



**REMARKS BY  
GENERAL MICHAEL V. HAYDEN**

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AND  
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**ADDRESS TO THE NATIONAL PRESS CLUB  
WHAT AMERICAN INTELLIGENCE & ESPECIALLY THE NSA HAVE BEEN DOING TO DEFEND THE  
NATION**

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MR. HILL: Good morning. My name is Keith Hill. I'm an editor/writer with the Bureau of National Affairs, Press Club governor and vice chair of the club's Newsmaker Committee, and I'll be today's moderator.

Today, we have General Michael Hayden, principal deputy director of National Intelligence with the Office of National Intelligence, who will talk about the recent controversy surrounding the National Security Agency's warrantless monitoring of communications of suspected al Qaeda terrorists.

General Hayden, who's been in this position since last April, is currently the highest ranking military intelligence officer in the armed services, and he also knows a little something about this controversy because in his previous life he was NSA director when the NSA monitoring program began in 2000 -- 2001, sorry.

So with that, I will turn the podium over to General Hayden.

GEN. HAYDEN: Keith, thanks. Good morning. I'm happy to be here to talk a bit about what American intelligence has been doing and especially what NSA has been doing to defend the nation.

Now, as Keith points out, I'm here today not only as Ambassador John Negroponte's deputy in the Office of the Director of National Intelligence, I'm also here as the former director of the National Security Agency, a post I took in March of 1999 and left only last spring.

Serious issues have been raised in recent weeks, and discussion of serious issues should be based on facts. There's a lot of information out there right now.

Some of it is, frankly, inaccurate. Much of it is just simply misunderstood. I'm here to tell the American people what NSA has been doing and why. And perhaps more importantly, what NSA has not been doing.

Now, admittedly, this is a little hard to do while protecting our country's intelligence sources and methods. And, frankly, people in my line of work generally don't like to talk about what they've done until it becomes a subject on the History Channel. But let me make one thing very clear. As challenging as this morning might be, this is the speech I want to give. I much prefer being here with you today telling you about the things we have done when there hasn't been an attack on the homeland. This is a far easier presentation to make than the ones I had to give four years ago telling audiences like you what we hadn't done in the days and months leading up to the tragic events of September 11th.

commonly refer to it as Signals Intelligence or SIGINT. SIGINT is a complex business, with operational and technological and legal imperatives often intersecting and overlapping. There's routinely some freedom of action -- within the law -- to adjust operations. After the attacks, I exercised some options I've always had that collectively better prepared us to defend the homeland.

Look, let me talk for a minute about this, okay? Because a big gap in the current understanding, a big gap in the current debate is what's standard? What is it that NSA does routinely? Where we set the threshold, for example, for what constitutes inherent foreign intelligence value? That's what we're directed to collect. That's what we're required to limit ourselves to -- inherent foreign intelligence value. Where we set that threshold, for example, in reports involving a U.S. person shapes how we do our job, shapes how we collect, shapes how we report. The American SIGINT system, in the normal course of foreign intelligence activities, inevitably captures this kind of information, information to, from or about what we call a U.S. person. And by the way, "U.S. person" routinely includes anyone in the United States, citizen or not.

So, for example, because they were in the United States -- and we did not know anything more -- Mohamed Atta and his fellow 18 hijackers would have been presumed to have been protected persons. U.S. persons, by NSA prior to 9/11.

Inherent foreign intelligence value is one of the metrics we must use. Let me repeat that: Inherent foreign intelligence value is one of the metrics we must use to ensure that we conform to the Fourth Amendment's reasonable standard when it comes to protecting the privacy of these kinds of people. If the U.S. person information isn't relevant, the data is suppressed. It's a technical term we use; we call it "minimized." The individual is not even mentioned. Or if he or she is, he or she is referred to as "U.S. Person Number One" or "U.S. Person Number Two." Now, inherent intelligence value. If the U.S. person is actually the named terrorist, well, that could be a different matter. The standard by which we decided that, the standard of what was relevant and valuable, and therefore, what was reasonable, would understandably change, I think, as smoke billowed from two American cities and a Pennsylvania farm field. And we acted accordingly.

To somewhat oversimplify this, this question of inherent intelligence value, just by way of illustration, to just use an example, we all had a different view of Zacarias Moussaoui's computer hard drive after the attacks than we did before.

