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## **FREEDOM AND SECURITY**

Remarks By Al Gore  
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Thank you, Lisa, for that warm and generous introduction. Thank you Zack, and thank you all for coming here today

I want to thank the American Constitution Society for co-sponsoring today's event, and for their hard work and dedication in defending our most basic public values.

And I am especially grateful to Moveon.org, not only for co-sponsoring this event, but also for using 21st Century techniques to breathe new life into our democracy.

For my part, I'm just a "recovering politician" – but I truly believe that some of the issues most important to America's future are ones that all of us should be dealing with.

And perhaps the most important of these issues is the one I want to talk about today: the true relationship between Freedom and Security.

So it seems to me that the logical place to start the discussion is with an accounting of exactly what has happened to civil liberties and security since the vicious attacks against America of September 11, 2001 – and it's important to note at the outset that the Administration and the Congress have brought about many beneficial and needed improvements to make law enforcement and intelligence community efforts more effective against potential terrorists.

But a lot of other changes have taken place that a lot of people don't know about and that come as unwelcome surprises. For example, for the first time in our history, American citizens have been seized by the executive branch of government and put in prison without being charged with a crime, without having the right to a trial, without being able to see a lawyer, and without even being able to contact their families.

President Bush is claiming the unilateral right to do that to any American citizen he believes is an "enemy combatant." Those are the magic words. If the President alone decides that those two words accurately describe someone, then that person can be immediately locked up and held incommunicado for as long as the President wants, with no court having the right to determine whether the facts actually justify his imprisonment.

Now if the President makes a mistake, or is given faulty information by somebody working for him, and locks up the wrong person, then it's almost impossible for that person to prove his innocence – because he can't talk to a lawyer or his family or anyone else and he doesn't even have the right to know what specific crime he is accused of committing. So a constitutional right to liberty and the pursuit of happiness that we used to think of in an old-fashioned way as "inalienable" can now be instantly stripped from any American by the President with no meaningful review by any other branch of government.

How do we feel about that? Is that OK?

Here's another recent change in our civil liberties: Now, if it wants to, the federal government has the right to monitor every website you go to on the internet, keep a list of everyone you send email to or receive email from and everyone who you call on the telephone or who calls you – and they don't even have to show probable cause that you've done anything wrong. Nor do they ever have to report to any court on what they're doing with the information. Moreover, there are precious few safeguards to keep them from reading the content of all your email.

Everybody fine with that?

If so, what about this next change?

For America's first 212 years, it used to be that if the police wanted to search your house, they had to be able to convince an independent judge to give them a search warrant and then (with rare exceptions) they had to go bang on your door and yell, "Open up!" Then, if you didn't quickly open up, they could knock the door down. Also, if they seized anything, they had to leave a list explaining what they had taken. That way, if it was all a terrible mistake (as it sometimes is) you could go and get your stuff back.

But that's all changed now. Starting two years ago, federal agents were given broad new statutory authority by the Patriot Act to "sneak and peak" in non-terrorism cases. They can secretly enter your home with no warning – whether you are there or not – and they can wait for months before telling you they were there. And it doesn't have to have any relationship to terrorism whatsoever. It applies to any garden-variety crime. And the new law makes it very easy to get around the need for a traditional warrant -- simply by saying that searching your house might have some connection (even a remote one) to the investigation of some agent of a foreign power. Then they can go to another court, a secret court, that more or less has to give them a warrant whenever they ask.

Three weeks ago, in a speech at FBI Headquarters, President Bush went even further and formally proposed that the Attorney General be allowed to authorize subpoenas by administrative order, without the need for a warrant from any court.

What about the right to consult a lawyer if you're arrested? Is that important?

Attorney General Ashcroft has issued regulations authorizing the secret monitoring of attorney-client conversations on his say-so alone; bypassing procedures for obtaining prior judicial review for such monitoring in the rare instances when it was permitted in the past. Now, whoever is in custody has to assume that the government is always listening to consultations between them and their lawyers.

Does it matter if the government listens in on everything you say to your lawyer? Is that Ok?

