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PROSPECTS FOR THE U.S. INTELLIGENCE COMMUNITY:
THE HAYDEN NOMINATION, ELECTRONIC SURVEILLANCE,
AND THE QUESTION OF REFORM

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Q&A SESSION

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P R O C E E D I N G S

MS. CROWLEY: So, the idea here was for the five of these distinguished panelists to set the table for you, and we're ready for your questions. Again, if I can just ask that they be brief and that they be a question either directed to the panel as a whole or to someone in particular. If somebody is ready now, that's great; otherwise, I'll --

CONGRESSWOMAN HARMAN: Tell us who they are.

MS. CROWLEY: Yes, and please tell us who you are. Come over where the microphone is. I'm going to wait for some hands.

Let me just kick this off, because there's one thing -- I was struck by the Manhattan Project image for intelligence. I think people out there do feel that the intelligence community is not ready, is not at that point where they can prevent another sort of 9/11 attack. Are they at that point? How much trust should we have in the intelligence community at this point? Because I don't think much is out there.

REP: HARMAN: No, they're not at that point. Is that something we need to aspire to? You bet. But we're not there.

That was the idea behind intelligence reform in 2004. We were trying to establish a joint command across 16 agencies just like we did 20 years ago in the military with Goldwater/Nichols.

We now fight one military war. All the four military branches, more or less, fight together, recruit together, deploy together, ask for materiel that is interoperable, etc. That's the idea, and have one command structure. That's what we want now so that we can task together, use the budget to force cooperation, break down stovepipes.

I surely agree with Rich that we don't want to go backwards, but I disagree

strongly with him that what we want to do is empower some very aggressive lawyers in the White House to come up with legal theories to justify limitless executive power, which is kind of where I think we are. I actually think you empower people to take risks if you come up with a clear legal framework that they understand and that has widespread acceptance, so at any rate, bottom line, we're not there, we need to do a lot better.

MR. McLAUGHLIN: I would add to that and say that in my remarks I said we were in need of more effort and not as well prepared as we need to be, but I also said we're better prepared than most people think, and I would differ with Jane a little bit here in saying that the intelligence community has made dramatic progress against Al Qaeda since 9/11. In fact, before 9/11 I can cite a number of instances in which bombings were prevented at our embassies and so forth.

Clearly, 9/11 was a huge battle lost in a war that the intelligence community had been fighting since the mid-'90s. Since 9/11, though, one of the reasons that this movement has metastasized or diffused, as George indicated, is because of the success that the intelligence community has had in attacking the leadership of Al Qaeda around the world and essentially putting it on its back heel, if you will. They are now probably much less able to plan, much less able to coordinate.

If you look at the letter that Zawahiri sent to Zarqawi, it's apparent that they are isolated in some remote spot, having trouble with money, and so forth. So, first, a lot of progress has been made, and there are reasons why we haven't been attacked in a massive way since 9/11.

Now, that said, I'm not arguing at all for complacency here. Nor should we think that because this movement has metastasized we shouldn't delude ourselves into thinking that it is no longer an international movement.

What's happened is that it is now, today, much less about geography as it was prior to the takedown of the sanctuary and hierarchy as it was when they had a (off mike) counsel that functioned in one place. It's today much more about internet and ideology so that one of these attacks occurs in a place like Madrid or London or Bali or Casablanca.

Just look at the Jihad website. That's used for propaganda and recruitment purposes. So, the movement in that sense is just as dangerous, and maybe more, and I also would not argue for complacency in thinking that they're not planning another attack in the United States. This is still the brass ring for them, and the way that they could rejuvenate the movement, bring in donations and recruits, is to carry out a major attack here.

Going back to what I said earlier, the thing they need to achieve is surprise as they did the last time, and I will just say we're in much better shape than we were before 9/11, but I'm not arguing for complacency at all on this.

It's important to think back to -- the 9/11 Commission did not look strenuously at anything that happened after October of 2001, so it did not take into account in its recommendations the progress that had been made from 2001 up to 2004 in July when they reported out, and I'll leave it there.

MR. FALKENRATH: Can I say on this, my argument is not for limitless executive power. It's not just a peer article to argument. It's, rather, that when we have a particular program that we want to do from a government perspective to accomplish a mission, if we can find authorization for it by looking at, say, an old statute or an old court case, you know *Smith v. Maryland* from 1979 or the Electronic Communication Privacy Act, and if we can find authorization there then we should be able to do it if that authorization was granted historically. We should not have to go back to the Congress for a permission slip every time there's a new program if on good faith cleared and sophisticated lawyers can find

adequate statutory justification for doing it. I would -- no, the administration, even on the warrantless wiretap, is not claiming, to my knowledge, that this was justified by the inherent Article II powers. It's claiming it was justified because it believes the authorization for the use of force was sufficient authorization for that program.

