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Record Group/Collection: George H.W. Bush Presidential Records
Collection/Office of Origin: Counsels Office, White House
Series: Liberman, Lee S., Files
Subseries: General Subject Files

OA/ID Number: 45279
Folder ID Number: 45279-013

Folder Title:
Deputy Solicitor General

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G	12	12	5	2

Julie Carnes

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

December 12, 1989

The President today announced his intention to nominate Julie E. Carnes to be a Member of the United States Sentencing Commission for a term expiring October 31, 1995. She would succeed Paul H. Robinson.

Ms. Carnes is currently Special Counsel for the United States Sentencing Commission. Prior to this, she served as Deputy Chief of the Criminal Division, 1987-1989. Ms. Carnes was the Assistant United States Attorney for the Northern District of Georgia, 1978-1989; and Law Clerk to the Honorable Lewis R. Morgan, United States Court of Appeals, Fifth Circuit, 1975-1977.

Ms. Carnes was graduated from the University of Georgia (A.B, 1972; J.D., 1975). She was born October 31, 1950 in Atlanta, Georgia. Ms. Carnes has two children and currently resides in Atlanta, Georgia.

#

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01a. Resume	Re: Resume of unsuccessful candidate (1 pp.)	n.d.	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Counsel to the President, Office of
Series: Liberman, Lee S.
Subseries: General Subject Files
WHORM Cat.:
File Location: Deputy Solicitor General

Date Closed: 7/22/2005	OA/ID Number: 45279-013
FOIA/SYS Case #: 2005-1392-F	
Re-review Case #:	
P-2/P-5 Review Case #:	
MR Case #:	Appeal Case #:
MR Disposition:	Appeal Disposition:
Disposition Date:	Disposition Date:

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

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CADG
Dep-S-G-1

MICHAEL BOUDIN

Home:



(b)(6)

Office: Antitrust Division
Department of Justice
Washington, D.C. 20530
(202 633-2404

LEGAL EXPERIENCE

1987-Present: Deputy Assistant Attorney General for
Regulatory Affairs, Antitrust Division,
Department of Justice

1966-1987: Partner (1972-1987), Covington & Burling,
Washington, D.C.; associate (1966-1972)

1965-1966: Law clerk, Justice John M. Harlan, U.S.
Supreme Court

1964-1965 Law clerk, Judge Henry J. Friendly, U.S.
Court of Appeals for the Second Circuit

LAW TEACHING

1983-Present Henry J. Friendly Lecturer on Law, Harvard
Law School

1984-1985: Lecturer, University of Pennsylvania Law
School

1982-1983: Visiting Professor from Law Practice,
Harvard Law School

EDUCATION

Law School: Harvard Law School, LL.B., magna cum laude,
1964; President, Harvard Law Review

College: Harvard College, B.A., magna cum laude,
1961

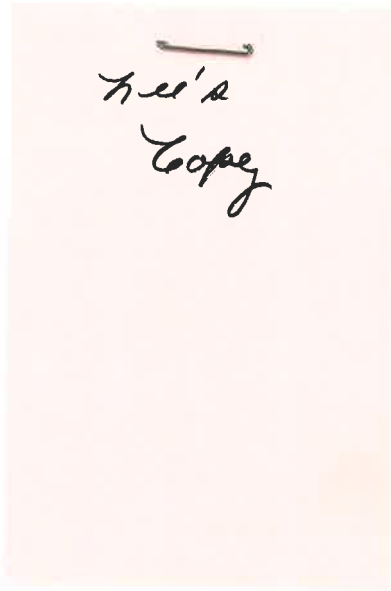
BAR AFFILIATIONS: New York Bar, 1964; District of Columbia Bar, 1967; Council, American Law Institute; American Bar Association

LEGAL WRITINGS:

Articles: "Antitrust Doctrine and the Sway of Metaphor," 75 Geo. L.J. 395 (1987); "Common Sense in Law Practice," 34 Harvard Law School Bulletin 22 (Spring 1983)

Book Reviews: 77 Harv. L. Rev. 835 (1984); 35 Stan. L. Rev. 621 (1983); 49 U. Chi. L. Rev. 1098 (1982); 67 Va. L. Rev. 1251 (1981); 77 Mich. L. Rev. 503 (1979); 85 Yale L.J. 591 (1976)

PERSONAL: Born, November 29, 1939; married, Martha A. Field, September 14, 1984; children: Maria, Gabriel, and Lucas Field



**Document Originally
Attached to
Following Page**

THE WHITE HOUSE

WASHINGTON

Boyden:

Attached are (1) DOJ's list of candidates for the principal Deputy Solicitor General and (2) the resumes of those for whom we have them. Presidential Personnel is getting the others.

