



# The Phyllis Schlafly Report



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## The Problem of the Supreme Court

Article II of the U.S. Constitution authorizes the President to appoint Supreme Court Justices "with the advice and consent of the Senate." Unfortunately, the Senate has not always done its duty in this regard.

For example, when President Franklin Roosevelt nominated Hugo Black of Alabama, the Senate failed to inquire into well-founded rumors of his Ku Klux Klan membership. After Black was sworn in as Supreme Court Justice, he admitted that he had been a card-carrying, dues-paying member of the Klan and had been issued a life membership card.

Likewise, when President Eisenhower nominated Earl Warren to the Supreme Court, the Senate failed to investigate Warren's major role in the greatest violation of civil liberties in American history. When Warren was Attorney General of California, he participated in the imprisonment in concentration camps of 100,000 American citizens of Japanese descent, without a trial and without any proof that they were guilty of anything. President Eisenhower later told friends that the Warren appointment was the greatest mistake he ever made.

President Ford's appointee to fill the Douglas vacancy should be asked fundamental questions about the major moral and constitutional issues that have come before the Supreme Court in recent years. For example, what is his position on the alleged right of a woman to kill her unborn baby? What is his position on the decisions that knock out state laws forbidding Communists to teach in public schools? What is his position on the Supreme Court decision that, after nearly two centuries, it has suddenly become unconstitutional to have voluntary prayer in public schools or released-time religious classes? What is his position on the Court decisions that prevented enforcement of the Subversive Activities Control Act against Communists, but make it mandatory to issue passports to Communists? Does he agree

with the Supreme Court mandate that children must be bused across town away from their neighborhood schools in order to satisfy racial quotas arbitrarily decreed by the bureaucrats? Does he agree with the Supreme Court decision invalidating capital punishment?

The public has even more right to know the views of Supreme Court candidates than of Presidential and Congressional candidates because Supreme Court Justices will be in office for life.

### Justice Douglas

Justice William Douglas was appointed to the U.S. Supreme Court at the age of 41 because President Franklin Roosevelt wanted to replace what were called the "nine old men" with youthful, liberated justices. By 1975, 36 years later, Douglas had become the oldest Justice on the Supreme Court, having served longer than anyone else in history.

There was a substantial case against Justice Douglas even before his present infirmities forced his resignation. On April 15, 1970, when Douglas was still healthy, Congressman Gerald Ford called him "unfit" and said, "I would vote to impeach him right now."

Ford presented Congress with a 21-page bill of particulars including the fact that Douglas accepted large sums of money from Las Vegas gamblers, and was paid a fee for writing an article for a pornographer and then voted in favor of that pornographer when his appeal from an obscenity conviction reached the Supreme Court.

Under the law, Douglas should have disqualified himself from participating in the decision, Ford said. He said that to take money from a man with a case pending before the Supreme Court was a "gross impropriety."

Continuing, Ford added: "Writing signed articles for notorious publications of a convicted pornographer is bad enough. Taking money for them

is worse. Declining to disqualify oneself in this case is inexcusable."

Two of Douglas' own associates were also sharply critical. Justice Felix Frankfurter described some of Douglas' opinions as those "of a judge who has political ambitions, and is not thinking about the court or his court job."

Justice Frank Murphy called Douglas' written opinion upholding the curfew and other World War II restrictions imposed upon Americans of Japanese descent *only*, "the most shocking thing that has ever been written by a member of this court" and "a regular soap box speech."

Others have pointed out Douglas' prejudice against religion as shown by his opinions which questioned the constitutionality of chaplains in the armed services, the words, "In God We Trust" on our money, and the deductibility from federal income tax of contributions to churches.

## Federal Courts

As we begin to celebrate the 200th anniversary of our country, it is well to reflect on the unique checks and balances in our Constitution. The Founding Fathers took great care to prevent either the Executive Branch or the Congress from becoming too powerful. They were made subject to frequent elections so as to be responsive to the people.

But not so the federal judiciary. Given lifetime appointments, are federal judges subject to any of the constitutional checks and balances imposed on all other federal officeholders?

The question is important because high federal judges have (1) forbidden prayer and Bible-reading in our public schools, (2) ordered forced busing of our children away from neighborhood schools to distant schools, (3) knocked out New York laws which said that Communists may not teach in public schools, (4) ordered public hospitals to perform abortions on demand, (5) struck down state laws requiring the father's consent before an abortion may be performed on his minor child, and (6) decreed that topless dancing is "a harmless form of diversion or entertainment, by way of communication from one human being to another" and may not be prohibited by local communities.

