

Presidents' Message, Jim Manley, Polson

The 2006 Initiatives: Mahatma Gandhi meets Karl Rove

"Truth stands, even if there be no public support. It is self-sustained." Mahatma Gandhi.

"That's not the way the world really works anymore. We're an empire now and when we act, we create our own reality. And while you're studying that reality – judiciously as you will – we'll act again, creating new realities which you can study too. And that's how things will sort out. We're history's actors and all of you will be left to just study what we do." Senior Bush advisor to NY Times reporter Ron Suskind, in 2002, before the Iraq invasion.

Gandhi didn't know the reality changers, or Murdock, Rove, the right-wing echo chamber of AM radio and cable "news," or moneyed "think tanks" with patriotic names like "Americans for Limited Government." These people have spent decades and millions of dollars studying public opinion, and how to frame their message to control it. A democracy can be bent to the will of the moneyed interests, after all, by simply controlling public opinion. Their success can't be denied: they consistently get working Americans to vote against their own interests.

Karl Rove discovered something else, a sort of political epiphany, while working on George Bush's Texas gubernatorial campaign. Attacks on trial lawyers and the jury system did not just move public opinion. It also brought a flood of campaign cash from industry interests. He also discovered a bonus benefit: by making trial lawyers spend money to defend themselves and the jury system, they were less able to contribute to democratic candidates. Hence, he says attacking trial lawyers and the civil justice system is *"The gift that keeps on giving."*

The plaintiffs' bar has been the target for decades. Most of us did not seriously counter this. We didn't know how. Or we believed the "pendulum always swings back," or that the truth would eventually catch up to the lie. The statistics did, after all, prove that the accusations (lawsuit crisis, jackpot justice, doctors leaving the state, etc.), were untrue. While we watched, public opinion kept getting more radioactive. Belatedly, ATLA and others have begun to seriously study the mass psychology of all this and counter it. But there is a lot of ground to make up.

The defense bar and judiciary have been largely silent in this fight. That may be about to change. To the *"tort reform"* rallying cry, they have added *"judicial reform."* The empire has the judiciary in its sights.

The propaganda groundwork is laid. GOP attacks have turned on the judges. U.S. Senator Coburn (R- Oklahoma) called judges *"terrorists in black robes."* House Majority Leader Delay (R-Texas), following the Terry Schiavo debacle, announced that judges (including federal judges with lifetime appointments) would have to *"answer for their behavior."* After the murders of a judge's family, Sen. Cornyn (R- Texas) counseled understanding, *"It builds up and builds up to the point where some people engage in violence."* (Cornyn is a former Texas Supreme Court Justice, mentioned for possible appointment to U.S. Supreme Court). Sen. Coburn's chief of staff told reporter Max Blumenthal, *"...I'm an extremist. I don't want to impeach judges. I want to impale them."* Perpetual candidate Alan Keyes told a crowd, *"I believe the judiciary is the focus of evil in our society today."* Right-wing bloggers actually described the current U.S. Supreme Court as *"liberal"* and *"leftist,"* following the *Hamdan* decision. Lawyer Edwin Vieira, author of How to Dethrone the Imperial Judiciary, made headlines by touting Stalin's method: *"He had a slogan, and it worked very well for him whenever he ran into difficulty: 'No man, no problem.'" (Stalin's actual quote was, "Death solves all problems: no man, no problem.")* Not to let anyone stoop beneath her, Ann Coulter said *"We need somebody to put rat poison in Justice Stevens' crème brulee."*

Hate speech against judges and the law has become socially acceptable, indeed fashionable. We are seeing the effects on jurors, as more and more enter the courtroom with disdain not just for the lawyers and plaintiffs, but the judges and the law as well. Recent polling seems to indicate that a majority of jurors now believe they should disregard the judge's instructions, if they believe they are wrong.

If the collateral damage includes a justice system that has worked for 200 years, in order to advance the cause of corporate power and profit, then so it goes. Independent judges are in the way.

But state legislatures won't always go far enough (except perhaps in Texas). So these groups are investing heavily in a more direct approach: state initiatives.

Which brings us to CI-98, a Montana constitutional initiative for "judicial reform," which would: add a new section to the constitution; provide for recall of any elected justice or judge, upon a petition filed by "up to" three voters; require the petition to be approved, "as to form" only, by an elections officer and approved or denied within three days of filing; require the petition to state a "justification" for recall, up to 200 words (with no requirements or limitations on reasons for recall); prohibit "judicial inquiry or review" of the petition; require filing "circulation sheets" signed by voters numbering 10% of the number of votes cast in the last election, for judges holding state-wide office, or 15% of the votes cast for local judges; and, require a recall election within 75 days of filing a completed petition.

This initiative is a gift to Montana by "Americans for Limited Government" (headquarters: Chicago, Ill.; www.getliberty.org). Supported by New York millionaire Howie Rich, ALG has formed historical "partnerships" with political action groups in 14 states for initiative drives.

