A return to the rule of law

By FRANK ZEIDLER

Posted: Aug. 20, 2005

A recent article by Sen. Herb Kohl (D-Wis.) concerning the appointment of a U.S. Supreme Court justice cries out for a response. ("Next court choice should respect the middle," Crossroads, July 17.)
The senator demonstrated a common misunderstanding among politicians and citizens regarding the function of the Supreme Court under our constitutional system.

It is the right of the people, acting through their elected representatives, to pass laws.

It is only when the legislative and executive branches exceed their powers under the Constitution that the Supreme Court has a function.

Over past years, the Supreme Court has made the rule of law meaningless. Under the Constitution, laws are the responsibility of the various legislative bodies exercising their power, within constitutional limits.

When nine (or more often five) unelected justices create the law, this is judicial tyranny, ignoring the will of the people.

If stare decisis, the blind following of previous decisions, were to have prevailed, we would still have the apartheid society established by the Supreme Court in Plessy vs. Ferguson in the late 19th century. It took the court until 1954 to correct this egregious decisions, which had no basis in the Constitution.

In Griswold vs. Connecticut, the court created "penumbras" in the Constitution in order to invalidate a state criminal statute. They bootstrapped on this decision to invalidate a host of state criminal laws in Roe vs. Wade.

Ignoring their devotion to stare decisis, they reversed a fairly recent decision upholding Georgia's law against sodomy by holding a Texas law against sodomy to be in violation of the Constitution. Is this the rule of law, or is it an expression of the justices' personal beliefs?

The McCain-Feingold bill limiting political speech gave the court an opportunity to exercise its proper function.
However, they ignored the clear words of the Constitution that the "Congress shall make no laws respecting freedom of speech" and upheld the statute.

They have stretched the establishment of religion clause to a point where the framers would not recognize it and, for the most part, have ignored the free exercise clause.

Recently, they turned the Fifth Amendment-taking clause on its ear when they changed the long-established meaning of the words "public use" and put every citizen's property at risk.

In view of the above, it should be clear that our senators should forget the words "conservative," "liberal" and "moderate" when considering a candidate for the Supreme Court.

Instead, they should use as a guide his or her intelligence, character, knowledge of the law and respect for the people's law, the Constitution.

Perhaps then we would return to the rule of law.

Frank Zeidler was mayor of Milwaukee from 1948 to 1960.

From the Aug. 21, 2005, editions of the Milwaukee Journal Sentinel
Have an opinion on this story? Write a letter to the editor or start an online forum.

Subscribe today and receive 4 weeks free! Sign up now.