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KENNETH WAINSTEIN ON THE CURRENT THREAT ENVIRONMENT

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FIRESIDE CHAT

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WITTES: Welcome to the Brookings Institution. My name is Ben Wittes. I'm a senior fellow in Governance Studies. It's a pleasure to welcome you here. So, it isn't every day that you get to host the head of an intelligence agency that has filed intelligence reports on you. But that is actually the delightful position that I'm in. And actually, doing it for reasons having almost nothing to do with the unpleasantness that happened between me and the Department of Homeland Security's Intelligence and Analysis Office in the last administration. I am-- and we're going to have we'll, we'll talk about that a little bit. But essentially, we are here for a completely different purpose. And that is, I think, a fascinating one as an original matter and also in the in our contemporary politics. That is to talk about what the circumstances are and are not in which you would want to have a domestic intelligence operation and specifically what that looks like after 9/11 and what that looks like after January 6th, and how different those situations are and how you would want to configure that intelligence operation and what kind of government operation you would want and whether we have the one we want.

To that end, it is a absolute pleasure to welcome Ken Wainstein to Brookings. So, Ken has one of these resumes that we used to think of as the sort of nonpartisan aspiration in the national security legal community. And now, sort of stands out as exceptional. He's been a U.S. attorney, both the assistant U.S. attorney in the District of Columbia and in New York, and U.S. attorney. He's been the the head of the Executive Office of U.S. Attorneys, which is one of those great offices that people don't know exists, which coordinates all the U.S. attorney's offices. And the chief of staff to the FBI director and general counsel of the FBI. And perhaps most importantly for present purposes, he was the first assistant attorney general for the National Security Division of the Justice Department. He's got-- and now is running intelligence at the Department of Homeland Security, which a lot of people don't know has a significant intelligence component.

And this has happened precisely at the time in which this agency is pulled in a number of different directions. On the one hand, a lot of people are arguing, particularly on the right, and it's now been written into some pending legislation that this agency should be out of the business of collecting on domestic activity entirely. I'm sure we'll talk about that legislation. There are also people, and I, despite having been the subject of a intelligence report by this agency, myself — or two, to be precise — there are people who think we need to do a little bit more monitoring of social media that may be giving rise to violent activity of the of various extremist components.

And so, we have a kind of dramatic pull in multiple directions on this agency, as well as questions about its effectiveness, and as well as questions about whether there should have been more warning concerning what became January 6th and other other violent incidents. So, there's a huge amount to talk about. There is a great, a great deal of material currently on the table from a, from the point of view of of legislation and future authorities. And finally, I just want to say a word about Ken personally. You know, there was a time when we thought of national security and the law of national security as completely above politics. And we have lost that. Ken represents that. He represents a, a time when this was certainly-- simply a professional discipline that people of diverse politics routinely engaged in and engaged in together and without a sense of cognitive dissonance about it. Some of us value that. And, you know, there are, you know, if we are going to have a a culture in which we respond to national security threats in a serious way, in a way that represents the unity of the country rather than the one side going after another, we have to somehow get back in touch with that. And I think the-- Ken represents that. He is part of a group of people who has represented that over a long period of time. And I couldn't be more delighted to host him here. Ken, the floor is yours.

WAINSTEIN: Well, good morning, everybody. And let me just say thank you for that really very warm and kind introduction. I mean, to the extent that, as you say, I'm one of a number of people who are-- many people who are focused on national security as a matter for our country and not for politics. I look around here and I see a number of people, many who sort of fit the exact same-- fit that profile and are committed to the same thing. So, I feel very much at home here. And I also am glad to see some old friends who are here, members of our advisory board who are who are here. And so, it's really it's a pleasure to be here. Let me, let me start off by thanking Ben and the Brookings Institution for giving me this opportunity to speak here today. But I also want to thank Ben and his colleagues at Brookings, and also at Lawfare, for the exceptional work they do in the national security space. I think you all know how critical it is. And with the complexity of the national security challenges that we're facing today in our country, their very thoughtful analysis of those challenges, and also the policy options that we have to deal with those challenges has never been more important than it is today.

I'd like to take you-- take some time today, as Ben said, to talk to you about the Office of Intelligence and Analysis at DHS. And I'm going to discuss and sort of give you an overview of the state of the office, and how the office is evolving to meet the the current homeland security threats

while at the same time safeguarding American civil liberties, civil rights and privacy. But before I launch into it, I want to take a moment to acknowledge that last week was the 22nd anniversary of 9/11 and the attacks that day —or I guess two weeks ago now — and the lives. And I want to take a moment to acknowledge that anniversary, as well as the lives that were lost and the lives that were changed forever by that tragedy. 9/11 is absolutely elemental to I&A and to its mission. So much so, that every couple of months our new class of employees who join I&A and I make the trek up to the New York National 9/11 Memorial Museum. And together we discuss the lessons of 9/11. And then I'm honored to then swear them in as new employees of I&A. 9/11 was a watershed moment for our country. It laid bare vulnerability, demonstrating that we were no longer protected by the bordering oceans and highlighting the need to build defenses both internally and externally. In many ways, 9/11 was reminiscent of President Theodore-- I'm sorry, Franklin Roosevelt's statement to the American people in 1940 during the Nazi occupation of much of Europe when he warned that we were entering a new era. One in which, as FDR said, quote, "So-called impregnable defenses no longer exist." That was certainly true in 1940 when the Nazi war machine easily surmounted all the defensive fortifications that were designed to contain them. It was tragically true in 2001 on 9/11, when terrorists evaded our defenses by infiltrating our country, attacking us from within, with our own airplanes.

And it's true today, and in many ways even more true today, as globalization and technological advancement are extending the reach of our adversaries, allowing them to threaten the homeland without regard to national borders. We can clearly see this globalized threat in the areas that were highlighted in the annual homeland threat assessment that I&A released just last week. And I'd commend it to you. It just came out last week. It's a public document that lays out the threats as we see them today. You can see that in the HTA, in the cyber threats, by which our adversaries can disrupt our critical infrastructure or interfere with our elections from anywhere on the globe. You can see it in the foreign malign influence operations orchestrated by Russia, China, and other nation-states that are designed to exacerbate division and undermine our democratic institutions. You can see it in the online radicalization by foreign and domestic actors who are using the digital ecosystem to recruit and mobilize others to ideologically driven violence. And you can see it in the Mexican cartel activity that's trafficking Fentanyl and other deadly drugs into our country and killing tens of thousands of Americans every year.

My boss, Secretary Alejandro Mayorkas, highlighted the implications of this globalized threat in his speech, which marked the 20th anniversary of DHS earlier this year, where he remarked that, quote, "Our homeland security has converged with our broader national security, making the point that the traditional demarcation between foreign and homeland facing missions has now collapsed into a single continuum of authorities and operations that are necessary to protect the American people against the increasing reach and globalization of today's threat." From its inception, I&A has played a critical role in the effort to meet that globalized threat environment. Our organization was established after 9/11 specifically to address the intelligence gaps that were exposed by those attacks. Numerous experts and entities, like the 9/11 Commission, examined and diagnosed the reasons for those gaps.