Now, I personally would have rather amended the FISA statute to permit the NSA to do whatever it's doing in this operation. I don't know the details of it. That's my preference, and I think the administration needs to explain why it did not try to do that when we got a lot of changes throughout the time. And, so this is -- you know, it's not a claim of limitless executive power, I think, that the administration is making, in that case -- and my argument is certainly not that we should seek that all the time. What we should, though, do is look at all the statutes, all the court cases, all the regs, and if there's a way that we can authorize what we want to do, what we need to do, then we should do it and move forward without that sort of timorous fear of the consequences.

MR. PODESTA: A couple of points, Candy. I think we've got -- we probably have too many lawyers on this panel, but I think that, you know --

MS. CROWLEY: There are too many lawyers.

MR. PODESTA: There are two many lawyers in the country.

Fundamentally I think I agree with -- I want to say two things really. I agree with John's point, but I think you need to think about that in the domestic context, which takes me to where Richard's going with respect to unique interpretations or expansive interpretations of the law.

I mean, I think we saw that -- to just make a reference, I think we saw that and we got in trouble when people overruled the career military lawyers with respect to the use of torture, and I think that the country (off mike) profoundly regret that we didn't listen to the

lawyers who were inside the Pentagon at that moment. I think that's done tremendous damage to the stature of the United States around the world.

I think that with respect to the domestic side of this, that's, I think, what the troubling part about the NSA programs is. The problem really is that the administration hasn't settled on what its argument -- I'm not talking about the program George was talking about, but the question of whether they're actually carrying out wiretaps on contact with calls that are being made overseas into the United States against U.S. persons at any rate.

The problem is we can't really get a rationale, because every time the administration's challenged to say well, how does this comport with the Constitution, how does it comport with the statutes, how does it comport with FISA we get the answer that to discuss that would be to undermine the war on terror to use fear again to prevent us from really kind of understanding what the country needs to move forward, whether the price is that George discusses is balanced against what the potential harm might be.

And with respect to the specific question, again, that George brought up, the statute that Rich alluded to, the Electronic Communications Privacy Act, the Stored Records provisions, requires for those phone companies to turn over those records -- a court order -- although evidently *Business Week's* reporting today that they use a different exemption to use a cutout. I don't know if that's true or not. But we can't get the facts straight.

And when Quest was asked for that information, they said well, get us a court order from the FISA court, and evidently the administration decided that they didn't want to do it or couldn't do it or that the statutory basis wasn't there.

So, we're operating in this hazy world in which we can't get a straight story about what the legal structure is. The Congress rejected a similar program that Admiral Poindexter tried to put forward called the Total Information Awareness Program under

DARPA rather than the NSA, and I think the country needs and particularly the Congress and the oversight committees need a straighter story about exactly what's going on and what the legal basis for it is.

CONGRESSWOMAN HARMAN: Okay, and just -- I know others want to answer, but a PowerPoint presentation about the operational details of a program is not congressional oversight. Congressional oversight requires the full tools that committees have, starting with, you know, very educated constitutional lawyers who really can get back, you know, go back into the 68 statutes that may apply or may not apply, and the legislative history of FISA, which makes clear that FISA was supposed to be the exclusive way to eavesdrop on Americans in America, but it also gives tools like subpoena power if all the documentation is not made available, if the committee chooses and can operate under tools. So, I -- Rich, it is just not the case that briefings of the gang of 8 or now the gang of, whatever it is, 21 plus 15 -- the gang of 36 equals oversight, and I hope that Congress will now assert its prerogative under the Constitution and insist on overseeing all aspects of this program and making it comply with law.

MR. TERWILLILGER: If I may, Candy, just a word on a couple (off mike) through this discussion and some of the earlier remarks. I think it's important to step back and take a look at the constitutional structure.

When Ms. Harman mentioned that the Executive Branch seems to think the Constitution begins with Article II, in fact under the Constitution the Executive Branch does occupy the field and dominate in the apportionment of power among the three branches when it comes to military and foreign affairs. It gets very hazy when you get into areas that include domestic surveillance and support of international/national security responsibilities, and I favor congressional oversight, because it's consistent with what I said before about

toning down the political rhetoric. But the nature of spying on people and operations is, by its nature, clandestine. It is secret. And the Congress, I think it's fair to say, has had a very hard time keeping secrets.

