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Judicial nominees and free marketeers under attack

The fight over President Bush's judicial nominees has received considerable attention, and will dominate the agenda when the Senate considers his choice for the Supreme Court. But this is not the only way in which ideologues attempt to impose their views on the courts. In some respects, the other manipulations should cause the public more concern.

Consider my experience.

For the past several years, some of the biggest organizations in journalism have parroted a Washington-based group's criticisms of our institute without making any apparent effort to determine the motives of the complainant - an organization called the "Community Rights Counsel" - or the legitimacy of its claims.

As our name implies, the Foundation for Research on Economics and the Environment (FREE) uses economic analysis to examine environmental problems. Among our programs are educational seminars for federal judges, which are cosponsored by Montana State University.

Distinguished scholars from some of the nation's top schools, such as Berkeley, Chicago, Harvard, UCLA and Yale, join us at these seminars as we examine the interface between economics and the environment.

Yet CRC explicitly describes the seminars as "junkets for judges" and strongly implies they are crass brainwashing sessions. They have similarly accused FREE of promoting corporate interests and pursuing anti-environmental policies. Just days ago, for example, the organization's chief counsel repeated the charges in a column in Washington's Legal Times. The title was a giveaway: "Stop Judges Tripping on Corporate Dollar." According to the column, the purpose of the trips is clear: "to advance a particular jurisprudential perspective."

There is plenty of evidence to refute such claims (all readily available on our Web page), but little evidence that reporters and editors have made any effort to find it. We have even invited some top journalists to audit our seminars. It's difficult to accept distortions when one has personal knowledge, but we've had no takers.

Several weeks ago, Washington's Other Paper ran a story describing FREE as "corporate-funded group that opposes environmental regulation." The Washington Post asserted that FREE "has received sponsorship" from companies that "have fought environmental fines and rules in federal court." The implication was clear: that our little institute in far-away Bozeman, Montana, is basically a corporate pawn. CRC, by contrast, was described by The Post as "a public interest environmental advocacy firm."

But what is the basis for such descriptions? For more than 20 years, FREE has advanced environmental quality with analysis, concrete proposals and cooperative efforts with other environmental and public-interest organizations. Less than 25 percent of our total annual funding (which is modest indeed) comes from corporations, and none of that money is used for the judicial seminars.

So why do journalists describe our organization as "corporate-funded?" Why are we not described as a "public interest" group? Because our critics claim we are a corporate front and reporters simply take their word for it?

Last year, the Community Rights Counsel stepped up its attacks, filing complaints against four of our board members, all federal judges, alleging their affiliation with FREE amounted to "judicial misconduct." Rather than subject themselves to the ongoing attacks, three of the judges resigned from our board. The fourth, Danny J. Boggs, Chief Judge of the Sixth Circuit Court of Appeals (covering the states of Kentucky, Michigan, Ohio and Tennessee), stood his ground.

The complaint against Judge Boggs was assigned to Judge James Loken, Chief Judge of the Eighth Circuit Court of Appeals. After conducting an extensive investigation, Judge Loken dismissed the complaint, saying that the allegations against Judge Boggs "typify the character assassination that is all too common in our Nation's Capital, much of it intended to further the accuser's legislative agenda."

"By use of this tactic," Judge Loken wrote, "it is the complainant [CRC] who is undermining public confidence in the integrity and impartiality of the judiciary, not the judges complained of."

The news media should make an honest effort to tell the truth so the public can make its own judgments about complex and contentious issues, whether it's our seminar series or a Supreme Court nominee's background. The ongoing attacks on our little organization show they're not doing their job - unless it is character assassination.

John Baden is chairman of the Foundation for Research on Economics and the Environment in Bozeman, Mont.

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