



Keynote address at the Bill of Rights Institute's *Being an American* Awards Gala – March 31, 2009

Justice Clarence Thomas

Thank you. Thank you all. Thank you, Dr. Templeton for reading all my words. [laughter] It gives me a pass and thank you for your kind introduction. I'd like to thank each of you for being out in the middle of the week. This is a rare sighting for me to be out at this point in the week, and certainly during a sitting week, but this is an important evening.

I'd like to thank my bride for being here. It's one great thing about, we've been a team for awhile and kind of enjoy each other a lot and I must admit I admire my wife because she has never lost sight of the principles that she came to the city to defend and each day whether she's working at home or at her Hillsdale office, she always has that spirit and that energy to defend the principles of our country. It is a wonderful spirit to emulate. I tend to be morose sometimes, she's always energetic.

I'd also like to take my hat off to my friend Juan Williams. I've known Juan a long time, it is though we grew up together and the one thing in all the agreements and disagreements, growth and working through issues, he's always been honest and in this town that counts for a lot and [clapping] during some very difficult times he was also courageous and I admire honesty and courage especially in this city, and we should preserve and protect that rare commodity.

Now what I'd like to do this evening is to not go on too long and to not lecture you. I told my wife before we came that I had run out of things to say. Between the book, and opinions, and speeches, and lectures there's nothing else to say. And perhaps, I was kidding her as I was writing my book that I was tired of talking about me and asked her to talk about me. Of course that didn't quite work, but it was worth the try. But the...I guess it's not so much that there is a limited supply of ideas but I think that you have a sense - at least I do - that at some point people should be tired of hearing from you. I've been fortunate to have been in this town for quite some time now, almost 30 years. I have....I'm rounding the last turn for my 18th term on the Court, and as I was thinking about these young people I realized that many of them had not been born when I started there. That is a sobering recognition.

I'd like to make a couple of points, and then a final point and make considerable amount of time available for these young people's questions

which I think are far more important than any of my musings. I think that the framers, and especially Madison - who gave us our Bill of Rights - and Jefferson - who gave us our Declaration of Independence - they understood that for liberty to exist, the populous needed to be educated enough to understand liberty and to be able to defend liberty. They also understood that liberty was not on automatic pilot, that liberty would not exist simply because it was once started and that having won it, it was very delicate and had to be protected.

The one thing that stood out to me about the Bill of Rights Institute was that it understands that. It understands that to protect this precious but essential commodity young people, the next generation and the generation after that, has to understand what they're protecting and why it has to be protected.

I've been, as I said, on the court for quite some time, and I have to admit that when I started this endeavor or, for some, an ordeal that you have a level of understanding of our great document, our Founding documents that it's workable, it's functional; but after you work with that document for so many years your level of understanding and appreciation grows. It becomes, as I say to my law clerks through all the opinions, all the briefs, all the back and forth, that I am more of an idealist about this great document today than I was the day I became a judge. That understanding and that passion about the Constitution, about our Declaration, about our country, about our Founding - they represent and fuel the basis for wanting to do the job. There are people that we have sent off to war - as I had the wonderful opportunity that was a little bit awe-inspiring, at the same time overwhelming, to meet young people who returned from Iraq with very fresh but very, very difficult wounds. And as they were apologizing to me for taking so much of my time I couldn't help but think and say to them that it is I who should be apologizing to you for not giving as much as you've given to save our country, to stand up for us, and our liberties. [clapping] And so it is the passion that they have, the commitment that they have about our country in a different way and not in harms way that fuels working at the Court. It is not for joy, it is not for self aggrandizement, it's not for legacy. It's what fuels my wife's passion to do her job. It is the right thing to do. It is the right thing to try to preserve liberty. [clapping]

And I'd also like to say that I'm not one of those who will criticize or beat on my colleagues or the institution. We have to preserve our institutions and I think that there is a way to disagree and these young people will learn it from us, that we can constructively say I respectfully but firmly disagree without acting out a disagreeable attitude and reaction to other people. That

is the way it's been at the court. I sat between for, between my two friends Justice Ginsberg and Souter, for about 15 years and I was unable to persuade them but always able to act in a civil and warm manner, of people who are engaged in a common endeavor to try to find the right answers and decisions about our great document in this wonderful country.

