



®

NINTH JUDICIAL COMMITTEE

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1:35 pm

Chris —

Something in the
near future.

More to follow
when I get back.

Regards
to you + Marcia

Elena

202-662-
8810



THE TALK OF THE TOWN

GEORGE'S CHOICE

THE United States Court of Appeals for the Second Circuit is often called the second most important court in the nation. It has thirteen active judges, who, sitting in panels of three, rule on all appeals from the federal trial courts in New York, Connecticut, and Vermont. The Second Circuit has a rich history. Lawyers who argue in its elegant courtroom, on the seventeenth floor of the federal courthouse on Foley Square, stand between bronze busts of the court's most eminent alumni—Learned Hand and Henry Friendly—who are widely regarded as the greatest American judges never to have served on the Supreme Court. The Second Circuit has a new judge, Dennis G. Jacobs. The Senate confirmed his nomination on September 29th, making him the last federal judge in New York nominated by President Bush. He is a curious choice.

Between his graduation from law school, in 1973, and his appointment to the bench, Judge Jacobs held one job, as a lawyer with the prominent corporate-law firm of Simpson Thacher & Bartlett. He has none of the qualifications that the public and, certainly, most lawyers assume are required for a federal judgeship as important as one on the Second Circuit. He was never a judge on a lower court, a criminal prosecutor, or a defense attorney. He never worked for the government or performed any kind of public service. He never participated in a civil-rights case or in any case where constitutional issues played a major role. And, unlike many federal judges, he has shown no interest

in legal scholarship; his sole published work since law school is a short article in the *Review of Securities Regulation* on which he collaborated in 1982.

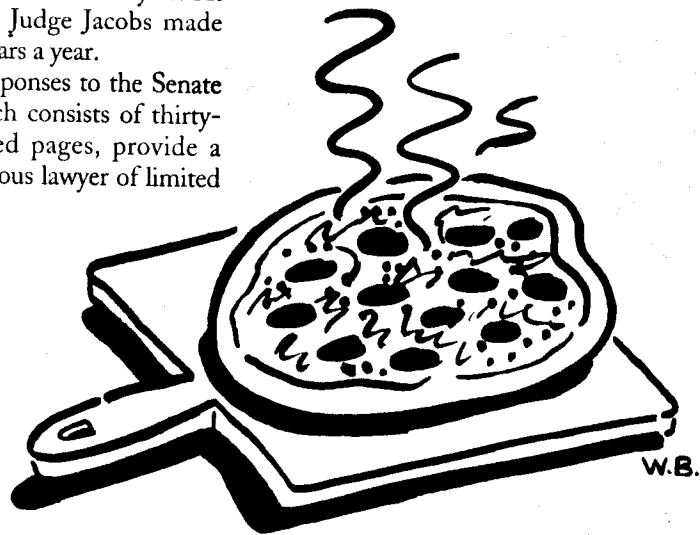
In his career at Simpson Thacher, he showed few signs of public spirit. He was never, for example, active in the local bar association. In his answers to the questionnaire that was given him by the Senate Judiciary Committee, Judge Jacobs says that he "organized" his firm's effort to aid the lawyers at Bronx Legal Services, but the people at Bronx Legal Services who established its relationship with Simpson Thacher say they have never met Judge Jacobs.

Most of Dennis Jacobs' professional activity for the past decade has been in the narrow field of reinsurance litigation. That area of the law concerns disputes between insurance companies about which of them should pay policyholders' claims. The cases, while important to the companies involved, are of little importance to the public. They are, however, very good business for lawyers. At Simpson Thacher, Judge Jacobs made about a million dollars a year.

Judge Jacobs' responses to the Senate questionnaire, which consists of thirty-two densely packed pages, provide a picture of a prosperous lawyer of limited interests and little distinction. They contain a single clue to why he was nominated. He was asked to list "all organizations to which you belong," and he listed just one: the Federalist Society.

The Federalist Society for Law and Public Policy Studies, which was founded in 1982, is, according to its statement of purpose, "a group of conservatives and libertarians interested in the current state of the legal order." The society quickly became the principal unofficial network of the Republican judicial revolution. Its meetings and seminars were training grounds for a generation of judges and academics. For Dennis Jacobs, mere membership in the society served to propel him from obscurity to a spot near the pinnacle of the judicial world.

That such a small thing could be enough to land someone on the Second Circuit is a sign of exhaustion in President Bush's effort to produce a reliably conservative judiciary. In the early eighties, President Reagan could select from an able assortment of conservatives to fill the federal bench. On the Second Circuit, for example, he named law-and-order trial judges like George C. Pratt and



W.B.

esteemed conservative scholars like Ralph Winter. But after twelve years the ranks of conservatives who were both eminent and reliable had thinned. As the Jacobs nomination demonstrates, President Bush was ultimately forced to settle for reliability alone.