And Congress undertook a number of consequential actions to empower us to better meet today's homeland threat. Congress lowered the wall that had inhibited information sharing and coordination between our law enforcement agencies and our intelligence agencies. It codified a new definition of intelligence, national intelligence, to clarify that intelligence operations are no longer limited to foreign intelligence. And that we needed a domestic intelligence capacity to detect domestic threats before they came to fruition, rather than simply waiting and investigating and prosecuting them after they harmed our people. And finally, Congress built a federal apparatus to develop this domestic intelligence capacity. In doing so, Congress considered a number of bureaucratic constructs, including one which would have broken off the FBI's intelligence function and created a separate domestic intelligence agency-- domestic intelligence agency, along the lines of Britain's MI5. Ultimately, Congress rejected the MI5 option, in large part, out of civil liberties concerns, and instead established the Office of Intelligence and Analysis DHS, which was tasked with information sharing with our federal and other homeland partners and with developing a national intelligence network with those partners, under authorities and limitations that were designed specifically for the sensitivities of conducting intelligence within the homeland.

As currently constituted and authorized, I&A has three primary missions. They're— one: to build and maintain an intelligence program within the U.S. that can detect and ultimately prevent threats to the homeland. Two, to serve as the information-sharing bridge between federal law enforcement and intelligence agencies at our state, local, territorial, tribal, and private sector partners, I'll often referred to it as some SLTTP partners. And third, to operate with an intensely focused regard

for privacy and civil liberties, which is a mission that is completely on par with the other two. Let me now take a few minutes to show how I&A has gone about pursuing each of those three missions over the years of its existence. Mission one: establishing an intelligence program. In furtherance of that mission, Congress constituted, initially, when it first stood up I&A — constituted I&A — as an intelligence agency as a member of the federal intelligence community. I&A then developed the capabilities to operate in each area, or each stage, of the intelligence cycle: the setting of intelligence requirements, the collection of intelligence related to those requirements, in the analysis, production, and dissemination of intelligence products out to our partners.

And I&A has done an admirable job over the years of creating capabilities in each stage of the intelligence cycle. Let me go through them briefly. First, in terms of the setting of intelligence requirements per its mandate to meet the intelligence needs of our state, local, territorial, and tribal, and private sector partners, I&A serves as a voice for those partners in the intelligence community's prioritization process, ensuring that their homeland security priorities are fully reflected in the operative requirements that direct the intelligence activities of the IC and DHS — intelligence community being IC. These voices, it's the President, the joint chiefs of staff, and federal department and agency leaders. After the setting of requirements, collection of intelligence. I&A then collects intelligence that it's related to those requirements. Importantly, however, it does that collection without the search and arrest powers and without any cover collection authorities that some other IC agencies can employ. I&A's collection activities are significantly limited by executive order, with strict requirements that we must be completely overt or-- in our collection or collect from publicly available sources. Very tightly limited.

Well, observing these safeguards, we've collected some vitally important information in recent years. In 2022, I located and shared the manifesto of the individual responsible for the shooting of so many people up in the grocery store in Buffalo, providing key situational awareness to our partners as they tried to assess the situation earlier this year. I&A personnel worked with CISA to share information on an ongoing attempted ransomware attack targeting a university, which subsequently helped to deter the attack. And just this summer, I&A officials partners with-- partnered with CBP to interview individuals detained along the southern border, netting critical and detailed information about smuggling-- migrant smuggling operations being run by Mexican cartels, and about specific individuals and organizations that were trafficking fentanyl into the United States. That information

and those interviews resulted in referrals to law enforcement and more than 200 intelligence reports to our partners.

And in the last stage of the intelligence cycle, which is the analysis, production, and dissemination of intelligence products, I&A does does that and analyzes the intelligence it collects or receives from other agencies and partners and generates intelligence products that are designed to provide our customers, our partners, with decisional advantage over our adversaries. I&A's analytical products have always been the bread and butter of our work. And just last year, I&A established a new office to focus on enhancing the quality and utility of those products. We're already seeing significant improvement, both in the quality of their content and in the positive feedback that they're generating from our partners. So, that was mission one, the development of an intelligence capacity here in the United States.

Mission two is building an information bridge through our partners, our state, local, territorial, tribal, and private sector partners. That second foundational mission to build that bridge to our partners was critical after 9/11 because that bridge was largely lacking before then. Over the past 20 years, I&A has built that bridge across the country, both with its systems and with its partnerships. On the systems side, it has developed the Homeland Security Intelligence Network, or HSIN, which provides online access to over 50,000 unclassified intelligence products for our partners around the country, both on their desktops and now with our new app on their mobile phone. And on the partnership side, I&A has developed the operational relationships that break down the silos that have historically impeded coordination and information sharing. As Secretary Mayorkas often says, DHS is a department of partnerships, and nowhere is that more true than in I&A. Throughout its existence, I&A has prioritized partnerships and has forged relationships across the country. And to further that effort, we recently elevated that function within the organization, creating a deputy under secretary for partnerships and bringing in Boston Police Department intel veteran Dave Carabie, who's already taking steps to further and deepen our partnership network.

The last mission, and I want to spend some time on this one, is the protection of privacy and civil liberties. As I mentioned, I&A was designed with strictly limited powers and authorities, reflecting the sensitivities of its role as an intelligence organization in a domestic domain where constitutional concerns are most pronounced. Among the members of the IC, I'd like to say that I&A is the kinder, gentler intelligence agency, operating under strict limitations as dictated by Executive Order 12-triple-

three and its attorney general oversight guidelines. Over the years, I&A has developed an internal oversight mechanism to ensure adherence to these limitations. Well, when compliance concerns were raised in I&A in 2020, my predecessor, John Cohen, and others took strong steps to enhance that oversight function. They doubled the number of intelligence oversight officers within I&A. They developed new and stronger training on privacy and civil liberties. And they brought in two ombudspersons, a regular ombuds and an intelligence ombuds, whose sole job is to solicit and address concerns about politicization or any other improper influence on our intelligence operations. Then, when I joined I&A in the summer of 2022, Secretary Mayorkas instructed me to conduct a 360 review of the organization with a focus on scrutining-- scrutinizing I&A's privacy and civil liberties protections. And to do that review, we brought in three senior advisors who are experts and long-time professionals in the intelligence community: CIA and Hill veteran Steve Cash, former DHS general counsel Steve Bunnell, and former NTCT director Russ Travers. And they helped me in consulting, both with outside experts and inside I&A personnel, to get input on the direction of I&A.

And this 360 review is already resulting in privacy and civil liberties progress in a number of areas. First, in collection. Much of this progress has been focused on our collection operations, which makes sense because intelligence collection so directly implicates our privacy and constitutional rights. First in our overt collection program, our human interviewing-- Overt Human Collection Program, which is our interviewing program, we've undertaken an in-depth review of the rules and procedures to make sure that they provide the level of governance needed for such a sensitive operation. Second, in our open-source collection area, we're doing a similar review with a focus on providing our collectors with clear guidance on the distinction between communications that are protected from collection and those related to a homeland threat that are not. This is a crucial distinction, especially in relation to threats like domestic terrorism, where so much of the violence, the homeland threat, arises from political thought and speech that falls squarely within the core protections of the First Amendment. Third thing we're doing in collections in our field operations around the country, we have outside experts doing a complete review to ensure a strong centralized oversight of their operations. And finally, to fully enhance the supervision of our collection activities.

