
BARBARA K. OLSON MEMORIAL LECTURE:
VICE PRESIDENT OF THE UNITED STATES DICK CHENEY

INTRODUCTION: Good evening. I'm Eugene Meyer, President of the Federalist Society. And welcome to the sixth annual Barbara Olson Lecture. Despite its brief history, this has been quite an illustrious lecture series. It started with an unforgettable talk by Ted Olson on his late wife and what it means to be an American. We are honored to have here tonight Ted and Lady Olsen. Last year, Judge Randolph delivered a truly memorable lecture on Judge Friendly's never-published draft opinion on abortion two years before *Roe*. In between were lectures by Judge Kenneth Starr, Judge Bork, and Justice Scalia. All those who preceded the Vice President to this platform had known Barbara well, personally. The Vice President did not know her as well, yet it would be hard to find a more appropriate person to deliver the Barbara Olson lecture.

Why? This lecture series began because of the horrific events that have dominated our guest speaker's thoughts and efforts ever since. While leadership is always an enormous challenge for the world's greatest power, there is no question that the attack of September 11, 2001 left our country's leaders with a thankless task. The next attack will be blamed on you. Whatever procedures you adopt to increase security will likely be denounced as too strict and going much too far if there is no such attack. What do we want of leaders in such a situation? The usual. Wisdom and judgment and some luck and courage.

Vice President Cheney has played a critical role in our leadership during this period. After many years in public service, as chief of staff under President Ford, Congressman from Wyoming for over a decade, and secretary of defense under the first President Bush, he knew the task he was undertaking. He has addressed his duties with a seriousness appropriate to that task. He's been direct and forceful in advocating and defending the position of this Administration that terrorism must be faced and debated, that it will be a long battle, and that we cannot hide from it. He and the President have been equally forthright and direct in saying that Iraq policy is a vital component of long-term success.

It is interesting to reflect on J.R.R. Tolkien's line, spoken through Gandolf from "Even more perilous times" in *The Lord of the Rings*. "It is not our part here

to take thought only for a season or for a few lives of men or for a passing age of the world. We should seek a final end to this menace, even if we don't hope to make one." I think this Administration has in mind a shorter timeframe than Gandolf, but that passage captures some of the spirit of their thoughts.

I do not know how that policy will turn out or how history will judge them, except to say that history favors success. Nor do I know how the woman this series is named after would react to their policy, although I suspect she would favor it. I do know that she would admire enormously the way this Administration and Vice President Cheney have had the courage to do what they believe is in the long-term interest of our country, without regard to whether it's good or bad politics.

In closing, let us return to the initial talk by Ted Olson for just one second. He said, "I know, and she, Barbara, knows that her government and the people of America will win this war, however long it takes, whatever we have to do. We will never, ever forget or flinch. We will prevail for Barbara and for all the other Americans we lost on September 11, and for the American spirit for which they stood and their lives embodied. And most of all, we will defeat these terrorists because Barbara and those other Americans casualty of September 11th and our forebears and our children would never forgive us if we did not." I believe it is in this spirit that this Administration and Vice President Cheney pursued the war on terror in their policy in Iraq. To offer the 2006 Barbara Olson Memorial Lecture, it is my honor to introduce the Vice President of the United States, the Honorable Richard Cheney.

DICK CHENEY: Thank you. Thank you very much. Well, a warm welcome like that is almost enough to make a guy want to run for office again. Almost. Let me thank the board, the officers, and the staff of the Federalist Society for the invitation to be here this afternoon. I especially want to thank Gene Meyer for his kind introduction and for the outstanding leadership he provides the Federalist Society. I've spoken at a number of your events over the years, and I appreciate the contribution that you've made to the debate on vital questions of policy.

war with every development of classical liberalism in the past 12 centuries. They serve an ideology that rejects tolerance and denies freedom of conscience. They would condemn women to servitude, gays to death, and minority religions to persecution. An ideology so backward, so violent, so hateful, can take hold only by force or intimidation, and so those who refuse to bow to the tyrants face brutalization or murder, and no group or person is exempt.

And it is they, the terrorists, who have ambitions of empire. Their goal in the broader Middle East is to seize control of the country so they have a base from which to launch attacks against governments that refuse to meet their demands. Their ultimate aim--again, one that they boldly proclaim--is to establish a caliphate covering a region from Spain across North Africa through the Middle East and South Asia all the way around to Indonesia. They have proclaimed, as well, the goal of arming themselves with chemical, biological, or nuclear weapons to destroy Israel, to intimidate all western countries, and to cause mass death in the United States. One of the terrorists believed to plan the 9/11 attacks said he hoped the event would signal the beginning of the end of America. They hate us, they hate our country, they hate the liberties for which we stand, and they hit us first. And we will not sit back and wait to be hit again.