I think who fills this job is sufficiently important both to this office and the President to warrant your involvement on the White House end, perhaps interviewing any serious candidates along with Chase. (At present Chase has Bob Estrada doing the interviewing.) I doubt Chase would object to such an arrangement. If you agree, I recommend that either you or I let Chase know.

Lee

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01b. List	Re: candidates for Deputy Solicitor General; unsuccessful candidate information redacted [DOCUMENT FOLLOWS] (2 pp.)	n.d.	(b)(6)	

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DEPUTY SOLICITOR GENERAL CANDIDATES



(b)(6)



(b)(6)

John Glosier Robert, Jr.
Hogan + Hartson
Columbia Square
505 13th Street, N.W.
Washington, D.C. 20004-1169
(202) 637-6448

John Glover Roberts, Jr.

HOGAN & HARTSON
Columbia Square
555 13th Street, N.W.
Washington, D.C. 20004-1109
(202) 637-6448

314 South Alfred Street
Alexandria, VA 22314
(703) 683-1427

Born: January 27, 1955

Marital Status: Single

Experience

1988 - Partner, Hogan & Hartson.
1986-1987: Associate, Hogan & Hartson.
1982-1986: Associate Counsel to the President.
1981-1982: Special Assistant to the Attorney General,
William French Smith.
1980-1981: Law Clerk to Justice William H. Rehnquist,
United States Supreme Court.
1979-1980: Law Clerk to Judge Henry J. Friendly,
United States Court of Appeals for the
Second Circuit.
Bar membership: Supreme Court of the United States,
United States Courts of Appeals for the
District of Columbia, Fifth, Ninth, and
Federal Circuits, United States Claims
Court, District of Columbia Court of
Appeals.

Education

Legal: Harvard Law School, J.D., magna cum laude, 1979.

Editor, Harvard Law Review, volumes 91-92,
Managing Editor, volume 92.

College: Harvard College. Entered 1973 with Sophomore
standing. Graduated A.B. summa cum laude in History,
1976. Honors thesis on British domestic politics,
1900-1914.

LEGAL TIMES

LAW AND LOBBYING IN THE NATION'S CAPITAL

WEEK OF JUNE 3, 1989 • VOL. XII, NO. 2 • \$4.50

INSIDE



Gerald Fisher

Technical Foul?

Gerald Fisher is hoping that a technicality involving an obscure D.C. statute will help his 17-year-old client avoid facing the death penalty in Alabama. *Page 6*

Inadmissible

William Kunstler comes to Judge Hastings' defense; Robert Brumley's Moscow ties pay off for Hunton & Williams. *Page 3*

Lobby Talk

Some interest groups don't need to pay honoraria to lawmakers. *Page 4*

Property Lines

Jones, Day builds a litigation center; Williams & Connolly may be in the market for new offices. *Page 18*

The Graft Craft

Jim Wright's transgressions pale in comparison to the institutional (and legal) corruption that degrades the body politic. Taking Issue, *Page 21*

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Job Hunting?

Attorneys Wanted, a new national monthly publication listing job openings for lawyers, makes its debut in this issue.

FEDERAL COURT WATCH

Rhetoric Aside, Drug Program Left in the Lurch

Federal Probationers Lose Rehab Option

BY ANN PELHAM

While Congress and the Bush administration pay considerable lip service to the battle against the horrors of the nation's drug problems, the District's federal probation office has been forced to shut down its relatively modest \$110,000 residential drug-treatment program.

"We are out of money," says Eugene Wesley Jr., chief U.S. probation officer for the U.S. District Court for the District of Columbia. "More people are going into the programs, and they're staying longer."

Increasing demand for drug rehabilitation has squeezed the treatment budgets of federal probation offices across the country. But Washington, D.C., is the first U.S. court district actually to stop referring drug-dependent offenders to privately run residential treatment centers, a step it took the last week of May.

"If this is the target city [for federal drug czar William Bennett], why the hell was this allowed to happen?" asks one frustrated lawyer who has had clients in programs funded by the D.C. probation office.

