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

CBS News

FACE THE NATION

Sunday, July 10, 2005

GUESTS: MICHAEL CHERTOFF
Secretary, Department of Homeland Security

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

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

JAN CRAWFORD GREENBURG
The Chicago Tribune

MODERATOR: BOB SCHIEFFER - CBS News

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FACE THE NATION - CBS NEWS
202-457-4481

BOB SCHIEFFER, host:

Today on FACE THE NATION, the London bombings and the upcoming battle over the Supreme Court.

In the aftermath of the deadly London bombings, the question here is: How safe is US mass transit? We'll ask the secretary of Homeland Security, Michael Chertoff.

Then we'll turn to the story that has Washington on tenterhooks all week: Will there be a second resignation from the court this week? If so, how will that complicate the process? We'll talk to the leaders of the Senate Judiciary Committee, Chairman Arlen Specter of Pennsylvania and the ranking Democrat, Pat Leahy of Vermont. Jan Crawford Greenburg of the Chicago Tribune joins in the questions, and I'll have a final word on Judy Miller in jail.

But first, Michael Chertoff 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 joining us now, the secretary of Homeland Security, Michael Chertoff.

Mr. Secretary, thanks for coming. Let me just ask you the obvious question: Are we sure at this point that these London bombings are the result of al-Qaida?

Secretary MICHAEL CHERTOFF (Department of Homeland Security): Well, you know, the British are obviously doing an investigation. They're following leads. They're examining the forensic evidence from the sites of the explosions. We've got FBI agents over there working with them. And I want to withhold judgment before we start to reach a conclusion. But what I do want to say is we have to remember traditionally al-Qaida also includes a network. There's the core group itself that is obedient to bin Laden and takes direction from him. But then, even going back several years, there have been affiliated groups that he supports with economic aid or he gives inspiration to, but that pursue their own agenda. So we want to look at the full range of possibilities, but I think we want to wait until the investigation is complete.

SCHIEFFER: But at this point it appears to be pointing that way.

Sec. CHERTOFF: I think it's pointing clearly to a jihadist terror group. But again, I don't want to jump to a conclusion until the examination is complete.

SCHIEFFER: Would these be--at this point, can--do you have any idea whether it could have been people who were indigenous to London and Great Britain, or are they people who came in from other places?

Sec. CHERTOFF: Well, I think those are things that the British are going to be very concerned about and we're going to be very interested in as well. Are we dealing with a cell that was a sleeper cell, that operated completely on its own? Was it activated by somebody coming in from outside or was the whole group imported? And I think what we learn about that issue is going to be useful for us as well in terms of the way we prepare ourselves in this country.

SCHIEFFER: What does this tell us about security for our own trains and subways and our transportation system? Will we need more?

Sec. CHERTOFF: Well, first of all, it tells us we need to continue to do what we have been doing. Since September 2001 we've strengthened our entire transportation system, including mass transit. We're safer now than we were then and we're safer now than we were before Madrid, but we're continuing to look at the system to see about new technologies and new strategies we can deploy to continue to raise our level of safety for mass transit.

SCHIEFFER: Can we really protect trains, subways in the same way that we've taken these precautions at the airports?

Sec. CHERTOFF: Of course, every system is different, and we rely upon a network or a layered defense to intercept and deter these kinds of attacks. We start with intelligence, and that's why, for example, we have things like the Patriot Act, which gave us additional tools to find out in advance about attacks. We deal with our partners, our state and local partners, who also have their own intelligence and their own protective measures. And then we do want to build in the system more advanced technological equipment in terms of detection. We want to harden the sites. And we want to have a capability to respond and recover if there is an attack.

SCHIEFFER: So more security is on the way. Is that what you're telling us?

Sec. CHERTOFF: Well, I think--you know, again, we're going to continue to roll out a comprehensive strategy with respect to mass transit. We're going to continue to do what we've been doing, but take advantage of our better intelligence, our better technology and our better systems.

SCHIEFFER: Do you believe that there are sleeper cells, al-Qaida sleeper cells, in this country?

