

## God Bless Conservative Lawyers (If He Can Survive the Court Challenge)

Ah, the conservative image. Conservatives rise early, work at some job that involves names on their shirts, and then proceed to the post-shift activities of racial slurs and the search for larger tires. Conservatives do not touch arugula unless it has been dipped in batter, fried in grease or coated with multi-colored doughnut sprinkles. At eventide, conservatives tuck their oil buddies in, brush their tooth, and go to bed. Be that as it may, there are good reasons, social-graces caricatures aside, for having a few conservatives tucked away here and there among us counselors, barristers and esquires. Conservative lawyers save or create thousands of legal jobs each year.

Without conservative lawyers, Madalyn Murray O'Hair just would have been a local crank. In *School District of Abington Tp. Pa. v. Schempp*, 374 U.S. 203 (1963), we challenged her fight to exclude from the classroom the Lord's prayer, God and all things spiritual except carbon footprints. Feisty conservative lawyers handed Madalyn and her lawyers national careers because they fought mightily to mention the Almighty here and there, even if just at recess in hushed tones around the monkey bars. We lost that battle to Madalyn, but then again, she disappeared. A lucrative estate hung in the balance, complete with all those hearings and challenges! More work!

Where would Elena Kagan be without conservative lawyers? When she banished the military from recruiting at Harvard Law School because of "don't ask, don't tell," her marching orders would have been but one of 12 one-paragraph stories in the *Chronicle of Higher Education* had conservative lawyers not challenged her. Conservatives took her defiance of the Solomon Amendment all the way to Chief Justice John Roberts' little hole-in-the-wall court in *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* 547 U.S. 47 (2006), and won an 8-0 victory. That Neanderthal Alito did not participate in the case or it would have been 9-0. What victory and/or silver lining is there in that kind of stinging defeat? Why, Dean Kagan was lionized by the Left for her courage. When we conservative lawyers show up to oppose your actions, do not despair, for international fame, money and even nominations to the U.S. Supreme Court await.

Conservative lawyers also help with items such as the aforementioned monkey bars, products of entrepreneurial minds (conservatives) who paid mightily the lawyers and their little cherub clients who were dropping like flies from slippery metal. The windows of heaven have just begun to open on class-action recovery for fried food.


Sir Walter Raleigh was a colonist, military hero and potato farmer and not too uppity to get the tobacco crop going, induce addiction in the Mother Country and, well, the rest is history, all the way to Dickie Scruggs. His multibillion-dollar tobacco settlement brought him fame, fundraisers at his home for Hillary, fortune—and a prison sentence. Well, the sentence was for a little overreaching with Judge Neal Biggers, who was so offended by Scruggs' bribery attempt

that he told the FBI. Judge Biggers was a Reagan appointee, and you just cannot trust those types.

We conservative lawyers are sticklers for consistency and that darn *stare decisis*. Emotion and ideology often win the day with legislative bodies and the public. But the law can run contra to the emotion of the moment, and it defies mob mentality. Most lawyers revere the law when they represent accused terrorists but seem unable to grasp that unpopular clients occupy both sides of the aisle. How comforting to demonize CEOs and their pay and perks. How terrific to have a pay czar who wags a finger, curbs pay and gloats, "Not on my watch!" Who would dare take a CEO's case to challenge the government's right to dictate maximum pay?

How delicious to see BP executives take a perp walk into the White House and emerge with \$20 billion of their company's assets securitized because the president and vice president told them, "You don't have a choice." Sure, we hate BP now, and bashing is so avant-garde. Who would dare raise constitutional issues as \$20 billion lies on the table for the taking?

We conservative lawyers would. These shake-downs warrant caution. Sure, "It feels good." But taking property without process or proof? Surrendering cash without findings of fact under political pressure? We conservatives worry and fret aloud, but when we utter our worries, we are relegated to the pickup truck or told to look for Russia from our homes. So we shall, but when government agents come calling on any of our brothers and sisters in the bar demanding property without process and payment without proof of wrong, we will be there for you. We shall raise defiantly the mighty Constitution. We will defend you, preserve your property rights and stand firm with you on our common meeting ground: the rule of law.

If we can do it for BP, then surely we can do it for you. You really do need us. 



*Marianne M. Jennings*

Marianne M. Jennings is a Professor of Legal and Ethical Studies at the W.P. Carey School of Business, Arizona State University. She is the author of six textbooks in law and ethics and has had her monographs on ethics translated into four languages. She still has to meet State Bar CLE requirements each year.