

Department of Defense

Constitution Day and Citizenship Day

September 17, 2008

Keynote Address by Justice Sandra Day O'Connor

Associate Justice (Retired) of the Supreme Court

to

The Department of Defense

on

Constitution Day and Citizenship Day

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I'm honored to have this opportunity to speak to an audience of such dedicated Americans and to share with you my reflections on the importance of our U.S. Constitution, especially on the occasion of the annual commemoration of Constitution Day and Citizenship Day.

Our Constitution is truly a remarkable document. It has shown its endurance and its elasticity over time. It was developed, and written, and debated, and amended by our marvelous forefathers more than 200 years ago, but it's very much alive today in the 21st century. It's really been a centerpiece of our lives as Americans. It's the document which expresses our core values, what we stand for, and the means to ensure fulfillment of the inalienable rights to Life, Liberty and the pursuit of Happiness as expressed by the Founder in the Declaration of Independence.

Now, today, I'm going to be speaking about our Constitution – specifically, its continued relevance in today's world, and the need for continuing education

and ongoing discourse and discussion among our citizens; and finally, the importance of individual participation in our government.

Our Constitution is a remarkable document. It's short, it's only a few paragraphs long, but it has withstood the test of time. Compare that to the recent effort of the European Union to develop a charter and the difficulty they had. Amendments to their charter were circulated to the member nations. It was over 400 pages of text. It was so unwieldy and difficult for citizens there to read and understand. They ended up not approving the modifications. On the contrary, our Constitution is one that everyone can read and understand. It is as important today as when it was first published. And we have to make sure that all Americans--young and old, naturalized or born here, that all of us know the content and the history of our great Constitution. We may not know some of the vernacular or the words, but the concepts are still applicable to our daily lives as American citizens.

Information about our Constitution and the way it shapes our lives isn't passed down through the gene pool from generation to generation. Our children don't automatically inherit that knowledge and the understanding. It has to be learned by every successive generation. And, it isn't enough just to read or memorize

parts of it. We have to try to understand the ideas that gave our Constitution its life and that still give it strength today. There's no better proof of this point than the words of one of the Framers of our Constitution, Alexander Hamilton. He wrote in the Federalist Papers that it was:

“...reserved to the people of this country to decide ...whether [we] are ...capable...of establishing good government from reflection and choice, or whether [we] are forever destined to depend for [our] political constitutions on accident or force.”

Now, it's a sad state of affairs when we look around the world today and see that many governments that have developed from accident or brute force, rather than reflection and choice that we had here, and that we continue to support – makes the difference.

Now, in 2004, the U.S. Congress enacted a law requiring all federal agencies to provide education and training on our Constitution to both newly hired and currently employed staff. Now, this was a big legislative achievement for Congress, because we, as American citizens, must learn, know, and understand all that we can about this critically important document called the Constitution of the United States.

And, unless we educate every generation of our citizens about our Constitution, we could lose our most valuable resource. And, that's why I appreciate the efforts of Senator Byrd to have a national day of commemoration on September 17th. And that's also why I'm honored to serve on the Board of Trustees of the National Constitution Center in Philadelphia. If you haven't visited that, I hope you will.

Now, the same legislation that requires education of the federal workforce also requires schools to promote programs on the Constitution for their students.

And this is as it should be. We have to nurture knowledge and understanding of our Constitution. We have to emphasize our civic duty in following it. And each generation has to learn about our system of government and the rights as well as the responsibilities of all of us as citizens.

One project that is in development is an online website called "Our Courts." And, it's designed for the middle school level of students. It's going to have useful information for all of us, but, it's especially aimed at our young people in the digital age, because we're going to make it interactive and provide an online community for teachers to share resources and content. It's an evolving source of materials and suggestions that are anchored to state and national standards. I

hope you will visit the website [www.ourcourts.org]. It will be complete with the interactive part early next year. I am certain that you will be engaged, that you will be challenged to review your own thoughts on the Constitution, and view activities to share with your families.

Ours is a nation that's built on pride in the sacrifice and commitment to shared values, and on a willingness of our citizens to give their time and energy for the good of the whole. And, you are among those citizens because you serve our nation with such dedication and valor.

The simple truth is our nation needs hardworking, innovative, dedicated people to give their working lives to its operation and improvement. We have a great nation today because people like you have given of themselves in ways that really matter. It's through your commitment and diligence that we're able to honor and support our great Constitution, more than 200 years after its adoption. It's your devotion to the goals and principles of democracy that keep our Constitution relevant and alive in today's world. It's heartwarming to hear discussion and educated discourse on our Constitution and how it applies to our daily lives as American citizens.

