

President's Column

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July 4. December 7. September 11. Some dates, standing alone, and without more, convey meaning so profound that human words may serve only to limit the thoughts and emotions embodied therein.

Nevertheless, when Americans consider July 4, they say “the birth of our nation.” It was the birth date of a democratic form of government—of a nation based upon the principle of government by the people, of the people, and for the people—and of a nation founded on the concept that all men (and women) are created equal.

December 7, of course, is “a date which will live in infamy.” It is the date when the United States, which had theretofore attempted to isolate itself from the entanglements of other nations, was involuntarily thrust into the fray, into a great world war, from which it emerged an even greater nation, a leader among all nations.

September 11, 2001. How will historians characterize the significance of that date? Most likely it will be remembered as the date when the world went to war against terrorism. And if it is a war eventually won, it is certain that even in the centuries to come September 11 will have a special place in the history books.

But consider for a moment an even greater significance to this date. It may not be as exciting as the birth of a nation or as bold as a war fought and won. Just as, in the history books, when July 4 is remembered it is not so much about a document that was signed on that date as it is about ideas of a new nation expressed therein, likewise, it is possible that September 11 may not be remembered so much for the acts of terrorism that occurred on that date as it will be for how our nation, founded upon principles of liberty, fought to preserve the very liberties that were threatened by the terrorist acts.

Benjamin Franklin, one of America's founding fathers, was said to have remarked that anyone who would sacrifice liberty for the sake of safety deserved neither. Yet that is exactly the balancing act that the United States, and indeed other free nations, face as we endure the aftermath of September 11. Will September 11 be remembered as the day that our liberties were tested and lost? Or will it be the day that we began a serious debate over how much, if any, liberty we as a nation can sacrifice for the sake of safety and still be a nation of liberty rather than oppression?

There are those who say that if we allow September 11 to erode our constitutional freedoms, then the terrorists will have won. There are others who argue that safety can be achieved within the bounds of our constitutional principles without violating basic liberties. This debate is one that, according to our system of government, rightfully belongs in the legislative branch. And we, as judges, are watching as the debate ensues.

But we will be the ultimate arbiters of these issues. When the liberties of our nation are tested, they will be tested in the court systems across our country.

Our federal courts will grapple with questions of profiling and discrimination as new federal standards and restrictions are imposed on air and other forms of travel to reduce the opportunities for terrorism. State and local courts will labor over constitutional challenges to new state statutes and local ordinances designed to make our communities safer. The age-old issues of searches, seizures, and due process rights of the accused will take on added dimensions in criminal courts throughout the land as more citizens are accused of aiding and abetting terrorists or terrorist organizations.

Judges will be called upon to make difficult decisions, decisions that will potentially subject them to public ridicule or clamor. Yet, as judges, we know we can never yield to public pressure in circumvention of our duty to uphold the constitution—though our job security may be at stake.

As Alexander Hamilton explained in the Federalist Papers (No. 78), without oversight by courts of justice, all rights and privileges reserved in our Constitution are meaningless. It is not only the province but also the obligation of courts to conduct this exercise when properly called upon to do so, and to take our obligations seriously and somberly.

The history books may tell a story of how the horrific events of September 11 challenged the fundamental freedoms of our democracy. It is my earnest hope and most sincere expectation that the volumes will be replete with examples of brave and independent judges who labored over difficult decisions when called upon to do so—judges who did their part in our system of justice to preserve the constitution while helping to make the world a safer place for ourselves and our loved ones.

