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ROMA TRE REMARKS BY KERRY KENNEDY

“Diritti umani nella società americana contemporanea”

A few months ago I was asked to speak with you about civil liberties in America in the wake of September 11th.

Over the course of the last 4 years, the United States government has undertaken sweeping policy initiatives on a wide range of issues under the rubric of national security which, taken together, amount to an unprecedented assault on our fundamental values and most cherished beliefs. The Bush administration took full advantage of the climate of fear in the wake of the terrorist attacks on our country to silence critics, imprison the innocent, torture suspects, invade our privacy and create an atmosphere of repression which harms the American people and appeals to the worst instincts for oppression in governments across the globe.

Today, I will point to 12 changes in law, regulation and practices which amount to a frontal assault on the very freedoms the Bush administration is claiming to protect. For additional information I urge you to visit **www.humanrightsfirst.org** and **www.ACLU.org**. Both organizations have issued a series of reports on these subjects, from which I have taken freely in my remarks today, especially Human Rights First's comprehensive report on the loss of civil liberties in the wake of the September 11th attacks called "Assessing the New Norma".

This Bush administration has gone to war on civil rights.

Assault Number 1: The Freedom of Information Act.

In 1966, Congress passed the Freedom of Information Act---FOIA--- mandating that records in the federal and legislative branches of government must be accessible to the American people. Perhaps our most important transparency legislation, FOIA has been used to increase government accountability, expose abuse, and counter corruption.

In November 2001, the Attorney General reversed nearly 40 years of openness, mandating a new policy which orders agencies to presume government records are secret, forcing citizens to resort to litigation. This secrecy policy reaches far beyond issues which might touch on terrorism, or, for that matter, any security concern. It is a presumption of secrecy in decision making on everything from education budgets to housing policy to regulation of the pork industry!

For instance, an expose in last week's New York Times revealed that chemical manufacturers successfully lobbied the federal Environmental Protection Agency which subsequently refused to answer FOIA requests about the extent to which toxic paints and household chemicals are poisoning New York City's water and air.

I am as concerned about terrorism as anyone, but its clear this policy makes our city, and our nation, more vulnerable to corruption, abuse and endangerment, not less.

Assault Number 2: The Whistle Blower Protection Act

Further eroding the right to scrutinize government action, the Bush administration initially sought to shield the Department of Homeland Security from the Whistle Blower Protection Act. Though Congress rejected this bad idea, the Bush Administration has made no secret of its intention to punish federal employees who sound the public alarm about official corruption and violations of the law, whether it's about no-bid contracts in Iraq or a secret program to spy on Americans. At a time when public attention is focused on intelligence failures in order to take corrective action, the Administration has gone to great lengths to silence whistleblowers who speak out in the name of national security.

Just look what happened to Sargeant Sam Provance, a young soldier serving in Iraq who began to raise concerns with his superiors in early 2004 about what was going on at a U.S. run prison at Abu Ghraib. For speak ing to the press about what he learned in his experience, Sgt. Provance—who testified before Congress last week—was disciplined and demoted, As even Republican members of Congress are beginning to recognize, our national security interests would be far better assured by protecting the brave women and men who are willing to come forward and report government abuse than by, in effect, shooting the messenger.

Assault Number 3: Outsourcing Torture

Since September 11th, the United States has pursued a new policy known as “extraordinary rendition”, under which the United States seizes individuals from our streets or yours, and sends them off for interrogation to countries known to practice torture.

Bob Herbert wrote about the practice in the New York Times. Here is what he said:

“ Mr. Arar, a Canadian citizen with a wife and two young children, had his life flipped upside down in the fall of 2002 when the Justice Department, acting at least in part on bad information supplied by the Canadian government, decided it would be a good idea to abduct Mr. Arar and ship him off to Syria, an outlaw nation that the Justice Department honchos well knew was addicted to torture.

Mr. Arar was not charged with anything, and yet he was deprived not only of his liberty, but of all legal and human rights. He was handed over in shackles to the Syrian government and, to no one's surprise, promptly brutalized. A year later he emerged, and still no charges were lodged against him. His torturers said they were unable to elicit any link between Mr. Arar and terrorism. He was sent back to Canada to face the torment of a life in ruins.

Mr. Arar's is the case we know about. How many other individuals have disappeared at the hands of the Bush administration? (The New York bar report estimates between 100-150 cases.) How many have been sent, like the victims of a lynch mob, to overseas torture centers? How many people are being held in the C.I.A.'s highly secret offshore prisons? Who are they and how are they being treated? Have any others been wrongly accused? If so, what recourse do they have?"

But our government did not act alone. Last week, the Council of Europe released a report acknowledging that European governments were most likely aware of or collaborated in the rendering of prisoners.

