The Phyllis Schlafly Report

VOL. 30, NO. 8 | P.O. BOX 618, ALTON, ILLINOIS 62002 | MARCH 1997

It's Time to Hold Federal Judges Accountable

Senator Orrin Hatch has taken exception to the *New York Times'* criticism of his record as chairman of the Senate Judiciary Committee, and he wrote a letter to the editor to object. (2-19-97) The *Times* had complained that Republican Senators have "politicized" the judicial confirmation process by not confirming enough of Clinton's judicial nominees.

Not so, says Hatch, and he has the numbers to prove it. He proudly asserts that the Senate has confirmed 202 of Clinton's judges. That's more than President Bush's (194), more than President Reagan's (164), and more than President Nixon's (191) during each of their first terms. Hatch added, "None of these judges would have been confirmed without Republican cooperation."

It is not only shocking that Republican Senators have cooperated in confirming Clinton's 202 federal judges, but it is just as shocking that Orrin Hatch is bragging about it. In allowing themselves to be coopted by Bill Clinton, Republican Senators have failed to accept their constitutional "advice and consent" responsibilities.

The federal judges appointed by Bill Clinton and Jimmy Carter are the biggest threat to constitutional self government today. These activist judges have been writing liberal opinions into the law, usurping legislative functions, and depriving Americans of our rights of self-government.

Last November 15, Senator Hatch made a speech to the Federalist Society in which he said, "Those nominees who are or will be judicial activists should not be nominated by the President or confirmed by the Senate, and I personally will do my best to see to it that they are not." Sounds good, doesn't it?

But Senator Hatch and Republican leader Bob Dole enthusiastically confirmed Clinton's most activist Supreme Court nominee, Ruth Bader Ginsburg. Her Supreme Court opinion forcing Virginia Military Institute to admit women is typical feminist judicial extremism and was wholly predictable at the time of her appointment. Where were Orrin Hatch and Republican Senators then? They didn't even ask Ginsburg any questions about her own published writings in support of radical feminist goals to fundamentally change our Constitution. (See the *Phyllis Schlafly Report*, July 1993)

Use the Impeachment Power!

Instead of cooperating in confirming Clinton's judges, Republicans should be talking about impeaching the Clinton and Carter judges who have been usurping legislative and executive functions. Article III states that "The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior," and it is not "good behavior" to hand down rulings based on personal social views rather than the Constitution's words.

David Barton of the Texas-based organization called WallBuilders has just published a handbook called *Impeachment*, in which he lays out the constitutional foundations for using impeachment to curb our present overactive judiciary. (WallBuilders, P.O. Box 397, Aledo, TX 76008, 817-441-6044)

The Constitution contains six clauses about impeachment. The House of Representatives has the sole power of impeachment (the presentation of formal charges). The Senate has the sole power to try impeachments, and conviction requires a two-thirds vote. Punishment can be removal from office or removal plus a bar against future office-holding.

Impeachment is not a criminal proceeding, and Congress cannot impose civil or criminal penalties. Contrary to current popular misconceptions, the offense for which a judge may be impeached does not have to be a crime or have any statutory or criminal basis. Barton quotes numerous Founders to prove that they viewed impeachment as a remedy for a broad range of non-statutory offenses such as (in George Mason's words) "attempts to subvert the Constitution," or (in Alexander Hamilton's words) "violation of some public trust."

Even that great advocate of judicial power, Chief Justice John Marshall, wrote during impeachment proceedings against Justice Samuel Chase for his arbitrary use of judicial power that "a Judge giving a legal opinion contrary to the opinion of the legislature is liable to impeachment." Carter and Clinton judges are constantly making rulings contrary to what the legislature intended.

The impeachment cases brought during our country's first half-century involved non-statutory offenses, such as judicial high-handedness. It's easy to think of some current judges who could be targets for impeachment on that charge.

When President Gerald Ford was a Congressman, he proposed the impeachment of one of the most liberal of all Supreme Court Justices, William O. Douglas. Ford, who was a moderate in every sense of the word, explained Congress's tremendous and far-reaching power of impeachment: "An impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body [the Senate] considers to be sufficiently serious to require removal of the accused from office."

