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CBS News

FACE THE NATION

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Chairman, Judiciary Committee

Senator CARL LEVIN (D-MI)
Ranking Member, Armed Services
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***FACE THE NATION - CBS NEWS
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BOB SCHIEFFER, host:

Today on FACE THE NATION from New York, the administration squares off against The New York Times and what now for the Guantanamo Bay prison?

When The New York Times reported a secret government program to examine millions of financial records in an effort to find terrorists, the administration unloaded on the newspaper. The president called the reporting disgraceful and congressional Republicans said it put American lives in danger. Today, we'll get the newspaper's side of it from editor Bill Keller. And we'll get perspective from Republican Judiciary Chairman Arlen Specter and Carl Levin, the ranking Democrat on the Armed Services Committee. We'll also have questions for them on Guantanamo prison. How should the government deal with the terror suspects being held there now that the Supreme Court has struck down the administration's plan to try them in military tribunals? Finally, I'll have a word on good news. But first, New York Times editor Bill Keller on FACE THE NATION.

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

SCHIEFFER: And good morning again. We're in New York this morning because that's where the news is and what better time than the Fourth of July weekend to talk about the role of government and a free press in a democracy. The founders never thought the relationship would be easy and were they right, as our guests this morning can certainly attest.

Bill Keller is the executive editor of The New York Times, and welcome, Mr. Keller.

Mr. BILL KELLER (Executive Editor, The New York Times): Thank you.

SCHIEFFER: When your paper revealed that the government had a secret surveillance program which tapped banking records to trace how terrorist groups were getting their money, first, the White House and then many Republicans in Congress unloaded on you. Let's listen to just what the president said.

President GEORGE W. BUSH: What we did was fully authorized under the law and the disclosure of this program is disgraceful. We're at war with a bunch of people who want to hurt the United States of America and for people to leak that program and for a newspaper to publish it does great harm to the United States of America.

SCHIEFFER: And as you well know, that was only the beginning. One of your own congressmen here in the state of New York, Peter King, said the paper should be prosecuted for espionage. So I would just ask you to start, why did you decide to print this particular story?

Mr. KELLER: I think this is about a lot more than just the banking story. I mean, since September 11th, editors have had to make some really, really tough

choices about how we keep Americans informed about how their government is waging the war on terror. And there have been a lot of occasions where we have decided to withhold information. You don't hear about those. There have been some occasions where despite the pleas of the administration officials, we've gone ahead and published sensitive material after a long process of deliberation, and those tend to, you know, make officials angry.

The banking story in particular was part of a whole constellation of stories and programs that we've written about that the--that the government has undertaken in the war on terror. And they're part of a pattern of accumulating broad powers to the executive branch without the usual congressional oversight. I expect that most Americans support that, And in the case of the banking program, there didn't seem to be any obvious illegality about it, although some of the people who are very knowledgeable about the program and involved in it, had doubts about both the scope of it, that something like 11 million transactions a day that the government has access to, and concerned about it--the fact that it had acquired a kind of permanence. It was no longer an emergency program. And all of that was happening without much congressional oversight.

I mean, ironically, the members of Congress who were beating up on us this week, most of them have not even been briefed on this program or weren't until The Times exposed it.

SCHIEFFER: Well, you did not suggest in--in your reporting that there was anything illegal about this program. Now when you reported on the eavesdropping story, that the National Security Agency was eavesdropping on the phone calls of Americans--phone calls going out of this country, clearly, those stories suggested that was illegal, that the Congress didn't know about it, that there had been no oversight. But when you say this was not illegal, what made you decide that people needed to know about this?

Mr. KELLER: I don't--I don't think the threshold test about whether you write about government waging the war on terror is whether they've done something that's blatantly illegal or outrageous. I think you probably would like to know what they're doing that's successful, as well. The question we start with is why would you not publish? And sometimes there's good reason. When lives are clearly at risk, we often hold back information. But this was a case where clearly the terrorists, or the people who finance terrorism, know quite well because the Treasury Department and the White House have talked openly about it, that they monitor international banking transactions. It's not news to the terrorists. The scope of the program and its evident successes and the questions about its oversight were news to voters and citizens.

SCHIEFFER: Well, let me just play a piece of tape from the vice president, because he seemed to suggest over the last couple of weeks that maybe newspapers ought not to be making judgments like that, whether or not this is something the terrorists know about or don't know about. Let's listen to what he had to say.

