

© 2006 CBS Broadcasting Inc.  
All Rights Reserved

***PLEASE CREDIT ANY QUOTES OR EXCERPTS FROM THIS CBS  
TELEVISION PROGRAM TO "CBS NEWS' FACE THE NATION. "***

*CBS News*

# ***FACE THE NATION***

*Sunday, May 14, 2006*

**GUESTS: Mr. STEPHEN HADLEY**  
National Security Advisor

Senator ARLEN SPECTER (R-PA)  
Chairman, Judiciary Committee

Rep. JANE HARMAN (D-CA)  
Ranking Member, House Intelligent  
Committee

**MODERATOR: BOB SCHIEFFER - CBS News**

*This is a rush transcript provided  
for the information and convenience of  
the press. Accuracy is not guaranteed.  
In case of doubt, please check with*

***FACE THE NATION - CBS NEWS***  
***202-457-4481***

BOB SCHIEFFER, host:

Today on FACE THE NATION, the government's been making a list of the people Americans have been calling on the telephone. Is it legal? And does it help on the war on terrorism?

The story hit Washington last week like a typhoon. The National Security Agency has been secretly collecting Americans' phone records since 9/11. Is it still going on? And exactly how does it fight the terrorists? We'll ask President Bush's national security adviser, Stephen Hadley. What does Congress plan to do about this? We'll ask Senator Arlen Specter, who wants to bring phone company executives to Capitol Hill for an explanation, and Congresswoman Jane Harman, the ranking Democrat on the House Intelligence Committee.

I'll have a final word on moms and their day.

But first, spying on your calls 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 on this Mother's Day.

The National Security Adviser Stephen Hadley is in the studio with us this morning.

Well, this is a story that all of Washington is talking about, and it all began when The New York Times reported last year that the National Security Agency was eavesdropping without court orders on some telephone calls coming into this country and some telephone calls going out of this country when it involved people suspected of having terrorist ties. The government stressed from the beginning this was a very limited kind of surveillance that was going on. But last week USA Today reported that phone companies have been turning over the phone call records of millions of Americans to the government. We want to see how all this comes together.

Mr. Hadley, thank you for joining us this morning. Let me just ask you first, is--we're told this began after 9/11. Is it still going on?

Mr. STEPHEN HADLEY (National Security Advisor): Well, let me just start by giving a little context. There's been concerns about privacy. The president takes very seriously his responsibility to protect the privacy of the American people. He also takes seriously his responsibility to protect the American people from attack from al-Qaeda.

As you know, we have a series of efforts and intelligence programs to try and prevent this country from being attacked. They're lawful. They have been briefed to the appropriate members of the Senate Intelligence Committee, House Intelligence Committees, Republicans and Democrats, and they're focused on the war on terror.

I can't, sitting here, confirm or deny the claims that are in the USA Today story. But it's very interesting what that story does not claim. It does not claim that the government was listening on domestic phone calls. It does not claim that names were passed, that addresses were passed, that content was passed. It's really about calling records, if you read the story--who was called when and how long did they talk. And these are business records that have been held by the courts not to be protected by a right of privacy. And there are a variety of ways in which those records lawfully can be provided to the government.

So again, I can't confirm or deny the claims made, but if you just look at the claims, it's a very limited question and it--it's hard to find the privacy issue.

SCHIEFFER: Let me just ask you the question and that I can just imagine that people sitting and watching this broadcast this morning are asking, and they're saying, 'Look. It's been in all the papers. If there's a terrorist spy around that hasn't heard about this by now, he's not a very good spy.' Why can you not confirm it, Mr. Hadley?

Mr. HADLEY: Well, one of the reasons is that--that again, these are intelligence operations. They are to try and protect this country from being attacked. And it's precisely the problem that when these things are leaked to the media and they become known, the value of the program goes down because the--the enemy knows what it is you're trying to do. So it is very important that if we're going to protect the country against terrorists, the government be able--properly, lawfully, consulting appropriately with Congress--to be able to pursue secret programs. In addition, there's litigation involving some of these claims in the courts. The courts will have an opportunity to rule on it.