"We're going to have a massive problem," warns Donald Chamlee, chief of the Probation Division at the Administrative Office of the U.S. Courts. Chamlee

SEE FEDERAL COURT WATCH, PAGE 7

Crimping Enforcement?

High Court Ruling Boosts Double-Jeopardy Defense

BY LINDA HIMELSTEIN

Ivan Boesky was fined \$100 million in a civil proceeding in 1986 for masterminding a massive insider-trading scam, and a year later the former arbitrageur was sentenced to three years in prison for the same offense. But had a recent U.S. Supreme Court ruling been in effect at the time of Boesky's fine and sentencing, his lawyers might have had stronger ammunition to challenge the dual penalties as excessive.

In the little-noticed decision, *United States v. Halper*, the Court held unanimously on May 15 that there are limits to the government's right to impose extreme punitive civil penalties against a defendant convicted and fined under criminal law.

The opinion provides defense lawyers, who have become accustomed to setbacks from the high court, with a new avenue for challenging the hefty civil penalties that are increasingly accompanying criminal prosecutions. Also, defense attorneys argue that the government will have to change the way it does business as a result of the ruling.

"This certainly will force the government to prosecute these cases in a different manner," suggests John Roberts Jr., of D.C.'s Hogan & Hartson, who represented plaintiff Irwin Halper before the Supreme Court.

And the ruling has touched off concern among enforcement-minded government lawyers who fear they may not be able to pursue both severe criminal and civil penalties.

"It will make it more difficult for enforcement," says Edward Reich, deputy



Hogan's John Roberts Jr.: Ruling forces agencies to change tactics.

assistant administrator for civil enforcement at the Environmental Protection Agency.

In *Halper*, the Supreme Court decided

SEE DOUBLE JEOPARDY, PAGE 14

A Private Room or Stigmatizing Isolation?

Suit Against Hospital Raises Questions About Treatment of AIDS Patients

BY ANNE KORNHAUSER

On Oct. 6, 1988, Sarah showed up at Howard University Hospital's emergency room scared and anxious. Sarah had AIDS. She threatened to harm herself if she was sent home; she had a history of being suicidal.

The 31-year-old AIDS patient from a poor neighborhood in Southeast Washington, D.C., was admitted to the hospital that fall day as a psychiatric inpatient, but she was placed in the surgical ward, not the psychiatric ward. A doctor ordered round-the-clock supervision.

Admission to the hospital did not relieve Sarah's anxiety. On Oct. 7, Sarah (not her real name) took a potentially lethal overdose of two prescription medications that she had brought with her to the Northwest D.C. hospital. The medical team overseeing Sarah, who is represented by D.C.'s Bernabei & Katz, tried to get



Lynne Bernabei of D.C.'s Bernabei & Katz (left) claims her client, who has AIDS, was improperly isolated by Howard University Hospital (above).

SEE HOWARD, PAGE 9

Ruling Leaves Agencies Worried About Enforcement Clout

DOUBLE JEOPARDY FROM PAGE 1

that Halper, a former manager of a medical-services company who had already been convicted of 65 counts of fraud for submitting false claims to Medicare, could not be hit with an additional, excessive civil fine because it violated the Fifth Amendment's double-jeopardy clause.

In a criminal proceeding, Halper was sentenced to two years in prison and fined \$5,000. The government then brought a second action against him under the Civil False Claims Act, asking more than \$130,000 in fines. Under the penalties in effect at the time (Halper committed the fraud in 1982 and 1983), the government could seek \$2,000 for each of the 65 false claims he filed, plus twice the amount of the actual damages of \$585. In 1986, the act was amended to allow the government to seek \$5,000 to \$10,000 per false claim and three times the amount of actual damages.

Civil and criminal penalties must be 'rationally related to the goal of making the government whole.'

HARRY BLACKMUN
U.S. Supreme Court

Writing for the Court, Justice Harry Blackmun noted the extreme disparity between the government's actual loss, a



mere \$585, and the size of the civil penalty.

"The government may not criminally

prosecute a defendant, impose a criminal penalty upon him, and then bring a separate civil action based on the same conduct and receive a judgment that is not rationally related to the goal of making the government whole," Blackmun wrote.

The Court granted summary judgment for the government in the amount of \$16,000.