We recently established a new collection division and appointed as its leader a highly respected 20-year veteran from the CIA who's bringing a heightened level of rigor to those operations. Also, you're seeing civil liberties and privacy progress in the area of analysis as well. We're bringing

that same renewed oversight to those operations. For over a decade, our finished intel products have been subject to review for privacy and civil liberties by four different DHS offices: the Office of Civil Rights and Civil Liberties, the Privacy Office, the Office of General Counsel, and our Intelligence Oversight Office. And those products all get reviewed prior to dissemination up to our partners. At the direction of the secretary last year, we're now expanding that progress to conduct equivalent reviews of finished intelligence products produced by the DHS components, our partner entities throughout DHS. That effort is well underway with the support of our new Intelligence Enterprise Program Office, which is tasked with coordinating and sharing best practices among the intelligence elements of DHS.

The last thing I want to mention in the civil liberties and privacy space is the Transparency and Oversight Program Office. To fully institutionalize all the progress we've made in privacy and civil liberties oversight, we recently established the Transparency and Oversight Program Office, in the front office where I where I sit. It's led by a highly respected veteran DHS attorney Andy Fausett, who reports directly to me. And this new office consolidates all the oversight functions that were previously dispersed throughout the organization, including the eight members of the Privacy Intelligence Oversight Office, the two ombudspersons, and the personnel handling everything from FOIA requests to congressional oversight to GAO and IG inquiries. And it takes a-- it consolidates those people and elevates their role within the organization. And with that new office in place and with Andy's appointment, we now have a strong voice for oversight and compliance in all our front-office deliberations and policy conversations. These oversight enhancements all flow from our recognition that homeland security can be achieved only in conjunction with the protections of privacy and civil liberties.

Some like to say that the two principles, security and freedom, are at odds and that there is an inherent zero-sum tradeoff between freedom and security. We at I&A don't buy that. We feel that both can and must be pursued at the same time. We cannot have a truly secure country if we ignore the values that made our nation strong in the first place. As someone who spent the better part of 15 years as a federal prosecutor, this dual mission is not a foreign concept to me. Not at all. Just as I had a sworn and equal duty as a prosecutor to both pursue conviction of the guilty and protect the rights of the accused, we at I&A have a sworn and equal duty to both prevent threats to the homeland and protect against incursions into our rights and privacy. With that duty in mind, my colleagues are executing on the founding vision. The founding vision behind our kinder and gentler intelligence

agency. And our making transparency, civil liberties, and privacy the foundational elements of intelligence tradecraft in the domestic operating environment.

So, as you can see, we're working hard in these days to execute on that founding vision to gain support for that effort. We've been engaging with Congress and asking for the legal authorities we need to protect the homeland. As you may know, and that's been mentioned, there have been efforts in recent years to limit our authorities in a way that would endanger our ability to perform our critical missions. We've been making the case strongly against these efforts, just as our fellow agencies in the intelligence community are currently arguing and authoritatively demonstrating, that renewal of the surveillance authority in Section 702 of the FISA Amendments Act is critical to national security. And I firmly agree with them on that.

We have been arguing that the maintenance of our authorities is critical to prevent a return to the pre-9/11 state of readiness in the homeland. In making that argument, however, we also acknowledge what was a clear lesson of 9/11 and the post-9/11 era, which is that intelligence authorities need to be packaged with sufficient oversight to assure Congress and the American people that those authorities are being used appropriately. With that lesson in mind, we are asking Congress, both for the authorities we need to do our job and also for the oversight requirements that will secure the public's acceptance of those authorities and make those authorities sustainable into the future. We're hopeful that the wisdom of that approach, along with the commitment to civil liberties that is reflected in all the reforms and initiatives that I've just recited, that those will persuade Congress to entrust us with the balance of authorities and oversight that we need to protect the homeland.

So, that's the state of I&A today. In short, it is in a state of positive change, positive change as it adapts to the evolving threat environment and to the recent reforms to our organization. At the same time, I&A is exhibiting a very important attribute, a willingness to change and to improve. As we all know, it is not easy for a government organization to change, but that is exactly what this organization is doing at this point in its history. And that is one of the many reasons I'm very proud to be a part of this organization and to be counted among the I&A professionals who do so much to protect our homeland security each and every day. Thank you very much for being here and for listening to my thoughts. And with that, I believe I invite Ben up to the podium.

WITTES: Indeed. Well, we should sit down. So, I want to start with the legislation that you alluded to, in which that you describe as restricting current authorities. I just want to have you lay out what it would do and how, and and to what extent it is a change from the last 20 years of Chinese authorities.

WAINSTEIN: Now, thanks for that question. And, and thanks again for for doing this. This is great.

WITTES: Thank you.

WAINSTEIN: So, so look. What I wanted to do, and my colleagues and I feel strongly about this, is we wanted to give a clear-- give people a clear understanding of what I&A is, what it does, and what it was intended to be. And that's important. I am kind of a bit of a history nut, and so I can't — and my kids will tell you I make their eyes glaze over with history stories all the time — but history is important because by looking backward, you see the reasons why things are as they are today. And that's why I think it's so important to go back to 9/11. Not only because we lost 3000 of our our fellow countrymen and women, but also because that was the origin story of I&A. I&A was designed-- built and designed to address the gaps that happened on 9/11. And specifically, the gaps between the federal law enforcement intelligence agencies and personnel, and the state and locals, who were out there seeing what was going on, possibly even knowing about the 9/11 hijackers before they struck. And so, Congress wisely, based on advice from many entities think tanks like Brookings, but also the 9/11 Commission and others, put in place a construct — and we could all debate whether it was the perfect construct — but it was a construct intended to address the gaps that were identified by 9/11. In particular, that gap within the domestic space, that intelligence gap. And keep in mind what intelligence is. Intelligence is designed to prevent. You seek intelligence to detect threats so you can prevent those threats from becoming attacks or affecting our people. So, it was the lack of that intelligence slash preventive capability within the homeland that Congress was trying to address. So, we set up I&A. And I&A has the three missions that I just articulated. One was to start or to help mature that intelligence process within the United States, i.e., make-- help our partners develop the capacity in conjunction with us to identify those dots that indicate a threat, a coming threat. Connect the dots, put them together into a picture, see the pattern, see the coming threat, and take steps to prevent that threat. That is the intelligence cycle I just talked about.

So, the first mission I wanted to highlight was the I&A's purpose in in developing that intelligence capability within the U.S. And the second related, is deem the information sharing mechanism with the state and locals and territorial and tribal and private sector partners. So, those were the purposes of I&A. That's how we were constructed. That's how we've been authorized, both by law and by executive branch regulation.

