

T R A N S C R I P T



FREEDOM
& Secrecy:

Trading Liberty for Security?

How does an open society reconcile the inevitable clash that occurs when our notions of freedom come into conflict with a government's desire for secrecy?

October 2, 2003

Boise State University, Student Union, Jordan Ballroom

Presented by:

The Idaho Statesman
IdahoStatesman.com



**Frank
Church
Institute**

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Conference Schedule

- 8:30 AM **Welcome: Cecil D. Andrus**, Chairman, The Andrus Center
Bethine Church, Chair, The Frank Church Institute
Leslie Hurst, President and Publisher, *The Idaho Statesman*
- 9:00 AM **Opening Address: Slade Gorton**, former United States Senator (R-Washington), a member of the Senate Select Committee on Intelligence, now a member of the the 9/11 Commission.
- 9:40 AM **Question & Answer Forum** with **Senator Gorton**
- 10:00 AM **Break**
- 10:15 AM **Intelligence, National Security, & Secrecy**
A panel discussion exploring the history and outcomes of intelligence investigations in the 1970's and what those efforts tell us about issues the nation faces in 2003.
Moderated by **Patrick Shea**.
Leroy Ashby, PhD., Frank Church biographer, professor at Washington State University
Mark Gitenstein, Intelligence Committee staffmember, now practicing law in Washington, D.C.
Loch Johnson, PhD., Intelligence Committee staffmember, now Regents Professor of Political Science at the University of Georgia
George Lardner Jr., Reporter, *The Washington Post*
- 11:00 AM **Question & Answer Forum** with panel.
- 11:45 AM **Luncheon**, Jordan Ballroom, Student Union.
Introduction: **Bethine Church**
Address: **Walter F. Mondale**, Former Vice President, U.S. Senator, Ambassador to Japan, and member of the Senate Select Committee on Intelligence
- 12:45 PM **Question & Answer Forum** with **Vice President Mondale**
Moderated by **Governor Cecil D. Andrus**.

- 1:45 PM ***Freedom and Secrecy: The Clash of Values***
Consideration of a series of hypothetical situations pertaining to current issues.
Moderated by **Marc Johnson**, President of the Andrus Center.
- David Broder**, Columnist, *The Washington Post*
Jim Brosnahan, Noted First Amendment Attorney
John Deutch, PhD., Former Director of the Central Intelligence Agency
Kevin Duffy, Judge, U.S. District Court, 3rd District, New York
Slade Gorton, Former U.S. Senator, Member of the 9/11 Commission
Andrew Malcolm, Columnist, *The Los Angeles Times*
Thomas E. Moss, U.S. Attorney for Idaho
Pierce Murphy, Boise Community Ombudsman
Patrick Shea, Former senior staffmember, Committee on Foreign Relations, U.S. Senate
Stephen S. Trott, Judge, U.S. Court of Appeals, 9th Circuit
Carolyn Washburn, Executive Editor, *The Idaho Statesman*
- 3:30 PM ***General discussion and audience questions*** with conference speakers and panelists.
- 4:00 PM ***Concluding Remarks: Dr. Forrest Church***, Senior Minister, All Souls Unitarian Church in Manhattan
- 4:15 PM ***Conference Recess***
- 7:00 PM ***Closing Address: David Broder***, nationally-syndicated, Pulitzer Prize-winning columnist for the *Washington Post*. Jordan Ballroom, Boise State University, Student Union. Reserved seating for conferees.
- 7:40 PM ***Question & Answer Forum*** with **David Broder**
Moderated by **Governor Cecil D. Andrus**.
- 8:00 PM ***Closing Remarks: Cecil D. Andrus***, Former Governor of Idaho and Secretary of the U.S. Department of the Interior
- 8:15 PM ***Adjournment***
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FREEDOM & SECRECY: Trading Liberty for Security

October 2, 2003

Boise, Idaho

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CECIL D. ANDRUS: Welcome to this conference on freedom and secrecy, which is jointly sponsored by the Andrus Center for Public Policy, the Frank Church Institute, and the *Idaho Statesman*. We have a very full schedule today. We will have the panel discussions, and the Vice President will speak to us at noon. Then tonight, we will end with an address by one of Washington's best and most respected reporters, one of the deans of journalism in America, David Broder. Mr. Vice President, I know you're leaving right after your speech, so I'll protect you tonight if he says anything that needs response.

Let me acknowledge a variety of sponsors. You see them on the screen over here; they are also on the back of the program. Those people help us financially, and they give of their dollars and their time. When you see any of them, I ask you to thank them for their help. The Andrus Center is a non-profit, as you know, so we rely on the volunteers and the contributions.