Assault Number 4: Torture under U.S. Custody

Throughout my 25 years working on human rights, torture was always associated with the most brutal regimes-Kim Jong Il's North Korea, Idi Amin's Uganda, Papa Doc's Haiti, Pinochet's Chile. Today, say the word torture and the universal image is of U.S. soldiers abusing prisoners in Abu Ghraib, Iraq.

It is not always convenient to send detainees overseas for abuse. In recognition of that fact, the New York Times reported:

«In the spring of 2003, Defense Secretary Donald H. Rumsfeld explicitly approved 24 interrogation techniques for Guantanamo, including “dietary manipulation,” “environmental manipulation,” “sleep adjustment” and “isolation,” all of which had been previously prohibited by U.S. law and explicit military policy. He did so despite strenuous objections from senior military lawyers, the FBI and others in the government. This policy is still in place.

By mid-2003, the military extended the Guantanamo rules to Iraq. In fact, in August 2003, the Pentagon sent the Guantanamo commander, Maj. Gen. Geoffrey Miller, to Abu Ghraib prison, reportedly with the instruction to “Gitmo-ize” the Iraqi prisons. The revelation of pictures from Abu Ghraib this week tells part of that story.»

Under this administration, prisoners under US control have been subjected to unspeakable horrors, including sexual abuse, humiliation, use or threat of electric shock, beating, shaking, hooding, “water boarding,” extended sleep deprivation, attacks by dogs, prolonged solitary confinement, and prolonged incommunicado detention.

For the past several years, the Bush administration has fought hard for the right to torture detainees. Mr. Bush even threatened to use the first veto of his presidency, on a defense bill needed to fund military operations in Iraq and Afghanistan “, As the Washington Post reported” So that he can preserve the prerogative to subject detainees to cruel, inhuman and degrading treatment. In effect, he threatens to declare to the world his administration's moral bankruptcy."

After months of debate Sen. John McCain 's amendment -- barring cruel inhuman or degrading

treatment -- passed the US Senate by a vote of 90-9, despite the administration's fierce objections. So the President was forced to accept this provision. But when he signed it into law, the President added language in his "signing statement" saying that he would apply the law only as it was consistent with what he, as commander-in-chief, deemed necessary and appropriate to ensure US national security.

Today the United States is holding more than 12,000 detainees in Iraq, Afghanistan, at Guantanamo and elsewhere. At least half the Guantanamo detainees have no known connection with terrorist organizations. An unknown number of these so called "ghost detainees" are being held in secret locations, with no access to the International Committee of the Red Cross or anyone.

According to a report released by Human Rights First this month, to date almost 100 detainees have died in U.S. custody. The Pentagon itself categorizes 34 of these deaths as homicides. In at least 8 and as many as 12 of these cases, the detainees were literally tortured to death by U.S. officials.

The United States must allow the International Committee of the Red Cross to meet with individuals in U.S. custody. Moreover, Congress should create an independent commission, to investigate the hundreds of allegations of torture, abuse, and other illegal detention practices that have been reported over the last four years.

Assault Number 5: Domestic Spying

According to the ACLU, the Bush administration has gutted restrictions on the FBI's spying on domestic religious and political organizations. The new guidelines loosen some of the most fundamental controls on the conduct of the Federal Bureau of Investigation and represent yet another civil rights casualty of the Bush Administration's war on terrorism.

The guidelines had regulated FBI activity in both foreign and domestic intelligence gathering, and had made it clear that constitutionally protected advocacy of unpopular ideas or political dissent alone could not serve as the basis for an investigation.

Under the new guidelines, however, the FBI is free to send undercover agents to snoop on groups that gather at places like mosques or churches -- even if there is not a shred of evidence that someone in the group has or plans to break the law.

Congressman John Conyers declared the new guidelines "decimated the Fourth Amendment".

Assault Number 6: Attorney Client Privilege

Without observing the legally mandated period of public review and comment, the Bush administration implemented a new eavesdropping regulation that gives the government the unprecedented power to listen in on conversations between a prison inmate and his attorney.

The new regulation allows the Justice Department, unilaterally, without judicial oversight, and with no meaningful standards as to when it will be invoked, to decide when to eavesdrop on the confidential attorney-client conversations of a person whom the Justice Department itself may be seeking to prosecute. What is even more disturbing, this new regulation applies not only to convicted prisoners, but to all persons in the custody of the Department of Justice, including those who have not yet been convicted of any crime and are presumed innocent, as well as those who are not accused of any crime. This means that innocent people will have their rights stripped.

