

Memorandum



Subject Conference Sponsored by the American Enterprise Institute	Date September 24, 1981
To See List Below	From Hank Habicht <i>HL</i> Special Assistant to the Attorney General

The American Enterprise Institute will sponsor a timely conference on "Judicial Power in the United States: What are the Appropriate Constraints?" I will ask for copies of the papers in advance, but in view of the topic and the distinguished participants (see attached schedule), we may want to have one or two people sit in next week.

Addressees:

Theodore B. Olson
AAG/OLC
Ken Starr
David Hiller
Carolyn Kuhl
John Roberts
Chips Stewart

American Enterprise Institute for Public Policy Research
1150 Seventeenth Street, N.W., Washington, D.C. 20036

(202) 862-5800

September 21, 1981

Mr. Henry Habicht
Special Assistant to the
Attorney General
Department of Justice
Room 5123
10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Hank:

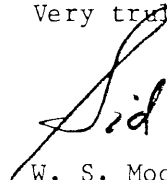
You are cordially invited to attend a conference entitled "Judicial Power in the U.S.: What Are the Appropriate Constraints?" This conference, sponsored by the American Enterprise Institute, will be held at the Mayflower Hotel in Washington, D.C. on Thursday and Friday, October 1 and 2, 1981.

This conference is intended to deal with four subjects: 1) Prior responses in American history to controversial judicial decisions; 2) Current proposals before Congress to restrain federal judicial power, such as limits on jurisdiction and remedy, and legislation to define substantive rights under the Fourteenth Amendment; 3) The question, what is there precisely about the exercise of judicial power today that requires remedy? and 4) What responses to the exercise of judicial power today are most constructive and consistent with the Constitution?

A copy of the program is attached. The papers can be sent to you in advance if you desire.

I sincerely hope you can join us and participate in what I expect to be a stimulating and significant meeting. Please let us know whether you will be coming no later than Monday, September 28, by telephoning Marilyn McMorran on 862-5815 or 862-5800.

Very truly yours,



W. S. Moore
Director
Legal Policy Studies

Enclosure

"Constitutional Checks on the Judiciary" by Charles Rice,
Professor, Notre Dame Law School

"The Reforming Judiciary" by Paul J. Mishkin, Emanuel
S. Heller Professor of Law at the University of California,
Berkeley

Commentators: John S. Baker, Jr., Louisiana State University Law Center
Paul M. Bator, Harvard Law School
Walter Berns, American Enterprise Institute
Jesse Choper, University of California, Berkeley, Law
Walter E. Dellinger, III, Duke University School of Law
Ted Eisenberg, Cornell Law School
John Ely, Harvard Law School
Charles Fried, Harvard Law School
Jules B. Gerard, Washington University School of Law
Joel M. Gora, Brooklyn Law School
Lino A. Graglia, University of Texas School of Law
John H. Langbein, University of Chicago Law School
Betsy Levin, University of Colorado School of Law
Hans Linde, Associate Justice, Oregon Supreme Court
Michael Malbin, American Enterprise Institute
Daniel Meador, University of Virginia School of Law
Ira M. Millstein, Weil, Gotshal & Manges
Robert F. Nagel, University of Colorado Law School
John E. Nowak, University of Illinois College of Law
Dallin Oaks, Associate Justice, Utah Supreme Court
Michael J. Perry, Ohio State University College of Law
Martin H. Redish, Northwestern University School of Law
Norman Redlich, New York University School of Law
Keith S. Rosenn, University of Miami School of Law
Ronald D. Rotunda, University of Illinois College of Law
Terrance Sandalow, University of Michigan Law School
Antonin Scalia, University of Chicago Law School
Aviam Soifer, Boston University School of Law
William Van Alstyne, Duke Law School
J. Harvie Wilkinson, University of Virginia Law School
Ralph Winter, Yale Law School

COORDINATOR: W. S. Moore, Director, Legal Policy Studies,
American Enterprise Institute

American Enterprise Institute for Public Policy Research

CONFERENCE
JUDICIAL POWER IN THE U.S.:
WHAT ARE THE APPROPRIATE CONSTRAINTS?

Mayflower Hotel
East Room
October 1 and 2, 1981

Thursday, October 1, 1981

1:30 p.m. - 4:30 p.m.

SESSION I: PRESENTATION OF PAPERS AND COMMENTARY

RECEPTION: 5:30 - 6:30 p.m.

Friday, October 2, 1981

9:15 a.m. - 11:45 a.m.

SESSION II: COMMENTARY

LUNCHEON: Noon - 1:45 p.m.

2:00 p.m. - 4:30 p.m.

SESSION III: COMMENTARY AND GENERAL DISCUSSION

Conference Chairman: Gerald Gunther, William Nelson Cromwell
Professor, Stanford Law School

Papers: "Containing the Least Dangerous Branch: From the Founding
to the Civil War," by Ann Stuart Diamond, Assistant
Director, Legal Policy Studies, American Enterprise
Institute

"Curbing the Court: Responses to Judicial Activism,
1857-1981" by Gary L. McDowell, Fellow in Law and
Political Science, Harvard Law School

"Majoritarian Restraints on Judicial Review: Congressional
Control of Supreme Court Jurisdiction" by Leonard G.
Ratner, Legion Lex Professor of Law, University of Southern
California Law Center