SCHIEFFER: Well, the reason the litigation is there, though, is because they're claiming it's illegal and it is an invasion of privacy.

Mr. HADLEY: The reason it's there, of course, is because of the leaks of this information in--in public. And what the president has said very clearly is he has charged us and charged his administration to do everything possible to protect the country from being attacked, but to do it in a lawful way, to do it within the law and within the Constitution. That's the charge, and that's what he's trying to do.

SCHIEFFER: Is the president himself, aware of all of this?

Mr. HADLEY: Well, again, all of this. I can't confirm or deny specific claims in that article, but we--there has been discussion of the terrorist surveillance program, which was talked about. Which again, is a program that was talked about in response to The New York Times article you're talking about.

SCHIEFFER: Let me just ask you--let me just ask you this, Mr. Hadley, Arlen

Specter, the chairman of the Judiciary Committee, is going to be on this broadcast after you and in the next segment. And I think the question--well, he told me--in fact, he told you as we were talking before the broadcast, that he has--the question that he has--the main question he has is, 'How does the Congress, the Judiciary Committee, exercise its oversight authority on a government program if it doesn't know what the program is?' I think that's a good question.

Mr. HADLEY: Of course, the Congress does know. Now the House Intelligence--these are intelligence programs. They have been briefed to appropriate members of the House Intelligence Committee, the Senate Intelligence Committee. These were the committees established by the Congress to deal with these matters. These are the committees that we have been keeping appropriate members informed.

SCHIEFFER: Let me just ask you this, then. Why didn't you go to a court and seek court orders on this sort of thing, or see if it was illegal? I know for a fact--sources have told me that when this whole thing about the eavesdropping came about that General Hayden, who was running the National Security Agency at that time, went to his lawyers in the agency and asked three of them to check the legality of this, and he was so concerned about it, I am told by a source that he told them separately and didn't tell any of the three that he had asked the other two to check it out.

Mr. HADLEY: Look, you want your officials to be concerned, to make sure that the programs they design to fight terror are lawful. And a lot of lawyers in the executive branch spend a lot of time to try to make sure that the things we do are within the law. That's what you'd expect, and that's what we do. But the terrorist surveillance program that has been talked about in the press is a narrowly defined program. It is a program that is, in a way, to detect and prevent attacks in the United States. And it requires people to be very agile, to use information, see if it is an indication of a plot. And the FISA legal structure is not designed for this kind of function.

SCHIEFFER: All right.

Mr. HADLEY: That's the problem.

SCHIEFFER: All right. Another question that I want to ask you about. The administration from the beginning has argued that this, again, was very carefully focused, this whole eavesdropping thing, that it was the calls coming into the United States from people who might have some sort of terrorist tie, or at least expected as such, or going the other way, and vice versa. But this morning in *The New York Times*, a White House spokesman, Dana Perino, I think her name is, and here's the quote, "NSA, the National Security Agency, does not intentionally listen in on any domestic-to-domestic calls without a court order." Now, having been in Washington a long time, I have to say, Mr. Hadley, if ever there were a statement with red flags all over it, it would be a statement from the White House that says they do not intentionally do something. Does that mean that there have been some calls that have been monitored inside the United States, intentionally or otherwise?

Mr. HADLEY: The president has been very clear that we are to pursue our intelligence programs within the law. As you know, domestic-to-domestic require a court order. He has directed that that, of course, will be complied with. If there have been mistakes, he would have expected that those mistakes would be identified and remedied, because his guidance has been very clear, 'We're going to do all we can to defend the country, but we're going to do it within the law and the Constitution.'

