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FACE THE NATION

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**GUESTS: Senator JOSEPH BIDEN, (D-DE)
Foreign Relations Committee**

**Senator LINDSEY GRAHAM, (R-SC)
Armed Services Committee**

**THOMAS FRIEDMAN
The New York Times**

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, how many of us has the government been spying on since 9/11? Is it legal and necessary if the president says, or has he ignored the law? Those are the questions for Republican Senator Lindsey Graham and Democrat Joe Biden. They both serve on key Senate committees, and they are just back from Iraq. So we'll have questions about that as well.

Tom Friedman, foreign affairs columnist for The New York Times, joins in the questioning. And I'll have some final thoughts on one of the Senate's great characters, William Proxmire.

But first, Biden and Graham 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.

We're going to start today with some late news. Vice President Cheney made a surprise visit to Iraq this morning, a trip conducted in such secrecy and under such heavy security that even Iraq's prime minister did not know about it until he walked in to a meeting with the US ambassador and found Cheney sitting there. The vice president spent the day getting briefings and visiting with both US and Iraqi troops. He told American troops at one stop that the only way to lose this fight is to quit, and he said that is not an option.

The White House says this visit is not connected to what has been a PR blitz this week to rebuild support for the war, but it does come on the same day that the president will speak to the nation at 9 PM Eastern time tonight from the Oval Office. We will, of course, carry that address live tonight on this CBS station.

And now to our guest: Democrat Joe Biden of Delaware, who's in his home state this morning, and South Carolina Republican Lindsey Graham, both of them just back from Iraq.

But, gentlemen, we have to start this morning with this spying story. It is against the law, of course, to eavesdrop or wiretap US citizens in this country without a court order from a federal judge. But The New York Times says that is exactly what the president has authorized the government to do since 9/11. The secretary of State said this morning that the president has statutory and constitutional authorization to do what he did. So I'll start with Senator Graham.

Does he have that authority, Senator?

Senator LINDSEY GRAHAM (Republican, South Carolina; Armed Services Committee): If he has the authority to go around the FISA court, which is a court to accommodate the law of the war of terror, the FISA Act was—created a court set up by the chief justice of the United States to allow a rapid response to requests for surveillance activity in the war on terror. I don't know of any legal basis to go around that. There may be some, but I'm not aware of it. And here's the concern I have. We can't become an outcome-based democracy. Even in a time of war, you have to follow the process, because that's what a democracy is all about: a process.

SCHIEFFER: Well, you're saying he broke the law.

Sen. GRAHAM: I don't know. I don't know what legal basis or statute they're referring to. What statute would give the authority of the president to collaborate with a handful of congressmen and senators not to get a warrant? What executive order or constitutional provision would give the authority of the president to avoid the warrant requirement? There may be some. I just don't know of it. But if there is not any, that's a problem.

SCHIEFFER: And you are a lawyer.

Well, Joe Biden, what is your response?

Senator JOSEPH BIDEN (Democrat, Delaware; Ranking, Foreign Relations Committee): Well, I'm the guy that drafted the FISA Act 25 years ago on the Judiciary Committee, one of the three people, and we set it up--it's a secret court allowing the president to wiretap anybody, intercept anything for up to 75 hours. They can in the meantime go into that court and say, 'I needed to do this.' If there's a reason the court thinks is under the Constitution permissible, they're allowed to do it. If it turns out they're not allowed to do it, they have to destroy the evidence.

So I just don't get it. He already has the authority under the FISA court to go in and intercept anything he wants up to 72 hours. This is neither, I think, legal, nor is it necessary what he's been doing. It is a little bit frightening how broadly he asserts his authority as commander in chief, where the guy hasn't shown very good judgment on torture or a lot of other things.

SCHIEFFER: What you're saying, though, in your view, that he has broken the law. Why would he do that, Senator?

Sen. BIDEN: Well, why would he do what he did on torture? Why would he have, you know, gone outside the Geneva Convention? Why would he have put us in that spot? The judgment of this operation has not been very good, and we're rushing to judgment on these things. And if he needed a change in the FISA court, all he had to do is contact the Congress. If there's legitimate rationale, then, in fact, we could amend it. But the idea that his Justice Department doesn't act swiftly enough, which is one of the arguments offered, or the not sustainable argument made by the secretary this morning that this is a different kind of war--the reason we set up this secret court, it's a secret court. It's given him everything he's wanted. The reason we set it up was so that we could protect Americans' liberties without giving away to the bad guys a notice of what we're doing.

Mr. TOM FRIEDMAN (The New York Times): Senator Graham, what recourse does the Senate have in the face of this kind of action? What can you do?

