

Mr. HATCH. I have been critical of the activism of many of President Clinton's judges, and let me tell you I have read many an activist decision in the last few years, but I have never ever seen, nor heard of, a district court judge requiring circuit court of appeals judges to justify their decision, let alone circuit court of appeals judges from an altogether different circuit. In fact, we have consulted with a number of Federal court scholars who have told the committee that to their knowledge such an action is unprecedented. I should hope so.

In short, Judge Kessler's order can only be explained as a blatant abuse of judicial authority and disregard for the basic structure of our Federal courts, or perhaps at the very least a gross oversight. But in any event, it is confounding and it is dumbfounding. That Judge Kessler apparently believes she somehow has the power to review fourth circuit judges' opinions is, quite frankly, nothing short of appalling and represents the worst short of judicial hubris.

Perhaps Judge Kessler does not appreciate the gravity of her actions or perhaps she is trying to make a statement. Either way, however, her order is very disturbing because it represents either a fundamental disregard for, or ignorance of, the most basic limits on judicial power.

Mr. President, when Republicans point out the activism of Clinton nominees, we are accused of using selective criteria. But as Clinton judges issue more and more activist decisions, it is becoming clear that a great number of them are—by any criterion—activist judges.

Now, I have asked that the show cause order be printed in the RECORD. I hope people will read that. It is an astounding document. I do not know how anybody, any judge sitting for the district court, could have issued that kind of order. Nevertheless, it is just evidence of some of the things we have been going through in this country.

Mr. D'AMATO. Will the Senator from Utah yield for a question?

Mr. HATCH. I am happy to yield.

Mr. D'AMATO. First, let me, if I might, say that I commend the Senator for taking the time to bring to the attention of the Congress and of the Senate such a glaring, incredible abuse of judicial authority. It is obvious that that is the case. But let me ask—I am confused as to how it is that the district court judge here in Washington would assert jurisdiction. What was her jurisdiction?

Mr. HATCH. There is none. It is absolutely astounding. Here is a Federal district judge, trial court judge in the District of Columbia, who has absolutely no connection to the Fourth Circuit Court of Appeals, telling appellate judges that they must come before her and explain why this murderer's frivolous appeal was denied.

Mr. D'AMATO. Was the crime committed here in DC?

Mr. HATCH. No. If I understand it, the crime was in North Carolina.

Mr. D'AMATO. So if the crime was in North Carolina, the prisoner is in the Carolinas, the question is total lack of jurisdiction. So the thing that becomes shocking is what is to prevent this judge from issuing or entertaining a case, let us say, from Utah where a Utah judge and court had ruled; she is claiming that she could ask that judge to come here and to explain to her why the judge made that decision.

Mr. HATCH. Or from New York. If we can have judges, district court judges, trial court judges in the District of Columbia issue an order to appellate judges in the Fourth Circuit Court of Appeals, then the structure and rationality of our Federal judicial system would be thrown into disarray.

Mr. D'AMATO. Has the Justice Department involved itself in this matter?

Mr. HATCH. I do not know that they know about it, but they certainly are going to know about it after we finish here today, because it is unbelievable.

Mr. D'AMATO. Is it the intent then of the Senator to bring this to the attention of the Justice Department and ask them, would it not be correct, to seek an order from a higher court right here to quash this? This is incredible.

Mr. HATCH. We intend to let the Justice Department know, but, more importantly, I think, I am serving notice around here that we are not going to continue to sit back and tolerate these activist judges. Nobody has been more fair to the Clinton judicial nominations than I have. But many of these nominees have come in here and said we are not going to be activist judges; we are not going to usurp the powers of the executive and legislative branches of Government; we are going to do what judges should do, and that is interpret the laws that are made by those who are elected. All of them mouth that kind of language, but when it comes right down to it, a significant number of them are, one on the bench, engaging in patently activist judging and usurping powers that they do not have.

So I am just serving notice that we are on to the games these nominees are playing, and do not intend to let this game go on. We are going to do what it takes to weed out those nominees who pay lip service to judicial restraint, but then think they can do anything they want to once they don their robes.

There are limitations to the judiciary. The judiciary can preserve itself and keep the high opinion of the American people by not acting as activists, by not usurping the powers of the other two separated branches of Government, and by living within the limits of the Third Branch.