Vice President DICK CHENEY: What I find most disturbing about these stories is the fact that some in the news media take it upon themselves to disclose vital national security programs, thereby making it more difficult for us to prevent future attacks against the American people. That offends me.

SCHIEFFER: Members of the news media taking it upon themselves to make these decisions.

Mr. KELLER: Yeah. It's a strange situation that we have in this country, but it's one that came with the birth of the country. The founding fathers had the notion that amateurs, meaning journalists, could actually look into the affairs of their government and lay them bare for the public to make judgments. We don't do it lightly. In a case like this where the government contends that there could be some damage to publishing the information, we give that a long, respectful, thoughtful consideration. Sometimes, as I said before, we come down on their side, but not always. And, you know, what's the alternative? I think the founding fathers didn't much like the idea that you would take everything the government said at face value. Sometimes we're thrust in the awkward position of having to make a decision against the advice of elected officials.

SCHIEFFER: You said that you always weigh the possibility of putting lives at risk and you generally would withhold information. Do you think any lives were put at risk? Because some are suggesting that they were by making this public?

Mr. KELLER: No. I don't, I don't think any lives were put at risk. You know, the government likes to have it both ways on these kinds of programs. They confide in us when they want to advertise the programs that are successful and then they rebuke us if we write about something that they would prefer we didn't write about. You know, it's interesting that Secretary of the Treasury John Snow, outgoing secretary, who rebuked us for writing the banking story, three years ago took a number of reporters, including one of ours, on a six-day tour of the Middle East, where they were given extensive briefings on sensitive details of how we monitor international financial transactions. They did that because they wanted us to write about their relentlessness in pursuit of terrorism and their successes. You know, so one man's breach of security is another man's public relations.

SCHIEFFER: If you had it to do over, would you still publish this story?

Mr. KELLER: I would. I would. I think, you know, in the--on the scale of these kinds of stories, I don't think it was quite as much of a bombshell, for example, as the NSA eavesdropping story where we had serious misgivings that we had uncovered in all three branches of government. Here, the questions about the legality are, you know, a little less intense. But nonetheless, I think, I think it's useful for us to discuss, to know about how our government is waging this war to protect us.

SCHIEFFER: The administration reaction to all of this, which Howie Kurtz, the media critic for your competitor, The Washington Post, said was remarkable

even by the levels of today's media-bashing. It was somewhat delayed. At the first White House briefing, the White House press secretary, Tony Snow, did not really take much issue with this. He said he--in fact, he said he found it somewhat balanced, talking about--because after you all published--on the same day, The Wall Street Journal and The Los Angeles Times also published. But then when the president weighed in, the reaction was very much stronger. Were you surprised at how strong the administration reacted?

Mr. KELLER: Only a little surprised. I mean, you know, they're--it's an election year, beating up on The New York Times is red meat for the conservative base. But, I mean, I don't think this is all politics, I think the administration's a little embarrassed. They--this is the most secretive White House we've had since the Nixon White House, I think, by general acceptance, and I think they're a little embarrassed that they've had so much trouble holding on to their secrets. And making this kind of a clamor, I suspect, they hope will silence people who do talk to the press and maybe intimidate reporters.

SCHIEFFER: One of the more interesting reactions came from your competitor, The Wall Street Journal. Now, they did publish the story after it became known that you were going to publish the story, but they used some very strong language. In fact, I think at one point they said something that you had taken one of the most powerful weapons in the US arsenal and exposed it. What was your reaction to--to the way the Journal reacted?

Mr. KELLER: I think people who should react to The Wall Street Journal editorial are the--are the people over in The Wall Street Journal's newsroom, who must have been cringing with embarrassment to read, kind of, what the people on their opinion pages were saying. Because they wrote that story and although they were not--because they were a little late coming to the story, they were not asked by the administration not to publish.

SCHIEFFER: Well, to the contrary. As I understand it, from the Journal's editorial, they were actually given the story after it became known that you all had the story. Is that unusual in journalism...

Mr. KELLER: It's--it's...

SCHIEFFER: ...for the government to give somebody else's story to another newspaper?

Mr. KELLER: No, that's not that unusual a tactic. A lot of times when they are aware that one newspaper's going to publish something, they will give it to other papers in hopes that first of all you get the whole story out in one fell swoop, rather than have it trickle out over, over days or weeks, and you also have more of a chance to put your own spin on it.

