To Professor Bob Bauer, Professor Christine Rodriguez, et al.

From: G. Edward White

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Re: Testimony to Presidential Commission on the Supreme Court of the United States

I have been invited to express my views on a number of matters related to the Supreme Court of the United States that the Commission has been instructed to analyze. I am going to confine myself to matters that bear a close connection to my scholarship, which has centered on American legal and constitutional history and judicial biography.

Perceptions About the Court and Justices

I believe that current concern with the proper role of the Supreme Court in the American system of constitutional government stems from a perception about the Court as an institution and the justices who serve on it. The perception is that the Court is a political institution, not dissimilar to the other branches of government and affected by the same issues that affect the decisions of those branches, and that its justices are political actors whose decision-making largely resembles that of the members of the other branches.

I happen to think that the perception is oversimplified and inaccurate as an explanation for much of what the Court decides. But I also recognize that it is widely held and tends to be reinforced by the mainstream media's coverage of the Court, which is generally limited to decisions in visible constitutional cases, describes those decisions in ideological terms, emphasizing their outcomes and labeling those outcomes as "liberal" or "conservative," and characterizes justices sitting on the Court as "liberals," "conservatives" and (occasionally) "moderates."

A number of the issues connected to current concerns about the composition and role of the Court follow from the above perception. Justices are described as members of "blocs" on the Court, supporting or opposing one

another on ideological grounds. Presidents nominating justices to the Court are given ideological labels in the media, as are the justices they nominate. When a vacancy on the Court occurs, the departing justice is given an ideological label, and a president with the opportunity to replace that justice is expected, depending on the president's perceived ideology, to choose a replacement whose perspective is anticipated to be compatible with that of the president and either consistent with or opposed to the perspective of the departing justice. Coverage of nominations to the Court tends to be dominated by attention to the perceived ideological composition which will result should a particular nominee be appointed.

Close students of the Court recognize that such perceptions about the Court and its justices are mainly misleading. So-called "blocs" of justices do not vote consistently with one another across a range of cases. The Court decides a number of cases each Term unanimously, and issues a number of other rulings deciding cases without opinion where, although the outcome is made plain, the actual votes of justices are not revealed. Over the course of American history a number of justices' voting patterns have not conformed to the expectations when they were appointed, so that some nominating presidents have signified their "disappointment" in an appointee's voting record. And regularly over the stretch of a justice's tenure the most visible opinions of that justice tend not to be on issues that were deemed vital to the justice's candidacy during the appointment process.

Perhaps most importantly, if one widens the lens of investigation of the Court's decisions over time it becomes clear that far from being "out of step" with or indifferent to mainstream attitudes in American society at large, the Court has tended to conform to them. Sometimes Court majorities have tended to prod other branches of government to embrace attitudinal change, as the Warren Court did with race relations in the 1950s and the reapportionment of state legislatures in the 1960s. Sometimes Court majorities have appeared reluctant to support economic and social changes approved by other branches and the public at large, as in the 1930s, when the Court initially opposed and subsequently endorsed state and federal legislation seeking to regulate economic activity and redistribute economic benefits. But the principal "lesson" one can draw from a historical investigation of the relationship of the Court to mainstream attitudes in

American society is that the Court has never strayed very far from such attitudes. As the attitudes of Americans toward private property, the ambit of governmental regulation, the voting franchise, race, gender, religion, sexual preference, and communicating media have changed over time, the Court, on the whole, has changed with them.

If one roughly agrees with the above characterizations of the Court and its role in American society at large, some observations about issues being considered by the Commission might be said to follow from them.

The Size of the Court

There is no question that Congress can constitutionally change the size of the Court, and the number of sitting justices has changed several times over the years, ranging from originally six in 1789 to seven to nine to (very briefly) ten, then back to seven, then, in 1870, nine, where It has remained ever since. The initial rationale for changing the number of justices was the responsibility of justices to serve, along with federal district court judges, as judges for federal circuit courts, which decided appeals on cases from the district courts. With steady increases in population and the entrance of additional states into the Union during the nineteenth century, the legal business in certain areas of the nation dramatically increased, and Congress responded by creating new federal circuit courts and on occasion adding justices to the Supreme Court to help staff them. Geography and the absence of speedy transportation also played a part: when California and Oregon experienced significant population growth in the decades after 1850, the distance between those states and the nine existing federal circuits was so vast that Congress created a tenth circuit, initially called the California Circuit, and subsequently increased the size of the Supreme Court to ten justices, assigning the nominee to the tenth slot, Stephen Field, who was a resident of California, to the tenth circuit.