Blackmun even went so far as to suggest that in cases where double jeopardy is an issue, the government could consolidate civil and criminal proceedings into a single court action, thereby ensuring "the total punishment did not exceed that authorized by the legislature." Lawyers at the Justice Department say there are no plans to adopt this novel approach.

Significance in Doubt

Lawyers disagree about the importance of the decision. Some contend that the facts in *Halper* were so extreme—the civil fine exceeded the government's actual damages by 220 times—that the decision will have minimal impact.

Michael Hertz, director of the Commercial Litigation Branch in the Justice Department's Civil Division, says any widespread attempt to apply *Halper* will result from the "unlimited bounds of defense counsel's ingenuity" rather than from the substance of the Court's opinion.

"We read it narrowly and believe it only applies in the rarest of cases," says Hertz. "I don't think anything within the opinion itself will change the nature of the type of cases the government will bring."

But others argue that the principle of the case—that the severity of a defendant's punishment must be judged by the combination of criminal and civil penalties—applies across the board.

"There's no question that what has happened is that Congress, in its anti-crime effort, is providing for immense fines, and the courts are imposing fines in excess of a million dollars," says William Jeffress, a defense lawyer with D.C.'s Miller, Cassidy, Larroca & Lewin. "With that development, the government comes in and seeks double damages under false claims that are totally unfair to defendants."

"This Supreme Court decision is particularly important," Jeffress adds. "It will have a dramatic impact in preventing crushing penalties."

Argues Hogan & Hartson's Roberts: "[Prosecutors] will either have to bring all the charges at once or make sure they don't go after too big an amount in separate proceedings," he says.

Taking Measure

Government lawyers are already assessing the impact that the decision will have on their agencies in cases involving everything from insider trading to procurement fraud. While the ruling will affect many government agencies, from the Environmental Protection Agency to the Defense Department to the Occupational Safety and Health Administration, the impact is likely to be felt most acutely at agencies like the Securities and Exchange Commission and the Commodity Futures Trading Commission, which have in-house authority to pursue civil litigation.

At the SEC, lawyers say the double-jeopardy claim has been tried unsuccessfully in previous insider-trading cases, but it may have more punch in the aftermath of the *Halper* decision. Since 1984, the commission has been able to seek civil penalties three times the amount of a trader's profit.

Phillip Parker, associate general counsel at the SEC, says the decision "forces the hand of government" and might stop the agency from routinely seeking civil penalties.

The SEC "might have to determine whether to seek a civil penalty in the civil



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DOUBLE JEOPARDY FROM PAGE 14

case and run the risk that it couldn't bring a criminal case," Parker says. "It's a tough call to make because many cases can go either way."

Parker says the agency will have to seek better coordination with the U.S. attorney's office in bringing criminal actions to determine whether both enforcement proceedings are necessary. Civil actions are typically initiated first in insider-trading cases, which make up about 10 percent of the SEC's caseload, and are often followed by criminal prosecutions.

Joanne Madero, general counsel of the

'I don't think the opinion will change the nature of the cases the government will bring,' says Justice's Michael Hertz.

CFTC. says the opinion contains "troubling language" for her agency, but she expects the SEC, which has similar enforcement procedures, to tackle the issue first.

Lawyers at the Internal Revenue Service also are concerned about how *Halper* will apply to them. In more than 1,000 criminal tax-fraud cases brought annually, civil penalties are imposed as well.

Peter Scott, acting chief counsel at the IRS, says his agency is looking at the ruling.

"I don't know if we will change the way we do our cases, but it will affect enough of them to be concerned," he says.

Scott doubts that the ruling will have much impact on the IRS because the agency's civil penalties are based only on the actual damages suffered; in *Halper*, the penalty was based on the number of fraudulent claims filed.

Pushing the Edge of the Envelope

Still, defense attorneys say they are prepared to test the boundaries of the case, whether in tax-fraud or defense-procurement cases.

David Stewart, a defense lawyer in the D.C. office of Boston's Ropes & Gray, calls the *Halper* decision a "welcome counterweight" to the onslaught of extreme penalties that have been imposed to combat fraudulent activity against the government.

Stewart says the decision may even help in the numerous defense-procurement cases currently pending, because defendants are often willing to pay excessive fines rather than be prohibited from doing business with the government.

"The *Halper* case is not squarely on that point, but if you think about it, you can see a connection," says Stewart, noting that the ruling may lead the government to impose what he considers more reasonable fines.

Stewart hopes the decision will send a message to the judiciary.