Some people have asked: Why a conference on freedom and secrecy? Take a look at this morning's newspaper. Many of the issues and concerns we will discuss today are literally right there in the headlines of your newspaper every day. The Andrus Center has always taken pride in contributing to the public discussion about important current issues, and we think this discussion today carries on that tradition. We have some truly outstanding participants with us today, genuine experts on all the issues we are going to discuss.

You'll have time for questions at various points during the day, but I respectfully ask that you be courteous to people's time and understand that a question is not a speech. Dr. Freemuth, who is the Senior Fellow at the Andrus Center, is an academician and is experienced in the private as well as the public sector. He is very knowledgeable in his own right. He knows aspiring politicians by sight, and he is not going to hand the mike to you folks. He is going to hold the

mike for you. Then if you don't play by the rules, he's gone. If anyone doesn't understand that, please raise your hand.

Not everyone in this audience is going to agree with what will be said. After all, this is America; we're built on the differences of opinion we might have. But I'm asking you to be respectful of folks who have come a great distance at cost of time and money to participate in this. Please give them the courtesy of your attention and respect that they deserve.

I mentioned before our other two major sponsors. Bethine Church, widow of the late great Senator Frank Church, is chair of the Frank Church Institute. She is here this morning, and I ask her to make any comment she would care to. Bethine Church.

BETHINE CHURCH: One thing I've learned as life has gone by is that if you can get a helping hand, get it. I'm just so pleased and want to welcome all of you who have been staunch supporters of the Frank Church Chair over the years. It is now being called the Frank Church Institute because we are covering a lot more territory, and I think that joining with Cece Andrus would make Frank really happy. He liked working with him over the years.

I see so many people that I dearly love, and I have to tell you that Frank thought this was an important thing to do. Long ago, just after he was out of the Senate, he said that people should have a chance to talk about the issues of the day, that it is not unpatriotic to question what your government is doing. You are the government. About the committee that he and the Vice President — then Senator — were on, he said,

“The critical question before the committee is to determine how the fundamental liberties of the people can be maintained in the course of the government's efforts to protect their security. The delicate balance of these basic goals of our

government is often difficult to strike, but it can and must be achieved.”

I know Frank would be delighted to have the Statesman, the Andrus Center, and all of you here. Thank you.

ANDRUS: Now, ladies and gentlemen, it is my pleasure to introduce to you the president and publisher of the *Idaho Statesman*, Leslie Hurst, who came to us just recently this year to head up the Statesman. She came out of Huntington, West Virginia, where she held the same office in the *Herald Dispatch*. Leslie, welcome.

LESLIE HURST: Good morning, ladies and gentlemen. The Idaho Statesman is honored to partner with the Andrus Center for the fourth year to sponsor a major conference on public policy issues. This year, we are privileged also to join the Frank Church Institute to bring you this day of discussion about the balance between freedom and secrecy. It is a key part of our mission to create forums that give you direct access to thinkers with great experience. You'll hear them debate and struggle over some grey areas. You'll have a chance to ask them questions, and I hope you will take that opportunity. It's not often that you get direct access to experts like these.

I also hope you'll think about what these issues mean for us here at home. The balance between freedom and secrecy is not just a national issue. At the Statesman, we have written many stories and editorials about fights for openness in Idaho, and we have done some direct fighting ourselves to make sure information is not held secret. If you saw my legal bills, you'd know what I am talking about.

Some examples: There are audits underway right now at the University of Idaho regarding University Place. Should they be released to the public? How much detail should be released from the Boise ombudsman's investigation of citizen complaints against the Police Department? Should the audit of finances at Boise City Hall be reported in an open meeting or behind closed doors? What checks and balances should be placed on the new Criminal Intelligence Unit in the Boise Police Department? Should the ombudsman be able to investigate complaints against the CIU?

As you listen and ask questions today, consider what balance of freedom and security you want — not

just for our country but right here at home. Consider: If you get comfortable with secrecy at home, does it make you more comfortable with secrecy in Washington? The bottom line is, as you listen to these global discussions today, what can you do or should you do in our corner of the world? This is an important discussion for our community and our nation, and I'm pleased that the *Idaho Statesman* is part of it. Thank you taking the time to participate.

ANDRUS: Thank you very much, Leslie, and thank you for your participation in this and other conferences.

