

Alliance For Justice

Part I: Its Dirty War on Bush Judicial Nominees

Liberal Activists Use Misinformation and Character Assassination to Block Conservatives

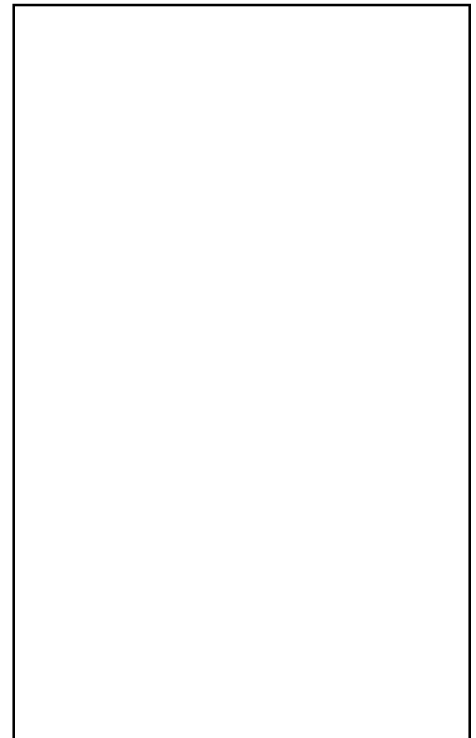
By John Carlisle

Summary: The Alliance For Justice is one of the chief liberal coalition groups working to stop President Bush from appointing judges who believe in judicial restraint. While the Alliance has scored many victories, including the 1987 battle against Robert Bork and the recent effort to defeat Charles Pickering, its unethical tactics threaten to undermine the Senate's constitutional duty to confirm judges.

The Alliance For Justice is a national association representing 57 liberal special interest groups. Founded in 1979, it says its mission is to fight for the rights of women, minorities and the underprivileged and to advance the cause of justice for all Americans. The Alliance bills itself as a watchdog that monitors federal judicial nominations to insure that only "fair and qualified judges" committed to "equal justice" are confirmed.

However noble its rhetoric, the Alliance's actions are neither fair nor just. No other political advocacy group has done more over the last two decades to undermine the integrity of the federal judicial confirmation process. None has tried harder to polarize public policy debate. Seldom has a nonprofit group been as successful in using character assassination to achieve its ideological objectives.

When it helped defeat U.S. Circuit Court Judge Robert Bork's nomination to the U.S. Supreme Court the Alliance For Justice made "borking" part of the political vocabulary. "Borking" has come to mean an intense and prolonged campaign to distort or lie about a nominee's past record to prevent his confirmation to a federal



Feature Photo Service

Miguel Estrada and John Roberts are two well-qualified judicial nominees that the Alliance For Justice has targeted for defeat.

judicial post. The nominee typically is targeted as a "right-wing extremist" or outside "mainstream" opinion. At its ugliest, borking involves smearing a nominee's character by charging that he is a racist, a sexist or possessed of some other unsavory trait making him unfit for public office.

Borking worked against Judge Bork. An Alliance-led campaign tarred him as a right-wing zealot who would create an America where, in Senator Edward Kennedy's words, "Women would be forced into back-alley abortions, blacks would sit at segregated lunch counters,

rogue police would break down citizens' doors in midnight raids." It next tried to sink the 1991 Supreme Court nomination of

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Clarence Thomas with more unfounded allegations. During the eight-year Clinton Administration the Alliance pressed for confirmation of liberal activist judges, and it lashed out at any Senator who dared challenge the worthiness of controversial and unqualified nominees. Then-Senator John Ashcroft was often the subject of Alliance ire.

Now President George W. Bush is vowing to appoint judges who adhere to the philosophy of judicial restraint and the Alliance is gearing up another campaign to block qualified nominees with misinformation and smear tactics.

On March 14, Democrats on the Senate Judiciary Committee rejected President Bush's nomination of U.S. District Judge Charles Pickering to an appellate court post. The 10-9 party line vote came after the Alliance spent 10 months distorting Judge Pickering's record, calling him "insensitive" to the needs of minorities and insinuating that he was a racist. The Alliance's successful campaign against Pickering has created so much partisan

rancor that many fear the Senate will be unable to fulfill its constitutional duty to confirm future judicial nominations. The Pickering battle will be addressed next month in the second installment of *Organization Trends*' two-part series on the Alliance For Justice.

