

### The Washington Post

#### A Blot on Judicial Ethics

IF THERE'S one part of the federal government that ought to be insulated from lobbying, the judiciary is it. Yet a distasteful system has developed in recent decades in which judges, supposedly to further their understanding of particular issues, attend posh, all-expenses-paid "seminars" at resorts that are sponsored by groups with strong—and generally strongly conservative—ideological leanings. The seminars combine a vacation atmosphere with one-sided presentations on environmental and other areas of law. A new report by an environmental group, the Community Rights Counsel, documents the surprising extent of this flourishing effort to wine, dine and indoctrinate a too-willing judiciary.

Between 1992 and 1998, nearly one federal judge in three went on an educational junket sponsored by one of three conservative groups: the Law and Economics Center at George Mason University, the Foundation for Research on Economics and the Environment, and the Liberty Fund. Many of the judges failed to disclose the gifts on their annual disclosure statements. The sponsoring organizations are supported in part by interest groups and people who are simultaneously supporting litigation the judges have to decide. Even if the seminars had no effect at all, the appearance would be terrible.

The report, however, also offers some circumstantial evidence that the seminars actually do have an effect. The authors listed

what they regard as the 10 most damaging environmental law decisions to emerge from the lower courts over the past decade. Nine were written by judges who had been on junkets; the 10th judge went on a junket two years after issuing the opinion. In six of the cases, the judges took their trips—either to study or to teach at seminars—while the relevant cases were pending. According to the report, one judge, Stephen Williams of the D.C. Circuit Court of Appeals, after returning from a seminar, granted a motion to reconsider an opinion he had earlier issued, which he then reversed. Abner Mikva, the former chief judge of the D.C. Circuit, writes in the report's foreword: "I remember at least two occasions where co-panelist judges took positions that they had heard advocated at seminars sponsored by groups with more than a passing interest in the litigation under consideration."

The point is not that the judges are corrupt or that they should forswear discussion with academics—including ideological ones. But judges should not be put, or put themselves, in positions in which their objectivity can reasonably be questioned. The federal judiciary itself already sponsors educational programs for judges. If more are needed, those could be expanded. When instead the judges take educational vacations on the dime of private groups, they do so at the expense of the judiciary's reputation for impartiality, even if not the impartiality itself.

“A new report by an environmental group, the Community Rights Counsel, documents the surprising extent of this flourishing effort to wine, dine and indoctrinate a too-willing judiciary.”

### The New York Times

#### A Threat to Judicial Ethics

At a moment when the federal judiciary needs to tighten its ethical prohibitions on accepting money or gifts from private interests bent on advancing judicial thinking, Chief Justice William Rehnquist has been quietly collaborating with Senate Republicans to move to the opposite direction. With Justice Rehnquist's approval, Senator Mitch McConnell, Republican of Kentucky, inserted a provision into a spending bill in July that would lift the 11-year-old ban on judges' collecting honorariums for appearances. The ban was imposed in 1989 to protect the integrity and impartiality of the judicial system against outside influence.

It is not surprising that Mr. McConnell, the leading opponent of reforming the nation's corrupt campaign financing system, would be blind to the dangers of widening the opportunities for outside interests to buy favor with judges. But Chief Justice Rehnquist should know better than to endorse Mr. McConnell's scheme to weaken judicial ethics radically. The fact that in today's business economy first-year legal associates in top law firms can make as much as a federal judge is no excuse to return to corruptive salary supplements from private interests. Nor is the failure of Congress to move its commitment to adjust judicial salaries annually for inflation.

These junkets seem to be having an impact on judicial decision-making. Ten of the past decade's most significant rulings cutting back on environmental protections, according to the study, were written by judges who attended these seminars, often while the cases were pending in court.