President Andrew Johnson, who assumed the office after Lincoln's death inn 1865, was sufficiently unpopular in Congress that even though deaths and resignations reduced the number of sitting justices almost immediately after the Court's size was increased to ten, Johnson had no prospect of having any of his nominees confirmed by the Senate, and Congress responded to the presence of three potential vacancies on the Court by passing a statute reducing the Court's

size to seven. Then, after Grant became president in 1868 and Republicans cemented their control of Congress, an 1870 statute increased the number of justices to nine, Grant's being given two nominations. The ostensible reason for that statute was once again the demanding business of the federal circuit courts, but in one visible sequence of cases, involving the constitutionality of making national bank notes legal tender, the two new appointees voted in 1870 to reverse a prior 1867 decision finding any currency other than specie unconstitutional.

The Legal Tender cases may have been one instance in which the size of the Court had a direct effect on its decisions, but for the next sixty odd years none of the Court's controversial decisions were associated with its size. In addition, responsibilities of justices to staff federal circuit courts were eliminated in 1891, with Courts of Appeals being created in each circuit and judges appointed to those courts, and in 1925 a federal statute changed the Court's docket from largely mandatory to largely discretionary, meaning that the justices could hear and decide far fewer cases if they so chose. So there seemed no apparent reason for Congress to tinker with the size of the Court.

Then, in 1937, the size of the Court once again became a visible issue, and was on that occasion directly related to its decisions. In the 1933 and 1934 Terms Court majorities, some of them substantial, invalidated some early New Deal legislation and some state legislation limiting the number of hours and establishing minimum wages in certain industries. President Roosevelt openly criticized the Court's decisions as reflecting outmoded attitudes toward the economy and social welfare, and after decisively winning re-election in 1936 introduced legislation that was widely described as an effort to "pack" the Court with additional justices who would be sympathetic to the reformist goals of the New Deal.

The reason the Court's size became a pivotal feature of the legislation was that the Roosevelt administration attempted to advance a politically neutral rationale for it: that the justices, seven of whom were over the age of 70 in 1937, were having difficulty keeping up with the Court's docket. The "Court-packing plan," introduced in Congress in January, 1937, allowed the president to

nominate an additional justice to the Court, up to a total of 12 justices sitting at any one time, each time a justice over 70 declined to retire.

The age/docket rationale for the plan was specious, since the Court was not in fact behind on its docket and had not been since Roosevelt had come into office, and since Roosevelt's claim that the Court "declined to hear 87% of its cases" only reflected its largely discretionary docket, where the vast number of cases came before the Court only when at least four justices agreed to entertain a petition for certiorari on the ground that the issues in a case were uncertain and contentious and required Supreme Court disposition. The real reason for the plan was to create incentives for Justices VanDevanter, McReynolds, Sutherland, and Butler, all of whom were over 70 in 1937 and all of whom had voted to invalidate federal and state social welfare legislation, to retire.

Thus the "Court-packing plan," which polls showed was opposed by a majority of the American public and which never made it through Congress, cannot accurately be seen as evidence that the size of the Court has been thought to affect its decisions. Instead it can be seen as an effort by the Roosevelt administration to claim that the age of justices affected the Court's decisions, when in fact the administration's concerns when it introduced the plan centered on outcomes rather than age.

Age/Life Tenure

One could, however, characterize the Court-packing plan in a slightly different fashion. One could argue that the principal complaint the Roosevelt administration was registering against the Court which had invalidated early New Deal legislation was that it was, as Roosevelt said in a fireside chat, one that held a "horse and buggy" conception of interstate commerce, one mired in the nineteenth century and hence oblivious to twentieth-century developments in communication and transportation that had resulted in a great many activities in the modern American economy "affecting" interstate commerce.