But more is at stake than one judicial nomination. The resort to "scorched earth" tactics—a term favored by Alliance executive director Nan Aron—signals an unprecedented degree of hostility and anger on the Left. Frustrated during the Clinton years and embittered by the election of George W. Bush, left-wing "inside the Beltway" political advocacy groups are prepared to take almost any action and accept any argument, however hypocritical, so long as it helps bring down their perceived enemies.

Some in official Washington dread what will happen when the next Supreme Court seat falls vacant; others look forward to the coming battle. Surely the Alliance for Justice falls into the latter camp. For many years it has excelled at blocking judicial nominees, using self-serving double standards and smear campaigns. It has perfected the politics of personal destruction that now threatens to become the effective standard for choosing federal judges. (Capital Research Center attempted to interview Nan Aron for this story but was told she was travelling.)

Alliance Members and Income

The Alliance For Justice, a 501(c)3 nonprofit, was founded by veteran activist Nan Aron. Aron, 53, is a former attorney for the federal government's Equal Employment Opportunity Commission (EEOC) and staff attorney for the ACLU National Prison Project. But for the past twenty-three years she has been president of an organization whose fifty-seven members are among the nation's most powerful liberal special interest groups.

The environmental, labor, civil rights, women's, mental health, children's and consumer advocacy organizations that are part of the Alliance each pursue their own programs. But they use the Alliance as a meeting ground for developing larger po-

litical strategies and common tactics, especially on federal judicial nominations. The Alliance also assists liberal activists with critical and often highly technical legal advice that helps them become more effective lobbyists and advocates. It provides publications and training in the fine points of advocacy and coalition-building, advice on public interest law, and information on the intricacies of IRS lobbying regulations.

Alliance members include a who's who of the liberal left: the National Education Association, Planned Parenthood Federation of America, Natural Resources Defense Council (NRDC), Earthjustice Legal Defense Fund, Center For Science in the Public Interest, Children's Defense Fund, Consumers Union, Mexican American Legal Defense and Education Fund, National Abortion and Reproductive Rights Action League (NARAL) Foundation, National Organization For Women (NOW) Legal Defense and Education Fund, and the League of Conservation Voters Education Fund. These groups in large measure define Washington's liberal agenda of public policy and political action.

In 2000, the Alliance took in more than \$4.5 million, according to IRS tax records, and spent about \$2.6 million. Yet despite representing itself as a membership organization, the Alliance receives little funding from dues—a mere \$56,000. Dues for Alliance members vary according to the budget of member organizations, from a minimum of \$500 for groups with less than \$250,000 in revenue to \$3,500 for groups with budgets of \$1.5 million or more. Foundation grants and individual contributions provide far more revenue—\$1,493,200. The Alliance also earned \$1,902,705 from investments in stock.

The largest and most committed donors to the Alliance for Justice are the Ford, MacArthur and Joyce foundations. In 2001, the John D. and Catherine T. MacArthur Foundation donated \$200,000; the Ford Foundation gave \$100,000; and the Joyce Foundation \$75,000. In 1999, the Ford Foundation gave \$150,000. The Ford grant followed 1998 grants of \$150,000 and \$670,000 (for three years). The Joyce Foun-

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Alliance For Justice Member Organizations