Sen. GRAHAM: Well, number one, we have to resolve this issue to build confidence in the American people that we're a nation of laws, not outcomes. So having hearings I think is appropriate. To have a public hearing maybe is not appropriate. I would like to see the Intelligence Committee and other people who are the appropriate folks to provide oversight look into it.

The bottom line is there is a theme here that's a big disturbing. Remember the debate with Senator McCain about immunity. The administration was pushing to give immunity to interrogators in the field. Well, if you allow the president to make a finding that this is a bad person and these techniques are necessary, the president would have the authority to set aside statutes like the torture statute. If you allow him to make the findings, he becomes the court. So you cannot give any executive, Republican or Democrat, the ability to make findings to set aside statutes that exist or play the role of a court because that becomes a model that other people will adopt when our troops are held by them. We don't want the attorney general of Iran using the model we've created to waive international laws.

So a process in a time of war is just as important as a process in time of peace, but here's what I reject. We're not fighting a crime here, Tom or Bob. We're fighting a war, and we need more flexibility in time of war, but we also need to adhere to the law because the law protects us in both instances.

SCHIEFFER: The president says that he informed key people in Congress about this. You're on the Armed Services Committee, Senator Graham. Senator Biden, of course, is ranking on the Foreign Relations Committee.

Sen. GRAHAM: Well, he's a key guy. I'm not.

SCHIEFFER: Both of you are on the Judiciary Committee.

Sen. GRAHAM: Right.

SCHIEFFER: Did you know about it, Senator Graham?

Sen. GRAHAM: No. And here's the point I'm trying to make. It's good to collaborate because when one branch collaborates with the other, that's a check and balance, but my point is that the president and a handful of congressmen can't collaborate to avoid judicial review when it's mandated.

SCHIEFFER: Well, Senator Graham—I mean, Senator Reid said this morning on television that he was briefed on it a couple of months ago but he pointed out this has been going on since just after 9/11. He says that the president can't pass the buck on this.

Sen. GRAHAM: We...

SCHIEFFER: Senator Biden, did you know anything about it, sir?

Sen. BIDEN: I knew nothing about it and even the senators who may have known about it on the Intelligence Committee, under the law, the federal statute, they are not allowed to say anything about it. They're not even allowed to come and tell the other senators in the United States Senate. It's a little like Pac-Man. It's a little like I gotcha. And, look, this is a very dangerous overreaching by an executive to say that I can eavesdrop on thousands upon thousands of Americans and I don't have to be accountable at any time now or in the future for having done that.

Mr. FRIEDMAN: Senator Biden...

Sen. BIDEN: That is preposterous.

Mr. FRIEDMAN: ...can I ask you—things happen for a reason—OK?—usually. So they were obviously looking—there was a gap in the law that they were looking to exploit. What do you think that was, 'cause an expert on this law? You're involved in writing it. The law as I understand it said the person you're wiretapping had to somehow be connected to a foreign terrorist organization. Could it be that what they were looking was to go after Americans where there was no obvious connection, maybe a suspicion. Could that have been what they were out to do?

Sen. BIDEN: I can't figure out any other reason, Tom, because if that wasn't the reason, they had the authority already. They could start—they didn't have to go to a court first and get this wiretap or eavesdropping capability. They could begin it as long as within 72 hours they went to the court. So they may be seeking something that does not—look, my niece just graduated from Harvard, in China for six months. My mother is calling my niece in China. Does that mean my mother's—you're able to—because it's a call to an American citizen abroad, you're able to intercept that? And apparently we don't know what they've done with this information. Have they kept the information that wasn't relevant? Do they keep it in a file? Do they do what the Pentagon apparently was doing, beginning to look at anti-war groups? Look, this—no one has attempted to use this power, Tom, in 25 years since the scandals broke about how it was used by previous presidents.

SCHIEFFER: Let me ask you about something that the White House put on the record yesterday. The story appeared in both The New York Times and The Washington Post this morning, the same quote. So I take it this was an official speaking for the administration on background. He did not give his name, but here when asked why did the president yesterday confirm this after saying the day before that he would neither confirm or deny it and this official said--I'm going to quote here--"This takes on Democrats and puts them in a box. Support our effort to protect America or defend positions that put our nation's security at risk." Have you been put in a box, Senator Biden?

Sen. BIDEN: Well, if it's a box I'm put in, I'm constitutionally responsible to be in that box, and I think that's exactly what this is about. Same with the Patriot Act. Look, conservative Republicans led the fight, some of the most conservative people in the United States Senate, Sununu and Gregg, led and followed by all the Democrats said, 'Look, Mr. President, we don't think you have it right on this Patriot Act. We don't think the House has it right. We want three months to work this out. We'll extend the act.' What's the president doing? The president's saying 'We cannot be a moment without this act and therefore I'm going to let it die,' instead of saying, 'OK, I'll accept extension of three months, and we'll negotiate it.'