Put another way, Roosevelt was suggesting that the Court's justices who voted to invalidate early New Deal legislation, in part because it unconstitutionally extended the scope of the federal government's regulatory powers to include "local" as well as "national" activities and "manufacturing" or "production" as well as commerce, had not sufficiently adapted to modern

understandings of the scope of the federal government's regulatory powers because their attitudes toward economic activity were frozen in time: they continued to exhibit outmoded "nineteenth century" sensibilities. They were, in that respect, "too old" to continue to make enlightened judicial decisions, and they needed to "give way" to younger justices better able to grasp the nature and scope of the contemporary American economy.

One could thus think of the Court-packing plan as not about the Court's size but about age and life tenure for Supreme Court justices. It may have been predicated on the assumptions that as justices age, their ability to adapt to changes in the culture around them recedes, and they begin to retreat to and replicate interpretive postures they held earlier in their careers, postures that may not be able fully to make sense of contemporary issues that come to the Court. With those assumptions in place, the Court-packing plan may have been an effort to identify a chronological age—70—when a justice can be said to have approached the point where his or her interpretive posture has become frozen in time, and less capable of entertaining and resolving "new" legal issues. It may also have been another way of establishing something like term limits for justices: after 70, a justice is in effect given the option of leaving the Court or having an additional justice as a colleague, possibly one appointed by an administration with quite different policy goals from the one that appointed him or her.

There is no question that members of the American public reflexively associate age with "retirement" from demanding official positions and a decline in cognitive skills. Of the three perceived "liberals" on the current Court, only Justice Breyer has been receiving pressure to consider retiring, and that is surely because Justice Breyer is 83, sixteen years older than Justice Sonya Sotomayor and twenty-two years older than Justice Elena Kagan. The pressure on Breyer stems not only from the strategic advantage his retirement before the 2022 election would give to Democrats, who could control a Senate vote on his potential successor, but from an assumption, by all accounts unfounded, that Breyer's age has caused the job of a justice to "wear" on him, so that he would be grateful to "give way" to a younger person.

What historical evidence is there, first, for the proposition that justices' cognitive skills, and consequently their performance in office, markedly decline as

they age, and, second, for the proposition that later in their lives they find the job of being on the Court burdensome and are tempted to retire? Term limits on a justice's tenure can be seen as a way of freeing justices from having to anguish over their possible retirement: after a designated number of years, they are off the Court, and they know that on accepting a nomination. But how many justices, absent physical or mental deterioration, have chosen to leave the Court? And what can be said about the performance of those who have chosen to stay on past the Court-packing plan's suggested limit of age 70?

The evidence, when one looks at the Court since its origins and makes use of admittedly impressionistic evaluations of the performance of justices by scholars, provides quite weak support for both propositions. Of the justices regularly ranked as "great" over the course of American history—in chronological order Marshall, Story, Taney, Field, Holmes, Brandeis, Hughes, Cardozo, Black, Douglas, Frankfurter, Warren, Brennan, and Rehnquist—only Story and Cardozo did not reach the age of 70 on the Court, both dying in office. All the other justices served into their eighties with the exception of Hughes, who retired at 79, and Warren, who retired at 78. The fourteen justices identified as exceptional in the history of the Court overwhelmingly remained in office into their late 70s and 80s. It may be that the cognitive skills of some of those justices declined near the end of their careers-Taney, Field, Holmes, and Douglas come to mind—but not enough to affect their exalted reputations.

Putting aside retirements from the Court to pursue other jobs, in support of the careers of family members, or because of estrangements with colleagues—Justices Campbell, Curtis, Davis, Hughes (temporarily), Byrnes, Clark, and Goldberg are examples—how many justices have voluntarily left the Court when they had no physical or mental reason to do so? In the overwhelming number of nineteenth-century retirements the justice in question had experienced some form of illness; occasionally he recovered from it in retirement but more commonly surrendered to it. Of the twentieth- and early twenty-first justices, only Justices Souter and possibly Kennedy come to mind as examples of retirements unaffected by physical or mental deterioration (putting Justice Fortas, who was forced to resign from the Court, aside). A more common pattern is that of Justices Rehnquist and Ginsburg, remaining in office despite terminal medical conditions.

All this suggests that there is no particular reason to conclude that a justice's performance will decline markedly with age or that justices over the Court-packing age of 70 will find their job burdensome and be tempted to retire. With respect to the latter issue, the reverse seems to be the case: once on the Court, most justices love their job and want to keep on doing it as long as they can.

