

JUSTICE KENNEDY SCREWS UP AGAIN



Bill Donohue comments on remarks made by U.S. Supreme Court Justice Anthony Kennedy at the Ninth Circuit Judicial Conference yesterday:

Justice Kennedy compared the outcry over the recent same-sex marriage decision to the hostile reaction following the 1989 high court ruling that legalized flag burning. He noted that over time the initial outburst of anger over the latter issue eventually subsided; he predicted that the same will hold true regarding the former.

Kennedy ruled the wrong way on both cases, and his analogy is also wrong.

U.S. Supreme Court Justice Hugo Black said he was a First Amendment absolutist, yet even he, in a case prior to the 1989 decision, ruled that flag burning was conduct, not speech; thus was it undeserving of First Amendment protection. Kennedy, on the other hand, said of the man who condemned and burned the flag, that "his acts were speech"; he saw no difference between public denunciations and setting fire to the flag.

In the gay marriage case, Kennedy again showed how asocial his vision of reality is. For him, marriage is not a social institution that exists *sui generis* (independent of the two parties); rather, it is simply an arrangement between two adults. This explains his preoccupation with individual autonomy.

Kennedy screws up again by comparing the two cases in terms of their social consequences. It is true that most Americans did

not continue to be outraged over flag burning. But a better analogy to the gay marriage ruling would be the 1973 decision legalizing abortion. Forty-two years later the nation is still polarized over this judicially contrived right, with no end in sight. Similarly, the public outcry over the judicially contrived right of two men to marry is not going to dissipate.

Abortion speaks to life and death. Marriage speaks to procreation. When elites toy with either they are playing with fire. Now they've toyed with both. This is an inferno that threatens to engulf us all.