You know, sometimes when I get a little down, I go on that as I say to my wife the "Inter-net" and I look up wonderful speeches; like speeches by Douglas MacArthur, to hear him give without a note, that speech at West Point- duty, honor, country- how can you not hear those words and feel strongly about what we have? Or how can you not reminisce about a childhood where you began each day with the Pledge of Allegiance as little kids lined up in the school yard and then march in two by two, or a flag and a crucifix in each classroom. I think that those things remind me of why it's important, and they fuel, they give you that energy to get up everyday and to look at cases, whether they're first amendment or the first section of ERISA, there's things that effect our country and the things that affect the kind of society that we want, and the things that will affect the lives of these young people here.

Now on with my few remarks about tonight then hopefully I'll be able to take quite a few questions. I should again repeat that I thank all of you who have been a part of this wonderful event and all of you who have had the foresight in planning and implementing this essay contest on being an American. What a wonderful idea and I congratulate each of the young people who are tonight's winners. I had an opportunity to chat with them informally and to take pictures with them and that is always inspiring. That's one thing about this job you know you get a little tired and then you go in and you see your law clerks and you're really energized. You see these young people and you say this is what it's all about, this is the good part of the job. Each of these young people have demonstrated through their essays and the mature depth of their thoughtfulness and the discipline that it took to communicate their ideas effectively.

I'm sure they edited and re-edited and thought through and rewrote their essays or they would not be the 27 young people who won out of 31,000. I assured them I would have been in the 30,000 plus who were left home. By doing your best you have demonstrated one aspect of what it means to many of us to be an American. I of course grew up during a different time and under different circumstances in a different era. I will not belabor that. Things were not as good as they are today, but they were good enough for me and they provided the soil, and there was enough of all of this

there for me to be here, and as Juan eluded to, enough to fuel changes that made it possible for us to be in this room tonight.

But recently, a college student asked me what I would recommend for them as our country continues through these difficult economic and financial times. I have to tell you I was momentarily at a lost for words and I eventually asked the assembled group of 20 or so young college students how many of them had cell phones or rather, how many of them did not have cell phones, of course no hands went up - they all had cell phones. None of them had known a life as a young adult without that convenience that is so new. So you see today, without giving a litany we have plenty and to some perhaps, too much and in my travels I have been surprised at how many people think that prosperity is a constant, that things are never to be difficult again, that there are never to be great challenges. Indeed it seems that many have come to think that each of us is owed prosperity, and a certain standard of living. They're owed air-conditioning, cars, telephones, televisions. Some of us by contrast thought that air-conditioning was the ultimate luxury, that having a television was something that you saved up and one day could get, that a telephone was not an essential and that a car, at least a working one, was something to be happy about, not something that you were owed.

I have to admit I'm one of those people who still thinks the dishwasher is a miracle [laughter]...what a device! And I have to admit that because I think that way, I like to load it. I like to look in and see how those dishes were magically cleaned. But in this era, in the era that many of us grew into adulthood, we did expect life to be difficult, we expected there to be challenges, but - we hoped that by living virtuous lives and working hard, all would eventually work out.

But there were no guarantees, except the guarantee that we had the right to try. All around us, for the most part, we're in the same boat. There of course were many challenges but with all the apparent and real problems most around me in Savannah, in Liberty County believed in the American Dream, even though it had either eluded them or had been denied them for countless reasons.

I found it perplexing as a young man that so many of the people I knew who never made it beyond being domestics and day laborers clung tenaciously to the promises of this country. So no matter that they have been denied opportunities because of race or lack of education or other difficult circumstances, they passed on the hopes and the dreams that they once had, or that they still have and equally important, they passed on that sense of obligation that is necessary to see the dream become reality.