Since the morning of 9/11, we have assumed correctly that more strikes would be attempted against us. So, we've made a tremendous number of changes to harden the target and to better prepare the nation to face this kind of emergency. We established the Department of Homeland Security to give us a comprehensive approach instead of a patchwork effort among diffuse and duplicative agencies. We created the position of the Director of National Intelligence to better coordinate the government's sixteen different intelligence components. We've reformed the FBI to make fighting terrorism its primary mission. We've made unprecedented improvements in port security and major public health investments to ensure early warning and rapid response to any attack with biological agencies agents.

To guard against the proliferation of weapons of mass destruction, we've created a domestic nuclear detection office and worked with other governments in the most intensive counter-proliferation effort the world has ever known. And we've already seen

results. Some years ago, the AQCON network was operating internationally to dispense weapons parts, uranium feedstocks, centrifuges for enrichment, weapons designs, and nuclear technology. We tracked and exposed the activities of that network, and it has now been shut down.

These years have also been a period of reform at the Pentagon. We have a new Northern Command to guard the American people, a new Strategic Command to counter long-range strikes, and a Special Operations Command redesigned to wage a new kind of war. At the same time, we've kept at the work of military transformation. We began, the day we arrived here, the retooling of the entire military, to make it faster, more agile, and more lethal in action. This vital work has been carried out under the steady hand of one of the great public servants of the age, Secretary Donald Rumsfeld.

Shortly after 9/11, by an overwhelming bipartisan vote, Congress also passed the PATRIOT Act. This law removed an unnecessary wall between law enforcement and intelligence personnel. They can now talk with one another, share information that could well prevent future attacks inside the country. The PATRIOT Act also gives federal agents investigating terrorism the same tools they use in fighting street crime and fraud. The PATRIOT Act was written and it is enforced with careful regard for the civil liberties of the American people.

The President signed a renewal of the Act that contains no fewer than thirty additional protections of civil liberties. He created, by executive order, the President's Board on Safeguarding American Civil Liberties, and working with Congress, he has created the Privacy and Civil Liberties Oversight Board, of which Ted Olson is now a member. The President has made very clear that as we fight for our principles, our first responsibility is to live by them. And no country in the world takes civil liberties more seriously than the United States of America.

We take with equal seriousness the requirements of justice and due process, and even before 9/11, federal agents and prosecutors were acting aggressively to hold terrorists to account. The record buildup over more than a decade is exemplary. Superb public servants have marshaled the evidence to convict the men who bombed the World Trade Center in 1993 and the shoe bomber, Richard Reid, and the 9/11 co-conspirator Moussaoui, and groups of terror suspects

from Buffalo, New York, and all the way to Portland, Oregon. The work goes on. From the FBI to the U.S. Attorney's Office to the military commissions created by Congress, the many skilled investigators and attorneys engaged in these efforts, together with Homeland Security and intelligence personnel, have made this country safer. We're grateful to each and every one of them.

On the morning of September 11, we saw that the terrorists need to get only one break, need to be right only once, to carry out an attack. We have to be right every time if we're going to stop them. To adopt a purely defensive posture, to simply brace for attacks and react to them, is to play against lengthening odds and to leave the nation permanently vulnerable. To protect America, we must understand that the fight against terror is not primarily a law enforcement operation. It is a war. Wars have winners and they have losers, and this is a war the United States is determined to win.

We'll win this war by staying on the offensive, carrying the fight to the enemy, and going after them one by one if necessary, and going after those who could equip them with even more dangerous technologies. In these five years, we've broken up terror cells, tracked down terrorist operatives, and put heavy pressure on their ability to organize and to plan attacks. We have applied the Bush doctrine that any person or government supporting, protecting, or harboring terrorists is complicit in the murder of the innocent and will be held to account. And we have acted vigorously to keep the deadliest weapons out of the hands of killers. In the post-9/11 world, we have to confront such dangers before they fully materialize. President Bush has put it very well: Terrorists and terrorist states do not reveal these threats with fair notice, in formal declarations, and responding to such enemies only after they have struck us first is not self-defense; it's suicide.

