



NINTH JUDICIAL COMMITTEE

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FAX COVER SHEET

6/12/92

2:25 p.m.

DATE _____ TIME _____

OFFICE OF SENATOR MOYNIHAN
Att: Eliana Dolgoff, Assistant to Chief Counsel

TO: _____

FAX NUMBER: 202-224-9293 (tele: 202-224-4451)

This fax consists of a total of 3 pages, including this cover sheet. If you do not receive the indicated number of pages, or if there is a question as to the transmittal, please call (914) 997-8105.

FROM: Elena Ruth Sassower, Coordinator

Dear Ms. Dolgoff:

As discussed, enclosed is page 9 of People for the American Way's newly-released report "Assault on Liberty", which mentions Senator Moynihan. Also enclosed is the page with the corresponding footnote.

Based upon our fully documented critique, there can be no doubt but that Senator Moynihan must withdraw the approval of Mr. O'Rourke's nomination--represented by the "blue slip".

The people of this State are entitled to at least one Senator championing the cause of a quality judiciary, which only rigorous pre-nomination screening will ensure.

In view of the opposition to the Carnes nomination, the issues presented by our critique offer an extraordinary opportunity for Senator Moynihan to demonstrate leadership.

Do you think we should expect less?

Elena Ruth Sassower

E "K"

and Responsibilities. Lacovara wrote a bitter opinion piece that appeared in *The New York Times*, in which he observed that in the past,

political affiliation has provided a source of recognition, not a litmus test for philosophical orthodoxy. Over time, this pattern has created a Federal judiciary rich in diversity and perspective. Today the message is quite different: ideology is the primary qualification, and it is a candidate's demonstrated orthodoxy that brings his name before the President and ultimately before the Senate. Unique in our nation's history, the current Justice Department has been processing any judicial candidate through a series of officials whose primary duty is to assess the candidate's ideological purity.¹³

William Hellerstein's 1984 candidacy was derailed by no less than Roy Cohn, former counsel to Sen. Joseph McCarthy (R-WI). Objecting to a passing criticism in an article on court congestion about the courts' willingness to imprison citizens convicted of minor drug possession offenses, Cohn called Hellerstein "ultraliberal." The nomination was withdrawn, prompting New York Senator Daniel Patrick Moynihan (D-NY) to attack the White House screening process as an example of "corruption."¹⁴

Bush in the Reagan Mold

Reagan did better in judicial-personnel selection than in any other area of the government.... It's just going to take another eight years [to complete the task].

Patrick McGuigan
Free Congress Foundation¹⁵

With respect to judicial selection, the Bush presidency has been largely a rerun of his predecessor's. As in 1980 and 1984, standard-bearer Bush ran in 1988 on a platform promising judges opposed to Roe v. Wade. His campaign rhetoric echoed Ronald Reagan's; he promised to appoint judges who would "interpret the law, not legislate from the bench."¹⁶

Once elected, Bush officials made clear that the new President would follow in the footsteps of his predecessor. Bush "will continue to appoint judges in the Reagan manner,"¹⁷ declared White House Counsel C. Boyden Gray just four days after the President's inauguration. Indeed, in some areas, most particularly White House involvement in the process, the Bush model appears to have fine-tuned the Reagan approach.

Gray took charge of judge-picking from inside the White House, and among his first official actions was the hiring of Lee Liberman to assist him in riding herd over the process. Liberman, a Federalist Society co-founder (Gray, too is a member) promptly began to insert herself in the Justice Department's selection process in a way even no Reagan White House

End Notes

1. "Righting the Courts," *The National Journal*, January 25, 1992.
2. 1980 Republican Party Platform (repeated in 1984, 1988).
3. Mikva Speech to Washington D.C. Bar Association, June 13, 1985.
4. David M. O'Brien, *Judicial Roulette*, 1988.
5. David M. O'Brien, *Judicial Roulette*, 1988.
6. "Judges Should have 'Restraint,' Meese Says," *Chicago Tribune*, February 12, 1986.
7. Transcript of "All Things Considered" broadcast, National Public Radio report, August 28, 1985.
8. Transcript of "All Things Considered" broadcast, National Public Radio report, August 28, 1985.
9. "The Age of Judges: Reagan's Second Term Appointees," *ABA Journal*, October 1, 1987.
10. *Dallas Times-Herald*, March 19, 1984.
11. Transcript of "All Things Considered" broadcast, National Public Radio report, August 28, 1985.
12. Lacovara, "The Wrong Way to Pick Judges," *The New York Times*, October 3, 1986.
13. Lacovara, "The Wrong Way to Pick Judges," *The New York Times*, October 3, 1986.
14. *The New Right's Court-Packing Campaign*, Herman Schwartz, 1985.
15. *Washington Post*, January 29, 1989.
16. "Bush Quietly Fosters Conservative Trend in Court," *Washington Post*, February 18, 1991.
17. "Conservative Tilt Marks Remade Court," *USA Today*, January 24, 1989.
18. *Washington Post*, January 29, 1989.
19. "Supreme Court: An Emerging Case of Poetic Justice," *Wall Street Journal*, January 27, 1989.
20. "Righting the Courts," *The National Journal*, January 25, 1992.