American Society for the Prevention of Cruelty to Animals	Harmon, Curran, Spielberg & Eisenberg, L.L.P.	National Immigration Forum
Asian American Legal Defense and Education Fund	Human Rights Campaign Foundation	National Immigration Law Center
Bazelon Center for Mental Health Law	Institute for Public Representation at Georgetown University Law Center	National Law Center on Homelessness & Poverty
Business and Professional People for the Public Interest	Juvenile Law Center	National Legal Aid and Defender Association
Center for Digital Democracy	League of Conservation Voters Education Fund	National Mental Health Association
Center for Law and Social Policy	Legal Aid Society – Employment Law Center	NOW Legal Defense
Center for Law in the Public Interest	Legal Aid Society of New York	National Partnership for Women & Families
Center for Reproductive Law and Policy	Mexican American Legal Defense and Educational Fund	National Veterans Legal Services Program
Center for Science and the Public Interest	National Abortion and Reproductive Rights Action League Foundation	National Women’s Law Center
Children’s Defense Fund	National Association of Criminal Defense Lawyers	National Youth Advocacy Coalition
Consumers Union	National Center for Lesbian Rights	Native American Rights Fund
Disability Rights and Education Fund	National Center for Youth Law	Natural Resources Defense Council
Drug Policy Alliance	National Center on Poverty Law	New York Lawyers for the Public Interest
Earthjustice Legal Defense Fund	National Council on Nonprofit Associations	Physicians for Human Rights
Education Law Center	National Education Association	Planned Parenthood Federation of America
Equal Rights Advocates	National Employment Lawyers Association	

dition also provided a \$150,000 grant (for two years) in 1998. Other foundation contributors on record include the Rosenberg Foundation, \$20,000 (1999); Public Welfare Foundation, \$25,000 (1999); Eugene and Agnes Meyer Foundation, \$15,000 (1999); Turner Foundation, \$100,000 (2000); Surdna Foundation, \$15,000 (1998); Park Foundation, \$10,000 (1998); and Dorot Foundation, \$25,000 (1998).

Key Programs

The Alliance offices in Washington, D.C. are located in a second-floor suite at 11 Dupont Circle. The DuPont Circle neighborhood (also the location of Capital Research Center) is quite literally a hub of

nonprofit activist groups.

Many of these groups rely on the Alliance to tell them what they can and cannot do within the limits of the law to achieve their goals. The Alliance’s Non-profit and Foundation Advocacy Project, established in 1992, has conducted hundreds of workshops and forums that teach tax-exempt 501(c)(3) nonprofits how to lobby within IRS regulations. The Alliance shows nonprofits how to “navigate laws governing public policy initiatives, including lobbying, funding advocacy, initiative and referendum activities, and voter education.”

For instance, a March 18, 2002 training session in Denver concerned “Rules of the Game: Nonprofits and Election-Year Advocacy.” It reviewed federal tax and election laws affecting the political activities of nonprofits and explained how a 501(c)(3) could pay for and distribute voting guides and organize candidate issue briefings. One Alliance manual, *Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities*, leads nonprofits through the rules on lobbying. Another, *Worry-Free Lobbying for Nonprofits*, explains how a complex 1976 regulation called the “501(h) election” sets up more explicit expenditure limits that will let medium-sized nonprofits opt to undertake more

substantial amounts of lobbying without incurring penalties or threatening their tax-exempt status.

The Alliance also has recognized that leftist activists are advancing from the streets to the suites. Instead of begging for funding as grant-seekers, many former activists have become grantmakers themselves. And instead of waiting for proposals to come to them, they are using their financial power to direct the agenda of activist grantees. In 1995, the Alliance launched a Foundation Advocacy Initiative to help philanthropic foundations increase their support for liberal advocacy groups and use their power to steer nonprofits in a more activist direction. In particular, the Initiative holds workshops and meetings with regional associations

“Foundations and Advocacy,” will be sponsored by the Association of Small Foundations. The Alliance’s legal guide for foundations is *Myth v. Fact: Foundation Support for Advocacy*.

Undoubtedly, the Alliance’s most important program is its Judicial Selection Project. It was established in 1985 after Democratic Party politicians and liberal organizations grew alarmed by President Reagan’s attempt to fill a large number of judicial vacancies without delay. The Alliance set up shop to coordinate the efforts of liberal interest groups and activists investigating the record of Reagan appointees. Last September, the project took a new direction when the Alliance set up a separate 501(c)(4) lobby organization to sharpen its judicial attacks without worry-

tween a liberal like Aron and a conservative president. But the rancor runs deeper than differences over policy. President Bush didn’t win the election in the Alliance’s view. It thinks a “conservative” Supreme Court handed him victory. Commenting on the 2000 presidential campaign, Aron has said, “It brought home to people just how much a threat this court is and how critically important public participation is in the process of selecting judges. People do not want this court by judicial fiat to be able to perpetuate itself.”