I think this is about politics because it--certainly if it's about substance I don't get it and I've been involved in this a pretty long time.

SCHIEFFER: So you're saying...

Sen. BIDEN: The same thing they tried to do with Lindsey.

SCHIEFFER: So you're saying that they put this on the record, confirmed they've been do--they were doing this on the record to put Democrats in a box? I mean, that's what you're saying.

Sen. GRAHAM: I..

Sen. BIDEN: No, what I'm saying is I don't know what the reason is.

SCHIEFFER: OK.

Sen. BIDEN: But that is one of reasons that is on the table. I don't know what the reason is because he has the power here and he has the power in the Patriot Act to keep it in place, both--two separate issues...

Sen. GRAHAM: Well..

Sen. BIDEN: ...to keep it going, doesn't have expire.

SCHIEFFER: I want to talk about Iraq but I'll give you one comment.

Sen. GRAHAM: Here's what I reject. Whether you're a Republican or a Democrat in the White House, I reject the ability of any president during a time of war to make findings to set aside the torture statute and give blanket immunity to people out in the field because that could come back and hurt our own troops in different scenarios. I reject the idea that any president can sit down with a handful of congressman and deal the courts out if the law requires the court to be involved. It is about the process. It's not about the politics. It is about winning the war, adhering to the values that we're fighting for and you can't set those values aside in the name of expediency.

SCHIEFFER: Well, when they say and put on the record that they're doing this to put Democrats in a box, that does smack of a political decision rather than...

Sen. GRAHAM: I don't know what generated that comment. But if the comment is to say that challenge me at your political detriment, here's what I'm going to challenge. I'm going to challenge the idea that any president, any member of Congress, can collaborate with each other and deal the courts out if the courts are required to be involved and nobody taking that position is going to suffer with the American people because that's the American way.

Mr. FRIEDMAN: Senator, very quickly, who do you want to see up on Capitol Hill now being questioned about this issue?

Sen. GRAHAM: I want people who made the legal decision that he didn't have to go to the court come and tell us why. And they may be right. I'm not prejudging their legal analysis.

Mr. FRIEDMAN: You want to see the attorney general. You want to...

Sen. GRAHAM: I want to see the statute. I want to see the executive order. Whatever legal authority was used, I want someone to explain to me how it justified not going to a court that was set up for this very purpose. And there may be reason and we are at war and I applaud the president for being aggressive. But we cannot set aside the rule of law in a time of war because that's what we're fighting for in Iraq, for them to follow the law, not an outcome. I don't want an outcome-based process in Iraq. I want something they've never had—protections for everybody.

Mr. FRIEDMAN: But just to skip ahead on Iraq, you said—you were talking earlier that you felt before the glass was half empty. Now in light of your trip and the election you feel it's half full.

Sen. GRAHAM: It's half full.

Mr. FRIEDMAN: Why do you feel it's half full but what is missing in the other half to get it full?

Sen. GRAHAM: Eleven million people told the terrorists to go to heck by voting. They're making a giant step forward. They've had three elections. Each one's been better than the other. The bottom line is there are major obstacles. The Ministry of the Interior, the police force, is seen as an agent for a political party, not protecting the people. The militias, armed camps representing political parties, are stronger than the army. Many obstacles yet.

SCHIEFFER: What about it, Senator Biden? What did you learn as you observed this election and what do you think its impact is going to be?

Sen. BIDEN: Necessary, not sufficient. Next six months are going to tell the story. Two important things. What's the government going to look like? If it's Mr. Mahdi who ends up representing the SCIRI Party, who's aligned with Iran, then we got a real problem. We don't even know who's elected yet. Number two, if there's not a consensus constitution that voted on six months from today where the Sunnis buy in, we have, as David Brooks said this morning in The Times, we got a full-blown civil war, and that's a real problem. The president has a chance between now over the next six months to make sure the ministries that Lindsey referred to are represented by non-sectarians and that we get a constitution that requires, as Kissinger and myself before and others have been calling, you've got to bring in the international community and the regional powers to put pressure on the Sunni parties to compromise. If that doesn't happen, all the king's horses and all the king's men six months from now are not going to hold this country together.

SCHIEFFER: Do you think, Senator, that the violence will now subside?

Sen. BIDEN: No, I think that the Sunnis have chosen both a combination of participation and violence. They're going to wait and see what the actual makeup of the government is. If it's a totally sectarian Iranian or a--yeah--sectarian Iranian-oriented government with ministries that, in fact, they think threaten their physical security and ministers, then I think it continues. And if the constitution ends up being something they can't buy into, Bob, then I think it continues. But as far as--it's a--it's going to be a while before they lay down their weapons, and that's the test.

