.

The appeal, filed late Thursday in state Superior Court by Philadelphia attorney Christina Rainville, claims police and prosecutors engaged in willful misconduct in the prosecution of Darrel McCracken, 33, who was convicted of three counts of third-degree murder in January.

(PHILADELPHIA INQUIRER

, 260 words.)

[Complete Article](#)

LETTERS

Published on 08/16/97, Article 4 of 15 found.

PHILADELPHIA INQUIRER

Kankas' reaction to killer's execution is natural

Claude Lewis chooses to criticize some of the recent behavior of Megan Kanka's parents, whom he believes ``went a bit astray and appeared to relish the day [Jesse K.] Timmendequas is scheduled to be executed." ("After tragedy, seek closure, not rage," Aug. 4.)

(PHILADELPHIA INQUIRER

, 1042 words.)

[Complete Article](#)

BILL INTRODUCED TO REIN IN JUDGES IT WAS INSPIRED BY THE FREEING OF A WOMAN CONVICTED OF MURDER IN LANCASTER COUNTY.

federal court. Fisher also said the judge who freed her overstepped his authority when he declared her "innocent."

(PHILADELPHIA INQUIRER

, 424 words.)

[Complete Article](#)

METROPOLITAN AREA NEWS IN BRIEF

Published on 07/18/97, Article 8 of 15 found.

PHILADELPHIA INQUIRER

COURT ORDERS LAW FIRM PAID

FOR WORK IN MURDER APPEAL

The Center City law firm that successfully represented a 24-year-old Lancaster woman during her appeal of a 1991 murder conviction in Lancaster County has been awarded a total of \$252,437 in legal fees and costs.

(PHILADELPHIA INQUIRER

, 726 words.)

[Complete Article](#)

METROPOLITAN AREA NEWS IN BRIEF

Published on 07/13/97, Article 9 of 15 found.

PHILADELPHIA INQUIRER

BOY, 3, DROWNS IN DEL. POOL;

HIS TWIN BROTHER SURVIVES

A 3-year-old boy drowned, but his twin brother survived yesterday when both went into a swimming pool at a home they were visiting with their mother in Frenchtown Woods, Del.

(PHILADELPHIA INQUIRER

, 307 words.)

[Complete Article](#)

2D CONVICT IN '91 KILLING APPEALS VERDICT A U.S. JUDGE FREED LISA MICHELLE LAMBERT IN APRIL. NOW TABITHA BUCK ALSO CITES UNFAIRNESS IN HER TRIAL.

Published on 07/10/97, Article 10 of 15 found.

PHILADELPHIA INQUIRER

SOURCE: ASSOCIATED PRESS

DATeline: LANCASTER

First, Lisa Michelle Lambert was freed from a life prison sentence after a federal judge declared a corrupt Lancaster County prosecution had led to her murder conviction.

Now, the second person sentenced to life in prison for the 1991 murder of teenager Laurie Show also wants to be freed.

(PHILADELPHIA INQUIRER

, 463 words.)

[Complete Article](#)

**REVERSAL SOUGHT OF RULING THAT FREED WOMAN
THE PROSECUTORS' APPEAL CALLS THE JUDGE'S DECISION TO
ACQUIT LISA LAMBERT OF MURDER AN AFFRONT TO JUSTICE.**

Published on 06/04/97, Article 11 of 15 found.

PHILADELPHIA INQUIRER

SOURCE: By Joseph A. Slobodzian, INQUIRER STAFF WRITER

The Lancaster County District Attorney's Office has asked a federal appeals court to reverse a judge's decision that freed a 24-year-old woman who was serving a life sentence for a 1991 murder, calling the ruling an "affront to justice."

The brief filed late Monday night by lawyers for Lancaster County District Attorney Joseph Madenspacher said U.S. District Judge Stewart Dalzell's decision to acquit and free Lisa Michelle Lambert because of prosecutorial misconduct violated legal precedent and

(PHILADELPHIA INQUIRER

, 577 words.)

[Complete Article](#)

**JUDGE'S RULING, AND TONE, LEAVE A COMMUNITY REELING
HE OVERTURNED A MURDER CONVICTION AND HARSHLY REBUKED AUTHORITIES.
"IT'S ALL ANYBODY IS TALKING ABOUT," ONE MAN SAID.**

Published on 04/26/97, Article 12 of 15 found.

PHILADELPHIA INQUIRER

SOURCE: By Rich Henson, INQUIRER STAFF WRITER

DATELINE: LANCASTER

U.S. District Judge Stewart Dalzell has left this corner of Pennsylvania stunned and bitter.

In a sweeping ruling this week, he overturned one of the county's most notorious murder cases, accused police and prosecutors of wholesale misconduct, and cast the blame in blunt terms: "In making a pact with this devil, Lancaster County made a Faustian bargain," Dalzell said. "It lost its soul."

(PHILADELPHIA INQUIRER

, 878 words.)

[Complete Article](#)

**SERVING A LIFE SENTENCE, LISA MICHELLE LAMBERT
MUSTERED A FINAL APPEAL. IT INTRIGUED A JUDGE.
HOW A CONVICTED MURDERER WON HER FREEDOM**

Published on 04/25/97, Article 13 of 15 found.

PHILADELPHIA INQUIRER

SOURCE: By Dianna Marder, INQUIRER STAFF WRITER

Lisa Michelle Lambert's lowest moment came late in 1994.

She was 21 and two years into a life sentence for a murder she swore she didn't commit.

(PHILADELPHIA INQUIRER

, 3086 words.)

[Complete Article](#)

**'RIGGED' MURDER CONVICTION IS TOSSED
A LANCASTER WOMAN, 24, HAD SERVED FIVE YEARS. A FEDERAL
JUDGE CITED "GROSS PROSECUTORIAL MISCONDUCT" IN HER TRIAL.**

Published on 04/22/97, Article 14 of 15 found.

PHILADELPHIA INQUIRER

SOURCE: By Dianna Marder, INQUIRER STAFF WRITER

A young Lancaster County mother who served five years of a life prison term for murder saw her conviction overturned and was set free yesterday by a federal judge who said her trial "was corrupted from start to finish."

U.S. District Judge Stewart Dalzell in Philadelphia said Lancaster County officials had engaged in "such gross prosecutorial misconduct" that the 1992 conviction of Lisa Michelle Lambert could not stand.

(PHILADELPHIA INQUIRER

, 1094 words.)

[Complete Article](#)

**LANCASTER PROSECUTORS CHALLENGE THE RELEASE OF CONVICTED MURDERER
THEY ASKED THE JUDGE TO REMOVE HIMSELF FROM
HER APPEAL. THE JUDGE HAD ALLEGED PERJURY.**

Published on 04/18/97, Article 15 of 15 found.

PHILADELPHIA INQUIRER

SOURCE: By Dinah Wisenberg Brin, ASSOCIATED PRESS

A day after a federal judge accused a former police sergeant of perjury and released a convicted murderer to the custody of her lawyers, Lancaster County prosecutors scrambled yesterday to keep their high-profile case together.

U.S. District Judge Stewart Dalzell denied prosecutors' requests that he reconsider his decision to release Lisa Michelle Lambert and

remove himself from her first-degree murder appeal. Lancaster County District Attorney Joseph Madenspacher quickly appealed to the Third U.S.

(PHILADELPHIA INQUIRER

, 430 words.)

Complete Article

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No Curtain on Net / Court annuls law limiting 'indecenty' on Internet (Newsday)

No Curtain on Net / Court annuls law limiting 'indecenty' on Internet

By Susan Benkelman. STAFF WRITER

A three-judge federal panel yesterday declared unconstitutional a new law making it a crime to transmit "indecent" material on the Internet, saying the worldwide computer network deserves broad First Amendment protection.

In a strongly worded, 179-page ruling issued just a month after closing arguments in the case, the U.S. Court of Appeals in Philadelphia issued a preliminary injunction blocking federal prosecutors from implementing the Communications Decency Act.

Groups challenging the law, including the American Civil Liberties Union, said the ruling represented a thorough and resounding victory for free speech and puts them in a strong position to argue the case before the U.S. Supreme Court.

The U.S. Justice Department, which is defending the law in court, is expected to appeal, though officials there yesterday said they were reviewing the decision. In the law, Congress specified that any appeal would go directly to the Supreme Court.

President Bill Clinton, commenting on the ruling, said, "I remain convinced, as I was when I signed the bill, that our Constitution allows us to help parents by enforcing this act to prevent children from being exposed to objectionable material transmitted through computer networks."

The law, approved by Congress earlier this year as part of an overhaul of the nation's telecommunications regulations, would have criminalized the transmission of "indecent" material to minors over computer networks or the electronic publication of such material in a way that would make it available to minors.

The judges agreed with groups challenging the law that it is so broad that it would essentially limit speech on the Internet to that which is acceptable for children. In formulating the law, Congress decided to use the broad "indecenty" rather than the narrower "obscenity" standard. While courts have allowed the government to regulate "indecent" material in broadcast, there are no such restrictions in print.

In her opinion, Judge Dolores Sloviter, chief judge for the Third Circuit Court of Appeals, said the use of the indecency standard "sweeps more broadly than necessary and thereby chills the expression of adults."

Sloviter and U.S. District Court Judge Ronald Buckwalter also agreed with the ACLU, the American Library Association and the numerous other groups challenging the law that the "indecenty" standard was unconstitutionally vague.

She said the terms could cover a "broad range of material from contemporary films, plays and books showing or describing sexual activities, to controversial contemporary art and photographs showing sexual organs in positions that the government conceded would be patently offensive in some communities."

The judges also expressed skepticism about the government's arguments that the law was aimed at pornographers, saying that differing regional standards and politics could render something indecent in one community that is acceptable in another.

"What may be, figuratively speaking, one administration's pen may be another's sword," wrote Buckwalter.

While the third member, U.S. District Judge Stewart Dalzell, said he

He is
a Bush
Judge!

thought the "indecent" standard was not vague, his opinion was the most forceful in arguing that the Internet deserves the strongest possible free-speech protections, largely because the Internet is so democratic a medium in the "marketplace of ideas."

"Any content-based regulation of the Internet, no matter how benign the purpose, could burn the global village to roast the pig," wrote Dalzell, an appointee of President George Bush.

Groups challenging the law were thrilled by the decision and said the three judges laid out the facts in a way that clearly explains how the Internet works. None of the three judges had used the Internet extensively before they took on this case, and spent considerable time hearing experts' testimony to learn about the computer network.

"Our mission was to convince the court that even though it's an electronic medium, the Internet should have the same protections as print, and I think we succeeded beyond our wildest expectations," said Jerry Berman, executive director of the Center for Democracy and Technology, an industry group.

Heidi Stirrup, legislative director with the Christian Coalition in Washington, which supported the law, said the decision is not surprising and suggested the challengers filed the case in Philadelphia specifically because they thought that court would be sympathetic to their challenge.

Neither side would speculate on how the Supreme Court might rule in this case. While yesterday's winners said they believed the case was clear-cut in their favor, they also said they feared the Supreme Court might uphold the law out of fear of criticism that it protected pornographers.

Jill Lesser, deputy director for public policy at People for the American Way, one of the plaintiffs, said that while groups supporting the law have attempted to portray it as "family groups versus pornographers," the decision in fact sends the message that "this law takes away from families the power to make decisions" about what their children will see online.

Lawyers at the Justice Department suggested a decision on whether to appeal could await a ruling in a parallel suit now pending in federal court in New York, and a Supreme Court decision expected this summer on a 1992 law on indecency in cable access programming. If Justice decides to appeal, the Supreme Court will take up the issue even though the Philadelphia court's decision is a preliminary one and the case has not been fully argued on its merits there.

Gaylord Shaw in Newsday's Washington bureau contributed to this story.

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Susan Benkelman, No Curtain on Net / Court annuls law limiting 'indecent' on Internet, Newsday, 06-13-1996, pp A03.

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TOM JIPPING'S

GRASSROOTS
LIST

January 27, 1997

Hon. Trent Lott
Majority Leader, U.S. Senate
Washington, D.C. 20510

Dear Senator Lott:

We represent millions of Americans deeply concerned about an activist federal judiciary. Judicial activism threatens self-government; without self-government, there is no liberty. In America, lawmakers must be accountable to the people, yet unaccountable judges with life tenure too often assume that role by making our laws mean something other than what the real lawmakers intended.

Some of us lobby, others educate. We have different methods, different means, but one message. We will promote judicial restraint and fight judicial activism with whatever tools and resources are legitimately at our disposal. The Constitution names the President and the Senate as the key players in judicial selection, but both are accountable to the people.

As the 105th Congress opens, we want you to know of our common resolve and commitment to see a more restrained judiciary, one more consistent with self-government and liberty.