The United States has also carried out our commitment to deny the terrorists control of any nation. That's why we continue to fight Taliban remnants and Al Qaeda forces in Afghanistan, and that's why we're working with President Musharraf to oppose and isolate the terrorist element in Pakistan, and that's why we are fighting the Saddam remnants and terrorists in Iraq. September 11 taught us that threats can gather across oceans and continents and find us here at home. The notion that we can turn

our backs on what happens in places like Afghanistan, Iraq, or any other possible state haven for terrorists is an option that we can never again indulge after 9/11.

I know some have suggested that by liberating Iraq from Saddam Hussein we simply stirred up a hornet's nest. They overlook a fundamental fact. We were not in Iraq on September 11, 2001, and the terrorists hit us anyway. The fact is that they regard the entire world as a battlefield. That's why Al Qaeda has operatives in Iraq right now. They're making a stand in that country because they believe they can frighten and intimidate America into a policy of retreat.

Some in our country may believe in good faith that retreating from Iraq would make America safer. Recent experience teaches the opposite lesson. Time and time again, over the last generation, terrorists have targeted nations whose behavior they believe they can change through violence. To get out before the job is done would convince the terrorists once again that we free nations will change our policies, forsake our friends, and abandon our interests whenever we are confronted with violence and blackmail. They would simply draw up another set of demands and instruct Americans to act as they direct or face further acts of murder.

Retreat would also send a message to everyone in that part of the world who trusted us, to the millions of Iraqis and Afghans who have voted in free elections despite threats from car bombers and assassins, to the hundreds of thousands who have signed on for the security forces, and to leaders like Musharraf and Karzai, who risk their lives every day just by going to work. They know what is at stake, and so do we. Defeating the terrorists in Iraq is essential to overcoming the advance of extremism in the broader Middle East. As we help Iraqi's Unity Government to defeat common enemies, we build the peace and stability that will help make our own country more secure.

There's still tough work ahead, and as the enemy switches tactics, we will do the same. As General Pace has put it, from the military standpoint, every day is reassessment day. We will be flexible. We'll do all we can to adapt to conditions on the ground. We'll make every change needed to do the job. The key is to get Iraqis into the fight, and we'll continue training local forces so they can take the lead in defending

their own country. America is going to complete our mission. We're going to get it done right, and then we'll bring our troops home with victory.

As we persevere in the central front on the war on terror, Americans need to know that our government is bringing the same focus to every other front in the war, and there is, of course, a special urgency to our efforts to figure out the intentions of the enemy. We live in a free and open society, and the terrorists want to use those very qualities against us. So we must act in dead earnest to learn who they are and what they are doing and stop them before they can act.

To this end, in the days following 9/11 the President authorized the National Security Agency to intercept a certain category of terrorist-linked international communications. On occasion, you would hear this called a domestic surveillance program. That is more than a misnomer; it's a flat-out falsehood. We are talking about international communications, one end of which we have reason to believe is related to Al Qaeda and to terrorist networks. And in a post-9/11 world, it's hard to think of any category of information that could be more important to the safety of the United States. The activities conducted under this authorization have, without any doubt, helped to detect and prevent terrorist attacks against Americans and saved American lives.

I note, as well, that leaders of Congress from both parties have been briefed more than a dozen times on the President's authorization and on activities conducted under it. I have personally presided over those briefings. In addition, the entire program undergoes a thorough review approximately every forty-five days. After each review, the President personally has to determine whether to reauthorize the program, and he has done so more than thirty times since September 11. He's indicated his intent to continue doing so as long as our nation faces a threat from Al Qaeda and related organizations.

Yet none of these considerations was persuasive to a federal district court in the state of Michigan, which ruled three months ago that the NSA program violated the Constitution and the Foreign Intelligence Surveillance Act. The court found, among other factors, that warrantless surveillance of terrorist-related communications would cause irreparable injury to the American Civil Liberties Union and

other players. As a remedy, the district court granted a permanent injunction—in other words, ordered the President of the United States—to seize all activities under the terrorist surveillance program. The Sixth Circuit Court of Appeals has stayed that injunction, and the government is now waging a forceful appeal on the merits.

President Bush and I have complete confidence that the district court's ruling will be reversed. We're confident because the terrorist surveillance program rests on firm legal ground. The joint authorization to use military force, passed by Congress after 9/11, provides more than enough latitude for these activities. Therefore, the warrant requirements of the FISA law do not apply to this wartime measure, and the program falls squarely within the constitutional powers of the president. Every appellate court to rule on this issue has recognized inherent presidential authority to conduct warrantless surveillance, to counter threats directly directed at the country from abroad.

