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May 14, 2007, 0:57 p.m.

## First Things First

By Fred Thompson

**EDITOR'S NOTE:** This speech was delivered to the meeting of the Council for National Policy in Tysons Corner, Virginia on Saturday, May 12, 2007.

**O**ne thing about folks knowing you are going to speak at the Council for National Policy, you get lots of advice as to what to say. A lot of good advice. Good talking points. In fact enough for several speeches. Also, some of your friends, knowing that you are thinking about running for President, urge you to give a rousing campaign speech.

Hopefully there will be an opportunity to do all of those things but tonight instead of all of that, I want to talk a little about what should be the *origin* of all those talking points. This would be the principles on which they are based — first principles. The principles you have been defending since 1981.

For Americans, these are found in the Constitution and the Declaration of Independence. They include a recognition of God and the fact there are certain rights that come from Him and not the government. They are based upon a respect for the wisdom of the ages, and a belief that human beings are prone to err; that too much power must never rest in too few hands. The result is a system of checks and balances and a separation of powers that flow from our guiding documents and from the rule of law.

Finally, if we want to change or alter these concepts or any provision in the Constitution, we are given a specific method to do that — by Constitutional Amendment.

So how are we doing as a nation in upholding these first principles? The answer is we could be doing better ... a lot better.

I want to tell you a couple of short stories from my own personal experience. Each story is about a man. They are both public figures and I was blessed with the opportunity to be of some small assistance to each of them. Their circumstances have to do with these first principles.

First, an observation. Our nation is based upon the proposition that our statutes, common law and the Constitution will not only be applied fairly between litigants, but will also be observed by the government. People will be able to rely upon the rules, usually long established, and their consistent application. This engenders respect for the law. *It is a sad irony that a nation that is so dedicated to the rule of law is doing so much to undermine the respect for it.*

Our founders established an independent federal judiciary to decide cases, not social policy. Yet more and more that is exactly what it is doing. *Roe v. Wade* is a classic example. And nowhere is it more apparent than with regard to the issue of church and state.

Many federal judges seem intent on eliminating God from the public schools *and* the public square in ways that would astound our founding fathers. We never know when a five to four Supreme Court decision will uphold them. They ignore the fact that the founders were protecting the *church* from the *state* and not the other way around. Instead of having the basic rules of society changed in the way clearly set forth in the Constitution by two-thirds votes of both Houses and by three-fourths of the states, the entire process is reversed by the stroke of a pen and supporters of the rule of law have the burden placed upon *them*, which is usually insurmountable.

We have always held our federal judiciary in high esteem, even at a time when most of our institutions are under assault. However, if judges continue to act like politicians they will get the respect currently given to politicians. It is already rapidly headed in that direction. The antidote for this, of course, is good judges. And presidents who know one when they see one ... one like John Roberts.

John Roberts is the first of the individuals I referred to earlier. The President asked me to help Judge Roberts through the Senate confirmation process. Certain things were apparent at the outset — he was a Conservative, he believed deeply in first principles, including the rule of law and, lastly, his opponents would do everything they could to defeat his nomination.

Judge Roberts's character, intellect, and devotion to the law were unassailable. Of course for a conservative this is just the *beginning* of the discussion, not the end. The usual liberal outside groups mounted their horses and charged, but we fought the battle and won. However, we were reminded once again of several things during this process.

- What a steep price even the best Conservative nominee has to pay. The *Washington Post* "Style" section criticized the way his small children were dressed. The *New York Times* was caught trying to get the adoption records of his children unsealed.
- We were reminded how desperate the liberal community is to keep the deck stacked in their favor.
- And most importantly, we were reminded that the quality of an individual can overcome all obstacles. So he is now Chief Justice John Roberts.

*I kept wondering throughout all of this, why would politicians want this to be the last experience a man would have before he assumed the role of Chief Justice of the United States?*

This also brought home again the importance of elections of a President and the Senate. It is ironic indeed that any President's legacy could well be formed on the basis of something that is usually very far from the public's consciousness — the nomination of federal judges. And on this nomination and that of Justice Alito this President can be proud and our entire nation can be grateful.