The need for reform was underscored a week ago when a federal district judge in Manhattan, Jed Rafeff, denied a motion to rescind himself from further involvement in a lawsuit seeking damages from Texaco for harming the rain forest in Ecuador. Lawyers for the plaintiffs — indigenous people who live in the rain forest — filed the crucial motion upon hearing of Judge Rafeff's ill-directed participation in an expense-laden seminar on environmental issues that had been held at a Montana ranch by a foundation receiving sizable donations from Texaco. One of the lecturers was Alfred DeCarra Jr., the retired chairman and chief executive officer of Texaco, who ran the company when it operated in Ecuador. In his ruling, Judge Rafeff argued that his acceptance of the travel gift was within existing rules, a half-spirited explanation that does not remove doubts about his judgment or impartiality.

Indeed, in Abner Mikva, the former White House counsel and federal appellate judge, noted as a recent Op-Ed piece in The Times, the harm to impartiality of the federal judiciary are already being seriously undermined by allowing federal judges to accept free vacations or both retreats from private interests bent on influencing their future decisions. A valuable new report from the Community Rights Counsel, an environmental group, finds that between 1992 and 1998 some 230 federal judges — more than a quarter of the federal judiciary — traveled to resort locations at the expense of private interests with a stake in federal litigation. Once there, they attended legal seminars making the case for curbing federal regulatory authority in favor of a free-market approach in matters like protecting the environment.

Federal judges should have the ethical compass to resist these one-sided "educational" seminars. But in the absence of judicial self-restraint, Chief Justice Rehnquist should be leading the United States Judicial Conference, the governing body for all federal judges, to crack down on such junkets, and making Congress to create new avenues for influence-peddling.

If judicial pay is deemed too low, Congress needs to address that problem directly, by granting judges a salary increase paid for with public funds. Similarly, if there is a genuine need for judges to attend educational seminars, Congress ought to provide public funds for that purpose, too. But the effort to lift the ban on honorariums for judges, which was brought to light yesterday by The Washington Post, should be rejected, either by Congress or by a presidential veto.

“A valuable new report from the Community Rights Counsel, an environmental group, finds that between 1992 and 1998 some 230 federal judges – more than a quarter of the federal judiciary – traveled to resort locations at the expense of private interests with a stake in federal litigation.”

### Bangor Daily News

#### Junkets for judges

FOR the last three years, campaign finance reform has been at the top of the nation's good government agenda. While all the attention has been focused upon the influence of money on the White House and Congress, its corrosive effect upon the third branch, the judiciary, has gone largely unnoticed.

Thankfully, not entirely unnoticed. Hard money soft money PACs and all the rest of the electoral ring has gotten the headlines, but exposing the systematic attempt to sway judges through luxury vacations has been the work of the Community Rights Counsel, a little-known but highly diligent Washington-based public-interest group.

CRC has investigated, catalogued and brought much-needed daylight to a situation that, though nominally legal, is simply unconscionable. Every year, nearly 300 federal judges from throughout the country spend a week or more being "educated" in seminars held at swank golf resorts and scenic dude ranches with corporations and private business special interests picking up the tab.

CRC first revealed this unacceptable situation in 1998. Its scathing and thoroughly documented report last year ("Nothing For Free: How Private Judicial Seminars are Under-

mining Environmental Protections and Breeding the Public Trust") detailed case after case in which a judge's education/vacation led to favorable rulings from the bench. Ten of the last decade's most dramatic departures from established precedent followed these junkets.

In six cases, the judges attended a seminar while the case was pending. In one, a judge voted to uphold an environmental law, attended a seminar, came back and switched his vote. A hidden-camera report from Arizona golf resort aired two weeks ago on ABC's "60/60" — with graphic images of judges relaxing poolside on the special-interest dime — should bring this issue the broad attention it deserves.

The junkets are not illegal, but they are ethically wrong. The only possible defense is that judges, like many other professionals, attend a seminar, come back and switch their vote, but that defense simply does not stand up in the court of public opinion or pass the straight-face test. American taxpayers already fund an extensive educational program for the judiciary with courses and seminars held throughout the country. The difference is that the taxpayers' program is done in classrooms, not chateaus.