How shall one consider term limits with this evidence in mind? There are two principal issues connected with term limits for justices. The first is whether, assuming from historical evidence that most justices are disinclined to retire from the Court when in good health, term limits can be seen as a way of forestalling justices from staying in office "too long." There seems no doubt that such is the case. A hypothetical justice appointed at the age of 50 would have no option but to leave the Court after twenty or twenty-five years or whenever the limits of his or her tenure were reached. That conclusion raises the second issue: why should one want justices, regardless of their performance on the Court, to leave it after a specified time interval?

The second issue can be seen as containing two related sub-issues. One is what the purpose of limiting the tenures of Supreme Court justices might be. The second is, if such a purpose can be discerned, why it is particularly efficacious for Supreme Court justices where no limits are imposed on the tenure of members of Congress. Why might It be important to restrict the years in office for the former set of officials but not the latter?

It is apparent that term limits for justices are seen as a way of coping with the purported difficulty that as members of the Court age in office their attitudes and perspectives "harden," or become "frozen in time," so that they are less capable of effectively responding to novel legal questions as they come before the Court. Term limits would have the effect of forcing aging justices to "give way" to younger nominees who would be assumed to have a better grasp on current issues.

The historical evidence previously reviewed suggests that the assumptions about the relationship of age to a justice's performance on the Court which seem to be informing proposals for term limits are flawed. Some justices, such as most of the ones typically identified as "great," served for many years without a

noticeable diminution in their performance. Others—Justices McLean and McKenna come to mind—had an unremarkable impact despite lengthy tenures. Further, it does not necessarily follow that when a younger appointee replaces an older justice, the new justice can be expected to be more effective because of his or her age. Here one might consider the replacement of Hughes with Vinson, or that of Field with McKenna.

But even if one treats the assumption that the Court and its constituencies would be "better off" if younger justices replaced older ones after a specified length of service, why should term limits be imposed on justices when they are not on members of Congress? It would seem that the assumptions about the connection of aging to attitudinal postures, if sound, would apply equally to members of Congress. Is there something about being a judge that makes one peculiarly susceptible to a hardening of one's interpretive stance over time?

The last questions invite an exploration of why the framers of the Constitution concluded that Supreme Court justices should have life tenure in their offices, only being susceptible to removal if they violated a norm of "Good Behaviour." We know, from arguments advanced by the authors of the Federalist Papers and other supporters of the Constitution as its ratification was being contemplated, that life tenure for justices, and other federal judges, was thought to be a way of preserving the independence of the judiciary from the influence of other branches and from the citizenry at large. If federal judges were not elected, advocates of life tenure argued, they would be freed from having to consider the "popularity" of their decisions and consequently be more likely to advance what they believed was a sound interpretation of legal issues, regardless of the potential controversiality of that interpretation.

There is little evidence that in arguing for life tenure for federal judges, proponents were implicitly contemplating and rejecting term limits. At the time of the framing of the Constitution there were no limits on the tenure of any federal officials, including the President. George Washington voluntarily declined to seek office beyond a second term, establishing something of a practice for his successors, but in 1940 Franklin Roosevelt felt no barriers to running for a third term, nor for a fourth in 1944. The fact that a constitutional amendment was

eventually necessary to limit the terms in office of a President suggests that one would equally be necessary to do so for Supreme Court justices.

The last matter to consider with respect to term limits for justices is the possible effect on the incentives of persons to offer themselves as candidates for the Court. Although over the course of American history several persons offered the prospect of being nominated to the Court have declined, the overwhelming evidence is that the position is a highly coveted one, even despite something of a gap between the salaries recently earned by justices and those earned by visibly successful practitioners or legal academics.

In the late twentieth and twenty-first centuries a discernible pattern of prior career experience for nominees to the Court has emerged. Since the 1970s the overwhelming number of nominees have been lower court judges, most of them from the federal Courts of Appeal. Since the 1975 appointment of John Paul Stevens to replace Wiliam O. Douglas on the Court, only two nominees, William Rehnquist and Elena Kagen, have been named to the Court without prior judicial experience. It now seems virtually routine for nominating administrations to confine their list of prospective candidates to lower court judges.

Some commentators have speculated that this pattern has served to generate a class of “professional judges,” persons who make a decision, comparatively early in their careers, to seek a judicial appointment and to “work their way up” from district courts to courts of appeal to, hopefully, the Supreme Court. Such persons, it has been said, are well aware of the differences between judging and other legal jobs, including the compensation, and have made a decision to enter the ranks of the judiciary, ostensibly on a permanent basis (although judges periodically have resigned from their posts to work in another sector of the legal profession).