Today there's much focus on our rights, indeed I think there is a proliferation of rights. I don't deny that these rights are important, they are. But I am often surprised by the virtual nobility that seems to be accorded those with grievances. At least it seems to me that more and more people are celebrated for their litany of grievances about this or that. Shouldn't there at least be equal time for our "bill of obligations" and our "bill of responsibilities"? What is required of us? I think we have an idea.

You know I watch my grandfather, I think he is the greatest man I have ever known. And I admit, you know I told my wife that yesterday was the 26th anniversary of his death. Why is it that there are certain days we never forget, that still bring pangs of either pain or a smile to our face? That is one of those days, but he's the greatest man I've ever known.

I remember watching him in the midst of a hurricane in Savannah, going out of the house, with wind blowing and rain driving down. He walked through about a foot of water to the corner to clean out the sewer so that our house would not flood. I remember when one of our cousin's house burnt down. He began planning immediately how to build another for her, before the ashes lost their warmth from the fire, and we did. In his view that was required of him as a citizen, as a relative, as a man.

When I begin to feel overburdened or put upon in Washington or in my job, I often like to think of those who have made it possible for us to be here tonight as a free people. People like my grandparents, people like the man who thought it was important to clear the sewer so that houses wouldn't flood. There are those close to us who've helped us and made it possible, our parents, our teachers, and our friends and there are those who are in the not so distant past who made this country safe and free or who changed it on so many ways for the better. Those who fought and died and gave in the words of President Lincoln "that last full measure of devotion."

I have on many occasions, or a number of occasions when things were becoming particularly routine gone down to my basement to watch *Saving Private Ryan*, I can't tell you why that particular movie except we have it and it's about something important in our lives, World War II. After so many of his men had died saving Private Ryan, and actually I guess it all starts with the mother being informed that her three of her sons had died, and watching that poor lady drop to her knees, that she had lost three of her four children in war for our country. But after many men had died to save Private Ryan and Captain Miller himself was dying, he turned to Private Ryan and he said "Earn this, earn it." What a burden. Earn the right to the death of so many people so that you could live, and then Private Ryan now an elderly man at the end of the movie, turns to his wife for reassurance, and we've

heard this in real life from some of our elderly relatives, “tell me I have lead a good life, tell me I’m a good man.”

That is a man who is saying let me know that it was worth it. Those who signed our Declaration of Independence, as Dr. Templeton so eloquently noted, could well have been signing their obituary or their death warrant. They were taking on arguably the most powerful man in the world, who was none to happy with them and all their shenanigans. But they were willing to commit all, to put it all on the line, the final sentence of the Declaration of Independence as Dr. Templeton read is sobering and yet so reassurance and it bears repeating, “and for the support of this Declaration with a firm reliance on the protection of divine providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.”

They were willing to give all to obtain liberty. What are we willing to give to retain it? You young students have already demonstrated at your tender years that you have an idea about what is most important about being an American, and they’re wonderful ideas. You know that it is bigger than us, but you also know that to build that great bold work of liberty, each of you, and indeed each of us, must live lives worthy of the liberties that we have inherited and that others have made possible for us. In a sense we each must hold ourselves as accountable for our lives as Private Ryan held himself accountable for his life.

Many died to save him and many, many more sacrificed and died for us and our liberties. Will we one day be able to say that we have earned what they gave us? I congratulate each of these young essay winners and I thank each of you for being here this evening to also congratulate them and I’ll take your questions, Thank you. [clapping]

Questions:

“Since the Civil War what has changed the way American’s view the Constitution the most, and why?”

Is that from one of the students? Oh my goodness, whoa. I would have to say the 14th Amendment, for a lot of the obvious reasons- the equal protection clause and the fact that it assured the rights to, for the purpose of assuring the rights to the freed slaves, it assured the rights to all Americans, all citizens and gave dual citizenship and there’s this wonderful if you have a chance and you read *Plessy vs. Ferguson*, read Harlan’s dissent; it is a fabulous, fabulous short decision that I think just nails it, just wonderfully done.

