

## The Sacramento Bee, Justice Anthony M. Kennedy's home town paper, refused to print this ad.

The Bee could have learned how reliable the author is: a retired judge, a Sacramento native who volunteered the Monday after Pearl Harbor, was a 4-year WWII Vet, earning the Distinguished Flying Cross before his plane was shot down over Nazi Germany in 1943, was a distinguished graduate of Stanford Law School (Order of the Coif), was Chief Counsel of the State Public Utilities Commission, arguing before the U S Supreme Court; was Chief Counsel of the Jackson, Mississippi office of Lawyers' Committee for Civil Rights under Law; and for a year was a

fellow at Harvard's John F. Kennedy Institute of Politics (other Fellows: General Stanley McChrystal and Senator Al Franken). All jobs duly performed with no hint of misconduct or inadequacy.

But the Bee summarily rejected Judge Tuttle and all he had to say, not even allowing him to use his own money to buy the space to say it. (Even Rupert Murdoch's Neanderthal WSJ let Sean Penn buy space to vent at length about Iraq: C. K. McClatchy [and Walter Jones] must be spinning in their graves, appalled at their successor's stupidity.)

## Sacramento's Idol: Feet of Clay

"The most dangerous decision ever" and "the greatest threat to American freedom since Dred Scott" are words used to describe the judicial opinion (Citizens United) composed by an honorable man, Supreme Court Justice Anthony Kennedy, who is convinced that soulless corporations must enjoy the same political rights as human citizens in order to preserve our democratic way of life.

I am a retired California Superior Court judge. Like Kennedy, an honor graduate of a prestigious law school; like Kennedy, a former teacher at McGeorge School of Law; and, like Kennedy, a registered lobbyist for wealthy corporations.

Justice Kennedy's decision in the Citizens United case has produced a valiant but futile Congressional struggle to do the impossible: devise a mere statute that can rectify an egregious 5 to 4 holding that the constitution requires that corporations enjoy the same political rights as human citizens.

Some friends of Kennedy have said, after reading a first draft, why are you so unfair to Sacramento's icon, Mr. fair-minded even though slightly to the right of center? To which I reply, you are damned right; I am not fair to Tony; what I say is an advocacy piece; it does not purport to present both sides. And here is why:

I am sick enough to puke when I see Kennedy feted by various law schools, including my own, as the ideal, well-balanced, and fair-minded justice. He is, after all, the man directly responsible for the two worst decisions of the last 50 years: Bush v Gore and Citizens United.

[Stanford added to its dishonor when the faculty awarded Chief Justice Roberts high honors,, a ceremony where -- seized by a fit of revulsion

-- I left in the middle. ]

Not only was Kennedy responsible for these opinions, he enabled them by casting his swing vote to create a 5-4 majority for the Forces of Darkness. Had he instead cast his vote with the Angels, Al Gore would have been president [after all, he did win that election by 250,000 votes]. And in Citizens United, an enlightened 5-4 would have kept the plutocrats out of power.

Kennedy's dismal role in all this is obscured by the force of his

personality: he is a genuinely thoughtful and considerate man, loyal to his many admiring friends who range along the entire political spectrum.

Justice Kennedy's warm defenders — not confined to Sacramento friends — have many facts on their side establishing Kennedy's intelligence and sensitivity, but they face an obstacle: Kennedy's own words, which stand forever as a monument to his thinking on this issue.

According to Kennedy, soulless money-making machines, corporations whose only reason for existence is to make more money, are truly "citizens," enjoying the same political rights as human beings like you and me.

Plutocrats who already control both major political parties are now given carte blanche by Kennedy to use their unlimited dollar power to hoodwink American voters by unrestricted advertising clap-trap into voting as the money-bags decree.

How did it come about that this immensely popular man, of large intelligence, warm and moderate disposition, and vast experience should write such an opinion?

"Experience" is the key word. From the time Kennedy was ten years old his loving father, whom he chose to emulate, made his living giving voice to the wealthy and powerful in Sacramento's halls of governance. Kennedy was brought up to believe such an occupation was not merely tolerable but downright admirable, and it became his own after Harvard Law School, until at age 38 he became a judge.

Justice Kennedy shocked many by the fervor of his proclamation that corporations are entitled to free speech just like individual human beings. To understand this peculiar outlook we should look at how he made his living until his appointment to the bench in 1975. Such inquiry would disclose Kennedy's professional life was largely that of a lobbyist, devoted to political activity on behalf of wealthy corporations. Bear with me, please, for a moment.