Of course, the Alliance worries most over the next nominee to the U.S. Supreme Court. Alliance member NARAL sent a million-piece mailing in April 2001 asking abortion supporters to “be prepared to oppose George W. Bush’s nominees to the Supreme Court.” Failure to stop Bush’s conservative choices, said NARAL president Kate Michelman, could “strangle reproductive freedom for many years to come.” One telling example: During an Alliance conference on April 18, 2001, Yale Law School professor Bruce Ackerman argued that the Senate should refuse to confirm any future Supreme Court nomination until after the next presidential election. This was the only appropriate response to the court’s “vulgar partisanship” in *Bush v. Gore*, declared Ackerman. The conference broke into applause.

The Alliance wages increasingly fierce and unethical electoral-type campaigns so that the Senate will only “elect” judges who will “legislate” its goals. This is a strategy designed to intimidate qualified judicial nominees and will provoke a constitutional crisis.

of grantmakers to address their legal worries. Should foundation proposals mention that funding is available for lobbying activities? Should grantees discuss lobbying activities in their reports to foundations? Should foundations themselves lobby? How should a foundation handle a grantee budget that contains a line item for lobbying?

In 2002, the Alliance plans to hold 17 workshops across the nation for foundation grantmakers. Each is sponsored by a grantmaker or grantmaker association. For instance, a January 10 conference in San Francisco, “Foundation Engagement in Public Policy Work: Myths & Facts,” was sponsored by the Rosenberg Foundation. A February 25 conference, “Foundation Support for Nonprofit Advocacy,” was sponsored by San Diego Grantmakers. A September 10 San Antonio conference,

ing about a 501(c)(3) charitable tax status. The Alliance For Justice Action Campaign will focus on President Bush’s judicial nominees. Aron says the (c)(4) will “add some firepower to our efforts,” adding that “since *Bush v. Gore*, [liberals] understand the threats of the Administration’s judicial selections” and want to defeat them.

If the President is Illegitimate, So Are His Nominees

After it became apparent that George W. Bush had won the election, the Alliance For Justice vowed to do whatever was necessary to block his nominees to the federal judiciary. Mincing no words, Aron said, “It will be scorched Earth. We won’t give one lousy inch on Bush’s judicial nominees.” Uncompromising language is to be expected given the differences be-

Going After Ashcroft

The Alliance did not wait for a judicial nomination to signal its displeasure with the new president. On January 9, 2001, the Alliance held a joint press conference with Handgun Control, Human Rights Campaign, the Leadership Conference on Civil Rights, NARAL, NAACP, People for the American Way and the Sierra Club. Wasting no time, the coalition declared war on the Bush Administration by contesting Senator John Ashcroft’s nomination to be Attorney General.

Aron accused Ashcroft of attacking “well-qualified candidates for federal judgeships, not based on the merits, but to achieve his own personal ambitions.” While the coalition had no realistic chance to defeat Ashcroft (he was confirmed by a 58-42 vote), the stridency of its attack was

meant to yield eventual political dividends by showcasing its tactics against future nominees and their supporters. Liberal groups have since said that many senators who voted for their former colleague committed themselves to side with abortion rights organizations and oppose any future Supreme Court nominee who held Ashcroft's views.

The Ashcroft fight also revealed an ugly side: the Alliance was willing to play the race card to thwart conservative nominees. It claimed Ashcroft was motivated by race when in 1997 he opposed Clinton district court nominee Ronnie White, an African American. Aron even called Ashcroft's vote against White a "hate crime," even though 53 other Senators also voted against the Missouri Supreme Court justice. They were disturbed that White had dissented in death penalty cases more than three times as often as any of his colleagues, even for shockingly brutal crimes like the 1991 murder of a sheriff, his wife and two deputies. White's nomination was opposed by the National Sheriffs Association, the Missouri Sheriffs Association and the Missouri Federation of Police Chiefs. So it was no surprise that Missouri Senator Ashcroft voted against the nominee.

