

***The following are the remarks of former Associate Justice Sandra Day O'Connor at the 2007 Annual Meeting of the American College of Trial Lawyers in Denver, Colorado on the occasion of the creation of the Sandra Day O'Connor Jurist Award and the presentation of a bronze bust of Justice O'Connor in honor of the occasion.***

I am quite overcome to not only be here with all of you and to have a medal produced that will be given in the future, and to have an award named for me to be given in the future to jurists selected by you . . . . And I'm so touched that you have this bust made of me. . . .

I suggested to Frank Jones that in light of the close relationship so many of you have had through the years with the Supreme Court of the United States and with many of its members, that you might be willing to have this bust go, not to me, but to the United States Supreme Court. . . .

The Chief Justices are all in the Great Hall with white busts in those niches. I'm sure that you've seen them. And there are a few of former Justices, including my former colleague and treasured friend and your friend, Lewis Powell. So maybe that could go to the Court to be placed, I hope, near my old friend, Lewis Powell, . . . I should say my former dance partner. Now, Lewis thought he was a very good dancer, and he was. I'm not sure he was quite as good as my dear husband, John O'Connor, but we're not going to get into that.

As you've heard, Judge Tacha and I have returned from the recent completion of the Canadian-U.S. Legal Exchange. And for all the reasons she gave you, which were so beautifully expressed by her, I agree with her that the exchanges that the American College of Trial Lawyers has promoted with countries such as Canada and the United Kingdom have been enormously important.

We have to look back a little bit in history. As you have heard, we celebrated the 400th birthday of the founding of Jamestown in Virginia this year—the first permanent English settlement in the United States. It brought us a few things that we care about. For one thing, we're all speaking English. And for another, when the Charter for the settlement in Jamestown was written in Great Britain, by barristers, actually – I don't know what they were doing writing the Charter, but they were – from the Middle Temple, it was to support the first venture capital operation in the New World. They thought they could send some settlers over and just pick up gold on the ground and, in the process, find a new route to the Pacific Ocean. They thought they would make a good deal of money.

Well, it didn't turn out that way. The settlers who were chosen were not chosen because they were good carpenters or builders or herdsman or anything. They were chosen because they were well-to-do and they could pick gold up on the ground. And they suffered a lot. Within a year, over half the original seventy were dead. They drank water out of the James River instead of digging a well, and many of them just drank polluted water and died.

It was a very difficult settlement. But in addition to the English language, the Charter itself, drafted by our colleagues in Great Britain, said that the settlers would apply the English common law. In other words, the settlement in Jamestown established the concept of the rule of law, which stemmed from the Magna Carta and the common law and the system in Great Britain, and

that was a priceless gift to the New World.

The settlement brought other things not quite so good along with it—and it's taken us more than 300 years to address them—such as the use of tobacco and the use and presence of slaves. That wasn't such a good inheritance. But through lawyers, over time, even those problems have been largely overcome, but they've been overcome by application of the rule of law and the judicial process.

In the American College, what we worry about today is peace in the world. We don't want to be engaged in wars around the globe. The best hope for peace in the world, it seems to me, still is the notion of the rule of law. To the extent that other nations accept that concept, we're going to move closer to peace. And that's why what you do at the College and what we do together matters more than it ever did in the past.

The American College of Trial Lawyers is the best we have to offer in this country in the legal profession. I've already told you why it is the legal profession and its concepts that are fundamental in the founding of our country and in the hope of the future. You are the best we have, and you have some marvelous, marvelous members, you have had in the past, you have now and you will have, and your role in maintaining contact with other nations with these traditions has been critical and will continue to be. And your working on other issues that affect lawyers more directly, like electronic discovery and things like that, I hope you'll find a way out of that morass. I bet you can.

We just have a lot to do still in this country to make our system work and to make the rule of law a norm in the rest of the world.