Sincerely,

Original 260 Signers:

Abraham Lincoln Foundation for Public Policy Research
Adirondack Solidarity Alliance
African-American Life Alliance of Maryland
Alabama Citizens for Truth
Alabama Family Alliance
Alaska Term Limit Coalition
Alliance Defense Fund
Alliance for America
American Association of Christian Schools
American Association for Small Property Ownership
American Center for Law and Justice
American Collegians for Life
American Conservative Union
American Family Association
American Land Rights Association
American League of Catholic Voters
American Life League
American Loggers Solidarity
American National Council for Immigration Reform
American Policy Center
American Pro-Constitutional Association
American Renewal
Americans Back in Charge Foundation
Americans for a Sound AIDS/HIV Policy
Americans for Choice in Education
Americans for Limited Terms
Americans for Tax Reform
Americans for Voluntary School Prayer
Americans United for Life
Arizonans for An Empowered Future
Arkansas Federation of Young Republicans
Association of American Physicians and Surgeons
Association of Christian Schools International
Association of Concerned Taxpayers
The Buckeye Institute
California Right to Life Committee
Californians for America

New Signers to be Delivered Later This Year:

Alpha Center
American Association of Pro-Life Obstetricians and Gynecologists
American Coalition of Life Activists
American Conservative
American Family Association of Kentucky
American Family Association of Michigan
American Family Association of New York
American Family Association of Oregon
American Family Association of Texas
American Foundation
American Monetary Foundation
American Rights Coalition
Americanism Foundation
American Freedom Crusade
Americans for Decency
America's Future
Arkansas Policy Foundation
Black Californians for Life
California Coalition for Immigration Reform
California Justice Foundation
Cascade Policy Institute
Center for the American Founding
Christian Coalition of California
Christian Coalition of Iowa
Christian Coalition of Massachusetts
Christian Exchange, Inc.
Christian Home Educators of Kentucky
Christian Libertarian Fellowship
Christian Values in Action Coalition, Inc.
Citizens Against Repressive Zoning
Citizens for Community Values
Citizens for Judicial Responsibility
Citizens for Reform
Citizens' Justice Programs
Coalition Against Pornography
Concerned Women for America of Virginia

Capital Research Center	Conservative Opportunity Society PAC
Capitol Hill Prayer Alert	Council of Conservative Citizens
Capitol Resource Institute	Dentists for Life
Catena Rose Victims of Crime Assistance League	Eagle Forum of Alabama
Catholic Alliance	Eagle Forum, Inc. (FL)
Catholic Campaign for America	Environmental Conservation Organization
Catholic League for Religious and Civil Rights	Ethan Allen Institute
The Center for Arizona Policy	Evergreen Freedom Foundation
Center for Equal Opportunity	Family Council (AR)
Center for Individual Rights	Family Foundation (KY)
Center for Military Readiness	Family Friendly Libraries
Center for New Black Leadership	Family Institute of Connecticut
Center for the Defense of Free Enterprise	Family Institute (TN)
Christian Action Network	First Principles, Inc.
The Christian Civic League of Maine	Freedom in Medicine Foundation
Christian Coalition	Free Market Committee
Christian Coalition of Kansas	Georgia Christian Coalition
Citizens Against Violent Crime	Georgia Sport Shooting Association
Citizens Committee for the Right to Keep and Bear Arms	Government Is Not God - PAC
Citizens Equal Rights Alliance	Great Lakes Center for Law and Justice
Citizens for Better Government	Gulf Coast American Family Association
Citizens for Budget Reform	Gun Owners of South Carolina
Citizens for Constitutional Property Rights	Illinois Citizens for Life
Citizens for Economically Responsible Government	Illinois State Rifle Association
Citizens for Educational Freedom	Impeach Federal Judge John T. Nixon
Citizens for Federal Judicial Term Limits	Indiana Republican Liberty Caucus
Citizens for Law and Order	Justice Fellowship
Citizens for Less Government	Kansas Conservative Union
Citizens for Responsible Government	The Lawyer's Second Amendment Society, Inc.
Citizens United	League of Catholic Voters
Coalition for Local Sovereignty	Liberty Amendment Foundation
The Coalition on Urban Affairs	Life Coalition International
Coalition of Arizona/New Mexico Counties for Stable Economic Growth	Life Legal Defense Fund
Coalitions for America	Maryland Association of Christian Schools
Colorado Coalition for Fair Competition	Michigan Decency Action Council
Colorado Term Limits Coalition	Morality Action Committee
Colorado Union of Taxpayers	<u>National Association for Neighborhood Schools</u>
Communities for a Great Northwest	National Association of Christian Educators/Citizens for Excellence in Education
Concerned Citizens of Florida	National Coalition for the Protection of Children and Families
Concerned Women for America	National Justice Foundation
Conservative Campaign Fund	New Hampshire Right to Life
Conservative Leadership PAC	New Jersey Family Policy Council
Conservative Victory Committee	New Yorkers Family Research Foundation
The Constitutional Coalition	Oklahoma Christian Coalition
Constitutional Heritage Institute	Oklahomans for Children and Families
Constitutionists Networking Center	Oregon Center for Family Policy
Coral Ridge Ministries	Oregon Women for Agriculture
Cornerstone Fellowship	Palmetto Family Council
Crime Victims United	Pennsylvania Rifle and Pistol Association
Defenders of Property Rights	Please Let Me Live
Delaware Family Foundation	Public Advocate
Douglass Policy Institute	Public Interest Institute
<u>Eagle Forum</u>	Republican National Coalition for Life
Empower America	Right to Life of Greater Cincinnati, Inc.
English First	Southwest Florida Sportsman's Association
Environmental Policy Task Force	Stewards of the Range - Stop Promoting Homosexuality America
The Fairness to Landowners Committee	The Sutherland Institute
The Family Foundation	Texas Eagle Forum
Family of the Americas Foundation	Tradition, Family, Property, Inc.
Family Policy Center (MO)	The United Republican Fund of Illinois
Family Research Institute of Wisconsin	Virginia Eagle Forum
<u>Family Research Council</u>	Washington Family Council
Family Taxpayer's Foundation	

Family Taxpayer's Network
 Focus on the Family
 Freedom Alliance
 The Freedom Foundation
 Frontiers of Freedom Foundation
 Fully Informed Jury Association
 Georgia Family Council
 Georgia Public Policy Foundation
 Goldwater Institute
 Greater Boston Young Republicans
Gun Owners of America
 Heritage Caucus and Judicial Forum
 Home School Legal Defense Association
 Human Life International
 Idaho Family Forum
 Illinois Family Institute
 Independence Institute
 Independent American Party of Nevada
Independent Women's Forum
 Indiana Citizens for Life
 Indiana Family Institute
 Individual Rights Foundation
 Institute for Family Studies
 The Institute for Media Education
 Institute on Religion and Democracy
 Iowa Family Policy Center
 The James Madison Institute
 Jewish Policy Center
 John Locke Foundation
 Judicial Reform Foundation
 Judicial Selection Monitoring Project
 Judicial Watch
 Justice for Homicide Victims
 Justice for Murder Victims
 Kansas Family Research Institute
 Kansas Taxpayers Network
 Kentucky Family Forum
 Kriple Institute - USA
 Land Rights Foundation
 Landmark Legal Foundation
 Law Enforcement Alliance of America
 Legal Affairs Council
 League of American Families
 League of Private Property Voters
 Libertarian Party of Colorado
 Libertarian Party of Ohio
 Libertarian Party of South Dakota
 Libertarian Party of Utah
 Liberty Counsel
 Liberty Matters
 Liberty's Educational Advocacy Forum
 Life Advocacy Resource Project
 Life Decisions International
 Life Issues Institute
 Lifesavers
 The Lincoln Caucus
 Lincoln Legal Foundation
 The Madison Project
 Maryland Conservative Caucus
 Massachusetts Family Institute
 Memory of Victims Everywhere
 Michigan Family Forum
 Michigan Term Limits Coalition
 Minnesota Family Council

Wisconsin Information Network
 Wisconsin State Sovereignty Coalition

TALK-SHOW HOSTS

Dr. Larry Bates, Information Radio Network (82 Stations)
 Gordon Lee Baum & Earl P. Holt III, "From the Right at Night" WGNU (Granite City/St. Louis)
 Bryan Hyde, KDXU-AM (St. George, UT)
 Trudy K. Thomas "Focus" & "America's Roots" The Out Channel (National weekly cable/satellite TV programs)

Minnesota Landowners Rights Association
Mississippi Family Council
Montanans for Term Limits
Morality in Media
More Edwards Witherspoon Institute
National Association of Evangelicals
National Association of Industrial and Office Properties
National Association of Reversionary Property Owners
National Center for Constitutional Studies
National Center for Public Policy Research
National Citizens Legal Network
National Clergy Council
National Coalition for Restoration of the Black Family
National Defense Council Foundation
National Education Taskforce
National Family Legal Foundation
National Federation of American Hungarians
National Institute of Family and Life Advocates
National Law Center for Children and Families
National Legal and Policy Center
National Legal Foundation
National Parents' Commission
National Rifle Association
National Right to Work Committee
National Tax Limitation Committee
National Wilderness Institute
Nebraska Civic Digest
Nevada State Rifle & Pistol Association
New Hampshire Landowners Alliance
New Yorkers for Constitutional Freedoms
North Carolina Family Policy Council
North Central Florida Sportsmen's Association
North Dakotans for Term Limits
Northwest Council of Governments
Northwest Legal Foundation
Of the People
Oklahoma Family Policy Council
Oklahoma Term Limits
One Nation Indivisible
Operation Integrity
Oregon Lands Coalition
Oregon Taxpayers United
Organized Victims of Violent Crime
Pacific Research Institute
Parents Rights Coalition
Pennsylvania Family Institute
Pennsylvania Landowners Association
People for the West!
Philadelphia Family Policy Council
Population Research Institute
Pro-Family Legislative Network
Pro-Life Action League
Pro-Vita Advisors
Progress & Freedom Foundation
Project 21
Property Rights Foundation of America
Putting Liberty First
Reason Foundation
Rocky Mountain Family Council
Round-Up Republican Womens Club
Safe Streets
Save America's Youth
Second Amendment Foundation
The Seniors Coalition

Small Business Survival Committee
 Small Business Survival Committee of Arizona
 South Carolina Policy Council Education Foundation
 South Dakota Family Policy Council
 South Florida Firearms Owners
 Southern Baptist Convention, Christian Life Commission
60 Plus Association
 Strike Back
 Students for America
 The Susan B. Anthony List
 Take Back Arkansas
 Teach Michigan Education Fund
 Tennessee Shooting Sports Association
 Term Limits Legal Institute
 Texas Justice Foundation
 Texas Public Policy Foundation
 Toward Tradition
 Traditional Values Coalition
 United Seniors Association
 U.S. Business and Industrial Council
 U.S. English
 U.S. Justice Foundation
 Vernon K. Kriebel Foundation
 Vocal Foundation
 Watchdogs Against Government Abuse
 West Virginia Family Foundation
 Wisconsin Christians United
 WallBuilders
 Washington Citizens for Term Limits
 Women for Responsible Legislation
 Young America's Foundation
 Young Conservatives of Texas

TALK-SHOW HOSTS

Perry Atkinson, KDOV (Medford, OR)
 Chuck Baker, KCS (Colorado Springs)
 Neil Boron, "Life Line" (5 stations across New York state)
 David Bresnahan, Talk USA Radio Network (broadcast from Utah on 13 stations)
 W. Adam Clatsoff, WWNW, WFTH
 Jane Chastain, Crawford Broadcasting (18 stations in 8 states)
 Mike Cooper, KBRT (Costa Mesa, CA)
 Blanquita Cullum, Radio America Network (350 stations)
 James C. Dobson, "Focus on the Family" (957 stations)
 F.R. Duplantier, "Behind the Headlines"
 Hank Erwin, WDJC (Birmingham, AL)
 Michael Farris, "Home School Heartbeat" (238 stations)
 Ron Freeman, "The Civil Right" AM 1340 (Missouri)
 Mickey Grace, Family Life Radio (Tucson, AZ)
 Roger Hedgecock, KSDO (San Diego)
 Kim Iverson, KBRT
 Tom Jipping, "Legal Notebook" and "Capitol Watch,"
 NET-Political NewsTalk Network
 D. James Kennedy, "Truths That Transform" (350 stations)
 Beverly LaHaye, "Beverly LaHaye Live" (108 stations)
 Mark Larson, KPRZ (San Diego), Salem Communications
 Jim Lawson, Neon Communications
 Terry Lowry, WTEK (Houston)
 Marlin Maddoux, "Point of View" (360 stations)
 Marty Nalitz, KNUS (Denver)
 Oliver North, "The Oliver North Show" (140 stations)
 Janet Parshall, "Janet Parshall's America" (48 stations)
 Michael Reagan, Premiere Radio Network (150 stations)

David Robinson, WGTT
Stan Solomon, "The Stan Solomon Show" (13 stations in 5 states)
Matt Staver, "Central Florida Live," TV52
George Tanner, KFLR (Phoenix)
David Vastola, WTNO (West Palm Beach, FL)
Pat Trueman, "AFA Report" (125 stations in 27 states)
Armstrong Williams, "The Right Side" (USA Radio Network Feb. 1997)
Brian Wilson, WBAL (350 stations)

(Note: Actual signatures on file with the Judicial Selection Monitoring Project)

Join the Coalition against judicial activism

If you have any questions or would like more information about judicial activism,
please contact us at Judges@fceref.org.



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Dirty name for a judge: 'Activist!'; Fighting AIDS the morning after; Social Security's web of trouble; An emergency call for the Big Muddy; Contribution laundering
(U.S. News & World Report)

THE LAW

Dirty name for a judge: 'Activist!'

Are courts thwarting the will of the public and the other government branches? So critics charged last week in two controversial federal cases. After a judge threw out Prop. 209--a California voters' measure to ban race preferences in state contracts--an appeals panel reinstated it, warning against courts that unconstitutionally "trump self-government." Another judge voided a law allowing the president to veto line items in the budget as an improper delegation of congressional power.

Conservatives say the overturning of Prop. 209 is the latest example of judicial activism and proposed steps to combat it. Last week, House Judiciary chair Henry Hyde proposed requiring three judges instead of one to review state referenda. And a new private panel including several ex-attorneys general will rate President Clinton's court choices for activist leanings. Liberals say conservative judges practice activism, too.

The White House and GOP leaders denounced the line-item-veto ruling; they say the Founding Fathers backed the veto law's concept of power-shifting.