Picking Judges: The Art of Hypocrisy

The Alliance says its mission is to insure that only "fair and qualified judges" dedicated to "equal justice" are on the courts. But the ease with which it adapts its philosophy of judicial selection to partisan ends undermines this declaration.

In 1999, for instance, Aron wrote in a *San Francisco Chronicle* article that the president "has a duty to fill judicial vacancies and appoint jurists who share his views." She then denounced the Republican Senate's opposition to some Clinton judicial nominees. The Alliance repeatedly castigated Republican senators for not moving fast enough to confirm critically-needed judges during Clinton's two terms and criticized a Republican Senate for confirming only 39 Clinton judges in 1998.

What about now? The Alliance praises a Democratic-controlled Senate for confirming 28 Bush judges in 2001. "Democrats have been putting nominees through at a very good pace," noted the Alliance's 2001 judicial report, even though the judicial vacancy rate was increasing. In December 1994, the Alliance complained that 60 vacancies were "unacceptably high." But there were no complaints in late 2001, when 105 of 853 federal judicial positions were empty. The Alliance wailed when nearly a quarter of the seats on the Ninth Circuit were vacant at the end of 1999, but

it said nothing when half the seats on the Sixth Circuit and one-third of the seats on the D.C. and 10th Circuits were vacant at the end of 2001.

Like the Alliance, Democrats in the Senate have renounced their call for speedy confirmations to fill court vacancies. In 1998, Illinois Senator Dick Durbin said 84 vacancies were "a nationwide crisis" and then-Minority Leader Tom Daschle called 75 vacancies in 2000 "a dire shortage of judges." When President Bush took office, there were 82 vacancies, which the President moved to fill by nominating 66 men and women. But thanks to Alliance obstructionism and Senator Daschle, there were 99 vacancies in January 2002 – 12 percent of the allotted judgeships—and 60 nominations are still pending before the Senate.

A study by the Constitution Project at Georgetown University and Professor Wendy Martinek of Binghamton University details how slow the confirmation process has become. The average time between judicial nomination and confirmation was 36 days in President Reagan's first year in office and 46 days in the first year of his second term. Sixty-two days passed between nomination and confirmation during the first year of President George Bush's term and 53 days during President Clinton's first year. In 2001, the average time it took to confirm President George W. Bush's judicial nominees was *112 days*.

The Alliance's Anti-Gun Rights Campaign

When gun retailers reported sharp increases in firearm sales after September 11, the Alliance for Justice organized a new student organization called Gun Industry Watch, which aims to intimidate gun manufacturers, retailers and the National Rifle Association. Begun on October 1, the program has launched a series of 150 college campus and community anti-gun events intended to expose alleged deceptive advertising and boycott corporate supporters of gun rights groups. Alliance president Nan Aron vows the campaign will create a "dedicated group of activists" who will do to America's gun culture what earlier activists did to "America's smoking culture."

The Alliance criticizes gun manufacturers for using patriotic themes in their advertising and has asked the Federal Trade Commission (FTC) to investigate claims that firearms are good for self-defense. The FTC has yet to act. It also has organized protests against H&R Block after the nation's largest tax preparation service agreed to contribute to the NRA every time an NRA member used its services. The protest so deluged the H&R Block with phone calls, faxes and e-mails that the company withdrew from the agreement.

Former White Counsel to Presidents Clinton and Carter Lloyd Cutler and former Republican Congressman Mickey Edwards criticized the slow pace of action on President Bush's nominees in a February *Washington Post* article. While supporting careful Senate scrutiny of nominees, Cutler and Edwards wrote:

"Ultimately, however, vacancies on the federal bench need to be filled. Judgeships sometimes remain open for two or three years. This can cause significant backlogs in civil cases, which, unlike criminal cases, are generally not subject to legal time limits."

Cutler and Edwards note that the delays in confirming judges and the increasingly bitter nature of confirmation battles "may deter qualified candidates from seeking federal judgeships."

