

spoken repeatedly of confiscating the profits of oil companies, described religion as the opiate of the masses (telling an audience in San Francisco that economically embittered Americans were clinging to their “God and guns”), and glibly predicted that the coal industry would go “bankrupt” unless it adjusted to his environmental socialism.

In the case of Ayers, a former Weather Underground terrorist who regretted not doing “more” to harm America, the case again was not association but agreement: Obama had written a favorable blurb of one of Ayers’ books (on the topic, of all things, of juvenile justice) and given money through a foundation he chaired to Ayers’ lunatic educational programs.

Under the protection of the media, Obama could dismiss these agreements as meaningless while tying John McCain to Bush positions he didn’t even support.

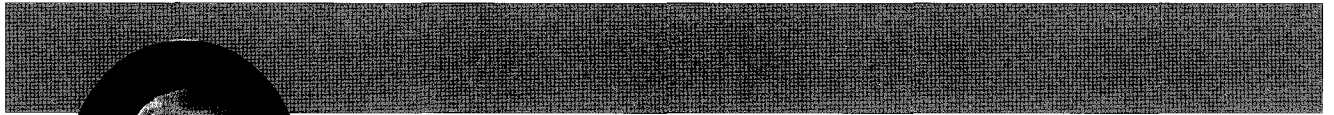
The *Los Angeles Times* figured into the campaign at

the very end of it, not for anything the paper disclosed about Obama but for what it refused to disclose: editors resisted calls from the McCain campaign to release a videotape in its possession of Obama attending a dinner for the former PLO spokesman Rashid Kalidi. The paper primly explained that it couldn’t violate an agreement with its source.

“Maybe some politicians would love to have a pet newspaper of their very own,” Sarah Palin remarked on the campaign trail. “In this case, we have a newspaper willing to throw aside even the public’s right to know in order to protect a candidate that its own editorial board has endorsed. And if there’s a Pulitzer Prize category for excelling in kowtowing, then the *L.A. Times*, you’re winning.”

Competition in that category, particularly in the years to come, will be fierce. To paraphrase an old saying, where flattery for Liberalism’s Lightworker is concerned, no excess is possible.

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Those in power over us

Common sense, for once, prevails

The U.S. High Court rules that ‘species preservation’ does not trump national security.

M. DAVID STIRLING

WHATEVER ONE’S thoughts about the war on terror or U.S. military activities in Iraq, Afghanistan, and other parts of the world, most of us believe our men and women in military service should have the best equipment and training available to defend our national security. But many people in the environmentalist

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community hold a different view. They say species protection laws such as the Endangered Species Act (ESA) should trump all human activities or endeavors, *even* the military.

A classic confrontation on this issue began in January 2007 when the Natural Resources Defense Council (NRDC) and other environmental groups filed suit under ESA to stop the Navy’s use of sonar during real battle-like training exercises in waters off the coast of Southern California. They offered no documented evidence to support a claim that the sonar sound pulses emitted through the water by Navy vessels searching for pretended hostile submarines harmed beaked

whales, dolphins, and other ESA-protected marine mammals. Even so, their suit (*Winter v. NRDC*) asked the court to halt the Navy's use of sonar during the exercises to protect these marine species from alleged harms.

FOR MORE than 40 years, Navy training exercises have used mid-frequency active sonar off the coast near San Diego. This area contains the unique features necessary for simultaneous, integrated training of air, sea, and undersea forces. Although these exercises are aimed at preparing sailors and Marines for a full range of possible naval conflict situations, one of their primary purposes is to train naval personnel in sonar proficiency to detect quiet-running diesel-electric submarines. The Navy regards its sonar training exercises as the only effective means to prepare its naval strike groups to detect these stealth submarines before they close within weapons range.

Although the early stealth diesel-electric submarines that triggered the Navy's initial sonar training program were produced and used by the Soviet Union beginning in the mid-1960s, some 377 modern versions of this relatively cheap submarine (\$200 million for the Russian version, \$300 million for the French) are now owned and operated by 39 countries. North Korea's

and China's stealth subs now shadow U.S. warships in the western Pacific while Iran's quiet-running subs operate in the waters of the Middle East. Russia has contracted to deliver stealth submarines to Venezuela, Algeria, and Indonesia within the next couple of years.

Before the NRDC lawsuit, the Navy had scheduled a series of rigorous military exercises to run from February 2007 through January 2009 to train and certify thousands of naval personnel for deployment to the western Pacific and the Middle East. Before the suit, the Navy issued a lengthy environmental assessment. It stated, among other things, that the past 40 years showed no documented incidents of harm, injury, or death to marine mammals resulting from exposure to sonar in the Southern California training area. Also, the National Marine Fisheries Service, the federal agency responsible for protecting and preserving marine mammals, issued a Biological Opinion concluding that the Navy's use of sonar was not likely to jeopardize the continued existence of any ESA-listed species of marine mammals.

Nevertheless, the federal district court issued a preliminary injunction restricting the Navy's use of sonar so severely that it negated the training value of the exercises. The Navy appealed to the Ninth Circuit Court of Appeal. In January 2008, while the case was pending

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before the Ninth Circuit, the chief of Naval Operations determined that the lower court's restrictions on sonar use imposed unacceptable risks to national security and to the timely deployment of strike groups to the Middle East. President George W. Bush issued an exemption to "enable the Navy to train effectively and to certify ... strike groups for deployment" in support of operational and combat activities "essential to national security."

Despite these clear statements of the importance of the sonar training exercises to national security, the Ninth Circuit, with minor changes, affirmed the district court's restrictions on the use of sonar, declaring that "the armed forces must take precautionary measures to comply with the [environmental] law during its training." The U. S. Supreme Court voted to review the appeal of *Winter v. NRDC* because of the issue of ESA, in effect, thwarting national security preparedness.

Pacific Legal Foundation's friend-of-the-court brief to the Supreme Court challenged the long-held notion within the federal judiciary that ESA is a super statute that trumps all other public interest considerations — a view that first emerged in the Supreme Court's 1978 *T.V.A. v. Hill* decision (the snail darter case). In *Hill*, the Court majority declared that, under ESA, Congress

intended to preserve plant and wildlife species "whatever the cost." Ever since the Court's unfortunate use of that imperious phrase, federal district and appellate courts have regularly cited it as their basis for elevating species preservation above all other socially beneficial public interests. PLF argued that removal of that mandate would restore, in injunction cases, trial court judges' traditional role of weighing and balancing the equities between species preservation and competing human endeavors.

IN NOVEMBER, the Supreme Court restored a measure of common sense to the equation by overturning the Ninth Circuit's injunction. This much-needed win for the Navy and for national security also is a big victory for balance in ESA-based injunction cases. For 30 years federal courts have acted as a rubber stamp for the often undocumented claims and fear-mongering of uncompromising environmentalist groups wielding ESA like a club. Now, finally, America's highest court has said enough is enough. This belated tip toward balance and common sense in the area of national security should be extended to reign in the routine elevation of ESA species preservation above other socially beneficial human interests. Time will tell us whether or not it does so. CPR



A Closer Look

Restoring faith in the 'Republican Brand'

'Moderates' at the top destroyed voter trust in the GOP; conservative leadership alone can regain it.

MICHAEL S. FREDENBURG

MANY READERS will be familiar with the age-old philosophical question: if a tree falls in a forest and no one is there to hear it, does it make a sound? As Republicans and conservatives, we will be asking ourselves a question in the same philosophical vein, updated

for current events: if Obama and/or his administration commit some serious gaffe or mistake and the media ignore it, did the mistake actually occur? In other

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