RIVERS

An emergency call for the Big Muddy

If Lewis and Clark were to return to the wild and mighty Missouri River that frustrated and nearly swallowed up their 1804-06 expedition, they wouldn't recognize today's Big Muddy. Diked, dredged, and dammed into submission, the Missouri is managed by the Army Corps of Engineers for commercial navigation although current benefits from wildlife, recreation, and tourism are estimated at five times the \$15 million economic benefits from barge traffic. Taming the river and its flood plain has put one fifth of the native species of fauna and flora on endangered lists and many fish species have fallen below 10 percent of their historic levels.

The Missouri leads a list issued this week by the environmental group American Rivers of the nation's 10 most threatened waterways. To help tourism and reduce flood losses, the group urges an end to commercial navigation, changes in dam operations to benefit wildlife and recreation, acquisition of flood-prone land from willing sellers, and less cattle grazing in the river's scenic Montana portion.

HEALTH

Fighting AIDS the morning after

When medical workers accidentally prick themselves with HIV-contaminated needles, they quickly start taking anti-AIDS drugs to prevent infection. Last week, two San Francisco public health doctors recommended in the New England Journal of Medicine that the medication be offered to the public; federal regulators are likely to agree. Doctors would be asked to decide whether to give the drugs to a man who says his condom broke during sex or someone who used a dirty needle to shoot drugs. Preventive treatment would cost \$400 to \$500 per person. But AIDS treatment runs \$119,000 per patient.

THE GOP

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Archives *plus*

Deseret News Archives,
Saturday, June 3, 1989

HATCH ASSAILS BAR'S ROLE IN PICKING JUDGES

By Lee Davidson, Washington Bureau Chief

Sen. Orrin Hatch, R-Utah, called Friday for the Bush administration and the Senate to take away the near-absolute power that the American Bar Association has over judicial nominations.

That call, which came before the Senate Judiciary Committee, is especially interesting because Attorney General Dick Thornburgh wants his new No. 2 man to be Robert B. Fiske Jr. - the man who used to head the ABA committee that reviewed judicial nominations.

Hatch is being asked to support Fiske's nomination in the Judiciary Committee - which he said he is unsure he will do because the ABA panel under Fiske appeared to torpedo conservative nominees such as Robert Bork because of their ideology and politics.

Hatch said Friday, "I believe it is time to pull the plug on the ABA's pre-eminent role in judicial selection and reclaim for this committee its full place in the advice-and-consent function with respect to judges."

He added, "It is no longer appropriate that this one private organization be granted a status not accorded any other group."

Hatch said, "It exercises a virtual veto over judicial nominees. ... Our judicial nomination hearings are held up pending the ABA's investigation of the nominee; the ABA is always accorded the opportunity to testify, usually first; and the ABA rating of a nominee is given very great weight, if not always conclusive effect."

Hatch, citing a list of ABA abuses, said they show the ABA panel "has been allowed for too long to operate without constraint, governed only by rules of its own choosing."

He said the Senate and administration should still listen to the ABA's views about judicial nominees, but not any more than they would listen to other private groups.

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Archives^{plus}

Deseret News Archives,

Thursday, March 22, 1990

STRIP ABA OF ITS ROLE IN SELECTION OF JUDICIAL NOMINEES, HATCH SAYS

By Lee Davidson, Washington Bureau Chief

Sen. Orrin Hatch, R-Utah, wants to strip the American Bar Association of its official role in judging the qualifications of judicial nominees, saying it has been swayed by its own strong political stands.

He and three other Republican members of the Senate Judicial Committee wrote Attorney General Dick Thornburgh this week saying the ABA's recent resolution to essentially support abortion on demand was the last straw.

"We are concerned that the ABA will irresistibly scrutinize prospective nominees to see whether nominees share the ABA's views," wrote Hatch and Sens. Charles Grassley of Iowa, Gordon Humphrey of New Hampshire and Alan Simpson of Wyoming.

"Since the ABA is now an avowed advocate of an unlimited pro-abortion position, it can no longer make any credible or legitimate claim to neutrality in evaluating judicial nominees," they said.

The ABA says it judges a nominee's competence, integrity and credentials in a non-partisan manner - and its ratings are given higher priority and importance than views expressed by other interest groups. But conservatives say the ABA has consistently given low marks to qualified conservatives.

Hatch has blamed that on the failed nominations of such people as Robert Bork to the U.S. Supreme Court. Hatch led the unsuccessful fight to confirm Bork.

"The ABA, like any other organization, has the right to take whatever position it wishes," the senators wrote.

"However, a group that has chosen to align itself with a particular side on such controversial issues as abortion can hardly pretend to be a nonpartisan organization."

The senators also noted that the ABA has voted to take stands to support anti-gun legislation, support controversial treaties, support legislation to overturn recent Supreme Court labor law decisions and support changes that would make death sentences more difficult to impose.

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The 1996 Republican Platform

Adopted August 12, 1996

CHANGING WASHINGTON FROM THE GROUND UP

- A Citizens' Congress
- Cleaning Up Government
- Streamlining Government
- Honest Budgets and Real Numbers
- Regulatory Reform
- Restoring Justice to the Courts
- The Nation's Capital
- Americans in the Territories

"On November 8, 1994, the American people sent a message to Washington.... Their message is my mandate: To rein in government and reconnect it to the values of the American people. That means making government a whole lot smaller, a lot less arrogant, and getting it out of matters best left to the states, cities, and families across America."

Bob Dole, March 10, 1995 in Washington, D. C.

We are the party of small, responsible and efficient government, joining our neighbors in cities and counties, rather than distant bureaucrats, to build a just society and caring communities. We therefore assert the power of the American people over government, rather than the other way around. Our agenda for change, profound and permanent change in the way government behaves, is based on the Tenth Amendment to the Constitution:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

For more than half a century, that solemn compact has been scorned by liberal Democrats and the judicial activism of the judges they have appointed. We will restore the force of the Tenth Amendment and, in the process, renew the trust and respect which hold together a free society. As its first initiative enacted into law, the new Republican majority on Capitol Hill launched that effort early in 1995 by forbidding the imposition of new unfunded mandates upon State and local taxpayers. From now on, if official Washington promises benefits, official Washington must pay for them. We will apply that same principle to the ill-conceived Motor-Voter Act, the Democrats' costly invitation to ballot fraud.

To permanently restore balance in the federal system, States must have the proper tools to act as a counterforce to the Federal Government. Our country's founders attempted to carefully balance power between the two levels. The Tenth Amendment, as well as the ability of State legislatures to initiate constitutional amendments, and other constitutional tools given to States to protect their role in the system have now been either eroded away, given away, or rendered impossible to use. Thus, States lack the tools necessary to do their job as a counterbalance to the national government.

We call upon Congress, governors, State legislators and local leaders to adopt structural reforms that will permanently restore balance in our federal system. In this Information Era of uncertainty and rapid change, it is government close to home, controlled by neighborhood and community leaders, that can best respond to the needs and values of all citizens.

As a first step in reforming government, we support elimination of the Departments of Commerce, Housing and Urban Development, Education, and Energy, and the elimination, defunding or privatization of agencies which are obsolete, redundant, of limited value, or too regional in focus. Examples of agencies we seek to defund or to privatize are the National Endowment for the Arts, the National Endowment for the Humanities, the Corporation for Public Broadcasting, and the Legal Services Corporation.

In addition, we support Republican-sponsored legislation that would require the original sponsor of proposed federal legislation to cite specific constitutional authority for the measure.

A Citizens' Congress

Even with these structural changes, a system of government is only as good as the women and men who serve within it. When the voters of 1994 elected Republican majorities in both the House and Senate for the first time in forty years, Capitol Hill had been an institution steeped in corruption and contemptuous of reform. Congressional Republicans

changed things, from the ground up. They:

- applied all laws to Congress, so that those who make the rules will have to live by them;
- slashed congressional spending and cut back the staff on Capitol Hill;
- ordered an unprecedented audit of the House of Representatives, with devastating exposure of the Democrats' four decades of mismanagement;
- streamlined legislative procedures by reducing the number of committees and subcommittees;
- imposed term limits for House committee chairs and Leadership positions - something the Democrats still refuse to do;
- abolished proxy voting in House committees, ending the scandal of absentee Members casting phony votes;
- required any Representative charged indicted of a felony offense to relinquish positions of authority within Congress until cleared of wrongdoing;
- ended the Democrats' secret sessions by opening to the press and the public all committee meetings;
- brought to a vote, in both the House and Senate, a constitutional amendment to impose term limits on Members of Congress. It failed to secure the necessary two-thirds vote in the House, where 80 percent of Republicans voted for it and 80 percent of Democrats voted against it. Every Senate Republican voted to allow a vote on term limits, but the Democrats killed it by a filibuster. It will take expanded Republican majorities in the 105th Congress to send to the States a term limits constitutional amendment; and
- passed historic legislation banning gifts to Members of Congress and their staff.

We will continue our fight against gerrymandered congressional districts designed to thwart majority rule. We will eliminate made-in-Washington schemes to rig the election process under the guise of campaign reform. True reform is indeed needed: ending taxpayer subsidies for campaigns, strengthening party structures to guard against rogue operations, requiring full and immediate disclosure of all contributions, and cracking down on the indirect support, or "soft money," by which special interest groups underwrite their favored candidates.

Cleaning Up Government

In 1992, Bill Clinton promised "the most ethical Administration in the history of the Republic." Instead, the Clinton Administration has been rife with scandal. An unprecedented four Independent Counsels have been appointed since the Clinton Inauguration to investigate various allegations of wrongdoing by members of this Administration. The Clinton White House has abused executive power in both the White House Travel Office firings situation and in the FBI files matter. The FBI Director said there have been "egregious violations of privacy" in the gathering of FBI files of officials who worked in the White House under Republican administrations. We believe that misuse of law enforcement authorities for partisan political ends is no trivial matter. Such abuses strike at the heart of the relationship between citizen and government and undermine the rule of law and confidence in our leaders.

Scandals in government are not limited to possible criminal violations. The public trust is violated when taxpayers money is treated as a slush fund for special interest groups who oppose urgently needed reforms. For example, the Democrats have denied school vouchers for poor children in the nation's capital at the demand of special interest unions. They have blocked urgently needed legal reforms at the command of the trial lawyers, now the biggest source of revenue for the Democrat party. They have rejected reforms to improve the workplace to please union bosses who committed \$35 million to aid the Clinton reelection effort.

It is time to restore honor and integrity to government. We propose to:

- revoke pension rights of public officials who have been convicted of crimes;
- strengthen citizen privacy laws and reform the FBI to guard against the politicization of law enforcement that we have seen by the Clinton White House;
- refuse to allow special interest groups to block innovative solutions for the poor or to block workplace or legal reforms that would help all working Americans; and
- recruit for public service, at all levels, men and women of integrity and high ethical standards.

We will end welfare for lobbyists. Every year, the federal government gives away billions of dollars in grants. Much of that money goes to interest groups which engage in political activity and issue advocacy at the taxpayers' expense. This is an intolerable abuse of the public's money. A Republican Congress will enact legislation, currently blocked by Bill Clinton's congressional allies, to make groups choose between grants and lobbying.

We will establish Truth in Testimony, requiring organizations which receive government funds and testify before Congress to disclose those funds. Our "Let America Know" legislation will force public disclosure of all taxpayer subsidies and lobbying by groups seeking grants. We will permit "private attorney general" lawsuits against federal grantees to ensure better enforcement of anti-lobbying restrictions. A Republican administration will impose accountability on grantees, to reveal what the public is getting for its money, and will end the process of automatic grant renewal. We will halt the funding of frivolous and politicized research grants.

Streamlining Government

Republicans believe we can streamline government and make it more effective through competition and privatization. We applaud the Republican Congress and Republican officials across the country for initiatives to expand the use of competition and privatization in government. It is greater competition - not unchallenged government bureaucracies - that will cut the cost of government, improve the delivery of services, and ensure wise investment in infrastructure. A Dole administration will make competition a centerpiece of government, eliminating duplication and increasing efficiency.

Honest Budgets and Real Numbers

We have a moral responsibility not to leave our children a legacy of monstrous debt. Spending \$1.6 trillion a year should be more than an accounting exercise. Restraining government spending, discussed elsewhere in this platform, is part of the solution. Reforming the entire budget process is the rest of it.

Our goal is clarity, simplicity, and accountability in the nation's budget. The keystone of that agenda is the enactment of a constitutional amendment to require a balanced budget which a majority of congressional Democrats have vigorously opposed. We do not take that step lightly; but then, a \$5 trillion debt is no laughing matter for tomorrow's taxpayers. We vow to offer that amendment again and again, until Congress sends it to the States for ratification.

In addition, we must eliminate all built-in biases toward spending. For example, the "current service baseline" builds in automatic budget increases for inflation and other factors and works like this: If the Democrats want a \$1 billion program to grow to \$2 billion, they then count an increase to \$1.5 billion as a half-billion dollar cut - and the media dutifully reports it as such. This is a deceptive and reprehensible shell game that must be stopped.

A Republican president will fight wasteful spending with the line-item veto which was finally enacted by congressional Republicans this year over bitter Democrat opposition, 120 years after President Grant first proposed it.

Even more important, we will stop the runaway growth of entitlement spending - the programs which automatically grow without any action required by Congress or the President. This spending has jumped 11-fold since 1970 and consumes more than half the federal budget. We will take entitlements off automatic pilot and make Congress accountable for their funding. To end outdated and wasteful programs, we will make the Government Performance and Results Act an integral part of our budget process.

Regulatory Reform

Regulatory reform is needed more than ever. Bill Clinton promised to "reinvent government," but he returned to the old mindset of controls and red tape. To make matters worse, he vetoed a comprehensive regulatory reform bill crafted by Republicans in the House and Senate. That measure will become law when Bob Dole is President.

We commend House Speaker Newt Gingrich and congressional Republicans in their innovative efforts to rescind, overturn and zero-out absurd bureaucratic red tape and rules through the process known as "Corrections Day."