I do not care whether activism comes from the right or whether it comes from the left. It is wrong, and I have never seen a more flagrant case of something that is wrong than this case. That is why I wanted to bring it to the

attention of the Senate and also serve notice that we are going to treat the judgeship nominees over the next 4 years with the utmost diligence and scrutiny.

We appoint Federal judges for a lifetime, and accordingly expect them to live up to the high calling of the judiciary; to appreciate the inherent limits on judicial power, and not to substitute their own policy preferences for that which the law requires.

I hope that this sends a message to everybody, and I am serious about it. As one who has taken a lot of abuse from both sides on judges—including my own Republican colleagues—I am serving notice that we do not intend to allow this rising tide of judicial activism to continue. The integrity of our judiciary, and our very right to self-government is at stake.

I thank my colleague. I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I thank the chairman of the Judiciary Committee, Senator HATCH, for bringing to the attention of the Senate and to the Nation as a whole, I think, a very serious situation. Because this portends the kind of thing that may take place, I think notice has to be served by those within the court itself.

Clearly, this case goes well beyond the realm of someone having a difference of legal opinion. The question of jurisdiction alone is a frightening one and how someone could reach well beyond and entertain a matter—are we going to say any Federal judge in any Federal jurisdiction can review matters that do not legally come before them or within their purview or power?

(The remarks of Mr. D'AMATO pertaining to the introduction of S. 249 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. D'AMATO. I yield the floor and I thank the Chair.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I ask unanimous consent that I be added as a cosponsor of Senator D'AMATO's legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, how much time am I allotted?

The PRESIDING OFFICER. Ten minutes.

Mr. FORD. I will not take that long.

(The remarks of Mr. FORD pertaining to the introduction of S. 250 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

RULES OF PROCEDURE FOR THE COMMITTEE ON ARMED SERVICES

Mr. THURMOND. Mr. President, today I am reporting to the Senate the

rules of procedure for the Committee on Armed Services as provided for in rule 26.2 of the Standing Rules of the Senate. These rules were unanimously adopted by the committee today, January 30, 1997, and I ask unanimous consent that they be printed in the RECORD.

There being no objection, the rules were ordered to be printed in the RECORD, as follows:

ARMED SERVICES COMMITTEE RULES OF
PROCEDURE

(Adopted January 30, 1997)

1. *Regular Meeting Day.* The Committee shall meet at least once a month when Congress is in session. The regular meeting days of the Committee shall be Tuesday and Thursday, unless the Chairman directs otherwise.

2. *Additional Meetings.* The Chairman may call such additional meetings as he deems necessary.

3. *Special Meetings.* Special meetings of the Committee may be called by a majority of the members of the Committee in accordance with paragraph 3 of Rule XXVI of the Standing Rules of the Senate.

4. *Open Meetings.* Each meeting of the Committee, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the committee or a subcommittee thereof on the same subject for a period of no more than fourteen (14) calendar days may be closed to the public on a motion made and seconded to go into close session to discuss only whether the matters enumerated below in clauses (a) through (f) would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the members of the Committee or subcommittee when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(a) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(b) will relate solely to matters of committee staff personnel or internal staff management or procedure;

(c) will tend to charge an individual with a crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(d) will disclose the identity or any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(e) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(f) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

5. *Presiding Officer.* The Chairman shall preside at all meetings and hearings of the committee except that in his absence the

ranking majority member present at the meeting or hearing shall preside unless by majority vote the Committee provides otherwise.

6. *Quorum.*

(a) A majority of the members of the Committee are required to be actually present to report a matter or measure from the Committee. (See Standing Rules of the Senate 26.7(a)(1)).

(b) Except as provided in subsections (a) and (c), and other than for the conduct of hearings, six members of the Committee shall constitute a quorum for the transaction of such business as may be considered by the Committee.

(c) Three members of the Committee, one of whom shall be a member of the minority party, shall constitute a quorum for the purpose of taking sworn testimony, unless otherwise ordered by a majority of the full Committee.

(d) Proxy votes may not be considered for the purpose of establishing a quorum.

7. *Proxy Voting.* Proxy voting shall be allowed on all measures and matters before the Committee. The vote by proxy of any member of the Committee may be counted for the purpose of reporting any measure or matter to the Senate if the absent member casting such vote has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. Proxy must be given in writing.

