

9-18-1992

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HUDSON — An essay by Judge Roger Miner of Hudson sharply criticizing the federal judicial selection process — and none too obliquely President George Bush, as well — has drawn attention from commentators from New York at least to Syracuse.

The essay, "Advice and Consent in Theory and Practice," originally was given at an American University Law Review dinner and converted to an article in the school's Law Review.

"It got as much response as anything I have ever done before," Miner said from the Manhattan chambers of the U.S. Circuit Court of Appeals for the Second Circuit in New York. "It seems to have struck a chord."

The "At The Bar" column in the Aug. 21 New York Times, by David Margolick, called the essay noteworthy in that Miner is apparently "unconcerned that he would appear ungrateful, be burning his bridges or be accused of sour grapes."

Margolick further called Miner's comments newsworthy because Miner "is a Reagan appointee, not some wild-eyed Democrat."

Also, Margolick wrote, Miner's wife, Jacqueline, "is vice chairman of

the New York state Republican Committee. She spent" time at the Republican Convention "presumably cheering on the man her husband is taking to task."

Syracuse attorney Richard Grossman, like Margolick, pointed to Miner's previous appearance on a short list for U.S. Supreme Court appointment.

"For his forthrightness," Grossman wrote in the Syracuse Post Standard, Miner "can expect no future consideration for higher office should the President be reelected."

"I don't know how he knows that," Miner replied to an invitation to respond. "It's not necessarily so."

In any case, Miner said, he didn't write the piece for political considerations, but "because I wanted to say something."

His nine-page essay, replete with references ranging from *Newsday* to *The Records of the Federal Convention of 1787*, argues the "President has abdicated his duty to nominate, the Senate provides no advice whatsoever, and the function of senatorial consent is a mere formality in most instances."

"As regards the appointment of federal judges, the Constitution simply

is not working as the Framers intended," Miner wrote.

The U.S. Constitution requires the President to nominate and, by and with the advice and consent of the U.S. Senate, appoint federal judges, he wrote.

"Today, that constitutional command is all but ignored," Miner wrote.

Instead, he contended, "the center of power for the appointment of federal judges has shifted away from Presidents and senators to staff."

With district judges, Miner wrote, senators of the President's political party get the right "to submit names of proposed nominees to the Presidential staff. This process should be known as nomination by a senator and advice and consent by the Presidential staff."

"The incumbent President is known to have no interest in the process," Miner wrote.

He described questions asked during the requisite Senate hearings before actual appointment to federal judgeships as "pro forma."

"The Senate seems to turn its attention briefly to the confirmation process only in the case of Supreme Court justices," Miner wrote. Reasons

for rejection, he wrote, "would seem to depend solely on the polls taken by the Senators and general public reaction to the nominee."

Recent U.S. Supreme Court nominees have shown little in the way of "strength, dignity and articulateness" in appearances before the Senate Judiciary Committee, he wrote.

"We are now treated to what is in effect a staged, albeit bumbling, performance on both sides," Miner wrote, saying unsuccessful nominee Robert Bork — possibly "one of the last of the straight shooters" who "answered honestly directly, without guile and with some intellect," in the process scaring "the hell out of everybody" — correctly predicted "direct answers would never again be the norm."

"...(N)ominees would be selected from those who have not written or spoken about important issues," Miner wrote. "Those who followed" Bork "have studiously avoided any controversial questions put to them, in one case even ignoring what the nominee had said and written previously."

"Merit is no longer the lodestar of federal judicial appointments," Miner

wrote. "Merit is more or less consigned to the back seat."

Instead, Presidential nominations to the U.S. Supreme Court, he wrote, consider personal friendship, balancing representation on the court, "real political and ideological compatibility" and "the ability not to create too great a stir when an indolent Senate undertakes its consent functions."

Miner is judge of the U.S. Court of Appeals for the Second Circuit since 1985, is a 1956 New York Law School graduate.

A Hudson native, he was the city's corporation counsel, Columbia County district attorney and practiced law as a partner in the firm of Miner and Miner.

He was elected a state Supreme Court Justice in 1976 and was named to the federal bench as a judge of the U.S. District Court for the Northern District of New York in 1981. Miner is a member of the Law School's adjunct faculty and received an honorary doctor of laws degree from the school in 1989.