Sec. CHERTOFF: Well, of course, if you look over the past few years, we've been successful in actually making cases against sleeper cells in northern Virginia and other parts of the country out in the far West. And sometimes, actually, you know, critics say, 'Well, these cells aren't really operational. There's no specific plan.' I think the lesson of things like London and Madrid is you don't wait until a cell becomes operational, because if you wait until the fuse is lit, you're waiting too long. And that's why we are very active and aggressive in pursuing these cells, even when we just have them training or lying in wait.

SCHIEFFER: But you think they're there, they're out there.

Sec. CHERTOFF: Well, we've seen these cells, and we're continuing to conduct active investigations of other cells.

SCHIEFFER: Do you think that the attack in London makes it more likely there would be an attack in this country?

Sec. CHERTOFF: Well, one of the things we did, of course, on Thursday was, by looking back at the tactics that al-Qaida and its affiliates have pursued in the past--was to consider the possibility of a copycat attack. We had no specific intelligence about an attack in the US coming imminently. We don't have any specific intelligence now about an imminent attack, but we look at their past practices and their tactics, and that's why we took a targeted step of elevating the security level with respect to mass transit.

SCHIEFFER: Do you--can you put any kind of time limit or would you want to put a time limit on how long we stay at this higher level of alert?

Sec. CHERTOFF: I wouldn't. I mean, we want to not only consider the tactics, but we're going to be getting more information out of the British investigation. I think that will help inform us about the way to proceed forward. We're actively monitoring this. We're obviously going to be at this level as we go into rush hour on Monday. And we'll continually re-evaluate where we need to be.

SCHIEFFER: Is it your feeling, Mr. Secretary, that al-Qaida is as strong as it's always been?

Sec. CHERTOFF: I think we've done a tremendous job taking the word of the enemy. We have dramatically degraded their command and control. We've apprehended or killed much of the top leadership. We've developed a tremendous amount of intelligence. I mean, one of the things we have to emphasize is when we detain a high-level al-Qaida operative, that is a rich source of information for us in terms of their strategic planning and the way they operate. So that's been a success.

On the other hand, the fact of the matter is there's a network of affiliates, and some of them involve fairly small groups that are operating more or less autonomously. Those are tough to intercept. We're constantly enhancing our tools that enable us to gather intelligence. But we recognize that they've got a network, we've got to build our network, as well.

SCHIEFFER: Mr. Chertoff, thank you so much.

Sec. CHERTOFF: My pleasure.

SCHIEFFER: Thanks for your time.

And the other story that swept Washington last week, the rumor that Chief Justice William Rehnquist would retire. Reporters went to his home Friday and asked the obvious question:

(Excerpt from videotape)

Unidentified Reporter: Is any of the speculation about your resignation true?

Chief Justice WILLIAM REHNQUIST: That's for me to know, and you to find out.

(End of excerpt)

SCHIEFFER: He didn't retire on Friday. And that, of course, set off rumors that he would do it this week, perhaps tomorrow. To check it all out, we're checking in now with the Republican chairman of the Judiciary Committee, Arlen Specter--He's in Philadelphia today--and the committee's ranking Democrat, Patrick Leahy, who is with us here in Washington, and Jan Crawford Greenburg, who covers the court for the Chicago Tribune.

Well, Senator Specter, what do you hear? Do you think the chief justice is going to step down this week?

Senator ARLEN SPECTER (Republican, Pennsylvania; Chairman, Judiciary Committee): I doubt it very much, Bob. The New York Times yesterday quoted the chief justice as saying to the press when they were at his home on Friday, 'It's for me to know and for you to find out.'

Those who know the chief say that he's a student of Delphi coming from the Greek oracle of Delphi, and there's a certain mystique and inscrutability about the chief. But my own analysis is that the chief does not intend to step down as long as his health holds out. Having--being engaged in a bout with cancer myself, I know that it's good to get up every morning and have something that you have to do, something that is important to do. If the chief's health holds up, I think he'll stay. But I believe he may not know that really from one day to the next, one week to the next, one month to the next. So there's not much he can say to the press. And if he were to say, 'It's a matter of my health,' every day he'd be asked about his health. But I think he's going to stay as long as he can.

SCHIEFFER: Well, what about you, Senator Leahy? What do you think?

Senator PATRICK LEAHY (Democrat, Vermont; Ranking, Judiciary Committee): I agree with Arlen. I think the chief justice wants to stay. I wish he could be up at his home right now in Greensboro, Vermont. He loves the place. It's a gorgeous area. I think that would do wonders for him. I suspect his doctors say stay closer to Washington. But he enjoys being chief justice. He's done--he's really shaped it into a strong chief justiceship, and I don't think he wants to leave.