“Exposing the systematic attempt to sway judges through luxury vacations has been the work of the Community Rights Counsel, a little-known but highly diligent Washington-based public-interest group.”

““ If I could tell the Supreme Court only one thing, I’d tell them to read CRC’s brief. ””

— WALTER DELLINGER, FORMER SOLICITOR GENERAL OF THE UNITED STATES

"All the News  
That's Fit to Print"

## The New York Times

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FRIDAY, DECEMBER 20, 2002

ONE DOLLAR

A32

### Legal Services Under Attack

Legal services for the poor across the country are seriously underfinanced. One key source of money for them is an ingenious program that exists in all 50 states. It pools the short-term deposits that lawyers hold in trust for their clients and uses the interest produced to finance indigent legal services. The Supreme Court heard arguments last week in a challenge to these programs, brought by a conservative legal group that says this practice is an unconstitutional taking of property. It is not. Striking down these programs would be a serious blow to poor people's ability to defend their rights in court.

Lawyers are ethically obligated to put money they hold in trust for their clients into accounts separate from their own. In the early 1980's states started requiring lawyers to pool their smallest, short-term client accounts. The interest that any one account would earn is negligible, but added together they generate \$160 million a year, 15 percent of legal services funding nationwide.

The Washington Legal Foundation has challenged these programs in state after state, arguing that they violate the Fifth Amendment because they are a taking of the property of the owner of the money. In a 1998 case challenging Texas's program,

the Supreme Court ruled that the interest generated by these accounts belongs to the owners of the funds on deposit. In the current challenge, to a program in the state of Washington, the court is being asked to decide whether using this money for legal services for the poor constitutes a taking.

It is clear that it does not. The accounts at issue here are small and short-term. If the program did not exist, the Ninth Circuit found, the money would be put, as it once was, in non-interest-bearing accounts, because it would not be worth the expense and effort to figure out how much interest each client earned. In fact, Washington's program stipulates that only funds that would not earn interest on their own can be placed in these accounts.

The real purpose of this case is not to restore taken property, but to defund legal services. Money raised through lawyer trust account programs helps poor people fight wrongful evictions, get heat in the winter and challenge corporations that are taking advantage of them. If the Supreme Court uses a baseless claim that property is being taken to deprive poor people of legal representation, this nation's commitment to equal justice before the law will be the real loser.

## The Washington Post

1978 Year No. 100 5 100 00

WEDNESDAY, APRIL 9, 2003

### Legal Services Spared

EVERY NOW AND then, the Supreme Court confronts a thoroughly uninteresting legal question that carries huge practical consequences. For example, the court recently issued its decision in the case of *Brown v. Legal Foundation of Washington*, which asked whether a state can seize tiny amounts of interest from money held in trust by lawyers. At a legal level, the case involves the fine points of the Fifth Amendment's prohibition against governmental "takings" of private property without "just compensation." But the case was really about whether states can continue funding legal services for the poor with \$160 million a year in interest from lawyer-held trusts. A narrow five-member majority fortunately prevented a major source of legal services funding from becoming a casualty of a needlessly technical reading of the Constitution.

Every state in the country has a program like the one the court considered from Washington state. When lawyers hold money for clients, they place that money in interest-bearing accounts. If the lawyer can invest the money for the client's benefit, he must. But often, lawyer-held money gets moved so quickly that the interest it earns is trivial; the costs of accounting for the interest and delivering it to the client exceed its value. So for situations in which attorneys would not otherwise

use an interest-bearing account, state rules have created a novel way of creating something from nothing: They require the lawyers to put the money in pooled accounts, and the interest then is siphoned off to support legal services. The clients aren't harmed, because they wouldn't have received interest anyway. The result is a huge amount of money for an important, if politically unpopular, state function.