Today, there-- many are stepping back and questioning all aspects of law enforcement intelligence and questioning them through the lens of civil rights and privacy. And I applaud that. I think it's important to do that. I actually think the more scrutiny on our civil liberties and privacy, the better, because it means that people, like myself and my colleagues, constantly think about that in the back of our minds as we're making decisions. We recognize and are reminded day in, hour in, and hour out, that we have to think about privacy and civil liberties, not just foiling a plot against us. So, people are questioning whether or not we're doing that well enough and that we have our eye on privacy and civil liberties. One output, or one product of that questioning, is-- has been sort of a couple of different recommendations to scale back our authorities. Same with the authorities of others, like 702, which is the surveillance authority I mentioned. My response to that is, don't we need those authorities? We can make the case why we need those authorities. We can show you the good things that we're doing with those authorities in place. That's why we just talked about some of the things that we collected with our collection authorities. Don't take the authorities away from us. Instead, make sure that we maintain those authorities but give us the oversight. Place the oversight on us and require us to come up and explain what we're doing on a regular basis to Congress, to inspector generals, or what have you. That is the debate that is that is carrying out right now between us and, and I'm hopeful that will get to a good place.

WITTES: But but I guess there are a lot of different ways to scale back authorities, some of which are more congenial and some of which are more objectionable. Specifically, what is being contemplated in terms of a rollback of authorities?

WAINSTEIN: Well, the current proposal, which is a an amendment that got into the Intelligence Authorization Act, was passed by the Senate, but has not been passed by the House. The House actually has another version, which is it doesn't have the same limitations. That current version would would prohibit us from collecting information involving, or I guess the terminology is targeting, U.S. persons. And, you know, the-- it's it's unclear exactly, sort of what the limits of that

language are. But in essence, it's an attempt to prevent I&A from collecting information on U.S. persons. And the argument is we shouldn't be doing that. We're an intelligence agency. We should not collect within the United States. I don't think I need to exhaustively go over what I just said, because the purpose of what I just said was to to explain why it was the need for that capability and the need for that intelligence capacity that led to the birth of I&A in the first place. And so, our argument is, as I just said, don't take that authority away from us. Just conduct oversight, aggressively, conduct oversight. We need to do it, but we need to do it within the bounds.

WITTES: All right. So, a lot of people in a different part of Congress would say that the problem at I&A is not that it's doing too much of that, but that it's not doing enough. And they would point to-- and there was a recent Congressional report that faulted you guys for not having flagged the large volume of "stop the steal" and "storm the Capitol" material in the run-up to January 6th. And so, I guess in this "pulled in both directions" department, there seems to be a sort of Congressional, you know, it's like the food here is terrible and such small portions kind of kind of--. I, I guess I want to give you a chance to respond to the the whiplash criticism that, "Hey, you know, you have--" under current authorities. When half of the the press was saying, "Gosh, there's going to be a riot at the Capitol tomorrow," I&A did not produce work product that anticipated the scope or magnitude or fact of the the danger. And so, you know, the response to the—to rein it in because it's repressing conservative thought response, is actually it's not even stopping the violent stuff, anticipating the violent stuff. Number one, are you satisfied with I&A's performance in the run-up to January 6th? And number two, if not, what are the, what are the parameters of the use of the authorities that you have that should be, you know, sort of tweaked up? Or is this just not a function that you guys want to play?

WAINSTEIN: Good question. Look, just to step back, this is the way it works, right, in the national security space, because everybody wants you to protect the country. Everybody wants you to protect civil liberties and privacy. And so, you have this sort of whiplash. That's that's what happened pre-9/11, what happened post-9/11, and that's what's happening now. So, that's to be expected. And actually, in some ways, it's kind of healthy, actually, in terms of its, you know, it's keeping us on our toes. Look, in terms of January 6th, I read that report, very well put together report by the Senate Homeland Security and Government Affairs Committee, and it highlighted issues with us and the FBI in terms of alerting people to what we were seeing in the open-source space about what was coming on January 6th. And I think those observations were well placed and and were well founded. Look,

there are a lot of factors that were going on there at the time. I wasn't there, but a lot of factors, a lot of things and influences, sort of playing out that caused people to have concerns about acting in a number of different ways.

That being said, I think January 6th is a good case study and why we need — what I'm talking about here — why we need clarity. And this is why I think the secretary was so wise to tell us to do this 360 review of I&A, and really zero in on the oversight and guidance. Because when you're an operator in the intelligence space — law enforcement as well, but particularly in the intelligence space — if you're an operator, and if you don't have clarity in the guidance that you're given in where the boundaries are or are not, that's paralyzing. That undermines your ability to confidently move forward. You need to know where those bounds are. You need to know what the mission is. And I would suggest, of course, that it's just looking-- me looking at the outside, that one of the reasons why 9/11 played out as it-- I'm sorry, January six played out as it did, was there wasn't that confidence. There wasn't that clarity in terms of the parameters that were-- that I&A was operating under. And that's why we're really focusing on those parameters to make sure that in the open-source area, people aren't looking in spaces where they shouldn't or collecting information that they shouldn't. January 6th is a good example of that particular issue.

And that's why I highlighted this, because when you look at domestic terrorism, as I said, most domestic terrorism emanates from some kind of political view, right? And political speech doesn't matter. We have the right to be as extreme as we want in our political speech and our rhetoric, but we don't have the right to try to coordinate and carry out violence. And by making that distinction when you're looking at-- on the open-source base, you're watching the Internet between conversations that might be extreme but not violent, and those that are [inaudible] violence, it's easier said than done, right? And that requires absolute clarity in the guidance and application of clear guidance. That's why we're putting such a focus on this. And I think-- so you're right to raise January 6th as an example for the need for this review and reappraisal of our our guidelines.

WITTES: So, it seems to me that that the January 6th represents something else, which is a a function that your kind of-- it gives rise pretty obviously to the need for a function. But it's a function that nobody obviously wants, right? So, you have thousands of people using the hashtag "storm the capitol," in the run-up before it, to to the thing, such that lots of people — and I was one of them — the night before January 6th were like, "Boy, it looks like people are going to storm the Capitol tomorrow."

And, you know, I actually had a conversation, a recorded conversation with some folks about it, where, you know, we were kind of speculating about, "Okay, what's going to happen tomorrow? " And there was nothing unusual about that. That's what, you know, that's what anybody who was looking at social media would have concluded. And yet, you have the FBI director and the director of the national security component in the FBI, testifying that basically they don't have the authority, rightly or wrongly, they don't have the authority to be monitoring people's social media without predicated investigations. It's a complicated question.

And you guys are criticized for not having picked up on it. And the legislation says we don't even want you in that business at all. So, my my question is, do we need clarification about whose, if any job-- anybody's job it is, to see if there is a "stop the steal" hashtag trending — or not stop the steal because that's pure speech, I suppose — but stormed the Capitol is not pure speech. And you know, when that hashtag is trending, say, Hey, Capitol Police. Maybe, maybe bulk up a little bit tonight." Do we know whose function that is? And is the-- if to the extent it's you guys, are there enough of you to do that? This gets into the resource question but... Yeah, I just put a lot on the table, and feel free to pick it up.