SCHIEFFER: Jan?

Ms. JAN CRAWFORD GREENBURG: Obviously, we've got one vacancy already, that of Justice O'Connor. And you're going to be going to the White House on Tuesday with Senator Specter and other leaders. You've spoken with President Bush. Regardless of the nominee and whoever the president selects to replace Justice O'Connor, will that have been the kind of adequate consultation that you've been looking for or does that depend on the nominee?

Sen. LEAHY: Well, I hope it's real consultation and not just check off the box, have some of the leaders down for breakfast. I commend the president for picking up the phone, he called or Arlen and called myself within an hour of time that Justice O'Connor resigned. You know, this could be hard for the president. Obviously, he's the one that makes the choice. He's the one who makes the nomination, not any group of senators. But it could help him very much in having a nominee who could unite the country, not divide the country. After all, the Supreme Court's there for all of us. And I would hope that he would really actively seek our advice on somebody who might unite us.

Ms. GREENBURG: Well, are you expecting on Tuesday to talk about specific nominees? And will you tell the president some of the nominees that you think Democrats would find unacceptable?

Sen. LEAHY: Well, I think if he wants that kind of input, I think he will get it, but he will get it privately. I said to somebody earlier this morning, 'I probably won't float a name on this program or any other program because I don't want that to be the kiss of death for the nominee,' but we can certainly give the president just as Republicans gave President Clinton heads-up: 'This nominee could make it, this nominee would have a very difficult time.'

Ms. GREENBURG: Before--let me go back to when--you know, when you talk about we need a nominee who can unite the country and not divide the country. Obviously, the Supreme Court grapples with incredibly contentious and controversial issues. How could a nominee--I mean, what attributes would a nominee have that he or she could unite the country? Does that mean he would take the conservative side on some issues, the liberal side on other issues?

Sen. LEAHY: Well, I think somebody who could help build consensus would be the best pick. Look at what Earl Warren with *Brown vs. Board of Education*, probably the most difficult matter facing the country at the time, brought a consensus, a united court on it. But you have to have somebody who doesn't come in there you automatically think, 'Oh, boy, this person is going to be for this special interest or that special interest.' That's not going to work.

SCHIEFFER: Let me go back to Senator Specter because I want to ask both of you this, but, Senator Specter, you say you don't think that Justice Rehnquist is going to step down this week. But if he should, if the president has two vacancies to fill rather than one, will that change the equation here? How does that change things?

Sen. SPECTER: Well, Bob, I think it would change the equation. There's a lot of speculation. Our Washington, DC, is filled with it. One line of speculation is that it would give the president a chance to put somebody whom the conservatives would really like very much to fill where Rehnquist has been philosophically on the court and somebody who is more of a swing voter like Justice O'Connor.

There's been another interesting line of speculation and I would denominate it as wide speculation when everybody was looking two weeks ago Monday for the chief justice to step down and then no one did and then people were surprised by Justice O'Connor. There was some speculation in the intervening week that Justice O'Connor might be waiting to see what Chief Justice Rehnquist did perhaps with the chance to become chief justice herself. And there had been a fair amount of talk about that possibility. And in her letter of resignation, as you know, she conditioned it on the confirmation of a successor. So there's some flexibility. Who knows? Some speculation is that she might reconsider if she were named chief justice and a confirmation...

Ms. GREENBURG: Then...

SCHIEFFER: So then you don't count her out as a possibility...

Sen. SPECTER: Well...

SCHIEFFER: ...for chief justice even though she said she's retiring?

Sen. SPECTER: ...I think it would be very tempting if the president said, 'Justice O'Connor, you could help the country now.' She has received so much adulation that a confirmation proceeding would be more like a coronation and she might be willing to stay on for a year or so.

Ms. GREENBURG: But, Senator Specter, if I could, Senator Durbin told the *Chicago Tribune* that a couple of senators had actually approached Justice O'Connor to see if she would be interested in this a month or so ago. Are you aware of that or were you one of those senators?