I recently heard of an instance where some congressional staffers went out for a briefing and refused to sign nondisclosure notices. Now, maybe there's some reason for that that I'm not aware of, but I find that a matter of some concern. I would like to see -- again, I would follow John Podesta's comment to take the politics out of this. Let's go ask the intelligence and law enforcement professionals what do you need in order to accomplish these objectives, and if the legal tools to do that are lacking, then Congress should give them to them in a reasoned, rational way.

MS. CROWLEY: I'll give the audience time to jump in. There we go. Go ahead.

MR. PEPREZE: Hi, Dan Putbrese at the Atlantic Council. Congresswoman Harman, you made a couple of comments about the fact that you believe the administration is breaking the law and that they're undermining the Constitution, but you also made a comment that they're abdicating the responsibilities, and when speaking about exerting themselves you mentioned that it's not easy to do right now is what I think I heard you say, and my question is why -- why can't Congress exert itself? And Mr. Falkenrath mentioned ways to do that. I'm just wondering why it's not happening.

CONGRESSWOMAN HARMAN: Well, how much time do you have?

(Laughter)

CONGRESSWOMAN HARMAN: I think the last five years of Congress in this administration under what, you know, some call, you know, a one-party government, meaning one party in control of the House, the Senate, and the White House, shows that we

have forgotten how to do oversight. I don't mean totally. There have been a few bright spots. And actually the House Intelligence Committee is, from time to time, capable of doing oversight, and I certainly work at it and so does he, a relationship with Chairman Pete Hoekstra, and even when Porter Goss was chairman of the committee, not immediately preceding his move to the CIA but before that, we did a serious study of the mistakes made by NSA, the FBI, and the CIA leading up to 9/11 and wrote up a hard-hitting report. (off mike), Senator, was the chairman of the subcommittee that did that and I was the ranking member at the time, so Congress can do it, but there is ample evidence that Congress is not doing it now, and the Republican party has the majority on every committee in Congress, and if they vote as a block, they can outvote the Democrats on the committee, and that happens over and over and over again.

I agree with John Podesta, too, that these issues should not be, you know, partisan football. The terrorists aren't going to check our party registration before they blow us up. That should be absolutely evident, and by behaving this way or behaving this way sometimes, we harm national security. So, it's a point I make over and over again. How do we restore oversight to Congress while the majority party has to want to do that and has to want to do it now? And it won't be a good idea if the majority should change in November if -- well, I'm not just talking about the next two years, but the goal is not to exchange the oppressed with the oppressors or the oppressors with the oppressed. The goal is to rebuild a Congress that cares about asserting its authority under Article I. We have had that in the past, even in very, very difficult times.

You know, remember the Nixon impeachment, which was a bipartisan effort. That is when I started working in the United States Senate for a senator from California. The Nixon impeachment was bipartisan, the government continued to work, Congress passed

laws, etc. That's a better model than the model we have sadly developed over the intervening period.

MS. CROWLEY: I'll take somebody in the back.

MS. KELLY: Hi, Mary Louise Kelly, National Public Radio. More on the NSA. In his testimony last week, General Hayden said that he wanted to limit his comments to what the President has publicly acknowledged in terms of the NSA surveillance activities. He left the impression with many that there were in fact other activities the administration has not publicly acknowledged, and so my question to Congresswoman Harman would be as one of the people being briefed, are you confident that you were fully briefed on what's going on or do you suspect there may be more out there that even the intelligence committees don't know about.

And to Mr. McLaughlin, the reason the administration says it doesn't want to discuss this is that there are -- these leaks are causing damage to national security, and I'm curious whether you personally agree with that -- not leaks in general, but the specific leak about what we know about NSA surveillance. Has that damaged U.S. national security?

MS. CROWLEY: Well, with respect to the question you asked me, the primary reason to make certain that this program fully complies with the law is to give certainty, not just to members of Congress but the public, that their rights are not being abused. This program must fully comply with the exclusive law that Congress passed -- the Foreign Intelligence Surveillance Act. That requires court warrants. That requires congressional oversight. That is why I make this point. It's not just to play lawyer. It's to make certain that the civil liberties of Americans are protected while we exercise the capabilities we need to find the bad guys, even if they're our next door neighbor. So, that's why I make this point.