A Republican administration will require periodic review of existing regulations to ensure they are effective and do away with obsolete and conflicting rules. We will encourage civil servants to find ways to reduce regulatory burdens on the public and will require federal agencies to disclose the costs of new regulations on individuals and small businesses. A new regulatory budget will reveal the total cost of regulations on the American people.

We will target resources on the most serious risks to health, safety, and the environment, rather than on politically inspired causes, and will require peer-reviewed risk assessments based on sound science. We will require agencies to conduct cost-benefit analyses of their regulations and pursue alternatives to the outdated Clinton command-and-control approach. These common-sense reforms will restore fairness and predictability to government rules and, even more important, will

enable us to achieve equal or superior levels of protection for the public at lower cost.

Just as important, we recognize that all too often, in its ever-present zeal to expand into every aspect of our daily lives, the federal government intrudes into the private economy by establishing new services in direct competition with already existing private firms. We oppose the use of taxpayer funds to provide a competitive advantage for government agencies seeking to compete with private firms in the free market.

Restoring Justice to the Courts

"When I am president, only conservative judges need apply."

Bob Dole, May 28, 1996, in Aurora, Colorado

The American people have lost faith in their courts, and for good reason. Some members of the federal judiciary threaten the safety, the values, and the freedom of law-abiding citizens. They make up laws and invent new rights as they go along, arrogating to themselves powers King George III never dared to exercise. They free vicious criminals, pamper felons in prison, frivolously overturn State laws enacted by citizen referenda, and abdicate the responsibility of providing meaningful review of administrative decisions.

The delicate balance of power between the respective branches of our national government and the governments of the 50 states has been eroded. The notion of judicial review has in some cases come to resemble judicial supremacy, affecting all segments of public and private endeavor. Make no mistake, the separation of powers doctrine, complete and unabridged, is the linchpin of a government of laws. A Republican Congress and president will restore true separation of powers and guarantee the American people a government of law.

The federal judiciary, including the U.S. Supreme Court, has overstepped its authority under the Constitution. It has usurped the right of citizen legislators and popularly elected executives to make law by declaring duly enacted laws to be "unconstitutional" through the misapplication of the principle of judicial review. Any other role for the judiciary, especially when personal preferences masquerade as interpreting the law, is fundamentally at odds with our system of government in which the people and their representatives decide issues great and small.

No systemic reform of the judiciary can substitute for the wise exercise of power of appointment vested in the president of the United States. A Republican president will ensure that a process is established to select for the federal judiciary nominees who understand that their task is first and foremost to be faithful to the Constitution and to the intent of those who framed it. In that process, the American Bar Association will no longer have the right to meddle in a way that distorts a nominee's credentials and advances the liberal agenda of litigious lawyers and their allies.

Justice is mocked by some of today's litigation practices, which hinder our country's competitiveness, and drain billions of dollars away from productive Americans. While we fully support the role of the judiciary in vindicating the constitutional and statutory rights of individuals and organizations, we believe the proliferation of litigation hits the consumer with higher prices and cripples the practice of medicine. Despite bipartisan congressional efforts to enact legal reforms, Bill Clinton vetoed such legislation at the behest of his financial friends: the trial lawyers. A Republican president will sign that bill, and more. We encourage State governments to adopt reforms similar to those we propose to restore fairness to the federal system:

- strengthen judicial sanctions for lawsuits that are substantially without merit, thereby hitting unethical lawyers in their pocketbooks;
- apply the Racketeer Influenced and Corrupt Organizations law (RICO) as originally intended, to criminal proceedings, not civil litigation;
- award punitive damages on a fair and reasonable basis after clear proof of wrongdoing, with limits that discourage opportunistic litigation. Since punitive damages are intended to punish egregious wrongdoing, a substantial portion of the amount awarded should go to a crime-victim compensation fund or similar program;
- restore limited liability to non-profit organizations - churches, civic and community groups, and the volunteers who sustain them - to provide protection against profit-seeking lawsuits and to encourage volunteerism;
- increase sanctions for abuses of the discovery process used to intimidate opponents and drive up the costs of litigation;
- reform medical malpractice to reduce health care costs and keep doctors practicing in critical areas like obstetrics;
- eliminate the use of "junk science" by opportunistic attorneys by requiring courts to verify that the science of those called as expert witnesses is reasonably acceptable within the scientific community, and forbid the practice

of making their fees conditional upon a favorable verdict. This action will reduce the practice of so-called hired-gun "experts" who make up theories to fit the facts of the case in which they are testifying;

- eliminate joint and several liability in order to ensure that responsible parties pay their "fair share" in proportion to their degree of fault; and
- guard against non-meritorious lawsuits that are designed to have a chilling effect on First Amendment rights.

A federal products liability law goes hand in hand with legal reform. Its absence not only penalizes consumers with higher costs and keeps needed products off the market, but also gives foreign nations a competitive edge over American workers. Bill Clinton doesn't mind that. He vetoed Republican reforms that would have saved the public tens of billions of dollars.

Bill Clinton even vetoed the Securities Litigation Reform Act, a Republican initiative to protect shareholders against avaricious litigation. That obstructionism was too much for even the Democrats in Congress, many of whom joined in overriding his veto. A Republican president will work with Congress to restore justice to the nation's courts and fair play to the practice of law.

The Nation's Capital

The District of Columbia should be an example for the rest of the country. Instead, decades of domination by the Democrat party has left the city bankrupt and dangerous. Its residents - and all Americans - deserve better than that.

We reaffirm the constitutional status of the District of Columbia as the seat of government of the United States and reject calls for statehood for the District.

We call for structural reform of the city's government and its education system. For both efficiency and public safety, we will transfer water and sewer management in the District to the Army Corps of Engineers or to a regional entity.

We endorse proposals by the congressional Republican Leadership for dramatic reductions in federal taxes - and the city's own outrageous marginal tax rate - within the District. Bill Clinton opposes that idea. A Republican president will make it part of a comprehensive agenda to transform the nation's capital into a renewal community, an enterprise zone leading the way for the rest of urban America to follow.

Americans in the Territories

We welcome greater participation in all aspects of the political process by Americans residing in Guam, the Virgin Islands, American Samoa, the Northern Marianas, and Puerto Rico. No single approach can meet the needs of those diverse communities. We therefore emphasize respect for their wishes regarding their relationship to the rest of the Union. We affirm their right to seek the full extension of the Constitution, with all the rights and responsibilities it entails.

We support the Native American Samoans' efforts to preserve their culture and land-tenure system, which fosters self-reliance and strong extended family values.

We recognize that the people of Guam have voted for a closer relationship with the United States of America, and we affirm our support of their right to mutually improve their political relationship through commonwealth.

We support the right of the United States citizens of Puerto Rico to be admitted to the Union as a fully sovereign state after they freely so determine.

We endorse initiatives of the congressional Republican leadership to provide for Puerto Rico's smooth transition to statehood if its citizens choose to alter their current status, or to set them on their own path to become an independent nation.

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SENATE RECORD VOTE ANALYSIS

105th Congress
1st Session
March 19, 1997, 5:45 pm
Page S-2536 Temp. Record
Vote No. 34

GARLAND NOMINATION/United States Circuit Judge

SUBJECT:

Nomination of Merrick B. Garland, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

NOMINATION CONFIRMED, 76-23

SYNOPSIS:

Biographical data is not available.

Those favoring confirmation contended:

Argument 1:

Senators do not question Merrick Garland's suitability to serve as an appellate judge. For Republicans, who have been dismayed at some of the shoddy decisions and judicial activism that have come from judges who were appointed by President Clinton, the **nomination** of someone of this caliber is something of a relief. Nothing in Merrick Garland's record indicates that he will be a judicial activist without respect for the law or the Constitution. Still, many Senators oppose confirmation. Their opposition is based solely on the belief that the position for which he has been **nominated** on the District of Columbia Circuit is unnecessary and should be eliminated. We disagree. In our opinion, our colleagues have been misled by statistics. They have looked at the 12 appellate circuits in America, and have noted that the average number of appeals handled by judges in the District Circuit, 123, is by far the lowest. Also, they have noted that the District Circuit is one of the largest in terms of the number of judges it is authorized to have (12; 2 of the seats are now vacant). From these facts they have made the simple, and wrong, assumption that the judges on the District Circuit are underworked. They then say that judges from other circuits agree with them, and that we should not fill either of the current vacancies. In response to these arguments, District Circuit judges have higher than average numbers of complex cases to consider. For other circuits, large percentages of the cases that they hear are frivolous suits from prisoners that can be dismissed quickly; District Circuit judges hear few such cases. Instead, they hear disproportionately high numbers of complex administrative cases that take a great deal of time to consider. As for the argument that judges on other circuits have said that it is better to operate with few judges and high caseloads, we note that the judges on the District Circuit disagree. They believe 11 judges are necessary. Basically, they agree that their caseload has declined, so they should be reduced from 12 judges to 11 judges, but they do not believe that they should go below that number. We defer to their judgment.

Those arguments aside, we also need to make a few comments about the pace at which Republicans have been considering President Clinton's judicial nominees from the 104th Congress through the present. We need to make these comments because Democrats have been twisting the statistics on that pace in a disingenuous, deceptive manner. Their argument is that Republicans are stalling the approval of judicial nominees for vacant posts, and as a result we are reaching a crisis situation in the ability of Federal judges to handle the caseload. Their argument is based on the low number of judges confirmed in the 104th second session and the fact that only 2 judges have been reported by the **Judiciary Committee** this year. By themselves, these facts seem to show that Republicans are

refusing to consider Clinton nominees, but when one looks at the rest of the picture one finds that these facts in isolation present a gross distortion of reality. The first fact our Democratic colleagues ignore is that it is not possible to confirm people unless they have been **nominated**. Last year President Clinton **nominated** only 21 judges, and the Senate confirmed 17 of them. The second fact our Democratic colleagues ignore is that during President Clinton's first term more judges were confirmed (202) than were confirmed under President Bush (194), President Ford (65), or President Reagan in his first term (164). Seventy-five of those judges were confirmed by the Republican-led 104th Congress, and nearly all of them were confirmed by voice vote. The third fact that our Democratic colleagues ignore is that the reason that the 104th Congress filled less vacancies than the 103rd is that there were fewer vacancies. In the 103rd Congress, President Clinton so loaded up the judiciary with his activist judges that the vacancy rate at the close of the 103rd Congress was just 7.44 percent, which the Justice Department bragged as being equal to a "full employment" level for the Judiciary. It certainly was much lower than the 14.89 percent and 12.88 percent rates at the start of the 102d and 103rd Congresses, after Democratic Senates had finished dealing with Republican nominees. Are our Democratic colleagues prepared to say that those numbers show that they were stalling, or perhaps do they admit that just looking at that one measure results in a facile analysis? We look at each situation, and we look at all parts of the situation. For instance, we are not prepared to say that Senator Biden played politics by having a much higher vacancy rate at the end of the 102nd, when he was Chairman of the **Judiciary Committee**. Instead, in his defense, we note that he recommended increasing the number of Federal judges by 84 when President Reagan was in office, knowing full well that President Reagan would **nominate** conservative judges, and many of the nominees who were not considered in the 102nd Congress were **nominated** too late to be considered. These facts indicate that the high vacancy rate statistic is not proof of political gamesmanship. The fourth fact that our Democratic colleagues ignore is that at the end of the 104th Congress the vacancy rate had not effectively changed from the rate at the end of the 103rd; instead of 63 vacancies, there were 65. In other words, Republican Senators did not do to a Democratic President what Democratic Senators did to Republican Presidents; the vacancy rate did not climb to 13 percent or 15 percent, it stayed at what the Justice Department calls "full employment." The fifth fact that our Democratic colleagues ignore is that normal attrition and the Senate's schedule have always resulted in an increase in vacancies at the start of a Congress. During the many-month span from a Congress' adjournment until the **Judiciary Committee** starts reporting nominees (usually in April), vacancy rates naturally climb. This year, the **Judiciary Committee** is way ahead of schedule compared to prior, Democrat-controlled Congresses, when the first nominee **hearings** typically were not even held until mid-March or April. The vacancy rate of course has risen from its 7.7 level at the end of the 104th; any other result would have been impossible.

Though the charge that Republicans have delayed judicial nominees is demonstrably false, we daresay that the American people may have been better served if it were true. Justice was not served by the Clinton judge who went easy on a criminal because the woman murdered by that criminal did not suffer enough, nor was it served by the Clinton judge who said that a bomb was not really a bomb because it failed to detonate and kill anybody, nor was it served when a Clinton judge in New York (Judge Baer) went to herculean lengths to exclude evidence in a major drug case. When we Republicans have criticized these decisions, President Clinton's response has been that we have no right to criticize because we voted in favor of confirmation. If that is the standard that he wishes to use, then so be it. We will not follow the traditional practice of deference if he is going to imply that our confirmation votes are the equivalent of endorsements of his nominees' extremist views. We will subject his nominees to greater scrutiny, and we will vote against activist judges.

As we said at the outset, however, this particular nominee does not fall into this category. We intend to consider each nominee on his or her merits. Merrick Garland deserves confirmation, and we will vote accordingly.

