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TELEVISION PROGRAM TO "CBS NEWS' FACE THE NATION. "***

CBS News

FACE THE NATION

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**GUESTS: Senator JEFF SESSIONS (R-AL)
Member, Judiciary Committee**

**Senator PATRICK LEAHY (D-VT)
Ranking member, Judiciary
Committee**

**DAVID BROOKS
Columnist, The New York Times**

**KAREN TUMULTY
Reporter, Time Magazine**

MODERATOR: BOB SCHIEFFER - CBS News

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***FACE THE NATION - CBS NEWS
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BOB SCHIEFFER, host:

Today on FACE THE NATION, is eavesdropping without a court order legal? Congress opens hearings on that question tomorrow. We'll hear the arguments from both sides today. It is a serious question. Did the president go too far when he told National Security Agency officials they did not need a court order to eavesdrop on the conversations of American citizens suspected of terrorist connections? Should the law be changed to allow such action? White House officials say key members of Congress told them privately that changing the law would just tip off the enemy. But now, Congress is in an uproar. Two senators from the Judiciary Committee who are right in the middle of this will argue the case this morning: the ranking Democrat on the committee, Patrick Leahy of Vermont and Republican Jeff Sessions of Alabama. We'll talk about the rest of the week's news with New York Times columnist David Brooks and Karen Tumulty of Time magazine. I'll have a final word on my favorite interview with the president, and you'll never guess who that is. But first, eavesdropping to catch terrorists on FACE THE NATION.

Announcer: FACE THE NATION with CBS News chief Washington correspondent Bob Schieffer. And now from CBS News in Washington, Bob Schieffer.

SCHIEFFER: And good morning again. Senator Leahy and Senator Sessions are with us both in the studio this morning.

And, gentlemen, you two are going to be in the middle of what is, from all sides as discretion, a major hearing of whether what the president did exceed his authority when he ordered these eavesdropping inc--ordered eavesdropping on Americans who were talking to people overseas. The attorney general is going to be your main witness tomorrow. Mike Allen of Time magazine has apparently gotten a look in advance. Look at his testimony. And he says that Gonzales is going to tell you that seeking a court order could result in delays, quote, that "may make the difference between success and failure in preventing the next attack."

What about that, Senator Leahy?

Senator PATRICK LEAHY (Democrat, Vermont; Judiciary Committee): Well, everybody wants to stop another attack. I mean, obviously, the Bush administration, the first attack happened on their watch. They don't want a second one on their watch. As a Democrat, I agree with it. After all, nobody looked at whether Democrats or Republicans were hit. Senator Sessions and I go to work every day along with thousands of others in the building that was targeted for destruction by al-Qaeda. Of course, we want them caught. But what I worry about is, if we keep out trying all these things that might not be legal, we're distracted from catching them. Just as we told the administration, go get Osama bin Laden. They almost caught him. Instead, they yanked their best people out of Afghanistan to send them precipitously into Iraq. We didn't catch Osama bin Laden. Think how much better off we'd be if they had done what they said they wanted to do.

SCHIEFFER: What about the argument that they're making, though, that it's the

difference between success and failure. Is it?

Sen. LEAHY: Well, there hasn't been too many successes. The biggest success, almost five years after September 11, would have been if we'd caught Osama bin Laden, the man who set up the attack wars, the man that we could've caught if we kept our eye on the ball. They define success as 'you're either for the terrorists' or 'you're against the terrorists.' Well, we're all against the terrorists. But just as they set up the Homeland Security to protect us, that failed miserably during Katrina. We want to make sure they succeed. Every Democrat, every Republican, wants him to succeed. We should stop the polemics and talk about making it work right. Now, if we're spying on Americans, if we're spying on Americans, tapping their phones, e-mails, whatever, I think Americans want to know at least there's a check and balance. At least it's being done within the law.

SCHIEFFER: All right. Well, let me just stop you right there and go to Senator Sessions.

Senator, your own committee chairman, Arlen Specter, a Republican, says he believes the president's on thin ground when he claims this authority. Now, here's what the president told me last week when I asked him about it.

President GEORGE W. BUSH: I view this situation we're in as war. And therefore, I must protect the American people with the tools available to me.

SCHIEFFER: So, senator, what is the best argument you can make about why you believe the president has this authority?