The Framers of our Constitution thought “the rule of law” was essential to the safekeeping of social order and civil liberties. The rule of law, which was first really established in the Magna Carta in Great Britain in 1215, says that every government agent – even the king – has to follow the law. It is believed that if our relationships with each other and with the state are governed by a set of laws, rather than by a group of individuals, we’re less likely to fall victim to authoritarian rule. The rule of law calls for all of us – high and low, wherever we are – to respect the law’s supremacy. Thomas Paine wrote a pamphlet called, *Common Sense* in 1776. He said:

"For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other."

In order to realize this ‘rule of law,’ the pact we have with each other about our governance and our freedoms, we have to renew commitment to it with every generation. There are 4,440 words or so in the U.S. Constitution and they’re relevant to today’s world. We have amendments to it through the years. And we have interpretations by the Supreme Court. But, it has to be nurtured as a basis for discussion about our beliefs and our principles. It’s the basis for our daily dialog about democracy.

The responsibility for knowing and following our Constitution is shared by all our citizens: by local, state, and federal legislators who have to think about the constitutionality of the laws they consider. It's shared by litigants who have to take the time, and money, and effort to take cases to court. It's shared by the Courts, who have to interpret and rule on problems and issues of law brought forward by people. Ultimately, we enforce the Constitution by our citizens. It is our citizens that determine our Nation's response to every major issue.

And I think this system is comforting because we spread the responsibility to uphold our Constitution among so many, and the Framers enlisted a legion of defenders for our charter. It does remain a living document. It reflects our lives as participants in a democratic process, and it reflects what's important to us as a Nation.

Well, what does this mean for you, personally? Being members of the Department of Defense, you represent the strongest element of power that we have as a nation-state and the Framers of the Constitution, were fully aware of the importance of this power and they established the concepts of civilian oversight of the military. And they established the checks and balances of the three branches to ensure thoughtful discussion on the use of force.

The power is granted to Congress in Article I, Section 8:

“To declare War...to raise and support Armies...to provide and maintain a Navy...to provide for calling forth the Militia...”

That power is further extended by the requirement that Congress:

“...provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States...”

But, this power was balanced in the Constitution later in Article II, where it states that:

“The President shall be the Commander in Chief of the Army and Navy of the United States, and the Militia of the several States, when called into actual Service;”

So, we see that Congress has the power to *“raise & maintain”* and the President has the power to *“command”* the control of our Armed Forces. It is clear that our Founders wanted this serious decision to go to war to rest in the hands of the people and their chosen representatives in Congress. It is not a decision we take lightly or put under control of one person. There was much discussion by the Framers over the terms “make war” and “declare war.” The

choice of a “declaration of,” instead of “to make” war implies an active decision.

In my 25 some years on the Supreme Court, I found myself dealing with many issues requiring interpretation of our Constitution. One of the major issues that’s been tested over time is the balance of power between the federal government and the states, and among the three branches of the federal government. This balance is critical to our success as a Nation. We have to be diligent in our stewardship over that balance.

The Supreme Court almost never has the first word in interpreting the Constitution, but many think the Supreme Court has the last word. Certainly the Supreme Court’s interpretation of the Constitution is considered binding on the states and on the other branches of the federal government. But when it comes to putting interpretation of the Constitution into practice, the Supreme Court has to rely on the other branches of our government.

One of the most dramatic examples of the executive branch enforcing a Supreme Court decision occurred in 1957, when President Eisenhower ordered federal troops to Little Rock, Arkansas. And he did that to ensure that, pursuant

to the Court's decision in *Brown v. Board of Education* which held unconstitutional racial segregation of public schools. The troops were sent so that nine black children could enter Little Rock's Central High School. And on that day, President Eisenhower addressed the nation. He said his duty to uphold the ruling of the Supreme Court was "*inescapable.*"

Even more remarkable and inspiring are the many times that state and federal officials around the country respond to Court decisions without delay or dispute, whether they agree with the decision or not. This is the "balance of power" in action— the Constitution being applied today, as it has been throughout our Nation's history.

Now, I want to discuss one of the important and fundamental ways that individual citizens contribute to our American way of life – that is by exercising the right to vote.

When the Constitution was originally drafted in 1787, voting rights and protections were not addressed in the Constitution. And at that time the electorate was almost exclusively white and they also for many years were only male property owners who could vote. White male property owners. So, it's

important that we understand today and appreciate how various Constitutional amendments through the years, and even a dreadful Civil War, have dealt with this critical, but fundamental hallmark of living in our country.

