

Politics mar court-appointment process

WHEN JOHN Adams, the bulwark of the Federalist Party, lost the presidential election of 1800 to Democratic-Republican candidate Thomas Jefferson, he vowed to get even.

Having lost Congress and the presidency to the new, more liberal party and being extremely bitter over the defeats, Adams spent the final hours of his administration appointing a slew of Federalists to the judgeships and lesser court offices created by a hastily passed Judiciary Act.

The so-called "midnight appointments" were designed to deny the incoming administration the opportunity to leave its mark on the courts, and to guarantee a strong Federalist check on the Democratic-Republicans.

Although Jefferson removed many of the Federalist judges when he assumed office, Adams' attempt to pack the court with conservative ideologues in 1801 was just as misguided as Franklin D. Roosevelt's effort to stack it with liberal ones in 1937.

The Supreme Court has a constitutional obligation to decide each case that comes before it with impartiality. Yet that hasn't stopped other presidents from politicizing the judicial branch of government.

President Bush's recent nomination of John G. Roberts, Jr. to replace outgoing Justice Sandra Day O'Connor has evoked a virtual theater of political attacks and counterattacks in the press.

At issue for liberal activists is how the nominee would decide specific legal and constitutional issues such as abortion and affirmative action.

Pointing to Roberts' one-time membership in the Federalist Society for Law and Public Policy Studies - the nation's most powerful and politically active group of lawyers in America, and one that increasingly controls the federal bench - liberal interest groups assert that the nominee holds the same strict constructionist

COMMENTARY

WILLIAM C.
KASHATUS

interpretation of the Constitution advocated by many conservatives and employed by an increasing number of judges.

Their concern is that Roberts, if appointed to the Court, would increase presidential authority by operating on the philosophy that the people of the United States have no rights other than those specifically bulleted in the Constitution's original text.

Insisting that Roberts cannot be confirmed unless he can satisfy the Senate Judiciary on litmus-test issues like abortion and affirmative action, Senator Edward M. Kennedy and Democratic National Committee Chairman Howard Dean have called for the White House to release documents from Roberts' tenure as deputy solicitor general during the presidency of George H.W. Bush.

The conservative activists seem to be just as paranoid. White House spokesman Steve Schmidt insists that those same documents must remain privileged or "it shatters the ability of government lawyers to have candid conversations." If that's true, then why did the White House already release thousands of pages of documents from Roberts' service as a lawyer in the Reagan White House and the Justice Department?

Just as surprising is the conservatives' effort at damage control when there is no need for it. When it was disclosed that Roberts was once listed as serving on the steering committee of the Federalist Society's Washington chapter, Bush aides continued to insist that Roberts had no recollection of ever being a "full-fledged member." It was as if membership in the conservative legal group was something nefarious that would damage Roberts' chances of confirmation.

If the conservatives are look-

ing for damage control, they should probably discourage James Dobson's support for Roberts' confirmation. Dobson, who heads the conservative Focus on the Family lobby, is staunchly anti-homosexual. Yet he's been outspoken in his support for Roberts, who did pro bono work on behalf of gay rights groups in *Romer v. Evans*, a 1996 case establishing protections for homosexuals against state discrimination.

That certainly doesn't sit well with the right wing of the Republican Party.

To be sure, Roberts' professional credentials are unimpeachable. He is a brilliant, well-respected individual who can be counted among the 10 most accomplished lawyers in America. But his background is not without shortcomings, which must also be examined carefully.

When confirmation hearings begin on September 6th, the Senate Judiciary Committee will have to weigh more important considerations than Roberts' confirmation. Because a justice serves a lifetime tenure, each appointment provides the nation with an opportunity to examine the past, present, and future of our constitutional government. The appointment also makes an important statement about the kind of country our government hopes to shape.

Will ours be a country that protects the religious freedom of the few or the many? Will it be a country that provides not only for the national defense but also promotes the general welfare of all the people and secures the blessings of liberty for future generations?

Only the Senate Judiciary Committee can answer those questions now. Let's hope they do so responsibly without resorting to more political theater.

William C. Kashatus, a writer for the History News Service, teaches at Luzerne County Community College. He can be contacted at bkashatus@luzerne.edu