Look, this is not unlike things that happened in other areas. Prior to September 11th, airline passengers were screened in one way. After September 11th, we changed how we screen passengers. In the same way, okay, although prior to September 11th certain communications weren't considered valuable intelligence, it became immediately clear after September 11th that intercepting and reporting these same communications were in fact critical to defending the homeland. Now let me make this point. These decisions were easily within my authorities as the director of NSA under and executive order, known as Executive Order 12333, that was signed in 1981, an executive order that has governed NSA for nearly a quarter century.

Now, let me summarize. In the days after 9/11, NSA was using its authorities and its judgment to appropriately respond to the most catastrophic attack on the homeland in the history of the nation. That shouldn't be a headline, but as near as I can tell, these actions on my part have created some of the noise in recent press coverage. Let me be clear on this point -- except that they involved NSA, these programs were not related -- these programs were not related -- to the authorization that the president has recently spoken about. Back then, September 2001, I asked to update the Congress on what NSA had been doing, and I briefed the entire House Intelligence Committee on the 1st of October on what we had done under our previously existing authorities.

Now, as another part of our adjustment, we also turned on the spigot of NSA reporting to FBI in, frankly, an unprecedented way. We found that we were giving them too much data in too raw form. We recognized it almost immediately, a question of weeks, and we made all of the appropriate adjustments. Now, this flow of data to the FBI has also become part of the current background noise, and despite reports in the press of thousands of tips a month, our reporting has not even approached that kind of pace. You know, I actually find this a little odd. After all the findings of the 9/11 commission and other bodies about the failure to share intelligence, I'm up here feeling like I have to explain pushing data to those who might be able to use it. And of course, it's the nature of intelligence that many tips lead nowhere, but you have to go down some blind alleys to find the tips that pay off.

Now, beyond the authorities that I exercised under the standing executive order, as the war on terror has moved forward, we have aggressively used FISA warrants. The act and the court have provided us with important tools, and we make full use of them. Published numbers show us using the court at record rates, and the results have been outstanding. But the revolution in telecommunications technology has extended the actual impact of the FISA regime far beyond what Congress could ever have anticipated in 1978. And I don't think that anyone can make the claim that the FISA statute is optimized to deal with or prevent a 9/11 or to deal with a lethal enemy who likely already had combatants inside the United States.

I testified in open session to the House Intel Committee in April of the year 2000. At the time, I created some looks of disbelief when I said that if Osama bin Laden crossed the bridge from Niagara Falls, Ontario to Niagara Falls, New York, there were provisions of U.S. law that would kick in, offer him protections and affect how NSA could now cover him. At

the time, I was just using this as some of sort of stark hypothetical; 17 months later, this is about life and death

So now, we come to one additional piece of NSA authorities. These are the activities whose existence the president confirmed several weeks ago. That authorization was based on an intelligence community assessment of a serious and continuing threat to the homeland. The lawfulness of the actual authorization was reviewed by lawyers at the Department of Justice and the White House and was approved by the attorney general

Now, you're looking at me up here and I'm in a military uniform, and frankly, there's a certain sense of sufficiency here - authorized by the president, duly ordered, its lawfulness attested to by the attorney general and its content briefed to the congressional leadership

But we all have personal responsibility, and in the end, NSA would have to implement this, and every operational decision the agency makes is made with the full involvement of its legal office. NSA professional career lawyers - and the agency has a bunch of them - have a well-deserved reputation. They're good, they know the law, and they don't let the agency take many close pitches.

And so even though I knew the program had been reviewed by the White House and by DOJ, by the Department of Justice, I asked the three most senior and experienced lawyers in NSA: Our enemy in the global war on terrorism doesn't divide the United States from the rest of the world, the global telecommunications system doesn't make that distinction either, our laws do and should; how did these activities square with these facts?

They reported back to me. They supported the lawfulness of this program. Supported, not acquiesced. This was very important to me. A veteran NSA lawyer, one of the three I asked, told me that a correspondent had suggested to him recently that all of the lawyers connected with this program have been very careful from the outset because they knew there would be a day of reckoning. The NSA lawyer replied to him that that had not been the case. NSA had been so careful, he said - and I'm using his words now here - NSA had been so careful because in this very focused, limited program, NSA had to ensure that it dealt with privacy interests in an appropriate manner.

In other words, our lawyers weren't careful out of fear; they were careful out of a heartfelt, principled view that NSA operations had to be consistent with bedrock legal protections.

In early October 2001, I gathered key members of the NSA workforce in our conference room and I introduced our new operational authority to them. With the historic culture of NSA being what it was and is, I had to do this personally. I told them what we were going to do and why. I also told them that we were going to carry out this program and not go one step further. NSA's legal and operational leadership then went into the details of this new task.

