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## **Constitution Day Speech at DMACC - 9/6/2006**

by R. Ben Stone, Executive Director

### **The 'Battle' within the 'War:' Stopping the Abuse of Power**

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Constitution Day - DMACC Ankeny Campus

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Thank you. DMACC great. Lauritsen hired, west campus; one of the first to teach me about the Constitution. Adjunct, been one since 1991.

Constitution Day was actually Sept. 17th, 1787 --- 229 years ago. Irony of federal law mandating this stuff. ACLU opposed, now giving speeches.

Before I begin, let me briefly explain what the ACLU is all about.

- ACLU founded in 1920, Iowa affiliate 1935. 5th oldest
- non-profit, membership, nonpartisan (no foreign policy, no endorsements), purpose, role in history. GREAT website, tons of materials, ie searchable FOIA documents, FREEDOM FILES on Court TV and LINK TV. Mention STOP THE ABUSE OF POWER campaign.

- Iowa ACLU, staff, website, defending folks who hate us, or don't believe in civil liberties. Defending Everyone. TP: "He that would make his own liberty secure must guard even his enemy from oppression."

Now, what about this **Constitution Day**. What's it about? Why dedicate a day to the Constitution. What's the big deal, anyway?

- For centuries all over the world, nearly all societies of any size were ruled by monarchs—kings and queens. But in 1776, in America, they have a Revolutionary idea -- no kings, people (and laws!) rule instead, but divided power among three branches of government, checks and balances, govern ourselves/representatives/democracy, (DISCLAIMER: rich white males only)

•But even with checks & balances among the 3 branches of govern't, two main problems still existed: 1) for democracy to work, people must be able to make knowledgeable & informed decisions, and 2) individuals and political/religious minorities must be free from majoritarian tyranny. – freedom of conscience. So ....

BILL OF RIGHTS created:

•Define civil liberties, some things off limits from majority rule: (Speech, Press Religion/Establishment, privacy, property [eminent domain] right to trial, counsel, jury, confront witnesses & evidence, *later, after Civil War*, equal protection), tyranny of the majority, self government, being informed, limit power of government. A NATION OF MEN, NOT LAWS.

*"So far as we approve of monarchy, in America, the law is King... There ought to be no other."* Thomas Paine.

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So that is basically the plan laid out so long ago – our Constitution -- put in place by those "founding fathers" over 200 years ago: divided government, checks and balances, freedom of conscience, protection from majoritarian tyranny, a free press to help keep citizens informed so they can vote, free speech so everyone can contribute their ideas, protection for your rights to liberty, privacy and property.

**So, how we doing in 2006, as the so-called "War on Terror" continues unabated?**

The national ACLU and ACLU of Iowa fervently believe we are in the midst of a hugely under-reported *Constitutional Crisis* and that we need to restore checks and balances and the rule of law in America, before it is too late. To help illustrate this, I have brought a short ACLU video.

[SHOW DVD – 12 minutes]

I started giving speeches about the state of the Constitution in the aftermath of 9/11 four years ago. Back in 2002, I conveyed grave concerns that the rule of law was endangered by the so-called "War on Terror" .... Today, I am finding it difficult to contain my alarm, my sense of dismay, and my genuine OUTRAGE at what is happening to the nation my three children will inherit.

Quite frankly, it is INTOLERABLE what is going on in our government, and I hope to convince you to help us put a stop to it.

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At the outset, let me say that civil libertarians and the ACLU **DO NOT want** the terrorists to win, and we **DO WANT** to be safe and secure from further terrorist attacks. Where we part company with the administration and its allies in Congress is in our faith that IF

we are smart and strategic in how we conduct our selves, we can be **BOTH SAFE AND FREE IN AMERICA.**

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In all honesty, I believe that if you believe in the Constitution, it is imperative that you rise up to save our democracy. The *half million strong* membership of the ACLU invites you to join us in the battle within the WAR to STOP THE PRESIDENTIAL ABUSE OF POWER by RESTORING THE RULE OF LAW IN AMERICA.

{Before I go further, I want to especially implore those of you who generally support President Bush to hear me out as I continue. Please don't simply turn a deaf ear to me as a so-called "Bush Basher" -- for, as I will explain in a little bit, the battle I describe is not really about the current occupant of the White House. NO. It is more about 'us' as a people, it is about the branch supposedly representing us – the Congress, and it is about FUTURE presidents, and whether they will rule as despots, or servants of democracy. [In other words, if you aren't alarmed by the things this president is getting away with, think about what a president YOU DON'T TRUST might do with the kind of power I am going to describe]}

In the short time I have left, I simply cannot catalogue the extensive list of abuses of power so poignantly demonstrated *in part* on the video. Instead, I will merely give you THE TOP TEN ABUSES OF POWER BY THE BUSH ADMINISTRATION.