"At least this may embolden a few judges to not let penalties get out of hand," Stewart says. "It tells the bench to realize there are elements of proportionality that would apply to these cases. The government will still go after a prize, but maybe this will change the size of the prize they try to win." □

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Dukakis Justices v. the People

By CHARLES J. COOPER

"Michael Dukakis has a very clear track record picking the best judges," judges who are "not ideologically attuned one way or the other. He's had a good non-partisan screening mechanism to pick them." So claimed Sen. Patrick Leahy (D., Vt.) in a recent MacNeil/Lehrer Newshour discussion of the next president's judicial appointments, an issue that also came up during last night's debate. Rejecting the concern that a President Dukakis would be influenced by fellow members of the American Civil Liberties Union to appoint liberal judicial activists, Sen. Leahy predicted that a Dukakis Supreme Court would be "basically centrist."

Yet a study of Mr. Dukakis's most important judicial appointments—the two justices he added to the seven-member Massachusetts Supreme Judicial Court—reveals judges starkly at odds with such a description. The opinions and votes of Justice Paul Liacos, a former law school professor, and Justice Ruth Abrams, a former trial court judge, establish them as fervent proponents of the ACLU's liberal social agenda, committed to imposing it on state residents through judicial decree.

Justices Liacos and Abrams believe that the death penalty is "cruel or unusual punishment" in all circumstances and have voted repeatedly to strike down efforts by the people of Massachusetts to enact one. In 1977, they joined a majority opinion holding that a capital punishment statute (which all the justices acknowledged was constitutional under U.S. Supreme Court precedent) violated the "cruel or unusual punishment" clause of the state constitution. They did so again in 1980, when, in a concurring opinion, Justice Liacos all but admitted that he was simply substituting his judgment for that of the Massachusetts Legislature, asserting that the death penalty is "antithetical to the spiritual freedom that underlies the democratic mind."

The people fought back, this time amending the state constitution to say that none of its provisions "shall be construed as prohibiting the imposition of the punishment of death." Yet in a 1984 case involving the murder of a policeman, the court once again invalidated the statute under the procedural provisions of the state constitution.

Capital punishment is not the only criminal penalty that Justices Liacos and Abrams would forbid. Alone among their colleagues, the Dukakis appointees have opined that a mandatory 25-year jail sentence for major drug traffickers would constitute cruel or unusual punishment.

Nor is their solicitude for criminal defendants limited to leniency in sentencing. In a 1985 case, for example, Justice Liacos argued that a murder conviction should be overturned because of a flawed jury instruction, even though the instruction was favorable to the defendant. And in a particularly shocking case, Justice Liacos voted to overturn the criminal conviction of a father who had raped his daughters, ages six and eight. The girls had been allowed to testify via a camera placed outside the courtroom, and Justice Liacos stated that this procedure was an unconstitutional denial of the defendant's rights, even though the defendant could see and hear the testimony on camera and could communicate with his attorney, who was allowed to cross-examine.

Justices Liacos and Abrams have also objected to the "good faith" exception to the U.S. Supreme Court's "exclusionary rule." In one murder case, for example, they excluded from trial evidence from a search conducted by police in good-faith reliance on a warrant issued by a magistrate who, it was later noticed, had not struck through certain lines on the printed warrant form. The U.S. Supreme Court reversed them.

In many other contexts, the Dukakis appointees have hamstrung law enforcement efforts by inventing criminal protections nowhere found in the Constitution or in Supreme Court precedent. For example, Justice Liacos believes that simply writing down the telephone numbers of calls made by or to a suspected criminal is prohibited

The opinions and votes of Justice Liacos and Justice Abrams establish them as fervent proponents of the ACLU's liberal social agenda, committed to imposing it through judicial decree.

by the Fourth Amendment. Indeed, one Liacos opinion even held that a police informant may not record a face-to-face conversation with a suspect even though the U.S. Supreme Court has upheld such a "body wire" recording. Earlier this year Justice Liacos reduced the bail of a Costa Rican cocaine dealer to \$50,000 from \$500,000, although five lower courts had agreed on the higher figure. Not surprisingly, the drug pusher fled the country.