Alliance to Judges: Let's Make Law

Take the case of Judge **Carolyn Kuhl**. President Bush nominated her in July 2001 to the U.S. Circuit Court of Appeals for the Ninth District. There are four vacancies on the 28-seat court. Kuhl is currently a California Superior Court judge with impressive credentials. A former partner at Munger, Tolles & Olson, a respected California law firm, she served as principal deputy solicitor general of the U.S. under Solicitor General Charles Fried in 1985-1986, and prior to that was a deputy assistant attorney general in the Justice Department's civil division. But the Alliance argues that Kuhl is not committed to abortion rights based on briefs she wrote justifying the Reagan Administration's efforts to overturn *Roe v. Wade*. As a deputy solicitor general in the Reagan Justice Department, it was Kuhl's job – not her choice – to write briefs advocating the Administration's position. "But," say Nancy Pfothenauer of the Independent Women's Forum and Harvard Law School Fellow Jennifer Bracer, "the radical feminists view Judge Kuhl's prior representation of a client whose views differ from their own as political apostasy."

It should be obvious that the positions an attorney advocates for a client or

employer are hardly a reliable guide to the decisions a court nominee will render as a judge. Yet the Alliance also opposes the nomination of **John Roberts** to the Court of Appeals on the District of Columbia Circuit because he co-wrote a brief in *Rust v. Sullivan* for the first Bush Administration that argued for the Administration's position that it could prohibit doctors in federal government-sponsored programs from discussing abortion. NARAL's Michelman pronounced Roberts unacceptable: "There is no question that John Roberts' views represent a serious threat to the constitutional rights of women and the rights of reproductive choice." Lawyers have denounced such arguments. "John Roberts is possibly the foremost appellate lawyer of his generation," says Washington, D.C. attorney Lawrence Robbins, a Roberts supporter. "The idea of arguing that he would do as a judge, based on positions he has advanced in court is reckless. These groups are not being candid. They are just playing politics. They should be honest and just say they will oppose any nominee by this president."

Roberts' colleagues argue that he is fair and not ideological. Richard Lazarus, director of the Georgetown University Supreme Court Institute, says Roberts has not filed a single brief for a conservative organization in the eight years since he left the Solicitor General's office. Roberts "is not an ideological person," concludes Lazarus, whose personal views tend to be liberal. Indeed, Roberts has argued the liberal position on occasion. As an attorney with the Washington D.C. law firm Hogan & Hartson, Roberts argued in the case *Rice v. Cayetano* (and against Solicitor General Theodore Olson) that Hawaii did not impose improper racial preferences in limiting voting in some state elections to indigenous Hawaiians. (The Supreme Court rejected Roberts' argument in a 7-2 ruling.)

The Alliance further argues that Roberts represented too many business clients in private practice. But Thomas Jipping, director of the Judicial Selection Monitoring Project at the Free Congress Foundation, says, "Even if this were a reliable guide (and it's not), Mr. Roberts

also represented the 19 states suing the Microsoft corporation for allegedly violating the anti-trust laws." There is simply no way to tell how Roberts would rule on those issues as an independent judge and not as an employee of a client.

Undoubtedly, the Alliance for Justice has such strong ideological commitments that it cannot fathom why an attorney would make the best argument possible for a client's interests or why a judge would follow the law without regard to his own personal preferences. Here is the Alliance's blind spot. The folly of the Alliance's approach to law is most apparent in its attempt to block David Souter's 1990 nomination to the U.S. Supreme Court. The Alliance claimed the New Hampshire jurist was anti-woman and insufficiently supportive of civil rights, yet Souter became one of the High Court's most consistently liberal justices. "It is a hazardous enterprise to try to extrapolate judicial philosophy from scattered academic writings or lower-court rulings," says attorney Clint Bolick of the Institute for Justice, a conservative legal foundation. "It is even more hazardous for the Senate to take its cue from ideological organizations that themselves are so far from the mainstream of American jurisprudence that they considered David Souter...too conservative."

