

resent black districts, however, are free to lobby for black interests. In the West, where the races are less polarized, blacks find it easier to win elections and to join the ruling coalition in city hall.

The lesson is clear, says Mladenka. Blacks need not rely solely on Washington or white allies for a larger share of the political pie. In most cities, they can make the political process work in their favor.

### *Age and the Court*

"While Justice Sleeps" by Terry Eastland, in *National Review* (April 21, 1989), P.O. Box 96639, Washington, D.C. 20077-7471.

In 1937, President Franklin D. Roosevelt, angered by the "nine old men" on the Supreme Court, asked Congress to empower him to appoint one additional Justice for each sitting Justice over 70. FDR's politically inspired "court packing" scheme was a disaster, notes Eastland, a researcher at the National Legal Center for the Public Interest, but the issue of age and incompetence on the Court has never gone away.

The Justices are appointed for life, and many are determined to die on the bench. In 1974, the Court was crippled until Justice William O. Douglas, victim of a disabling stroke, reluctantly agreed to retire.

Today's Court—eight men and one woman, Justice Sandra Day O'Connor—includes several octogenarians. Justice William J. Brennan is 83 and Justices Harry Blackmun and Thurgood Marshall are both 80. Justice Byron White, the next oldest, is 72. Brennan and Blackmun remain spry, according to Eastland, although Blackmun's intellectual interest in the law appears to have waned. Marshall "is said to watch lots of television, in chambers."

"An aging Justice who uses his law-clerk bureaucracy skillfully can, like a smart athlete, conserve his diminishing energy and extend his career," says Eastland. It was not until the 1930s that every Justice employed a clerk—almost always a recent law-school graduate. A second was added in 1947, a third in 1970, and a fourth shortly thereafter. They do much of the Court's work, including the drafting of the 15 or so opinions each Justice is assigned each year. Only Justice John Paul Stevens is known to draft all of his own opinions. Others frequently assign the writing to clerks, then edit the drafts. (A joke has it that Justice Blackmun's clerks assign him the opinions they are not interested in.)

"Can an editor be a great judge?" asks Eastland. Try to imagine Justice Oliver Wendell Holmes polishing the draft opinions of his law clerks.

What to do? Short of endorsing a Constitutional amendment requiring Justices to resign at age 75 or 80, Eastland says, Congress could reduce its appropriation for the Court's clerks. Half as many would do. The Court's opinions would improve, he argues, and "Justices who couldn't cut it would be forced to step down." Justice Holmes, incidentally, was 91 when he retired in 1932.

### *The Media Mandate*

*What happens when the news media define our politics? Wilson Carey McWilliams, a Rutgers political scientist offers one opinion in Commonweal (March 10, 1989):*

We lack the peer review that, in earlier years, was provided by party leaders and opinion makers who controlled nominations and guided campaigns. In 1884, the discovery that Grover Cleveland apparently had fathered an illegitimate child provoked the response that such private failings, then as now the focus of media attention, are not the most important indices of *political* character, and Cleveland won the election. In 1988, by contrast, while Gary Hart's derelictions shattered his candidacy, voters did not appear to notice that, after all his years in the Senate, Hart was endorsed by only one incumbent Democratic senator. Judgment by peers is yielding to an audition by the media, and private proprieties may now outweigh public virtues.