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 casualtie of September 11th and our forebears and our children would never forgive us if we didn't.” 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.
In many law schools the Federalist Society is the primary, if not the only, forum for authentic dialogue carried out in the spirit of civility and good will. Your goal is for law schools to be places of active, well-reasoned debate instead of echo chambers of accepted opinion. You have the respect of people across the ideological spectrum for the simple reason that you've earned it, and I congratulate you for nearly a quarter-century of leadership and accomplishment. No modern organization has been so effective in promoting respect for the separation of powers, federalism, and the topic of this conference, limited government. The Federalist Society stands firm, as well, for the principle that courts exist to exercise not the will of man but the judgment of law. Federal judges are appointed for life and serve outside the democratic process; therefore, they have a duty to pursue no agenda or platform and to leave to politics those who run for office and answer to the people. As a great American put it, “Judges are to be servants of the law, not the other way around.” Those are the words of Chief Justice John Roberts, one of the many superb nominees chosen by President George W. Bush.

One of the President’s most recent nominees happens to be a founding member of this organization, and we look forward to the confirmation of Peter Kaiser as a judge on the D.C. Circuit. Throughout our time in office, the President has selected judges who understand their role in the constitutional system, and I assure you that nothing that has happened in the last two weeks will change his commitment to nominating first-rate talent like John Roberts and Sam Alito.

It’s a privilege today to be in the company of my friend Ted Olson. Ted, of course, is a lawyer of high scholarship and persuasiveness. To this day, I’m still impressed with his effective performance in a case called *Bush v. Gore*. Ted, of course, has had a brilliant career both in the public sector and private practice. He did a tremendous job for the nation as Solicitor General of the United States. But there’s so much more to be said about the man. I don’t know of a single public servant who has ever faced heavier professional demands or greater personal sorrow, all at the same time. That’s the burden that fell on Ted, and we admire so very much his example of dignity and character. I hope those of you who don’t know Ted will have the chance to shake his hand during this conference because he’s the kind of person that every lawyer should hope to be.

I’m happy to relate, also, that Ted is a newly married man, so I want to congratulate him and Lady on their wedding last month.

For many years, one of the most familiar faces at Federalist Society gatherings with Ted’s late wife Barbara. Going back to her days as a law student at Cardozo, and throughout her fine career as a practicing attorney, prosecutor and author, Barbara always made time to help this organization. It’s most fitting that a lecture series should bear her name, and I consider it an honor to participate. Lynn and I knew Barbara as many of you did. When we think of Barbara, we see her smiling, speaking her mind, sharing great warmth and humor, and being surrounded by loving friends and family. This beautiful and kind-hearted woman was taken away in a moment of cruelty that shocked our nation and moves us still. Those who knew Barbara miss her. We’re grateful for her good life, and the United States of America honors her memory.

The passing of another five years has not managed to dim the outrage of September 11, 2001, and as our nation wages the War on Terror, we’ll never lack for inspiration when we think of the innocent men, women, and children who were the first to fall in this war, nor will those of us in positions of responsibility lose sight of the urgent, ongoing duty to find and hold to account the people who wanted to kill innocent Americans.

It’s natural to feel fortunate that our country has come this far without another attack like that of 9/11. But it’s really not just luck, and it’s not because the terrorists have not been trying to hit us. The relative safety of the last five years is the result of focused, determined, necessary efforts to track down these enemies, to understand their ambitions, to stop them before they strike again, and to deny them safe havens and access to even deadlier weapons.

When you’re dealing with hidden adversaries, you have to spend a lot of time speculating on what their next movements or next targets might be. But when it comes to their beliefs and to their long term objectives, we have no need to speculate. They have laid it out in detail for the entire world to see. The terrorists have adopted the pretense of an aggrieved party, claiming to represent the powerless against modern imperialists. The fact is, however, they’re at
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 Iraq’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.