The Alliance's "scorched Earth tactics" add unnecessary bitterness and contention to judicial nomination fights. The judiciary's own institutional mechanisms tend to restrain judges – liberal or conservative – who take it upon themselves to ignore judicial precedents and make law. Says Bolick, "Renegade judges can and are reined in by higher courts. A lower court judge cannot overturn *Roe v. Wade*...or overturn Miranda rights. Occasionally they have tried, and this supposedly conservative activist Supreme Court has rejected such efforts."

The Alliance's focus on the cases Bush nominees argued as lawyers further reveals its failure to understand the role of judges in applying the law to cases before it. For instance, the Alliance opposes the nomination of **Miguel Estrada** to the D.C. Court of Appeals. Estrada, an immigrant

from Honduras, is currently a partner with the Gibson, Dunn & Crutcher law firm in Washington, D.C. His impressive record includes graduating magna cum laude from Harvard Law School, a clerkship for U.S. Supreme Court Justice Anthony Kennedy, and service as an assistant U.S. attorney for the Southern District of New York. Estrada is also highly recommended by Latino organizations, including both the Hispanic Business Council and the Hispanic Business Roundtable. However, the Alliance charges that Estrada lacks the “ability to hear cases fairly,” that he may be too much of an ideologue and will allow his personal views to influence his rulings.

But most observers of Estrada’s record commend his judicial restraint. Ironically, some conservatives are downright furious about his restraint. Pro-life groups have argued that the federal racketeering statute RICO should not be used against abortion clinic protestors because they are pursuing a cause, not economic gain. But in an amicus brief on behalf of the United States to the Supreme Court, Estrada said the statute was unambiguous and not subject to a different interpretation. The Supreme Court agreed and ruled against the pro-life groups.

The essence of the conservative philosophy of judicial restraint is: Interpret the law; don’t make law. This is what guides President Bush’s selection of judges. Says Jipping, “Either courts can make up stuff or they can’t; conservatives have always argued that judges must follow rather than make the law and are wrong for criticizing Mr. Estrada for his correct position.” The Alliance is wrong to view Estrada as an ideological loose cannon if, indeed, he is exercising judicial discipline and enduring conservative hostility on this issue. That the Alliance strains to reach this conclusion suggests that it is clueless about the purpose of law and the role of judges.

Throwing Restraint Out the Window

Judicial restraint most recommends Miguel Estrada for a federal judgeship. But this is precisely why the Alliance adamantly opposes his confirmation. Similarly, it wants to de-rail the confirmation of

Chief U.S. District Judge **Brooks Smith** to the Third Circuit Court of Appeals. The Alliance finds Smith unacceptable because he favors “corporate and other powerful interests” in the areas of worker and prisoner rights, consumer safety and gender discrimination cases. It also criticizes Smith for a 1993 speech in which he argued that the Violence Against Women Act was unconstitutional because it improperly gave to Congress a fundamentally state authority to regulate domestic violence law. Warned Aron, “He is emblematic of President Bush’s nominees who will turn back the clock on progress Americans cherish.”

In May 2000, the U.S. Supreme Court seemed to agree with Smith. In *United States v. Morrison* it overturned that portion of the law that would turn local criminal prosecutions of domestic violence into federal civil lawsuits. Yet during his February 26 confirmation hearing, Smith assured Senators that he was “absolutely committed to adhering” to the portions of the law that were not struck down.

Still, Smith faces more problems. The Washington D.C.-based Community Rights Counsel charges Smith with engaging in illegal and unethical conduct for not recusing himself quickly enough from a 1997 case in which he allegedly had a “substantial” personal and financial interest. In the case, Smith was overseeing a fraud trial involving an investment advisor later convicted of defrauding Pennsylvania school districts. Some of the defendant’s assets were deposited in Mid-State Bank where Smith’s wife worked. The Smiths also owned stock in Mid-State’s parent company. To Community Rights Counsel founder Doug Kendall this “violates federal recusal law and raises serious questions about Judge Smith’s fitness for a seat on the appellate bench.”