When we open the topic of impeachment, we hear a lot of impassioned talk about preserving the "independence" of the judiciary. That's really a cover to shield federal judges from accountability. The Founders did not intend life tenure for federal judges to saddle us with a judicial oligarchy.

In our intricate constitutional system of interlacing checks and balances, the legislative and executive branches are held accountable by frequent elections. Judges should be held accountable by the Senate's "advice and consent" power to withhold confirmation, and by the House's power to impeach judges for lack of "good behavior."

Stop Federalizing Local Crimes

Americans were shocked when Congressional investigations in 1995 unfolded the truth about the fatal tragedies at Ruby Ridge, Idaho and Waco, Texas. In the former, an innocent woman and child were killed in cold blood by an FBI sharpshooter, and in the latter, 80 American men, women and children were incinerated by the Federal Government in a full-scale military attack. Both events involved outrageous abuses of power by federal law enforcement agencies, followed by lies, coverups, and destruction of evidence.

The Senators on the Terrorism, Technology and Government Information Subcommittee could not conceal their amazement at how busybody federal agents had manufactured the Ruby Ridge case out of virtually nothing into a monstrosity that involved millions of dollars, an 18-month siege of a little cabin on a remote Idaho mountain, a federal assault force of 400 agents armed with sub-machine guns, and the killing of innocent people.

These tragedies have changed the way Americans view federal law enforcement agencies and jeopardized public confidence in government itself. It's no wonder that people distrust government today and that ordinary Americans have concluded that the government is our enemy, not our friend.

What concerns us here is not merely the actions of certain federal employees, but the involvement of the Federal Government in the first place.

Ruby Ridge and Waco were, constitutionally speaking, none of the Federal Government's business. Neither incident involved interstate activity or posed a threat to the Federal Government.

The underlying problem is that so many criminal laws and laws regulating firearms have been federalized. Until very recent years, everything involved at Ruby Ridge and Waco would have been handled under state and local laws (if, indeed, there were anything to handle at all, since the Ruby Ridge sequence of events started only when a BATF agent entrapped Randy Weaver into committing a minor firearms violation).

Former Attorney General Edwin Meese believes that these outrages require remedies that are much more fundamental than the mere suspension and forced retirement of several agents.

Federalizing crime contradicts constitutional principles, according to Edwin Meese. The U.S. Constitution gave Congress jurisdiction over only three crimes: treason, counterfeiting, and piracy on the high seas and offenses against the law of nations. The Constitution left responsibility for public safety solely in the domain of the states.

Congress, however, has created more than 3,000 federal crimes, many of them redundant with state laws. Hardly any crime, no matter how local, is now beyond the jurisdiction of federal criminal authorities.

Meese accurately says that federalizing crime increases "the potential for an oppressive and burdensome federal police state."

Ruby Ridge and Waco proved that proposition when the federal agents who testified before the Senate investigating committee expressed no apology for their actions. They repeatedly said that they would take the same course of action if they had it to do all over again. Attorney General Janet Reno stoutly maintained that the Justice Department made no mistakes during the Waco debacle.

One of the worst effects of federalizing crime is the added jurisdiction and power this gives to the federal courts. Activist federal judges have greatly expanded the rights of criminal defendants, have further burdened law-enforcement agencies, and have virtually

taken over the operation of 80 percent of all state prison systems. Arrogant federal judges have overturned or altered jury findings and verdicts, contrary to the specific powers given to juries, which are enumerated in the Sixth and Seventh Amendments to the U.S. Constitution.

Another part of the federalizing of crime is the criminalization of environmental regulations. Many of these federal environmental crimes are local in nature, and they are often so vague that some property owners violate the law without realizing it.

Crime often tops the list when voters are asked what they are concerned about, and Republicans like to pose as law-and-order spokesmen. That's why many politicians, seeking to portray themselves as tough on crime, have passed so many laws creating new federal crimes and stiffer penalties. They should know that these laws are not in harmony with our Constitution and that crime is most effectively fought at the local level, anyway.

Republicans also do a lot of talking about their devotion to the Tenth Amendment. If they are sincere, Congress should wipe off the books all the federal crimes that contravene the principles of the Tenth Amendment or that are redundant with state crimes. It's time for Members of Congress to admit that law-and-order is a state and local function and address themselves to the real problems that are properly Congress's responsibility.

