P.S. to the NEWS
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APPOINTMENTS TO THE SUPREME COURT

What kind of persons should be appointed to the U.S. Supreme Court, and whether some kind of a qualifying test should be applied, was one of the lesser issues during the 1980 presidential campaign. Columns of newsprint were consumed in denouncing what was called "the litmus test" of the Republican Platform adopted in Detroit.

Contrary to such contrived, publicity-seeking outbursts, the Republican Platform did not require any "litmus test," but only expressed a pious hope. It said: "We will work for the appointment of judges at all levels of the judiciary who respect traditional family values and the sanctity of innocent human life."

President Carter, on the other hand, who has personally appointed nearly one-half of all federal judges -- more than any other President in history -- made his judicial appointments on the basis of an ideological litmus test plus a race/sex quota. In 1978, he remarked, "If I didn't have to get Senate confirmation of my appointees, I could just tell you flatly that 12 percent of all my judicial appointments would be blacks, 3 percent would be Spanish-speaking, and 40 percent would be women."

All Carter's judicial appointees had to be liberal, pro-abortion, pro-feminist Democrats. The American Judicature Society (the judges' equivalent of the American Bar Association) made a survey of Carter's appointees which showed that 48 percent considered themselves liberal, 44 percent moderate, and none conservative.

Carter made noisy boasts about his plan for "merit selection" of judges. The litmus test to be appointed to the merit selection commissions to choose the judges was "early Carter." A survey by the American Judicature Society found that virtually all members of Carter's merit selection commissions were liberal Democrats, and nearly all were early Carter supporters. Hamilton Jordan selected the panelists and had final veto power over all who served.

The result of Carter's litmus test and quota selection can be seen in his four appointments to the Circuit Court of Appeals for the District of Columbia, the second

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most important court in the country because it handles most appeals from federal regulatory agencies. Patricia Wald spent 25 years fighting for liberal causes, starting with the representation of Owen Lattimore (whom the Senate Internal Security Subcommittee unanimously called "a conscious articulate instrument of the Soviet conspiracy") and continuing later with her advocacy of "children's rights" (such as voting at age 13).

Abner Mikva, a left-wing Congressmen from Chicago, was promoted to this important court after achieving a cumulative rating of 96% from the Americans for Democratic Action. Harry Edwards, a black law professor from the University of Michigan, was rewarded for being a leader of the "affirmative action" battle. Ruth Bader Ginsburg, a Columbia University law professor, was appointed because of her advocacy, in briefs and articles, of judicial activism to achieve the most extreme feminist goals.

The American people voted for a change on November 4, but they won't get a change in the judiciary for many years, if ever, because Carter's judges are locked into lifetime jobs. Yet it is the federal judiciary, much more than the other two branches of government, which is principally to blame for the policies so offensive to the American people in the areas of crime and punishment, abortions, apportionment, race relations, education policies, internal security against subversion, pornography, federal-state relations, land-use planning, and the environment.

Senator Orrin Hatch, a member of the Judiciary Committee, has remarked that judicial nomination hearings are held in a large, dark room in a remote corner of the Dirksen Senate Office Building, customarily without press or audience. Six or seven judges are usually processed by the Committee within an hour, and then are approved without debate by a voice vote in the full Committee and then in the Senate.

Yet federal judges have more to say about the future of the United States, its laws, its schools, its morals, its internal defenses, its culture, than Congress. Federal judges are accountable to no one and have lifetime jobs free from the insecurities of elections, dismissals, and salary cuts.

Abram Chayes, Harvard law professor, summed it all up in a recent speech at Georgetown Law School. He said that "the legacy of [the Carter] Administration on the bench is superb, and ... will live long beyond the 1980 elections." One of the biggest tasks before the Reagan Administration and the new Congress is to devise a way to shorten the life of that legacy.

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