SCHIEFFER: Let me ask you this question. General Hayden, who headed the NSA, as we all know, has been nominated now to head the CIA. Senators of both parties say his confirmation is going to hang on how he answers the questions at these confirmation hearings. Is he going to be able to confirm any of this to the senators? You say that you simply can't confirm or deny the story that was in USA Today. If he stonewalls those committees, isn't that going to make it very difficult for them to confirm him?

Mr. HADLEY: Well, what I'm saying is, here, speaking on national television, General Hayden, of course, has been answering questions about this terrorist surveillance program, carefully in public, those things he can talk about in public, but of course, very extensively with those members of the Senate and House Intelligence Committees that have been designated to provide oversight to this program. General Hayden spent a lot of time up in the Congress with the members of those committees talking through the terrorist surveillance program to make sure they're now going to understand.

SCHIEFFER: So what you're saying is he's going to be able to give them more information perhaps in a closed session or in some other way than you've been able to give us.

Mr. HADLEY: He already has. Because the whole point of these programs is they are secret programs. Because if they become public, their value is attrited, because then the bad guy knows what we're doing.

SCHIEFFER: Let me shift quickly to another subject. The president's going to make a speech on Monday on immigration. We are told--in fact, the lead story on the "CBS Evening News" and a couple of the other networks Friday, was that the administration has been considering plans to bring the National Guard into this, and to use the National Guard rather extensively. Now, a lot of people have a picture here, and I want to ask you about this: Are you planning to station armed National Guard troops on the border? I mean, I think a lot of people can see this picture of our National Guardsmen shooting Mexican immigrants as they're coming across the border. Is that what's about to happen here?

Mr. HADLEY: This is not about militarizing the border. The president is looking to do everything he can to secure the border. It's what the American people want, it's what he wants to do. He's listening to, and getting a lot of good advice. He's had good consultations on the--with the Congress. He will be talking to the governors. He's looking at a number of ideas, and a number of folks have suggested greater use of the National Guard. It's one of

the things he will consider. He is, as you said, giving a speech to the country tomorrow night, and he will be addressing, at that time, additional measures to secure the border.

SCHIEFFER: Well, let's just clear up one thing, and I know you don't want to pre-empt the boss, what he's going to tell the American people. Is there a plan, or is it being envisioned, to use the Guard troops as guards? In other words, to carry out police functions?

Mr. HADLEY: There's actually been some use of the National Guard on the border already. They have been used in support functions to help the border patrol, things like intelligence and training and that sort of thing. And I think that's the kind of thing people have in mind.

But again, there are a number of ideas out there. The president is taking a look at them, and we'll have an opportunity to hear from him tomorrow night.

SCHIEFFER: Can you rule out, though, that he's going to use National Guard troops, armed National Guard troops, in guard duty, as it were?

Mr. HADLEY: As I said, the--safeguarding the border is for the border patrol.

SCHIEFFER: Right.

Mr. HADLEY: And, and they have a huge task, and one of the issues is do they need help on an interim basis, so that they can do the full function? It's the support function we're talking about. It's something we are doing as both we and our neighbors try and cooperatively strengthen our border.

SCHIEFFER: All right. All right, thank you very much, Mr. Hadley. I appreciate it.

Mr. HADLEY: Thanks very much.

SCHIEFFER: We'll be back in a minute to get some other views on all of this.

(Announcements)

SCHIEFFER: And joining us now from Philadelphia, the chairman of the Senate Judiciary Committee, Republican Arlen Specter. With us here in the studio, Congresswoman Jane Harman, who's the ranking Democrat on the House Select Committee on Intelligence.

Well, Senator Specter, I know you were listening when I asked the question that you had posed, and that is how can a congressional oversight committee give proper oversight to a program if it can't find out what the program is? Did you get the answer you were looking for there?

Senator ARLEN SPECTER (Republican, Pennsylvania; Chairman, Judiciary Committee): I did not get a satisfactory answer, because when we called in

the attorney general--and the Judiciary Committee has specific oversight over the Department of Justice and the attorney general on our congressional oversight responsibility--we did not get answers.

