

Welcome Address
FTC and the Utah Department of Commerce: Consumer Fraud and Business Symposium
September 20, 2018

I appreciate the opportunity to address you this morning. When Francine Giani extended the invitation to speak to you, my first reaction was surprise. I do not receive invitations to speak to non-captive audiences very often any more.

It is not that I am unaccustomed to speaking, or to being heard. To the contrary, as a federal judge, I am acutely aware of the fact that in my courtroom, the attorneys and parties that appear before me hang on every word that I utter and every question that I ask.

In my nineteen years on the bench, I have sentenced thousands of men and women to federal prison. What I say to those criminal defendants is listened to.

Yes, judges are used to being heard.

Senator Orrin Hatch, who always speaks at those ceremonies where new Utah federal judges are sworn in, tells the same joke each time. What is the difference between God and a federal judge? The answer: God does not think that he is a federal judge.

Think about that for a moment. I do not believe Senator Hatch intends it to be a compliment.

But today is different. You do not have to be here. I hope that what I am about to say may justify the few minutes that I shall take.

For almost 40 years, I have been involved in government at the local, state and federal level.

I have been a councilman in a small city.

I have been the chairman or executive director of three departments of Utah state government—including the Department of Commerce for a brief, but most enjoyable couple of months.

I have also served as the chief of staff to Utah's governor.

I have appeared before the state legislature dozens of times.

I have worked for a United States Senator and a member of the United States House of Representatives and testified before Congress on numerous occasions.

I have been in multiple meetings with Presidents of the United States and members of Presidents' Cabinets.

I have been a federal judge for 19 years.

I have written three books about our country.

I have taught classes about our government at the university level since 1991.

The conclusion I have drawn from these experiences is this: I am convinced that you and I live in a most remarkable nation. The system of government under which we live is the best the world has ever known. In the long history of this world, the freedoms, opportunities and security that we enjoy as citizens of the United States is incredibly rare, very precious, and sadly, very fragile.

Please remember those three words: rare, precious, fragile—I will return to them.

Before I continue, let me make this disclaimer: our nation is far from perfect. In its 231-year history, there is much that we did, and continue to do, that is wrong. We still have far to go to reach the noble objectives of equality, liberty, and rule of law that we all seek. Having been a part of government for as long as I have, I have witnessed dysfunction, ugly partisanship, and many reasons to criticize those of us who are in positions of responsibility.

Winston Churchill once said, “it has been said that democracy is the worst form of government, except for all those other forms that have been tried.”

Without hesitation, I again assert that our nation is remarkable, our system of government is the best the world has known, and ours is a system worth defending.

I attribute the success of this unique experiment in self-government to the Constitution of the United States—whose birth 231 years ago we recognized this past Monday.

I consider those who crafted that document to have been extraordinarily wise. I believe they possessed a unique grasp of human nature.

Today, it is common to criticize the Founders of America. Judging them by today’s standards of equality and justice, they do fail. Some owned slaves. None fought to give women equal rights. Most were wealthy white men. Yes, judging the founders by today’s standards of equality and justice, they fail.

But, there is just one problem with judging them by today’s standards and it is this: but for those imperfect founders and the sacrifices that they made and the instruments of government which they created, there would be no current, enlightened standards of equality and justice by which to judge them—not here in America or anywhere else on earth.

Every one of us in this room, whether we like it or not, have hitched our futures to the future of this nation. Our peace of mind, our ability to enjoy daily life, and our opportunity to succeed financially and in our chosen field of professional endeavor, depends upon the continued success of our nation.

Because our future is tied to that of our country, you should realize that you have a duty to help assure that future.

All of you have the ability to affect the destiny of the United States. You will affect it by the lives that you live day in and day out.

But, because of what you do—the nature of the governmental responsibilities that you perform—you have an added responsibility, as I hope the following remarks explain.