Or, to take another change -- and thanks to the librarians, more people know about this one -- the FBI now has the right to go into any library and ask for the records of everybody who has used the library and get a list of who is reading what. Similarly, the FBI can demand all the records of banks, colleges, hotels, hospitals, credit-card companies, and many more kinds of companies. And these changes are only the beginning. Just last week, Attorney General Ashcroft issued brand new guidelines permitting FBI agents to run credit checks and background checks and gather other information about anyone who is "of investigatory interest," - meaning anyone the agent thinks is suspicious - without any evidence of criminal behavior.

So, is that fine with everyone?

Listen to the way Israel's highest court dealt with a similar question when, in 1999, it was asked to balance due process rights against dire threats to the security of its people:

"This is the destiny of democracy, as not all means are acceptable to it, and not all practices employed by its enemies are open before it. Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. Preserving the Rule of Law and recognition of an individual's liberty constitutes an important component in its understanding of security. At the end of the day they (add to) its strength."

I want to challenge the Bush Administration's implicit assumption that we have to give up many of our traditional freedoms in order to be safe from terrorists.

Because it is simply not true.

In fact, in my opinion, it makes no more sense to launch an assault on our civil liberties as the best way

to get at terrorists than it did to launch an invasion of Iraq as the best way to get at Osama Bin Laden.

In both cases, the Administration has attacked the wrong target.

In both cases they have recklessly put our country in grave and unnecessary danger, while avoiding and neglecting obvious and much more important challenges that would actually help to protect the country.

In both cases, the administration has fostered false impressions and misled the nation with superficial, emotional and manipulative presentations that are not worthy of American Democracy.

In both cases they have exploited public fears for partisan political gain and postured themselves as bold defenders of our country while actually weakening not strengthening America.

In both cases, they have used unprecedented secrecy and deception in order to avoid accountability to the Congress, the Courts, the press and the people.

Indeed, this Administration has turned the fundamental presumption of our democracy on its head. A government of and for the people is supposed to be generally open to public scrutiny by the people -- while the private information of the people themselves should be routinely protected from government intrusion.

But instead, this Administration is seeking to conduct its work in secret even as it demands broad unfettered access to personal information about American citizens. Under the rubric of protecting national security, they have obtained new powers to gather information from citizens and to keep it secret. Yet at the same time they themselves refuse to disclose information that is highly relevant to the war against terrorism.

They are even arrogantly refusing to provide information about 9/11 that is in their possession to the 9/11 Commission – the lawful investigative body charged with examining not only the performance of the Bush Administration, but also the actions of the prior Administration in which I served. The whole point is to learn all we can about preventing future terrorist attacks,

Two days ago, the Commission was forced to issue a subpoena to the Pentagon, which has – disgracefully – put Secretary Rumsfeld's desire to avoid embarrassment ahead of the nation's need to learn how we can best avoid future terrorist attacks. The Commission also served notice that it will issue a subpoena to the White House if the President continues to withhold information essential to the investigation.

And the White House is also refusing to respond to repeated bipartisan Congressional requests for information about 9/11 – even though the Congress is simply exercising its Constitutional oversight authority. In the words of Senator McCain, "Excessive administration secrecy on issues related to the September 11 attacks feeds conspiracy theories and reduces the public's confidence in government."

In a revealing move, just three days ago, the White House asked the Republican leadership of the Senate to shut down the Intelligence Committee's investigation of 9/11 based on a trivial political dispute. Apparently the President is anxious to keep the Congress from seeing what are said to have been clear, strong and explicit warnings directly to him a few weeks before 9/11 that terrorists were planning to hijack commercial airliners and use them to attack us.

Astonishingly, the Republican Senate leadership quickly complied with the President's request. Such obedience and complicity in what looks like a cover-up from the majority party in a separate and supposedly co-equal branch of government makes it seem like a very long time ago when a Republican Attorney General and his deputy resigned rather than comply with an order to fire the special prosecutor investigating Richard Nixon.