You might think that such a win-win scenario would be uncontroversial. Yet somehow, these accounts had become the target of property rights enthusiasts who argued that state seizures of such otherwise unusable—and in any event trivial—monies represent takings, requiring compensation. This seems both mean-spirited and a bit ridiculous. But the court, in a prior case, actually spurred on the attack. This time, however, it drew back. Justice John Paul Stevens, writing for the majority, held that while the program may technically amount to a taking, no compensation is required, because no victim actually suffers a net loss. This common-sense reasoning may not produce an important precedent. But it does permit programs that collectively fund about 15 percent of legal services nationwide to remain in place. The alternative—which fell one vote short of carrying the day—would have been terribly destructive.

# Community Rights Counsel

## WINNING IN COURT

### The New York Times

VOL. CLJ No. 52,000 WEDNESDAY, APRIL 26, 2002 ONE DOLLAR Page A1

#### JUSTICES WEAKEN MOVEMENT BACKING PROPERTY RIGHTS

#### LAKE TAHOE RESTRICTIONS

#### Court Says a Moratorium on Land Use Doesn't Amount to Government 'Taking'

By LINDA GREENHOUSE

WASHINGTON, April 23 — The Supreme Court ruled today that a government-imposed moratorium on property development, even one that lasts for years, does not automatically amount to a "taking" of private property for which taxpayers must compensate the landowners.

The 6-3 decision was a sharp setback for the property rights movement, which has scored many recent successes in the Supreme Court. The ruling came in a case that sought millions of dollars in compensation for a prolonged restriction on development along the shores of Lake Tahoe.

The plaintiffs, hundreds of people who had bought undeveloped lots in the expectation of building houses on the scenic lake, argued that a restriction that even temporarily deprives property owners of all "economically viable" use of their land is a taking for which the Constitution requires compensation.

Supreme Court decisions over the last 15 years had suggested that this in fact might be the law, a prospect that galvanized a broad coalition of government and planning groups to urge the justices to reject such a categorical rule. The Bush administration entered the case against the property owners.

Writing for the court today, Justice John Paul Stevens said, "A rule that required compensation for every delay in the use of property would render routine government processes prohibitively expensive or encourage hasty decision making." He added, "Such an important change in the law should be the product of legislative rule making rather than adjudication."

The complex law of "takings" is based on the Fifth Amendment's provision that private property shall not be taken for public use without just compensation.

Today's decision had the effect of limiting some of the court's recent property rights rulings and left property rights advocates scrambling to minimize the scope of their defeat, at least for public consumption. One such group, the Pacific Legal Foundation, called the decision "an unfortunate slip in the forward progress of property rights."

On the other side, Community Rights Counsel, a public interest law firm that filed a brief for government groups that included the Council of State Governments, the National League of Cities and the National Governors Association, called the decision "the best news from the Supreme Court on takings law in more than 20 years."

The majority opinion was joined by Justices Sandra Day O'Connor, Anthony M. Kennedy, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer. Chief Justice William H. Rehnquist and Justice Clarence Thomas both filed dissenting opinions, and Justice Antonin Scalia, usually the court's most vocal advocate of increased protection for private property rights, signed both of those opinions without writing one of his own.

For Justice Scalia, the decision today in Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, No. 00-1187, must have been a particularly bitter defeat in two respects.

First, the majority rejected an expansive ruling of one of his most important opinions, a 10-year-old decision in *Central Hudson* that

The Lucas decision breached what had been a doctrinal wall between a physical taking, in which the government actually takes possession of private property and for which compensation has always been required, and a "regulatory taking," in which the government restricts the owner's use of the property.

Under the court's precedents, regulatory takings were subject to a case-by-case balancing test that weighed the government's interests against the owner's legitimate expectations. But the Lucas case involved a regulatory taking, an environmental ban on coastal development, so the decision raised the prospect that even temporary restrictions might be subject to the categorical rule.

