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NEWS FROM:
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SENATE REPUBLICAN LEADER

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NOMINATIONS PROCESS
DEMOCRATS' PROBLEMS LIE IN BALLOT BOX, NOT PROCESS

THE DEMOCRATS IN THE SENATE HAVE EXAMINED THE NOMINATIONS AND CONFIRMATION PROCESS AND PRONOUNCED IT FLAWED.

AFTER THE SPECTACLE OF THE THOMAS HEARINGS, I THINK WE CAN ALL AGREE WITH THAT DIAGNOSIS, AS WELL AS WITH A FEW OF THE RECOMMENDATIONS IN THEIR REPORT.

UNFORTUNATELY, HOWEVER, WHEN IT COMES TO SUPREME COURT NOMINATIONS, THEIR PRESCRIBED CURE IS MUCH WORSE THAN THE DISEASE.

DEMOCRATS IGNORE HISTORY

THE DEMOCRATIC REPORT CHOOSES TO IGNORE HISTORY. PRESIDENT WASHINGTON, FOR INSTANCE, FILLED THE COURT WITH STAUNCH SUPPORTERS OF A STRONG FEDERAL GOVERNMENT.

JOHN ADAMS LIKEWISE SOUGHT TO APPOINT JUSTICES WITH STRONG FEDERALIST SENTIMENTS AND SUCCEEDED IN HAVING JOHN MARSHALL CONFIRMED AS CHIEF JUSTICE.

MARSHALL AUTHORED DECISIONS WHICH HAVE HAD AN ENDURING EFFECT UPON THE NATION'S POLITICAL AND ECONOMIC STRUCTURE CONSISTENT WITH WASHINGTON'S AND ADAMS' VISIONS.

IT WAS FRANKLIN ROOSEVELT'S OBJECTIVE TO FASHION A COURT SYMPATHETIC TO NEW DEAL LEGISLATION.

WITHIN FOUR YEARS OF THE DEFEAT OF HIS COURT PACKING LEGISLATION, PRESIDENT ROOSEVELT APPOINTED SEVEN NEW MEMBERS TO THE COURT. IN THE SHORT RUN THE EFFECT OF THE CHANGE IN COURT PERSONNEL WAS IMMEDIATE AND PREDICTABLE. SOCIAL AND REGULATORY LEGISLATION WAS SUSTAINED ACROSS THE BOARD AGAINST CONSTITUTIONAL CHALLENGES THAT MIGHT HAVE PREVAILED BEFORE THE 'OLD' COURT.

THE SEVEN ROOSEVELT NOMINEES, WHO WERE VIRTUALLY UNANIMOUS ON MATTERS OF ECONOMIC AND SOCIAL LEGISLATION, DIVIDED ONLY WHEN CIVIL LIBERTIES ISSUES BEGAN TO BLOOM DURING THE POST-WAR PERIOD.

SENATE'S JUDGEMENT SOLELY ON QUALIFICATIONS

PRESIDENTIAL NOMINATIONS OF JUDGES TRADITIONALLY HAVE REFLECTED PRESIDENTIAL AGENDAS.

ANY PRECEPT THAT A PRESIDENT SHOULD NOT USE THE APPOINTMENT PROCESS TO PROMOTE POLITICAL OBJECTIVES, OR AVERT THEIR SUBVERSION, IS IRRATIONAL AND, TO THE EXTENT THAT IT FOSTERS EXPECTATIONS OF EXECUTIVE FORBEARANCE, IS ALSO UNREALISTIC.

SENATOR WILLIAM PROXMIRE, FOR EXAMPLE, ARGUED DURING THE 1971 DEBATE ON THE REHNQUIST NOMINATION, THAT THE SENATE SHOULD CONFIRM A NOMINEE OF OBVIOUS INTELLECTUAL CAPACITY WITHOUT CONSIDERING HIS OR HER SUBSTANTIVE VIEWS -- UNLESS THE NOMINEE WOULD NOT UPHOLD CONSTITUTIONAL GUARANTEES.

IN 1969, SENATOR MARLOW W. COOK, IN DEFENDING HIS SUPPORT FOR THE HAYNSWORTH NOMINATION, WROTE TO A CONSTITUENT THAT THE IDEOLOGY OF THE NOMINEE IS THE RESPONSIBILITY OF THE PRESIDENT. THE SENATE'S JUDGMENT SHOULD BE MADE, THEREFORE, SOLELY UPON GROUNDS OF QUALIFICATIONS.

DEMOCRATS' POWER GRAB DREAM

WHEN THE DEMOCRATS SUGGEST THAT THE PRESIDENT IMMEDIATELY BEGIN CONSULTING WITH THE DEMOCRATIC SENATE ABOUT THE NEXT SUPREME COURT NOMINEE--AT A TIME THERE IS NO VACANCY ON THE COURT--THEY ARE DREAMING OF A WORLD THAT NEVER WAS AND NEVER WILL BE.

THIS IS NOTHING MORE THAN A BLATANT ATTEMPT TO GRAB POWER WHICH THE SENATE HAS NEVER HAD.

IT IGNORES THE PLAIN LANGUAGE OF THE CONSTITUTION WHICH EXCLUDES THE SENATE FROM THE NOMINATION PROCESS AND ONLY INVOLVES THE SENATE IN THE APPOINTMENT PROCESS. THE CONSTITUTION SEPARATES THESE TWO FUNCTIONS AND ONLY IN THE LATTER CASE IS THERE SENATE ACTION REQUIRED.

SHOULD DEMOCRAT PRESIDENTS CONSULT WITH REPUBLICANS IN ADVANCE?

NO PRESIDENT BEFORE HAS SURRENDERED THE NOMINATION POWER OF SUPREME COURT JUSTICES TO THE SENATE. IT IS UNLIKELY THAT THIS ONE CAN BE PERSUADED TO DO SO.

THERE IS, HOWEVER, AN ANSWER TO THE DEMOCRATS COMPLAINT, BUT IT LIES IN THE BALLOT BOX, NOT IN PROCESS CHANGES.

WHEN AND IF THEY ELECT A PRESIDENTIAL CANDIDATE, THEN THEY CAN CONTROL THE NOMINATION PROCESS.

AND IF THEY DO SO, YOU CAN BET THAT ANY SUGGESTIONS THAT THE PRESIDENT SHOULD CONSULT THE SENATE ON SUPREME COURT NOMINATIONS WILL QUICKLY DISAPPEAR.