

Thank You, Steve Stowell

BY KAREN KERIN

It is always good to clear the air and Steve Stowell in his letter to the editor printed in the September issue of *Out in the Mountains* provided an opportunity to do so. He took issue with my article in the August edition.

First, he took issue with a summation of the results of the presidential election, claiming that our Constitutional framework, as interpreted by the U.S. Supreme Court, resulted in a faulty decision in *Bush v. Gore*. His thesis centers on his allegation of a partisan vote that denied each vote being counted, thus throwing the vote to Bush. This is a troubling allegation because it is the same court, regardless of the president was that appointed them, which ruled Colorado Amendment 2 to be unconstitutional. Wasn't this hailed as a monumental ruling for the court? Our courts, whether the Supreme Court, a subordinate court or a Vermont Court, are constrained by the national or state constitution. Mr. Stowell is complaining about a legal framework that does not always give him a result he likes. All of us, from time to time, disagree with an outcome and at other times are cheered by a result. Whatever Mr. Stowell, "and everyone. he knows", might think, and certainly our judiciary is far from perfect, it is the best ever devised by human genius. I, for one, am not ready to abandon a legal system that has provided stability for nearly all the life of the nation, because the alternative to the courts is an anarchy too terrible to contemplate. I wonder if Mr. Stowell would like to disregard the Vermont Supreme Court whose ruling on the same sex marriage issue angered another minority because the court was all picked by Kunin and Dean? I certainly hope not. It's all in whose ox got gored. And, by the way, I rendered no opinion on the decisions of either the Florida Supreme Court or the U.S. Supreme Court, so I am more than a little baffled at Mr. Stowell's conclusions. I can only suppose that he cleaves to something other than the rule of law. Heaven forbid, because that is what we have seen in totalitarian countries, which, like the Nazis, gave us the pink triangle and death sentences for a state of being.

Next, Mr. Stowell complained that our "faux-President", Mr. Bush, was destroying "our environmental and anti-ballistic treaties". I

can only surmise that the reference to environmental treaties was the Kyoto Protocol, which is not a treaty. The U.S. Senate did not ratify the protocol. Under the terms of the Vienna Convention on the Law of Treaties, specifically Article 14 (1)(c), "The consent of a state to be bound by a treaty is expressed by ratification when: the representative of the state has signed the treaty subject to ratification". The U.S. Constitution requires ratification by the U.S. senate. I am clueless regarding any other environmental treaties that are being "destroyed". Having a master's degree in environmental law and having worked for my LLM in international law, I suspect I would know if there were some other environmental instrument being destroyed. In any case, I am unaware of the United States of America ever repudiating any environmental treaty, or treaty of any kind for that matter, except under the appropriate rules for doing so as provided in the Vienna Convention.

The anti-ballistic missile treaty was made with a party no longer in existence, the former Soviet Union, hence the former treaty has no correspondent to create a valid and enforceable treaty. Article 61 of the Vienna Convention Addresses "supervening impossibility of performance". "A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it, if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty." In the bilateral ABM treaty, the disappearance of the former Soviet Union renders it impossible to perform. Besides the absence of another party to the treaty, like so many treaties, the treaty has lost its utility. We no longer have a superpower confrontation, but instead have worse threat from rogue states and terrorist organizations. September 11, 2001 clearly demonstrated just how dangerous the world has become when a handful of terrorists hijacked four jumbo jets and caused the death of thousands of people, halting the economy of the nation and much of the world. Clearly, we live in a very different world from the days when the anti-ballistic treaty was created. What we do need today is protection from delivery systems carrying any number of deadly warheads. We also need to develop better security systems to

preclude events that destroyed so many lives and wiped the World Trade Center from the landscape. Article 64 of the Vienna Convention deals with the "emergence of a new peremptory norm of general international law, referred to as jus cogens, which invalidates the ABM treaty. On those several grounds, pacta sunt servanda, no longer applies. I like living in a free country and have some experience with living in countries with substantially different systems. If Mr. Bush can improve our security, and that is a collective security accruing to us all, I will applaud him and be grateful we have someone who cares enough to work on protecting all of us.

Regarding Senator Jeffords, who is raised to heroic status by Mr. Stowell, some few points need to be made. The senator voted for the Defense of Marriage Act, (DOMA). Is that your hero? I worked very hard with the senator to persuade him to make the Employment Non-Discrimination Act (ENDA) inclusive, because I do not believe in creating classes of people. It does not ever equate to equality under the law. When I was in law school, I was deeply involved with the Alliance. It had been originally for Gay, Lesbian and Bisexual law students, but when I showed up, it became inclusive of T's as well. When I had the opportunity to address an incoming class, it changed to GLBT and straight, telling the new students that if we had left anyone out, to let us know and we would make it inclusive for them. Our membership grew dramatically, because there was fairness and no one was being distinguished. Mr. Stowell seems to want to remain segregated, but most of us just want to be accepted for who we are on our own merits.

Senator Jeffords did something that was not admirable to anyone, no matter the political persuasion. He ran for office under a false flag. I know that because I ran with him on the Republican ticket and saw first

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