Our Constitution, signed September 17, 1787, was drafted by fifty-five white men. The addition and ratification of the Bill of Rights in 1791 didn't have much effect at the time on the status or rights of women or of freed slaves or even of slaves. Although the Bill of Rights did not expressly deny equal rights to women or to freed slaves, the Framers did not think about meaningful protection for them.

It took the Fifteenth Amendment in 1870 to, for the first time directly address the right to vote. It says:

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”

This amendment specifically addressed, finally, the disenfranchisement that resulted from the use by states of poll taxes, literacy tests, and so on, to control the growing political power of the vote of former slaves. Fifty years later, in

1920, the Nineteenth Amendment to the Constitution was ratified. It finally gave women a right to vote.

I don't need to remind you that progress sometimes takes a long time to achieve. Here the past serves as prologue. The situation of women in the late 18th, 19th, and 20th centuries in the U. S. provides a context and shows just how far we have traveled.

When Abigail Adams, the wife of President John Adams, implored her husband to “*remember the ladies*” in drafting our nation’s Constitution, her remarks fell on deaf ears. John Adams’ curt dismissal of her plea prompted Abigail Adams to respond:

“I cannot say that I think you are very generous to the ladies; for, whilst you are proclaiming peace and good-will to men, emancipating all nations, you insist upon retaining an absolute power over wives.”

Well, the Nineteenth Amendment to our Constitution dealing with women was not approved until 1920. And that was the outgrowth of an amazing alliance between people who touted women’s need for protection in the workplace, and also pioneer feminists like Elizabeth Cady Stanton and Susan B. Anthony, who wanted full and equal citizenship for women. So, the Nineteenth Amendment,

which required a two-thirds vote of both houses of Congress, as well as ratification by three-fourths of our state legislatures, remains the single greatest political triumph of the women's movement in the United States.

This year -- 2008 -- is when we're going to be casting our votes for the president in a national election, and for members of Congress, and for many state and local political offices. The right to vote is deeply embedded in our culture, but those conditions were not always part of our social fabric. In addition to the 15th and 19th Amendments, there have been other changes to the Constitution that focused on voting rights.

The Twenty-Third Amendment, ratified in 1961, gave residents of the District of Columbia the right to vote in presidential elections. The Twenty-Sixth Amendment, ratified in 1971, lowered the federal voting age to 18. This last amendment came about because of the unfairness of having people serve in our Armed Forces, even through a draft, but not allowing them to vote. Now, all of these constitutional amendments are necessary ingredients of our citizenship in the United States today.

The military, because of service in sometimes hostile and faraway places, poses a logistical challenge in exercising the right to vote. It's important to get ballots out to all the voters and get them returned and counted in a timely way, so they can be included in the overall election results. I appreciate the efforts of the Department of Defense to help the members of the Services in exercising their voting rights, even in tough environments. These efforts require work between the Department of Defense, other federal agencies, and of course, state and local governments across our nation.

Now, I want to make a few final remarks about the second part of our national commemoration—Citizenship Day. Some of you might have seen the 2007 White House Proclamation on Constitution Day and Citizenship Day in which President Bush describes the great diligence of our Founding Fathers in creating our Constitution that would...

“develop a framework to balance authority and inherent freedoms, Federal interests and State powers, individual rights and national unity.”

But the White House proclamation also describes citizenship by acknowledging that...

“Today, every American shares in this legacy of liberty, and we are grateful for the courage, conviction, and sacrifice of all those who have

helped preserve and uphold the principles of a free society. As we remember the importance of the Constitution, we also recognize our responsibility as citizens to respect and defend the values of our Founding Fathers and participate in the unfolding story of freedom.”

In sum, our Constitution really is remarkable. And it's an enduring accomplishment by our forefathers as the means to govern our new and independent nation. So, I urge each and every one of you to take a few minutes today to re-read these few short paragraphs and to contemplate how those words continue to have in our American life in the 21st century, such an important effect. We have to keep this document, our Constitution, alive through activities, such as annually recognizing Constitution Day and Citizenship Day. Most importantly, each of us as American citizens have to provide our own continued commitment and service, especially by voting in our Presidential election in 2008.

Thank you for your dedication, your hard work, and your sacrifices defending not only our great land—the United States, but all of our freedoms and liberties as embodied in that best of documents—the Constitution of the United States.

Thank You.