The court today made clear that the distinction between a physical and a regulatory taking would remain a vital one. Justice Stevens reiterated the Lucas decision to "the extraordinary case in which a regulation permanently deprives property of all value," a rule with no application to a temporary even if prolonged moratorium.

As Justice Stevens explained the reason for treating the two categories of takings differently: "Land-use regulations are ubiquitous and most often impact property values in some tangential way — often in completely unanticipated ways. Treating them all as per se takings would transform government regulation into a heavy burden governments could afford. By contrast, physical appropriations are relatively rare, easily identified, and usually represent a genuine affront to individual property rights."

In a second dissent for Justice Scalia, the court's most vocal advocate

“Community Rights Counsel called the decision “the best news from the Supreme Court on takings law in more than 20 years.”

### The New York Times

VOL. CLJ No. 52,000 FRIDAY, APRIL 26, 2002 ONE DOLLAR A2

#### The Court Reverses Direction

The Supreme Court acted wisely this week to preserve the ability of states and localities to institute land use and zoning regulations to control growth and protect the environment. In doing so, the court dealt a major setback to the conservative-led property rights movement, ending its string of recent Supreme Court victories elevating the rights of individual property owners over valid planning and community needs.

At issue in the new case was a temporary moratorium on development along the shores of Lake Tahoe, which straddles the California-Nevada border, imposed by the regional planning agency charged with protecting the lake's environmental health. Owners of undeveloped lots along the scenic lake contended that the prolonged restriction depriving them of "all economically viable" use of their land while the agency addressed environmental problems that threatened the celebrated clarity of Lake Tahoe's waters amounted to an official "taking," entitling them to "just compensation" under the Constitution.

Fortunately, six of the nine justices disagreed.

The majority opinion, written by John Paul Stevens and joined by Sandra Day O'Connor, Anthony Kennedy, David Souter, Ruth Bader Ginsburg and Stephen Breyer, is not unsympathetic to the plight of landowners left in limbo by the moratorium. But the decision recognizes the larger practical harm to the public interest of treating temporary government freezes on development as seizures of private property requiring compensation, as if they were the same as a permanent physical taking.

"Land-use regulations are ubiquitous and most of them impact property values in some tangential way — often in completely unanticipated ways," Justice Stevens wrote. "A rule that required compensation for every delay in the use of property would render routine government processes prohibitively expensive or encourage hasty decision making."

At last a majority of justices has confronted the practical implications of the court's recent property rights jurisprudence and restored limitations that respect the public, not just private property.

“At last a majority of justices has confronted the practical implications of the court's recent property rights jurisprudence and restored limitations that respect the public, not just private property.”

### NATIONAL EDITION Los Angeles Times

Monday, April 28, 2002

#### The Fight for Tahoe's Life

In 1861, Mark Twain wrote that Lake Tahoe, 22 miles long and 12 wide, was so clear that even at a depth of 80 feet "every little pebble was distinct, every speckled trout." A dozen years later, geologist John LeComte lowered a white dinner plate into the water. It was still visible at a depth of 100 feet.

That was before the forests were clear-cut to provide timber for the Comstock mines, before grazing livestock polluted streams running into the lake and before the urbanization of the Tahoe Basin. The basin's population grew fivefold between 1960 and 1980 and is more than 50,000 today.

By the late 1960s, the dinner plate was visible to only 90 feet. Tahoe was in crisis — a possibly irreversible clouding of the pristine waters by pollution-caused algae. Then big government stepped in and a slow success story began.

The planning agency was created by California, Nevada and Congress in 1969 after Govs. Ronald Reagan and Paul Laxalt held an urgent summit at the lake. They agreed that the only solution was creation of a super-government agency, even though that concept violated their conservative beliefs.

The lake, at 6,225 feet elevation, and its surrounding ridges and peaks, rising to 11,000 feet, were abused for 150 years. They will not heal quickly even with planning and growth-control regulations that are among the nation's most stringent.