Sen. SPECTER: Well, no, I was not one of those senators. My view is that I can best perform the role I have is if I don't make recommendations, but I did hear about it, that there had been senators who had made that suggestion to Justice O'Connor and the response that I heard was that she was flattered, that she didn't say no. I think it would be quite a capping to her career if she served for a time, maybe a year or so. She has her reasons for wanting to retire, as we all know, but it could help the country in a tough spot and it might be very tempting.

SCHIEFFER: But it sounds as if you think it might be a really good idea, Senator?

Sen. SPECTER: Well, I'm like Senator Leahy. I don't want to jinx it. If I say it's a good idea, there's going to be an upsurge across the country against it.

SCHIEFFER: All right. Well, Senator Leahy, do you think it's a good idea?

Sen. LEAHY: I think it'd be a very doable thing and I do know of the conversation with Justice O'Connor, but, you know, this is just going to start a whole new rumor mill in here. I mean, one of the reporters told me on Friday, he said, 'You know, the latest rumor is that 19 members of the Supreme Court or 15 members of the Supreme Court would step down on Tuesday.' Of course, there's only nine.

SCHIEFFER: Yeah. All right. We're going to take a break here, stop these rumors right here, but we'll come back in a minute and start them up again.

(Announcements)

SCHIEFFER: And we're back again with Senators Arlen Specter and Pat Leahy.

Senator Leahy, if the president did nominate Sandra Day O'Connor to be the chief justice, as we've just been talking about here, how long would that take for a confirmation hearing?

Sen. LEAHY: Well, first off, of course, you'd have to have the vacancy of the chief justice.

SCHIEFFER: Sure.

Sen. LEAHY: And he hasn't stepped down. It would still take some time. It would be a lot easier than somebody who was a totally unknown quantity. But I think senators on both sides of the aisle would want to go back and read a lot of her opinions. I mean, you have the summaries in the press today. I'd want to read virtually all of them. And I think for the sake of the American people, you'd want to make it a thorough hearing. I suspect...

SCHIEFFER: You think she'd be confirmed, though.

Sen. LEAHY: Yes. I suspect it would not be anywhere near as contentious as some of the names that have been floated out. And yes, I do think when we finished, she would be confirmed and, I think, by a vast majority of both Republicans and Democrats.

SCHIEFFER: Let me go to Senator Specter then.

Senator, there's been some speculation that if two vacancies did occur, that it might be likely-- more likely that the president might nominate his friend, Alberto Gonzales, to one of those positions, because, as we now know, there's been sort of a conservative groundswell against Alberto Gonzales, even though he is a conservative, because some of the conservatives are worried about his position on abortion. Would two vacancies make it easier for him to be confirmed if the president nominated him?

Sen. SPECTER: Bob, I don't think it would have any significant effect.

SCHIEFFER: Oh.

Sen. SPECTER: It is true that there was quite a lot of hollering against Attorney General Gonzales, but I'll tell you what I attribute it to. There are a lot of people who want to get their names in the newspapers...

Sen. LEAHY: Right.

Sen. SPECTER: And they aren't going to have any effect on what they've had to say. In fact, it might even be counterproductive. There are a lot of groups out there--ever since 1987 with the proceedings as to Judge Bork, there has come to be a view that the groups have a considerable influence. Well, Judge Bork was not rejected because of the political advertising which was started in 1987. He was rejected because he had the most extreme views of any nominee in the history of the country with original intent. So that if you looked at what the Senate meant by equal protection when they passed the 14th Amendment, the galleries were segregated, blacks on one side and whites on the other. But now the groups seem to think because of what happened with Bork, and it's a big fund-raising apparatus, that they can have some effect. And I think that's largely what the anti-Gonzalez talk was all about.

SCHIEFFER: Jan?

Ms. GREENBURG: Senator Leahy, you have a view on Attorney General Gonzales?

Sen. LEAHY: Well, I think that the dynamics would be different in some ways from his confirmation as attorney general. But I still think the questions would come up on the torture memos, on some of these things. But he would be looked at in the long run far more on the opinions he wrote when he was on the Texas Supreme Court.

Ms. GREENBURG: Would you vote for him based on that--those writings?

Sen. LEAHY: Well, I'm going to wait until I have the hearing. You know, I'm an old trial lawyer. I like to have the trial before the verdict.