You know, the 9/11 commission criticized our ability to link things happening in the United States with things that were happening elsewhere. In that light, there are no communications more important to the safety of this country than those affiliated with al Qaeda with one end in the United States. The president's authorization allows us to track this kind of call more comprehensively and more efficiently. The trigger is quicker and a bit softer than it is for a FISA warrant, but the intrusion into privacy is also limited: only international calls and only those we have a reasonable basis to believe involve al Qaeda or one of its affiliates.

The purpose of all this is not to collect reams of intelligence, but to detect and prevent attacks. The intelligence community has neither the time, the resources nor the legal authority to read communications that aren't likely to protect us, and NSA has no interest in doing so. These are communications that we have reason to believe are al Qaeda communications, a judgment made by American intelligence professionals, not folks like me or political appointees, a judgment made by the American intelligence professionals most trained to understand al Qaeda tactics, al Qaeda communications and al Qaeda aims.

Their work is actively overseen by the most intense oversight regime in the history of the National Security Agency. The agency's conduct of this program is thoroughly reviewed by the NSA's general counsel and inspector general. The program has also been reviewed by the Department of Justice for compliance with the president's authorization. Oversight also includes an aggressive training program to ensure that all activities are consistent with the letter and the intent of the authorization and with the preservation of civil liberties.

Let me talk for a few minutes also about what this program is not. It is not a driftnet over Dearborn or Lackawanna or Fremont grabbing conversations that we then sort out by these alleged keyword searches or data-mining tools or other devices that so-called experts keep talking about.

This is targeted and focused. This is not about intercepting conversations between people in the United States. This is hot pursuit of communications entering or leaving America involving someone we believe is associated with al Qaeda. We bring to bear all the technology we can to ensure that this is so. And if there were ever an anomaly, and we

MR HILL: Okay, I have to cut you off here.

We have time for two more questions. And if you can keep them fairly brief, we'd appreciate it.

First you, then the gentleman in the red.

QUESTION: Yeah, but --

MR. HILL: I'm sorry.

QUESTION: The first question that I asked --

MR HILL: Excuse me. I'm sorry --

QUESTION: -- about U.S. citizen abroad.

MR HILL: All right. Go ahead.

GEN. HAYDEN: I'm sorry, I didn't -- I apologize, I didn't understand the question, the first question. I'm sorry.

QUESTION: Jim Bamford. Good seeing you here in the Press Club, General.

GEN. HAYDEN: Hey, Jim.

QUESTION: Hope we see more of you here.

Just to clarify sort of what's been said, from what I've heard you say today and an earlier press conference, the change from going around the FISA law was to -- one of them was to lower the standard from what they call for, which is basically probable cause to a reasonable basis; and then to take it away from a federal court judge, the FISA court judge, and hand it over to a shift supervisor at NSA. Is that what we're talking about here -- just for clarification?

GEN. HAYDEN: You got most of it right. The people who make the judgment, and the one you just referred to, there are only a handful of people at NSA who can make that decision. They're all senior executives, they are all counterterrorism and al Qaeda experts. So I -- even though I -- you're actually quoting me back, Jim, saying, "shift supervisor." To be more precise in what you just described, the person who makes that decision, a very small handful, senior executive. So in military terms, a senior colonel or general officer equivalent; and in professional terms, the people who know more about this than anyone else.

QUESTION: Well, no, that wasn't the real question. The question I was asking, though, was since you lowered the standard, doesn't that decrease the protections of the U.S. citizens? And number two, if you could give us some idea of the genesis of this. Did you come up with the idea? Did somebody in the White House come up with the idea? Where did the idea originate from?

Thank you.

GEN. HAYDEN: Let me just take the first one, Jim. And I'm not going to talk about the process by which the president arrived at his decision.

I think you've accurately described the criteria under which this operates, and I think I at least tried to accurately describe a changed circumstance, threat to the nation, and why this approach -- limited, focused -- has been effective.

MR HILL: Final question.

QUESTION: Jonathan Landay with Knight Ridder. I'd like to stay on the same issue, and that had to do with the standard by which you use to target your wiretaps. I'm no lawyer, but my understanding is that the Fourth Amendment of the Constitution specifies that you must have probable cause to be able to do a search that does not violate an American's right against unlawful searches and seizures. Do you use --

GEN. HAYDEN: No, actually -- the Fourth Amendment actually protects all of us against unreasonable search and