Not only does he show how to be a judge by separating your personal views from what the Constitution says he shows the intent and animated the 13th and 14th Amendments, but it also is important because you have in it the dual citizenship of the state and the national government and you have the doctrines like the doctrine of incorporation that is you get the Bill of Rights applied to the states and to the local governments through the doctrine of incorporation. So that is a big jump because by, textually if you look at the Constitution, 1st Amendment says “Congress shall make no law respect, etc.” it doesn’t apply to the states, but through the doctrine of incorporation that you get through the 14th Amendment, selective incorporation, which was rather controversial it is then applied in the way that we know it today, so it’s had an enormous impact. I’m sure there are other things that have happened when you look at the big gains in the civil rights era, etc. a lot of that was through the 14th Amendment, so I would have to say just off the top of my head, the 14th Amendment, and I bet you someone’s going to hear that and say well no it’s a dormant commerce clause or something which is a-textual.

“How have your experiences as a Supreme Court Justice affected you as a person?”

How has it affected me as a person...not a whole lot. It’s changed my hair.....and I have a bit more girth. But I think just on a personal level, it has not changed me that much, I am who I am. I’ve been the same person a long time and I kind of like being me. And I still take out the trash so that’s something, so you know you never lose touch with reality. And you know one of the things, you know I have the opportunity to do things with my bride, we go to football games or we go motor-homing and you try to be as normal as possible with all the security considerations and I like that and I miss that part of life more than anything else, that I can’t just walk around anonymously anymore. I really truly miss that.

I think though the way it’s really changed me, I think even talking tonight, I’m very very reluctant to, to have a strong opinion on something without having briefs or opinions to read and think through. It slows you down because, you know this job is easy for people who’ve never done it. [laughter, clapping] And what I have found in this job is that they know more about it than I do, especially if they have the title “law professor.” It also is easy with people who know what they think before they’ve thought. They know how they’re going to come out and which position is the right position. For the rest of us who have to decide, and who want to live up to

that oath to do it the right way, it is a little bit, it is a lot harder, and it requires that you not have these strong, un-counseled stakes in issues that are going to come before you. So you're reluctant to dig in on these big things that are happening in our society until you've had a chance to think them through, until you've got a case before you. So that's sort of a long way of saying it slows you down a little bit.

“How does someone who takes out the garbage and loads the dishwasher balance people's freedom with their need for security?”

You know that balance is in the Constitution. I don't have to make those policy decisions and I think what happens is that you can get in these jobs and you can think suddenly that you have more authority than you're given under Article III of the Constitution. I don't think we are entitled to do that simply because we're judges. I think if anything, the job requires you to take on a more humble approach to judging and to be willing to say I have no authority to make those decisions. You know, you take, I remember when I first when on the Court we had a couple of cases involving Haitian refugees and my own views early on, unformed and new at judging at that level was that, I thought that these people should have an opportunity to come into our country, but that wasn't a decision for me as a judge, so it was enormously difficult to balance that limitation with what I wanted to do, and overtime you learn how to do that properly but it is a discipline, that when even when you think strongly about something you have no authority to make some of those decisions so the balance is struck in the Constitution and in the laws that we have and my job is to figure out as best I can what those balances are, and that is imprecise I admit, but it has the benefit of being legitimate as opposed to saying I have because I'm in a robe, I can make up a new balance because I think the world has changed, that's not my job. That's what you elect people for and that's what you vote for. You don't assign that role to a new regal institution up at the Supreme Court. (clapping)

“How does your faith or your world view impact your role as a Supreme Court Justice?”

Well first of all I don't even know what a world view is anymore. You think you have things figured out when you're young and then you as you get older you figure, oh my goodness all that's wrong. I think the more you

learn, the more reluctant you are to say I've got it all figured out because some of this is beyond me. But as far as your faith, I think that it really gives content to the oath that you took. You took an oath to do a job right. You know, I hear people say, they ask questions like, such as, what do you want your legacy to be? Yeah, what do I know? I'm not going to be here anyway when you have a legacy. But the point is, we're not in the job to establish a legacy. We're in the job to live up to an oath and do it right and I think faith gives content to that because you say "so help me God". The other thing is that there's some tough cases. There are some cases that will drive you to your knees, and in those moments you ask for strength and wisdom to have the right answer and the courage to stand up for it. But beyond that you don't, it would be illegitimate I think and a violation of my oath to incorporate my religious beliefs into the decision making process. And I don't think it's appropriate so I don't do that. It's more personal, it really helps me to do the job the right way and to do it properly. (clapping)

"How is your judicial philosophy changed, if at all, from law school to the present?"

