The Battalion
OPINION
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Judges, judicial candidates should avoid 'lawless' judicial activism

Jon Beeler
Columnist

When the United States Constitution was drafted in 1789, the anti-Federalist concern with the document was the possible emergence of a despot.

Two hundred years later, their suspicion is proving well-grounded, but certainly not because of President George Bush. The injudicious criminal affronting us today wears a robe. If by saying "robe" I have made you think of a Napolean or Julius Caesar, you are mistaken. The man is not Uncle Fester of the Adams Family either.

Ironically, today the very man subverting our Constitution was a man originally intended to protect it. He is District Court Judge Russel Clark.

On September 15, 1987, Judge Clark ordered a comprehensive restructuring of the Kansas City, Missouri Independent School District to reach earlier court desegregation goals.

First, he demanded a one-and-a-half percent surcharge on Missouri's state income tax for Kansas City area residents. Second, he required an increase of the property tax from $2.05 to $4.00 per hundred dollars of assessed property value. College Station's rate is 40 cents per hundred dollars.

The third order was the collection of $150,000,000 from the sale of capital improvement bonds, the largest court-ordered capital improvement program in the United States.

Forgetting the taxation without representation for a minute, the capital improvement program could buy me almost 14 million large supremes at Pizza Hut (and that's with a coupon). I figure that stack of pizzas would be more than 215 miles high — shuttle astronauts beware!

Of course, the school district will not buy pizza. Instead it will build a planetarium so they can watch the shuttle amidst the stars on the overhead screen; an environmental magnet school replete with log cabins and outdoor wildlife refuge centers; an international magnet school with a model United Nations facility and accompanying language interpretation resources; an agricultural magnet with a farm and farm equipment; a French magnet school that has French lecturers flown in from Belgium and arranges student field trips to Belgium; and a science magnet that sends its students on field trips to the Rocky Mountains and Louisiana delta formations.

Judge Clark thrust the most comprehensive magnet school system in America on the people of Kansas City, Missouri.

Moreover, Judge Clark accomplished this tax-raising feat with disregard for Missouri statutory and constitutional law. The Missouri Constitution prohibits property tax increases over $1.25 per $100 of assessed property value without a voter referendum approving the increase.

It furthermore prohibits an increase to over $3.75 without approval of two-thirds of the affected citizens in referendum.

When the case was appealed to the 8th U.S. Circuit Court of Appeals, the court upheld the gold-plated magnet school plan ordered by Judge Clark but reversed the income tax surcharge. A small restriction was placed on the judge's property tax increases. Although a federal judge, the 8th circuit maintained, can order a property tax increase, the judge may not decide the amount of the increase.

But theoretically, a judge can rule school boards' property tax hikes insufficient to protect constitutional rights until the tax rate is as high as he pleases.

In April of 1989, the Supreme Court agreed to review the legality of the property tax increase. On April 18, 1990, in *Missouri v. Jenkins*, the Supreme Court upheld, 5-4, the 8th circuit's decision.

Understand that the proposal Judge Clark decided on in court was fully endorsed by the school board, but it was a plan the school board members had been unable to persuade the people of Kansas City in previous referenda to accept. But why worry about the residents of Kansas City, Missouri, when you have Judge Clark?

Meanwhile in Texas, Judge Clark's contemporaries Federal District Court Judge William Wayne Justice and Texas District Judge F. Scott McCown are exercising far-reaching influence over the institutional divisions of the Departments of Criminal Justice and Public Education respectively.

Judge McCown has appointed attorney William Kilgarlin to arrive at a plan to equalize public school funding the legislature is unable to come up with a plan that Judge McCown approves.

Although I agree wholeheartedly with Kilgarlin's plan of finance redistribution without a raise in revenue, I am fearful of Judge McCown's hegemony over the appropriations process.