The other man is in a less lofty position. After years of sacrifice and service to his country, he sits at home with his wife and two children awaiting a prison sentence. His name is Scooter Libby.

As you may recall, for some inexplicable reason, the CIA sent the husband of one of its employees to Niger on a sensitive mission. She had suggested it. He came back to the U.S. and proceeded to publicly blast the administration. Naturally, everyone wanted to know "who is this guy?" and "why was he sent to Niger?" Just as naturally, the fact that he was married to Valerie Plame at the CIA was leaked.

Having virtually guaranteed that Ms. Plame's identity would be ultimately disclosed by using her, shall we say, "politically active" husband, the CIA then demanded that this leak of her name be investigated by

the Justice Department for a possible violation of the Intelligence Identities Protection Act.

The Justice Department, bowing to political and media pressure, appointed a Special Counsel to investigate the leak and promised that the Justice Department would exercise *no* supervision over him whatsoever — a status even the Attorney General does not have.

The only problem with this little scenario was that there was no violation of the law, *by anyone*, and everybody — the CIA, the Justice Department and the Special Counsel knew it. Ms. Plame was not a “covered person” under the statute and it was obvious from the outset.

Furthermore, Justice and the Special Counsel *knew* who leaked Plame’s name and it *wasn’t* Scooter Libby. But the Beltway machinery was well oiled and geared up so the Special Counsel spent the next two years moving heaven and earth to come up with something, anything. Finally he came up with some inconsistent recollections by Scooter Libby, who had been up to his ears studying National Intelligence Estimates. But he worked for Dick Cheney, so that apparently was enough for the special counsel.

I didn’t know Scooter Libby, but I did know something about this intersection of law, politics, special counsels and intelligence. And it was obvious to me that what was happening was not right. So I called him to see what I could do to help, and along the way we became friends. You know the rest of the story: a D.C. jury convicted him.

In our system all citizens are guaranteed equal protection. And when we appropriate *unlimited* resources and give *unlimited* power and direct it all toward *one* individual, there had better be extraordinary circumstances. There were none here. Just a case of public officials without the courage to do the right thing and stop this farce before it began. In no other prosecutor’s office in the country would a case like this one have been brought.

Incidentally, this was shortly after Sandy Berger, the National Security Advisor to President Bill Clinton, received a slap on the wrist by the Justice Department for lying about and then confessing that he stole and destroyed what we think were classified documents. We’ll never know, because he destroyed them. But we do know that he didn’t want the 9-11 Commission to see them. But nobody was clamoring for his head. Back to Libby.

I have called for a pardon for Scooter Libby. When you rectify an injustice using the provisions of the law, just as when you reverse an erroneous court decision, you are not disregarding the rule of law, you are enforcing and protecting it.

The Roberts nomination shows us that we can win against those who would use the Constitution for their own ends, even though it is always a fight.

Libby’s prosecution demonstrates how injustices can occur when public officials lack the courage to go against the public clamor and to do the right thing, thereby perverting the rule of law.

All this of course, reminds us of what Washington has become and why more good people are not coming into public service. Add to that the bitter divisiveness on Capitol Hill with regard to all things large and small, and you can almost see Americans throwing up their hands. They’ve got to be wondering, how are today’s leaders going to lead us with regard to all these difficult issues if they can’t even agree on fundamentals — things that are supposed to bind us together.

Some of you may think that this is not a very optimistic outlook. I'm reminded of something my Daddy used to say: A man who walks around smiling all the time can't possibly know what's going on. However, I am optimistic. I think we all are. But as Americans, our optimism comes not from an analysis of how things are, but from our belief that we can change what we see for the better.

We have road maps — at least two of them in fact — the Declaration of Independence and the Constitution — to guide us. How can we look at the world without thinking about inalienable rights, and doing everything necessary to protect our country? How can we think of fiscal policy or even health-care policy without remembering the limitations appropriately placed upon government and the importance of individual freedom?

This is a message that needs to be delivered. The people in this room have been delivering it for a long time. We must rededicate ourselves to this commitment and to the magnificent legacy we have been given. And I am honored to join you in this effort. Thank you.

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