WAINSTEIN: It all right, this answer will stop in about three to five minutes. So, this-- that, that function of looking in social media for indicia of domestic terrorism is fraught. It's a very [inaudible]. I just assume not have anything to do with it, personally, because it's really difficult. That's not, unfortunately, the hand that we're dealt. January 6th, and other things from other, you know, disturbances from other parts of the political spectrum — this is because across political spectrum — in these cases and these situations, you can go back and see that there are warning signs on social media. A lot of this threat is actually carried out in social media these days. Not in encrypted channels, not, you know, with nation-state communication modes, just in an open source. And so, is there to be-- that warning is there to be seen. So, I think the need for that function is clear. Right now, we have the authority to do it and the FBI has the authority to do it. This legislation would deny us the ability to do it. I find that ironic in a way because if anything, January 6th showed the need for that and the need for enough people doing it with clarity in their, you know, their guidance, but enough people doing it, where we can really action that intelligence.

The other irony I see, though, is that, you know, the legislation that is now being considered would give that function, take it from us, and say it should all be done by the FBI. And the irony that,

of course, is, you know, we're just intel people, right? We're armed with nothing more than a ballpoint pen and maybe a a large notebook. So, they're saying that that should be done by law, a law enforcement agency that has arrest, search and seizure, and other compulsory powers. So, it's sort of odd to me because I would think we'd be the less threatening entities. Yet that is what the legislation would do. And then the third irony of that is what I just talked about in terms of 9/11. That construct says, "No, we shouldn't have intelligence work done in the United States. We should only use law enforcement in the United States. And you use intelligence outside the United States." What does that do? That resurrects that wall that Congress very intentionally dismantled after 9/11. So, I find that that position ironic for those three reasons.

WITTES: I'd add a fourth reason, which is that the FBI doesn't want this function. And, you know, the fact that the director in Congressional testimony kind of disclaimed it, whether he's right or wrong about his authorities, it certainly indicates this sort of cultural inhibition in the bureau against playing this sort of role that, you know, the FBI has good historical reason to be skittish about. So, one person whose social media has been read by I&A and reported on by I&A is me. And I, you know, I wasn't going to-- I started this event by saying we weren't going to talk about this, but in light of your comments about this, I'm going to raise it briefly. It seems to me that, you know, one thing that the agency has to be super sophisticated about if it's going to be monitoring social media, and I do not have a deep seeded problem with the idea that it would be looking for violent threats on social media, is the difference between--.

WAINSTEIN: Sorry about that.

WITTES: Deep seeded violent threats and, you know, people reporting on the activities of of the agency and, you know, in relatively close proximity in time, stormed the Capitol, got missed. But me sticking up some some non-classified internal documents got disseminated to, you know, state and local law enforcement all over the country. I'm-- you know, this raises the sort of privacy question that, you know, you identified as sort of the civil liberties question, since this wasn't private material that you that you identified as this third mission. And if if I&A is going to play this role, presumably it's got to be very sophisticated about the difference. So, I'm interested in the reforms that you've implemented and supervised in terms of making sure that when when you're monitoring social media, a cheeky post with an internal document is not confused with a threat of violence or a threat of lawless activity.

WAINSTEIN: Yeah. So, fair question. And look, I tried to mention in my remarks, a lot has been done before I got here. I got here back in June of 2022. And John Cohen, and Adam, Luke is here today, and the team that was in place did good job of learning from the lessons of 2000-2001 and quickly--.

WITTES: You mean, 2020.

WAINSTEIN: I'm sorry. 2020 and 2021. You know you're old and you're getting your decades off by two decades.

WITTES: Well, you got all the digits right.

WAINSTEIN: Yeah. There you go. Yeah, I'll take, I'll take credit for that. They they responded quickly. And so. I thought it was important to list some of the things that were put in place before I even got there. And, and so, in one of those was significantly enhanced training. And look, training, you know, you always hear the [inaudible], "Oh. I've got to go to training." It's absolutely vital in this space and especially in the open-source space. And we're working on that and we're revising our guidance now. We're doing a full review of operations. They're focusing on those particular issues, those line-drawing issues. In terms of your particular issue about reporting on journalists, we now have clear guidance and would be perfectly happy for it to be made into law, that we will not collect a report on First Amendment journalist activities, like yours. So, I actually think that the the groundwork is laid and we're actually building a good structure right now that is going to make sure that that kind of misstep doesn't happen in the future.

WITTES: So, we're going to go to audience questions shortly. If you have a question, flag it for me and I'll make sure a microphone comes around to you. Please do state your question in the form of a question. If you prattle on, I will cut you off with a shocking lack of due process and and civility.

WAINSTEIN: So, we can prattle on, but they can't.

WITTES: Exactly, the only people who get to prattle on today are us. While we are getting-- we also have a set of questions from the electronic audience while they are queuing up. I wanted to ask you, you had mentioned 702. You are part of the administration. You guys obviously don't use 702 material yourself, but you were, I think, you were at at NSD when 702 was first passed, or at least when it was in the rough period, and so, you seem you have like a pretty deep understanding of the set of issues involved. And I'm just interested in whether you think the sort of emergency tone that

Matt Olsen is talking about this is overwrought in any way, or is the potential lapse of 702 at the end of the year as big a crisis as the administration makes it out to be?

WAINSTEIN: In short, yes. It would be as big a crisis as it's being made out to be. In some ways, even more of a crisis. So, look, let me just take a minute about this, because I feel very strongly, very passionately, about this issue. Many of you know this, but 702 is the section within the FISA Amendments Act that was passed in the summer of 2008. And it was an amendment to the Foreign Intelligence Surveillance Act that was passed in 1978 that put in place a structure for getting court authorization for certain national security or intelligence electronics balances here in the United States. And anyway, because of the change in technology, it was important to amend the statute. And that's what the FISA Amendments Act was in the summer of 20-- 2008. And what it did is, it put in place a program by which the intelligence community can do that electronic surveillance if it's targeting a person who's overseas, who's a non-U.S. person, and do so without having to go into the court and have a 50-page document submitted and get specific approval, like you would for a U.S. person here in the United States. And that has been absolutely critical because it has allowed us to keep sort of nimble, real-time attention on our adversaries overseas who are non-U.S. persons.

And it has come into question in some controversy for a number of different reasons, some sort of political, but also, just as I said, because this is a strong national security authority and therefore, deserves to be carefully scrutinized. And-- but I was at the National Security Division and testified probably a dozen or two dozen times about, you know, about that legislation as it was being proposed and debated. And I will say, back to your point about sort of the nonpartisan approach to national security, I think that legislation was one of the best examples of nonpartisan legislation. It was done-- it was done in a tailored way but done out of a recognition that this was important for the national security and that we needed to lock arms up on the Hill and pass the legislation. And they did.

WITTES: And it was done, by the way, at the trough of the Bush administration's popularity. You know, if you want to look at a moment in time in which there was every reason to doubt that you could do something like that, surely that 2007, 2008, 2009 period was-- would have been one where you would say it couldn't be done, and yet it was done.