In an even more brazen move, more than two years after they rounded up over 1,200 individuals of Arab descent, they still refuse to release the names of the individuals they detained, even though virtually every one of those arrested has been "cleared" by the FBI of any connection to terrorism and there is

absolutely no national security justification for keeping the names secret. Yet at the same time, White House officials themselves leaked the name of a CIA operative serving the country, in clear violation of the law, in an effort to get at her husband, who had angered them by disclosing that the President had relied on forged evidence in his state of the union address as part of his effort to convince the country that Saddam Hussein was on the verge of building nuclear weapons.

And even as they claim the right to see the private bank records of every American, they are adopting a new policy on the Freedom of Information Act that actively encourages federal agencies to fully consider all potential reasons for non-disclosure regardless of whether the disclosure would be harmful. In other words, the federal government will now actively resist complying with ANY request for information.

Moreover, they have established a new exemption that enables them to refuse the release to the press and the public of important health, safety and environmental information submitted to the government by businesses – merely by calling it “critical infrastructure.”

By closely guarding information about their own behavior, they are dismantling a fundamental element of our system of checks and balances. Because so long as the government’s actions are secret, they cannot be held accountable. A government for the people and by the people must be transparent to the people.

The administration is justifying the collection of all this information by saying in effect that it will make us safer to have it. But it is not the kind of information that would have been of much help in preventing 9/11. However, there was in fact a great deal of specific information that WAS available prior to 9/11 that probably could have been used to prevent the tragedy. A recent analysis by the Merkle foundation, (working with data from a software company that received venture capital from a CIA-sponsored firm) demonstrates this point in a startling way:

- “In late August 2001, Nawaq Alhamzi and Khalid Al-Midhar bought tickets to fly on American Airlines Flight 77 (which was flown into the Pentagon). They bought the tickets using their real names. Both names were then on a State Department/INS watch list called TIPOFF. Both men were sought by the FBI and CIA as suspected terrorists, in part because they had been observed at a terrorist meeting in Malaysia.
- These two passenger names would have been exact matches when checked against the TIPOFF list. But that would only have been the first step. Further data checks could then have begun.
- Checking for common addresses (address information is widely available, including on the internet), analysts would have discovered that Salem Al-Hazmi (who also bought a seat on American 77) used the same address as Nawaq Alhamzi. More importantly, they could have discovered that Mohamed Atta (American 11, North Tower of the World Trade Center) and Marwan Al-Shehhi (United 175, South Tower of the World Trade Center) used the same address as Khalid Al-Midhar.
- Checking for identical frequent flier numbers, analysts would have discovered that Majed Moqed (American 77) used the same number as Al-Midhar.
- With Mohamed Atta now also identified as a possible associate of the wanted terrorist, Al-Midhar, analysts could have added Atta’s phone numbers (also publicly available information) to their checklist. By doing so they would have identified five other hijackers (Fayez Ahmed, Mohand Alshehri, Wail Alsheri, and Abdulaziz Alomari).
- Closer to September 11, a further check of passenger lists against a more innocuous INS watch list (for expired visas) would have identified Ahmed Alghandi. Through him, the same sort of relatively simple correlations could have led to identifying the remaining hijackers, who boarded United 93 (which crashed in Pennsylvania).”

In addition, Al-Midhar and Nawaf Alhamzi, the two who were on the terrorist watch list, rented an apartment in San Diego under their own names and were listed, again under their own names, in the San Diego phone book while the FBI was searching for them.

Not to put too fine a point on it, but what is needed is better and more timely analysis. Simply piling up more raw data that is almost entirely irrelevant is not only not going to help. It may actually hurt the cause. As one FBI agent said privately of Ashcroft: “We’re looking for a needle in a haystack here and he

(Ashcroft) is just piling on more hay.”

In other words, the mass collecting of personal data on hundreds of millions of people actually makes it more difficult to protect the nation against terrorists, so they ought to cut most of it out.

And meanwhile, the real story is that while the administration manages to convey the impression that it is doing everything possible to protect America, in reality it has seriously neglected most of the measures that it could have taken to really make our country safer.

For example, there is still no serious strategy for domestic security that protects critical infrastructure such as electric power lines, gas pipelines, nuclear facilities, ports, chemical plants and the like.

