

## **In Contempt of Courts**

Posted by

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**The Nation**, Copyright 2005 By Max Blumenthal, used by permission of Agence Global - A conference featuring Rep. Tom DeLay, Phyllis Schlafly, Alan Keyes and other religious extremists demands that judges acknowledge "God as the sovereign source of law." Michael Schwartz must have thought I was just another attendee of the "Confronting the Judicial War on Faith" conference. I approached the chief of staff of Oklahoma's GOP Sen. Tom Coburn outside the conference in downtown Washington last Thursday afternoon after he spoke there. Before I could introduce myself, he turned to me and another observer with a crooked smile and exclaimed, "I'm a radical! I'm a real extremist. I don't want to impeach judges. I want to impale them!"

For two days, on April 7 and 8, conservative activists and top GOP staffers summoned the raw rage of the Christian right following the Terri Schiavo affair, and likened judges to communists, terrorists and murderers. The remedies they suggested for what they termed "judicial tyranny" ranged from the mass impeachment of judges to their physical elimination.

The speakers included embattled House majority leader Tom DeLay, conservative matriarch Phyllis Schlafly and failed Republican senatorial candidate Alan Keyes. Like a performance artist, Keyes riled the crowd up, mixing animadversions on constitutional law with sudden, stentorian salvos against judges. "Ronald Reagan said the Soviet Union was the focus of evil during the cold war. I believe that the judiciary is the focus of evil in our society today," Keyes declared, slapping the lectern for emphasis.

At a banquet the previous evening, the Constitution Party's 2004 presidential candidate, Michael Peroutka, called the removal of Terri Schiavo's feeding tube "an act of terror in broad daylight aided and abetted by the police under the authority of the governor." Red-faced and sweating profusely, Peroutka added, "This was the very definition of state-sponsored terror."

Edwin Vieira, a lawyer and author of *How to Dethrone the Imperial Judiciary*, went even further, suggesting during a panel discussion that Joseph Stalin offered the best method for reining in the Supreme Court. "He had a slogan," Vieira said, "and it worked very well for him whenever he ran into difficulty: 'No man, no problem.'"

The complete Stalin quote is, "Death solves all problems: no man, no problem."

The threatening tenor of the conference speakers was a calculated tactic. As Gary Cass, the director of Rev. D. James Kennedy's lobbying front, the Center for Reclaiming America, explained, they are arousing the anger of their base in order to harness it politically. The rising tide of threats against judges "is understandable," Cass told me, "but we have to take the opportunity to channel that into a constitutional solution."

Cass' "solution" is the "Constitution Restoration Act," a bill relentlessly promoted during the conference that authorizes Congress to impeach judges who fail to abide by "the standard of good behavior" required by the Constitution. If they refuse to acknowledge "God as the sovereign source of law, liberty, or government," or rely in any way on international law in their

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rulings, judges also invite impeachment. In essence, the bill would turn judges' gavels into mere instruments of "The Hammer," Tom DeLay, and Christian-right cadres.

Conference speakers framed the Constitution Restoration Act in pseudo-populist terms--the only means of controlling a branch of government hijacked by a haughty liberal aristocracy against the will of the American people. As Michael Schwartz remarked during a panel discussion, "The Supreme Court says we have the right to kill babies and the right to commit buggery. They say the people have no right to express themselves, that the people have no right to make laws. Until we have a court that reflects a majority," Schwartz continued, his voice rising steadily, "it is a sick and sad joke that we have a Constitution here."

The right wing claims that judges should reflect majority opinion. But what is the majority opinion? After DeLay and Senate majority leader Bill Frist passed special bills ordering federal courts to consider the reinsertion of Terri Schiavo's feeding tube, according to a Gallup poll, Congress's public approval rating sank to 37 percent, lower than at any time since shortly after Republicans impeached President Bill Clinton. Meanwhile, 66 percent of respondents to a March 23 CBS News poll thought Schiavo's feeding tube should be removed. The notion that the Christian right's agenda is playing well in Peoria must be accepted on faith alone.

The recent right-wing fixation on impeaching judges was conceptualized by David Barton, Republican consultant and vice chairman of the Texas GOP. In 1996 Barton published a handbook called "Impeachment: Restraining an Overactive Judiciary," which was timed to coincide with Tom DeLay's bid for legislation authorizing Congress to impeach judges. "The judges need to be intimidated," DeLay told reporters that year.

In 1989 Barton published a book titled "The Myth of Separation," which proclaims, "This book proves that the separation of church and state is a myth." The Baptist Joint Committee on Public Affairs, in a critique of his 1995 documentary America's Godly Heritage, stated that it was "laced with exaggerations, half-truths, and misstatements of fact." Barton is on the board of advisers of the Providence Foundation, a Christian Reconstructionist group that promotes the idea that biblical law should be instituted in America. In 1991 Barton spoke at a Colorado retreat sponsored by Pastor Pete Peters, an adherent of racist Christian Identity theology with well-established neo-Nazi ties. During the 2004 presidential campaign, the Republican National Committee hired him as a paid consultant for "evangelical outreach." The RNC sponsored more than 300 events for him.

