

**JAY SEKULOW LIVE!**  
**01.14.05**

- Jay: This is Jay Sekulow. The hearing involving the Inaugural Prayer case has taken place, and we are waiting for a decision.
- Gene: This is *JAY SEKULOW LIVE!* From Washington, Chief Counsel of the American Center for Law and Justice (ACLJ), Jay Sekulow.
- Jay: Welcome to the broadcast, everyone. This is Jay Sekulow. As you can tell, I am on the road. Gene Kapp's in our studio in Virginia. We're going to get right to the news, and that is, the hearing took place yesterday afternoon on the Inaugural Prayer situation. Jim Henderson, Senior Counsel with the American Center for Law and Justice, was in court. Jim, give us your sense. It was a hearing that went a little bit longer than expected.
- Jim: Two and a half hours, Jay. Judge Bates was thoroughly prepared and closely questioned all the attorneys involved. Based on both the argument yesterday and the prior briefing, I still feel really confident that this judge understands just how wrong Dr. Newdow is in his claim that prayer at the Inaugural will violate the Constitution.
- Jay: Is your sense also, from what I gathered when we spoke quickly right after the argument, that this judge knows that appeals here are very, very likely because didn't he make reference to that during the hearing?
- Jim: Yes, he did. As he was closing up the hearing, he told counsel on both sides that they would probably want to be in touch with the appeals court clerk's office today to let them know that they might have a decision today that they would want to appeal from, and find out what the process for an emergency appeal over the weekend with a federal holiday on Monday would involve.
- Jay: Is it fair to assume at this point that regardless of how it goes—whether we win or if he were to rule against us—appeals here are likely to happen very, very quickly?
- Jim: Yes, that's fair to assume.
- Jay: Okay, now let's talk about the merits, Jim. What's your sense of where the questions were coming and what was the primary focus?
- Jim: Well, Jay, the judge really very evenly divided the argument between two big issues. One of those is the merits argument on whether or not prayer at the Inaugural satisfies one or another test under the Constitution. The other area was whether or not Mr. Newdow is a proper person to be bringing this lawsuit. For those who listened last year during the Pledge arguments, this is a familiar tune.

Jay: It's the standing issue again—the question of whether Michael Newdow had legal standing?

Jim: That's correct, and for a couple of reasons this time. He has previously lost a lawsuit challenging prayer at the Inaugural, and that principle of having lost previously, this question, should prevent him from raising those issues again. Separately also, there is a question of whether or not he can get from this court or any court an order that would provide him with relief from what he claims is his injury. It's a technical question, but this judge doesn't have (I think everybody agrees with this) the power to issue a direct injunction against George Bush as President.

Jay: That was the next question I was going to ask. We need to let everybody know is what Dr. Newdow has asked for here is an injunction against the President of the United States.

Jim: Exactly. He has asked for the President to be enjoined from doing this and he's asked for others—particularly the Presidential Inaugural Committee—to be enjoined. And the judge's questions in this area were very illuminating. He is clearly fully grasping what the problem was for Mr. Newdow since I can't enjoin or I'm likely to conclude that I can't enjoin the President, he wanted to know, "Mr. Newdow, can you tell me what good it will do for me to enjoin the Presidential Inaugural Committee." When Mr. Newdow suggested that somehow it would do good, the judge pointed out that, "Look, if I enjoin the Inaugural Committee from paying money for ministers to fly to Washington, DC, the President can still pick up the phone and invite somebody distant or local who can get in their car, drive," and he had to concede that it was true. Consequently, no matter what he did in ordering anybody other than the President not to participate in this activity, the President could still invite somebody to pray; and therefore, no order of this judge would keep Mr. Newdow from being exposed to prayer at the Inaugural.

Jay: Well, here's what we have. Jim, we appreciate your update on that. Keep up posted if it develops even while we are on the air today or if we hear something later this afternoon.

Jim: Will do, Jay.

Jay: Okay. There you've got it. That's the latest update on that. We're waiting for the decision from the court. The arguments went much longer than expected—two and a half hours. It's a very important issue. There are going to be appeals here, as you've heard from Jim, on an expedited basis. What we're trying to do is send a message to the Senate leadership. I'll be talking with Colby May from our office just a few minutes after this broadcast is done. We want to send a message to Senate leadership that the American people want these prayers to take place without the fear of intimidation. That's why we are gathering so many names.

Gene: Thousands have already signed on to our Petition to Preserve the Inaugural Prayer. You can too. If you're name's not on the list, here's what you need to do: Pick up the phone

and give us a call toll free at 1.877.989.2255. The Petition to Preserve the Inaugural Prayer. We need to hear from you. 1.877.989.2255 or you can add your name electronically at the website at [www.aclj.org](http://www.aclj.org). Much more ahead when we come back.