Argument 2:

Republicans have no reason to oppose this nominee. They just do not want to confirm any judges. Since they took over Congress they have gone to great lengths to block the confirmation of all judges. Last year, they slowed the number of confirmations down to a trickle. Only 17 judges were confirmed. In contrast, when the Senate has had Democratic majorities and the White House has had Republican Presidents, Democrats have always been willing to consider and confirm much larger numbers of nominees. Democrats have not played politics with the judiciary; they understand that partisan disagreements should not be allowed to keep judicial posts unfilled. The Republican filibuster against judges has only grown in this Congress--so far, not one single judge has been confirmed. As a result, we are reaching a crisis situation in courts around the country. The remaining judges are having an increasingly difficult time in handling the caseload. Republicans publicly deny that they are stalling on **nominations**, but privately some of them have told us that what they want is an agreement that they be allowed to pick a certain percentage of the nominees; they do not want just "Democrat" judges to be put on the bench. We will not agree to that unprecedented demand. We urge the confirmation of Merrick Garland, and we urge our Republican colleagues to stop blocking the confirmation of other deserving nominees.

Those opposing confirmation contended:

In our opinion, Merrick Garland is qualified to be a Federal judge. We only oppose his **nomination** because he has been **nominated** for an unnecessary post. The District Circuit currently is operating well with 10 judges; another judge is not needed. The fact that this

circuit is authorized to have 12 judges is irrelevant; the question Senators need to consider is whether it needs more than 10 judges. We have been studying this matter very closely for the past 2 years and have come to the firm conclusion that it does not. The first point that must be made is that the District Circuit has by far the lowest caseload per judge in the country, at just 123 cases per judge. The next lowest is the tenth circuit, at 216 cases per judge. The highest caseload, 575, is in the 11th Circuit. The average caseload around the country is three times higher than it is in the District Circuit. In response to this fact, our colleagues have countered that the District Circuit has to hear a disproportionately high number of complex regulatory cases. Granted, but we note that many other types of cases that are disproportionately considered in other districts are equally or even more complex. For instance, the Eleventh Circuit has to hear a large number of complex criminal cases involving international drug smuggling, and the Second Circuit has to consider a disproportionate number of commercial litigation cases. The next argument made by our colleagues is that they are willing to reduce the number of judges on the District Circuit to 11, but not to 10. They note that last year the former chief justice of that circuit said that the decline in caseload from the mid- 1980s justified that decrease. However, our colleagues should also be aware that in this last year the number of cases considered has dropped by another 15 percent, and the number of regulatory cases our colleagues say are so complex has declined by 23 percent. Our colleagues should also be aware that the court is not really at 10 judges, because one of the recently retired judges has gone on senior status, which means that he will hear nearly a full complement of cases but he will not assume responsibility for administrative work. In effect, the District Circuit is now at 10.5 judges. In our opinion, the facts just do not support the conclusion that we should pay the approximately \$1 million yearly cost of appointing another judge to the District Circuit. Without any prejudice against Merrick Garland, we cannot support his confirmation to this unnecessary post.

VOTING YEA:

Republicans:

(32 or 58%) Abraham Bennett Bond Campbell Chafee Coats Cochran Collins D'Amato DeWine Domenici Gorton Hatch Hutchison Inhofe Jeffords Kempthorne Lugar Mack McCain Murkowski Roberts Roth Santorum Smith, Bob Smith, Gordon Snowe Specter Stevens Thomas Thompson Warner

Democrats:

(44 or 100%) Akaka Baucus Biden Bingaman Boxer Breaux Bryan Bumpers Byrd Cleland Conrad Daschle Dodd Dorgan Durbin Feingold Feinstein Ford Graham Harkin Hollings Inouye Johnson Kennedy Kerrey Kerry Kohl Landrieu Lautenberg Leahy Levin Lieberman Mikulski Moseley-Braun Moynihan Murray Reed Reid Robb Rockefeller Sarbanes Torricelli Wellstone Wyden

VOTING NAY:

Republicans:

(23 or 42%) Allard Ashcroft Brownback Burns Coverdell Craig Enzi Faircloth Frist Gramm Grams Grassley Gregg Hagel Helms Hutchinson Kyl Lott McConnell Nickles Sessions Shelby Thurmond

Democrats:

(0 or 0%)

NOT VOTING:

Republicans:

(0)

Democrats:

(1) Glenn-2

ABSENCE CODE: 1-Official Business 2-Necessarily Absent 3-Illness 4-Other
Symbols: AY-Announced Yea AN-Announced Nay PY-Paired Yea PN-Paired Nay

Compiled and written by the staff of the Republican Policy Committee

Larry E. Craig, Chairman

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SENATE RECORD VOTE ANALYSIS

102d Congress
1st Session
October 15, 1991, 6:03 p.m.
Page S-14704 Temp. Record
Vote No. 220

THOMAS NOMINATION/Confirmation

SUBJECT:

Nomination of Clarence Thomas, of Georgia, Judge on the U.S. Circuit Court of Appeals for the District of Columbia Circuit, to serve as an Associate Justice of the United States Supreme Court. Confirmation.

NOMINATION CONFIRMED, 52 - 48

SYNOPSIS:

Clarence Thomas was born on June 23, 1948, in Pin Point, Georgia. He received his bachelor of arts degree from Holy Cross College in 1971, and his juris doctor from Yale Law School in 1974.

From 1974 to 1977, the nominee served as an assistant attorney general for the State of Missouri. He then worked from 1977 to 1979 for the Monsanto Company, located in Saint Louis, Missouri. From 1979 to 1981, Judge Thomas was a legislative assistant for U.S. Senator John C. Danforth, of Missouri. In 1981 he served for two months as a consultant to the Office of Civil Rights, U.S. Department of Education, and for ten months as Assistant Secretary for Civil Rights, U.S. Department of Education. From 1982 to 1990, Clarence Thomas served as Chairman of the Equal Employment Opportunity Commission. In 1990, President Bush appointed Judge Thomas to the United States Court of Appeals for the District of Columbia, a position he held for 17 months before his **nomination** to the Supreme Court.

Those favoring the nomination contended:

Judge Thomas has succeeded in life against tremendous odds. Born in rural poverty, he overcame racist stereotypes, rising to serve in numerous positions of great public trust. He has worked in private practice, state government, and all three branches of the Federal government. He has been confirmed by the full Senate four times to positions of immense responsibility. His life history and diversity of experience will bring a new and broad perspective to the Court that will greatly enrich it.

Judge Clarence Thomas was born June 23, 1948, in Pin Point, Georgia, a rural community near Savannah. His father left the family when Judge Thomas was still a small child. At the age of seven, he went to live with his grandparents. They instilled in him the values of hard work, discipline, and self reliance. He attended a parochial school run by Franciscan nuns, who taught him not to accept discrimination. They challenged him to prove that racist stereotypes about black people were wrong, and he rose to the occasion with outstanding scholarship. His strong religious values initially led him to the Immaculate Conception Seminary, where he began preparing for the priesthood. After a brief period of study, he decided instead to pursue a career in public service, and transferred to Holy Cross College. He graduated with honors in 1971, and then proceeded to Yale Law School, one of the premier law schools in the country, from which he graduated in 1974.

Following graduation, Judge Thomas embarked on a distinguished legal career, marked by a dedication to public service. He was hired in 1974 to work as an assistant attorney general for the State of Missouri. He practiced in both the trial and appellate courts, arguing several cases before the State Supreme Court. In 1977, he worked for the Monsanto Company, where his expertise in contract law, antitrust law, environmental regulation, and product liability was highly valued. He left the Monsanto Company in 1979 to work for two years as a legislative assistant for U.S. Senator John C. Danforth, of Missouri. Judge Thomas was then appointed by President Reagan and confirmed by the Senate to be the Assistant Secretary for Civil Rights at the United States Department of Education. One year later, he was **nominated** and confirmed to serve as the Chairman of the Equal Employment Opportunity Commission (EEOC), which employs more than 3,100 people and has an annual budget of \$180 million. During Judge Thomas' tenure at the EEOC, he performed a management miracle, transforming an inefficient and dispirited agency into an effective and dynamic enforcer of civil rights laws. He was reconfirmed to the post in 1986, and served until 1990, the longest tenure of any EEOC Chairman.

Judge Thomas left the EEOC when he was **nominated** by President Bush and confirmed by the Senate to serve on the United States Court of Appeals for the District of Columbia, the second highest court in the Nation. During his time on the bench, he has written opinions in such areas as criminal law, antitrust law and trade regulation, constitutional law, and administrative law. He has participated in more than 140 decisions of the court. His opinions have been lucid and scholarly. None of his decisions have been reversed, either by the District of Columbia Circuit en banc or by the U.S. Supreme Court.

In explaining why he chose to practice law, Judge Thomas said he wanted to help disenfranchised minorities and individuals gain access to this society. Very few people quarrel with this lofty goal, but some do object to the manner in which Judge Thomas advocates providing access. The judicial restraint that has been espoused by Judge Thomas is antithetical to some Senators' views. These Senators, while admitting that Judge Thomas is eminently qualified to serve on the Supreme Court, suggest that he should be opposed simply because he is not a judicial activist.

In order to advance their own political agenda, they are willing to abandon the long-standing, constitutional principle of presumption in favor of the nominee. Simply stated, this presumption posits that the President chooses who should serve on the Court, and the Senate decides only if the nominee has the legal ability, temperament, and integrity needed to serve effectively. Presidential primacy in making judicial appointments is reflected in the structure of the Constitution itself; the appointment power is listed in the executive powers, not in the legislative powers. Until very recently, nominees were not even questioned by the Senate or the **Judiciary Committee**. When questioning did begin, it was, at first, perfunctory. Justice White, for example, who was appointed to the Supreme Court in the early 1960's, had only eight questions asked of him. For 200 years the principle of presumption in favor of the President's nominee, with rare exceptions, has been followed. Some Senators point to these rare exceptions, such as the defeat of Judge Robert Bork, to justify their abandonment of this principle. However, the fact that the Senate has acted in disregard for the Constitution in the past is no excuse for irresponsible behavior now.

Although the Supreme Court has been historically apolitical, its actions in recent years have made Senate challenges to presidential primacy in making appointments to the Court much more frequent and strident. In the past 30 or 40 years, a number of Supreme Court Justices have shown a definite proclivity for discovering new constitutional principles whenever they disagree with a Federal law or regulation. These judges have shown little or no regard for congressional intent or prior Supreme Court decisions in dispensing their edicts on "unenumerated" constitutional rights. Their decisions are much more properly characterized as legislation rather than as adjudication. Liberal Senators are delighted by the Supreme Court's usurpation of legislative power, because its legislative decisions have almost exclusively favored liberal causes. These Senators, in turn, usurp presidential powers by inquiring into both the likelihood that nominees will be activists and the opinions of nominees on various issues. Their clear, and unconstitutional, goal is only to confirm nominees who will continue to rewrite Federal laws and the Constitution to please liberal interest groups.

The American people do not want the appointment of Supreme Court Justices to be a political issue. They, and we, believe that Justices should not be perceived as, nor be, policy makers. President Bush likewise agrees, which is why he campaigned on the promise to appoint only those individuals who will interpret the law, rather than create it. With the **nomination** of Judge Clarence Thomas, President Bush is keeping his promise.

Judge Thomas's testimony made plain that he views the role of the courts, correctly, as that of interpreting the law, not making it. Moreover, while he opposes any approach that would unduly limit access to the courts, he will also scrutinize cases carefully to ensure that the Article II requirement of a genuine "case or controversy" is met. We are confident Judge Thomas will interpret the law according to its original meaning, rather than substitute his own policy preferences for the law.

Judge Thomas's judicial philosophy is well within the mainstream of contemporary constitutional thought. In testimony before the Committee, he demonstrated a keen grasp of constitutional issues as well as a definite independence of thought. For instance, he asserted that there is a privacy component to the fourteenth amendment, which is anathema to conservatives, he supported affirmative

action as constitutional as long as it did not approve of lowering standards for certain groups, he disagreed with Chief Justice Rehnquist's belief that *stare decisis* carries greater weight in rulings regarding property rights, and he stated that while natural law informs the Constitution, positive law should be the basis for constitutional analysis. We found all his views to be both responsible and well reasoned.

Some Senators find the prospect of yet another responsible jurist being appointed to the Supreme Court disquieting. Liberals in the Senate are fearful of traditional judges like Judge Thomas, who look askance at the Supreme Court's recent willingness to legislate. Should Judge Thomas' view once again dominate the Court, unpopular positions, which they know they cannot pass into law, will no longer be "found" to exist in the Constitution. Furthermore, many of the Supreme Court's most egregious decisions will certainly be reviewed.

These Senators' fear of Judge Thomas has led them to distort his views and launch an abominable assault on his ability, temperament, and integrity. For more than 100 days, Judge Clarence Thomas and a parade of witnesses were summoned to appear before the **Judiciary Committee**. Public interest groups campaigned vigorously against his confirmation. He was unmercifully and unethically grilled for not voicing an opinion on several specific cases.

The most egregious questioning came on his opinion of the *Roe v. Wade* ruling, which declared that women have the right to have abortions. Any statement by Judge Thomas either favoring or opposing this case would have been extremely unethical. This case is easily the most controversial court decision of recent years, and it almost inevitably will be revisited by the Supreme Court. If he addressed himself to the issue now, and later a specific case were brought before the court for review, he would already in essence have declared his opinion before hearing the facts of the case. Asking Judge Thomas to answer now is analogous to a lawyer asking a prospective juror, if he is impaneled, if he will find the defendant guilty. Any lawyer behaving in this manner would be reprimanded.