And, is there some program outside? I hope not. I've surely asked the question of the attorney general and Mike Hayden repeatedly, and I have not gotten an answer yes. But the failure to clarify the legal underpinnings of this program, to make certain that the legal underpinnings are sound, can always make one suspicious, including me, that either they're hiding something now or they're going to hide something tomorrow.

MR. McLAUGHLIN: And to your question, Mary Louise, I think the revelation of these programs has damaged the fight against terrorists. A couple of reasons for that. People have often said to me well, don't they know that we listen to them? Well, of course they do. They also know that we try and recruit people in their midst in order to penetrate them. But you don't ever want to tell them how you do that or give them any window into the techniques you're using.

This program was something that helped us overcome things they had devised to tighten their security in order to elude detection. We now have alerted them to the possibility or to the certainty that we have ways of detecting things they thought we didn't have the capability to detect. That means they will tighten their communications, and it's important to remember -- and that will make it harder for us to understand what they're doing. It's important to remember that these guys use secrecy as an asymmetric weapon against us. They don't have bombs. They don't have airplanes. They don't have major weapon systems. They have to use everything they've got. They know we don't keep secrets. They keep secrets. And that's what makes it so hard to penetrate them and discover what they're doing, so I'm one of those who thinks this has been injurious to our fight against terrorism.

MR. FALKENRATH: I personally agree, and there's one more reason, and it has to do with the willingness of the private sector to cooperate with the government in these

very complex programs, and the telecommunications companies are now going to have to spend millions and millions of dollars defending themselves from lawsuits, which, it seems to me, they were acting in the public interest, and I suspect they were acting under the law or their subscriber agreements, and that's very damaging, because now when we go to other private sector information companies seeking their assistance, they're going to be less inclined to give it. Some of the mechanisms for getting business records from the private sector impose on them secrecy obligations, basically make it illegal for them to disclose that they are cooperating with it, and that runs both ways. We expect them to keep quiet about their cooperation with us for electronic surveillance, and they expect us to keep quiet about it, and if we can't be trusted, the U.S. government, to keep that secret, it seems to me they're less likely to cooperate with us.

MR. McLAUGHLIN: That extends into another realm, too, because let's connect some things up here. Everyone says that we need more and better HUMINT, right? Everyone in the audience would put their hands up and agree with that. What is HUMINT? HUMINT is going to an individual in another country and convincing them to work with you in a clandestine way on the basis that you will keep their identity and their cooperation secret. Well, when human beings out there see that our most sensitive programs are out in the newspapers and that this government can't keep secrets like that, leaving aside the legalities of the arguments here about that for a moment, when our -- when human beings see that as the case, their motivation to cooperate with us and HUMINT is severely degraded, because they're not sure we can protect their cooperation or their identity. So, it ripples across things in the intelligence business.

MR. TERWILLILGER: I just want to briefly underscore the point that Richard made about the private sector. I work with big U.S. and foreign companies all the

time. There is a wealth of information out there that has tremendous value to the intelligence effort against terrorism, and to the extent that this story has the effect that both John and Richard were talking about, and these disclosures have those effects, it is truly devastating.

MR. PODESTA: That's where these issues are joined, though, which is that the public has to have confidence that the Congress is accurately or is diligently looking to ensure that there is serious oversight and that these programs are operating in the context of and within the bounds of the law and the Constitution, and when they can't do that what happens is, I think -- well, you see this with the case of the AT&T whistle blowers at the kind of heart of the Electronic Frontier Foundation. Well, they can't -- when they have no sense that that's happening, then rather than breeding a culture in which truly operational details, like John's talking about, are protected, you have everybody sort of, you know, kind of (off mike) trying to get change in policy -- and, again, I come back to the question of the lawyers finally getting out in public on the torture question.

CONGRESSWOMAN HARMAN: But one more footnote, the leakers, and we don't know who they are, I'm guessing are folks who work for the Executive Branch. I don't think Congress is leaking information. Let's start with the fact that Congress doesn't have any information.

MR. PODESTA: Exactly.

CONGRESSWOMAN HARMAN: Exactly what would we leak?

MR. SMITH: Can I raise a question -- Bruce Smith from George Mason University. We seem to have assumed that the creation of the National Intelligence Director is a great progress. I think this was a very bad mistake. We didn't really need that. It was the wrong solution. Now we've got a billion-dollar agency, sort of an elementary (off mike) public administration is at the White House should not be the home of large operational

entities. You've got a billion-dollar agency with a thousand people.