In Montana, the "partner" is "Montanans In Action," though Montanans do not seem to have a lot to do with it. MIA has created three subgroups for the three initiatives they're promoting: Citizens' Right to Recall (CRTR), proponent of CI-98 (to recall judges); Stop Over Spending Initiative (SOS) proponent of CI-97 (to amend our constitution to limit any legislative spending increase by a certain percentage – similar to the one passed in Colorado, and subsequently suspended following the financial disaster it caused); and Protect Our Homes Initiative (POH), proponent of I-154 (which would largely eliminate land use planning powers). Local spokesman Trevis Butcher, of Winifred, says over \$1,000,000 has been raised. Neither he nor the national ALG spokesperson, Heather Wilhelm, Chicago, will say how much came from outside Montana. News reports indicate they spent over \$600,000 just to pay out-of-state signature gatherers in the petition drive. Gatherers are paid by the number of signatures gathered, and reportedly earned as much as \$1,000 a day.

Governor Schweitzer does not believe that these out-of-staters should be able to buy our constitution. He challenged Mr. Rich to two debates; one in Manhattan, Montana, and one in Manhattan, N.Y., where Mr. Rich can be found.

Anyone who does not take these initiatives seriously, because they appear so extremist, is making a mistake. These drives come with carefully framed, studied, tested, misleading, and well-funded propaganda campaigns. They did not spend all this money for no expected return.

The purpose of CI-98 is obvious. Howie Rich and our other generous Eastern friends want to eliminate, or at least intimidate, all independent judges. It is not aimed at judges guilty of misconduct. There are already constitutional and statutory provisions for removal of judges for various kinds of misconduct (Art. VII, Sec. 11, Mont. Const.; Montana Recall Act, §2-16-601, et seq, MCA). They want to eliminate corporate accountability, by removing judges who fairly follow the law.

If CI-98 passes, the future face of the Montana judiciary will be very different. What judge, unable to match the financial resources available to our Eastern friends, will want to face repeated, nasty, defamatory recall elections? We will lose our good judges in droves.

To fight back, some of us formed a ballot initiative committee, Montanans for Justice: Vote No On CI-98 (www.noci98). Retired Justices Hunt and Harrison agreed to co-chair. Separate committees

were formed to fight ALG's other two initiatives (Citizens Against CI-97, and Property Owners Against I-154). The MTLA Board has taken a position opposing all three initiatives.

Our attorney, Mike Meloy, filed an action in Cascade County to challenge the integrity of the signature gathering process for all three initiatives.

Montana law requires the signature gatherer to swear "...I gathered or assisted in circulating the petition ...that I believe the signatures on the petition are genuine...and that the signers knew the contents of the petition before signing the petition." MCA 13-27-302. The affiant must also state his address. At hearing, before Judge Sandefur September 8, Mike presented evidence that their affidavits could not possibly be true. For example, one fellow named King signed affidavits claiming to have gathered 41,761 signatures. In a one-week period, he claimed to have gathered 8,204 signatures in four counties hundreds of miles apart. This would be nearly one signature per minute, 24-7, for a week. He gave no explanation how this was possible without sleep or travel time, or, more importantly, how he could know his army of signors read and understood the petitions. Gatherers gave false addresses (shopping centers, etc.). Testimony indicated gatherers gave misleading summaries to signors and used bait and switch tactics; if a person agreed to sign one petition, the gatherer told the signor that the other documents (really the other two ALG initiative petitions) were "duplicates" and the signor had to sign all three.

We have some advantages in this fight. We have good judges in Montana. They are usually known and respected in their local communities. Voters will listen to them if they get involved. Whether the judicial recall initiative is voted on this year or not, it is clear that the judiciary will continue to be under assault - through another initiative, legislation and in the press. The truth is "self-sustaining," it just needs our help, right now, to distinguish it from the false propaganda.

Editors Note: After this was written, Judge Sandefur issued a well-reasoned decision which held that the signature gathering process for CI-97, CI-98, and I-154 was "permeated by a pervasive and general pattern and practice of fraud and procedural non-compliance perpetrated by paid, out of state, migrant signature gatherers commissioned by Proponents." Judge Sandefur invalidated the Secretary of State's certifications of CI-97, CI-98, and I-154. The full decision is online at www.noci98.org. Not surprisingly, the defendants appealed to the Montana Supreme Court. The Montana Supreme Court ordered an expedited briefing schedule, all briefs have been submitted and the matter should be resolved prior to election day on November 7. In the meantime, Judge Sandefur decided not to order the initiatives removed from the ballot - remind people to vote NO on all three of these initiatives. Thus, at this point, the case outcome is still uncertain. Every attorney, every judge, and everyone who cares about an independent and fair justice system should remain vigilant. Be prepared to talk to every voter you know. Write letters to your local paper. And donate as much as you can to these political action committees which had the courage to stand up to the moneyed, out-of-state interests bent on destroying our independent judiciary.