We were also dismayed by his critics' vociferous attacks on his view of natural law. Judge Thomas has consistently cited natural law as the basis for the drafting of the Constitution. The Constitution, in turn, serves as the positive law upon which all other U.S. law is based. His critics have seized on these statements to make the unwarranted claim that he would invoke natural law to rewrite parts of the Constitution which he finds objectionable. When Judge Thomas stressed during the **hearings** that he believed that constitutional analysis should be based on the positive law of the Constitution, many Senators chose to ignore his statements and continued with their attempts to popularize their own erroneous characterization of his views. We find it the height of hypocrisy that many of the same Senators who castigate Judge Thomas for speaking favorably of natural law were equally strident in their condemnation of Judge Bork during his confirmation **hearings** a few years ago, when he denied the validity of using the concept of natural law in constitutional analysis. These Senators obviously are not concerned with whether or not nominees believe in natural law; they only hope to use the issue to bludgeon nominees they fear may be hostile to liberal judicial activism. Some Senators' fascination with the conservative views espoused by Judge Thomas when he was an administration official demonstrate their inability to distinguish between policy and adjudicatory roles. Administration officials should not be neutral; it is their duty to support certain positions. To contend that his statements when he was with the Reagan and Bush Administrations prove that he will not be open-minded as a Supreme Court Justice is patently unfair. The assumption is that he will be as unscrupulously active in advancing conservative views as liberal judges have been in advancing their ideologies. His record on the District of Columbia Court of Appeals clearly refutes this contention. He has approached every case on its merits, without bias. The result has been the enviable record of not having even one of his decisions overturned.

A few Senators have chosen to question Judge Thomas' suitability for the U.S. Supreme Court on the traditional grounds of ability, temperament, and integrity. They quote groups that are openly hostile to Judge Thomas on philosophical grounds to denigrate his legal abilities, but ignore the many impartial groups that have praised his legal expertise. They claim that it would be a mistake to appoint anyone to the Court whose tenure as a judge has been so short, yet they ignore the fact that two of the current Supreme Court Justices never even served as judges before their appointments to the Court. Totally ignored by his critics is his long record of service in all three branches of the Federal Government, State government, and private industry. On the issue of temperament, hostile Senators were initially content to claim Judge Thomas' conservative views would make it impossible for him to serve impartially. More scurrilous accusations were left to be leveled by outside groups, and only alluded to by Senators. Probably the worst of these was the bigoted statement by Governor Wilder of Virginia that implied Judge Thomas would ignore the Constitution and follow the Pope. This accusation quickly lost currency among hate-mongers when it was revealed that Judge Thomas attends Episcopalian services. On the issue of integrity, hostile Senators also were initially restrained, confining their criticism to doubting his sincerity when he said he would approach all cases with an open mind.

The weekend before the vote on Judge Thomas' **nomination**, however, all restraint was abandoned. A secret charge of sexual harassment, which had been investigated and found to be without merit, was illegally leaked to the press by a person or persons associated with the **Judiciary Committee**. The clear intent of the leak was to derail the **nomination**, which at that point everyone conceded was a virtual fait accompli.

One month prior to the leak, the Senate **Judiciary Committee** was informed of the charge of sexual harassment against Judge Thomas. Professor Anita Hill, the individual making the charge, was persuaded by Senate staff to level the accusation, but she did so reluctantly. She did not want to appear before the Committee, and she did not want her accusation to be made public. The Committee complied, and had the FBI conduct a secret investigation. After reviewing the FBI report, the Committee wisely determined the charge was not credible, and did not warrant further investigation.

A charge of this nature is extremely serious. Simply making such an accusation immediately raises doubts as to the character of both the accuser and the accused. In this case, the alleged harassment occurred ten years ago, and there were no witnesses to the harassment. The charge could not be proven one way or the other; doubts could never be dispelled. Everyone realized that if the charge were made public, both Professor Hill and Judge Thomas would be victims of character assassination.

The last-minute leak was a shrewd, calculated attempt to give Senators who opposed Judge Thomas but did not dare vote against him the excuse they needed to vote against confirming him. Racism is a sad fact of life in America. Many people, when they hear that a black man has been accused of a sex crime, automatically assume he is guilty. The vast majority of lynchings of black men have in fact been committed because of supposed sex crimes. It is absolutely irrelevant that Anita Hill is also black. When many voters hear that a black man has been accused, they assume he is guilty, and they will support any Senator who opposes a black man so accused.

The leak achieved its initial goal, which was to delay the vote. Public **hearings** were scheduled, at which Professor Hill, now that she had been publicly exposed, agreed to testify. Professor Hill's testimony was shocking and lurid, and were it true would certainly be grounds for opposing Judge Thomas. However, rather than discuss the charge, some Senators attempted to turn the **hearings** into a public referendum on the subject of sexual harassment. The attitude of some Senators was that any woman who alleges sexual harassment is telling the truth because it is so difficult for a woman to publicly accuse someone. First, they insisted that the charges were true because there was no apparent motivation for her making them, and then when several likely motivations were advanced by people who worked with both Professor Hill and Judge Thomas, they said that it was outrageous that anyone would dare to challenge her motivation. If we dared to question her testimony, they said, then other women who are victims of sexual harassment will be afraid to come forward.

We emphatically disagree with our colleagues. We saw the purpose of the **hearings** as a chance to assess the validity of Anita Hill's charge, not as an opportunity to conduct a kangaroo court that would prove our sympathy for women who have been sexually harassed. Frankly, our examination of her charge has led us to believe that it is without merit. All evidence is circumstantial on both sides, but it overwhelmingly favors Judge Thomas.

Professor Hill alleges that Judge Thomas harassed her in 1982 at the Department of Education. The supposed harassment stopped for one month, during Judge Thomas' transfer to the EEOC. Anita Hill also chose to go to the EEOC where she could continue to work for Judge Thomas, at which time she alleges the harassment resumed for a brief period. Following her tenure at the EEOC, Professor Anita Hill continued a cordial relationship with Judge Thomas. She called him on numerous occasions, invited him to speak at her university, dined with him, and on one occasion drove him, alone, to the airport. Upon hearing of his **nomination** to the Supreme Court, she spoke effusively for half an hour in his favor. Approximately one month later she made her charge.

This charge is totally inconsistent with her behavior as she described it and as witnesses corroborated it. She claims that she followed Judge Thomas to the EEOC because she feared she would lose her job at the Department of Education, but witnesses testified that she knew she was a Schedule-A employee, and thus could not be terminated. She never once filed a complaint, even though, as a Yale Law School graduate familiar with civil rights law, she would have known that her complaint would be confidential and she would not suffer any retaliation for filing a complaint. None of the four witnesses who testified on Professor Hill's behalf knew Judge Thomas, and one barely even knew her. On the other hand, witnesses who knew them both universally supported Judge Thomas. These witnesses contended that Professor Hill was either delusional or lying, and suggested several likely explanations for her allegations. They portrayed her as an aggressive woman, who was likely retaliating against Judge Thomas for not giving her a promotion she coveted. They suggested that she had a "crush" on Judge Thomas, and might be attempting to get even with him for his marrying another woman. Another possible motivation given was that she might want to block his **nomination** because she has strong ideological differences with him.

Where they castigated Professor Hill, they had only praise for Judge Thomas. He was extremely sensitive to women's rights, and he insisted on the strictest propriety in all office conduct. Foul language was absolutely forbidden. He was particularly sensitive to the use of foul language because he was intent on avoiding the racist stereotype that black men are obsessed with sex. No one who knew Judge Thomas felt that it was possible for him to make the statements attributed to him by Professor Hill.

Judge Thomas reacted angrily to the charge leveled by Anita Hill, as well he should have. This eminently qualified man had already endured a relentless assault on his character by some Senators, who attacked his philosophy, ability, integrity, and temperament. When it became apparent that they could not stop his **nomination** on its merits, someone connected to the **Judiciary Committee** released this baseless charge in an attempt to pillory him with public opinion. Anyone treated the way Judge Thomas was would deserve to be outraged. The Senate reached a new low in its attacks on Judge Thomas. The only way it can go any lower is to vote against him.

Those opposing the **nomination** contended:

Argument I:

To be confirmed to the Supreme Court, we believe that nominees must demonstrate the integrity, judicial temperament, and professional competence that is expected of Supreme Court justices. In addition, we believe that the Senate has a duty to ensure that nominees to the U.S. Supreme Court will add to the diversity of judicial philosophy found on that panel. After a thorough review of Clarence Thomas's record, and after extensive **hearings**, we have come to the conclusion that, while otherwise fit to serve, Clarence Thomas's constitutional views are already overrepresented on the Court, and on this basis his **nomination** should be rejected.

Over the course of his professional life, Clarence Thomas has expressed views that align him with ultraconservatives who are seeking to fundamentally alter our society. The constitutional philosophy set forth in these views, if followed by the Supreme Court, would result in radical changes in the relationship between Americans and their government.

The issue of property rights is one area of constitutional law on which Clarence Thomas has presented extreme, ultraconservative views. He has advocated a return to an abandoned, expansive view of economic and property rights that limits the ability of Government to regulate businesses and corporations. Were his views in this area to prevail, it would prove much more difficult to protect the environment, workers, and public health and safety. Rather than deferring to legislative intent, the Court would subject laws regulating business to close, and harsh, review.

Where Clarence Thomas has advocated greater property rights, he has been in favor of restricting individual rights. We are particularly concerned over his unwillingness to state clearly whether the unenumerated right to privacy guarantees women the right to have abortions. His past statements, in which he praised certain constitutional analyses attacking this right, have given us pause, and he has been unable or unwilling to reassure us on this point. He has, perhaps correctly, refused to give us his candid opinion of *Roe v. Wade* ruling, which recognized women's constitutional right to have abortions. However, that ruling aside, we have a duty to assess how he views the right to privacy. Under questioning, he acknowledged that the Fourteenth Amendment does contain an unenumerated right to privacy, but he did not acknowledge this right separately from the equal protection clause. Furthermore, he has attacked the use of the Ninth Amendment to defend individual liberties as potentially open for abuse, and has on numerous occasions indicated a marked willingness to allow the Government to intrude into the most intimate of family matters. During questioning, he distanced himself from remarks he has made over his professional career in favor of restricting personal liberties, but on constitutional points he was not forthcoming. Similarly, when asked to comment on the freedom of speech implications of *Rust v. Sullivan*, which restricted medical workers receiving Government funding from discussing abortion with their patients, he merely stated that the issue was a matter of concern, without repudiating the Court's analysis.

Similarly, Judge Thomas has given us no clear indication of how he views recent and long-standing Supreme Court decisions on civil rights. He stated during his confirmation **hearings** that he did not object to the middle-tier standard of review for sex discrimination cases, or to the even more stringent "strict scrutiny" review employed in race discrimination cases. His assurances conflict with his praise of others' comments that reinforce sexual stereotypes and are highly critical of affirmative action programs. In the case of affirmative action, his past statements are even critical of the constitutional analysis used by the Supreme Court to support it.

Throughout his testimony, Judge Thomas stressed the importance of understanding the extremely different natures of his administrative and judicial roles. As an administrator, he was a policy advocate, and as a judge, he has been a neutral arbiter, bound by law and precedent. His performance in both roles has indeed been exemplary. However, the role of a Supreme Court justice is considerably different from that of an appellate judge. Where he has in his current role appropriately deferred to the opinions of the Supreme Court, Judge Thomas, if he were confirmed, would be writing the decisions to which others would defer. The ultraconservative viewpoints he has suppressed as an appellate judge would in all probability resurface on the Supreme Court, where we already have too many conservative jurists.

We totally reject the notion advanced by some of our colleagues that the Senate should play a secondary role in the **nomination** process. We are told that the Senate's powers of advice and consent are limited to determining the competence, integrity, and judicial

temperament of a presidential nominee. Historically, this has not always been the case. Nominees have appropriately been rejected because of their ideology. Furthermore, whenever one political party has controlled the White House for an extended period of time, Presidents have recognized their responsibility to **nominate** some people of opposing viewpoints. Sadly, the past two administrations have seen fit to **nominate** only conservatives. At this point, we cannot support another conservative on the Supreme Court. For this reason alone, we oppose his appointment to the Supreme Court.

ARGUMENT II:

Some of us agree with the above assessment, others believe that the Senate should be concerned only with suitability, not competence, while still others are quite comfortable with the conservative philosophy of the nominee. We concur in the belief, however, that Clarence Thomas does not possess the competence, judicial temperament, or integrity needed to serve on the highest court.

For some of us, the decision was very close; for others there was no question. Some of us found him lacking in only one of the criteria listed, while others found his **nomination** to be totally without merit. We present our concerns here, with the caveat that not all of the views expressed are shared by all Members who oppose Judge Thomas's **nomination** on these traditional grounds.

On the issue of competence, we were distressed by his weak legal credentials. He practiced law for only five years, until age 31. He does not have an extensive record of scholarship or expertise in any area of law, and he served as a judge for a mere 17 months. An analysis done by the National Association for the Advancement of Colored People found him to be less qualified than the last 48 Judges who were appointed to the bench. We are told by Clarence Thomas's supporters that he has tremendous capacity for growth, but we believe that it would be a mistake to confirm a nominee whose most impressive legal credential is his capacity for growth.

Of particular concern to us is his muddled view of natural law. For years, he has sung the praises of this nebulous concept, and he testified that he believes that it forms the foundation of our Constitution. However, he also testified that he would not use natural law in constitutional analyses except as an historical factor in analyzing the positive law of the text. The minor role he claims he will accord to natural law certainly conflicts with his effusive support for it in the past. Perhaps his views are moderating, or perhaps he does not have any clear idea of how to approach constitutional questions. Either way, we expect nominees to our Nation's highest court to have a firmer approach to constitutional analysis than this nominee has demonstrated.

Another possible, and greatly disturbing, explanation for Judge Thomas's testimony on natural law is that perhaps he was only telling us what we wanted to hear. He understood that his past statements on natural law had engendered a great deal of concern among Senators, and he may have been attempting to assuage our fears by misrepresenting his true position. By the candidate's own testimony, he has often done this in the past. In public speeches, he has often praised people and opinions to which he was personally opposed in order to curry favor with his audience. While such a practice was arguably appropriate when Thomas was expected to express certain views as an Administration official, it is highly inappropriate behavior for a judge. As a sitting appellate judge, he has displayed a proper judicial temperament. He has remained open-minded on all issues, and has shown proper deference to precedent. Now that he is a Supreme Court nominee, his disingenuous testimony seems to indicate that he is reverting to his old role of policy advocate.