[*ACLJ This Week Spot; Inaugural Prayer Spot*]

Jay: Welcome back to the broadcast, everyone. This is Jay Sekulow. As you can tell, I'm on the road being patched in by phone. Gene Kapp's in our office in Virginia. We just had Jim Henderson on the phone line with us talking about the arguments that took place yesterday involving the Inaugural Prayer issue. A decision is expected literally any moment now between now and the close of business today, so we'll keep everyone posted. If we can't get it on air in the next 20 minutes or so, we'll certainly do it by our website at [www.aclj.org](http://www.aclj.org).

I also want to mention that we have some great programming running tonight on a number of networks we're on: Trinity Broadcasting Network (TBN) at 7 p.m., *ACLJ This Week* will be on the air. Also, on the Inspiration Network tonight at 8:30 p.m. For those of you who have youth or are young at heart, we have a great new television program my son Logan's hosting called *The Logan Show*. It's on tonight on JC-TV at 10 p.m. Pacific Daylight Time. For those of you who don't get JC-TV, they do stream live, so 10 p.m. on the West Coast, but you can get it streaming anywhere in the world online at [www.jc-tv.net](http://www.jc-tv.net). FamilyNet also will air the broadcast tomorrow at 11, as will Inspiration, *iLife*, and the TCT Network; and for those three, it will be at 12 o'clock. So we encourage you to tune in there.

Again, we are waiting for the decision that's literally expected any moment now on the Inaugural Prayer case. The argument did go longer than anticipate—almost two and a half hours, but briefs have been submitted, and we are waiting for the decision.

Gene: We're taking your phone calls and questions for Jay right now in the studio at 1.800.684.3110. Give us a call. Jay, a very unusual twist in court yesterday. Michael Newdow did not appear personally before the judge. He phoned in his arguments, if you will, via a speaker phone in court.

Jay: That's becoming more and more common, actually. Michael Newdow's in California, so he was set to do the arguments by a phone. They do that now. The trial did go two and a half hours. For a preliminary injunction, that's becoming more common. I've had those as well. I'm with Jim Henderson; I think the judge is going to rule in our favor and allow the Inaugural Prayer to go forward, but there's definitely going to be an appeal here. The trial went longer than really any of us anticipated. We were surprised that it went two and a half hours. That's a *long* time for one of these trials to go forward on an injunction, so we're waiting.

Let me encourage you, if you have not yet signed on to our petition to send the word to the Inaugural Committee and to the Senate that we want that prayer to take place, that

historic prayer that's been going on since the founding of our country, then you need to do so now. Gene has that number and, of course, you can do it online at [www.aclj.org](http://www.aclj.org).

Gene: Yes, thousands are responding to our Petition to Preserve the Inaugural Prayer. We need to put pressure on the Senate to stand up and make sure this prayer stays in the ceremony next Thursday when the President takes the oath of office. Call right now. 1.877.989.2255. The Petition to Preserve the Inaugural Prayer. We need to hear from you. 1.877.989.2255. If you'd like, you can add your name electronically at the website at [www.aclj.org](http://www.aclj.org).

Let's go to Line 4 to Marla joining us from Wisconsin. Marla, welcome to the broadcast. Go ahead, your question for Jay, please.

Marla: Thank you. A U.S. district judge ruled that the disclaimer stickers placed in front of some biology books in Cobb County were violating the separation of the church and state. I read what the sticker said, and it sure didn't seem like that to me. I was wondering if you guys have any involvement in that case or how you feel the judge was able to come to that conclusion.

Jay: Well, I think you're talking about raw judicial activism. I was very disappointed with Judge Cooper's decision in the case. We did not try the case, but I will tell you this, we are going to be filing briefs when this goes to the U.S. Court of Appeals for the Eleventh Circuit, which is the next stop for this case. The idea that posting a sticker on the exterior of a book or on the inside cover that says "Evolution, as taught in this material, is to be taught as theory, not fact" certainly does not endorse a religion. I think it was a very troubling decision. It was wrong. It shows you this kind of raw judicial arrogance, really, that's at play here. I think it's something we need to get fixed. We're concerned about it. We'll be posting some stories to the website dealing with this, but this is wrong. In fact, the *Associated Press* piece is already up on the web. It's wrong and needs to be reversed. We will work at the Eleventh Circuit Court of Appeals to do that.

