

T H U R S D A Y , A

HOW TO BE A DEFENDER OF THE REPUBLIC – THE EXAMPLE OF JAMES OTIS

By
Stewart Rhodes

How do you, as an individual, defend the Republic of the Founders?

Because you must understand it to defend it, I have endeavored, over several columns, to remind you of the natural law foundations of our Republic (clearly set forth in our Declaration of Independence). I have reminded you that the Ninth and Tenth Amendments contain a built in guide to constitutional interpretation, such that the power granting provisions of the Constitution should be read very narrowly, while the rights protecting provisions should be read very broadly, as legal scholar St. George Tucker pointed out back in 1803.

But don't take my word for it. Open the Constitution and read it for yourself, and then read Jefferson's Kentucky Resolutions, which contain an excellent, concise analysis of the Constitution, as well as the Federalist Papers and the Anti-Federalist Papers. All of the above can be found online at www.constitution.org.

But once we understand it, how do we defend it? Once again, we can learn much from the Founding generation, and one of the very best examples is that of Founding Father James Otis.



Founding Father James Otis - the patron saint of lawyers who take their oath seriously.

In 1760 James Otis, a successful Boston lawyer, was appointed to the prestigious position of Advocate General of the Admiralty Court, the colonial equivalent of today's U.S. Attorney General. However, in 1761 Otis was expected to defend the Crown's use of the odious writs of assistance that allowed British customs agents to undertake warrantless searches without a probable cause determination by a judge. Otis not only refused to argue the government's case, he quite his job as Advocate General and became the pro bono (free) lawyer for the colonists who were challenging the writs as violations of their rights.

James Otis, in a fiery four-hour argument, condemned the writs as violations of the ancient rights of Englishmen as well as the people's natural rights, a "kind of power, the exercise of which in former periods of history cost one king of England his head and another his throne." See http://www.constitution.org/bor/otis_against_writs.htm

The court ruled against Otis, finding the writs to be "legal" under the British Constitution. But Otis did not bow his head and accept that interpretation. That was not the end of the argument – that was only the beginning. Otis continued to speak out against the writs of assistance as a heinous violation of the rights of the people, and the use of those writs was one of the causes of eventually taking up arms against the Crown.

In fact, John Adams wrote many years later that in James Otis's argument against the writs of assistance "the child

independence was then and there born,[for] every man of an immense crowded audience appeared to me to go away as I did, ready to take arms against writs of assistance."

Even though James Otis lost his case – lost that particular legal battle – he, and the rest of his generation, eventually won the war. It would take a full fourteen years of further agitation and argument before the actual shooting began, and during that time Otis played an instrumental role in the establishment of the Committees of Correspondence. After the Revolution, the opposition to the writs of assistance also led directly to our Fourth Amendment protections against warrantless searches. This is an important lesson for us. When we take a principled stand in defense of liberty, and in defense of the Constitution, we cannot know how far reaching that stand may be, and even if we lose the particular battle, we may yet win the "war."

Now, to see how far we have strayed from the path of the Founders, can you imagine a modern Attorney General, such as Janet Reno or Alberto Gonzales, doing what James Otis did, saying, "sorry, Mr. President, but you cannot do that, because it is simply unconstitutional" and then quitting their job and going over to the other side, volunteering to represent the people challenging the government action as unconstitutional? Imagine Janet Reno quitting her job and representing the Branch Dividians. Imagine Alberto Gonzalez quitting and representing citizen "enemy combatant" Jose Padilla or one of the people challenging the NSA warrantless surveillance. Although all lawyers swear an oath to support and defend the Constitution, you know those modern government lawyers are mere lap dogs for their presidents, yipping in agreement with whatever their master wants to do. While paying lip service to the oath of office, to loyalty to the Constitution, such people are loyal only to party, personal ambition, and to the government they are a part of. The same problem can be seen at every level of government, from the President on down to the local cop on the beat. Many have abandoned their individual responsibility to keep their oath of office, and instead blindly accept the decrees of the courts, of their bosses, or of their commanders. They just follow orders. That is wrong. The American Revolution would

never have gotten off the ground if the Founding Generation had taken that view.

You have an obligation as an individual American to read and understand the Constitution and the Bill of Rights, to draw your own line in the sand, just as James Otis did, and to stand by your convictions even though it may dearly cost you.

That is how the Founding generation did it. They risked all for our liberty, pledging their lives, fortune's and sacred honor. Many of that generation, and many since, gave their full measure of devotion to the cause of liberty, up to and including their lives. You owe them, and your children, your commitment to do the same.

If, like me, you swore an oath to support and defend the Constitution, you must stand by that oath through thick and thin. But keep in mind that, like James Otis, even when we lose we may win, and we can never know the full future impact of our principled stand. So take heart, and make interpretation and defense of the Constitution, and the natural rights it was meant to protect, a personal obligation, as the Founders intended.

- Stewart Rhodes
S.W.AT. Magazine columnist and
Founder of Oath Keepers
<http://oath-keepers.blogspot.com>

[**NOTE:** The above article was originally published in S.W.A.T. Magazine in Spring of 2008, and S.W.AT. Magazine, which supports the Oath Keepers mission 100%, has graciously permitted me to post it here. You may send it around if you like, so long as it is for non-profit and you include a link to this blog. - Stewart]

If you will be attending the rally on the Lexington Green this Sunday, April 19, 2009, and if you also spend any time in Boston, go visit the grave of Jame Otis at the Granary Burying Ground and pay respects to this great founding patriot.



Grave of Patriot Lawyer James Otis, at Granary Burying Ground, Boston.

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