As we considered how to begin a conference, we knew we wanted an individual who could speak thoughtfully to the issues of a troubled and dangerous world. We needed someone who possessed the experience, the perspective, and the knowledge of these difficult subjects. Ideally, we wanted an attorney's analytical mind combined with a politician's sense of the possible with a good sense of history thrown in. We found the right man just to the west of the Cascades in the Pacific Northwest: a former state attorney general, a three-term Republican United States Senator, a man known on both sides of the political aisle for his study and grasp of the issues.

Senator Slade Gorton is now practicing law in Seattle but remains active in public affairs and currently serves as one of only ten members of the so-called "9/11 Commission," the National Commission on Terrorist Attacks on the United States. Please welcome Senator Gorton to start us off today.

SLADE GORTON: Thank you very much. After accepting this invitation and reflecting on my remarks, I became increasingly disturbed by the title of the conference itself: *Freedom & Secrecy: Trading Liberty for Security?* In my view, not only is that an unnecessary question, implying that we are engaged in a zero sum game, it's rather profoundly destructive as the answer to that question, for most Americans, would fall overwhelmingly on the security side of the ledger.

Let's reflect back to our beginnings. Here is a relevant part of the Preamble to the Constitution of the United States of America: "We the people of the United States, in order to secure the blessings of liberty, do ordain and establish this Constitution."

"In order to secure the blessings of liberty." That is to say that those two words or phrases go hand in hand. Fundamentally, without security, there will

be no liberty. People will ultimately demand security first. Many of the troubles that the United States faces today in Iraq stem from the fact that the people there want security far more than they want the liberty that we have promised them. As we look at the effects on government of this question, I am reminded of a woman friend of mine who travels frequently from the west coast to New York City. She remarked that it is only in the last five years or so, both before and after 9/11, that she has felt secure enough to exercise the freedom of walking outside alone after dark in that city, a city that now claims to be the most secure of the large cities of the United States.

So our goal, it seems to me, is liberty *and* security, to do for our generation what those who wrote the Constitution did for theirs and for our own, to secure the blessings of liberty for all of us. It is not a zero-sum game. It is not the obtaining of one at the expense of the other.

Now with that, the triggering factor for this conference, of course, was 9/11 and the national reaction to that attack. 9/11, if it did nothing else, illustrated dramatically the failure of both preventive measures and of intelligence on the part of our multitude of national security agencies, particularly in the light of a clear and explicit declaration of war a good decade ago by Osama bin Laden against this nation, its society, and its most fundamental cultural aspects. It was followed up by acts of war against us in Kenya, Saudi Arabia, and Yemen, each of which resulted in substantial losses of American lives and none of which was followed by any kind of dramatic response on our part.

Query for me as a member of the 9/11 Commission and for all of the people of the United States: Was 9/11 effectively inevitable, or were there relevant failures in U.S. foreign policy and its ineffectual responses to these earlier attacks? Or were their failures in discovering and interdicting the 9/11 attacks themselves and in establishing and monitoring safety regulations, particularly with respect to airline security policies, failures that better and wiser policies might have cured?

Shortly after the 9/11 attacks, the Intelligence Committees of both the House of Representatives and the Senate of the United States mounted a joint inquiry into those facts. Their deadline was December of last year at the adjournment of that Congress. The report that they filed then was voluminous. I have all six or eight pounds of it in my brief case here. The great bulk of it was not declassified until July of this

year, and even at that time, as we deal with the question of secrecy, 28 pages dealing primarily with Saudi Arabia and its participation or non-participation in the 9/11 attacks, remain classified.

That joint committee itself recognized, first, that its inquiry was incomplete and had not ascertained all of the facts. Second, given what the former Vice President and I can agree is a healthy pessimism or questioning about the objectivity of any Congressional investigation, it created an outside independent commission to study the 9/11 failure and to build on what the joint Senate and House Committee had found.

In those findings, there are roughly ten factual findings or groups of closely-related findings with respect to intelligence facts discovered by some U.S. intelligence agencies prior to 9/11. There is at least the implication in the joint committee's findings that if more attention had been given to them, had there been better coordination among agencies, we might possibly have prevented 9/11.

What is not included in the report of the joint committee is the fact that those were ten facts or groups of facts out of perhaps ten million facts on various intelligence subjects discovered during those years by our various intelligence agencies. In other words, we were hunting for ten needles in ten separate haystacks with an attempt to relate them to one another.

The creation of the 9/11 Commission was highly controversial. The Administration didn't like the idea; it wanted this to be all over. In that, I think it was probably like every other Administration with respect to problems it would prefer to solve itself. Congress probably would not have acted without the incentive of a demand from the organizations of the families of victims of 9/11 that more needed to be done than the joint Senate-House Committee did and that such a commission should be created. So in November of last year, it created one.

