

JAY SEKULOW LIVE!
02.14.05

Jay: This is Jay Sekulow. Alberto Gonzales is sworn in as Attorney General.

Alberto Gonzales: I, Alberto R. Gonzales,
Justice O'Connor: do solemnly swear,
Alberto Gonzales: do solemnly swear,
Justice O'Connor: that I will support and defend,
Alberto Gonzales: that I will support and defend,
Justice O'Connor: the Constitution of the United States,
Alberto Gonzales: the Constitution of the United States,
Justice O'Connor: against all enemies...

Jay: There you have it. Alberto Gonzales is sworn in as Attorney General of the United States. Interesting comments made during the swearing-in ceremony. That was Justice Sandra Day O'Connor who did the swearing-in of Judge Gonzales; but the President addressed the great work that the previous Attorney General of the United States had performed in office, John Ashcroft. Here's what he said,

Bush: Over the past four years, Attorney General Ashcroft has started the Department of Justice on the right course in the War on Terror. He's helped reduce violent crime to a 30-year low. He's taken vital new steps to protect children from exploitation. John Ashcroft has worked tirelessly to make our nation safer and more just, and America is thankful for your lifetime of service.

Jay: Well, all of us joined in the President's comments about the Attorney General of the United States. John Ashcroft has done an absolutely fantastic job as Attorney General. I think Alberto Gonzales will do a great job as the new Attorney General of the United States. So, some transition going on; but I think policies and procedures are going to stay the course.

Gene: President Bush also used that opportunity, Jay, to talk about several topics he has done so in the past. One, of course, the ongoing War on Terrorism and second, judicial nominations. President Bush addressed squarely and called on Congress to renew provisions of the Patriot Act.

Bush: Many key elements of the Patriot Act are now set to expire at the end of this year. We must not allow the passage of time or the illusion of safety to weaken our resolve in this new war. To protect the American people, Congress must properly renew all provisions of the Patriot Act this year.

Jay: Let me make it very clear that the position of the American Center for Law and Justice is that we agree with the President and with the former Attorney General John Ashcroft that

this Patriot Act needs to be reestablished, if you will; sunset provisions need to be renewed because it has been so successful in the War on Terrorism. I think this is part and parcel of the overall global War on Terrorism. The fact is, the Patriot Act does not interfere with anyone's civil liberties. There has been no case of a civil liberties violation in light of the Patriot Act. I think it is not only an overstatement by the ACLU; I think they just got it plain wrong. We need to be vigilant in protecting the homeland, which includes protecting our liberties. The Patriot Act, in our view, draws that careful balance.

Gene: Alberto Gonzales becomes the 80th U.S. Attorney General in the United States. During the ceremony today, President Bush also talked about the need to continue the ardent protections for America.

Bush: With Al's principle leadership, the Department of Justice will continue this important mission and will defend the security of all Americans and the liberty of all Americans.

Jay: You have to realize that this has been a huge cultural shift at the Department of Justice. You went from an agency that was prosecution-focused to an agency that was terrorism prevention. That was a huge shift. John Ashcroft and his team—it's not just the Attorney General, but he assembled a great team as well—did just a magnificent job in retooling the FBI, the Department of Justice, to become, I think, the premier prevention of terrorism agency in the United States government; and they have done a great job of that.

Gene: The issue of judicial nominations was also on the President's mind this morning. President Bush took the opportunity once again to talk about the issue of judicial nominations.

Bush: To maintain confidence in the legal system, we must ensure that judges faithfully interpret the law—not legislate from the bench. I have a constitutional responsibility to nominate well-qualified men and women for the federal courts. I have done so; and the United States Senate must also live up to its constitutional responsibility. Every judicial nominee deserves a prompt hearing and an up-or-down vote on the floor of the United States Senate.

Jay: By the way, in *The New York Times* today, Sen. Specter has said that he is going to get up-and-down votes on these members of the judiciary, those who have been nominated; including Bill Pryor, the now-Eleventh Circuit Court of Appeals judge in Alabama. So, there's going to be some real movement, I think, on the judicial nomination issues. Talking about judges, the high court, the Supreme Court of the United States will be hearing in about two weeks two cases involving the constitutionality of the Ten Commandments. This is a major case. We're assisting in the preparation of moot courts for the lawyers who are going to be arguing the case, and we'll talk more about that in a minute.