It's been a long struggle against erosion, sewage effluent, casinos and landowner lawsuits. Federal, state and local governments have spent hundreds of millions of dollars buying land and developing erosion control and wetlands restoration projects. Hundreds of millions more are needed.

The dinner plate was visible to only 64 feet in 1997. But this year, the figure is up to nearly 74 feet. Does that mean all this effort is finally paying off? Too early to say. Planners say the lake is quick to react to negative changes in the watershed — one year's higher-than-normal runoff, for example — and very slow to respond to restoration efforts. But it will. And there's no doubt that without the planning agency, the controls and all the effort of the past 30 years, Lake Tahoe would have deteriorated to well beyond the saving point.

“The ruling is monumental in a broad sense because it upholds the power of state, federal and local government to restrict land uses to protect the environment.”

"All the News  
That's Fit to Print"

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SATURDAY, APRIL 24, 2004

ONE DOLLAR

A24

Editorial Observer/DOROTHY SAMUELS

## Golf Anyone? *The Movable Feast Called 'Judicial Education'*

Amid the uproar over Justice Antonin Scalia's duck-hunting trip with Vice President Dick Cheney, I phoned a federal judge I know to get his take on the matter. Speaking off the record, the judge, a seasoned court veteran, sharply criticized Mr. Scalia's judgment, first in going on the trip, and accepting free rides on Air Force Two for himself and two relatives, and then in refusing to step aside when the case challenging the secrecy of Mr. Cheney's energy task force is heard next Tuesday by the Supreme Court.

But the judge's disapproval instantly shifted from Mr. Scalia to this editorial writer when I suggested a similarity between the duck-hunting episode and a broader, less publicized judicial travel outrage. I'm speaking of the well-attended "judicial education" programs that are staged at resorts offering excellent golf, fly-fishing and horseback riding and are financed by private interests bent on influencing judges to curb federal regulatory authority in areas like protecting the environment.

"It's a non-issue," the judge snapped at me, adding that he'd attended such a seminar himself years ago and found the discussions to be "interesting and informative."

The exchange had a familiar ring to it. Much as many members of Congress resisted the 1995 gift ban, which barred lawmakers from accepting free meals and other largesse from lobbyists, many otherwise ethically alert judges are loath to relinquish their compromising travel perks.

So the problem festers. An eye-opening report four years ago by the Community Rights Counsel, an environmental group, revealed that between 1992 and 1998, more than a

A foolish duck hunt  
isn't the only  
travel problem.

quarter of the federal judiciary — some 230 federal judges — took advantage of a loophole in current ethical guidelines to accept the free vacations. The report also noted a troubling correlation between attendance at such seminars and rulings scaling back environmental protections, suggesting that these gifts are affecting judicial decisions. A new follow-up report by the same group finds these strategic private seminars are continuing apace, having been effectively protected by Chief Justice William Rehnquist and other judicial leaders who have quashed formative efforts at reform within Congress and by the American Bar Association.

Moreover, as the Community Rights Counsel recently set forth in a formal ethics complaint, three federal appellate judges — Judge Douglas Ginsburg, chief of the United States Court of Appeals for the District of Columbia Circuit, and Judges Jane Roth of the Third Circuit and Danny Boggs of the Sixth Circuit —

openly flout current limits on judges' off-the-bench activities by serving on the board of the Foundation for Research on Economics and the Environment. That group, an environmental advocacy outfit, has both a strident antiregulatory profile and gobs of money from energy industry interests to run educational/recreational seminars for federal judges in Montana and elsewhere.

Unlike Mr. Scalia's now infamous rustic vacation with Mr. Cheney, most garden-variety judicial junkets are unlikely to become grist for a David Letterman Top 10 list. Still, their harm to judicial integrity and impartiality in allowing well-heeled special interests to wine, dine and lobby judges under the deceptively neutral-sounding heading of "judicial education" is profound.