Our faith in his judicial temperament was more seriously undermined by his response to the serious allegations of sexual harassment that were leveled against him by Professor Anita Hill. Frankly, his handling of the charges was appalling. He refused to listen to her heartfelt, extremely credible testimony. Instead, his sole defense was to launch a histrionic attack against the integrity of the Senate for its failure to keep the allegations secret, and to claim we were engaged in a "high-tech lynching of an uppity black man." Considering his abject record on civil rights, we found this attempt to obfuscate the issue by claiming racism outrageous. These charges, leveled by an African-American woman against an African-American man, obviously have nothing to do with racism. We are all aware that a staff member or Senator on the **Judiciary Committee** is responsible for leaking these allegations to the press, thus irrevocably sully the reputations of both Judge Thomas and Professor Hill, but we are also aware that we are all not guilty. We condemn in the strongest possible terms the leak, but at the same time we condemn Judge Thomas' indictment of us as a body. We are guilty of no impropriety. The **hearings** were fair, and the investigation of Professor Hill's allegations was fair. His statement to Senator Metzenbaum that God was his judge, not the **Judiciary Committee**, was itself so intemperate and contemptuous of the Senate as to cause us to oppose his **nomination**.

Every Senator agrees that if the charges Professor Anita Hill made are true, Judge Thomas should not be elevated to the Court. We believe they are true. She was a very reluctant witness, and we are truly sorry that she had to endure the humiliation to which she was subjected. Her testimony, which was supported by four witnesses, was dispassionate and convincing. She came forward at great personal sacrifice, because she knew that a man capable of inflicting the type of abuse that Judge Thomas inflicted on her should not be on the Supreme Court. Professor Hill had nothing to gain by fabricating these charges. The aspersions and innuendos cast by some

Senators against her name are without merit, and send a chilling message to all women who are victims of abuse--keep quiet, or your character will be questioned. Professor Hill was forced to endure suggestions that she was a scorned woman, that she was trying to get even because she did not get a desired promotion, that she fabricated the story because of ideological differences with Thomas, and that she was suffering from delusions. Some Senators have suggested that, while we may believe the Professor, we cannot oppose Judge Thomas because it is impossible for us to prove or disprove the charges. Ultimately, because there were no witnesses, it is his word against hers. This logic is flawed. The presumption of innocence is for people who face incarceration; it is not for people seeking prestigious appointments. We should not, and will not, appoint anyone to the Supreme Court who in all probability is guilty of sexual harassment.

VOTING YEA:

Republicans:

(41 or 95%) Bond Brown Burns Chafee Coats Cochran Cohen Craig D'Amato Danforth Dole Domenici Durenberger Garn Gorton Gramm Grassley Hatch Hatfield Helms Kassebaum Kasten Lott Lugar Mack McCain McConnell Murkowski Nickles Pressler Roth Rudman Seymour Simpson Smith Specter Stevens Symms Thurmond Wallop Warner

Democrats:

(11 or 19%) Boren Breaux DeConcini Dixon Exon Fowler Hollings Johnston Nunn Robb Shelby

VOTING NAY:

Republicans:

(2 or 5%) Jeffords Packwood

Democrats:

(46 or 81%) Adams Akaka Baucus Bentsen Biden Bingaman Bradley Bryan Bumpers Burdick Byrd Conrad Cranston Daschle Dodd Ford Glenn Gore Graham Harkin Heflin Inouye Kennedy Kerrey Kerry Kohl Lautenberg Leahy Levin Lieberman Metzenbaum Mikulski Mitchell Moynihan Pell Pryor Reid Riegle Rockefeller Sanford Sarbanes Sasser Simon Wellstone Wirth Wofford

NOT VOTING:

Republicans:

(0)

Democrats:

(0)

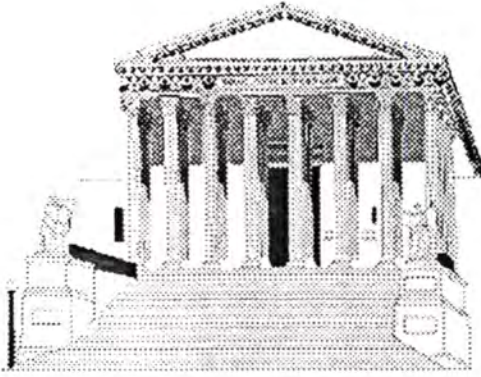
ABSENCE CODE: 1-Official Business 2-Nec. absent 3-Illness 4-Other

Symbols: AY-Announced Yea AN-Announced Nay PY-Paired Yea PN-Paired Nay

Compiled and written by the staff of the Senate Republican Policy Committee

Don Nickles, Chairman

TOP ☐



Judicial Selection Monitoring Project

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THE "HATCH PLEDGE"

On November 15, 1996, in a speech to the Federalist Society, Senator Orrin Hatch made a pledge that every Senator who believes in judicial restraint should make and keep. He said:

"Those nominees who are or will be judicial activists should not be nominated by the president or confirmed by the Senate, and I personally will do my best to see to it that they are not."

On February 3, 1997 each U.S. Senator received and was asked to sign this pledge. We believe this is a significant event, the first time a grassroots coalition has sought such an explicit commitment from Senators on this issue.

Senators who have signed (as of 5-18-97):

- Senator Wayne Allard (R-CO)
- Senator John Ashcroft (R-MO)
- Senator Christopher Bond (R-MO)
- Senator Paul Coverdell (R-GA)
- Senator Larry Craig (R-ID)
- Senator Lauch Faircloth (R-NC)
- Senator James Inhofe (R-OK)
- Senator Bob Smith (R-NH)

Senators who have refused to sign (as of 5-18-97):

- ALL DEMOCRATS
- Senator Spencer Abraham (R-MI)
- Senator Robert Bennett (R-UT)
- Senator Sam Brownback (R-KS)
- Senator Conrad Burns (R-MT)
- Senator Ben Campbell (R-CO)
- Senator John Chafee (R-RI)
- Senator Dan Coats (R-IN)
- Senator Thad Cochran (R-MS)
- Senator Susan Collins (R-ME)
- Senator Alfonse D'Amato (R-NY)
- Senator Mike DeWine (R-OH)
- Senator Michael Enzi (R-WY)
- Senator Bill Frist (R-TN)
- Senator Slade Gorton (R-WA)
- Senator Phil Gramm (R-TX)
- Senator Rod Grams (R-MN)
- Senator Charles Grassley (R-IA)
- Senator Judd Gregg (R-NH)
- Senator Chuck Hagel (R-NE)
- Senator Orrin Hatch (R-UT)

- Senator Jesse Helms (R-NC)
- Senator Tim Hutchinson (R-AR)
- Senator Kay Bailey Hutchison (R-TX)
- Senator James Jeffords (R-VT)
- Senator Dirk Kempthorne (R-ID)
- Senator Jon Kyl (R-AZ)
- Senator Trent Lott (R-MS)
- Senator Richard Lugar (R-IN)
- Senator Connie Mack (R-FL)
- Senator John McCain (R-AZ)
- Senator Mitch McConnell (R-KY)
- Senator Frank Murkowski (R-AK)
- Senator Don Nickles (R-OK)
- Senator Pat Roberts (R-KS)
- Senator William Roth (R-DE)
- Senator Rick Santorum (R-PA)
- Senator Jeff Sessions (R-AL)
- Senator Gordon Smith (R-OR)
- Senator Olympia Snowe (R-ME)
- Senator Arlen Specter (R-PA)
- Senator Ted Stevens (R-AK)
- Senator Craig Thomas (R-WY)
- Senator Fred Thompson (R-TN)
- Senator Strom Thurmond (R-SC)
- Senator John Warner (R-VA)

Click Here to Learn About JSMP's Adopt Your Senator Project

If you have any questions or would like more information about judicial activism,
please contact us at Judges@fceref.org.



Adopt Your Senators

You can join JSMP's "Adopt your Senators" project now and help fight for judicial restraint!

By adopting your senators you can:

- Track their position on the Hatch Pledge and judicial activism.
- Aid the coalition of more than 260 grassroots organizations who are fighting an imperial judiciary.
- Get regular email updates on critical information related to judicial selection.

YOU CAN HELP REIN IN AN OUT-OF-CONTROL JUDICIARY.

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please contact us at Judges@fcref.org.



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Hatch won't sign 'Hatch pledge' on judicial activists

(Gannett News Service)

WASHINGTON -- There is a hitch to the Hatch pledge.

Senators are being asked to sign a pledge named after Senate Judiciary Committee Chairman Orrin Hatch that would commit them to opposing the appointment of "judicial activists" as judges.

Problem is, Hatch will not sign it.

"Please understand that it is not my policy to sign pledges," the Utah Republican wrote recently to Thomas Jipping, director of the Judicial Election Monitoring Project. However, Hatch made clear he was sympathetic to the group's overall goals.

The pledge came to light when Sen. Patrick Leahy, D-Vt., highest ranking Democrat on the Judiciary Committee, made public his response to the group's request that he sign the "Hatch pledge."

"The only oath that I have ever taken as a U.S. senator is the one that I take at the beginning of each Congress to support and defend the Constitution," Leahy said in a letter dated Feb. 11.

Leahy works closely with Hatch in establishing the Judiciary Committee's agenda and is trying to clear a huge logjam of judicial nominees. There are nearly 100 vacancies on federal benches.

Leahy is worried the effort, and other initiatives by conservative groups, will exacerbate the problem. He also says he is offended by Jipping's tactics.

"Nor do I appreciate your thinly veiled threat that you will employ talk show hosts and national organizations to pressure me into taking such a pledge," Leahy wrote Jipping. "These tactics to force others to adopt your narrow view of political correctness is wrong."

Calls to the project seeking reactions to Hatch's and Leahy's comments were not immediately returned.

"Judicial activism" is the rubric conservatives use to describe judges and judicial nominees they believe are taking it upon themselves to expand the protections provided by the Constitution. Many conservatives, for example, believe the Supreme Court stretched the Constitution to make it illegal for states to outlaw abortions.

Hatch has been one of the most vocal critics of judicial activism and is helping make it a major theme of Republicans in Congress.

"Federal judges have expanded their definition of rights and of their own authority beyond what the Constitution permits and have made their own power pervasive in our society," Hatch said in a speech to the Federalist Society in November.

In that address, he also spoke the words the Monitoring Project adopted as the Hatch pledge: "Those nominees who are or will be judicial activists should not be nominated by the president or confirmed by the Senate, and I personally will do my best to see to it that they are not."

While Hatch told Jipping -- and quietly informed other senators -- that he did not support the signing of the pledge, he voiced strong support for its work.

"It is my hope that the Senate continues to oppose judicial activism on a number of fronts, and I look forward to your support in this critical endeavor," he said.

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Archives *plus*

Deseret News Archives,
Thursday, March 27, 1997

D.C. power struggle traps judiciary

New York Times News Service

By Marianne Means, Hearst Newspapers

I SMELL A RAT HERE," Delaware's Joseph Biden, ranking Democrat on the Senate Judiciary Committee, stormed the other day.

He was complaining about mounting attacks on undefined and unnamed "activist judges" whom Republicans fret President Clinton will nominate or promote and whose confirmation the GOP threatens to block in the name of preserving ideological purity on the bench.

"What is really happening," Biden raged, is that "I have had senators come up to me and say 'here is the deal.' We will let the following judges through in my state if you agree to get the president to say that I get to name three of them. . . . That isn't how it works. The president nominates.

"In the Republican caucus there are some who say we want to change the rules, we want to make sure . . . that Republican senators should be able to nominate half of them or 40 percent of them. . . . That is malarkey. That is blackmail. That has nothing to do with activist judges."

Senators have always had the power to hold up offending presidential judicial nominees from their home states, and the wise president picks politically acceptable candidates unlikely to provoke an unnecessary confirmation fight. But a deal such as Biden describes would be an unprecedented raid on traditional presidential authority and a threat to the independence of the judicial branch.

Republicans have in fact been increasingly dragging judges and the legal establishment into their partisan war with the Democrats and President Clinton.

GOP presidential nominee Robert Dole briefly tried last year to make a campaign issue of liberal "superlegislators in black robes" appointed by Clinton. The GOP contends these judges invent the law as they go along rather than interpret the Constitution literally. But the issue died when Democrats pointed out that almost all of Clinton's judges won unanimous bipartisan Senate approval. Dole himself voted for all but three of the nominees.

The tactic that provoked Biden's wrath last week was a rump right-wing effort to deny Justice Department official Merrick Garland, who had strong bipartisan support, a seat on the U.S. Circuit Court for the District of Columbia. Instead of futilely challenging Garland on the merits, a handful of GOP senators contended that the two-year-old vacancy need not be filled at all.

But Judiciary Committee chairman Orrin Hatch, R-Utah, a conservative who supported Garland, was offended by what he interpreted as an assault upon his own integrity as a budget-balancer. "Playing politics with judges is unfair, and I am sick of it," Hatch said.

Garland was confirmed, but his travail is an indication of how extensively the judiciary has become a political pawn in the Washington power struggle. It is the only judgeship the Senate has bothered to fill this year, although the federal judiciary now has accumulated nearly 100 vacancies. Only 17 judges were confirmed during all of 1996.

By contrast, in 1992, the last year of a Republican president and a Democratic Congress, 66 appeals and district court judges were confirmed.

"The administration is sending up judges," Democratic Sen. Patrick Leahy of Vermont sighed. "But it is like tossing them down into a black hole in space. Nothing comes back out."