The activist rulings of Dukakis appointees have by no means been confined to criminal cases. For example, in addition to supporting Mr. Dukakis in the now-famous Pledge of Allegiance case, Justices Liacos and Abrams have substituted their policy judgments for those of the state's elected representatives on the issue of abortion. In one illustrative case, they voted to strike down a state statute denying public funds for abortions under a provision they found "implicit" in the Massachusetts constitution. The U.S. Supreme Court had previously rejected virtually the same argument in three different cases, reasoning that the government's failure to fund a constitutionally protected "liberty" such as abortion does not deprive a person of that liberty.

Another cutting-edge issue on which the Dukakis appointees subscribe to liberal orthodoxy is gay rights. In one case they held that the fact that a woman is a lesbian should not have been considered by the lower court in determining whether she should regain custody of a child she had previously handed over to a guardian.

Similarly, in a series of decisions allegedly rooted in the U.S. Supreme Court's privacy decisions, they have asserted that statutory prohibitions against certain sexual activities cannot apply to private consensual conduct by adults—and they have unusual ideas about what conduct is private. They have stated, for example, that sex acts performed in the front seat of a car in a parking lot adjoining a public road are private, and reached a similar conclu-

sion with respect to a peep-show cubicle in a pornographic movie theater.

The Dukakis justices have also taken the lead in making communities powerless to prohibit child pornography or otherwise to resist the intrusion of obscene materials. In one case, involving a stepfather who took sexually provocative photographs of his 15-year-old stepdaughter, clad only in a red scarf and bikini-type white panties, Justices Liacos and Abrams joined the majority opinion in invalidating the state's child pornography statute, holding that posing a 15-year-old for such photographs is protected by the free speech clause of the First Amendment. (Although Mr. Dukakis recently expressed disagreement with the ACLU's efforts to shield child pornography under the First Amendment, he failed to note that his high court appointees are in accord with the ACLU's position.)

Moreover, Justices Liacos and Abrams, alone among their colleagues, believe that even plainly obscene material must be permitted unless thrust upon the public, even though it has long been held by the U.S. and Massachusetts supreme courts that obscenity is not protected under the First Amendment. Justice Liacos has also opined that communities may not deny liquor licenses to nude bars or forbid the nude dancers to mingle with patrons, because that interferes with the dancers' rights of free expression and association.

Justices Liacos and Abrams have also contributed to the national tort liability crisis, inventing ingenious theories by which businesses must pay for injuries they have not caused. For example, the Dukakis appointees held a hospital liable to a woman patient raped by a doctor, even though the rape did not occur on the hospital's premises and the doctor's only connection with the hospital was that he possessed staff visiting privileges there. For similar reasons, a bus company was held liable for a murder in its terminal. They have even opined that police are constitutionally obliged to pay the hospital bills of a suspect who is injured trying to escape arrest, a view unanimously rejected by the U.S. Supreme Court.

In sum, Sen. Leahy's description of judges "not ideologically attuned one way or another" is thoroughly refuted by the record of Mr. Dukakis's two appointees to the Massachusetts Supreme Court. Nor can the governor evade responsibility for appointing them by pointing to his use of the state bar's nonpartisan, merit-based judicial screening committee. Not only has Mr. Dukakis previously been quick to take credit for his appointments, he appointed Justice Liacos over the repeated objections of the state bar committee.

Both Justice Liacos and Justice Abrams have been named in national legal publications as leading candidates for appointment to the U.S. Supreme Court in a Dukakis administration. The Dukakis campaign has devoted considerable resources to diverting the electorate's attention from the governor's membership in the ACLU to the prospect of a "President Quayle." The voters would be well-advised to consider the prospect of a "Mr. Justice Liacos."

Mr. Cooper, a lawyer in Washington, was a U.S. assistant attorney general from 1985 until July. Michael A. Carvin, also a lawyer in Washington, assisted in the preparation of this article.

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Open opinion could shape the 1990s, because apart from a few holdouts — such as Gen. Alfredo Stroessner in Paraguay, a handful of Saddam Husseins and Hafez Assads in the Arab world — the practice of real, serious dictatorship now is almost entirely confined to two parts

In any country except the very poorest, governments now cannot help knowing what their people think of them, and cannot stop the people knowing they know.

of the world. One is a large swath of Africa, and there may be little to do about that just yet. The other is the communist world, whose form of dictatorship used to seem unbreakable because its system of control looked so solid. It no longer looks that way.

Having told people what perestroika ought to be doing for them, Soviet General Secretary Mikhail Gorbachev's sort of communism is now in the name of glasnost slowly and unevenly permitting people to find out whether perestroika is doing the job, and complain if it isn't.