Ms. GREENBURG: Well, if there were a nominee who had impeccable credentials and the right judicial temperament but from the writings you could see that he or she would vote to overturn Roe vs. Wade, would you vote for that nominee?

Sen. LEAHY: Well, if we're going to have somebody who's willing to set aside what is settled law, they might as well set aside Brown vs. Board of Education. And I think that that would be something that would disqualify...

Ms. GREENBURG: So you...

Sen. LEAHY: ...a person if they're going to set aside settled law. But there's a whole lot of issues. I mean, we have several very activist judges now. Justice Scalia, Justice Kennedy and Justice Thomas have--far more than anybody else have set aside congressional legislation. They--and written their own new laws.

Ms. GREENBURG: But an indication that the nominee would overturn Roe would be enough for you to vote against them?

Sen. LEAHY: Well, I don't think you're going to see such a clear indication. I think if there was such a clear indication, I don't think that the American public would accept it.

Ms. GREENBURG: Senator Specter, could I ask you about the timing here? When do you expect a nominee from the president, and when would we see some hearings if we get a nominee in the next week or two? Perhaps in August, or...

Sen. SPECTER: Well, it's obviously up to the president as to when he's going to make the choice. The sense I have is that he is reviewing names now. I've heard that he's going to do some personal interviewing so that I don't think it's going to be too quick. There had been some concern about not having the nominee hang out too long, so if he takes some time, the nominee--we have to have enough time for hearings, and we're not going to rush it. We're going to take time to do a very, very thorough job. We may have a nominee who has 100 opinions and 50, 70 speeches, so that--I will be flexible. Pat and I have discussed this. We've discussed the whole range of things. We're doing things very coordinatedly and there are some limitations as to August, but I wouldn't rule it out completely.

SCHIEFFER: Let me...

Sen. SPECTER: But I think more likely right after Labor Day.

SCHIEFFER: Let me just ask you quick, 'cause we're very close to being out of time. You're going to vote in the Senate this week on federal funding for stem cell research. Do you think that that has a chance of passing, Senator?

Sen. SPECTER: I do, Bob.

SCHIEFFER: You do?

Sen. SPECTER: The House has sent over a bill...

Sen. LEAHY: I do, too.

Sen. SPECTER: ...which passed the House, so they had 50 Republicans support it. Senator Harkin and I have introduced the identical bill. And in the House, many of those 50 Republicans cited the personal experiences of their families.

SCHIEFFER: OK.

Sen. SPECTER: And I intend to be very personal in what I say. I disdain that customarily on the Senate floor, but I'm going to talk about my own situation with Hodgkin's lymphoma cancer, and...

SCHIEFFER: All right. Senator, I'm sorry, we have to cut you off...

Sen. SPECTER: I understand.

SCHIEFFER: ...but Senator Leahy just said that he also believes it's going to pass.

Sen. LEAHY: Right. I do, too. I do, too.

SCHIEFFER: So we'll leave it right there. Gentlemen, thank you very much.

Sen. LEAHY: Thank you.

Sen. SPECTER: Thank you. Nice being with you.

SCHIEFFER: Back in a minute. That was good.

(Announcements)

SCHIEFFER: By now you know that New York Times reporter Judy Miller is in jail because she won't tell the government who she'd been talking to about the now-famous story she never wrote, the sorry episode of an anonymous government official who tried smear an administration critic by revealing his wife was an undercover spy. This may not be the best case to argue for protecting sources, for sure it seems to involve very few angels. But this is not about these people. It is about a larger principle.

What I find most offensive is this government claim that Judy Miller considered herself above the law. If that were true, she would have tried to escape. She recognized the authority of the court and went to jail just as Martin Luther King, Jr. and other Americans before her went to jail when they thought a law was wrong.

This is a very American story. Does anyone seriously believe we would be hearing and reading about this in a dictatorship? In a totalitarian society, the government alone decides what is news. In our democracy, the press provides a second source of information and then we, the people, decide which version to believe.

Judy Miller went to jail to protect that principle. She knew we'd never get the full story if the people reporters talked to believe they might be sold out to the government. We don't even know what the prosecutor wants from Judy Miller. He won't say. All we know is that he told a court we can't have 50,000 journalists making decisions about whether to reveal sources. Sorry, Mr. Prosecutor, but in America, we can. It's the American way.

Hang in there, Judy.

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