Sen. SESSIONS: Well, it's necessary. We are at war. That group, al-Qaeda, has declared war on us, that Congress has authorized the United States to conduct war against them. As an incident to war is the power to surveil the enemy and to intercept any communications they have. We know before, they used foreign communications into these sleeper cells that activated and did the 9/11 attack. So I think if we can do that, it's appropriate, it's necessary, and it's legal, both under the authorization to use force--because when you authorize our military to use force, they can kill the enemy without a Miranda warning, they can put them in jail without a trial. And to be able to intercept their communications is legitimate. Remember, it's not any foreign communication, it's only communications connected to al-Qaeda. That's international phone call from a foreign spot into the United States that implicates al-Qaeda, not Hezbollah or any other group. It's a narrow approval. And finally, the Congress, congressional leaders, were informed, and none of them objected.

SCHIEFFER: Well, Sandra Day O'Connor--and I'll get back to that in just a second--but Sandra Day O'Connor, who has just stepped down from the Supreme Court, said, 'A state of war is not a blank check for any president.'

Sen. SESSIONS: I couldn't agree more. It's not a blank check. But it is an authority to utilizing surveillance activities against the enemy with which you are at war. That's what we've done.

SCHIEFFER: Well, let me go to Senator Leahy. And I want to ask you just what he talked about. Because you can go to the White House, as we did over the last two weeks, talk to any official there, and they will tell you when they began to do this--this is their version of history, I want to get your version--their version is, when they began to do this, they went to congressional leaders, key members of the Senate and House, and said, 'This is what we're going to do. Do you think we ought to change the law to accommodate this, to codify it?' And they said the answer they got back from the key members of Congress was, 'No. If you do that, you're going to tip off the enemy to what you're doing.' General Hayden, who is head of the National Security Agency, was on television this morning, he said the same thing. True or false, senator?

Sen. LEAHY: False.

SCHIEFFER: False?

Sen. LEAHY: False. I'll tell you why. I mean, they say we're going to tip off the enemy, the president has talked about this in public, General Hayden's talked about it in public, everybody else has talked about it in public. What kind of a tip--do you think--do you think al-Qaeda is foolish enough to think that they'd pick up the phone and call somebody and say, 'Hi, this is al-Qaeda's 800 number. We'd like to recruit somebody,' that they're not going to be picked up? Of course they are. And of course we have the authority overseas to go after anybody. But we also, just like you have to...

SCHIEFFER: Well, let's go back, though.

Sen. LEAHY: No, no.

SCHIEFFER: No. No, no, no. The question I asked...

Sen. LEAHY: Yeah.

SCHIEFFER: ...was the Congress informed of this?

Sen. LEAHY: No.

SCHIEFFER: You said, 'No'?

Sen. LEAHY: Adequately, no. A change in law would have to come through our committee. I don't know if anybody on our committee was asked. And the proof...

SCHIEFFER: Let me just make...

Sen. LEAHY: ...the proof's in the pudding.

SCHIEFFER: Let me just get to the ta--you're saying that they did not tell you this and had--and you don't know any--I mean, your committee doesn't know

anything about it?

Sen. LEAHY: We know...

SCHIEFFER: You're saying that nobody on Capitol Hill said, 'No, it will tip off the enemy if we do this'?

Sen. LEAHY: I know of nobody who has said that. And the proof is in the pudding. We have amended the FISA, the special court, the special judges that can authorize all of this, we've amended that law five times--twice when I was chairman, again in a bipartisan way, showing that we all want to catch these terrorists.

SCHIEFFER: Well, let's...

Sen. LEAHY: Now--and the president--the president of the United States said during his campaign, when he was running for re-election, 'Of course, we're working with the law.' We--he even said, 'We have a special court that we follow.' Turns out he was not telling the truth when he said that.

SCHIEFFER: Well, Senator Sessions, do you know anything about this? Do you know of the--anybody from the White House coming up and briefing key officials? Because I'm told that the vice president is one of those who did.

Sen. SESSIONS: Well...

SCHIEFFER: Do you know if that's true? And, in fact, did anybody on the Hill say, 'No, we don't want to change the law'?

Sen. SESSIONS: By statute and tradition, the eight key people in the Senate--the majority leader, the House of Representatives speaker, and the four Democratic leaders, those eight, and the Intelligence Committee chairman and ranking Democrats--are given those top, top secret briefings on some of the most sensitive issues facing America. None of them have said they weren't adequately informed; none of them have said they asked for more information and didn't get it; none of them have filed an objection; none of them have filed any kind of legislation--and it could be done secretly as part of the intel bill...