We have a great offer for you involving the briefs that have been filed at the Supreme Court of the United States involving the Ten Commandments.

Gene: A very important resource for people across America. Thousands have already ordered their free copy of our brief filed at the Supreme Court. You can too. Here's the toll-free number -- 1.877.989.2255. Stay with us. Back in just a moment. Much more ahead when we come back from the break.

[*Ten Commandments Brief Offer*]

Jay: Welcome back, everyone. We were just talking about judges and the role of judges, the Supreme Court of the United States, and the upcoming Ten Commandment cases. Sen. Specter has stated that he is going to push these nominees through that the President has made, including Bill Pryor, whom he thinks should be confirmed immediately. Also, the Majority Leader Sen. Frist has said that he believes he now has the votes necessary to change the rules. Now he didn't say he would change them, but he thinks the votes are there. I think the handwriting is on the wall on this. We're going to see judicial reform, and I think we're going to see it very, very soon. I'm actually optimistic on that front.

Let me tell you what's going on in the Ten Commandments cases so everyone will know exactly how to be praying and what's coming up. The two cases are going to be argued on Tuesday, March 2nd, before the Supreme Court of the United States. One of the cases out of Texas is being argued by the Texas Attorney General Greg Abbott. There is also going to be a case out of Kentucky that will be argued by our friend Mat Staver of the Liberty Counsel. They are going to be making the oral arguments. Briefs are submitted. There are two cases up there right now involving the Ten Commandments.

Here's what's also interesting: we have two *other* cases that are being held at the Supreme Court of the United States involving Ten Commandments displays as well. So you have at least four cases that are going to be impacted by the decision of the Supreme Court on the Ten Commandments. So, the ramifications of this are very, very significant as you can imagine.

Jay: We have a great resource available to our friends around the country, the brief that shows the history of the role of the Ten Commandments in western law and its development. It also has photographs from famous monumental displays of the Ten Commandments, including the Supreme Court of the United States and literally courthouses from coast to coast. It has famous quotes from opinions. This resource should be in everyone's home. Literally thousands have already asked for a copy. We want to make sure you get yours as well.

Gene: Jay, we've put together a great collectors' edition copy of this brief that we filed at the Supreme Court. This in defense of the Ten Commandments. It's full of information, easy to read, easy to understand, and has fantastic pictures of the Ten Commandments on

display in courthouses across America. Your free copy available right now by calling toll-free 1.877.989.2255.

Let's go to the phones and Donna joining us in Maine. Donna, welcome to the broadcast; your question for Jay, please.

Donna: My question is, I was in my boss's office just talking with him, and he happened to notice I had a book on my lap; and he asked, "Oh, what book are you reading?" I said, "It's a book on Heaven" and I shared my beliefs with him. I said it was a very interesting book and very exciting. And he said, "Well, that's not allowed here."

Jay: That's just not correct. A private book during your free time to be read cannot be censored by your employer. Now they can say in the workspace area, they only want work-related material; but if you're on free time or lunch break, they can't say you can't read a book about the Scriptures or about your faith in Jesus. That's not illegal conduct at work. There is not a religious-free zone. Title 7 of the Federal Code actually protects religious expression, including not the creation of a religious-free zone at the workplace; so you're in great shape legally. Let me also point you to our website at www.aclj.org. We have great resources available there as well.

Gene: That's the Internet address for the American Center for Law and Justice, www.aclj.org. Jay, talking about the Ten Commandments issue before the Supreme Court, two independent, two very different cases that the Court will be hearing. How do you suspect they're going to approach this issue when there are two cases with two different sets of facts.

Jay: Well, there are two cases with two different sets of facts and now also at least two other cases pending those cases, so you have four cases being impacted by the Supreme Court's decision, two of which are ours. They took two cases, they're being briefed separately, they're being argued separately, which means the Court's going to take what I think is a comprehensive view on Ten Commandments displays. Now remember, in the Supreme Court's own facilities, there are depictions of the Ten Commandments. The Justices have talked about that before. So I think these kind of ceremonial recognitions of the rule of law and the foundations of the law being found in the Ten Commandments could very well be persuasive arguments, and we should see, hopefully, some support for the Ten Commandments. It's not going to be an easy case. We need to be in prayer for the case and pray for the lawyers arguing it. We'll be doing their moot courts starting Friday of this week; so that process is getting well under way.