Initially, Mid-State Bank was not a party to the case nor suspected of complicity. There were no allegations of wrongdoing by the bank, so the Smiths’ connections to it appeared immaterial. Only after a month elapsed did it appear that Mid-State might be involved in litigation. Smith immediately recused himself and was

cleared of wrongdoing by the Justice Department. Over 100 Republicans and Democrats have sent letters of support to the Senate Judiciary Committee. They include judges, public officials and leaders of civil liberties, labor and women’s organizations, who all praise Smith’s fairness and impartiality. But they are not enough for the Alliance for Justice, which cites the allegation as reason to oppose Smith’s nomination.

Substituting Ideology For The Constitution

The Bush Administrations has moved quickly to fill a glaring need for judges by nominating qualified individuals who have extensive experience and sound judicial temperament. Most importantly, Bush nominees believe in judicial restraint: ~~judges~~ interpret the law; they do not make the law. Unfortunately, liberal special interests are eager to achieve their political agenda by relying on activist judges who will ignore the law’s dictates. This is not the constitutional role of the judiciary. But the Alliance For Justice has only one guiding principle—liberal ideology—and its “dirty war” on Bush nominees is a continuation of its battle to achieve political objectives. The Alliance wages increasingly fierce and unethical electoral-type campaigns so that the Senate will only “elect” judges who will “legislate” its goals. This ~~is a strategy designed to intimidate~~ qualified judicial nominees and will provoke a constitutional crisis.

John Carlisle is the Editor of Organization Trends.

BrieflyNoted

Citizens Against Government Waste (CAGW) says the community development block grant program, established in 1976 to help low- and middle-income communities, has degenerated into a \$334 million pork barrel spending fund that disproportionately benefits affluent communities. The program, which is discussed in CAGW's annual "Pig Book" released in April, contains 827 earmarks totaling \$334 million for theaters, museums, opera houses and other local projects. These include \$2.4 million to restore six zoos, \$1 million for the Southern New Mexico Fair and Rodeo, \$2.2 million for winter recreational opportunities in Fairbanks, Alaska and \$340,000 to restore opera houses in Connecticut, Michigan and Washington. Says CAGW president Thomas Schatz, "This is clearly one of the most egregious areas of pork-barrel spending." Schatz says a provision in President Bush's budget would redirect the funds to their original use. Senator John McCain (R-AZ) has also pointedly criticized the block grant program.

Robert Woodson, president of the **National Center For Neighborhood Enterprise**, criticized corporate leaders for caving into the demands of activists like **Reverend Jesse Jackson** who "use the condition of the poor and minorities for their own gain." Writing in the April 1 edition of *Forbes* magazine, Woodson says corporations will give to the "loudest and most vitriolic critics" because they think they are buying protection. But that only encourages activists to make more strident demands which often do nothing for the disadvantaged they claim to represent. For instance, Jackson negotiated a settlement between Boeing and 13,000 employees claiming racial discrimination. Jackson's organization received \$50,000 from Boeing, the first of a series of donations. But 1,700 employees complained they did not benefit from the settlement.

Recent studies show a mere \$1 billion of the \$246 billion tobacco settlement is being spent by the states on tobacco-related prevention or health programs. A January report by the **Campaign for Tobacco-Free Kids** says only five of 46 states have put the minimum 20-25 percent of settlement funds into tobacco prevention programs. North Carolina, Tennessee, Michigan and the District of Columbia have put none of their money into tobacco-related programs. "We're not pleased at all," said Sara Hutchinson, a researcher for the Campaign for Tobacco-Free Kids. "The spirit of the settlement was to alleviate the epidemic. By not dedicating any or just minimal funding to it is not in the spirit of what those funds were supposed to do." Peter Sepp, a spokesman for **National Taxpayers Union**, which also has studied states' use of settlement money, says "those who expect politicians to suddenly act like angels around that much money should have known better."

Natural Resources Defense Council is the lead environmental group suing the Bush Administration for disclosure of its energy task-force records, but it's been forced to back off its claim that the Administration did not consult with it before drafting its energy plan. In fact, the Administration reached out early to get advice from leading environmental groups and in some cases got snubbed. NRDC admits that the Energy Department obtained its recommendations and key NRDC policy staff had several meetings with White House officials starting at least two months before the final plan was released. Representatives of Environmental Defense and Union of Concerned Scientists also met with Administration officials during the deliberation process.