8. *Announcement of Votes.* The results of all roll call votes taken in any meeting of the Committee on any measure, or amendment thereto, shall be announced in the committee report, unless previously announced by the Committee. The announcement shall include a tabulation of the votes cast in favor and votes cast in opposition to each such measure and amendment by each member of the Committee who was present at such meeting. The chairman may hold open a roll call vote on any measure or matter which is before the Committee until no later than midnight of the day on which the Committee votes on such measure or matter.

9. *Subpoenas.* Subpoenas for attendance of witnesses and for the production of memoranda, documents, records, and the like may be issued by the Chairman or any other member designated by him, but only when authorized by a majority of the members of the Committee. The Subpoena shall briefly state the matter to which the witness is expected to testify or the documents to be produced.

10. *Hearings.*

(a) Public notice shall be given of the date, place, and subject matter of any hearing to be held by the Committee, or any subcommittee thereof, at least 1 week in advance of such hearing, unless the Committee or subcommittee determines that good cause exists for beginning such hearings at an earlier time.

(b) Hearings may be initiated only by the specified authorization of the Committee or subcommittee.

(c) Hearings shall be held only in the District of Columbia unless specifically authorized to be held elsewhere by a majority vote of the Committee or subcommittee conducting such hearings.

(d) Witnesses appearing before the Committee shall file with the clerk of the Committee a written statement of their proposed testimony prior to the hearing at which they are to appear unless the chairman and the ranking minority member determine that there is good cause not to file such a statement. Witnesses testifying on behalf of the Administration shall furnish an additional 50 copies of their statement to the Committee. All statements must be received by the Committee at least 48 hours (not including weekends or holidays) before the hearing.

(e) Confidential testimony taken or confidential material presented in a closed hearing of the Committee or subcommittee or any report of the proceedings of such hearing shall not be made public in whole or in part or by way of summary unless authorized by a majority vote of the Committee or subcommittee.

(f) Any witness summoned to give testimony or evidence at a public or closed hearing of the Committee or subcommittee may be accompanied by counsel of his own choosing who shall be permitted at all times during such hearing to advise such witness of his legal rights.

(g) Witnesses providing unsworn testimony to the Committee may be given a transcript of such testimony for the purpose of making minor grammatical corrections. Such witnesses will not, however, be permitted to alter the substance of their testimony. Any question involving such corrections shall be decided by the Chairman.

11. *Nominations.* Unless otherwise ordered by the Committee, nominations referred to the Committee shall be held for at least seven (7) days before being voted on by the Committee. Each member of the Committee shall be furnished a copy of all nominations referred to the Committee.

12. *Real Property Transactions.* Each member of the Committee shall be furnished with a copy of the proposals of the Secretaries of the Army, Navy, and Air Force, submitted pursuant to 10 U.S.C. 2662 and with a copy of the proposals of the Director of the Federal Emergency Management Agency, submitted pursuant to 50 U.S.C. App. 2285, regarding the proposed acquisition or disposition of property of an estimated price or rental of more than \$50,000. Any member of the Committee objecting to or requesting information on a proposed acquisition or disposal shall communicate his objection or request to the Chairman of the Committee within thirty (30) days from the date of submission.

13. *Legislative Calendar.*

(a) The clerk of the Committee shall keep a printed calendar for the information of each committee member showing the bills introduced and referred to the Committee and the status of such bills. Such calendar shall be revised from time to time to show pertinent changes in such bills, the current status thereof, and new bills introduced and referred to the Committee. A copy of each new revision shall be furnished to each member of the Committee.

(b) Unless otherwise ordered, measures referred to the Committee shall be referred by the clerk of the Committee to the appropriate department or agency of the Government for reports thereon.

14. Except as otherwise specified herein, the Standing Rules of the Senate shall govern the actions of the Committee. Each subcommittee of the Committee is part of the Committee, and is therefore subject to the Committee's rules so far as applicable.

15. *Powers and Duties of Subcommittees.* Each subcommittee is authorized to meet, hold hearings, receive evidence, and report to the full Committee on all matters referred to it. Subcommittee chairmen shall set dates for hearings and meetings of their respective subcommittees after consultation with the Chairman and other subcommittee chairmen with a view toward avoiding simultaneous scheduling of full Committee and subcommittee meetings or hearings whenever possible.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Thursday, January 29, the Federal debt stood at \$5,319,575,822,990.65.