Even Chief Justice William Rehnquist, a Republican, recently worried publicly about the climbing vacancy rate resulting from the low number of judges confirmed last year compared with the number confirmed in preceding years. He noted tartly that "filling judicial vacancies is crucial to the fair and effective administration of justice."

But confirmation delay is only one aspect of the current politicalization of the courts. Some House Republicans are calling for the impeachment of federal judges with whose decisions they disagree. This assault on judicial independence, fortunately, may not be catching on with those who have read the Constitution. Senate Majority Leader Trent Lott hastily announced he would have nothing to do with the notion.

Still, Republicans are moving aggressively to wrest control of the nominating process from the president. In addition to bargaining for an illegal quota system dividing judgeships between the White House and Congress, GOP senators have organized a task force to screen nominees for ideological bent. "There are some lame-brained decisions out there - we all know that," Hatch said. "Some of them are occurring primarily in California."

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➤ ➤ HATCH ➤ ➤ THREATENS TO QUIT JUDICIARY COMMIT... 10/12/91

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Sen. ➤ ➤ Orrin ➤ ➤ Hatch ➤ ➤ says he didn't read report on charges before Thomas vote. Rear is Sen. Alan Simpson, R-Wyo.

➤ ➤ HATCH ➤ ➤ THREATENS TO QUIT JUDICIARY COMMITTEE

Byline: By Holly Yeager and Elizabeth Lesly, SPECIAL TO THE TRIBUNE

WASHINGTON -- His voice throbbing with anger, Sen. ➤ ➤ Orrin ➤ ➤ Hatch ➤ ➤ threatened to resign from the Judiciary Committee Friday. The Utah Republican was outraged that Committee Chairman Joseph R. Biden Jr., D-Del., told senators conducting the hearing into charges of sexual harassment against Supreme Court nominee Clarence Thomas that they could not use a statement Anita Hill made to FBI agents last month.

Mr. Thomas ``has a right to face the accuser and everything the accuser says," Mr. ➤ ➤ Hatch ➤ ➤ retorted. ``And if he doesn't then I'm going to resign from this committee today."

The matter was later resolved to the satisfaction of Mr. ➤ ➤ Hatch ➤ ➤, who acknowledged that he did not read an FBI report on the allegations of sexual harassment before voting Sept. 27 to support Thomas' nomination to the Supreme Court.

Mr. ➤ ➤ Hatch ➤ ➤ said he should have read the FBI report before the committee vote, but instead relied on information provided by Sen. Strom Thurmond of South Carolina, the highest ranking Republican on the committee. While the drama unfolded on television Friday, Sen. Hatch's offices in Salt Lake City and Washington were flooded with 600 phone calls -- with 80 to 85 percent of the callers supporting Thomas.





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Hatch At Center of Bench Fight

BY CHRISTOPHER ROSCHE
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WASHINGTON -- Chief Judge Mary Schroeder is snowed under. A federal judge for the U.S. 9th Circuit Court of Appeals, Schroeder is battling an avalanche of new cases and fears she may never catch up.

The load is so heavy that the San Francisco-based 9th Circuit has been forced to cancel more than 600 hearings this year. Judges double up their caseloads, take briefs home and work weekends, but the pace of claims never slows.

"We are approaching a crisis," says Schroeder from her Phoenix office.

The 9th Circuit, which handles cases from nine Western states including California, has 10 of its 28 judgeships vacant, leaving it with the lowest number of active appellate judges since 1980. During the same period, Schroeder has seen the circuit's caseload more than double.

She is not alone.

Nationwide, more than 100 judgeships are vacant.

At the center of the controversy is Utah's Sen. Orrin Hatch. Chairman of the Senate Judiciary Committee, Hatch has come under fire from Democrats and the White House for failing to move replacements nominated by President Clinton. Hatch, however, lays blame squarely on Clinton for not making the vacancies a higher priority. "The Senate cannot confirm judges who haven't been nominated and until very recently, the pickings have been slim," he wrote.

Hatch also is taking fire from conservative allies who criticize him for not being aggressive in blocking "liberal" appointments.

Whatever the cause, scores of nominations languish in the froth of Beltway political bickering. As of Aug. 26, 101 judgeships were empty -- nearly 12 percent of the federal court system. Under federal guidelines passed by Congress, 33 of those are declared "emergencies."

"This is a national disaster," says John Frank, a Phoenix-based attorney who specializes in federal civil appeals and is conducting a study of the problem for federal court administrators.

"Trial courts have way too many vacancies and cases simply can't get heard. It is the worst blockage in the administration of justice in this century."

The backlog poses hardships for thousands of average citizens, lost in the limbo of a faceless judicial bureaucracy.

"People who have filed claims for personal injuries from car accidents, discrimination suits, creditors trying to win back debts or debtors who feel they have been unfairly punished are all being forced to wait," Schroeder says.

Ironically, Hatch feels no pressure from his home state of Utah, which lies in the 10th Circuit. That circuit enjoys a relatively smooth ride in federal court. Not only does the area enjoy a lower number of federal cases, but the federal district and appeals court benches are fully staffed.

"We just aren't seeing quite the caseload here in Utah," says U.S. District Court Judge Bruce Jenkins, who is seated in Salt Lake City.

"The 10th Circuit is also in pretty good shape."

Things are so good, Jenkins, a senior judge who has served in the district since 1978, has been loaned to help the overburdened judges in the 9th Circuit. "Those folks are very, very busy."

On a recent tour-of-duty in the 9th, Jenkins sat with two active judges and heard oral arguments in 40 appeals cases in one week. "Each of us took 13 or 14 cases and have been writing up the decisions since," he says.

The debate about judicial vacancies escalated to a new level in recent weeks. On Aug. 5, Atty. Gen. Janet Reno made the issue the subject of a keynote address before the American Bar Association. Reno, who previously had declined to comment on the debate, blamed the Senate for the "unprecedented slowdown."

"Surely the framers did not intend Congress to obstruct the appointment of much-needed judges," Reno said, "but rather simply to ensure that well-qualified individuals were appointed to the federal bench."

Hatch was so incensed by Reno's speech, he wrote a commentary for The Wall Street Journal, saying that the attorney general's comments on a "looming crisis" were overblown. "There is no vacancy crisis," Hatch wrote. While acknowledging there are "particular courts that badly need additional judges," Hatch argued that the federal court faced even more vacancies in August 1991 and August 1992 when the Democrats controlled the Senate.

"In truth, the performance of the administration has been woefully inadequate," he says. "The Clinton administration's lethargic effort to nominate judicial candidates has significantly hampered the Senate's ability to confirm judges."

Even Democrats acknowledge Clinton has been slow in nominating new candidates. In June, Clinton had appointed only 31 people for more than 100 open judgeships. That left 70 percent of the vacancies unfilled.

The administration has scrambled to add more appointments in recent weeks, but court analysts believe that years will pass before the benches are filled.

Nominees face a tough fight in the Senate, where Hatch and other conservatives have criticized them as inadequate or too liberal. After gaining control of the Senate in the last election, conservatives declared war on so-called "activist

judges." The term has become a widely used code word denoting a judge that makes a practice of creating new tenets of law instead of strictly adhering to the Constitution and other established law.

Hatch, during speeches across the country over the past two years, has decried the damage "activist" judges have brought to the nation's code of laws. He also has pledged he would "personally do his best to see" that activist judges not be confirmed by the Senate.

Hatch also takes seriously the "advice and consent" responsibilities given the Senate by the Constitution. Each candidate, Hatch believes, should be thoroughly screened to weed out judges that may issue politically motivated rulings.

"The advice-and-consent function is not a mere numbers game," Hatch says. "The confirmation of a single judge to serve for life is a serious matter and should be treated as such."

"Activist nominees who are likely to legislate from the bench should be opposed," he says. But even Hatch agrees the Senate "should confirm qualified nominees regardless of their political viewpoints, provided they possess a proper judicial temperament and will interpret the law, not make it."

Ironically, such statements have drawn fire from several conservative leaders who believe Hatch is not going far enough to block nominees targeted by the far right. In March, Phyllis Schlafly, who recently labeled Hatch a "Latter-day Liberal," criticized the Utah lawmaker for being "co-opted by Bill Clinton" and failing to block the appointment of activist judges. Schlafly urged lawmakers to go even further, calling for the impeachment of judges already seated.

Momentum against Hatch continued to build and two months later, conservative senators led by Sen. Phil Gramm, R-Texas, unhappy with his handling of new nominees, tried to strip some of Hatch's power as chairman.

Had it succeeded, the move would have given other lawmakers increased veto power over judicial appointments. Hatch, however, was successful in getting his allies to vote against the measure.

Hatch's standing among conservatives wasn't helped in August when, appearing on ABC News "Nightline," former White House chief counsel Lloyd Cutler indicated Hatch was not the chief culprit in delaying Clinton nominees.

"Let me say first that if Orrin Hatch spoke for the Senate, we would have much less of a problem," Cutler said.

Facing constant attacks from the right and left, Hatch is forced to expend a great deal of political muscle pleasing both sides. But as conservatives continue their fight against "liberal" judges and Hatch works with the administration to find worthy candidates, the federal-case backlog continues to grow.

That troubles Judge Richard S. Arnold, of the 8th Circuit Court of Appeals, who has one vacancy on his 11-seat circuit based in Little Rock, Ark. A longtime critic of proposals to expand the federal bench, Arnold surprised lawmakers last week when he testified about his increasing concern that the quality of justice is being strained in the nation's courts.

Even if the vacancy were filled tomorrow, Arnold's court would exceed the recommended caseload per judge by 31 percent. "With the court facing a steadily increasing caseload and the largest backlog of cases in its history, it is clear that unless the 8th Circuit retains the 11th judgeship, litigants . . . will face increasing delays in having their cases heard and decided," Arnold testified before a Senate Judiciary subcommittee Thursday.

In mid-July, the presidents of the American Bar Association, Association of Trial Lawyers of America, the National Bar Association and other legal groups sent an urgent request to Clinton and Senate Majority Leader Trent Lott to move quickly to avert a "looming crisis" in the nation's judicial system.

"The injustice of this situation for all of society cannot be overstated," the group wrote. "Dangerously crowded dockets, suspended civil-case dockets, burgeoning criminal caseloads, overburdened judges and chronically undermanned courts undermine our democracy and respect for the supremacy of law."

After their request, Hatch joined Sen. Patrick Leahy, D-Vt., the ranking member of the Judiciary Committee, in asking Lott for a meeting to get the process moving. So far, Lott has declined.



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The Rest of the Story
“Putting Balance Back on the Bench”
Judicial Selection Monitoring Project
Fund Raising Videotape

- ➔ Watch the tape in its entirety. Merely reading a transcript will not give you the full impact. Don't miss the Kristallnacht sound effects.
- ➔ Cast list:
Republican Senators Phil Gramm (Texas), James Inhofe (Oklahoma), Jeff Sessions¹ (Alabama) and Bob Smith (New Hampshire);
Paul Weyrich, Tom Jipping, Ed Meese, and
Blanquita Cullum (identified as talk show host/association president)
- ➔ Summary of contents
Attack fund raising infomercial based on based on horror stories regarding Clinton judges; centerpiece is the story of a federal judge who released a “murderess”.

¹ A rejected federal judge nominee who was nominated by a Republican President and rejected by a Republican controlled Senate Judiciary Committee. The deciding vote was cast by Republican Senator Mac Mathias from Maryland.

➔ THE BIG HOAX

The federal judge attacked in the video is actually a Republican, nominated to the bench by President George Bush in 1991. He has strong Republican Party credentials. (See attachments)

The video falsely insinuates that the judge is "a typical Clinton activist" who is soft on crime and even accuses the judge of flirting with the "murderess".

- ➔ Besides the obvious attacks on President Clinton, including a threat to "downsize his judicial legacy", the video also obliquely attacks Senators Lott and Hatch by claiming that senators don't have the resources to do a proper investigation of judicial nominees. Therefore, the senators must turn to a private group to find out about nominees.

→ Questions the infomercial raises:

What is the Judicial Monitoring Project and how much authority has Senator Hatch given the project? (See *US News* article attached)

Is the government paying any expenses for judicial screening by the Judicial Monitoring Project? (Nominees provide copies for monitoring by the ABA; who provides copies to the Project?)

Which documents does the Project have access to? (FBI files? IRS records? Senate questionnaires? Health records?)

Who has access to reports developed by the Project? All senators? Republican senators? Members of the Judiciary Committee? Republican members of the Judiciary Committee? Can the nominee see the report to check for errors? Does the answer affect the tax-deductibility of the donation?

Are there any reports? (Or is this just a fund raising strategy?)

- ➔ What are the financial and legal ties of the Heritage Foundation to the Free Congress Foundation to the Judicial Selection Monitoring Project?
- ➔ Are donations really tax deductible when one of the premiums offered by the Project is private access to elected officials? (See attached documentation distributed with videotape promising \$10,000 donors invitations to attend private briefings, intimate dinners and access to leading conservative elected and public figures closely involved with the judicial confirmation process .)
- ➔ Are the grass roots organizations supporting this project actually lobbying?
- ➔ Who are the major underwriters of the Project and what kind of outcomes are being sought for their donations? (eg. A civil case not heard? A civil case not appealed? Who benefits when justice is delayed? Who might be blocking a suit against themselves from being heard?)

The GOP platform calls for removing RICOH from civil cases. Who would benefit?

➔ Sidebar issues

1. Several members of the Senate Judiciary Committee are running for president and have additional fund raising issues.
2. Committee members have the ability to benefit their home states while ignoring states with big problems.
3. Is the federal judiciary deliberately being downsized for private financial gain or candidate fund raising advantage?
4. Perhaps NBC would be interested in the fact that a photograph of *Today* host Katie Couric appears in the video.