All of these abuses share one common characteristic ---

they all display the executive branch's arrogant contempt for the LAW, and ANYONE, or ANY INSTITUTION, which dares question its exercise of power.

**So here are my TOP TEN Abuses by the Bush administration:**

1. Detention of Citizens without charges or trial. For nearly four years now, this administration has detained both citizens and non-citizens alike without charges, lawyers, court hearings, or trials, theoretically forever. [USSC said "No" in 2004, but non-citizens are still being held.]
2. Use of Secret and Coerced Evidence. The Admin. wants to use secret evidence and coerced confessions to justify the detention of people [current proposal in Senate; never done in American history; Warner, Graham and McCain leading GOP dissent].

*``TRUST US. You're guilty. We're going to execute you, but we can't tell you why." That is how Senator Lindsey Graham, Republican of South Carolina, characterized the Bush administration's recent proposal for a draconian new trial system to deal with accused terrorists*

3. Abolishing the Writ of Habeas Corpus. The admin. is urging the Congress to make it *impossible* for persons in custody to bring their case before the courts using the writ of habeas corpus [this is in all current senate proposals!]
4. Immunity or Pardons for Abusers and Torturers. The admin is trying to get Congress to adopt a rule granting immunity or pardons to all government agents who may be accused of violating the Constitution since 9/11, including members of the Bush Cabinet and the President himself [current Bush proposal].
5. Warrantless NSA Spying on Americans. The president claims he has the inherent power to violate the clear letter of a congressional law (FISA) that strictly lays out how wiretapping of Americans is to be done, and at the same time he is demanding that Congress pass another statute expressly giving the President the power to secretly spy on American citizens, entirely at his own discretion, with no review (warrant) by the courts. (*NSA wiretapping revealed in December, Senator Specter says "on its face, unconstitutional; allows 72 hour delay in notice to court in emergencies, ACLU lawsuit, win in Michigan, quotes from judge, Judge's ruling, if upheld, will render Bush impeachable for "high crimes and misdemeanors" Bush was lying when in 2003 he said all searches were approved by a judge*):

*The Office of the Chief Executive has itself been created, ... by the Constitution. There are no hereditary Kings in America and no power not created by the Constitution.*

-- Judge Anna Diggs Taylor  
U.S. District Court

"It was never the intent of the Framers to give the President such unfettered control, particularly where his actions blatantly disregard the parameters clearly enumerated in the Bill of Rights," wrote Judge Anna Diggs Taylor in her decision in *ACLU v. NSA*

6. Presidential Signing Statements. Over 750 times, the president has claimed he has the inherent presidential power to ignore a statute, or portions of it, when signing it into law. [torture law last December, no wonder no vetos]
7. Abuse of National Security Letters. The Bush admin has used what are called "National Security Letters" thousands of times to obtain business and other personal data without the approval of a judge. [ACLU has sued to stop abuse]
8. Section 215 Patriot Act Gag Rule on Librarians. The Dept. of Justice has vigorously enforced the GAG RULE against librarians who were forbidden from revealing that the FBI had demanded records of a patron (ACLU won case, librarians can now speak)
9. Use of secret prisons and secret detentions. This administration has now admitted it maintains numerous secret CIA prisons around the world, despite possessing no authority in U.S. or international law to do so. Also, the evidence is clear that our government has used "extraordinary rendition" to send prisoners to countries with a record of torture, with the expectation that such torture will be

done to extract confessions. Note: *Secrecy a massive problem with this administration, more secretive than the Nixon administration.*

10. The Use of Torture. From Abu Grahab, to Guantanamo Bay, this administration has incredibly, and shamefully, claimed that persons captured by the U.S. military on the battlefield OR elsewhere are not subject to the protections of the Geneva Conventions, and can therefore be tortured (not their word, but the right one to use) during the course of interrogations. [USSC said No this summer in Hamdan]. At this moment, there are proposals in Congress being pushed by the administration that would "reinterpret" the language of these protections, something that Colin Powell has said would undermine our moral standing in the world.

Last week, 27 retired military leaders warned Congress, "If degradation, humiliation, physical, and mental brutalization of prisoners is decriminalized" then US soldiers will suffer similarly." And leading GOP opponents in Senate are GOP are former or current military men.

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The dire constitutional threat that runs through all ten of these abuses is the brazen attempt by a highly secretive group of people to PLACE THE PRESIDENT ABOVE THE LAW.

