

Friday, January 4, 2008

Obama wins caucus, but should beware likening trial lawyering as antithetical to public service. Kudos to Kucinich.

Â Bill of RightsÂ (From public domain.)Â Clearly, Barack Obama's below-discussed trial lawyer comment did not prevent him from leading the Iowa Democratic caucus by 8% over Edwards and 9% over Clinton. I think that Edwards' and Obama's strong lead over Clinton will lead Democrats in other states to see this as a primary worth participating in, and, for the time being, to see this more as a three-way primary among the foregoing candidates, rather than as an Obama-Clinton primary. Regardless of what I think about Kucinich's other views -- about which I do not know enough -- I am pleased that he brought to the forefront, through his campaigning, the critical need to reverse course from the nation's militaristic madness; I am also pleased that he became a poster-person of sorts for veganism, which has been my lifestyle for six years. Â Now to the heart of this blog entry.Â Â "That's why I didn't become a trial lawyer,' Obama told the Newton audience -- a clear dig at Edwards, who made millions in the courtroom."Â Perhaps Mr. Obama has never tried a case. If he had done so, he would know that the moniker of trial lawyers goes far beyond wealthy plaintiff's personal injury lawyers (of course, to get wealthy through trials, they need to know how to capably try a case), to include public defenders, prosecutors (bite my tongue), and civil rights lawyers (how does civil rights case law get made if the cases do not commence at the trial level?). Â Alternatively, perhaps Mr. Obama is being disingenuous and is trying to play into the hands of voters who do not like lawyers. However, where do the anti-lawyer folks stop? The Sixth Amendment to the Constitution guarantees criminal defendants the right to an effectiveÂ lawyer; unless the defendant's case results in a dismissal or guilty plea, the case is going to trial, and requires a skilled trial lawyer to represent the defendant. Due process calls for permitting civil litigants to have the right to a lawyer, too (otherwise, how would a libel defendant have a leg to stand on if sued through the lawyers for Coca Cola, for instance?). Â Shakespeare's Henry VI, Act IV, Scene II, includes the famous urging: "The first thing we do, let's kill all the lawyers," which is apparently about one of the approaches tyrants can try to takeÂ for consolidating power. We do not need any tyrant sitting in the White House taking away people's right to retain effective trial lawyers. How many voters does Obama wish to alienate with his foregoing comment? Jon Katz.Â ADDENDUM I: Thanks to the several fellow trial lawyer listserv members for bringing this Obama story to my attention. ABC News's Political Punch blog has commentary and comments on this story. The December 31, 2007, Washington Post Trail blog reports that: "In one of his standard riffs, [Barack] Obama asserts that his career choices -- community organizer, civil rights lawyer, elected official -- underscores his commitment to public service and to bringing about political and social change. He always mentions the lucrative job offers he turned down, but today he added a new line.

Posted by Jon Katz in Constitutional Law at 00:00