If economic revival does not come, the Gorbachevs will have to choose between canceling the glasnost and doing a Pinochet. If they cannot reverse the information revolution, they will have to give the people a chance to choose somebody else who can run the place better. That is why a lot of the next few years' headlines will be coming from east of the Elbe.



PATRICK
BUCHANAN

On the home bench

"These [Supreme Court] appointments are for life, and when the vice president talks about liberals on the bench, I wonder who he is talking about."

With that disingenuous remark, "moderate Mike" of Thursday night's debate pooh-poohed the notion he would name fellow ACLU activists to the Supreme Court.

Wherever could Vice President George Bush have gotten such an idea! "I don't appoint people I think are liberal or people who I think are conservative. I appoint people of independence and integrity and intelligence."

The governor's assurances, however, are belied, not only by previous statements wherein he advanced the ultraliberals William Brennan and Thurgood Marshall as his ideal justices, but by his own record in Massachusetts.

As former Assistant Attorney General Charles Cooper wrote Friday in The Wall Street Journal, the only two Dukakis nominees to the Massachusetts Supreme Judicial Court, law professor Paul Liacos and Judge Ruth Abrams, are liberal activists of the Rose Bird school of jurisprudence, whose votes and opinions expose them as "fervent proponents of the ACLU's liberal social agenda," and "committed to imposing it through judicial decree."

On the ACLU's litmus test issue, capital punishment, both justices have voted to strike it down in every case where it has come up, even after the people of Massachusetts voted to put the death penalty back



in the state Constitution. As Justice Liacos airily declared, the death penalty is simply "antithetical to the spiritual freedom that underlies the democratic mind."

But the Liacos-Abrams solicitude for the criminal class goes far beyond keeping hope alive for the Bay State Willie Hortons. Justice Liacos has argued that a mandatory 25-year sentence for narcotics kingpins is "cruel and unusual punishment," that police roadblocks to keep the intoxicated off Massachusetts highways violate the constitutional

see BUCHANAN, page F4

Patrick Buchanan is a nationally syndicated columnist.

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BUCHANAN

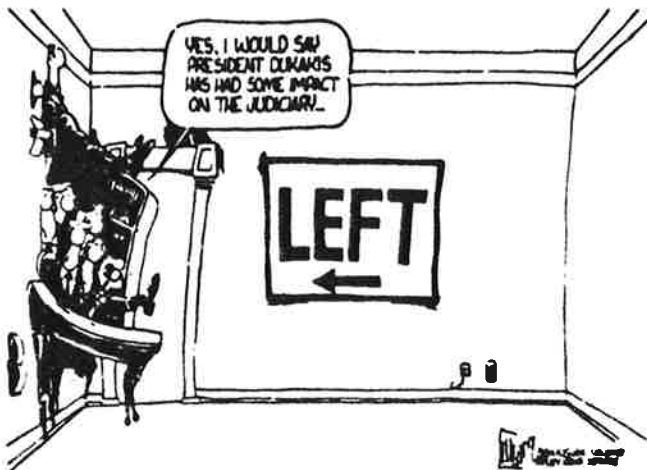
From page F1

rights of drunken drivers. Justice
Abrams, in a celebrated case, found
that convicts' rights had been vio-
lated because they had not been pro-
vided with absentee-voter registra-
tion forms, leading the victorious
defendant to set up a Massachusetts
League of Prison Voters, another
Bay State first.

In a case that may help explain the
Boston Police Union's dumping of
the Duke for George Bush, Justice
Liacos ordered a police department
to pay the hospital bills of a felon
shot trying to escape arrest — even
though the cop had fired a warning
shot and escorted the thug to the
emergency room. (Even Justices
Brennan and Marshall choked on
this one, joining a unanimous Su-
preme Court in dumping over Jus-
tice Liacos' "rather novel Eighth
Amendment approach.")

In one especially gruesome case,
where Justices Abrams and Liacos
helped overturn the conviction of a
father who had raped both his 6- and
8-year-old daughters, the justices
claimed the father's rights had been
violated when the girls were allowed
to testify and be cross-examined by
television, from another room,
rather than endure the "psychologi-
cal trauma" of facing their father
again.