No matter how they are framed, these privately financed trips cannot be squared with a judge's fundamental duty to avoid even the appearance of impropriety. Nor can they be justified by the ongoing failure of the Congress to give judges the considerable pay raise they deserve. For a special bar association commission reviewing possible changes to the bar's influential Model Code of Judicial Conduct, barring these junkets ought to be an easy call.

# Community Rights Counsel

## JUDICIAL NOMINATIONS

### LegalTimes

LAW AND ECONOMICS IN THE MARKET COURT

#### Left and Right, Activists Gird For Court Fight

Speakers of a Retirement Site Plans by Bush Foes, Defenders

By American Group and Kate Marlowe

As the clock ticks down to a possible nomination to the Supreme Court, participants in the Supreme Court nomination process in the coming months are already in a state of high alert. Environmental groups, labor unions, and other activists are preparing to meet in a downtown area to discuss the nomination of a D.C. law firm to the Supreme Court. The nomination of a D.C. law firm to the Supreme Court is a controversial move, and it is likely to be a major focus of the upcoming election.

#### New Faces on the List

Not all of the names of the daily opposition are veterans of the Bush and Clinton battles. Some groups that have not been active in the past are now playing a role in the nomination process. Environmental groups, labor unions, and other activists are preparing to meet in a downtown area to discuss the nomination of a D.C. law firm to the Supreme Court.

Environmental groups, labor unions, and other activists are preparing to meet in a downtown area to discuss the nomination of a D.C. law firm to the Supreme Court. The nomination of a D.C. law firm to the Supreme Court is a controversial move, and it is likely to be a major focus of the upcoming election.



Douglas T. Kendall is executive director of Community Rights Counsel, a public interest law firm based in Washington.

“There’s a level of awareness in the environmental community about the threat involved in judicial nominations that was not there even two years ago,” says Douglas Kendall, executive director of Community Rights Counsel, an environmental and land use group that has focused on judicial nominees for years.

### The Washington Post

FRIDAY, SEPTEMBER 19, 2003

#### Judicial Throwback

Douglas T. Kendall and Timothy J. Dowling

The Bush administration's decision to nominate Justice Rogers Brown to the nation's second most important court, the U.S. Court of Appeals for the D.C. Circuit, raises a strikingly paradoxical question: Where is the conservative outrage?

After all, Brown, a California State Bar lawyer, openly supports activists to the role of Justice. He has been a vocal supporter of the Supreme Court's decision to strike down an unconstitutional law that struck down an unconstitutional law that struck down an unconstitutional law.

### The Courier-Journal

LOUISVILLE, KENTUCKY

#### CONSERVATIVE BENCH PRESS

BY DOUG KENDALL

The writer is executive director of Community Rights Counsel, a public interest law firm based in Washington.

President Bush has nominated a judge to the Supreme Court who will nominate only judges who believe in judicial restraint. Judges who do not “make social policy” from the bench. Simultaneously, however, his first batch of judicial nominees includes people like Ohio’s Jeffrey Sutton, nominated for the federal appeals court that covers Michigan, Ohio, Tennessee and Kentucky. Sutton, unfortunately, is one of the nation’s leading proponents of judicial activism that is advancing a conservative policy agenda from the federal bench.

“Will the Senate confirm a judge who, by all indications, will take the bench hell-bent on undermining congressional power and striking down federal protections for civil rights and the environment?”

to the Supreme Court last year that the federal government lacks authority to prevent destruction of wetlands and wetlands for migrating birds. Yet as early as 1970, Justice Oliver Wendell Holmes declared for the Supreme Court that the government’s power to regulate the use of wetlands is not sufficient to rely upon the state’s first amendment and that “the first amendment” is not sufficient to rely upon the state’s first amendment and that “the first amendment” is not sufficient to rely upon the state’s first amendment.