

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## John Adams would have been proud

By **ROBERT L. BRENN JR.**  
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Watching the recent miniseries about John Adams has been inspirational.

Seeing even the anecdotal recreations of discussions between Benjamin Franklin and Thomas Jefferson as to whether WE hold these truths to be “self evident” rather than “sacred” remind us all of the enormous dedication and resolve of the founders of the greatest nation that ever existed.

Years ago, an attorney at my firm, Donald Rehkopf Jr., told me the story of how John Adams was coaxed into defending Captain Thomas Preston and his eight soldiers, when they were charged with murder arising out of the Boston Massacre. Adams was visited by a man who explained that Preston had been held and beaten for three days. Adams couldn't tolerate a society where this could happen. Don even bought me the book upon which the new miniseries is based.

The founders mutually “pledged their lives, their Fortunes, and their sacred Honor,” forever sacrificing their lives and reputations in support of their overwhelming desire to see their vision for a better world come to fruition.

John Adams, of course, previously seemed to have abandoned all hope for his future when he agreed to defend Captain Preston in the Boston Massacre murder trial. No attorneys for the crown would plead Preston's case for fear of retribution, or even death. Adams was convinced it would be the end of his career, but nonetheless his conscience wouldn't allow him to forego Preston's and the British soldiers' defense. Bricks thrown through his window didn't deter him, either, and he actually won acquittal when none seemed possible. We reference the case casually today, but truly think about what Adams was willing to sacrifice for one principle — that everyone, no matter how detested by the populous, deserves at least one person to take up his defense, to the best of his or her ability. It is only in these instances that our dedication to freedom is truly tested.

Several years ago, while we were collectively trying to determine how to protect our country after Sept. 11, people who otherwise agreed on most issues became embroiled in heated and passionate argument. Through the intervening years we have seen friendships unravel, and passions have risen to almost intolerable levels. Ironically, it is not that we really disagree that everything we can do must be done to preserve this great nation, but instead we struggle to define the line that must not inadvertently be crossed, because doing so would inexorably drag us into sanctioning the very acts Adams, Jefferson, Franklin, Washington and the other founders found so intolerable.



During this most difficult time, Rehkopf was asked to submit *amicus* briefs on an unpopular case. If the perpetrator did the acts of which he was accused — and for which he was, indeed, vilified in the headlines — he was an enemy, and one who likely deserved to be convicted, perhaps executed. Who would plead his case?

The real question did not concern this particular defendant, but whether we could now lose the fundamental rights established by our founders: The right of an American citizen to *habeas corpus*, the right to trial by jury, the right to speedy trial rather than being held, hidden away in undisclosed locations without counsel, indictment or trial, for years. We were even in danger of losing the most basic and fundamental rights for which we fought the Revolution. These include the basic right to be confronted by your accusers, to call witnesses on your own behalf, and to be apprised of the evidence being used against you.

When Don told me the National Association of Criminal Defense Attorneys chose him, out of every lawyer in the country, to author the brief (it wound up becoming five *pro bono* briefs before we were done) it obviously was an honor. But another question arose: Should we put the firm's name on it?

I foolishly declined, explaining that the public wouldn't see through the alarming and emotional headlines, and it was too hot to be associated with, without risking our future. Later that day, I learned that a Circuit Court pummeled a federal judge in Chicago for not giving Attorney General John Ashcroft “enough of an opportunity” to present his case, while reversing the court for upholding fundamental freedoms embodied in our Bill of Rights.

I saw the beginning of a very dangerous momentum, one that ultimately could eviscerate the Constitution. I called Don at home that night and asked if he knew of that quote from the German who said “when they came for the Catholics, I didn't protest because I wasn't a Catholic, and when they came for the Jews, I didn't protest because I was not a Jew, etc., etc.” I truly butchered the quote, but he never said anything about that.

Don calmly explained that he was familiar with it. I told him I didn't know in what direction the country was heading, but if it continued on the course it seemed to be on, I could never forgive myself for not speaking out, regardless of the backlash. I told him to put the firm's name on the brief. He politely thanked me, and that was that, until I read the final brief two months later and I, literally, was awestruck by the brilliance of his writing. At the end of the brief, I saw the full 1945 Martin Niemoller quote I refer-

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## *Continued ...*

enced during our earlier phone call. It was quoted verbatim, and perfectly cited by date, time and location. At first I felt proud about having contributed at least something to the brief, but then a question haunted me, one which I couldn't wait to learn the answer to.

I called Don and told him how brilliant the work was, and how proud I was to have the firm's name on it. Then I asked the inevitable: "Don, do you remember two months ago when I inarticulately tried to ask you if you had ever heard that quote?"

Humbly, he simply said that he remembered.

"Had you already written that part of the brief when I asked you?"

He merely replied that he had.

All I said was, "Well, then thanks for not rubbing my face in it."

"No problem," he replied.

You see, he made no mention of the fact that I didn't even know the whole quotation, or even its precise origin.

I had the unique privilege of working with someone so dedicated to the principle that everyone, no matter how detested by the populous, deserves at least one person to take up his defense, to the best of his or her ability.

John Adams would have been proud of him.

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