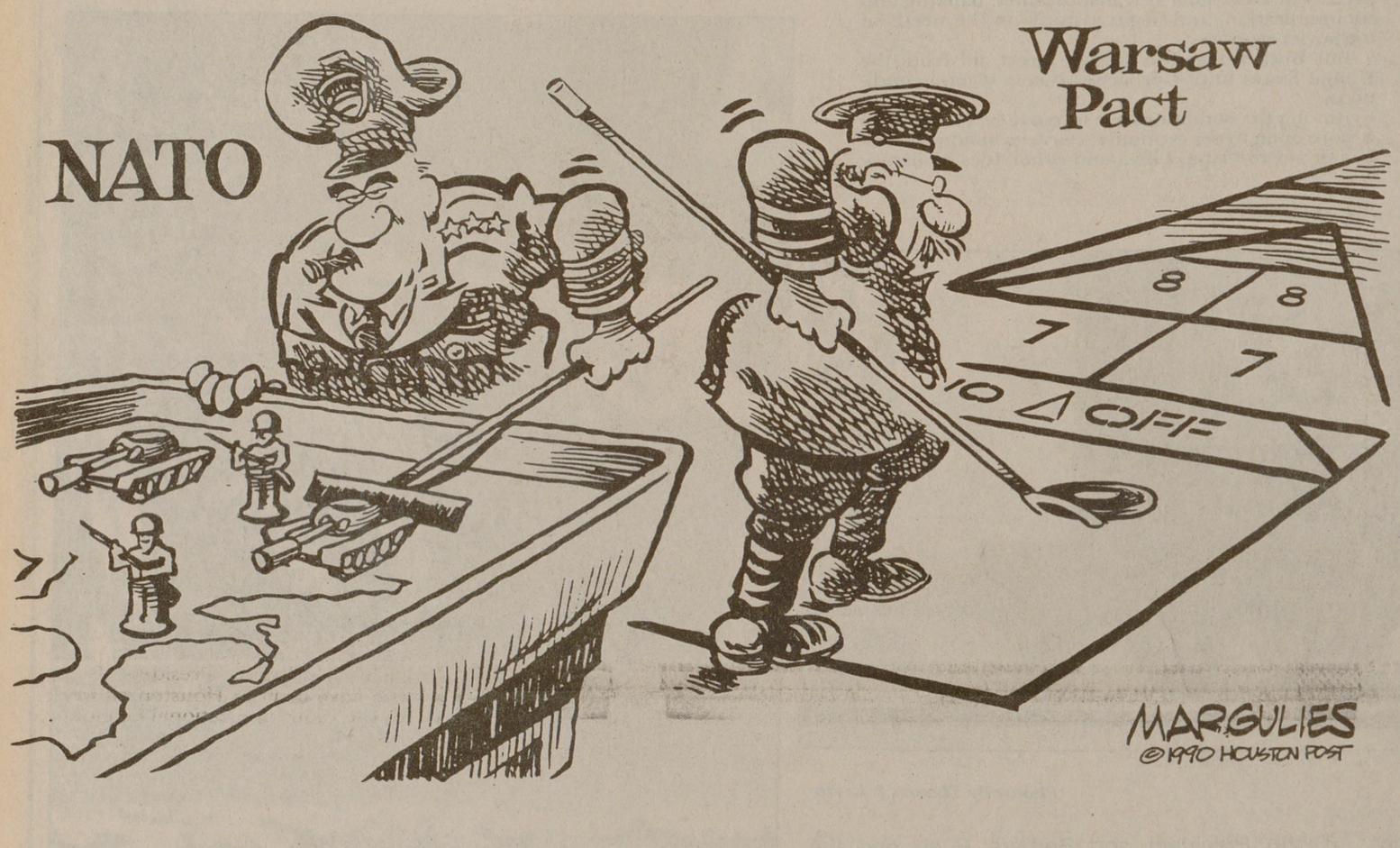
Judge William Wayne Justice was worried about prison inmate comfort when he ordered his reforms to provide more space, services and medical care. While some of his reforms sound necessary, others seem excessive. But the legislature, although they may disagree, has little recourse.

> **"Theoretically, a judge can rule school boards' property tax hikes insufficient to protect constitutional rights until the tax rate is as high as he pleases."**

Way back in 1625, Francis Bacon wrote that "Judges ought to remember that their office is *jus dicere*, and not *jus dare* — to interpret law, and not to make, or give law." This philosophy was reaffirmed by James Madison and his colleagues when they wrote the United States Constitution. I wish Judges Clark, McCown, and Justice would remember their jobs.

All this "lawless" judicial activism has provided fodder for campaign platforms. Judges and would-be judges across Texas are pledging to keep politics out of their decisions. They promise to interpret the law, and let us and our representatives change it if we so choose. Oliver Kitzman, an Aggie and candidate for the Texas Court of Criminal Appeals, has made this campaign slogan: "Judges should interpret the law, not legislate philosophy." He has my vote.

Jon Beeler is a junior nuclear engineering major.



Mail Call

Child abuse *and* abortion wrong

EDITOR:

This is in reference to Joyce Shanks' letter "Abortion anything but convenient," which referenced Jon Beeler's article on the hypocrisy of the pro-choice arguments. I applaud Shanks for her comments on Jon Beeler's article.

Someone has finally pinpointed the kindhearted purpose of abortion. Unlike many people believe, abortions are not "just" the easy way out of a major inconvenience.

As Shanks suggested, abortions help keep child abuse down.

And many would-be mothers actually abort their babies to protect them from future abuse.

If the 59,863 children abused in 1985 had been aborted, we would not have this enormous figure of abused children to horrify us today.

Further, if a woman thinks that she might abuse her child and wish it dead sometime in the future (because the kid might take away most of her independence), then she should definitely have "Roe v. Wade" around to permit her to kill it before she subjects it to child abuse. After all, as Shanks put it, "that is the greater crime."

As a matter of fact we should make another decision "Roe v. Wade 2" that would allow people to take their newborn, unwanted kids to some "professional and respected facility" where they could dispose of the child without too much mess and expense. All this of course before the kid becomes a real person.

After all, in an "advanced" society like ours, we should preserve the "freedom" to change our minds when we realize we are really not cut out for this parenting bit.

And what is the difference anyway?

Three months before its birth or three months after its birth, it is still just the same unwanted kid. Just think of all that child abuse we would save it from.

No Ms. Shanks, I don't have the answer, nor am I able to pick up the taxpayers tab. I just know that both child abuse and abortion are terribly wrong, and I refuse to condone one in lieu of the other.

Ricardo Rios '79

Drinking age limits essential

EDITOR:

Ellen Hobbs' column "Education key to responsible drinking, not legislation" (The Battalion, July 6) discussed the drinking problem. She believes there should be no age limits on alcohol consumption, that such limits are nuisances, not barriers, and that money spent on law enforcement (she conflates this with legislation) would be spent better on education. She also adduced some hackneyed "if you're old enough" arguments.

Traffic safety data do not support Hobbs' opinions. States with the 21-year-old drinking law have a statistically significant lower accident rate among the 18- to 20-year-old age group than states which do not have such a law. Furthermore, law enforcement officials attest to the fact that the filter down effect (those of age buying alcohol for those under age) starts at a higher age and filters to a higher age, thereby helping to curb some middle school substance abuse.

What is needed is a three-pronged approach to the problem: education, enforcement and engineering. Cars and roads need to be engineered as well as possible, with the designers taking into account all the human factors that affect motor vehicle operation. Law enforcement is needed because despite the fact that people may have been educated about what they ought to do does not mean that they will always do it.

Tom Ahern
Graduate student

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