Of course John Negroponte is a very able man, worked with him, good friend. He's going to be mainly concerned with his own internal agency. How are you even going to staff this? Do you just steal the good people from CIA and move them over to this new intelligence agency? Do they then rotate back to the CIA? Is there an organizational culture in this new agency? Is it going to become like a regular executive department?

What is the -- now, we've got the thing, so we've got to try to make sense with it. But how are we going to avoid the problem of simply creating another bureaucracy which has to be coordinated with all of the existing bureaucracies and the very function that you're supposed to expect of this new intelligence director is sort of negated by the administrative duties of trying to run this huge executive agency.

MS. CROWLEY: We do hear all about -- I mean, to this point, what we hear now is talk about lawyers, bureaucracies, all the things the American people don't really want to hear about.

REP. HAMAN: Well, let me take that on. To remind us all, that was forming a department of national intelligence, a director -- it's really an office, it's not a department. It was one of the primary recommendations of the 9/11 Commission.

It was also one of the -- the number one unanimous recommendation, I believe -- maybe there were a couple of dissents to the whole process, but most of the members of Congress -- the bicameral, bipartisan inquiry into 9/11 -- also recommended that we do it. We were not trying to form a new bureaucracy at all.

There is something called the Community Management Staff that has existed for years -- about 500 people -- that was an adjunct of the CIA and its intelligence coordination function that was intended to manage among these 15 or 16 intelligence

agencies, and the DNI -- the office of the DNI -- essentially is supposed to be this staff, not necessarily frozen in its present job assignments, without a lot of additions, being the joint command over these agencies.

We are as critical as you -- "we" meaning those of us in Congress who were proponents for the function -- as critical as you of what seems to sound like and smell like a new bureaucracy talking about billets and real estate and so forth rather than capability. That is not the direction Congress intended this to go.

The concept behind giving the DNI budget execution power was intended to give the DNI a club -- or, you know, I guess that would probably be what it is -- to force a change in culture across these agencies from stovepipes operating on a need-to-know basis. These are supposed to become capabilities operating on a need-to-share basis, and maybe that's a little jargon, but I think this audience is up to it. I think that's where we need to go, and it is cross-fertilizing -- people cross-fertilizing information collection -- you know, HUMINT and technology collection -- and cross-fertilizing analysis. And that's what I think we have to grow to meet an increasingly nimble, agile, and horizontally integrated threat. This is horizontal integration, not vertical integration.

MS. CROWLEY: Anybody on this panel think DNI was a bad idea and has impeded intelligence gathering?

MR. McLAUGHLIN: Let me get half way there but not all the way, because I think we're all -- those of us who are former professionals have to wish John Negroponte well, and I don't want to say anything to make his job harder. But I think many of the frustrations and concerns you're now hearing from members of Congress were quite predictable. This is not a path that I personally recommended, although once the President decided to go this way my thought was well, let's really empower this individual if we're

going to have such a person.

The law is a little spongy, frankly. I take Jane's point that there's as much leadership here as law involved, but on the other hand the law is not crystal clear about the authorities that this new director ought to have.

Remember, the reform of the military, the Goldwater/Nichols reform, was carefully debated over a number of years before it was enacted. This reform was enacted in the middle of a bitter presidential campaign. The 9/11 Commission's recommendations came out, I believe in July. They were instantly endorsed by one of the candidates, and then the other candidate instantly endorsed them. There was then a congressional debate and they were then voted on in December I think it was and signed into law.

So, this was very hurriedly done, and I think what we're seeing now is that in this new structure people are still sorting out their roles and responsibilities and trying to figure out who works for who, who's in charge, where does the responsibility lie, and so forth, and that's a concerning situation in the sense that if we were to have, God forbid, another terrorist attack sometime in the next six months we cannot be in a posture where people are sorting out roles and responsibilities.

Whatever its imperfections, after 9/11 the CIA had a plan on the President's desk for how to respond to it within four days, and it generally worked, and I would hope that would be the case. I hope it would prevent an attack, but if we didn't prevent it we would have to react to it and this new structure would have to be agile enough to do so. I don't think we're there yet.

Now, that said, there are some good things this new structure can accomplish if it focuses on coordinating the efforts of this 14-, 15-, 16-member community as distinct from getting involved in the day-to-day operation of analysis and operations and so forth, but

that will be very hard for them to do. The bottom line is our government always turns to reorganization and restructuring when it's facing a problem, and that's not always the best answer.