They're still not checking incoming cargo carriers for radiation. They're still skimping on protection of certain nuclear weapons storage facilities. They're still not hardening critical facilities that must never be soft targets for terrorists. They're still not investing in the translators and analysts we need to counter the growing terror threat.

The administration is still not investing in local government training and infrastructures where they could make the biggest difference. The first responder community is still being shortchanged. In many cases, fire and police still don't have the communications equipment to talk to each other. The CDC and local hospitals are still nowhere close to being ready for a biological weapons attack.

The administration has still failed to address the fundamental disorganization and rivalries of our law enforcement, intelligence and investigative agencies. In particular, the critical FBI-CIA coordination, while finally improved at the top, still remains dysfunctional in the trenches.

The constant violations of civil liberties promote the false impression that these violations are necessary in order to take every precaution against another terrorist attack. But the simple truth is that the vast majority of the violations have not benefited our security at all; to the contrary, they hurt our security.

And the treatment of immigrants was probably the worst example. This mass mistreatment actually hurt our security in a number of important ways.

But first, let's be clear about what happened: this was little more than a cheap and cruel political stunt by John Ashcroft. More than 99% of the mostly Arab-background men who were rounded up had merely overstayed their visas or committed some other minor offense as they tried to pursue the American dream just like most immigrants. But they were used as extras in the Administration's effort to give the impression that they had caught a large number of bad guys. And many of them were treated horribly and abusively.

Consider this example reported in depth by Anthony Lewis:

“Anser Mehmood, a Pakistani who had overstayed his visa, was arrested in New York on October 3, 2001. The next day he was briefly questioned by FBI agents, who said they had no further interest in him. Then he was shackled in handcuffs, leg irons, and a belly chain and taken to the Metropolitan Detention Center in Brooklyn. Guards there put two more sets of handcuffs on him and another set of leg irons. One threw Mehmood against a wall. The guards forced him to run down a long ramp, the irons cutting into his wrists and ankles. The physical abuse was mixed with verbal taunts.

“After two weeks Mehmood was allowed to make a telephone call to his wife. She was not at home and Mehmood was told that he would have to wait six weeks to try again. He first saw her, on a visit, three months after his arrest. All that time he was kept in a windowless cell, in solitary confinement, with two overhead fluorescent lights on all the time. In the end he was charged with using an invalid Social Security card. He was deported in May 2002, nearly eight months after his arrest.

The faith tradition I share with Ashcroft includes this teaching from Jesus: “whatsoever you do unto the least of these, you do unto me.”

And make no mistake: the disgraceful treatment suffered by many of these vulnerable immigrants at the hands of the administration has created deep resentments and hurt the cooperation desperately

needed from immigrant communities in the U.S. and from the Security Services of other countries.

Second, these gross violations of their rights have seriously damaged U.S. moral authority and goodwill around the world, and delegitimized U.S. efforts to continue promoting Human Rights around the world. As one analyst put it, "We used to set the standard; now we have lowered the bar." And our moral authority is, after all, our greatest source of enduring strength in the world.

And the handling of prisoners at Guantanamo has been particularly harmful to America's image. Even England and Australia have criticized our departure from international law and the Geneva Convention. Sec. Rumsfeld's handling of the captives there has been about as thoughtful as his "postwar" plan for Iraq.

So the mass violations of civil liberties have hurt rather than helped. But there is yet another reason for urgency in stopping what this administration is doing. Where Civil Liberties are concerned, they have taken us much farther down the road toward an intrusive, "Big Brother"-style government -- toward the dangers prophesized by George Orwell in his book "1984" -- than anyone ever thought would be possible in the United States of America.

And they have done it primarily by heightening and exploiting public anxieties and apprehensions. Rather than leading with a call to courage, this Administration has chosen to lead us by inciting fear.

Almost eighty years ago, Justice Louis Brandeis wrote "Those who won our independence by revolution were not cowards. . . . They did not exalt order at the cost of liberty." Those who won our independence, Brandeis asserted, understood that "courage [is] the secret of liberty" and "fear [only] breeds repression."