Gene: Jay, when you look at exactly what the U.S. District Court Judge Clarence Cooper said in his 44-page ruling declaring those stickers unconstitutional, this in Cobb County, Georgia, he said, "Adopted by the school board, funded by the money of taxpayers, and inserted by school personnel, the sticker conveys an impermissible message of endorsement and tells some citizens that they are political outsiders while telling others they are political insiders."

Jay: Let me tell you what's ridiculous about Judge Cooper's decision. I strongly disagree with his opinion here. I think he's really wrong on this and got this one backwards. This doesn't endorse a religion. Talk about political outsiders. What about those of us who believe, like most scientists who are credible these days including Nobel laureates, that the evolutionary model—specifically the Darwinian evolutionary model—is just wrong. How about saying there's something wrong with that and that it's not correct, but you can't get that out of these folks. The judge took the wrong view. I think what the

American Center for Law and Justice is going to do and do aggressively at the Eleventh Circuit Court of Appeals is fully engage.

Gene: Let's go to Line 1 to Colorado with Lydia on the phone. Lydia, welcome to the broadcast; go ahead, please.

Lydia: Good morning, everyone! I just have a comment rather than a question. We need to stir a memory about what happened in the early 70's when a one-woman campaign went into court and took prayer out of our schools, and so, I just thank you and Jay and everyone who is standing firm for us that people will get on and sign on the petition, because we do have a large voice in Washington, but we have to open up first and let them know. Thank you for your call and for your ministry.

Jay: Thank you! We appreciate you calling in. You brought up an analogy of the Madelyn Murray O'Hara case in the early 60's and into the 70's, and you're absolutely correct except the difference here is that Madelyn Murray O'Hara wasn't a lawyer and Michael Newdow is, so he's filing these cases all over. This is just the latest example. This Inaugural Prayer case is a big deal. Look, we filed immediately when we got word of this. We're monitoring it as closely as we can. But, again, I want to encourage those who are listening to us. This is a short time frame. This has to be done with by Tuesday or Wednesday of next week at the latest. The appeals could go forward much quicker than that even. We want your voice to be heard. We want your voice to count. We encourage you to go to [www.aclj.org](http://www.aclj.org) to get information about signing onto the petition electronically. We're informing the Senate leaders of the number of people who've contacted us on a regular basis. We need to hear from you and Gene will give that toll-free number again.

Gene: Jay, the petition language is very simple, indeed. It states: "Every President since George Washington has invoked assistance from God and asked for the blessing of the nation and its people. The Inaugural Prayer is part of the history and heritage of this country. We stand with the American Center for Law and Justice in its legal efforts to support the Department of Justice as it defends the constitutionality of the Inaugural Prayer. We also call on the leadership of the U.S. Senate, which has authority to control the Inaugural Ceremony itself, to stand firm and permit the expression of prayer when President Bush takes the oath of office on January 20<sup>th</sup>."

If your name is not on this petition, it needs to be. Call right now toll free 1.877.989.2255. The Petition to Preserve the Inaugural Prayer. We need to hear from you. Thousands are calling every day. 1.877.989.2255. We also have the petition posted online and you can add your name electronically there as well at [www.aclj.org](http://www.aclj.org).

Let's go to New York with Lee. Go ahead, Lee; your question for Jay.

Lee: Thank you for taking my call, Jay. I appreciate it very much. I have a question about the Constitution Restoration Act that failed to make it through Congress the last session here.

I just wanted to know what your thought was about the possibility of it making it through sometime in the future here.

Jay: Well, the idea was, of course, to get cases like the Pledge of Allegiance and “In God We Trust” (our national motto), and prayer at an Inaugural event not to be tampered with or messed with by the courts, but it did not have adequate support at the time really in the Senate. That’s where the biggest issue was there. However, we have a new Senate now. They’re just getting back and everything’s just gearing up, but I do think we have an opportunity to see some movement on this issue. I encourage you to go to our website, too; we have a section posted on our Washington Report that goes to the legislation. There’s also a proposal right now to take Article III of the Constitution which talks about what the courts have jurisdiction over, and remove jurisdiction especially on things like the Pledge of Allegiance and some of these other issues. There is some movement there. The Senate movement side has not been great, but I think with the new change in the Senate, we have a better opportunity. Our Office of Governmental Affairs in Washington, DC, is working aggressively on that. We just hired another senior staff person, Drew Ryun, who used to be with the Republican National Committee, as our Coalition Director. He’s working with our Washington, DC, office starting Monday. We’re going to hit the ground running on all of this and we’ll keep everybody posted as it continues to develop.

Again, for those of you who are following the case involving the Inaugural Prayer, we are expecting a decision today. The judge said at the latest, it will be by the close of business today; but it could come at any time. As soon as we get word, we will post it to our website.

