

Subject: What Hamilton, Tocqueville, and Montesquieu would do.

Date: 5/5/2004, 9:18 AM

From: Elena Ruth Sassower <judgewatchers@aol.com>

To: s-presser@law.northwestern.edu

Organization: Center for Judicial Accountability, Inc.

Dear Professor:

Thank you for your response. Surely, I am disappointed that you are not now engaged in studying "the problem of judicial appointments" -- as I would have tremendously enjoyed and benefited from your analysis of the evidence. Indeed, because this evidence involves Senators Schumer, Leahy, and Kennedy directly -- and establishes that my "strong terms" are not exaggerations -- it provides a stunning competing story to what I believe are the most powerful powerful words of the Jurist Symposium -- yours:

"The future of American jurisprudence is now being decided in the United States Senate, where a small group of judiciary committee members, notably Charles Schumer (D-NY), Senator Patrick Leahy (D-VT), Senator Richard Durbin (D-IL), and Senator [Edward] Kennedy (D-MA), have been articulating a theory for blocking several of the judicial nominees of President George W. Bush."

I do hope your knowledge of CJA's primary source materials will entice you back to the subject all the sooner. In any event, I ask that you be good enough to bring such important documents as are posted on our website, www.judgewatch.org -- and, in particular, by the "Paper Trail" on our homepage -- to the attention of other scholars. I think that is what Hamilton, Tocqueville, and Montesquieu would do...

Regards.

Elena

Stephen B. Presser wrote on 5/4/2004, 5:32 PM:

Dear Elena (if I may):

Your point, is, of course, well-taken. My comment about disagreement is simply that given the evidence I've examined (and after my very quick reading of your memo), I wouldn't characterize what's going on in the Senate as quite as severely corrupted as you seem to. I do believe that what is now happening is, in fact, qualitatively different in its politicization from much of what has gone before (and, in that, I think we're in agreement), but judicial appointments have been somewhat political since the beginning of the republic, and I hesitate to brand the participants in quite the strong terms you use. There is plenty of room for reasonable people to disagree on that, and let me again reiterate that I'm glad to have the benefit of your research. I'm not sure if I'm likely to get back to the problem of judicial appointments any time soon (right now I'm tied up in trying to produce a new corporations casebook), but if I do, I will turn to a more careful study of what you've sent.

Yours,

Stephen Presser