WAINSTEIN: No. The administration did not have a strong political hand at the time. And-- but nonetheless, I think people just stepped back and said this is necessary for national security. And since then, it's proved to be absolutely indispensable. And you can read all the statistics. A vast percentage of the intelligence that's in the president's daily brief comes out of from that collection. There have been examples about how crucial it is, for example, in the fight against fentanyl and fentanyl trafficking into the United States, and other serious threats against the PRC and others. So, it would be absolutely devastating if it were not reauthorized. It's been reauthorized, I think, twice before, and I think I've testified at each of those, on each of those occasions. It would be devastating if it weren't. And I think the president's Intelligence Advisory Board recently came out with a very strong report about it, looking at it from all sides, and concluding — I can't quote it — but I think they said it would be the greatest intelligence failure of our time if the Section 702 was not reauthorized. So, I think it's imperative that it be so.

WITTES: So, I want to start with a question from the electronic audience, which asks whether you see the conviction and sentencing of the Proud Boys and Oath Keepers defendants as making a significant difference in the threat environment. And I want to expand the question a little bit to, you know, to say that-- one of, the one of the substantial policy decisions that the Justice Department has made in this, in this administration is to focus really relentlessly on January 6th perpetrators. And they've gotten some criticism for that for a while. But there's also something to talk about in terms of the deterrent effect of it. You know, there have been 1200 of these cases, capstoned by the Proud Boys and Oath Keepers. And so, I'm I'm interested in your intelligence assessment of the of the deterrent effect of these prosecutions in terms of of other far-right violence.

WAINSTEIN: Well, I'd like to think, actually, that deterrence would be not just in the far-right, but far-left as well. And I think. I think two things about that whole exercise by DOJ. And of course, I'm not at DOJ — spent most of my career there, but I haven't been there since January 6th — but I applaud that what they've done. And I think it's had sort of two to sort of primary impacts. One is more atmospheric maybe, but it, I think, has made the statement that the conduct that was terroristic that day. And keep in mind, there were people on January 6th that were up there acting in the best spirit of American democracy and voicing their views publicly protesting. Amen. But there are those who then engage in violence. That's stepping over the line. And by bringing these prosecutions, has made the

statement that there is that dividing line. Very clear. And we're going to focus on those who did the, like the defendants in the Proud Boys case, those who were engaged in domestic terrorism.

I think, secondly, beyond making that statement, it has-- the series of prosecutions has had a deterrent effect. In fact, we've seen it and we've-- as an intelligence matter, we've seen that it has had an-- has dissuaded people from engaging in similar conduct in incidents and at junctures in our current affairs since that date. And and, look, I'm as a longtime prosecutor, I believe in deterrence. And I think most people are rational actors. And to see somebody engaging in conduct and it means that they end up in jail for 17 years, that diminishes their enthusiasm for engaging in similar conduct.

WITTES: And how more broadly do you see the threat environment with respect to domestic terrorism? Both of the far right and of the not, you know, of other movements?

WAINSTEIN: Look, I wish I could say that there's a silver bullet that's going to make it go away. But I mean, it is a product of the time that we're in right now. It is a product of this. You know, people talk about extremism, that extremism causes it. You know, I actually-- I'm fine talking, sitting down with somebody who has extreme views and sharing our views and getting in a heated argument and then buying each other a beer. That's great. Nothing better than that. The problem that I see now is that people demonize folks on the other side. And once you demonize people who have different views, you're sort of saying that there's something that's lesser than you. It makes it easier to then treat them as something lesser than you and makes it easier to treat them sometimes with violence. And I think we're seeing that. And that's why I think it's so irresponsible when people who have a public voice engage in that demonization because that is just perpetuating and building the circumstances and the conditions for domestic terrorism. So, until that gets moderated. And I, I think it's much worse. We're all good old days, people, right? We look back in the old days, you know, rose-colored glasses. But you know that that willingness to demonize here, the people you disagree with has gotten significantly worse as I've gotten older. And until that gets better, I think domestic terrorism is here to stay.

AUDIENCE MEMBER: Hi. Thank you so much for--.

WAINSTEIN: I can hear you.

AUDIENCE MEMBER: Testing. There we go. Hi, I'm Quinta Jurecic. I'm Ben's colleague at Brookings and at Lawfare. I wanted to ask more about what you were saying in terms of the importance of oversight, because one of the complications, in terms of both I&A and the FBI's ability

to engage in the kind of intelligence collection that we would want to see to prevent extremist attacks. For example, January 6 strikes me as actually in some ways the presence of oversight itself. So, I was thinking, for example, about the famous 2009 I&A report on the rise of far-right extremism among American veterans, which of course led to a huge backlash in Congress and an enormous amount of pushback on I&A. That was also oversight.

Now, of course, we're also seeing a great number of voices in Congress voicing discontent with the bureau. For example, for looking into Far-Right extremism on the grounds that it's potentially, you know, silencing and censoring people on the right, obviously, you know, acknowledging that there is a difference, as you say, between people expressing their views and engaging in violence. So, on one hand, we could say, you know, we want these agencies to have some level of insulation so that they can engage in the kind of intelligence work they need to do without being afraid of pushback. On the other hand, of course, as you say, it's very important to have that oversight so that we can, you know, be sure that our civil liberties are being protected. So, particularly in this political environment, I'm curious about how you think about navigating those two poles.

WAINSTEIN: That's a great question. Thank you. Look, as Ben mentioned earlier, politics is there. We, we're in D.C.. Politics is all around us. And politicians and the American public are going to have their views about what the executive branch does with its law enforcement authorities and its national security authorities. And we'll express those views. That's different from oversight. Oversight is looking at the rules, making sure that we are following the rules, probing and scrutinizing our operations, and calling us out when we don't follow the rules. That is, that's what oversight is, is not making sure that we pursue a particular political agenda. So, that's the oversight I'm talking about and that's what I want.

Now, in terms of the political influence and the political environment, in keeping that, or instead, as you say, insulating our people from that, that's my job. That is my job. My job is just-- and the job of my leadership team is to sort of be the [inaudible] and say, "Here are the rules. You apply the rules without bias or favor across the political spectrum. Wherever there is a threat that warrants intelligence activities, you focus those activities appropriately against that threat. And we'll support you even if someone doesn't like you doing it for political reasons because you're doing it in accordance with the rules." All right. So, that's really my job. I see it as the head of an intelligence agency, or any national security agency, is to do that. But to do that, we need clarity in our rules. We

need people to have a clear understanding internally about what to do and what not to do. And people need to understand why we're doing it. And that's one reason why I'm so happy to have an opportunity like this to explain to you what we're doing and why we feel so strongly about it.

AUDIENCE MEMBER: Thank you very much for doing this. Jeff Seldin with VOA. A couple of questions if I may. First, last week's threat assessment released by DHS warned that individuals with terrorism connections are interested in using either established travel routes or permissive environments to enter the U.S. So, wondering if you could say more about which terror groups are pursuing that strategy and to what extent is a concern focused on the southern border with Mexico? Also, just yesterday, Canada made some serious allegations about India being involved in the killing of a Canadian Sikh leader. How big is the threat from India or other countries to dissidents in the United States?

WAINSTEIN: So, great question. I'm sorry, you're with who?

AUDIENCE MEMBER: Voice of America.