Gene: Jay, we also know it’s on the fast track through the court system moving quickly through the appeals and ultimately to the Supreme Court. With Monday being a federal holiday and the Court is technically closed for Martin Luther King Day, does that throw a wrinkle into all this?

Jay: No, this is an injunction, Gene. Injunctions can be reviewed at 3 a.m. on a Sunday. It’s every day live when you have an injunction case. We’re assuming we will be working through the weekend getting these briefs done. I think that’s the reality here.

Gene: If you’d like to stand with us at the American Center for Law and Justice in support of the Inaugural Prayer, your name needs to be on our Petition to Preserve the Inaugural Prayer. Call right now toll free 1.877.989.2255. The Petition to Preserve the Inaugural Prayer. We need to hear from you. 1.877.989.2255. If you’d like, you can add your name electronically at the website at [www.aclj.org](http://www.aclj.org). Stay with us. A lot of phone calls ahead when we come back.

*[Inaugural Prayer Spot; The Logan Show Spot]*

Jay: Welcome back to the broadcast, everyone. Tonight on the Trinity Broadcast Network and on the Inspiration Network you will have the *ACLJ This Week* broadcast. We encourage you to take a look at that TV broadcast airing tonight. Tomorrow night is a major night the *The Logan Show* on FamilyNet at 11 p.m. and on *iLife*, Inspiration and TCT Network at midnight tomorrow. Logan's musical guest is James Clay. He has some great new music out. The program is great for college students, teens and those of us who need a laugh every once in a while who are young at heart. After the week we've had here dealing with the Inaugural Prayer case, I think a little laughter would be actually helpful.

Again, for those of you who are inclined to tune into the TV tonight, on TBN and on the Inspiration Network, you'll have *ACLJ This Week*. Tonight also on JC-TV, which is TBN's youth network, *The Logan Show* does air at 10 o'clock Pacific Daylight Time; but it is also available online live on JC-TV; then Logan's program will air again tomorrow on FamilyNet at 11 p.m. Eastern Time and on *iLife*, Inspiration and TCT Network at midnight. So, a lot of great television in store for this weekend.

Gene: Let's go to Missouri and Floyd who's joining us. Floyd, welcome to the broadcast, go ahead please.

Floyd: Hi! It's great to talk with you, Mr. Sekulow, a real privilege and honor. I just want to say that I appreciate the work you do very much.

Jay: Thank you.

Floyd: I'm a recent law school graduate and am feeling led by the Lord to go into the pro-life movement and I'm not exactly sure how to do it. I was wondering if you had any wisdom or advice on how I could go about doing that.

Jay: There's a lot of way, and welcome to the legal profession. We have affiliates at the American Center for Law and Justice throughout the country, and we're always looking for new affiliates who will work with us as these cases develop on a local basis. We often talk about the Supreme Court of the United States or what's happening in Washington, but the reality is most of the cases develop throughout the country. We have lawyers at the American Center for Law and Justice poised throughout the country. Let me get you in touch with our staff here at the ACLJ and get you one of our packages for affiliates. We're always looking for new affiliates, especially in Missouri and other states. We'd be glad to have you on board.

Gene: Let's go to Carl in Washington on Line 1. Go ahead, Carl, your question for Jay.

Carl: Jay, it's a pleasure to talk with you. What do you think about going to the Supreme Court of the United States and challenging the *Roe v. Wade* and trying to overturn that using the Lacie Peterson/Scott Peterson trial.

Jay: You would think with the Peterson trial and the two counts of murder which, basically, is what was issued in that case, the jury verdict which gives the death penalty, you look at that and say, "Boy, there certainly is a double standard here because you can have partial-birth abortion literally on demand." But all of this is helping us on the life issue. As horrible as the Lacie Peterson murder was, and it was horrific, the fact that they're talking about the unborn child as an unborn child and giving that personhood there does help the legal cause on this. Although, the tragedy on this is so overwhelming. Having said that, we are filing our briefs at the Second Circuit Court of Appeals in the partial-birth abortion cases. Those are going forward; so all three of those cases are now at the appellate courts. I think we are just a year and a half or two years at the most away from the partial-birth abortion case being at the Supreme Court of the United States. Depending on how it lines up, we'll see what we have and how really the vote would be. We're just one vote away from winning that case, so we will see how it develops.

Gene: Let's go to Colorado with Wayne. Welcome to the broadcast, Wayne; go ahead please.