What we need you to do is really understand the issue and be in prayer. We'll be talking about it and giving live reports. A lot of activity on the Ten Commandments.

Gene: Jay, you're going to be participating in a very important discussion concerning the Ten Commandments—a debate of sorts—just days before the oral arguments are heard before the Supreme Court of the United States. You're going to appear at a special event in

Washington, DC, sponsored by the Pew Forum on Religion in Public Life, and you'll be debating someone you're familiar with—someone whom you actually tackled on another very important issue—the Pledge of Allegiance issue, Jay.

Jay: Yes, Doug Laycock, Professor of Law at the University of Texas, is very well respected. He's going to be in the debate with me on the 24th at the Pew Forum in Washington, DC, at the National Press Club; but I'm actually going to be doing another one at William & Mary starting the Monday before. So about two weeks before these arguments start, that's pretty much what I'm doing starting Monday—defending the constitutionality of Ten Commandments displays in a lot of law school settings and educational academic settings while we are doing moot court preparation as well. Again, be in prayer for Mat Staver of the Liberty Counsel; be in prayer for Greg Abbott, the Attorney General for the state of Texas as they get ready to make these arguments. These are the biggest cases of the term. As I said, those of you who are members of the ACLJ, know that we have two cases that are pending there. That means a lot of activity and a lot of impact.

Gene: You can stay in touch, too, with the American Center for Law and Justice and keep up-to-date on these developments online at our website at www.aclj.org, the Internet address for the American Center for Law and Justice.

Right now, though, we're taking your phone calls for Jay at 1.800.684.3110. Let's go to Belinda out of Missouri. Welcome to the broadcast, Belinda. Your question for Jay, please.

Belinda: Yes, I have a 10-year-old son and three or four years ago I started getting mail addressed to him, and when I opened it up, it says, "STOP, not suitable for people under 18." It's an actual magazine advertising 1.800 numbers with very graphic pictures. I wrote to the company and asked them not to send any more. They sent three or four, maybe five; and my question is, do they have a legal right to send this stuff. My son's old enough to get the mail now and he could pull that out of the mailbox. It's pretty bad.

Jay: No, they don't. And you have the right to go in and get what's called a "stop order" from the U.S. mail service. You speak to your local Postmaster General; he will give you a form to fill out; and they will issue a notice—basically a "cease and desist" to the publisher of that publication, demanding that you be taken off the list and the material not be sent to you. It's automatic; it's not reviewable; and you have the right to get that done. I encourage you to contact the postal service and get that stop order in right away.

Gene: Jay, where do we stand with the issue of pornography and the Internet, regulating that. We talk so much on this broadcast about issues involving pornography in the mail, but we get many calls, too, concerning the opportunity for young people to plug into these websites that are obscene and pornographic.

Jay: It's been tough. The Supreme Court has not been receptive to restrictions on Internet access that involves pornography, even if it's aimed at children. We lost that case 5-4.

There is new legislation being introduced. I think you have to be vigilant. The Internet is a great resource and a great tool, but it also has great liabilities and big problems, so you have to be very cautious of that.

Gene: Let's go to Marty in Texas. Go ahead with your question for Jay, please.

Marty: Hi Jay! I had a pastor last weekend said that Jesus didn't get involved with the politics of the Roman government; he had more trouble with the religious leaders of his day. What's your answer to that pastor from a biblical standpoint why Christians should be involved with politics today?

Jay: I'd read the Sermon on the Mount where Jesus talks about being salt and light; and part of being salt is being a preservative in your culture. Of course, Jesus was dealing with the spiritual realm of mankind, but He did have discussions about government and the role of government. There are references throughout the New Testament about praying for those in authority, the role of government; so I think divorcing our faith from our political action just doesn't make any sense. That's what being salt and light is. You're being a preservative in the culture. When the Scripture talks about salt and light (Jesus talked about that in the Sermon on the Mount), they weren't talking about salt as a flavoring, but as a preservative. That's what it was primarily used for. There are a lot of views on this, but I think Christians should be politically engaged. I think that's part of the process.

Gene: Jay, I'm looking at the brief we filed in the Ten Commandments case at the Supreme Court; and when you look at the information contained inside this brief, the numerous examples of where the Ten Commandments are posted and the role they've played in our legal system, it's hard to come to a conclusion that this is a violation of our separation of church and state.

