

## Freedom and Security

Former Vice President Al Gore says the Bush administration's assault on civil liberties and its invasion of Iraq threaten American freedom and security like never before.

by Al Gore

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 Sept. 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 Web site you go to on the Internet, keep a list of everyone you send e-mail to or receive e-mail 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 e-mail.

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 Guantánamo 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. . .