

'All That is Necessary for Evil to Triumph is for Good Men to do Nothing.'

—Edmund Burke

The recent, much discussed Terri Schiavo case was a tragic situation, pitting a husband's right to make medical decisions for the wife he married against a parents' right to make medical decisions for the daughter they created. There was no solution palatable to all parties; however, the conduct of elected officials during and after the case is cause for concern.

Politicians took unprecedented steps to intervene and influence the judicial proceedings and, when unsuccessful, begin calling for impeachment of the federal judges who disagreed with their views. These politicians were blatantly attempting to manipulate the legal system to conform to their personal religious views. And, when unsuccessful, advocated for dismantling the wall of separation between church and state.

Whether we agree or disagree with the court's decision, we understand as lawyers the need to respect the court and the sitting judges as they weigh and consider the difficult issues presented before them. Judge Birch, appointed by George H.W. Bush, stated in his opinion in the Schiavo case, "In resolving the Schiavo controversy, it is my judgment that, despite sincere and altruistic motivation, the legislative and executive branches of our government have acted in a manner demonstrably at odds with our Founding Fathers' blueprint for the governance of a free people—our Constitution."

I am disturbed by persons who would advocate impeaching all federal judges who issue opinions that are different than their religious views, and when those persons so advocating are politicians who have unlimited access to the media, I am

doubly disturbed. We have cause for concern when the leading members of Congress exploit religious intolerance in order to affirm judicial nominees. We should be wary of politicians who attack the separation of church and state and frame legal issues as religious issues in order to curry votes and gain financial contributions. Such political rhetoric, coming on the heels of unprecedented limits to individual rights in response to terrorism, is a disturbing trend.

What did our founding fathers have in mind regarding these issues when they put forth the blueprint for the governing of the people to which Judge Birch referred? We would do well to remember the advice of Thomas Jefferson, who observed, "The constitutional freedom of religion (is) the most inalienable and sacred of all human rights." He wrote that, "One of the amendments to the constitution... expressly declares that 'congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, thereby guarding in the same sentence and under the same words, the freedom of religion, of speech, and of the press; insomuch that whatever violates either throws down the sanctuary which covers the other.'"

As our government is forced to take unprecedented steps in response to terrorism, we must guard against the erosion of individual rights. The fear of terrorism should not gain precedence over basic fundamental and inalienable rights. We should remember the comments of Benjamin Franklin, who stated, "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety." Or perhaps of William Pitt, who wrote, "Necessity is the plea of every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves." We should heed the observations of James Madison, who cautioned, "I believe there are more instances of the abridgement of freedom of the people by gradual and silent



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encroachments of those in power than by violent and sudden usurpation."

As lawyers, we have a duty to protect the civil justice system, and to remind our families, friends, and neighbors there is real danger when elected officials, no matter how good their intentions, begin infringing constitutional rights and unraveling the framework of our society. As Daniel

Webster said, "The Constitution was made to guard the people against the dangers of good intentions."

We should remind our families, friends, and neighbors that the institution of slavery, the Salem witch trials, the holocaust, the reign of terror, the Day Law, and laws mandating segregation in public facilities, to name but a few, were all wrought by a majority of

officials in power who profess to do good. If we each do our part, and are heard on the value and necessity of constitutional safeguards, maybe we won't be condemned to repeat history.



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