Jay: I think it's ridiculous, but here's what you have: we put in this brief not only the history of the law as it relates to the development of the Ten Commandments on western civilization or western law (by the way, this brief was coauthored by Hal Berman from Emory University, a noted constitutional law professor. As you mentioned, we also have a series of photographs, renderings of beautiful Ten Commandments displays in courthouses throughout the country, some of them very large murals with the text of the Ten Commandments there. These are foundations of law. Seven Supreme Court Justices have said that. So what do we do now? The next step is convincing the Supreme Court that these should be allowed. We also need to make sure that Christians around the country understand the role that the Ten Commandments have played in the development of law in the United States. The information on that is really great; but we have to be very engaged in this. To do that, we're encouraging people around the country to get a copy of this brief; it's absolutely free and a phenomenal piece of material. We encourage you to call the toll-free number.

Gene: If you are putting together a home library of resources for your family to enjoy, this needs to be on the shelf. Our brief filed at the Supreme Court of the United States in support of the Ten Commandments. Get your free copy right now by calling 1.877.989.2255. Stay with us. Much more ahead, including your phone calls, when we come back.

[*ACLJ This Week Spot; Ten Commandments Brief Offer*]

Jay: Welcome back, everybody. There's a lot of activity going on in Washington, and I wanted to keep everybody posted as to what is exactly happening right now. As you can imagine, the activity level has been high. A lot of discussions going on about the life issue; a whole series of litigation in Washington and California on the initiative to protect the "conscience clause" rights of medical professionals—we're litigating that. As I mentioned at the beginning of the program, there's a lot of speculation about judges and federal judges and potential retirements from the Supreme Court—so it's a very, very busy time in Washington, DC.

Gene: When you look at the situation in Congress, Jay, right now and the comments made by Bill Frist and others, including Arlen Specter/Head of the Judiciary Committee, there clearly is a consensus among the Republicans to move forward here and to break this gridlock in the Senate regarding filibuster use against judicial nominees.

Jay: There's no doubt about it. You have the Majority Leader, Sen. Frist, saying they have the votes necessary to do this, and I think that's probably right at this point. What does that mean? Well, that means when you look at getting your votes through and you have enough votes to make the rule change, maybe the minority in the Senate will get the message and just go ahead and get this rule changed rather than this approach they are taking, which is really censorship at its worst and really just derogatory to the entire judicial nomination process.

Gene: Do you think this will play out when President Bush nominates or renominates another judicial candidate here in the near future, Jay?

Jay: You're looking at a whole group of them being renominated and resubmitted. I think as soon as that happens, the votes are going to start; and once that starts, you're going to see the process go forward.

Gene: Let's go to Daniel from Florida. Go ahead, please. You're on the air with Jay.

Daniel: Internet pornography with the child going to different websites and getting it by accident or on purpose by these different companies, isn't that the regulatory power of the FCC or the commissioners themselves to review and enforce that?

Jay: Unfortunately, they have not exercised any jurisdiction over the Internet. It's not an airwave and not within their broadcast scenario; so, no, they have not. That's unfortunate

here. It's really a jurisdictional question. I think Congress is always relooking at this, and I think Congress will try to move forward as well.

Gene: When we look at the legislation that's been proposed and passed by Congress on several occasions; in fact, they took their cue off of a Supreme Court decision a couple of years ago, tried to rewrite some law, sent it back to the Supreme Court and got it rejected again.

Jay: Taking a cue is an understatement. They took the language verbatim out of the Court's opinion, and the Supreme Court of the United States still said the statute was unconstitutional. Justice Breyer asked in his dissenting opinion, What is Congress to do? They've taken our exact language, and you still can't get it passed. Look, we have an uphill battle on these cases, we have to realize that; and we have to continue to fight back aggressively.

Gene: Let's go to Debbie in Alabama. Go ahead, Debbie; you're on the air with Jay.

Debbie: Thank you so much for what you do, Jay. It's so appreciated what you do. I wanted to ask you what's going on with school vouchers. It was a real big hot topic for years and now it's just kind of dwindled. What is being done to promote and put school vouchers in place because out here in Alabama, our school system is atrocious.