How much would it matter to persons attempting to become “professional judges” if the tenures of federal judges, including Supreme Court justices, were subjected to term limits? One cannot of course analyze that question in any depth as long as term limits remain only a hypothetical possibility. But some observations about judging, and a class of professional judges, may be pertinent.

The job of being a judge has some common features with other law jobs, most notably the frequent opportunities to analyze contested legal issues, which

judges share with practitioners and legal academics. But there are other ways in which judging is not like other law jobs. Judges are not thought of as advocates: they do not represent clients, although their opinions might be thought of exercises in advocating for a particular disposition of a case. Judges are regarded as authority figures in a way that others in the legal profession are not. The advice of a practitioner, or the insights of an academic, may be valued by clients, students, or colleagues. But they do not typically dispose of real-world issues in an authoritative way. The authority of a judge is qualitatively different from that of other members of the legal profession.

There is another respect in which the professional role of a judge is qualitatively different from that other lawyers. Practitioners or legal academics can openly identify themselves as "interested" parties with respect to issues of law and policy. They can proselytize on such issues without being thought as behaving inappropriately. In contrast, judges need to avoid being perceived as "interested" in the same sense, for fear of violating norms of impartiality and disinterestedness associated with their role. They even need to avoid the appearance of too close connections with persons outside the judiciary: a common theme of judges who were formerly practitioners is that entering the judicial profession cut them off from informal contacts with their previous friends and colleagues in the bar.

In sum, being a judge is not like other law jobs in some important respects, and not everyone in the legal profession will find the comparatively lonely authoritativeness of a judgeship attractive. It may be that given those features of a judgeship, being able to occupy it for one's lifetime would be regarded by many prospective candidates as a distinct advantage. If one knows that a job as a judge will only be for a fixed number of years, the question of what one might do next, and how the experience of judging might aid one in preparing for that eventuality, necessarily arises. So does the matter, for some persons, of how to earn a living after a judicial tenure ends. So might the question, on a court making collegial decisions, of how the approaching end of one's tenure might affect one's stature among colleagues. If the other judges with whom one is making collective decisions know that next year Judge A will no longer be among them, will they be as likely to acquiesce in Judge A's suggestions, or join Judge A's opinions?

All told, term limits might have a marginal effect on the pool of prospective judges; follow from assumptions about age and judicial attitudes that seem dubious; and would very likely require a constitutional amendment to implement. At this point I cannot see much of a case for them.

Conclusion

I believe that the current concerns about the Court, which are partially responsible for the formation of the Commission itself, are principally short-run in their nature, a product of perceptions that the Court now contains a majority of "conservative" justices and that those justices will vote together to abandon "liberal" Court decisions currently in place, such as *Roe v. Wade* and subsequent decisions affirming a limited right to terminate a pregnancy, or to resist efforts to implement "liberal" policies, such as the expansion of protection for voting rights or health care benefits, in the immediate future.

Such short-run dissatisfaction with the perceived orientation of the Court is nothing new: it has been constant over the course of American history. Sometimes critics have objected to the Court's ostensibly "liberal" composition or character, as during the Warren Court; more recently many of the Court's critics have characterized it as alarmingly "conservative."

Two questions need to be asked about short-run dissatisfaction with the Court in light of the Commission's mandate. The first is whether the dissatisfaction is qualitatively different from previous illustrations of it in the past. The second is whether the current dissatisfaction should precipitate structural reforms to the Court itself, whether in the form of expanding the Court's size, instituting term limits on the tenure of justice, or other alterations in the Court's jurisdiction.

I will be limiting my comments to the first two of those structural reforms, but before discussing those I want to address the first of the above two questions, whether current dissatisfaction with the Court is somehow broader and deeper than it has been in the past, to the point where some measure of structural reform seems necessary.

The review of historical evidence I have previously undertaken has been designed, in part, to support two conclusions about the role of the Court in American history. One is that the Court's actions have periodically been criticized by commentators and that commentary had pointed in different ideological directions. The Court and its justices have alternatively been characterized as "too liberal" or "too conservative," and most of the criticism has been directed at particular recent decisions.