The Legal Services Corporation Should Be Abolished

The Legal Services Corporation (LSC) is the acid test to demonstrate whether or not the Republican Congress really intends to reform and reduce Big Government and restrain the Imperial Judiciary. If the Republicans merely play around with smoke and mirrors, pretending to correct abuses, but leave the money faucet turned on, they will have betrayed their mandate from the 1994 and 1996 elections and left their enemies with a gun pointed at their head.

When most people think of legal aid services, they think of helping victims who can't afford a lawyer, especially women and children. LSC is actually a giant national network of tax-funded lawyers who file lawsuits before liberal judges in order to implement a radical social and political agenda. LSC lawyers provide activist federal judges with legal jargon to rationalize usurping legislative and executive functions.

LSC lawyers work for such causes as preventing the eviction of drug dealers from public housing, shielding violent offenders' criminal records from the public, getting perks for prison inmates, maintaining taxpayer benefits for illegal aliens, and releasing mental patients (who often then join the ranks of the homeless).

When LSC lawyers talk about conducting "research" and facilitating "training," they are using euphemisms for political organizing and lobbying for pro-gay-rights, pro-abortion, pro-welfare-entitlement, pro-criminal, pro-drug, and pro-illegal-alien causes.

Interference in Elections. The most recent LSC outrage is the attempt to overturn an election that LSC lawyers didn't like. An LSC grantee, Texas Rural Legal Aid (TRLA), which gets 80 percent of its funding from the U.S. taxpayers, is trying to overturn the narrow elections of a Republican County Commissioner and a Republican Sheriff by suing to get a federal court to void the absentee ballots of 800 U.S. active duty military personnel and their families. TRLA's outlandish argument is that the military absentees diluted the votes of Hispanic residents.

U.S. District Judge George J. Korbel authorized discovery, and so TRLA sent a 24-page, 54-question deposition to all Val Verde County, Texas voters who cast absentee ballots in the November 1996 election. This extremely nosy questionnaire demands very personal information in extraordinary detail. The questionnaire demands lengthy written answers to questions about each voter's credit cards, bank accounts, stock brokerage accounts, insurance, the names of every organization to which the voter belongs, all schools and colleges attended by the voter's children and whether tuition was paid or not, and where the voter's spouse sleeps at night.

On January 8, LSC's Washington office sent a letter to TRLA stating that this lawsuit "constitutes a substantial violation of the grant agreement." But that letter didn't have any impact. TRLA further defied Congress by asking for attorney's fees, despite a clear prohibition on that practice.

LSC Has Spent $5 Billion since 1974. If the leftwing lawyers had merely torched the money, that wouldn't have been nearly as destructive as spending the money the way they did. LSC lawyers spent the money to litigate and lobby to increase entitlements (for welfare, aliens, criminals, etc.) that are the chief cause of federal deficits. Howard Phillips, who has been monitoring LSC since 1970 when President Nixon appointed him to a position that included that responsibility, estimates that LSC activism has added $2 trillion to the national debt.

LSC's litigation deserves a large share of the blame for our out-of-control, failed welfare system. LSC initiated the case, *King v. Smith*, in which the Supreme Court ruled in 1968 that the behavior of welfare mothers, including cohabiting with wage-earning males, could not be considered when determining eligibility for benefits. In *Shapiro v. Thompson* in 1969, LSC got the Supreme Court to ban the one-year residency requirement for welfare eligibility. In 1970, in *Goldberg v. Kelly*, LSC persuaded the Supreme Court to require a hearing process before benefits can

be cut off for any reason. As a result, hardly anyone is ever cut off.

The theory behind these cases, invented by LSC tax-funded lawyers, is that welfare recipients have a property right in their benefits, just like the rest of us have a property right in our houses or automobiles. This off-the-wall rationale has become the cornerstone of the welfare rights movement, which has changed our laws and picked the pockets of taxpayers.

Another favorite LSC constituency is incarcerated convicted felons. LSC's class action suit against the North Carolina prison system resulted in a requirement that each of 13 prisons provide softball and basketball equipment for two teams, a piano, a set of drums, three guitars, and five frisbees. Another LSC victory was to establish Chicago prisoners' rights to cable television and expensive weight rooms.