In 1949 upon graduating from Stanford Law School I worked for a San Francisco law firm that lobbied in Sacramento for the California Bankers Association and the California State Chamber of Commerce. A powerful lobbyist, a wheeler dealer second only to Artie Samish (King of the Lobbyists, dethroned when his picture appeared in Life holding on his knee a ventriloquist's dummy labeled "California Legislature") was Tony Kennedy's Dad, Anthony, representing — as best as I can recall after 60 years — retail grocers and other substantial business interests. Two years after law school, on his father's death in 1963, Kennedy took over his Dad's lobbying business, which later became the partnership of Evans, Jackson & Kennedy.

Kennedy's entire legal career, except for two years right out of law school, was spent in his father's law office and its successor where the chief source of income seems to have been lobbying and related legal activities such as representing trade associations.

His warm and gregarious disposition — "a hale fellow, well-met" — served him well as he retraced his father and role-model's footsteps in Sacramento's corridors of power, making friends of Republican politicians (helpful in his judicial ambition) and never for a moment doubting the propriety, fairness, or wisdom of corporate wealth deploying vast and unmatched power to influence government.

He continued such work until with the help of his political allies he secured his first judicial appointment in 1975, at age 38.

Kennedy took over his father's practice on his death in 1963, continuing with it till his first court appointment in 1975. A quick check of the public records would reveal whether he was a registered lobbyist during the time before he went on the bench. And if he lobbied, who he lobbied for. It is unlikely that it was the ACLU or the Friends' Committee on Legislation.

Martindale-Hubbell, the national directory of law firms, for the year 1974 lists among "representative clients" of Kennedy's firm the California Association of Dispensing Opticians whose stated objective is "To promote legislation that would continue the existence of free-choice optician through licensing legislation," and to this end they "have raised many thousands of dollars and hired the best available legal and lobbying talent."

Justice Kennedy is directly responsible for the two worst decisions of the last 50 years: Bush v Gore and Citizens United. Not only was he responsible for these opinions, he enabled them by casting his swing vote to create a 5-4 majority for the Forces of Darkness. Had he instead cast his vote with the Angels, Al Gore would have been president [after all, he did win that election by 250,000 votes]. And in Citizens

United, an enlightened 5-4 would have kept the plutocrats out of power.

Getting perspective on Kennedy's judicial performance is difficult for another reason as well. There is an emperor's robe element to any appraisal of the Roberts court, of which Kennedy is such a critical part. Those in the best position to accurately evaluate that court, the top constitutional law professors at leading schools, are in a difficult spot.

These academics cannot maintain their influence as leaders in legal education without a close and friendly relationship with the Chief Justice of the United States. If Stanford's then Dean, and top constitutional scholar, Katherine Sullivan, had spoken bluntly (as did dissenting Justice Stevens) about the travesty that was Bush v Gore, she would have sacrificed any chance of future cooperation with Roberts.

And not just Dean Sullivan personally would suffer from such a rupture; her school would have been wounded. When it came time for the Chief Justice and other judges of his party to pick, for example, academic experts to help federal courts devise sentencing rules, or anti-trust experts to create expedited procedures, or whatever, Stanford Law School would be left out in the cold. It would relinquish its claim to preeminence.

Thus it is that no leading law school dares to comment on the Emperor's nakedness, permitting Chief Justice Roberts and his crew to enjoy an undeserved halo of respectability, shielded from tough analysis; and thus it is that the field is left open, to be occupied only by an superannuated amateur willing to squander the family fortune. (Of course one should never be needlessly abrasive but at what point is one obligated to speak the truth with honest candor?)

This discussion portrays a legal academia driven by base motives rather than starry-eyed idealism, so let us now consider an analysis more favorable to the professors, dressing up this pig in the finest Max Factor cosmetics, so that one might say how terribly important it is for the academic world to remain friends with Roberts, Scalia, Alito, Thomas, and Kennedy because exposure to polite, respectful, and conciliatory moderates will lead these men away from the disruptive extreme right.

One might indeed say that, but only if one were utterly impervious to ridicule.

If my view of Citizens United strikes you as unduly alarmist, please read the opinions of the dissenting justices who sound the alarms even more loudly than I do.

It should be noted that Americans of both parties line up overwhelmingly in opposition to Kennedy's decree, as the Washington Post reported February 17, 2010:

"Eight in 10 poll respondents say they oppose the high court's Jan. 21 decision to allow unfettered corporate political spending, with 65% 'strongly' opposed...."

"The poll reveals relatively little difference on the issue among Democrats (85% opposed to the ruling), Republicans (76%) and independents (81%)." [The poll involved was a Washington Post-ABC News poll.]

This ad cost \$38,700 and was cheerfully paid for by Richard E. Tuttle, retired judge, California Superior Court, aka "The skunk at the garden party" who seeks to temper Sacramento's adulation for her favorite son the "moderate" Supreme Court Justice Anthony M. Kennedy.

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