Well in law school I didn't have one, I was just trying to graduate. You know in law school you really don't know a whole lot, you learn substantive due process, you try to figure out what emanations from penumbras are, you take your tort classes and your UCC Classes and you do your best. And I think what happens is you grow up. I mean you've been a judge (to Napolitano), when you begin, it's one thing to learn a case. It's another thing to use that case to decide another case, to decide the fate of someone. Those are two entirely different endeavors. You know and this could be totally wrong and it may be totally apocryphal but I'll say it anyway recognizing that I disclaim whether it's accurate or not, but it makes the point.

There are many people who think because they know a theory about law, that that's the same thing as actually judging. You've done both, you know the difference (to Justice Andrew Napolitano). It is much harder to do the judging part than to talk about it. So someone said to me that a great basketball player, and they used Michael Jordan at his prime, had been criticized by a sport's writer who really knew basketball. And someone went to Michael Jordan or some other great player and said to him, "this reporter criticized you", the sport's reporter, "what do you think of that?" And his response supposedly was, "tell him to suit up". Those are two entirely

different endeavors- playing the game and knowing about the game. So I think that the whole process of learning a judicial philosophy, my judicial philosophy is to try to discern the intent of the framers in constitutional cases, and in statutory cases, the intent of the legislature and to try to keep my personal views out of it completely, as best I can, does that make sense? Thank you. (clapping)

“Do you feel that the American people and government adequately uphold the Constitution today?”

(Laughs) We'll move on. That's what we do everyday. Let me move on from that, I know that trick Brian (to Brian Jones). You know, I don't know. I can't judge, I disagree with people about their approaches but I really, my concerns about our fellow citizens is a more, quantifiable or observable concern. And that is how few people actually take the time to know what's actually in the Constitution and that's what so admirable here, that the opportunity to learn about the declaration, the Founding documents, our framers, etc, are all being made available to teachers, it's being made available to young students, it's reinvigorating that sort of civic connection, so I think that whether or not I agree with how people come out, it's not the point but rather that this is an opportunity for them to learn more about that great document and it's right here that you already have it and you've have tens of thousand of teachers who have gone through this program, you have access to this program probably on the web and you have 31,000 young people participating in this great essay. That is teaching them about it and once they have that tool and they have that understanding they can make up their own minds and then we can respectfully disagree as people who are civil and also civic minded.

“Where do our freedoms come from? Do they come from the government? Do they come from the consent of the governed? Do they come from our humanity? Jefferson is listening.”

I think Jefferson felt that our freedoms were transcendent and that they were inherent rights, and in order to be governed we were willing to give up some of those rights. So, I don't think, I tend to agree to Ronald Reagan when he said it and I think he was simply paraphrasing Jefferson, “our freedoms do not come from the government, the government comes from us.”

With that though, I know their trying to stay on time, I'd like to say Judge Napolitano I've seen you quite a bit and you've always been such a

pleasant, respectful man, and intelligent, and I appreciate that. And I always enjoy your commentary. I'd like to thank Brian. I met him as a student at Georgetown, 19 years ago when I was on the court of appeals, and I'm proud of what you've done and as I've said to Juan Williams I will admire until I draw my last breath, not because we always agree but we do agree on what's important- the good things, and the right things and to each of you I want to thank you all for being here, you know when we get in the city and we can get full of ourselves, but in the end we are human beings trying to do the right thing and pass something precious on to the next generation in the best way we know how, and that is these wonderful things we have in our country, our country and our Founding documents. So thank you all for being out here and I appreciate it.