WAINSTEIN: Okay, thanks. So, in terms of-- I'll take the reverse order. So, the question about foreign nations trying to persecute or target dissidents here in the United States, I won't speak to that particular report. But I will say that if you look in our homeland threat assessment and in other products that we put out, we have seen an increase in foreign nation-state efforts to repress and persecute people they see as dissidents here in the United States. Transnational repression, as it's called. And we're seeing that from the PRC police stations that are set up here and being used to monitor and harass people that they think are unfriendly to the regime. We're seeing it in other countries who are targeting people here in the United States. And it's, obviously, it's a huge threat, both to those individuals, but to our sovereignty. Here it is, we have people who have come to the United States, as generations have before, as a place of freedom. And their old regimes back in their home country are reaching out to try to intimidate them. So, we have to do everything we can to prevent that.

WITTES: So, before you go on to the first part of the question, I actually want to follow up on that because I I have what I'm going to cheekily call sources.

WAINSTEIN: Are you [inaudible] leading the anti-prattle rule now?

WITTES: Exactly. No, and I want to-- so methodologically, how does I&A look at a question like that? You can't spy on the police station, and the PRC police station in question. You're not using

covert means of collection. So, what are you doing? Are you interviewing people? Are you gathering press reports? Or are you, like what, what's, what are the sources and methods for such, for such a investigation? And then, please go back to the the other question.

WAINSTEIN: Actually, that's why you're very good at your job because you just got to the critical question about China. And I have often said this, that one of the problems that I&A suffers from is that it doesn't have sort of an intuitively clear mission. People know what the CIA does. The CIA does human intelligence and briefs the president. And people know what NSA does. NSA signals intelligence and encryption decrypts. But people don't really understand what I&A does. And that highlights that question. Highlights exactly that. So, let's just take-- what is it that, where do we add value? And I'll put this in an abstract sense without getting into any specific reporting by us. But when you're talking about transnational repression, let's say transnational repression based on these police, PRC police stations that have been established over here. You're right. We're not gonna-- we don't have access to 702 to like wiretap and try to find out what our Chinese adversaries are doing with these police stations. We can't execute search warrants and the like.

But here's what we can do, is we can take intelligence that maybe the CIA has — and once again, this is all abstract, I'm not speaking about anything that's concrete and real — but we can take CIA reporting about what they're seeing in terms of the intentions about setting up these these police stations around the country. We can get information from the FBI because, obviously, FBI would be looking into something like that because that's a counterintelligence threat. We can then talk to our state and locals, especially in those areas where we've identified those kind of-- those kind of police stations, and ask them what they've learned from the people on the street, etc. And then we can pull that together into an intelligence product. It's not an intelligence product maybe that's gonna inform the CIA about something they don't don't know about them. Though it might, based on what we learn from our state and local partners. But in particular, it would go out to the rest of our state and local partners to say, "Here are the indicia that you would possibly see of an effort to build a police station in your city." So, look for these in indicia, look for these patterns, and, you know, this might be what is happening in your city. That's the information gap, the intelligence gap that existed pre-9/11. And that's where we are. Does that answer your question?

WITTES: Very much so. But I, but I distracted you from our, from the other question, which --I if you need to need a reminder of.

WAINSTEIN: Yeah, I remember it. So look, it's the question about whether terrorist groups are trying to get into our country. And obviously, since 9/11, that question and that concern has been of paramount importance to the federal government, and there's been no relaxation of that, of the concern about that. And looking-- and that concern plays out, or in terms of us looking at all avenues of terrorists trying to come in the United States. In terms of the southern border, we have people coming across the southern border. There's been an uptick because of, we have really a hemispheric challenge here in terms of migration. So, there's increased migration. So, we obviously are concerned that with that increase. You might have an increase in people who might come over with malign intentions, including potential terrorists. So, and you've heard public statements from the department. My colleagues at CBP and elsewhere in the department have significantly ramped up their operations to ensure that we're identifying any such bad actors before they come across the border. And working closely with FBI and other entities here within the United States to identify anybody who might have come across the border, who has affiliations with terrorist groups.

AUDIENCE MEMBER: Thank you. My name is Sophie Roehse. I'm a research assistant with the Foreign Policy program here at Brookings. You talked a lot about violent extremism. And in your introduction, you briefly mentioned cyber threats. And so, I wanted to ask, how that threat of cyber, and attacks on critical infrastructure — transportation, energy pipelines — how that fits into your portfolio. How you've seen the threat environment in that sphere change over time, and how your office is managing to adapt to those involving challenges? Thank you.

WAINSTEIN: Sure. A great, great question about the evolving threat. And that's-- cyber, obviously, is probably the biggest example of the evolving threat. And we are strongly positioned to deal with the cyber threat in the following ways. We we work with CISA, the Cybersecurity and Infrastructure Security Agency, our colleagues at DHS, and they focus like a laser beam on that threat and all its manifestations. And we do the intelligence work to assist in those operations. And I think I mentioned one incident where we collected some information about a cyber-attack against a university, which is very helpful for preventing that attack. And we do that sort of across the range of cyber threats. And cyber threats can be, you know, attempts to interfere with our elections, both the process and the election, political environment. It can be ransomware attacks, which are really devastating, to the tune of tens of billions of dollars of lost revenue by American companies. It can be,

you know, cyber disruptive attacks against the critical infrastructure. And keep in mind, one of our main mandates, our main missions in DHS, is to protect-- work with the industry sectors, to protect critical infrastructure.

And we're seeing time in and time, you know, day in and day out, adversaries, both domestic, but also, in particular, foreign, who are trying to disrupt, you know, engaging in disruptive cyber activities against our critical infrastructure. And one big issue is nation-states. You know, you have-- we in China are obviously, you know, we're in competition. There's a potential coming crisis about Taiwan. We and Russia, obviously, are at odds over Ukraine. And there's always the concern that those nation states and others might be pre-positioning themselves in our systems, our critical infrastructure systems, in a way that they would then, if things came to a head between us over Taiwan or over Ukraine or otherwise, they would then take advantage of their pre-positioning to disrupt our our infrastructure sector. So, we're working vigorously in that area. And it's a threat that, like domestic terrorism isn't going anywhere. It's only going to get more unmanageable and more more challenging as technology evolves.

AUDIENCE MEMBER: Hi. Greg Nojeim with Center for Democracy and Technology. If you had the capability of doing it, would it make sense, and would it be permissible for I&A to monitor all social media all the time in order to find the information about potential attacks and other intelligence risks to the United States? And if not, if if that wouldn't be appropriate, what's the trigger? What's the trigger for monitoring social media?

WITTES: Great question.

WAINSTEIN: Right. So, thanks, Greg. Greg and I have known each other for years and, and been engaged in a number of these panels and and debates over the years and always been very productive. Thank you for that question. So, look. We, we don't-- we can't and don't just monitor the Internet, just snooping around into people's private conversations. We can, what we can do, in terms of collecting — viewing and collecting — is focusing on those communications that relate to a homeland threat to one of our missions. So, we can only collect something if it relates to one of our missions. And our missions can be, you know, protection of critical infrastructure, etc., or protection against cyber threats, or protection against domestic terrorism.