When Mr. Hadley says that the intelligence committees have been informed, that's only partially so. When the program was put into effect, the so-called "gang of eight" was informed. That's the leadership of both the House and Senate, and the chairmen in ranking on the intelligence committees.

Now, Bob, the statute requires that the committees, all of them...

Representative JANE HARMAN (Democrat, California; Ranking Member, House Intelligence Committee): Mm-hmm.

Senator ARLEN SPECTER (Republican, Pennsylvania; Chairman, Judiciary Committee): ...be informed and they still haven't been informed. After we put pressure on with our hearings and legislation which we proposed, the administration started to brief a subcommittee of intelligence and part of the House committee, 11 members, but they still haven't complied with the act to inform the full intelligence committees as required by law. And there really has to be in our system of law, of government, checks and balance, separation of powers and congressional oversight. And, Bob, there has been no meaningful congressional oversight on these programs.

SCHIEFFER: All right, well, let's go to Congresswoman Harman.

What did you hear today? What did you like; what didn't you like?

Rep. HARMAN: I--I didn't like the claims of Stephen Hadley in two respects. I agree with Arlen Specter that Congress has not been briefed as required by law. The entire intelligence committees need to be briefed, and I think he should be briefed, too, he and his ranking member, and maybe their full committees if they're going to be asked to change the law, which I don't think is necessary. But that's one thing.

The second point is, Hadley said that FISA, the Foreign Intelligence Surveillance Act, is not appropriate of this kind of thing. I couldn't agree more--disagree more strongly. FISA, which was passed on a bipartisan basis by Congress in 1978, is the exclusive way to eavesdrop on Americans, and all aspects of this program--many of us have been saying this--all aspects of this program have to comply fully with FISA and the Fourth Amendment, and we need court warrants to do any aspect of this program.

SCHIEFFER: Do you think the law has been broken here?

Rep. HARMAN: Yes, I do. I think the administration is breaking the law. It's legal rationale that it offers I think is extremely shaky. To this White House the Constitution starts with Article 2, which is the power of the executives. They skip over Article 1 totally; that's the legislature, and Article 3 is the courts. As Arlen Specter just said, that we have a system of checks and balances. Each branch checks the excesses of the other branches.

This is a lawless White House out of control with respect to a program like this. Sure, we all want to catch terrorists, but I am against an effort to have the executive branch monitor itself.

SCHIEFFER: A lawless White House out of control. Do you agree with that, Senator Specter?

Sen. SPECTER: No, no, I don't. And there are more subtleties involved. I'm working very closely with Congresswoman Harman, but we have a difference of opinion on this. She is correct that the Foreign Intelligence Surveillance Act has been violated. But if the president is exercising Article 2, inherent constitutional powers, that trumps or supercedes the statute.

But the problem arises is that we don't know. The president does not have a blank check and in order to evaluate his Article 2 inherent powers, you have to know what the program is. And it's a balancing act. And on this date of the record we do not know whether it's constitutional or not, and that's why I have proposed legislation which would give the Foreign Intelligence Surveillance Court the authority to rule on constitutionality. They can keep a secret, they have the expertise, and they could resolve this question. And so far the White House won't say yes or no even on my bill.

SCHIEFFER: OK. Congresswoman, Harman, the Republican National Committee put out a release this week and said the real Democratic agenda is simply to stop the terrorist surveillance program. Do you agree with that?

Rep. HARMAN: I think the real agenda--I don't think it's just by Democrats, unless you mean democrats with a little D who want to preserve our--our system of laws, is to force this White House to comply with the law and the Constitution. Arlen Specter is right that there are inherent powers granted to the executive under Article 2, the president's role as commander in chief, but when Congress passed the Foreign Intelligence Surveillance Act, it anticipated that, and it said for 15 days after the declaration of war the president can conduct eavesdropping without warrants. But after that, FISA is the exclusive remedy. So my agenda, and I think it's the agenda of a lot of members of Congress in both parties, is to make certain that this White House not only partners with Congress, but obeys the laws that Congress passes. And I think if we can ever get this case to the Supreme Court, the White House will lose big time.