Assault Number 7 Invading Privacy: Snooping on Library Records, Credit Card Data, Pharmacy Purchases and other Personal Information

Under the Patriot Act, the FBI has vastly expanded access to personal records of US citizens who are not suspected of any criminal activity. Information sought can include what internet site a patron surfed while visiting the public library. The citizen would have absolutely no knowledge of the search. Indeed the librarian or bookseller can be criminally prosecuted for informing the citizen of the FBI's interest.* But this is not limited to books. The FBI is now allowed to openly monitor the Internet, credit card data and pharmacy items anyone purchases. In an nationwide survey nearly 10 percent of our libraries reported being asked to supply information by the federal government.

Assault Number 8: Wiretapping Private Conversations

Just after September 11th, President Bush authorized the National Security Agency to intercept vast quantities of the telephone and internet communications of innocent Americans without court approval.

“Without a system of checks and balances, the government can monitor any phone call or e-mail they want, and they can collect and disseminate any data they find however they like. Just knowing that the government is spying without cause on innocent Americans sends a chilling message to all of us that our conversations are not our own.” ACLU

As Italians, you are vulnerable to this abuse of power, because the surveillance is aimed at Americans calling people on the phone who live overseas. According to President Bush, he doesn't need a warrant to do so. Apparently he can just go on a fishing expedition and listen in on who ever he wants, despite the law.

The federal government already has the power to listen in on Al Qaeda, and that is not in dispute. The issue here is that the president wants to listen in on anyone. This policy actually undermines our national security.

As Sen. Kennedy, points out:

“The Administration has placed front line employees at the National Security Agency at risk of criminal penalties.

The Administration has made it possible for terrorists to challenge the evidence against them and evade prison.

The Administration has made it less likely that terrorists will cooperate in further investigations and prosecutions because they will rely on their challenges to the evidence to avoid conviction.

The Administration has even left the telephone companies vulnerable to lawsuits for cooperating with the government.”

This is one more example of the abuse of power in the wake of the terrorist attacks.

Assault Number 9: Targeting Immigrants

Walt Whitman wrote: “These States are the amplest poem. Here is not merely a nation, but a teeming nation of nations.” John Kennedy called us “A nation of immigrants”.

Over the 4 years the administration has gone on a rampage against the rights of immigrants in our country.

First, it rounded up 1,200 people, mostly Muslim men with minor visa problems, labeled them as “suspected terrorists”, and held them in prisons in secret, refusing to tell their loved ones, their lawyers or the press whether they were being held and on what basis. This is reminiscent of Latin American disappearances during the 1980’s. Many were long term, tax paying residents of the United States with American children. Few were ever charged with criminal activity tied to the investigation.

The administration then deported people, using secret evidence, without revealing to defendants, their lawyers or the press, the basis for the deportations.

Assault Number 10: Racial Profiling

Despite President Bush's claim that the war on Terrorism would not become a war on immigrants, the first several years after September 11th saw the Attorney General, in a full embrace of racial profiling, inform 5,000 immigrant Muslim men aged 18 to 35 that they were wanted by law enforcement for "voluntary questioning".

Racial profiling is anathema to our values our constitution, and our most cherished beliefs, but for a time it became official policy at the Department of Justice.

Assault Number 11: The Detention of U.S. Citizens

Just in case you think U.S. citizens protected ourselves from these assaults, think again. Consider the case of Jose Padilla. He is an American citizen, born in New York and raised in Chicago. He was arrested at O'Hare Airport in Chicago, and taken into federal custody. Initially he was detained in connection with a criminal investigation, but after 30 days he was transferred to US military custody and classified as an "enemy combatant" . For more than three years Mr. Padilla was held in incommunicado detention at a military base in South Carolina. Though the government claimed that he had ties to Al Qaeda and was part of a plot to detonate a dirty bomb, he was never charged and never tried for these alleged crimes. And he was denied access to a lawyer. Late last year as the US Supreme Court began to consider whether to pursue his case, Padilla was abruptly charged with an unrelated crime and transferred to a federal detention center in Miami where he is now being held. The administration continues to assert that it has the right to detain any US citizen suspected of having ties with Al Qaeda and to hold them indefinitely as "enemy combatants."

And even if Mr. Padilla is acquitted of the crimes of which he is now accused, the administration indicated it might continue to hold him indefinitely after that.

ASSAULT Number 12: Military Tribunals

Let me start with a quote:

"Following a rise of extremist violence, the Government began trying cases of persons accused of terrorism and membership in terrorist groups before military tribunals...This use of the military...courts...has deprived hundreds of civilian defendants of the constitutional right to be tried by a civilian judge. The Government defends the use of military courts as necessary in terrorism cases, maintaining that trials in the civilian courts are protracted and that civilian judges and their families are vulnerable to terrorist threats. Some civilian judges have confirmed that they fear trying high visibility terrorism cases because of possible reprisal. The Government claims that defendants receive fair trials in military courts...However, the military courts do not ensure civilian defendants due process before an independent tribunal...There is no appellate process for verdicts issued by military courts; instead, verdicts are subject to...confirmation by the President."