MS. CROWLEY: If it's quick. This is our last question right back here.

MS. GORDON: Siobhan Gorman with the *Baltimore Sun*. Quick question going back to the NSA program probably mostly for Congressman Harman, but others as well. I was wondering to what degree Congress is or should also be looking into technological changes that could be made to the program in addition to legal changes because it's my understanding that there is other technology that is very much available to put in privacy protections or perhaps smooth away to get, you know, FISA warrants and things like that.

CONGRESSWOMAN HARMAN: Well, first of all, I have been very careful -- I certainly hope I have -- not to discuss what's in the program. I respect the classification rules of our government, and that is why while a member of the gang of 8 I felt that I could not talk to anyone about the material on which I was briefed.

Having said that, you're asking me should the program be changed to conform to FISA rather than FISA change to --

MS. GORDON: Both.

CONGRESSWOMAN HARMAN: Or both. Well, my position is, and I don't feel that I have been rebutted adequately by this administration, or basically at all. My position is that FISA, as modernized 12 times since 9/11, fits -- has enough tools in it to cover this program and must be used for this program. The entire program must fit under FISA. That means that there must be court warrants every single time we are eavesdropping -- we're talking about content here -- on Americans, or U.S. persons, as defined in the

statute. It's a kind of complicated definition, but at any rate we must get court warrants to do this. I think that there probably should be some new ways that we put FISA applications together. They ought to be electronic. They ought to have more standardization. There ought to be better use of technology. Perhaps we need more people at both NSA and the Justice Department. Maybe we need more people in the FISA court, which after all is a secret court. We're not talking about dumping this information into the newspaper so that the terrorists can understand exactly what we're planning to do tomorrow to listen to them. But I think that Congress needs to make clear that FISA is the right law, that there is no other law or precedent that trumps FISA, and that's what our legislation in the House does. We're gaining co-sponsors, as I mentioned. The ACLU, which is an interesting arbiter out there, thinks that this is the right approach, and hopefully this administration -- hopefully first the House will engage in vigorous oversight, and I'm pushing that every way I can think of in both the intelligence and the judiciary committees. John Conyers, ranking member on judiciaries, co-author of this FISA law with me and with all the members -- all the Democrats on the House Intelligence Committee co-sponsor it, and many of the people on the House Judiciary co-sponsor it. Anyway, that's where I am. That is my position. I hope that's clear enough. And I think this administration, had it engaged with Congress four years ago in a serious way about the legal underpinnings of this program, would be, in my position, in my view, in a much stronger position than it is now. I think it ignored Congress to its detriment.

MR. TERWILLILGER: I can't address what has occurred in the past four years ago or otherwise, but I do think that the approach of having Congress tell law enforcement and intelligence professionals this is how you should do something is not the best way to go about this. The way to go about this is to ask them what is it you need to do, evaluate that request by the touch stone of the Fourth Amendment, which is reasonableness,

and then find a way to reasonably accommodate their objectives.

I think what we are ignoring in some of this debate about warrants and the warrant requirement is that the need for real-time information without the process that FISA warrants as currently envisioned, even electronically involved, is a real need, something that intelligence professionals need to do to protect the country. And if we can find a way to accommodate that by amending the law, then fine. If we can't, then we need to recognize that the law itself may be so outdated and the procedures that it has traditionally employed so cumbersome that it is simply an unacceptable impediment to a reasonable, legal approach.

MR. PODESTA: Candy, just a couple of things. With respect to how outdate the law is, remember the law was updated in 2001. So, I mean, people keep going back to 1978, but the administration had the opportunity I think to put those questions on the table.

Back when John and General Hayden and I worked in the government -- one thing that I think is happening here -- the NSA had an essentially foreign intelligence mission, and the FBI was conducting domestic surveillance. What we see under this program, I think, is the bleeding together of what the agencies of the Defense Department are doing and what the FBI is doing, and I come back to it. That's an important conversation that the Congress needs to engage in. What do we need -- and in some level I don't disagree with George on this -- what do we need to do, who ought to be doing it, what are the protections, can you create technical protections as well as legal protections to ensure that this is done under the Constitution and with due respect to the privacy of American citizens? I don't think that conversation has taken place.

MS. CROWLEY: Got to wrap it up. Richard Falkenrath, John McLaughlin, George Terwilliger, Congressman Jane Harman, John Podesta, the Brookings Institution -- thank you all for your input. Thank you all very much.

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