Alabama Justices Surrender to Judicial Activism

By Tom Parker

In 1997, a vicious thug entered the home of a pregnant Alabama woman. He raped and repeatedly stabbed her, then fled, leaving her to die in a house with three other children. Police acted swiftly and caught the attacker, Renaldo Adams, literally red-handed with blood. After a fair trial, Adams was convicted of rape and murder and given the death penalty. It took the jury less than 30 minutes to recommend his execution.

As an Assistant Attorney General under then Attorney General (now U.S. Senator) Jeff Sessions, I helped prosecute Adams and was satisfied that the Alabama jury chose the punishment that best fit his crime. Consequently, I was shocked to learn that the Alabama Supreme Court just freed Adams from death row.

Although I am now a justice of the Alabama Supreme Court, I had to recuse from any involvement in Adams' case because I helped prosecute him. Because I believe the Court's decision illustrates a serious problem with our judicial system, however, I write to explain what I regard as a failure to defend our constitution and laws against activist federal judges.

You see, my fellow Alabama justices freed Adams from death row not because of any error of our courts but because they chose to passively accommodate -- rather than actively resist -- the unconstitutional opinion of five liberal justices on the U.S. Supreme Court.

Those liberal justices declared last spring in the case of *Roper v. Simmons* that "evolving standards of decency" now make it "unconstitutional" to...
execute murderers who were minors at the time of their crime. The justices based their ruling not on the original intent or actual language of the United States Constitution but on foreign law, including United Nations treaties.

Ironically, one of the UN treaties invoked by the U.S. Supreme Court as a basis for its *Roper* decision is a treaty the United States has refused to sign. By insisting that American states submit to this unratified treaty, the liberals on the U.S. Supreme Court not only unconstitutionally invalidated laws in 20 states but, to do so, also usurped the treaty-making authority of both the President and the U.S. Senate.

I am not surprised that the liberal activists on the U.S. Supreme Court go to such lengths to usurp more political power. I am also not surprised they use such ridiculous reasoning to try and force foreign legal fads on America. After all, this is the same Court that has declared state displays of the Ten Commandments to be unconstitutional.

But I am surprised, and dismayed, that my colleagues on the Alabama Supreme Court not only gave in to this unconstitutional activism without a word of protest but also became accomplices to it by citing *Roper* as the basis for their decision to free Adams from death row.

The proper response to such blatant judicial tyranny would have been for the Alabama Supreme Court to decline to follow *Roper* in the Adams case. By keeping Adams on death row, our Supreme Court would have defended both the U.S. Constitution and Alabama law (thereby upholding their judicial oaths of office) and, at the same time, provided an occasion for the U.S. Supreme Court, with at least two new members, to reconsider the *Roper* decision.

After all, *Roper* itself was established as new U.S. Supreme Court "precedent" only because the Missouri Supreme Court refused to follow
prior precedent. The U.S. Supreme Court used the appeal resulting from the Missouri decision to overturn its previous precedent and declined to rebuke the state court for disregarding the prior precedent.

State supreme courts may decline to follow bad U.S. Supreme Court precedents because those decisions bind only the parties to the particular case. Judges around the country normally follow precedents in similar cases because they know that if those cases go before the Court again they are likely to receive the same verdict. But state supreme court judges should not follow obviously wrong decisions simply because they are "precedents."

After all, a judge takes an oath to support the constitution -- not to automatically follow activist justices who believe their own devolving standards of decency trump the text of the constitution. Thus, faithful adherence to the judicial oath requires resistance to such activism, and a changing U.S. Supreme Court membership makes such resistance more likely to bear good fruit.

The Adams case presented the Alabama Supreme Court with the perfect opportunity to give the new U.S. Supreme Court the occasion to overturn the unconstitutional *Roper* precedent. If our Court had voted to uphold Adams' death penalty, he would have appealed the decision to the U.S. Supreme Court. Because the U.S. Supreme Court can accept only a handful of the petitions it receives, the Court may not have heard the case at all, and Adams would have been executed as he deserves. However, if the new John Roberts-led court had taken the case, it could very well have overturned *Roper*.

But even if, in the worst-case scenario, the Roberts Court had taken the Adams case but failed to overturn *Roper*, the Alabama Supreme Court would have been none the worse for standing up against judicial activism.
After all, the liberals on the U.S. Supreme Court already look down on the pro-family policies, Southern heritage, evangelical Christianity, and other blessings of our great state. We Alabamians will never be able to sufficiently appease such establishment liberals, so we should stop trying and instead stand up for what we believe without apology.

Conservative judges today are on the front lines of the war against political correctness and judicial tyranny. Happily, Alabama’s Supreme Court has a reputation of being one of the most conservative in the nation.

However, it does no good to possess conservative credentials if you surrender them before joining the battle.

Tom Parker, a graduate of Dartmouth College and Vanderbilt Law School, is Associate Justice of the Alabama Supreme Court

[printed in the Birmingham News, January 1, 2005, p. 4B]