For our constitutional system of checks and balances to prevail, this **cannot stand**. For if this arbitrary use of power is allowed to continue, the precedent will be set for future executives to ignore laws he or she doesn't wish to follow, and we will no longer be "A nation of laws." Instead, we will become a pitiful nation "of men"... a place where the president becomes law *incarnate* ---becomes the law itself.

But what does that really mean ---- a nation of laws, not men?

Well I think the most revealing way to convey the essence of this concept is to talk about another GW – George Washington, the man rightly described as the "father of our country." I want to tell you about what he did to make sure all the fighting during the revolutionary war was not wasted—that American would indeed become a special place on earth, and a leader among nations.

*[Tell about suffering of soldiers, lack of pay, coup against Congress being contemplated, people asking him to become king, his refusal, 1783 Newburg Crisis, eyeglasses, "Forgive me gentlemen, for I have grown gray in you service and no find myself growing blind." Weeping men. GW later resigns his commission. King George III reportedly says if he does give up power, he is one of greatest men on earth.]*

GW demonstrated through his actions that he understood that the war was not fought so the people with the guns could call the shots in the new government. He also showed us that the war was not fought in order to replace one king with another--as benevolent as that king may have been. And finally, he made it clear that independence from England was not won in order to set up a form of government where a conquering military hero would become a supremely powerful executive who could run the country as his own.

No. The American War for Independence was fought so the American people could govern themselves in a radically new way -- through a responsive, accountable, and democratically-elected republic.

So what would the Founders today think about an America where a small group of super secretive people in the executive branch attempt to run the country irrespective of the opinions of the other two branches, while secretly conducting warrantless spying on Americans and locking up without a trial or lawyer anyone they deem to be an "enemy" of the state, irrespective of what judge might think?

The great majority of them – perhaps all of them -- would probably feel as if the revolutionary cause they had so bravely fought for had been betrayed in a most shameful way.

I feel confident in saying this because the Founders themselves knew war--they had just defeated England, the strongest nation on earth--a nation that continued to have troops to the north in Canada. A nation they would nearly go to war with again in the 1790s, and a nation they would go to war with in 1812. Add to this the presence of the French to the west and the Spanish Empire to the south, and you can see how precarious the United States' situation was in the 1780s.

Don't you think they might have been tempted to go the easy way and insist Washington take charge? Don't you think it must have taken courage to instead set up the first constitutional democracy in the history of the world? It had to be--for it had never even been seriously attempted before.

As we struggle with the dilemmas presented to us by the so called War on Terror --- and listen to our president tell us that he MUST have unilateral and unchecked powers or we will all be in great peril --- we would do well to reflect on the bravery and integrity displayed by George Washington in the early days of this republic.

He and others around him had the courage to do the difficult thing--the messy thing--the inefficient thing--the scary thing -- in setting up a government based upon laws, not men; based upon consent of the governed, not acquiescence to arbitrary and unchecked power; based upon respect for the individual, not the tyranny of the majority.

Expedience did not guide the original George W-- faithfulness to the ideal of a democratic republic did. We should do the same by insisting -- no, demanding -- an open and accountable government that respects the rule of law, the Constitution, and the rights of the individual.

The Roman historian Tacitus wrote that "**the desire for safety stands against every great and noble enterprise.**"

If the army officers at Newburgh had desired safety in the form of the financial security they so justly deserved, then, quite simply, the America we know today would not exist.

If George Washington and his courageous peers had desired the safety of having him serve as a virtual dictator, then American democracy would have never come about.

As modern day Americans, we must not allow a preoccupation with safety to result in the destruction of the essence of that "great and noble enterprise" known as America.

Please tell your representatives in Congress you care. Tell them you think the restoration of the rule of law is essential to preserving America, and that no one, not even this President, or any president, is above the law.

Now, more than ever, we must demonstrate the courage of our forbears and *lead with our values, rather than follow our fears.*

Only then, can we be both safe and free.

Thank you.

=====Gingrich Quote=====

In our battle against those that detest our free and prosperous society, we cannot sacrifice any of the pillars our nation stands upon, namely respect for the Constitution and the rule of law. Our enemies in the war against terrorism abuse the Islamic law known as the Sharia that they claim to value. It is perversely used as justification for their horrific and wanton acts of violence.

We must demonstrate to the world that America is the best example of what a solid Constitution with properly enforced laws can bring to those who desire freedom and safety. If we become hypocrites about our own legal system, how can we sell it abroad or question legal systems different than our own?

- Newt Gingrich, Republican, former speaker of the House, said in 2003