Wayne: Good morning, gentlemen. Jay, this morning I heard a news broadcast that the FDA is receiving incredible pressure from the maker of "the morning after" pill to bring it to market and make it an over-the-counter drug. They gave the number to the FDA for people to call in to help protest against this. I just wondered--

Jay: Let me tell you something about the Federal Drug Administration (FDA) situation. The FDA may actually recall RU-486 because of the number of deaths they had last year. I think there were four deaths attributed to RU-486. I should say the FDA is reviewing it and looking at it that way. They think there's a causal connection. They are re-evaluating that whole issue. There is a comment line that you can do online at [www.fda.gov](http://www.fda.gov), I think. They have information there for those who want to have your voice heard on this, I encourage you to do so.

Gene: Let's go to Line 6 with Nick from South Carolina. Nick, go ahead; you're on the air with Jay.

Nick: Thanks! I was curious. I heard a case in Wisconsin that is going to be rechallenged because the people who challenged leaving the Ten Commandments monument wherever it was are saying that the judge was biased and, therefore, they're going to challenge the case on that grounds.

Jay: No, we won the LaCrosse, Wisconsin, case. We were successful and it was not at district court. We were successful at the court of appeals; so, no, what may happen in that case is the other side is contemplating asking the entire circuit court to hear it or taking it up to the Supreme Court of the United States. But we were successful and they are not doing it on bias in Wisconsin. We won that at the three-judge panel level. We were not successful at the district court. But we won the case at the court of appeals.



Gene: This decision came out January 4<sup>th</sup>, Jay. We have the news release posted online at [www.aclj.org](http://www.aclj.org). As you say, the 2-1 vote by the three-judge panel of the U.S. Court of Appeals for the Seventh Circuit ruled in our favor. The appeals court rejected the conclusion that said the sale of a Ten Commandments monument and the land it was on by the city of LaCrosse to the Fraternal Order of Eagles was indeed constitutionally appropriate.

Jay: That's right. The court approved the strategy that was implemented there. It was a 2-1 decision in our favor, so we carried the day.

Gene: John's on the line with us in California. John, go ahead, you're on the air with Jay.

John: Listening to the program today, you guys gave me an idea and I wanted to ask, why can't we start a movement for a constitutional amendment that limits federal judges to a maximum of ten years before they have to be either reappointed or replaced?

Jay: Well, you would have a situation develop when you have a situation like this, where a constitutional amendment would have to be passed. And it's a big process. So, the reason for life appointments was to keep the judiciary out of the political realm. That was the idea with it. The founding fathers' idea was right actually, I think, to keep the judges free from political involvement. But you look at some of these decisions, including the one in Georgia that came out late yesterday about the sticker saying that evolution is to be taught as theory, not fact, and that's now a constitutional crisis. I think these are outrageous decisions. The American people have just about had enough on this. We've got to get the right judges through. We're working on that as well in Washington. Right now, we're waiting for a decision in the Inaugural Prayer case. That decision is expected literally any moment. So when we sign off the air in just a few minutes here, we will keep you posted online at [www.aclj.org](http://www.aclj.org) to keep you up to date on how it develops.

Gene: Jay, we know that this is going to be a very busy weekend, because with the Inauguration set for next Thursday, this is going to move very quickly through the appellate process and, ultimately, to the front steps of the Supreme Court of the United States.

Jay: It sure looks like it's going that way. Jim Henderson said that during the hearing yesterday the judge already laid out the emergency appeals procedure. If you can imagine, that's already laid out. That procedure could be implemented and because it's an injunction, it will take place very quickly. We're prepared on the legal front. What we need to do right now is hear from our friends around the country. The ACLU is bragging about 80,000 signatures on their petition campaign right now which is against just about everything we're doing. We need to respond in kind but also specifically for this Inaugural event. We need to hear from our friends around the country.

Gene: The toll-free telephone line is open right now to add your name to that petition at 1.877.989.2255. The Petition to Preserve the Inaugural Prayer. It's going to the

leadership of the Senate, which is ultimately in control of the Inaugural Ceremony. Thousands of people are signing on every day this week, Jay.

Jay: We've had just a great response. In fact, if the number is busy, keep trying. It will free up a little bit after we go off the air. I encourage you to sign with us to make sure the Inaugural Prayers take place. Let your voice be heard in Washington, DC.

Gene: Take a stand with us at the ACLJ. Add your name and make a difference. Call right now toll free 1.877.989.2255. The Petition to Preserve the Inaugural Prayer. We need to hear from you. If you'd like, you can add your name electronically at the website at [www.aclj.org](http://www.aclj.org).

That will do it for our broadcast today. Thank you so much for being with us. We will talk to you next time on *JAY SEKULOW LIVE!*