SCHIEFFER: But didn't, didn't--wasn't...

Sen. SESSIONS: ...to stop this stuff--this stuff.

Sen. LEAHY: Well, actually, three senators have made objections.

SCHIEFFER: Wasn't Senator Rockefeller actually...

Sen. LEAHY: Three of them have made objections.

Sen. SESSIONS: Post--after this event was leaked to The New York Times--and somebody probably needs to be investigating on that. But they did not object

during this whole period of time, and they knew about it.

SCHIEFFER: Well, do you know in fact if anybody told the White House, 'We don't want to change the law because it might tip off the enemy?'

Sen. SESSIONS: I understand that someone--the consensus was, and any Senator would say this, probably--'Mr. President, if you proposed legislation to deal with this complex technological surveillance technique, and try to fix that, you're going to reveal this program.' And the president said, 'I think I have the authority to do it anyway.' And they said, 'OK.' And nobody objected.

SCHIEFFER: Senator Leahy:

Sen. LEAHY: I don't think anybody's going say, 'OK, Mr. President, you want to act outside the law, we have a law that sets us up, but you, because you're president, the laws don't apply to you. They apply to 295 million Americans, but a president can pick and choose which laws he follows.'

We said no on torture, we said no on the intention of Americans, and we'd say no on this. The fact is, when they've asked us for help, Bob, the big thing is they've asked us five times to change this, we have given them to them; Democrats and Republicans, because we all want to stop the terrorists. We have given them the changes.

SCHIEFFER: Let me ask you this: you have asked for a trove of documents from the administration and from the Justice Department about all this. So far, the White House has said no way. Will you try to subpoena them? How will you handle this?

Sen. LEAHY: I think ultimately we're going to have to subpoena them. I mean, the White House has also said, 'No, we won't show you all the mistakes we made in Katrina, because we want to look forward.' Well, the fact is, if you're making mistakes, we ought to know about it. Now the Republican-led House and Senate, with due respect to my present colleague here, they don't do real oversight. And I think that any, any president, Democratic or Republican, if nobody's going to question them about it, of course they're going to make mistakes. It's only when mistakes are found out that you correct them.

SCHIEFFER: Do you think a subpoena will be asked for, Senator Sessions?

Sen. SESSIONS: I certainly hope not, and the president is not going to give these records voluntarily. These are...

SCHIEFFER: Would you vote to subpoena them?

Sen. SESSIONS: ...internal memorandums from his lawyers: the lawyers in the Department of Justice, the lawyers at the White House, Department of Defense lawyers, all contributed to trying to make sure we create a legal program, and I believe they did.

SCHIEFFER: Well...

Sen. SESSIONS: But those internal documents, those advice to the president, the president--every president, Democrat and Republican--protects their right to have confidential advice from their advisors.

SCHIEFFER: Well, I mean...

Sen. LEAHY: But you support, you supported getting similar documents during the Clinton administration, it was a Democratic president. Come on, Jeff, you can't...

Sen. SESSIONS: Well, if they're...

Sen. LEAHY: ...you can't be in--you can't be in favor of getting the documents when it's a Democrat, but you'd be against them when it's a Republican.

Sen. SESSIONS: Well, there's a principle, here, and that is if you are charged with a specific criminal offense, then you may can get documents; and if it's a cover-up or obstruction of justice, and that kind of thing, you have to give documents. But the general advice that a president gets, every president has objected to that.

SCHIEFFER: Senator Sessions, let me ask you this. The Washington Post says this morning, getting back to this eavesdropping, they report that intelligence officers involved in it say it really wasn't very effective, and we already know of people in the FBI, former officials there, say it was just a huge workload that really came to nothing. What would you say to that?

Sen. SESSIONS: I'm not sure the facts of that, although I would say this: one case, identifying one sleeper cell, can mean a matter of life and death. It's not academic. And these sleeper cells probably exist today, and if you can identify them, you can begin to surveil them.

SCHIEFFER: Well, gentlemen, we'll have to continue this this morning up on Capitol Hill.

Sen. LEAHY: I wish I was right, I wish I was right, though, because the Bush administration knew the names of the hijackers before 9/11, they did nothing on it. I want to make sure they do it right.

SCHIEFFER: All right. To be continued tomorrow morning at that hearing on Capitol Hill.

And we'll be back in a moment with our ROUND TABLE.