So, we're limited in that respect. Our guidelines limit what our operators can do and require that they go through certain steps to ensure that before they collect anything, there is a connection to

a specific mission of ours. And in fact, in this current debate about the legislation that's been proposed, we are proposing, we're laying out those procedural steps that a collector has to take before collecting on relevant information and then, you know, disseminating it. And we're recommending that it actually be codified, that it be put into law because we're fine with that. Because I get the concern that you have this sort of Orwellian operation that's just looking at everybody's private conversations and then deciding what they want to collect on. So, I hope that answers your question. But the trigger really is, it has to be something that's concrete in relation to a threat. So, if we see somebody saying, "Storm the Capitol," that's something that we could collect. If we say see something that says, "Hey, let's go out and stop the steal, and, you know, give it to the other party, or whatever," that's not something that would relate to a homeland threat unless there was some other connection to it.

AUDIENCE MEMBER: Thanks so much. My name is Sam Jackson. I'm from the Center on Terrorism, Extremism, and Counterterrorism at Middlebury College. Just a follow-up on this question, though. If you aren't monitoring, how do you see the triggers, the indicators, that would allow you to collect? And maybe this is a difference between monitoring versus collection or some other sort of rhetorical distinction here, here that matters. But how do we how does DHS, Ina, know to look for something that is linked to a threat if they're not already looking? Does that mean that you're essentially sort of secondary actors just getting things referred to you or are you uncovering things yourself?

WAINSTEIN: Right. So, very good point. In fact, we don't use the term monitoring and [inaudible] don't ever use it. In other respects, even if I'm talking about a TV monitor, I'm reminded that we don't monitor. So, for the record, we do not monitoring. So we, you know-- be happy to give you sort of a lay down of how how this operation works. But essentially, we have search terms, and we look for those search terms in the areas where we know there are communications about a particular event, let's say.

WITTES: Say, "Stormed the Capitol."

WAINSTEIN: "Stormed the Capitol," "attack," "explosives," "guns," you know. And so, we would look for those terms. You know, we even have people who are shooting up electrical substations — that's been happening around the country. And it's happening, in large part, because people talk about trying to accelerate the sort of the end of government. And if you take down the

energy grid, that will accelerate the end of government. And then they can then build a new government that's more to their liking. Well, you know, you can say what you want critical of the government, but if you start saying, "We don't like our current government and we're going to blow up a substation," we would have search terms that identify that second part. And that would make it something that we're entitled to collect.

WITTES: And what's the volume of people that you have doing "not monitoring," which is to say, which is to say--.

WAINSTEIN: Did I remind you we don't monitor?

WITTES: Yeah. Collecting on-- using primarily social media platforms as the the mechanism for collection.

WAINSTEIN: Yeah. I think we're, Adam, I think we're under 30, right? Yeah, below 30. I think we, we've had 30 authorized, but we're below 30 now.

WITTES: So, this is not you know, like, like a, a large scale. And from your point of view, if you were going to perform this function optimally, what's the right number of people working at the federal level to look at — I'm trying to say this without using the word monitoring, it's actually kind of hard— to to do collection for intelligence purposes on homeland security threats using social media as a platform.

WAINSTEIN: Right. I'm not even going to hazard a guess because--

WITTES: More than, less than 30.

WAINSTEIN: Yeah, it is. But keep in mind, the FBI is-- you have some caveats to that, but is engaged in that. And-- but, but look, I think it is more than the combined personnel who are assigned to it right now. But also, you know, it depends on how-- what what threats you're talking about. There are certain core threats and then there are sort of more peripheral threats. And so, it depends on the the scope of the threat that you would apply those people to. But again, 30 is not a big operation.

AUDIENCE MEMBER: Hi, Holmes Lybrand with CNN. Kind of just wondering about this expert panel that you're putting together that includes Mr. Wittes. What is, what is that? And what, what is it focused on? What is it? What are y'all doing with it? Is it a part of the "not monitoring?" What is it, you know, just generally? Thank you.

WAINSTEIN: Expert monitors.

WITTES: We're all going to be monitoring this stuff--.

WAINSTEIN: That's right. That's right. Now, that's a great question. Thank you for asking it. So, those of you who don't know, actually, we just announced today, or yesterday, today, that we've established at DHS what's called the Homeland Intelligence Experts Group. And that is a group of, I think around 16 or so people, who have generously and very kindly volunteered to become part of this group, which is which is giving advice to I&A and myself and Nick Pat-- and Nick Rasmussen, who is the relatively newly appointed counterterrorism coordinator and DHS. And they are giving us advice about a lot of the thorny issues we're dealing with here. And these are people who have, you know, tremendous experience and insights, who have, you know-- serious intelligence community veterans like Mike Leiter, who is the head of the National Counterterrorism Center, Jim Clapper, who's director of National Intelligence, John Brennan, who is the CIA director, and Frank Taylor, one of my predecessors, and others. But you also have people who have been who has a very particular perspective on national security challenges and operations in general. But also, given his experience, I&A specifically, he's learned a lot about I&A over the last few years, given his entanglement in that issue arising in 2020.

And then you also have folks like Greg Nojeim, who's, as I said, I've known him for years. He has always been one of those people who I disagree with on a number of different things. But I always value his opinion. He makes me think differently every time I stand up. After talking to Greg, I think differently about an issue before I sat down. And he, and Karen Greenberg, and Elise Massimino, and others who are very strongly embedded in the civil liberties human rights community, they're looking at these issues at the same table with the John Brennans and Jim Clappers. It is beautiful. You get these these completely, you know, sort of from all sides, you get different views of things. And we then walk out really enlightened about issues that we're dealing with. That, to me, is the best way for people to get advice. Go in — I always have a preconceived notion because I think I'm right about everything — but then you go into a meeting with smart people who see it differently, and you walk out and you go, "Wow, I hadn't thought about that." And anyway, that's what these people do. We had a meeting. It was, it was really invigorating. It was great. That's why we're we established this panel. And it's ike other panels around the government that you see. But I can tell you that given the makeup of this, this group, it's really impactful. So, thank you for asking that question.

WITTES: We have time for one last question very quickly.

AUDIENCE MEMBER: [inaudible]

WAINSTEIN: No, it's okay. Go ahead. I'll just give a short answer.

AUDIENCE MEMBER: So, I have a question that's a little bit tangential to just the collection of intelligence, but more about the response to it. Thank you very much for your time today. So, I know that in the United States, there's a separation of powers. But in D.C., it seems that the only person who has any authority on the on the use of force in response is the president because there is no National Guard over Congress and the D.C. mayor does not have the ability, unlike all the other 54 National Guards, to mobilize their own National Guard. Do you think that this is a threat to American national security to not have, uniquely in D.C., this division of power in mobilizing a response to a potential future riot or violent activity in the Capitol? Thank you.

WAINSTEIN: Yeah, no. Thanks for that question. I got to tell you, that's something that I can't claim to be an expert in. So, I would, so I kind of have to, like, put on that, other than to say, look, one of the things that would benefit is some of these reviews of what happened 9/11-- or on January 6th, was they looked at that issue. And and so, I think we can draw some lessons from that.

WITTES: We are gonna leave it there. Please join me in thanking Under Secretary Wainstein for joining us today.

WAINSTEIN: Thank you. I appreciate it.

WITTES: Thank you, sir.

WITTES: Thank you so much.