

Copyright 2004 The New York Sun, One SL, LLC
All Rights Reserved
The New York Sun

July 14, 2004 Wednesday
Correction Appended

SECTION: FRONT PAGE; Pg. 1

LENGTH: 1200 words

HEADLINE: Kerry Has Pressed A Long Campaign To Rein in Judges

BYLINE: By JOSH GERSTEIN, Staff Reporter of the Sun

BODY:

For four years, Senator Kerry of Massachusetts has fought a largely unheralded battle to restrict the attendance of judges at privately funded educational seminars billed by critics as "judicial junkets."

The effort by Mr. Kerry, who is the likely Democratic nominee for president, has irritated judges of various political stripes and led to claims that his proposals would infringe on First Amendment rights and threaten the independence of the federal judiciary.

Mr. Kerry's opening salvo on the issue came in July 2000, when he introduced the "Judicial Education Reform Act," a bill that would make it illegal for judges to accept free trips unless they were invited speakers.

The senator's move took place just days after a liberal public-interest law firm, Community Rights Counsel, released a report asserting that more than 200 judges had taken trips sponsored by entities the firm described as "right of center." The report also asserted that much of the travel was bankrolled by companies or foundations involved in pending court cases.

In a floor speech, Mr. Kerry said the practice threatened to undermine public confidence in the justice system. "The notion that federal judges are accepting all-expense-paid trips that combine highly political legal theory with stays at resort locations from persons with interests before their courts creates an appearance of conflict that is unacceptable and unnecessary," the senator said.

The legislation did not make much of a splash, but the prospect of finding federal judges vacationing on someone else's dime was too tantalizing for television magazine show producers to pass up. In December of that year, a camera crew with ABC's "20/20" caught up with a group of judges on a golf course in Tucson, Ariz.

"You wouldn't call this a junket?" ABC correspondent Brian Ross shouted to the judges as they played a par five.

"I wouldn't. Oh, no, well, it depends what you mean by junket," replied Judge William Osteen, who sits on the federal district court in Greensboro, N.C.

While the judge's Clintonian response may not have helped his cause, those who organize the judicial conferences defend them as balanced and essential to keeping judges informed.

"There is no program that I know of that has a stronger academic content than our programs," said Francis Buckley, a law professor at George Mason University and the director of the school's Law and Economics Center. Mr. Buckley said the faculty for the seminars are drawn from a variety of academic institutions, including Harvard, Princeton, and the University of Virginia.

According to Mr. Buckley, last year, more than 2,000 federal judges applied for one of the school's seminars.

Kerry Has Pressed A Long Campaign To Rein in Judges The New York Sun Jul

The most prominent critic of Mr. Kerry's legislative effort on the issue is Chief Justice Rehnquist. In May 2001, he blasted the measure as "antithetical to our American system and its tradition of zealously protecting freedom of speech."

In particular, Justice Rehnquist objected to a provision in the bill that would have put a government body, the Federal Judicial Center, in charge of approving privately run judicial seminars. Judges who attended approved seminars would be allowed to do so with federal funds.

"The notion that judges should not attend private seminars unless they have been vetted and approved by a government board is a bad idea," he said.

Justice Rehnquist's attacks and criticism from a variety of bar associations and judicial groups doomed Mr. Kerry's first volley. Last year, he tried again. In April, Mr. Kerry joined with Senator Leahy of Vermont to offer the "Fair and Independent Federal Judiciary Act." This time the restriction on judicial education programs was coupled with language promising a pay hike of roughly \$10,000 for each federal judge.

The Leahy-Kerry legislation stalled after Senate Republicans pushed through their own proposal for a judicial pay hike. That measure died in the House because of a dispute related to congressional pay raises.

The Leahy-Kerry bill is pending, though Senate aides said no action is expected on it in the near future.

Mr. Kerry's office did not respond to requests for information about the status of the legislation. In March, in a statement prompted by the controversy surrounding Justice Scalia's participation in a duck-hunting trip with Vice President Cheney, Mr. Kerry said, "There is absolutely no question that when judges accept vacations and gifts from the parties before them it erodes public trust in the courts."

One sponsor of free seminars for judges said he is not concerned about Mr. Kerry's legislative proposals. The director of the Foundation for Research on Economics and the Environment in Bozeman, Mont., John Baden, described his group as the "primary target" for critics of such programs.

"I just don't pay much attention to it, quite frankly," he said.

Mr. Baden described the attacks on his seminars for judges and law professors as "totally without foundation."

"In terms of the substance of the program, the quality of the program, I think it's as close to bulletproof as anyone's ever seen," Mr. Baden said. He described speakers at the foundation's judicial seminars as, generally, "the top people from the top places." Scholars like George Priest of Yale University and Philip Heymann of Harvard University have spoken at the foundation's retreats.

The executive director of Community Rights Counsel, Douglas Kendall, said the benign description of the judicial seminars is misleading. He described the foundation as "a group that takes judges to old Western ranches, takes them flyfishing, and talks to them about why they should strike down environmental laws." Mr. Kendall's reports note that the Montana-based group has received donations from large corporations, the conservative John M. Olin Foundation, and from foundations bankrolled by Richard Mellon Scaife.

Mr. Kerry has echoed the liberal group's complaint that some of those paying for the judges' trips have important cases pending in court.

Mr. Baden said only foundations funded by people who are deceased are allowed to support the judicial programs. "In my cosmology, they are not likely to appear before judges," he said.

While Mr. Baden's group says its funding is completely transparent, the George Mason program takes the opposite approach.

"On the advice of our board of judicial advisers we keep confidential our list of donors," Mr. Buckley said.

Another law professor at the university, Ronald Rotunda, said the policy insulates the judges from charges that they are being bought. "The judges often don't know the source, so it can hardly affect their thinking," he said.

Earlier this year, Community Rights Counsel lodged formal ethics complaints against three jurists for serving on the board of Mr. Baden's group, the Foundation for Research on Economics and the Environment. The complaints were directed against the chief judge of the District of Columbia Circuit, Douglas Ginsburg, the chief judge of the 6th Circuit, Danny Boggs and a judge on the 3rd Circuit Court of Appeals, Jane Roth.

Kerry Has Pressed A Long Campaign To Rein in Judges The New York Sun Jul

Mr. Ginsburg and Ms. Roth did not return calls seeking a response to the group's complaint. A court official said Mr. Boggs had no comment on the allegations.

CORRECTION-DATE: July 15, 2004

CORRECTION:

Two hundred Article III judges, or about a quarter of the Article III bench, applied for one of the programs sponsored by the George Mason University Law and Economics Center in 2004, according to the center. An article in yesterday's New York Sun misstated the number.

LOAD-DATE: July 15, 2004