You see, this nation was founded on the assumption that its citizens would be virtuous—virtuous being understood much more broadly than most of us think of it today. Webster’s 1828 *American Dictionary of the English Language* defined “virtue” as strength, bravery, valor, moral goodness, and excellence.

The Founders understood the link between virtue and successful self-government. It was part of the unique and precious insight possessed by those who crafted the Constitution. The evidence of this insight and understanding is more than plentiful.

The oldest and most experienced of the Founders, Benjamin Franklin, summarized the understanding of his fellows when he said, “only a virtuous people are capable of freedom. As nations become corrupt and vicious, they have more need of masters.”

Unquestionably, the man who had prepared himself most thoroughly to influence the gathering that became the Constitutional Convention of 1787, was James Madison. He had studied history with the sole aim of understanding what had to be found in a democratic republic in order for it to survive and to thrive. He once made the observation, “Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks—no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea.”

Our nation’s second President, John Adams once observed, “our constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”

It is easy to understand their assessment. People to whom the rule of law is imperative, and who by nature are disciplined and obedient to universal principles of virtue and morality, do not need an excessive number of laws and regulations to govern them.

Virtuous people will conduct themselves in such a way, even when the law does not demand it, that society does not suffer. Virtuous people will conduct themselves in such a way, even when that conduct is not discoverable, that society does not suffer.

In sum, a virtuous people can live their lives largely free of laws, regulations, and the heavy hand of government because they truly govern themselves.

The founders understood this.

What is meant by virtue?

One of the brightest and most accomplished leaders of the twentieth century was a woman named Clare Boothe Luce. She was an author and playwright, journalist, member of Congress, and the first American woman to be named to a major ambassadorship.

Very late in her life, she delivered a speech in which she identified what she characterized as *universal morality*. She pointed out the amazing fact that great minds of the world—in all civilizations and throughout the ages—have agreed on the marks of a moral person. She identified those marks as truthfulness, honesty, duty, personal responsibility, unselfishness, loyalty, honor, compassion, and courage.

Some examples of these traits: a person who acts in a cowardly way, even though it is not a violation of the law, has historically been deemed to be in the wrong by all societies and cultures; successful cultures always operate on the principle that individuals are responsible for their own decisions and actions, and those who cannot accept responsibility for their conduct are

rejected; a person who lies, which is not illegal except in a handful of cases, is ostracized by society.

If one is willing to accept Ms. Luce's list of personal characteristics that constitute virtue or morality, it dictates the type of citizens we must be if we are to survive as a free nation—if we as citizens of the United States are to flourish as a free people.

I mentioned earlier that my conclusions about our system of government, after serving and studying and teaching and writing about it for almost 40 years, is that our freedoms, opportunities, security and ability to govern ourselves are rare, precious, and fragile.

It is rare because in the long history of this world, what we enjoy as citizens of this nation is extraordinary. The vast majority of people that have lived, and do live on this earth today, have never tasted the liberty and opportunities and security that we enjoy as citizens of the United States of America.

I hope that I do not need to persuade you that the blessing of self-government is precious.

But, I do feel compelled to convince you that what we have is fragile. Self-government demands much of those being governed.

A passive citizenry will not remain a free citizenry.

A citizenry that abandons belief in those universal principles of virtue and morality cannot remain free. A nation which no longer demands its citizens be truthful, honest, willing to perform their duty and accept personal responsibility, will, eventually fail as a self-governing nation.

A nation which no longer demands that her citizens be unselfish, loyal, honorable, compassionate, and courageous, will not survive.

In the broad sense of what you do day in and day out, you have the responsibility to assure that the citizens of the State of Utah are a virtuous people. I hope that understanding why that is so important might make your employment more meaningful.

I also hope that each and every one of you will accept the challenge of being virtuous—virtuous in the broad sense that those who gave us the Declaration of Independence and the Constitution of the United States knew that we had to be in order that our grand and wonderful experiment in self-government might endure.

Thank you.