Rather than defending our freedoms, this Administration has sought to abandon them. Rather than accepting our traditions of openness and accountability, this Administration has opted to rule by secrecy and unquestioned authority. Instead, its assaults on our core democratic principles have only left us less free and less secure.

Throughout American history, what we now call Civil Liberties have often been abused and limited during times of war and perceived threats to security. The best known instances include the Alien and Sedition Acts of 1798-1800, the brief suspension of habeas corpus during the Civil War, the extreme abuses during World War I and the notorious Red Scare and Palmer Raids immediately after the war, the shameful internment of Japanese-Americans during World War II, and the excesses of the FBI and CIA during the Vietnam War and social turmoil of the late 1960s and early 1970s.

But in each of these cases, the nation has recovered its equilibrium when the war ended and absorbed the lessons learned in a recurring cycle of excess and regret.

There are reasons for concern this time around that what we are experiencing may no longer be the first half of a recurring cycle but rather, the beginning of something new. For one thing, this war is predicted by the administration to "last for the rest of our lives." Others have expressed the view that over time it will begin to resemble the "war" against drugs -- that is, that it will become a more or less permanent struggle that occupies a significant part of our law enforcement and security agenda from now on. If that is the case, then when -- if ever -- does this encroachment on our freedoms die a natural death?

It is important to remember that throughout history, the loss of civil liberties by individuals and the aggregation of too much unchecked power in the executive go hand in hand. They are two sides of the same coin.

A second reason to worry that what we are witnessing is a discontinuity and not another turn of the recurring cycle is that the new technologies of surveillance -- long anticipated by novelists like Orwell and other prophets of the "Police State" -- are now more widespread than they have ever been.

And they do have the potential for shifting the balance of power between the apparatus of the state and the freedom of the individual in ways both subtle and profound.

Moreover, these technologies are being widely used not only by the government but also by corporations and other private entities. And that is relevant to an assessment of the new requirements in the Patriot Act for so many corporations – especially in the finance industries – to prepare millions of reports annually for the government on suspicious activities by their customers. It is also relevant to the new flexibility corporations have been given to share information with one another about their customers.

The third reason for concern is that the threat of more terror strikes is all too real. And the potential use of weapons of mass destruction by terrorist groups does create a new practical imperative for the speedy exercise of discretionary power by the executive branch – just as the emergence of nuclear weapons and ICBMs created a new practical imperative in the Cold War that altered the balance of war-making responsibility between Congress and the President.

But President Bush has stretched this new practical imperative beyond what is healthy for our democracy. Indeed, one of the ways he has tried to maximize his power within the American system has been by constantly emphasizing his role as Commander-in-Chief, far more than any previous President -- assuming it as often and as visibly as he can, and bringing it into the domestic arena and conflating it with his other roles: as head of government and head of state – and especially with his political role as head of the Republican Party.

Indeed, the most worrisome new factor, in my view, is the aggressive ideological approach of the current administration, which seems determined to use fear as a political tool to consolidate its power and to escape any accountability for its use. Just as unilateralism and dominance are the guiding principles of their disastrous approach to international relations, they are also the guiding impulses of the administration's approach to domestic politics. They are impatient with any constraints on the exercise of power overseas -- whether from our allies, the UN, or international law. And in the same way, they are impatient with any obstacles to their use of power at home – whether from Congress, the Courts, the press, or the rule of law.

Ashcroft has also authorized FBI agents to attend church meetings, rallies, political meetings and any other citizen activity open to the public simply on the agents' own initiative, reversing a decades old policy that required justification to supervisors that such infiltrations has a provable connection to a legitimate investigation;

They have even taken steps that seem to be clearly aimed at stifling dissent. The Bush Justice Department has recently begun a highly disturbing criminal prosecution of the environmental group Greenpeace because of a non-violent direct action protest against what Greenpeace claimed was the illegal importation of endangered mahogany from the Amazon. Independent legal experts and historians have said that the prosecution -- under an obscure and bizarre 1872 law against "sailor-mongering" -- appears to be aimed at inhibiting Greenpeace's First Amendment activities.