The other conclusion is that if one takes a long view, the Supreme Court of the United States has almost never occupied an ideological position that served to estrange it and its justices from mainstream public opinion for long periods of time. Individual decisions of the Court have been perceived as controversial, even wrong-headed. But over time the Court has found a way to reverse or disengage itself from those decisions. *Plessy v. Ferguson* has given way to *Brown v. Board of Education* and its progeny; *Hirabayashi v. United States* and *Korematsu v. United States* are virtual dead letters; *Bowers v. Hardwick* has given way to *Lawrence v. Texas* and its progeny; *Whitney v. California* has given way to *Brandenburg v. Ohio.* The New Deal decisions that precipitated the Court-packing crisis were subsequently altered by other decisions in which the Court sustained the constitutionality of legislation regulating economic activity or redistributing economic benefits.

In short, when one expands the time frame of Court decisions, the Court tends to end up in positions largely consistent with the views of most Americans. That in itself would seem to furnish a reason for not responding to any currently perceived dissatisfaction with the Court with far-reaching structural reforms to the institution itself.

As far as those reforms themselves, I have taken up two, the size of the Court and mechanisms for addressing the perceived issue of the deleterious effects of justices aging during their tenures but remaining in place because of life tenure, specifically the idea of term limits for judicial tenures.

The idea of "Court-packing," I suggested, came about because of a disingenuous effort of the Roosevelt administration to tie the age of justices on the Court to the purported inability of the Court to administer its docket. The Roosevelt administration erroneously attributed the limited number of the cases

the Court actually heard, as opposed to those brought to its attention, to aged justices being unable to complete the Court's business, when in fact the limited number of cases was a function of the Court's largely discretionary docket, and the Court decided a number of other cases summarily, typically without accompanying opinions. The Court-packing plan presupposed that when justices over 70 declined to retire, they would "need help," in the person of newly appointed justices, to perform their work. In fact the objection of the Roosevelt administration to the Court in the mid 1930s was not so much the age of the justices but the results Court majorities were reaching in cases challenging the constitutionality of New Deal statutes and some related state social welfare legislation. The issues of age and the Court's alleged inability to keep up with its work were simply efforts on the part of the Roosevelt administration to avoid looking as if it were principally objecting to the Court's decisions.

But the Court-packing plan was founded on assumptions about the relationship of age to judicial performance. Once again, evidence from American history suggests those assumptions were ill-founded. Not only was there no evidence that the Court in the 1930s was not keeping up with its work, but there is very scant evidence that the performance of justices over 70—the age that triggered additional justices being appointed if justices reaching that age declined to leave the Court—declined while they remained in office. Of fourteen judges identified as "great" over the course of American history, only two left the Court before the age of 70, and only two others failed to serve into their eighties.

If anything, evidence suggests that 1)most justices have remained on the Court, whatever their ages, as long as they felt physically and mentally able to do so; 2) only a handful of justices experienced significant deterioration of their performance in the late stages of their tenure, yet remained on the Court; and 3) the replacement of an "older" with a "younger" justice did not invariably, or even regularly, result in improved performance.

Thus if one discards age, and consequent inability to discharge the Court's business, as salient reasons for increasing the size of the Court, one is left simply with a Court of expanded size. There seems no particular reason to expand the size of the Court unless the number of sitting justices is not capable of coping with the Court's workload, and if that is not the case there would seem reasons for not

going beyond 9 justices, one of which being the fact that the Court has had that number of justices since 1870, and since the Judges' Act of 1925 has not had problems with an overcrowded docket, nor failed to decide cases by the end of its Terms.

This leaves me with the issue of term limits. I will not repeat the arguments I previously advanced against that reform. Suffice it to say that I remain unconvinced that imposing term limits on judicial tenures would have any noticeable beneficial effects, particularly because I believe that arguments for term limits rest on the same flawed assumptions about the correlation between age and judicial performance that were held by proponents of Court-packing in the 1930s.

As noted, I am not addressing additional reformist proposals, such as ones affecting the Court's jurisdiction. But I continue to maintain that if one takes the long view, current dissatisfaction with the Court is based on short-run considerations; the Court has a way of righting itself when it temporarily gets our of synch with the public at large on particular issues; and thus perhaps the best response to current concerns might be to let time and the appointments process "reform" the Court as they have in the past.