SCHIEFFER: If you had something to say to people in America on this Fourth of July weekend about all this, what would it be, Mr. Keller?

Mr. KELLER: I guess I would say if you're under the impression that the

press is neutral in this war on terror, or that we're agnostic--and you could get that impression from some of the criticism--that couldn't be more wrong. We have people traveling in the front lines with soldiers in Iraq and Afghanistan. We've had people who've been murdered in trying to figure out the terrorist threat. You know, we live in cities that are targets, proven targets, for the terrorists. So we--we're not neutral in this.

SCHIEFFER: All right. Well, we'll leave it there. Thank you very much.

Mr. KELLER: OK, thank you, Bob.

SCHIEFFER: Pleasure to have you.

And I'll be back in a moment with Senators Arlen Specter and Carl Levin. We'll continue to talk about this and Guantanamo.

(Announcements)

SCHIEFFER: And joining us now from Long Beach Island, New Jersey, Senate Judiciary Committee chairman, Arlen Specter. With us from Wakefield, Michigan, Senator Carl Levin. He is the top Democrat, of course, on the Armed Services Committee.

Senator Specter, what do you make of this very tough reaction that the administration has made against The New York Times? There--there's some pretty strong language that's come forth here. In fact, some Republicans are even saying that perhaps the newspaper ought to be prosecuted. What--just what's your take on all this?

Senator ARLEN SPECTER (Republican, Pennsylvania; Chairman, Judiciary Committee): Well, Bob, when I take a look at this I start with Jefferson's principle that if he had to choose government without newspapers or newspapers without government, he would choose newspapers without government. I believe that The New York Times would have been better advised had they pointed out that the disclosure of bank records and getting into bank records is not unlawful, and that there was no privacy interest in bank records like--like there is in electronic surveillance.

I think that the administration is still concerned about what is happening with the electronic surveillance issue, and we're very close to have the administration submit that program to the Foreign Intelligence Surveillance corps. And I think if, as--and when that is done, it will give a lot more assurance to what the administration is doing. But I can, I can understand the president's reaction. There is an historic tension between newspapers and government, and that's been with our country since the beginning of the republic.

SCHIEFFER: Senator Levin, some of the Republicans over in the House, led by Congressman J.D. Hayworth, have written a letter--and I think 71 Republicans have now signed onto it--saying that the credentials of The New York Times to cover Congress ought to be lifted. What would be your reaction to that?

(Graphic on screen)

"We are writing to ask
you to use your authority
to rescind the congressional
press credentials of The
New York Times.

This request does not come
lightly, but in response to The
Times' decision to repeatedly
publish information detrimental
to our national security."

Senator CARL LEVIN (Democrat, Michigan; Ranking Member, Armed Services Committee): Well, they shouldn't try to muzzle the press. The American people rely on a free press. It's a very important part of our Constitution and Bill of Rights. What strikes me about this whole incident, though, is the way the administration adopts such a double standard. When it's to their advantage, they leak material to the press right and left.

Just to give you a couple of examples, the name of a CIA agent, Valerie Plame, leaked to the press. The president promises to take strong action against the leaker. You don't see much of that. Then you've got the Defense Department leaking a highly classified document to a favorite magazine of this administration. And what does the vice president do? Even though this is a top secret document that was leaked, the vice president says, 'That document is right on target, very accurate,' even though it was a very strong distortion of the pre-war Iraq intelligence that was leaked by the Defense Department to the Weekly Standard.

So the administration follows a double standard on this, and secondly, they resist congressional oversight when the few attempts at congressional oversight are made. I've been trying to get documents from this administration for years. I've had to put holds on nominations to try to get documents. But there's terrific resistance to any congressional oversight, even when that effort is made, and because of that kind of resistance to oversight, you have another source--which is used by leakers--instead of coming to Congress, saying, 'Hey, take a look at what we're doing,' they leak these materials to the press.

SCHIEFFER: All right. Well, let's shift to another story that was a big story last week, and that was the Supreme Court telling the administration that they simply cannot write their own rules for how you try and bring to justice these people that're being held down at Guantanamo.

Senator Specter, where do you go from here? Should Congress write new legislation? Should these people be tried in a US court? Should they be court-martialed? What would you advise the administration to do from here on?