The topless dancing decision by the U.S. Court of Appeals in New York violates the U.S. Supreme Court's own rule, in somewhat related decisions, that obscenity should be judged on the basis of prevalent community standards. A book or movie is obscene if it violates the standards prevailing in a community that has a law against obscenity. Few might consider topless dancing obscene, but most would find it morally offensive. Should not it be a city's right to ban topless dancing in order to maintain its community standards?

In the opinion of some scholars and even of dissenting justices themselves, the U.S. Supreme Court has read into the Constitution a bias against religion, unborn children, fathers, morality, and local government which was certainly not put there by the Founding Fathers. The time-tested saying is that power tends to corrupt -- and the federal courts are, indeed, very powerful.

The authors of our Constitution did provide a check for absurd decisions rendered by judges with life tenure. Article III of the Constitution gives Congress the power to limit the jurisdiction of the federal courts, a handy means of cutting off the power of the federal courts to persist in their hurtful decisions. During the 1930s, Congress used this constitutional provision several times, depriving the federal courts of jurisdiction to enjoin state tax collections, state-fixed utility rates, and picketing by labor unions.

It is time for Congress again to take action under Article III in order to check the runaway federal courts and thereby restore morality to our local schools, hospitals, and entertainment.

## The Right to Kill

When the U.S. Supreme Court struck down anti-abortion laws in January, 1973, the Court in effect espoused the view that life does not begin until live birth. No medical evidence whatsoever was presented in the Supreme Court cases to support this most unscientific conclusion. None of the Supreme Court Justices is a doctor of medicine.

Every advance in medical knowledge and science proves further that the unborn infant is a separate human life, with separate unique fingerprints, a separate heart which starts beating at 24 days, and separate brainwaves which can be detected at 43 days. No one could look at a photograph of any of the two million babies who have been aborted in the United States during the last two and a half years and conclude it was anything other than human.

The abortionists argue that a woman has a right to do what she wants with her own body. All medical textbooks and professors of embryology and obstetrics are witnesses to the fact that an unborn infant is not a mere extension of the mother's body, like an appendix or tonsils. Abortion involves the destruction of somebody else's body -- which is living within the life-support system of the mother, like the astronauts lived within their life-support systems on the moon.

The abortionists argue that unwanted babies should be eliminated. There are no unwanted babies in the United States. The demand for babies far exceeds the supply. Couples are now paying up to \$10,000 for a baby they can adopt.

A few decades ago, the famous physician, Sir William Osler, said that most people over 60 are

unproductive and should be chloroformed. After he reached 60, he changed his views, but his anti-life suggestion has lingered on.

In recent years, there has been an ominous acceptance of the idea of terminating the lives of senior citizens because they are useless or unwanted. This was Hitler's philosophy of eliminating people whom he judged unwanted or mentally or physically defective. Unfortunately, this Hitler idea has survived his death.

All human life, whether young or old, productive or dependent, should be sacred. It's time to get moving with a constitutional amendment to protect our very young and our very old both from the Supreme Court and from Hitler's philosophy.

### Solution for Pornography

The week before Senator Everett Dirksen died, he completed an article for the November 1969 *Reader's Digest* called "A New Plan to Fight Pornography." Calling attention to "the mounting flow of obscene books, films and magazines threatening our national health," he identified the principal cause of the smut epidemic as the shocking series of 22 pro-obscenity decisions handed down by the U.S. Supreme Court.

Senator Dirksen then presented his own solution for the pornography problem: removal of jurisdiction from the Supreme Court in accordance with the powers granted Congress in Article III of the U.S. Constitution. The purpose of the Dirksen bill was to return to local juries their right to make the final determination as to whether a book, magazine or movie is obscene.

In June 1973, the Supreme Court ruled against smut peddlers in five cases, thus calling a halt to the long series of pro-obscenity decisions of recent years. While the Supreme Court did not restore full rights to local juries to make the final determination as to what is obscene, the Court did take two constructive steps in that direction.

First, the Court threw out the false phrase which a slick lawyer conned Justice Brennan into adopting in the "Fanny Hill" case. This phony phrase asserted that no book or movie is indecent unless proved that it is "utterly without redeeming social value." This ridiculous rule blocked obscenity convictions for seven years.

