Thank you very much for inviting me to be here today. It is indeed a privilege to experience first-hand the charm and generosity for which the Arab world is so justly renowned and which we in the West so much admire. As an American, it is a special pleasure, in the midst of this hospitality, to be at the American University to address a question that is specifically American: What would the Framers of the United States Constitution say about the United States government today?

For anyone with even a passing familiarity with our government’s functioning—if that’s the right word for it—it’s easy to conclude that the Founders would not be all that happy. Washington, all know, is polarized and paralyzed. The wealthy exercise inordinate influence. Campaign contributions often are little more than legalized bribes. The government’s health care roll-out was incompetent and dishonest. Indiscriminate NSA surveillance of the American people has eroded their respect for the government. Overseas, the government relies too little on the power of example and too much on the force of arms. It blunders into one foolish war after the next. A state of war has become the new normal for the United States. The traditional checks and balances that were supposed to control the United States’ national security bureaucracy have all but collapsed. (I have written a book describing this, National Security and Double Government, to be published in September.) In many ways, therefore, the Founders would be dismayed at the sorry remnants that remain of their grand experiment in democracy.

I want to say a few brief words, however, about one important way—the most important way—that that grand experiment has thrived and continues to thrive in America today. It is so obvious that it often is overlooked. That is the realm of freedom of expression—specifically, the right of Americans to criticize their government. One early incident encapsulates the meaning and spirit of the First Amendment of the Constitution in this regard better than any court case. Let me recount it.

Shortly after Thomas Jefferson took office in 1801 as the third President of the United States, he was visited by the distinguished German scientist and explorer, Baron von Humboldt. Jefferson at the time had been the object of the most scurrilous, scandalous abuse in the press concerning his religion, family relations and personal life. When von Humboldt came to the White House he was stunned to find, in Jefferson’s own office, one of the very newspapers that contained those shocking charges. Von Humboldt asked Jefferson why the newspaper was not suppressed. “Why do you not fine the editor, or imprison him?” he asked. Jefferson smiled. “Put that paper in your pocket,” he said, “and if you hear the reality of our liberty, the freedom of the press, questioned, show them this paper and tell them where you found it.”

That was of course over 200 years ago. But I want to relate to you, for whatever it’s worth, my own personal experience with the reality of this particular liberty in America today.
Thirty years ago, I was invited with another American lawyer to undertake an on-site human rights investigation. The sponsors were two independent, American, non-governmental organizations. They asked us to go to the war zone of Nicaragua. Our mission was to look into allegations that the so-called “contras” were involved in serious abuses of the rights of Nicaraguan civilians. The contras, at the time, were actively supported by the United States government. In fact, President Reagan had described them as the “moral equals of the Founding Fathers.” So our government, understandably, was not eager to help us, and it did not.

My colleague and I went to Nicaragua, and what we found appalled us. The contras were involved in numerous, heinous violations of the rights of innocent men, women and children—murder, kidnapping, rape—of people who had no involvement whatsoever with the Nicaraguan government. It was clear, the American ambassador in Managua told us, that the “level of atrocities was enormous”—his words. These were calculated, deliberate acts of cruelty, carried out by thugs whom the United States government trained and financed. When we returned to Washington, we said that. Our report was widely covered by the newspapers and television. Some months later I was asked to testify as a witness for Nicaragua in its action against the United States in the International Court of Justice. I did that, and related to the Court what we had found. My most vivid memory of that case is not of my testimony, however, but of a question that I was asked as I stepped out of the courtroom, a question put to me by a young law student who had come to The Hague to observe the historic case from his native Poland. (Poland at the time was still within the iron grip of the Soviet Union.) He stepped up to me, a look of sheer amazement on his face, and he said, “You can do this? You can do this? You will not be arrested? You can go back to your home?”

“Yes,” I replied. “I am an American.”

That was then—and remains today—the reality of American liberty, in Jefferson’s phrase. No one ever told me that I could not travel to Nicaragua to find out what my government was doing there. No one told me that I could not return home. No one told me that I could not talk about the shameful truth we had uncovered in Nicaragua’s war zone. No one told me that I could not insult the government of the United States by testifying against the United States before the World Court. No one told me that I could not leave the United States to do that. No one told me that I could not return to the United States after I did that. Neither I—nor the Harvard law professor who headed the Nicaraguan legal team, nor the Washington lawyer who organized it, nor the former CIA official who also testified as a witness for Nicaragua—none of us was ever punished, or reprimanded, or penalized in any way for what we said or what we wrote or where we traveled.

However much may be wrong with the American government today, and there is a lot wrong with it, the most important thing is still very much right with it: the United States government continues to respect the constitutional right to freedom of speech, freedom of the press, freedom of assembly, and the right to travel—the right to listen and to learn, and to inform others—the rights on which the survival of all other rights depends. Jefferson’s words continue to ring as true today as they did the day he wrote them: “We are not afraid to follow truth wherever it may lead,” he said, “nor to tolerate any error so long as reason is left free to combat it.”