SCHIEFFER: All right. Democrat Joe Biden, Republican Lindsey Graham, thanks, both of you, for sharing your views this morning.

Sen. BIDEN: Thank you very much.

SCHIEFFER: We'll be back in a moment.

(Announcements)

SCHIEFFER: And we're back now because we want to talk with Tom Friedman a little bit to get his insight.

What did you make about this today, Tom?

Mr. FRIEDMAN: Well, just focus a little on the Iraqi issue. I think Senator Graham has it about right, Bob, that the glass is now half full, but it's just still half full. We've teed up this situation for Iraqis, and I think the next six months really are going to determine whether this country is going to collapse into three parts or more or whether it's going to come together. And it really depends on Iraqis. Iraq is going to be what Iraq makes of it. We can create, hopefully, a--better security conditions. We can get more international support. But at the end of the day--you know, you can talk about training troops, you know, in the 10s, the 20s, the thousands, whatever. But I always ask myself, Bob, this question: Who's been training the insurgents?

Nobody's been training the insurgents, yet they've been fighting head-to-head with the US Army, creating enormous trouble for us and basically sapping the ability to put this Iraq back together again. So it's not about the way. It's about the will. And the question is: Will we get a political consensus together in Iraq where enough Iraqis will have the will to want to fight and defend it? That's the only question. And I think, you know--the president's been talking about this issue as if it's a question of just American will for a certain amount of time will produce a decent outcome in Iraq. That's right, that's part of it, but it's not all of it. We've now got to put the burden much more on Iraq, because that's ultimately where it lies.

SCHIEFFER: You know, I was struck when the secretary of Defense, Donald Rumsfeld, was here about three or four weeks ago and he was talking about how much safer Iraq is. And I suppose that's true, but I also noticed this morning that when the vice president came to Iraq, they were so secretive and so cognizant of security they didn't even tell the country's prime minister. He didn't even know about it until he walked into the US Embassy there, thinking he was going to meet with the US ambassador. So it may well be that we're not as confident about the security situation as we have said we were.

Mr. FRIEDMAN: Yeah. And we'll know the glass is all full, Bob, when a US--senior US official can show up in Iraq without wearing a flak jacket and can stay for more than eight hours.

SCHIEFFER: What do you think--where do you see this going, this whole question about the spying, Tom?

Mr. FRIEDMAN: Well, I think what Senator Graham said was so important and so powerful, which is—who is a Republican and a legal expert, a lawyer, who was basically saying this administration has acted outside the bounds of any law that he knows of. Now they're going to have to come up there—they can talk about the politics all they want. We're going to put this on the Democrats. We're going to turn this into the ACLU, you know, every one of you guys. But at the end of the day, what he said was—what Senator Graham said, I think, was very powerful. We have to have answers. You were acting outside the law as we know it. And without a law-based government—to just say the outcome matters without a law-based government, well, the Iraqis, they can say the same thing to us.

SCHIEFFER: Do you know—and the other thing is, he's not just a senator, and he's not just a Republican. He was an Air Force lawyer for 10 years...

Mr. FRIEDMAN: Right.

SCHIEFFER: ...and is now in the Reserves as a colonel in the Judge Advocate Corps. So these are laws that he knows something about.

Tom, thank you very much for being with us this morning. I'll be back with a final word in just a second.

(Announcements)

SCHIEFFER: Finally today, when the announcement came last week that former Wisconsin Senator William Proxmire had died at the age of 90, I thought of the old days and what the Senate used to be, a place of giants: Lyndon Johnson, Everett Dirksen, Hubert Humphrey, Robert Taft. Even the demagogues like Joe McCarthy were somehow larger than life, and, oh, what characters they all were.

Not so in today's money-driven politics. Yesterday's giants have been replaced mostly by good but smaller men. On the one hand, those who have made a science of non-stop fund-raising, and on the other by rich people who have tired of giving to charity and have decided to instead to give themselves. A pity really; their money did so much good.

Of all the characters, though, who strode the Senate floor, William Proxmire was the oddest one I ever knew. Long before jogging was in vogue, he ran to work literally 10 miles every day. He was a vain fellow, among the first to get a face-lift and hair transplant, but he never hid it, just showed up for work, plugs in fuel view. Even odder, he thought taxpayers had sent him to Washington to stop spending on stupid stuff, and he saved us a bundle in his relentless quest to track down waste. And then there was that other quirk. He refused to accept campaign contributions. Let me repeat that: He refused to accept campaign contributions and, in 32 years in the Senate, never spent more than \$200 on a campaign, and most of that went to buy stamps to return contributions people sent to him. I know, I know. Yesterday always looks better than it probably was. But I believe politics was a lot better when we had more characters like Bill Proxmire.

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