Now, even in our own country, we are neglecting to teach young people government and civics and the need for an independent judiciary to protect the vital freedoms in our Constitution given to all of us. And this knowledge is not inherited in the gene pool. We don't just pass that on genetically. We have to teach it, and we've stopped doing that. You have to help us make sure that we start to do it again.

I have been impressed recently with some levels of support around the country. As I have talked about the attacks on judges and the lack of understanding around the country, about the need for independent judges, I've been impressed with some of the responses.

Now, I read a recent little piece in *Judicature* magazine, and it was coauthored by a conservative lawyer and a very liberal one, Bruce Fein and Bert Newberg. And they said this: "Judicial independence in the United States strengthens broader liberty, domestic tranquility, the rule of law and democratic ideals. At least in our political culture, it has proved superior to any alternative form of discharging the judicial function that has ever been tried or conceived. It would be folly to squander this priceless constitutional gift to placate the clamors of political partisans."

Now, that put it pretty well, and that's where we are today, and that's what I think all of us have to be concerned about. In my own efforts, which I thought I would devote some time to, since

I'm retired, and when I'm not sitting on the Circuits – which I don't intend to do all the time, . . . even as nice as it is – I think that time spent in reminding all Americans of why the framers of our Constitution chose to work so hard in creating three branches: to ensure the independence of the judicial branch from the other two, to ensure that the other two branches of government would not seek retaliation against judges for decisions they might not like.

We are seeing it today in Colorado. We are seeing it in South Dakota. There are even efforts in my home state of Arizona to change a system that has produced one of the finest state judiciaries in the country. We're seeing efforts to curb that.

We have judicial elections in a majority of states today, partisan election of judges, with the raising of large amounts of campaign money. From whom? From lawyers, from business interests who care about results.

Now, this is a strange way to go about selecting an independent judiciary. And these things didn't occur right after the establishment of our country. Indeed, when the framers worked so hard to establish an independent judiciary, the common framework was that judges didn't make law; they *found* law. Law was out there somewhere, preordained, and it was the role of judges to find what it was.

Well, with Oliver Wendell Holmes and a few other luminaries, we changed that way of thinking and we realized that indeed in a common law system, judicial opinions on new questions become part and parcel of the law. And they weren't just finding it from out there somewhere. They were having to articulate it, and in some instances, it answered questions that hadn't been answered before.

And with that discovery came a greater pressure from the public to say, “Well, if judges are going to make law, we want to elect them.” We didn't start out in this nation electing all our judges. That's a later phenomenon, and it's a very popular one today. . . .

I've been down to Texas and had a little conference down there to explore whether Texas would be interested at all in moving to a merit selection and retention election scheme. There's not much interest down there. I'm told on very good authority that at times in Texas, if there's an important case in a trial court, and two lawyers on either side, they sort of have the side agreement that each lawyer or lawyer's firm will make a contribution to the judge's campaign, so that it won't be one-sided. Now, what kind of a system is that, I ask you?

I mean, I think we have to do something about this. That isn't what we stand for or what you stand for, and we need to educate young people. And I'm trying very hard to put together a program that will be addressed to seventh, eighth and ninth graders. Middle school is when the light bulb starts to turn on in the mind and they begin to get it, and that's the time I think to get *them* interested. And we want to make an interactive program that will enable a student with a computer to plug into a permanent free website and to play the role of judge and decide some actual issues and then check and see how the courts did it, and to play other roles, that of an advocate or perhaps a juror, and to learn about what we're talking about and why it matters.

This is a complicated project, but with education, I think we can begin to make a difference. But we also have to remember the problems that we have in the various states that still have partisan election of judges, with massive amounts of money changing hands.

I thank all of you for everything you do. You do make a difference in our legal profession. I totally agree with Deanell Tacha [an earlier speaker], that you have and are making a difference, and I too thank you for everything you do, that you have done, that you've done today to honor my name and legacy. I treasure that more than you will ever know.

Have a good meeting, and continue doing lots of good things.