Sen. SPECTER: The administration is under direction by the Supreme Court, and they're the final word. The Judiciary Committee had hearings on Guantanamo last June and I made a trip there, and it's been apparent to us for some time that the Supreme Court was going to impose some restrictions, and we had legislation ready to go. And I think that we should now have hearings. And the Judiciary Committee, which we've scheduled for July 11th, the Armed Services Committee is going to have hearings. Senator McCain said earlier today that he thought it was a good idea for both Armed Services and Judiciary to have hearings. And we ought to work with the administration to try to structure rules which will comport with the Supreme Court decision, but still protect national security interests. We are detaining a great...

SCHIEFFER: Yeah. Let me just interrupt.

Sen. SPECTER: Sure.

SCHIEFFER: Why has the administration not just gone ahead and done this in the way that you would normally do when you have these prisoners here--why not just bring them to court-martial? Isn't that legal, Senator Specter?

Sen. SPECTER: Oh. Well, that is legal. I thought you were looking at Carl on that one. But they have structured their system to try to hold back on evidence, and I think, had they given them court-martials, that would certainly have been satisfied. But Bob, they have, and I started to mention this before, they have a great many enemy combatants where there is not much evidence. The Hamdan case didn't deal with that directly, somebody who was charged.

SCHIEFFER: Mm-hmm.

Sen. SPECTER: And I don't think they can give court-martials as such within the range of what information they have and still have detentions.

SCHIEFFER: Well...

Sen. SPECTER: And that's why I think it has to be worked out. It can't be handled on a sound bite on a Sunday morning. We have to get the details as to what the administration thinks they can do. We've got to look at the Supreme Court decision and we have to reconcile them. But it has to be Congress because it's our constitutional responsibility.

SCHIEFFER: OK.

Sen. SPECTER: It's not up to the president alone.

SCHIEFFER: All now. Now let me bring--let me bring Senator Levin in now. Well, Senator, it sounds to me like what the administration is saying, we have some very dangerous people down there. We may not have the evidence to convict them at a court-martial, but on the other hand, we can't get them--let them go. Is that--is that what the dilemma is here? And what do you think we ought to do?

Sen. LEVIN: Well, the dilemma here is that you've got in President Bush, somebody who's taken too much authority for himself, who thinks he not only is supposed to execute the laws, which is the job of a president, but to write the laws. And when he did this, he created a real mess which now has to be cleaned up. And it's going to be cleaned up, hopefully, in a bipartisan way by the Congress, people like Senator Specter. We've got four of us on the Armed Services Committee, Senator Warner, Senator Lindsey Graham, John McCain and I have already issued a statement saying that we're going to have hearings in a couple of weeks. This is going to be done thoughtfully, carefully. We're going to focus to start with, on the views of military lawyers because military lawyers understand the importance of having rules that are provided to all people that are tried in front of tribunals. You've got to give them the right to confront their accusers, to see what the evidence is, to be in court. The president's rules were so extreme that they could even keep somebody from knowing what the evidence was that was being used against them...

SCHIEFFER: All right. Senator, I'm very sorry.

Sen. LEVIN: ...which means going up in court.

SCHIEFFER: The clock is running out on us. But I get your point.

Thanks to both of you this morning. We'll be back with a final word in just a minute.

(Announcements)

SCHIEFFER: Finally, someone asked me the other day if it bothered me to announce bad news. The flip answer would be, 'I guess not or I would've found another job a long time ago.' Because the truth is, most of what we report is bad news. When there's a fire down the street from your house, that isn't welcome news, but you sure want to know about it and we see it as our job to tell you. Still, there is so much bad news that I sometimes think we ought to start our newscasts by saying, 'I hate to tell you this, but.' Not so, last week, though, when Warren Buffett said he would turn over \$31 billion to Bill Gates' foundation and let Gates decide how to give it away. It made me feel good just to announce it. What an example to all of us. So many channel their charitable giving to reflect maximum credit on themselves. But Buffett followed the rule he's followed in business: Get good people to run your operation and then stay out of the way.

On charity, the Bible speaks of doing it so secretly that even the left hand won't know what the right hand is doing. Buffett went one better, keeping both hands off and letting Gates do it. 'He'll have a clearer head six feet above ground than I will six feet under,' he said. I hope they'll be more news like that. But you know the world being with it is, it will probably be a while.

That's it for us. Have a great Fourth and remember, if our founders hadn't

done that brave thing 230 years ago, we'd all be helping pay Prince Charles' salary today. Now there's some good news. See you next week.