

Sandra Day O'Connor Connects Court Critics to Cookie Caper

December 7, 2006

by Jan LaRue, Esq.

When Justice Sandra Day O'Connor retired from the Supreme Court, we wished her well riding the range on her Arizona ranch. So far, she's been riding herd against "threats to the judiciary" on the media and academia circuit. O'Connor says in a [Wall Street Journal](#) op-ed, "we must be more vigilant in making sure that criticism does not cross over into intimidation." Anybody feel the chill in the air?

Too many people who've been hog-tied to a "hate crime" prosecution for merely [expressing an opinion](#) have learned the hard way that one man's criticism is another man's "intimidation."

If O'Connor limited her concerns to cases in which someone made a threat of physical harm to a judge, every reasonable person would champion her cause. Such conduct is indefensible.

The trouble is, each time O'Connor speaks or writes about "threats," she combines examples of physical threats with examples of protected speech and political action directed at "judicial activists." You get the feeling you're being told to get outta Dodge.

When it comes to speech critical of judicial opinions, dissenters on the Court often make the rest of us sound like the Pillsbury Dough Boy. Apparently, O'Connor thinks it's only safe to blow off steam while robed in black.

Muddling serious, criminal acts with constitutionally protected speech and conduct hurts, rather than helps, the cause. And O'Connor's assurance that she "does not mean, of course, that it is somehow improper to criticize judicial decisions" is hardly convincing.

She admits, "Judges can—and—sometimes render erroneous decisions," like we needed reminding. "That's why appeals are allowed to higher courts." In other words, another judge will have the final and only word. O'Connor reminds us that "We are a nation of laws and not men or even women."

But are we a nation of laws and not judges is what a whole bunch of us would like to know.

In her op-ed, O'Connor describes a South Dakota ballot initiative, the "Judicial Accountability Initiative Law," (J.A.I.L.), which received support from only 10% of voters as "unusually venomous."

The J.A.I.L. initiative is a silly idea, but since when did the right to vote on something stupid become a "threat," especially when judges like O'Connor hold the "constitutional" gavel?

It's been O'Connor and her former band of brethren, who've told us time and again, that even "venomous" ideas, including "nonobscene" pornography, are protected by the First Amendment: "All ideas having even the slightest redeeming importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the

guarantees.” Roth v. United States, 354 U.S. 476, 484-85 (1957).

They keep telling us that the only way we can be sure that the political and religious speech the Founders were concerned about remains securely protected is to protect perverse gyrations with a moan track, otherwise known as “expressive conduct.”

So, how is it that no matter how utterly guttural the porn gets, it’s still cloaked in the First Amendment, but political and religious speech is becoming thread-bare?

“Every member of the Supreme Court received a wonderful package of home-baked cookies, and I don’t know why, (but) the staff decided to analyze them,” the Fort Worth Star-Telegram [quoted](#) O’Connor at the legal conference November 10 in the Dallas area. “Each one contained enough poison to kill the entire membership of the court.”

If you got a package of home-made cookies from a total stranger with a letter tucked in stating, “I am going to kill you. This is poisoned,” would you feel the need to send them out for chemical analysis before you called the cops?

Apparently, those at the court who’ve been indoctrinated in O’Connor and company’s “living” theory of the Constitution really can’t take words at their face value, as in, “This is poisoned.” Textualists would have simply called the cops.

The case in point involves Barbara Joan March, a 60-year-old Connecticut woman, who pleaded guilty in March to 14 counts of mailing injurious articles to several federal officials, for which she received 15 years in prison. March’s lawyers said she had a history of mental problems.

If you’re wondering why you’re just hearing about the March Cookie Monster, it’s because nobody brought it up “until O’Connor discussed it last week.” ([Watch how plot to poison justices was revealed -- 1:52.](#))

What O’Connor apparently didn’t tell her audience is that March sent packages of poisoned cookies to several other federal officials, including FBI Director Robert Mueller, his deputy, the chief of naval operations, the Air Force chief of staff and the chief of staff of the Army. Neither CNN, the Star-Telegram, nor an article in the New York Times mentions that she did. Supreme Court spokeswoman Kathleen Arberg said the poison packages never reached the chambers of the justices.

Including those relevant morsels would [undermine O’Connor’s case](#) that judges are the only ones in danger and that the danger is fueled by citizens who express criticism of judges.

She has crossed the country warning that “spurious” attacks on the judiciary—by politicians and other talking heads—threaten judges’ doing their jobs without fear or favor.

When federal appellate Judge Danny Boggs said at a Friday legal conference at Las Colinas that physical assaults aimed at judges have come mainly from “the deranged,” O’Connor underscored the safety concerns. (Linda P. Campbell, “Sitting Ducks on the Bench,” Fort Worth Star-Telegram, Nov. 10, 2006, p. B11.)