On gay rights, the Liacos-Abrams
opinions come right out of the ACLU
policy guide. The right of privacy,
they have both declared, covers sex-
ual acts committed in the front seat



of a car in a parking lot beside a
public highway as well as homosex-
ual acts performed in a peep show
cubicle in a pornographic movie the-
ater. The pair were also decisive in
the 4-to-3 Massachusetts Supreme
Court decision dumping over the
state's "child pornography" law,
when they ruled that the First
Amendment protected a stepfather's
right to put his 15-year-old step-
daughter up on a bar and photograph
her half-naked.

While both justices have expan-
sive views of the First Amendment
rights of nude go-go dancers (not
only have they a constitutional right
to perform in public bars, but also to
solicit drinks), Justices Liacos and

Abrams have a restrictive view of
the First Amendment rights of pub-
lic school teachers, having ruled it
unconstitutional to tell schoolchil-
dren they can meditate silently or
pray for a minute at the opening of
class.

Mr. Dukakis' choice for Chief Jus-
tice of Massachusetts, Edward Hen-
nesey, comes out of the same ACLU
cookie-cutter.

Alone on the court, the chief jus-
tice said that the felons who fled,
while on the now-famous Dukakis
furloughs, could not be prosecuted
— "because it is not consistent with
common usage to hold that a failure
to return constitutes an escape."

The chief justice also led the

court in overturning a state law
which gave preference in hiring to
disabled veterans, asserting that to
provide such an advantage to an eye-
less, armless or legless Vietnam vet
was "arbitrary and capricious" and,
moreover, could have an "adverse
impact" on the "efficient operation
of the public service."

Chief Justice Hennesey also
joined the opinion, reinstating to the
Massachusetts bar, as a person "of
good character," the traitor Alger
Hiss, even though the convicted per-
jurer persists with the pack of lies
he told in 1948 about not being Josef
Stalin's spy.

As Mr. Cooper notes, both Justice
Liacos and Justice Abrams have
been named in national legal pub-
lications as leading candidates for
appointment to the U.S. Supreme
Court in a Dukakis administration.
As, incidentally, has Susan Estrich,
the Dukakis campaign manager,
who headed the Massachusetts
ACLU in 1985-86 and is the nation's
leading advocate of giving homo-
sexuals equal rights to marry and
adopt children. Ms. Estrich person-
ally went into court in 1982 to force
the city of Pawtucket to get its nativ-
ity scene off public property.

We are forewarned, friends. If we
want an ACLU-dominated Supreme
Court that will make us look back
upon Thurgood Marshall and Wil-
liam Brennan as centrists, then let's
go out and save the Duke — because
that is what his past rhetoric and his
past record indicate he has in store
for the American people.

The Washington Times

WEDNESDAY

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01f. Resume	Re: candidate for Deputy Solicitor General. (2 pp.)	n.d.	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Counsel to the President, Office of
Series: Liberman, Lee S.
Subseries: General Subject Files
WHORM Cat.:
File Location: Deputy Solicitor General

Date Closed: 7/22/2005	OA/ID Number: 45279-013
FOIA/SYS Case #: 2005-1392-F	
Re-review Case #:	
P-2/P-5 Review Case #:	
MR Case #:	Appeal Case #:
MR Disposition:	Appeal Disposition:
Disposition Date:	Disposition Date:

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

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Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01g. Article	Re: Interview with candidate for Deputy Solicitor General. (9 pp.)	1988	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Counsel to the President, Office of
Series: Liberman, Lee S.
Subseries: General Subject Files
WHORM Cat.:
File Location: Deputy Solicitor General

Date Closed: 7/22/2005
FOIA/SYS Case #: 2005-1392-F
Re-review Case #:
P-2/P-5 Review Case #:

OA/ID Number: 45279-013

MR Case #:
MR Disposition:
Disposition Date:

Appeal Case #:
Appeal Disposition:
Disposition Date:

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Withdrawal/Redaction Sheet

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. List	Re: candidates for Deputy Solicitor General. (2 pp.)	06/05/89	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Counsel to the President, Office of
Series: Liberman, Lee S.
Subseries: General Subject Files
WHORM Cat.:
File Location: Deputy Solicitor General

Date Closed: 7/22/2005
FOIA/SYS Case #: 2005-1392-F
Re-review Case #:
P-2/P-5 Review Case #:

OA/ID Number: 45279-013

MR Case #:
MR Disposition:
Disposition Date:

Appeal Case #:
Appeal Disposition:
Disposition Date:

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