(Announcements)

SCHIEFFER: And we're back now with Karen Tumulty, the national political correspondent for Time magazine, and David Brooks, columnist for The New York

Times.

Well, ladies and gentlemen, I think we know one thing. These hearings that open tomorrow are going to be fairly lively.

Where do you think all this is going, Karen?

Ms. TUMULTY: Well, you know, I think that the question that you raise at the beginning of the broadcast is, one, is it legal? I think that, as far as getting political traction on this issue, the country--I have not run into any Democrat who thinks that this is something that is likely to get them big traction going into the elections. That Americans really are willing to give up some of their civil liberties if they think it's making them safer.

But the question that Senator Leahy raised at the end was interesting because the real question is, is this doing any good for--and in exchange for the intrusion into civil liberties?

SCHIEFFER: I think you're absolutely right about that, and my sense of it is most Americans--I think the White House has handled this very adroitly from a political point of view because I think the feeling in the country right now is 'They're not spying on me. They're out there spying on those other guys, and that's what they ought to be doing.'

What do you think, David?

Mr. BROOKS: Well, I agree. The president's line in the State of the Union was: 'If al-Qaeda's making a phone call here, I want to listen in.' That's just a killer line. And there are two issues here. Is it legal and is it good? And these hearings are going to give me a big toothache because they're going to be about is it legal and who said what to who a year ago, and there's going to be a whole bunch of "gotcha" games. But I want them to talk about how we going to make this legal so everybody agrees it's legal. Fine, the president can say, 'I agree it's legal, but I understand serious people disagree. What are we going to do to fix that?' Because the more I read about the program, the better I think it is.

SCHIEFFER: Well, you're a civil libertarian. You don't believe in big government and big brother and all that kind of business. Do--does it bother you that they are listening in?

Mr. BROOKS: Yeah, well, here--you know...

SCHIEFFER: Or maybe they're listening in to old David Brooks.

Mr. BROOKS: ...this is--the...(unintelligible)...to think about it--I hope so, they're going to be bored--here's what the program seems to be. It seems to be these computers going out and sweeping these vast sweeps. And what we know about Mohamed Atta is that he shared post office boxes, telephone numbers and home addresses with some of his co-conspirators. So they're looking for patterns. And then when the computer dings a pattern, then they can go to an

individual listening in. And, personally, and this is what we all have to think about, I don't feel that invaded with a computer sweeping. I feel more invaded with an individual listening to my phone call. But this is really about the new technology. I want the president to use that new technology.

Ms. TUMULTY: But it doesn't...

SCHIEFFER: Well...

Ms. TUMULTY: ...by the way, that doesn't explain the why the president didn't use the--the FISA law says you can do this kind of surveillance and then go back after the fact and get permission, and the White House--and the administration has yet to answer the question of why they didn't do that.

Mr. BROOKS: Yeah, I think--you know, one of the things they're sweeping thousands, and I think it would be hard case-by-case to get FISA. But the reason they didn't, I believe, is because they didn't want to publicize the program. But now it's been publicized. You can read about it in every newspaper and magazine in the country. So I think they should say, 'OK, it's a new game. Let's get together. This is going to be a long war, there are going to be Democratic president, Republicans presidents, let's get a law we can all agree on.'

SCHIEFFER: Let's talk about something I think a lot of people do understand, and that is this enormous scandal up on Capitol Hill. The Republicans now bring in a new guy to be the majority leader. I think we all agree the Tom DeLay era is over, whatever comes from this. We--we've seen the end of Tom DeLay and his influence. Is this scandal going to be so bad that Republicans are going to lose the majority up there, do you think, Karen?

Ms. TUMULTY: I think that's entirely possible. We really haven't seen how far it's going to go. There are going to be more indictments when--we in Time magazine reported, for instance, that Abramoff is viewed as the middle guy in this investigation, suggesting that the Justice Department has much bigger fish in its--in its--in its line of view. Can that ultimately get the kind of traction we saw with a number of the scandals in the early '90s that hit a lot of Democrats? I think it's possible.

SCHIEFFER: What do you think, David?

Mr. BROOKS: I think it's possible, but I don't think it is the main danger for the Republicans. You know, if you go around the country and say, 'Hey, guess what? Money has a lot of influence in Washington,' there's nobody falling over out of shock.

SCHIEFFER: No, 77 percent of the people in our CBS News poll last week said they think that's just the way it works.