SCHIEFFER: Let me go back to Senator Specter, because you announced last week that you're going to call the heads of the three telephone companies up to Capitol Hill for a hearing. What do you want to ask them, Senator?

Sen. SPECTER: I want to know how many people are being checked on their records. The news reports are that millions of people and that billions of telephone calls. I want to know what their basis is in the law. There are decisions, Bob, which suggest that if you're just looking at the number itself that that's not an invasion of privacy. But those are limited decisions. They don't encompass a program, the magnitude of what is going on now. I want to know why the telephone companies are making these disclosures about private

information on such a massive scale.

SCHIEFFER: Do you--let me just ask you, Senator. Do you have any information at this point that they have been coerced into doing this?

Sen. SPECTER: I do not. But that's a question that I think is fair--is fair to ask. The telephone companies are subject to a lot of regulation. The--these are questions which ought to be disclosed, Bob, and they ought not to be disclosed just on the front pages of the newspapers. That's why you have congressional oversight; that's why you have a judiciary committee. And there are a lot of--there's a lot of information that the American people are entitled to.

Listen, it may come out that it's entirely lawful. But until we know a lot more about it, we can't pass judgment, and we're entitled to know.

SCHIEFFER: OK.

Rep. HARMAN: Well, I want to commend Senator Specter as I have frequently, for trying to hold rigorous hearings to oversee programs that he feels may or may not violate the law. That's a good thing, that's what the Senate and House judiciary committees ought to do on a bipartisan basis. With respect to the phone companies, though, I would say that our focus needs to stay on this administration. And this administration must be forced to observe the laws that Congress passes. And if it gets--and I think it must get court warrants for this entire program, those warrants are reviewed every 90 days. That puts a separate branch of government in a role of overseeing it, and Congress needs to be a co-equal branch doing the same thing.

SCHIEFFER: About 20 seconds left, Senator Specter. Is Michael Hayden, who the president has nominated to be the head of the CIA, who used to run the National Security Agency, the spy agency, is his confirmation in trouble?

Sen. SPECTER: I would say that there are a lot of questions which General Hayden has to answer. He's a first-class professional, but he has been in charge of a program where we need a lot more information.

For 10 seconds, Bob, on the telephone companies, the advantage of having them in is they can't claim executive privilege, so we may get some answers from the telephone companies. It'd be a pleasant change.

SCHIEFFER: All right. Well, I'm going to thank both of you for being with us this morning.

Sen. SPECTER: Thank you.

SCHIEFFER: And I will be back with a final word on Mother's Day in just a minute.

(Announcements)

SCHIEFFER: And finally, a little Mother's Day poem.

What's to say about moms that hasn't been said before?  
Well, here's just a couple of things, maybe three or four.  
When you were just a little one, who was it that taught you a song,  
And even more important, the difference between right and wrong?  
When others turned against you, who was always there?  
Who always took your side, no matter when or where?  
If you're like me, it was mom.

Who kept the family going whether times were good or not?  
Who always could remember the things that we forgot:  
Birthdays, homework deadlines, a hundred things or more.  
And on school days, wide awake or not, got you up and out the door?  
If you're like me, it was mom.

Who told you you were just as good as any rich man's son,  
So don't go look for some excuse not to do what you want done.  
You've known movers and shakers, some may even know you.  
But in the final accounting, who taught you most that's true?  
If you're like me, it was mom.

If you forgot this is Mother's Day, take that little poem as a reminder, and  
make the call right now. Forget the excuses, just say "I love you, Mom,"  
which is the only thing every mom wants to hear.

And we'll see you right here next week on FACE THE NATION.