

Inside the Newsroom: Sacrificing freedom to terrorism

By [Chris Peck \(Contact\)](#)

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Jack Goldsmith came back from Harvard to visit Memphis a few days ago and gave a speech on terrorism and the government's response to it that sent chills down the spines of those who heard him speak.

Born in Memphis in 1962, Goldsmith comes from the distinguished family that for decades owned the Goldsmith's department stores.

Now he's the Henry L. Shattuck Professor of Law at Harvard, where he lectures on the thorny topic of how the rule of law intersects with the threat of terrorism.

Here's the crux of his Memphis message about terrorism.

"We don't know how to stop it. We don't have enough actionable intelligence. And we know that there are plans out there for everything from nuclear bombs in New York City to more planes crashing into airports," Goldsmith told a wide-eyed luncheon crowd at The Economic Club of Memphis.

But Goldsmith believes an even bigger threat than terrorism faces America: the squeeze on our open, free society by the heavy hand of an all-powerful, paranoid government.

"The current administration has not worried itself too much with issues of trust and credibility that are so important to political success," Goldsmith documents in his book "The Terror Presidency." "The Bush administration has operated on a concept of power that relies on minimal deliberation, unilateral action and legalistic defense. This approach largely eschews politics: the need to explain, to justify, to convince, to get people on board, to compromise."

As a result, Goldsmith believes the United States finds itself caught in a dangerous vise.

On one hand, the terrorist threat continues to grow and mutate -- but the public isn't being well informed about that threat and doesn't fully comprehend it.

On the other hand, trust is dropping among the American public and others around the world in the ability of America's leaders to effectively fight terrorism and protect America's way of life.

Don't mistake Jack Goldsmith for a dove or a liberal.

A conservative lawyer and a Republican, he's part of the Hoover Institution's Task Force on National Security and the Law.

He was hired by the Bush administration in 2003-2004 as an assistant attorney general and worked in the Justice Department's Office of Legal Council, where he tried to make sure our nation's anti-terrorism investigations and actions -- like wire-tapping, waterboarding and detention of civilians without some legal protections -- were lawful.

What he saw troubled him.

Goldsmith concluded early on that Bush administration officials had become ensnared in a tangle of wanting to do all they could to fight terrorism while often stretching the guidelines of American law that protect personal privacy, the right to legal counsel, a fair trial and many other foundational freedoms of our society.

From Goldsmith's perspective, these were dedicated men and women who, for the most part, saw with clarity the challenge terrorism presents.

But their zeal to fight terrorism led them onto a path of go-it-alone secrecy where they often proceeded without advice and consent of Congress or world leaders. They pushed the envelope on what was legal and lost the huge reservoir of initial public support for the war on terror that swelled after 9/11.

As a result, the administration grew to fear the law and legalistic second-guessing almost as much as terrorism itself.

For Goldsmith personally, this tension proved difficult. "I saw the administration pushing their power to the limit," he recalled. "And I knew that if I wasn't pushing the limits of the law to protect the American way of life, I wasn't doing my job."

After less than a year, Goldsmith resigned from the Office of Legal Counsel in 2004.

To this day, he's worried about the disconnect between the public and the administration related to the terrorist threat.

"The gap between the president's view and the public's view on terror has grown," he acknowledged in Memphis. "There is significantly diminished trust in the president, even as the terrorist threat continues. "

And all that twisting and re-shaping of the law to try to justify waterboarding, secret wire-tapping and whisking people away to unnamed sites to be interrogated or tortured under the American fight against terrorism?

"Completely unnecessary," Goldsmith said.

Most of what the government felt it needed to do to fight terrorism could have been accomplished by opening up the process, bringing Congress and the public into the discussion, and using the foundations of America's legal system. Other presidents, such as Franklin

Roosevelt and Abraham Lincoln, have faced national crises and war and didn't resort to excessive abuses of power and shaky legal justifications.

How would Goldsmith re-balance the interests of fighting terrorism and protecting America's legal and political systems?

First, share more information about the threat today. "The government has been too stingy with intelligence information. The public needs to know more about the threat matrix," he said.

Second, the next president needs to rebuild credibility and trust. "Get Congress and the public on board again," he said.

Third, don't assume everyone who is against your policies is an enemy. "Some disagreements are healthy. And some presidents, like Roosevelt, appoint political rivals to important jobs during a time of war," he noted.

In private, Jack Goldsmith has this enduring fear: as a nation we are one terrorist attack away from losing much of our American way of life.

We aren't well prepared to repel another attack. And we have undermined the rule of law that protects our personal freedoms should that attack occur.

Not a good place to be, according to this brilliant Memphis native, and a place Jack Goldsmith believes we must quickly exit.

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