Mr. BROOKS: Right.

SCHIEFFER: Which is sort of a sad...

Mr. BROOKS: And I think--you know, I used to cover Chicago. People accept corruption if you're addressing their needs. To me, the problem for the Republicans is more they have no shape, no form, no agenda. And if people get the sense they're out of touch with their needs, that's when they get punished. I doubt Abramoff alone does it.

SCHIEFFER: Well, do you think that--do you think Republicans view this as a serious matter? I mean these elected officials?

Mr. BROOKS: Yeah.

SCHIEFFER: Or do they think it can be just sort of finessed?

Mr. BROOKS: There are two groups of Republicans. And this came up in some of the secret sessions they had this week. The blue-state Republicans, northern New York state, Ohio, they're in a panic. They say the president is radioactive in my district. The red-state Republicans don't hear that. They don't get it. And a lot of what was happening this week was blue-state Republicans, were the vulnerable ones, saying, 'Listen up, something big has to change over the next couple of weeks or months for us to, you know, change our image.'

SCHIEFFER: Do you think something big has happened? I mean, bringing in this John Boehner?

Ms. TUMULTY: It depends on whether what they do is...

SCHIEFFER: As the new majority leader, I should add.

Ms. TUMULTY: If they change the little loopholes in the rules. You know, former members can't go on the floor and lobby. That's not where the corruption in the system is. It's in people being able to go in and get money. These so-called "ear marks," big amounts of money. And if they go after that, where one lobbyist can get to one member and get something that doesn't go through the process, I think that could change the way business is done on Capitol Hill.

SCHIEFFER: I mean, you go talk to a lobbyist and he will tell you, 'Look, if they make it illegal for a lobbyist to give a political contribution, it would be great because they're bleeding us dry.'

Mr. BROOKS: Yeah.

SCHIEFFER: And they point out it's not the lobbyists who's trying to give them the money, it's the members of Congress who now demand the money, David.

Mr. BROOKS: Right. Well, that's how they measure themselves as legislators. 'How much am I raising and giving to my team?' I agree with Karen, the little things about whether you can accept a baseball hat or a meal, that's stuff is totally trivial. Though I enjoy that I can get a much easier table at a

restaurant in Washington now that the lobbyists have changed. The big thing is whether the House enforces the rules so, like, people actually see legislation before they vote on it. That's the big stuff they really have to address.

SCHIEFFER: Do you think the fact that people hire lobbyists to go get these ear marks--and these are the things that are stuck into the appropriations bills at the last minute. Do people understand how that works?

Mr. BROOKS: I hope not. You know, most of us don't. But as long as you have one member of Congress at 2 in the morning who can stuff in \$300 million for so-and-so, you're going to get corruption. It's just an invitation.

SCHIEFFER: All right. Thanks to both of you.

We'll be back with a final word in just a minute.

Announcer: FACE THE NATION continues and is always on cbsnews.com brought to you in part by...

(Announcements)

SCHIEFFER: I have interviewed all the men who have served as president since Richard Nixon, and when I interviewed President Bush the other day, people asked what they always do, which was, 'Who was your favorite interview?' They were surprised, as they always are, and this is no reflection on any of them, but I still have to say the one I remember most is my very first presidential encounter. It was 1969, Nixon had just come to office, and I was a rookie reporter in the CBS News Washington bureau covering such prestigious assignments as the birth of the Washington Zoo's new tiger cub and the National Miniature Golf Championships. I had just signed that one off, 'Bob Schieffer, CBS News, at the National Putt-Putt Championships in Rockville, Maryland,' when my mother called and demanded to know, 'When are they going to let you cover some real news?' I explained I was not yet allowed to make my own assignments, but, to my relief--my mother was a formidable woman--I was sent the very next Sunday morning to cover a White House reception for the president's supporters.

It was such a minor affair that Helen Thomas of UPI and I were the only reporters there. A receiving line was set up, and when no one told us we couldn't, Helen and I just got in the line. Well, there was a story going around that the president was bringing in some new advisers, and when it came my turn to shake his hand, I said, 'Mr. President, will these be outside people or in-house advisers?' 'Oh, no,' he said, 'these will be outhouse advisers.' Then he realized what he had said and added, 'Well, you know what I mean,' and he wandered off into the crowd.

Not many would even call that an interview, and we did no story about it, but when I told my mother, she thought it was a great question.

That's it for us. We'll see you next week right here on FACE THE NATION.