Jay: I know it's a big problem and not just in Alabama; it is in a number of other states. I know you've had a lot of problems with that in Alabama, though, and don't want to minimize that. Here's the law and it's actually quite clear. If a state wants to adopt a voucher program, they have the authority and the right to do it. If the legislature decides that the voucher program will also include putting religious schools in that category of voucher support, they can do that as well. The Supreme Court—there's two cases: one involved whether school districts can have voucher programs, and the Supreme Court said yes. The other was, can you make them have religious programs in those voucher programs; and the answer was no, you can't make them; but if the state decides they want to, the Court unanimously said in the *Davey* case that they can if they want to, but the Court also said that you can't make them include religious school. So it's really a political decision; although I will tell you—about 38 states have some type of scholarship or voucher program, and in those, they are very direct. Most of those 38, I think 36 allow Christian and religiously affiliated schools to participate.

Gene: In addition to the school voucher issue, there's another issue percolating in school systems across the country that we get a lot of questions about, Jay, and that is the teaching of evolution v. the teaching of intelligent design. You have authored a new commentary, an opinion editorial that will be published in newspapers across the country, really raising the question on why shouldn't we teach intelligent design in public schools across America.

Jay: I think this is becoming a big issue. The fact is, the courts may not be catching up with us, but the science sure has. The science is saying, there has to be intelligent design.

That includes many scientists who are Nobel Laureates. That answer is “it’s there.” It’s important, it’s in place, it can be done, and it can be taught. The question is getting the courts to understand that everything that happens to coincide with a religious view does not constitute the establishment of religion. There are a number of cases pending right now. This issue is going to pick up in intensity over the weeks and months ahead, and we’re committed at the ACLJ to standing with those who want to teach this as a legitimate part of science to do so.

Gene: Barry Lynn of Americans United for Separation of Church and State is on the other side of the issue. He authored the opposing position. Jay, we’re going to post your article on our front page of the website this week at www.aclj.org. It’ll also be listed in our Commentary section; it’s something you’ll definitely want to check out.

Let’s go to Florida with Allison joining us. Your question for Jay, please.

Allison: I was looking at Sesame Street last week with my friend, and the Elmo portion of Sesame Street was talking about families. They showed two men with a child representing a type of family. My question is what would be my step to complaining about that?

Jay: Well, you have to talk to PBS and express your concern. They are a listener-supported broadcast and are susceptible to being talked to. I would do it politely and be courteous but be direct and tell them you’re concerned about the direction the programming is going. You’re a big advocate of the program, but you didn’t like that particular aspect of it, and see what kind of response you get. I think that’s the way to do it.

Gene: Good advice, Jay. We have Anna in Nevada on the phone. Anna, go ahead please. Your question for Jay.

Anna: I was listening to the comment about the parents who wanted to opt his child out of curriculum; and if you opt your children out who have a strong foundation in the Christian belief, then we don’t have the opportunity to use that in the classroom. Being a teacher in an elementary public school, I can’t introduce Christian topics. However, many of the topics we cover have elements that when the children bring up their Christian beliefs, then I can allow it to be entertained. So if they are excluded from the curriculum, then we lose a valuable asset as a Christian teacher.

Jay: Well, I think that’s a decision every parent has to make. I’m not talking about wholesale abandonment in all cases; I realize some people have to utilize the public school system. I’m not a big advocate though, frankly, of the public school systems, although there are exceptions and there are some really great public school teachers. I understand that every parent cannot afford to send their child to private school, and not every parent can afford to have her child homeschooled because of work situations. I will tell you that students have broad free speech rights; it’s the parents who need to let the students know what

those rights are. Of course, we do that at the ACLJ; but teachers have to be very careful. That's a decision each parent has to make individually.

Gene: A great place to go for additional resource material about the many topics you hear about on this broadcast is our website at www.aclj.org, the Internet address for the American Center for Law and Justice. You can learn a lot about the Ten Commandments issue that will be argued before the Supreme Court of the United States on March 2nd. There's another way, though, that we want people to participate as well, Jay.

Jay: That's right. We have got a great brief—this is the brief that we filed at the Supreme Court of the United States. We have basically a collectors' edition put in place, and we want you to be involved.

Gene: Get your free copy of our brief filed at the Supreme Court in support of the Ten Commandments. Just call toll-free 1.877.989.2255.

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!*