And at the same time they are breaking new ground by prosecuting Greenpeace, the Bush Administration announced just a few days ago that it is dropping the investigations of 50 power plants for violating the Clean Air Act – a move that Sen. Chuck Schumer said, "basically announced to the power industry that it can now pollute with impunity."

The politicization of law enforcement in this administration is part of their larger agenda to roll back the changes in government policy brought about by the New Deal and the Progressive Movement. Toward that end, they are cutting back on Civil Rights enforcement, Women's Rights, progressive taxation, the estate tax, access to the courts, Medicare, and much more. And they approach every issue as a partisan fight to the finish, even in the areas of national security and terror.

Instead of trying to make the "War on Terrorism" a bipartisan cause, the Bush White House has consistently tried to exploit it for partisan advantage. The President goes to war verbally against terrorists in virtually every campaign speech and fundraising dinner for his political party. It is his main political theme. Democratic candidates like Max Cleland in Georgia were labeled unpatriotic for voting differently from the White House on obscure amendments to the Homeland Security Bill.

When the Republican leader in the House of Representatives, Tom DeLay, was embroiled in an effort to pick up more congressional seats in Texas by forcing a highly unusual redistricting vote in the state senate, he was able to track down Democratic legislators who fled the state to prevent a quorum (and thus prevent the vote) by enlisting the help of President Bush's new Department of Homeland Security, as many as 13 employees of the Federal Aviation Administration who conducted an eight-hour search, and at least one FBI agent (though several other agents who were asked to help refused to do so.)

By locating the Democrats quickly with the technology put in place for tracking terrorists, the Republicans were able to succeed in focusing public pressure on the weakest of the Senators and forced passage of their new political redistricting plan. Now, thanks in part to the efforts of three different federal agencies, Bush and DeLay are celebrating the gain of up to seven new Republican congressional seats in the next Congress.

The White House timing for its big push for a vote in Congress on going to war with Iraq also happened to coincide exactly with the start of the fall election campaign in September a year ago. The President's chief of staff said the timing was chosen because "from a marketing point of view, you don't introduce new products in August."

White House political advisor Karl Rove advised Republican candidates that their best political strategy was to "run on the war". And as soon as the troops began to mobilize, the Republican National Committee distributed yard signs throughout America saying, "I support President Bush and the troops" -- as if they were one and the same.

This persistent effort to politicize the war in Iraq and the war against terrorism for partisan advantage is obviously harmful to the prospects for bipartisan support of the nation's security policies. By sharp contrast, consider the different approach that was taken by Prime Minister Winston Churchill during the terrible days of October 1943 when in the midst of World War II, he faced a controversy with the potential to divide his bipartisan coalition. He said, "What holds us together is the prosecution of the war. No...man has been asked to give up his convictions. That would be indecent and improper. We are held together by something outside, which rivets our attention. The principle that we work on is, 'Everything for the war, whether controversial or not, and nothing controversial that is not bona fide for the war.' That is our position. We must also be careful that a pretext is not made of war needs to introduce far-reaching social or political changes by a side wind."

Yet that is exactly what the Bush Administration is attempting to do -- to use the war against terrorism for partisan advantage and to introduce far reaching controversial changes in social policy by a "side wind," in an effort to consolidate its political power.

It is an approach that is deeply antithetical to the American spirit. Respect for our President is important. But so is respect for our people. Our founders knew -- and our history has proven -- that freedom is best guaranteed by a separation of powers into co-equal branches of government within a system of checks and balances -- to prevent the unhealthy concentration of too much power in the hands of any one person or group.

Our framers were also keenly aware that the history of the world proves that Republics are fragile. The very hour of America's birth in Philadelphia, when Benjamin Franklin was asked, "What have we got? A Republic or a Monarchy?" he cautiously replied, "A Republic, if you can keep it."

And even in the midst of our greatest testing, Lincoln knew that our fate was tied to the larger question of whether ANY nation so conceived could long endure.