DeLay's bill, based on Barton's writings, failed due to lack of GOP support. But the judicial impeachment campaign was reignited six years later when a federal court ordered the removal of then-Alabama Supreme Court Chief Justice Roy Moore's Ten Commandments monument from courthouse grounds. In February 2004 a group of about 25 enraged ministers and movement leaders gathered in Dallas to plot a new response. The Constitution Restoration Act was the result. According to Moore, he was a principal author, along with Herb Titus, the former dean of Pat Robertson's Regent University law school, and Howard Phillips, a veteran third-party activist whose U.S. Taxpayers' Party served as a vehicle for the antigovernment militia movement during the 1990s. All three men stalked the halls of the downtown Marriott last Thursday and Friday.

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In the Senate the bill was sponsored by Richard Shelby, a senator from Roy Moore's home state; among the co-sponsors is Senator Sam Brownback of Kansas, who is contemplating a run for the Republican nomination for President. The bill was introduced on March 3, before the Terri Schiavo affair erupted, before Florida Circuit Judge George Greer ordered the removal of her feeding tube and before he became the poster-child for the right's judicial impeachment campaign.

Now, according to Howard Phillips in a speech to the conference, his "good friend" Wisconsin GOP Rep. James Sensenbrenner is planning to hold hearings on the Constitution Restoration Act in the House. DeLay, who appeared on a big screen during a Thursday morning session to call for the removal of "a judiciary run amok," has put his name on the act as the House sponsor.

The Schiavo case remains the flashpoint for the right. That was apparent at a Thursday evening banquet honoring the lead attorney for Terri Schiavo's parents, David Gibbs. After a breathless introduction from Peroutka, who called the removal of Schiavo's feeding tube "an act of terror," Gibbs confidently strode to the lectern while a crowd of about 100 regaled him with a thunderous standing ovation. Baby-faced, with his hair molded tightly against his scalp and clad in a well-tailored navy blue suit, Gibbs maintained a cool disposition during his speech, presenting a sharp visual contrast to the wildly gesticulating, bedraggled figures who held the microphone throughout most of the conference. But Gibbs' impeccable appearance and measured tone were not enough to mask the lurid nature of his speech.

First, Gibbs suggested that Schiavo fell into a persistent vegetative state not because of an eating disorder but as the result of "some form of strangulation or abuse at the hands of her husband, possibly." Then, Gibbs asserted that after Schiavo's parents were awarded millions of dollars by the state to provide for her care, Michael Schiavo "began moving against the family to kill his wife." These claims, however, did not hold up in court because, as Gibbs explained, "a judge that never went to see [Schiavo] was the judge who made the decision that her life did not matter."

As members of the audience gasped, Gibbs painted a vivid portrait of Schiavo in her hospital bed. "Terri Schiavo was as alive as anyone you see sitting here," he said. "She liked my voice. It was loud and deep and she would roll over and try to talk back." But after Judge Greer "literally ordered her barbaric death," everything changed.

Gibbs described his visit to Schiavo's hospital room after her feeding tube had been removed. Schiavo lay in bed "with her eyes sunken deep in her head ... she was skeletal," Gibbs recounted. "Then she turned to her mother suddenly, like she wanted to speak, and she just started sobbing." By now, members of the audience were crying.

As soon as he left the stage, one of the event's planners asked all the men in the room to get down on the floor and pray. With no other choice, I moved my plastic-upholstered chair aside, took to my hands and knees and listened as plaintive voices arose all around me with prayers for Schiavo's parents and maledictions against judicial tyranny. A saccharine version of Pachelbel's Canon emanating from the player piano in the hotel lobby seeped through the

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banquet hall's open doors, suffusing the ceremony with a dreamlike atmosphere. When I finally dared to look up from the ground, I realized that my head was only inches from an enormous posterior belonging to William Dannemeyer, the former congressman who once issued a letter to his colleagues listing 24 people with some connection to Bill Clinton who died "under other than natural circumstances."

As the conference attendees filed out of the banquet hall and into the rain-flecked night, mostly silent except for the few who were still sobbing, they seemed prepared to do anything--absolutely anything--against judges. "I want to impale them!" as Michael Schwartz told me.

"This isn't Colombia. This isn't drug lords terrorizing the judiciary. It's America," Florida Judge George Greer declared recently. Greer remains under police guard.

On Monday, April 11, at Sen. Frist's invitation, David Barton will lead him and other senators on an evening tour of the Capitol, offering "a fresh perspective on our nation's religious heritage."

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