As Elisa Massimino of the Human Rights First points out, "This is not a draft of an ACLU press release on the recent military order signed by President Bush. It's an excerpt from the Egypt section of the U. S. Department of State Country Reports on Human Rights Practices from 2001. Similarly, when American Lori Berenson was convicted on terrorism charges in a military court in Peru, the United States, including in its Human Rights report, vigorously objected: "Proceedings in these military courts...do not meet internationally accepted standards of openness, fairness, and due process. Military courts hold...trials in secret." What will we be able to say now?"

U.S. military commissions at Guantanamo suffer from the very same flaws—and worse. Under military tribunal rules, a defendant could be sentenced to death in a trial held entirely in secret.

Congress recently added a limited right to judicial appeal, but there is no protection against coerced confession, no protection against the use of evidence obtained through torture, and as practical matter no presumption of innocence. To the contrary, it's a presumption of guilt on which the military tribunal system is justified.

As we wrestle with our response to the terrorist attacks on our nation, policies we pursue and laws we pass have had a devastating impact on real human beings.

So we have innumerate 12 assaults: Assaults on:

- The Freedom of Information Act
- The Whistle Blower Protection act
- Out sourcing torture
- Torture under U.S. Custody
- Domestic Spying
- Attorney Client Privilege
- Invading Privacy
- Wiretapping Private Conversations
- Targeting Immigrants
- Racial Profiling
- Indefinite Detention of U.S. Citizens
- Military Tribunals

It is no easy job to balance protecting civil liberties with maintaining our national security. I don't claim to have all the answers. But I do know this. If we fail to confront the issue, then the next generation will inherit the harvest of our indifference.

It seems clear that there are certain things we ought to do.

In the wake of the terrorist attacks, our first duty is to the survivors, the victims and their families. We must tend to their needs, rebuild New York city, and invest in our economy.

Second, we must bring the people responsible for this act of destruction to justice. Success will necessitate a coordinated effort between local, federal and international law enforcement and cooperation with our allies around the world. That cooperation can only be enhanced if we adopt a stance of fraternity with the rest of the world by supporting rather than seeking to undermine international agreements such as the anti-ballistic missile treaty, the Kyoto conference, the land mines treaty and International Criminal Court among others.

Third, we must root out terrorists in general and their sponsors throughout the globe and make certainty of capture so absolute and the consequences for participating in, or harboring, or financing or in any way aiding and abetting terrorists so severe that no one considers it an option. Suicide bombers may appear unstoppable but their effectiveness depends on a network of cold calculators with well developed instincts for self-preservation.

Fourth, we must take all reasonable precautions to secure innocent civilians, our land, airports,

sea ports, nuclear power plants and other vulnerable sites.

Fifth, we must use our vast resources of knowledge and wealth as a nation to build a world in which the United States is viewed from abroad with the same sense of admiration for our values of openness, freedom and democracy as we like to think of ourselves at home. In practical terms that necessitates several changes. The average American's share of foreign aid to the world's 40 poorest countries is about equivalent to the price of a pastry and a fancy cup of coffee. We must increase foreign aid, seek the wisdom of our allies, comply with international treaties, and assure our foreign policy enhances human rights and economic prosperity for our neighbors as well as ourselves.

Too often, the United States is viewed as propping up brutal regimes which practice torture. We need, instead, to demonstrate our support for local civil rights defenders, the Martin Luther Kings of their countries and urge governments to tolerate peaceful, non-violent dissent.

And then, at home, we must be vigilant to assure that, in the aftermath of this disaster, we achieve a reasonable balance between collective security and individual liberty. I think we are all now more willing than ever before, to endure the inconveniences of heightened security, longer lines at airports, metal detectors in all government buildings, etc. But we should proceed with wisdom and caution about what we are willing to accept in a time of fear. Justice Thurgood Marshall said: "History teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure."

But liberty is never extravagant; it is the very heart and soul of the idea of America. I would like to end with these lines from the great American poet and civil rights advocate, Langston Hughes:

O, Let America be America again---
The land that never has been yet---
And yet must be---
The land where every one is free.
I'm the one who dreamt our basic dream
In the Old World while still a serf of kings,
Who dreamt a dream so strong, so brave, so true,
That even yet its mighty daring sings
In every brick and stone, in every furrow turned
That's made America the land it has become.
Out of the rack and ruin of our gangster death,
The rape and rot of graft, and stealth, and lies,
We, the people, must redeem
The land, the mines, the plants, the rivers.
The mountains and the endless plain--
All, all the stretch of these great green states--
- And make America again!

As you leave here today, hold fast to your dreams-to your courage and your commitment. And, help us make America, America again.