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**Subject:** : This is a score...

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Maybe Lubet appreciated that Hatch did not name him on C-Span in the Smith debate when we showed 4 million viewers his photo atop a police car.

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\The Atlanta Journal and Constitution  
August 28, 2002 Wednesday Home Edition  
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HEADLINE: Sniping fails to study judge's merits

BYLINE: STEVEN LUBET

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BODY:

There are both good and bad reasons to be unhappy about President Bush's nomination of Priscilla Owen, currently a justice of the Supreme Court of Texas,

to the important Fifth Circuit Court of Appeals.

Owen has been called the most conservative member of the most conservative state

supreme court in the nation. She is so far to the right that she has dissented

87 times from her court --- which is composed exclusively of Republicans

---

finding her colleagues either too soft on abortion or too tough on corporations.

One majority opinion --- remember, these are Texas Republicans --- referred to

her dissent as "nothing more than inflammatory rhetoric [that] merits no response." Another Republican justice called Owen's position in an abortion case

"an unconscionable act of judicial activism." And that was not just any Republican speaking. It was Alberto Gonzales, who serves as President Bush's

White House counsel.

But some of Owen's opponents are not content to challenge her record. They have

also attacked her as "unethical" primarily because she accepted campaign contributions from Enron and Halliburton but did not disqualify herself when

those companies had cases before her court. One liberal activist called her "Judge Enron," saying that she "illustrates the hold that Enron established over the [Texas] courts."

That is a cheap shot. Texas is one of 10 states in which Supreme Court justices

are chosen in full-throttle partisan elections. That makes the elections contentious and costly, with candidates raising and spending millions of dollars. Owen's campaign contributions were entirely lawful in Texas (they came

from PACs and individuals, including Ken Lay, but not directly from the corporations themselves), similar to those received by every other justice and

most other candidates. As in most states (the sole exception seems to be Florida), the Texas Code of Judicial Conduct does not require judges to disqualify themselves in cases involving campaign contributors.

As a political liberal, I am troubled by the Owen nomination. But as a nonpartisan judicial ethicist, I am even more troubled by the mudslinging. The

Democrats on the Judiciary Committee can stand up for integrity by brushing aside the specious charges against Owen and deciding her case on the merits.

Has Priscilla Owen been an outstanding judge? In fact, her tenure on the Texas

Supreme Court raises considerable doubts about her qualifications for the federal bench. Has she been an ethical judge? There is no meaningful reason to

think otherwise.

Steven Lubet is a professor of law at Northwestern University and the coauthor of "Judicial Conduct and Ethics."