Other exotic LSC lawsuits included representing transsexuals in an effort to overturn Georgia's prohibition on Medicaid reimbursement for sex change operations, forcing public housing officials to rent apartments to unemancipated minors, and trying to define opium and alcohol addiction as a disability under the Americans with Disabilities Act.

How LSC Nullifies "Reforms." Congress had planned to terminate LSC in 1995, but because of bleeding-heart whining about the "poor," Congress relented and extended LSC's life with some reasonable restrictions to try to de-politicize it. Congress banned the filing of class-action lawsuits and prohibited LSC grantees from pursuing politically controversial cases, even with non-LSC funds. The handful of Republican "moderates" plus the Democrats who engineered this life-support system for LSC assured us that LSC would clean up its act and devote itself to its real mission of helping the poor.

LSC responded by committing a raft of new offenses, such as the interference in the Texas election (described above) and filing lawsuits to get the federal courts to overturn the new Congressional regulations.

For the last 20 years, LSC grantees have evaded the laws against political advocacy by claiming that they were pursuing political cases with "non-LSC" money. This loophole is big enough to drive thousands of lawsuits through because money is fungible and nobody can identify what money is being spent for which suit. Most LSC money comes from the federal taxpayers, who pay for LSC attorneys' salaries and overhead. Since Congress cannot force grantees to open their case files, there is no way to prove allocation of the funds.

Congress certainly should have the right to appropriate taxpayers' money only to those who agree *not* to engage in class-action suits or political advocacy, and that was one of the reforms passed in the previous Congress.

LSC lawyers have counterattacked through the courts. An LSC grantee in New York, Legal Services for the Elderly, persuaded a New York state judge to rule on December 26, 1996 that it is unconstitutional for Congress to prohibit LSC grantees from engaging in class-action lawsuits or pursuing political litigation with non-LSC funds. Manhattan Supreme Court Justice Beverly Cohen ruled that Congress has no right to tell LSC grantees what kind of cases they can pursue with non-LSC money. Judge Cohen said that this restriction is just a "thinly disguised attack on basic freedoms," *i.e.*, the "basic freedom" of tax-funded LSC lawyers to engage in class-action or political litigation.

This decision inspired other LSC groups to challenge the new Congressional restrictions. Five LSC-funded groups filed suit in federal district court in Hawaii, and on February 19, 1997, Federal Judge Alan Kay struck down the new Congressional restrictions on the way LSC lawyers spend nonfederal funds. A federal judge in Rhode Island and a Ohio state judge have also granted temporary relief to legal aid groups and allowed them to continue work on their class action suits.

LSC Can't Be Reformed. LSC lawyers have no intention of abiding by any restrictions, and when they bring their cases before Carter-appointed or Clinton-appointed judges, they have a good chance of outmaneuvering any restrictions Congress tries to impose. LSC lawyers have constructed for themselves such a Byzantine, self-perpetuating infrastructure and grant-making mechanism that they are accountable to no one: not to Congress, or to the Administration, or to the people they serve, or to the taxpayers who foot the bills. Hillary Rodham Clinton used to be LSC's chairman of the board, and LSC has continued to be peopled with leftwing attorneys who share her class-warfare ideology and socialist goals.

Radical leftwing activism is part and parcel of the Legal Services Corporation. It is a fraud on the public to pretend it can be reformed. LSC functions as a pot of gold for leftwing lawyers to litigate and lobby for radical causes. This scandal-ridden agency must be completely abolished. The 1996 Republican Party Platform called for the elimination of the Legal Services Corporation. It's time to fulfill that pledge before LSC engages in any more mischief.

The Phyllis Schlafly Report
PO Box 618, Alton, Illinois 62002
ISSN0556-0152

Published monthly by the Eagle Trust Fund, PO Box 618, Alton, Illinois 62002. Periodicals Postage Paid at Alton, Illinois. Postmaster: Address Corrections should be sent to the Phyllis Schlafly Report, PO Box 618, Alton, Illinois 62002.

Subscription Price: $20 per year. Extra copies available: 50¢ each; 3 copies $1; 30 copies $5; 100 copies $10.

http://www.eagleforum.org **eagle@eagleforum.org**