Democratic Silence About The Courts

by Phyllis Schlafly Aug. 11, 2004

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The principal speakers at the Democratic National Convention conspicuously omitted one topic: the courts. The speakers didn't talk about what kind of judges John Kerry would appoint, or how his choices might affect future decisions, or why the Democrats blocked George W. Bush's appointments.

This silence about the courts is especially odd because the Democratic Party has become a party of lawyers, and lawyers were given the primetime podium at the Convention. Call the roll: John Kerry, John Edwards, Bill Clinton, Hillary Clinton, Ted Kennedy, and keynoter Barack Obama.

If these lawyers really think they can run the government better than Republicans, why didn't they draw on their personal expertise to tell us why they blocked Bush's judicial nominees and how Kerry's nominees would be different?

The only speakers who complained about the courts were the Reverend Al Sharpton and Al Gore who, in his 2000 campaign, promised to appoint judges who believe the "Constitution is a living and breathing document" to be interpreted by "evolving experience."

Extreme Bush-haters such as Michael Moore are fond of complaining about how Bush stole the 2000 election and various other wacky conspiracy theories, but those complaints were not allowed at the Democratic Convention.

Apparently, the Democratic strategists decided that campaign rhetoric about right-wing judges and back-alley abortions just doesn't scare the voters. We already have a left-wing judiciary, and everybody knows it.

Recent Supreme Court decisions have been against the Bush Administration's handling of terrorism suspects, in favor of affirmative action, in favor of homosexual sodomy, in favor of limiting capital punishment, and against any restrictions on pornography available to children on computers in your own home. The Court even hinted it might declare the Pledge of Allegiance unconstitutional the next time the Pledge is challenged.

Kerry and Edwards probably agree with those decisions. But their legal philosophies are very unpopular with the swing voters they need so badly.

Edwards, who represents the worst of the legal profession, made his millions by suing obstetricians and others with junk science claims. These lawsuits have caused malpractice insurance in many states to skyrocket and driven many good physicians out of business.

Kerry claims he opposes gay marriage, but he voted against the Defense of Marriage Act, which would protect the other states from having to recognize Massachusetts' same-sex mischief. He opposes any legislative action to maintain the traditional definition of marriage and praises judges who presume to redefine it.

The explanation for Kerry's paradoxical position is that he is a judicial supremacist who believes that unelected judges should have the final say on controversial social policies. He and other liberal Democrats know that many of their policy objectives can be achieved only if they are dictated by an activist judge.

Antonin Scalia and Clarence Thomas are the only Supreme Court justices who eschew judicial supremacy and believe in relying on the actual text of the Constitution and statutes. They are the only justices who have coherent legal philosophies that receive respect from legal scholars.

Scalia and Thomas are actually the most reliable defenders of constitutional rights. It was Scalia who wrote the majority opinion in the two big cases this year guaranteeing a criminal suspect the right to a fair trial.

In Crawford v. Washington, Scalia affirmed the constitutional right to confront witnesses. In Blakely v. Washington, Scalia led a 5-4 majority in affirming the right to a jury trial, as opposed to allowing judges to impose extra-long sentences based on evidence never submitted to a jury.

When Bush said that Scalia and Thomas are examples of judges who base their judgments strictly on the words of the Constitution, he was stating what the American people expect of judges. The alternative is for judges to base their decisions on their personal political views and supremacist attitude.

It's not that Scalia and Thomas always agree; they don't, and they had some sharp disagreements this year. Ginsburg agreed with Stevens, Souter and Breyer more often than Thomas agreed with Scalia. What makes Scalia and Thomas seem similar is that they are the only ones on the Supreme Court who actually do their jobs the way judges are supposed to.

President Bush says, "We will not stand for judges who undermine democracy by legislating from the bench and try to remake the culture of America by court order." When a Supreme Court vacancy occurs, we expect him to stand down the Daschle Senate and appoint another Scalia or Thomas.

Kerry has flip-flopped on what sort of litmus tests he might apply to his appointments, but it seems clear that he wants to appoint supremacist judges who will remake the culture of America by court order. He just won't admit it on national television, and his Convention speakers were "issued muzzles," as Zell Miller charged on Meet the Press.