Secondly, the Court threw out a national standard of obscenity, saying that, in judging whether a book or movie is obscene, a jury should use the view of "the average person, applying contemporary community standards."

What if juries decide differently in various parts of the country? Chief Justice Burger dismissed this problem by saying: "It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct

found tolerable in Las Vegas or New York City."

### The Remedy: Article III

Article III of the U.S. Constitution specifically authorizes Congress to make "exceptions" to the appellate jurisdiction of the Supreme Court, and to decide what types of cases the lower federal courts may hear.

Some years ago, the great Judge Learned Hand said that the Supreme Court was becoming a super-legislature, contrary to Article I which states that "all legislative powers" shall be vested in Congress. Since Judge Hand said that, a runaway Supreme Court has done more legislating than he ever dreamed possible.

The Supreme Court has granted free speech to Communists to teach in public schools, but denied free speech to students to say prayers in public schools.

The Supreme Court has denied a jury's right to impose the death sentence on the most depraved murderers, but has granted a woman and her doctor the right to kill an innocent unborn baby.

The Supreme Court has said that it is constitutional to require lawyers, automobile drivers, members of the Ku Klux Klan, and owners of guns to register with the government, but unconstitutional to require Communists to register.

The Supreme Court has said that it is constitutional for the government to assist students to obtain an education in religious colleges, but unconstitutional to assist students to obtain an education in religious grade schools or religious high schools.

Members of the Supreme Court often complain about their heavy workload of cases, but they spend an exorbitant amount of time exceeding their own authority, such as reapportioning state legislatures and evaluating pornographic books and movies.

Senator Everett Dirksen, who knew more about the functioning of Government than any man of our generation, believed that Congress should use Article III of the Constitution to remedy the mistakes of the Supreme Court. Congress should use Article III to limit the jurisdiction of the Supreme Court and stop its usurpation of legislative powers in accordance with the legislation which Senator Dirksen drafted.

# *Christmas Message of Hope*

If there ever was a time when the world needs the Christmas message of Hope, it is today. On all sides we are confronted by the prophets of gloom and doom. The environmentalists foresee a dismal future of man's greed consuming the earth. The population control specialists falsely predict the world is running out of space.

The economic forecasters tell us that inflation will be with us for years, and we will continue to be short of oil. Henry Kissinger takes a defeatist view of foreign affairs and says that the United States "could not win an arms race" against the Soviets and therefore must accept whatever terms they demand.

All these dire warnings from the experts are having a depressing effect. From the American concerned about keeping his job, to the Israeli who worries about his country's survival, the attitude is growing that the future is bleak and that our fate is controlled by powerful forces over which we have no control.

Our religion teaches that we must avoid both Presumption and Despair. Presumption is the sin of believing that God will take care of everything so there is no need for the individual to do anything to improve himself. Despair is the sin of believing that all is lost, that nothing we can do will make any difference.

It is time for each of us to listen to the Christmas message of Hope -- the invitation to men of good will everywhere to tread a narrow line of faith and action that succumbs neither to Presumption nor to Despair.

## **Back Newsletters Available**

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To have Hope is not to be a pollyanna or a chaser of rainbows, but to be pragmatically realistic. In 1939, the New York World's Fair was called "The World of Tomorrow." The best intellectual, scientific, and business minds came there to display their most imaginative ideas for the coming decade.

Yet, look at all the major areas of invention and progress they missed: jet airplanes, transistors, computers, anti-biotics, home television, nuclear energy, and space travel. The reality of progress turned out to be more spectacular than man's most vivid imagination.

The truth is that there is no ceiling on man's ingenuity and resourcefulness to cope with problems -- so long as we operate in the American climate of freedom. When we combine the Christmas message of Hope, with the can-do philosophy that carved our great nation out of the wilderness, we will surely find that our future is brighter than any of us could ever dream.

*"They that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles; they shall run, and not be weary; and they shall walk, and not faint."* Isaiah 40:31.

**Phyllis Schlafly** is the co-author of four books on nuclear strategy: *The Gravediggers* (1964), *Strike From Space* (1965), *The Betrayers* (1968), and *Kissinger on the Couch* (1975). She has testified on national security before the Senate Foreign Relations and Armed Services Committees. Her 1972 series of interviews with military and nuclear experts was aired on 70 television and 50 radio stations. An honors graduate of Washington University and a member of Phi Beta Kappa, she has a Master's Degree from Harvard University.

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