According to a study by the U.S. Secret Service, attacks on judges are rare, usually personal, and are rarely perpetrated by someone who has made a threat:

As a practical matter, an individual who is committed to mounting an attack may be less inclined to threaten his or her potential target directly, particularly if he or she does not want to be stopped. Following the assassination of Judge Daronco, U.S. District Judge Dudley H. Bowen Jr., spokesman for the Federal Judges Association, noted that the circumstances of Daronco’s attack

highlighted the “problem that protection is now based on assessment of threat. Unfortunately, people who are going to kill you ain’t going to threaten you. They are [just] going to do it” (Blum 1988, 3). Indeed, none of the federal judicial officials murdered between 1980 and the mid-1990s had been recently threatened (Berkman 1994). Accordingly, the key threshold question in a threat assessment is not Did the subject make a threat? Rather, the question is, Has the subject engaged in recent behavior that suggests that he or she is moving on a path toward violence directed at a particular target or targets? (Bryan Vossekuil, Randy Borum, Robert Fein and Maris Reddy, “[Preventing Targeted Violence against Judicial Officials and Courts](#),” United States Secret Service, 2006.)

O’Connor’s continued carping against regular folks who comment critically about judges is also inconsistent with her concern for the right of judges to speak freely on legal and political issues.

O’Connor said “she’s having second thoughts” about a 2002 Supreme Court 5-4 ruling, *Minnesota v. White*, in which she wrote a concurring opinion expressing her “misgivings” about partisan election of judges: “The State’s claim that it needs to significantly restrict judges’ speech in order to protect judicial impartiality is particularly troubling,” she wrote. “If the State has a problem with judicial impartiality, it is largely one the State brought upon itself by continuing the practice of popularly electing judges.” (Campbell, *Star-Telegram*).

O’Connor prefers that judges are appointed, not elected, which in her mind means insulating them from political accountability. What O’Connor seems to miss is that when the people have a say in selecting judges, they are far more likely to express their opinion about a judge’s rulings at the ballot box, rather than having to rely on the soap box.

O’Connor also expressed her concerns about public unhappiness with the courts in an interview with CNN: “I saw increasing indicators of unhappiness with judges,” O’Connor told CNN’s Jeffrey Toobin as part of the network’s “[Broken Government](#)” series. “We heard all kinds of statements by members of Congress, by state legislators. We saw legislation introduced to somehow restrict or affect judges at both the state and federal levels.” (Bill Mears, “O’Connor: don’t call us activist judges,” Oct. 30, 2006).

Last March, O’Connor spoke at Georgetown University in Washington, D.C. about her unhappiness with “right-wingers”:

Sandra Day O’Connor, a Republican-appointed judge who retired last month after 24 years on the supreme court, has said the US is in danger of edging towards dictatorship if the party’s right-wingers continue to attack the judiciary.

In a strongly worded speech at Georgetown University, reported by National Public Radio and the *Chicago Daily Law Bulletin*, Ms O’Connor took aim at Republican leaders whose repeated denunciations of the courts for alleged liberal bias could, she said, be contributing to a climate of violence against judges.

Ms. O’Connor, nominated by Ronald Reagan as the first woman supreme court justice, declared: “We must be ever-vigilant against those who would strong-arm the judiciary.”

Such threats, Ms O’Connor said, “pose a direct threat to our constitutional freedom”, and she told the lawyers in her audience: “I want you to tune your ears to these attacks ... You have an obligation to speak up. (Julian Borger, *The Guardian*, “[Former top judge says US risks edging near dictatorship](#),” March 13, 2006.)

Notice that O'Connor is telling lawyers that they "have an obligation to speak up" against "these attacks." After all her years on the bench excoriating speech discrimination based on viewpoint, our circuit riding judge is lassoing one viewpoint about judges while hailing the opposite viewpoint.

Logic compels me to ask why O'Connor fears that "rightwing attacks" on the judiciary could "be contributing to a climate of violence against judges," but she doesn't seem concerned that her attacks on the "right-wing" may contribute to attacks on them.

The federal "hate crimes" law, like the Pennsylvania law, includes the act of intimidation, which is defined under federal law as placing "a person in reasonable apprehension of bodily harm to him- or herself or to another."

A 17-year-old girl and a 72-year-old grandmother spent the night in jail in the City of Brotherly love for singing hymns and carrying signs with Bible verses. They and nine others were charged with several felonies for engaging in "intimidation" under the Pennsylvania "hate crime" law. I'm sure they'd like to tell O'Connor a thing or two about real intimidation.
[<http://www.cwfa.org/articles/7945/LEGAL/judges/index.htm>.]

Homosexuals want to silence right-wing criticism because it's "intimidating." **"The floor of our agenda is, of course, the demise of America's anti-gay industry and putting an end, once and for all, to their use of us and our families for cynical culture wars and political gains." (Matt Foreman, executive director, National Lesbian and Gay Task Force, Kansas City, Missouri, Nov. 8-12).**

O'Connor thinks right-wing criticism of judges is intimidating. I wonder if she would consider words like "demise" and "putting an end, once and for all" a tad threatening if they were directed at the judiciary by a "right-winger."

O'Connor's muddling of protected speech with criminal conduct is a compelling reason for Congress not to expand "hate crime" laws to include sexual orientation and gender identity because homosexual activists will use them for "putting an end, once and for all" to religious and political speech of a different viewpoint.

And a request to Justice O'Connor: Some articles about Arizona sunsets would be nice.