The district court's opinion, which the *New York Times* called "careful and thoroughly grounded", did not distinguish any of those prior federal decisions, nor indeed did the district court even cite those decisions. The district court also held that the terrorist surveillance program violates the doctrine of separation of powers. We, of course, disagree and expect to prevail on that issue as well. But since we're on the subject of separation of powers, one conclusion is hard to escape; the one the Michigan District Court's decision is an indefensible act of judicial overreaching.

As law students and lawyers, of course, all of you understand that a given point of view isn't necessarily correct or even persuasive merely because it's been handed down by a judge. There's a reason these things are called opinions. But the Michigan decision is something altogether different, and it's very troubling. It is a court order tying the hands of the President of the United States in the conduct of a war, and this is a matter entirely outside the competence of the Judiciary.

I'm not saying that courts should have no say in matters that touch on international affairs. Some kinds of cases are inevitably going to have an impact on foreign policy. For instance, when the Supreme Court found Harry Truman had gone too far in seizing the steel mills, the decision had clear

implications for the Korean War effort. But the Court saw Truman's action as mainly legislative in nature, too loosely connected to the core functions of the Commander-in-Chief, and therefore beyond the exclusive authority of the President.

Yet the justice whose opinion in that case has become a standard for measuring executive authority, Justice Robert Jackson, pointed out in an earlier opinion the kind of situations that would counsel wide deference to the executive. Justice Jackson's words deserve quoting at length. "It would be intolerable," he wrote, "that courts without the relevant information should review, and perhaps nullify, actions of the Executive taken on information properly held secret. The very nature of executive decisions as to foreign policy is political, not judicial. They are decisions of a kind for which the judiciary has neither aptitude, facilities, nor responsibility, and have long been held to the long in the domain of political power, not subject to judicial intrusion or inquiry." If ever a situation for the kind of deference Justice Jackson envisioned, it would be the terrorist surveillance program.

We have here a highly classified measure to gain intelligence about an enemy that has already attacked us, with whom we are at war, and with whom the United States Armed Forces are in combat at this very hour. It is one thing to have an academic discussion about the best way to defeat an enemy that uses sophisticated technology and that very likely has combatants inside this country. It is quite another matter for a federal court to suddenly close off an entire avenue of defense for the United States.

If an additional reason is needed for courts to show exceeding caution in national security affairs, it is this: they are unaccountable for the consequences of getting it wrong. The security of the country and the strategies for its defense are the province of the American people themselves. They exercise that control at the ballot box, by voting us in or throwing us out. For courts to assert themselves into defense and security matters is to weaken the bond of accountability where it should be the strongest, in the area of national self-preservation.

All of this has been sorted out before, not in our own era but at the time of the Framers themselves. What was true in 1789 is equally true in 2006. The federal government has coordinate branches, but that these branches do not have coequal responsibilities.

The Executive, for example, has no business telling the Court how to find facts or dictating the result of a constitutional case, and the judicial branch has no business directing national security policy for this country.

When you're facing adversaries that operate in the shadows, that have no territory to defend, and that have no standing armies or navies that you can monitor, one small piece of data might very well make it possible to crack open a plot and save thousands of lives. The term that's used is "connecting the dots." It is hard, painstaking work, and in a time of asymmetric threats an awful lot depends on getting it right.

In the decade prior to 9/11, our country spent more than \$2 trillion on national security, yet we lost 3,000 Americans that morning at the hands of nineteen terrorists armed with box cutters and airplane tickets. We don't know for certain if better intelligence-gathering might have saved all those lives. We do know, however, that intelligence work is saving lives today. The ultimate threat here isn't nineteen men on airplanes; it's nineteen men in the middle of one of our cities with a nuclear weapon. As long as that danger is real, our duty and our objective could not be more clear. This nation must not, and will not, relent in tracking terrorist activity with every legitimate pool at our command.

Ladies and gentlemen, the national imperative that arrived five years ago will still be with us five years from today. This Administration, this Congress, and those who win the next set of elections will have to conduct the war on terror as their prime responsibility. It will go on until the threat is dealt with symmetrically, systematically and permanently. But this war, though lengthy, is not endless. We know that our cause is right and we know, as Ronald Reagan did, that no weapon in the arsenals of the world is so formidable as the will and moral courage of free men and women. It is a weapon our adversaries in today's world do not have. It is a weapon that we as Americans do have. Armed with that courage, confident in the ideals that gave life to America itself, we go forward to serve and to guard the greatest nation on earth.

Thank you.