The Jacobs nomination also demonstrates a kind of exhaustion among the Democrats in the Senate. In the exercise of its constitutional obligation to "advise and consent" concerning the selection of judges, the Senate was virtually invisible as far as Judge Jacobs was concerned. His confirmation hearing, last August 11th, was almost comically perfunctory. Only one senator on the committee, Dennis DeConcini, of Arizona, sought any information from Jacobs: he asked Jacobs a few questions having to do with his background and his feelings about the British system of civil litigation (in which the losing party pays the winner's attorneys' fees), and expressed concern about judicial delays. The transcript of the entire hearing takes up less than seven double-spaced typed pages. Jacobs was confirmed by the full Senate without debate.

Over the past twelve years, the Senate has confirmed five hundred and nine federal judges nominated by Presidents Reagan and Bush, or almost two-thirds of those now on the bench, and confirmed virtually all of them without any serious debate. Nan Aron, the executive director of the Alliance for Justice, which has coordinated liberal opposition to Republican judicial nominees in recent years, says, "Judges get very little attention from senators or the public." Some public-interest organizations, like the N.A.A.C.P. and the Mexican-American Legal Defense and Education Funds, occasionally speak out in opposition to individual judges, but "members of the bar are reluctant to raise issues about judges if there's a chance they'll be confirmed, and most are," Aron says. "They don't want to jeopardize the interests of their clients by opposing judges they are going to have to appear in front of." Therefore, as happened with Judge Jacobs, the legal public-interest organizations choose silence, and so do most senators and most of the press.

The costs of that silence should not be underestimated. Federal judges have enormous power and wide discretion. Because the Supreme Court reviews only

a few decisions each year, the lower federal courts usually serve as the final arbiter on the constitutionality of the nation's laws and the civil rights of its citizens. Federal judges also have life tenure. Dennis Jacobs is forty-eight years old.

BILL AND THE KING

WHEN the Inaugural Parade heads up Pennsylvania Avenue, perhaps the most fitting salute to Bill Clinton may be the image, on a float, of the late Elvis Presley. Clinton, after all, is the first President-elect to have played "Heartbreak Hotel" on the saxophone, and he once described himself as "going nuts over Elvis."

Clinton may by now have noticed some eerie similarities between his life and Presley's. Both were born in small Southern towns. Both had weight problems. Like the precocious Clinton, who was first elected governor of Arkansas at thirty-two, Presley came to public notice at a very early age. When they reached their forties, both men were surrounded by bodyguards and lived in huge houses sought out by tourists. And, although Clinton is alive and Presley is dead, both have been spotted everywhere over the past decade. In Clinton's case, the ubiquity results from apparent perpetual political motion; in Presley's, the best explanation is that there has been an international outbreak of impersonators.

The first Presley impersonator to appear in an Inaugural Parade will take his place among the marching bands, drill teams, color guards, jugglers, and horses. Julie Gibson, the Inaugural Parade director, declares that the decision to include one came about by chance. "We didn't go out searching for Elvis imper-

sonators, but we got several from all over the country," "We said, 'What a great idea.'"

Ms. Gibson says that the spontaneous submissions came from Wendy Mydlach, of New York, who produce an amalgam of Elvis's satin costume which they call "Elvis of America" and say is a "tribute to Presley. Jim Mydlach, the brother of Wendy, is a safety for the Golden State. He has formed a variety of promotional appearances for Presley in the nineteen-seventies. Wendy Mydlach worked as a hair stylist for the singer's manager. "We try to bring back the life of Elvis's life," she says.

In their production the Mydlachs use dual impersonators: one for the young Elvis, one for the old. The impersonator, pelvic Presley of the fifties, who must have fasted before the parade, as he did before the Inauguration in America; and the caped, Elvis of the nineteen-seventies, who took shots at his television show and apparently of a drug overdose year before Clinton was first elected. And therein lies a problem. "They were both impersonators," Gibson says, "but only one will be in the parade." That one, she says, will be the nineteen-fifties Elvis, who wears a gold lamé jacket and "Don't Be Cruel" and "Burning Love" shoes.

The Mydlachs are shaking the prospect of having to separate the two Elvises. "It's a package," Wendy Mydlach says, with a sad sigh, "but it's what the Spirit of America is about." It does not console her that the United States Postal Service has issued a stamp for Clinton voted with the support of Americans for the young Elvis.

The Inaugural Parade director, Kevin Mills, who has been impersonating Elvis for eight years. In the ways that American life and Elvis are sometimes linked, Mills, a native of Delran, New Jersey, is affected by the new President. Clinton was once dazzled by Elvis. "When I saw Clinton play 'Heartbreak Hotel' on the 'Arsenio Show,' that's when it really hit me," Mills says. "That's one of the reasons I voted for him." It was not a vote that entered in exit polls, but it is in s