This Administration simply does not seem to agree that the challenge of preserving democratic freedom cannot be met by surrendering core American values. Incredibly, this Administration has attempted to compromise the most precious rights that America has stood for all over the world for more than 200 years: due process, equal treatment under the law, the dignity of the individual, freedom from unreasonable search and seizure, freedom from promiscuous government surveillance. And in the name of security, this Administration has attempted to relegate the Congress and the Courts to the sidelines and

replace our democratic system of checks and balances with an unaccountable Executive. And all the while, it has constantly angled for new ways to exploit the sense of crisis for partisan gain and political dominance. How dare they!

Years ago, during World War II, one of our most eloquent Supreme Court Justices, Robert Jackson, wrote that the President should be given the “widest latitude” in wartime, but he warned against the “loose and irresponsible invocation of war as an excuse for discharging the Executive Branch from the rules of law that govern our Republic in times of peace. No penance would ever expiate the sin against free government,” Jackson said, “of holding that a President can escape control of executive powers by law through assuming his military role. Our government has ample authority under the Constitution to take those steps which are genuinely necessary for our security. At the same time, our system demands that government act only on the basis of measures that have been the subject of open and thoughtful debate in Congress and among the American people, and that invasions of the liberty or equal dignity of any individual are subject to review by courts which are open to those affected and independent of the government which is curtailing their freedom.”

So what should be done? Well, to begin with, our country ought to find a way to immediately stop its policy of indefinitely detaining American citizens without charges and without a judicial determination that their detention is proper.

Such a course of conduct is incompatible with American traditions and values, with sacred principles of due process of law and separation of powers.

It is no accident that our Constitution requires in criminal prosecutions a “speedy and public trial.” The principles of liberty and the accountability of government, at the heart of what makes America unique, require no less. The Bush Administration’s treatment of American citizens it calls “enemy combatants” is nothing short of un-American.

Second, foreign citizens held in Guantanamo should be given hearings to determine their status provided for under Article V of the Geneva Convention, a hearing that the United States has given those captured in every war until this one, including Vietnam and the Gulf War.

If we don’t provide this, how can we expect American soldiers captured overseas to be treated with equal respect? We owe this to our sons and daughters who fight to defend freedom in Iraq, in Afghanistan and elsewhere in the world.

Third, the President should seek congressional authorization for the military commissions he says he intends to use instead of civilian courts to try some of those who are charged with violating the laws of war. Military commissions are exceptional in American law and they present unique dangers. The prosecutor and the judge both work for the same man, the President of the United States. Such commissions may be appropriate in time of war, but they must be authorized by Congress, as they were in World War II, and Congress must delineate the scope of their authority. Review of their decisions must be available in a civilian court, at least the Supreme Court, as it was in World War II.

Next, our nation’s greatness is measured by how we treat those who are the most vulnerable. Noncitizens who the government seeks to detain should be entitled to some basic rights. The administration must stop abusing the material witness statute. That statute was designed to hold witnesses briefly before they are called to testify before a grand jury. It has been misused by this administration as a pretext for indefinite detention without charge. That is simply not right.

Finally, I have studied the Patriot Act and have found that along with its many excesses, it contains a few needed changes in the law. And it is certainly true that many of the worst abuses of due process and civil liberties that are now occurring are taking place under the color of laws and executive orders other than the Patriot Act.

Nevertheless, I believe the Patriot Act has turned out to be, on balance, a terrible mistake, and that it became a kind of Tonkin Gulf Resolution conferring Congress’ blessing for this President’s assault on civil liberties. Therefore, I believe strongly that the few good features of this law should be passed again in a

new, smaller law – but that the Patriot Act must be repealed.

As John Adams wrote in 1780, ours is a government of laws and not of men. What is at stake today is that defining principle of our nation, and thus the very nature of America. As the Supreme Court has written, “Our Constitution is a covenant running from the first generation of Americans to us and then to future generations.” The Constitution includes no wartime exception, though its Framers knew well the reality of war. And, as Justice Holmes reminded us shortly after World War I, the Constitution’s principles only have value if we apply them in the difficult times as well as those where it matters less.

The question before us could be of no greater moment: will we continue to live as a people under the rule of law as embodied in our Constitution? Or will we fail future generations, by leaving them a Constitution far diminished from the charter of liberty we have inherited from our forebears? Our choice is clear.

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