There are ten members, evenly divided between Republicans and Democrats. My first reflection is how much of a role personality plays in these matters. The chairman was to be picked by the President of the United States, the vice chairman by the Democratic leader of the Senate. They made those choices: Henry Kissinger and George Mitchell, two of the most prominent and perhaps opinionated and certainly articulate citizens of the United States. Within a week, they had decided that they didn't want anything to do with the job for various reasons that are not particularly relevant here. The second choices of the president and the

minority leader were former Governor Tom Kean of New Jersey, now a university president there, and former Congressman Lee Hamilton, for many years the chairman of the House Foreign Affairs Committee.

The contrast between the first pair and the second pair could not be more dramatic from the very beginning. Chairman Kean and Vice Chairman Hamilton are soft-spoken, thoughtful, probably as non-partisan as two former elected officials of the two political parties could conceivably be. They impressed me in their management of the commission as being, for all practical purposes, twins. There has never been the slightest disagreement between the two. Perhaps I have thought from time to time they don't push the other eight of us as hard as they might. Certainly they don't push us as hard as Kissinger and Mitchell would have. To the extent that there's a chance that this bi-partisan Commission will truly act in a bi-partisan fashion and come out with unanimous or close to unanimous recommendations, it will be due very largely to the profound degree of cooperation and thoughtfulness of the now chairman and vice chairman.

I had the distinction or the honor of having been the first member picked. My qualifications were basically that I was a close friend of then - Majority Leader Trent Lott. It may have been his last official act in that position.

I did serve for about three years on the Senate Intelligence Committee, and because one of the subjects of this conference will be the quality of legislative oversight of our intelligence activities, I can tell you that I left it in boredom and frustration after about three years, considering it to be an almost total waste of my time. I can put it in this fashion: I cannot remember a single significant fact that I heard in a closed hearing of the Senate Intelligence Committee that I didn't read in the *Washington Post* within 48 hours.

Legislative oversight in that field is particularly difficult. First, of course, it does take place behind closed doors. Second, to do it right takes an immense amount of time. Third, that immense amount of time conflicts with the more public and, in many respects, the more important duties of the members of the House and Senate. When I was a member of that committee, it was the fifth committee of which I was a member. There simply wasn't time to do the job right.

There are a few exceptions. Senator William Cohen, later Secretary of Defense, as chairman of the committee, spent a huge amount of time on legisla-

tive oversight of the intelligence agencies. The present chairman of the House Committee, Porter Goss, congressman from Florida, does the same thing, but they are overwhelmingly the exceptions rather than the rule.

The other seven members were picked in a manner similar to mine. They were all picked by the Republican and Democratic leaders of the Senate and the House of Representatives. They include, on the Republican side, Fred Fielding, an old Washington hand and a lawyer in private practice in Washington D.C. He has been a significant part of several Republican Administrations, and he brings great experience and wisdom to the task. It includes John Lehman, the first Secretary of the Navy under President Reagan, and Jim Thompson, a former governor of Illinois and former U.S. Attorney in Illinois.

The Democratic side includes a former colleague of mine, Max Cleland from Georgia, who was defeated for re-election just last year; Tim Rohmer, a former member of the House of Representatives, who retired from the House last year, who was the bridge between the Commission and the joint committee. He was a member of the House Intelligence Committee and of that earlier House-Senate investigation. Richard Ben-Veniste, who gained fame as a Watergate lawyer and later represented President Clinton, one of the finest cross-examiners during our hearings that I've ever come across. It included Jamie Gorelick, number two in the Clinton White House and before that, solicitor for the Department of Defense, and she is a particular favorite of mine. We have been paired as questioners of many of the witnesses, and I have a profound appreciation for her skills, her intelligence, her thoughtfulness, and patriotism.

We have not moved rapidly, perhaps not as rapidly as we should have, in this connection. One of the most intense elements of the debate over the creation of the commission was how long it would have to make its report. Our deadline is May 27, 2004. Personally, I think that was a great mistake. I think it should have been after next year's elections, but it's unlikely that Congress will extend that period of time. We will make every effort to finish our deliberations by then.

But the first six months or more of the commission's existence have been spent almost entirely on procedural matters and on our own self-education. As is the case with every administration, this Administration was very slow in coming up with the

documents and the papers that we needed. We had a public news conference on that subject about three months ago in which our chairman and vice chairman, particularly, criticized the Department of Justice and the Department of Defense. Within three days, we had almost a million documents that we had not seen before. Publicity does help and does count.

We are now in the position of having in our possession more than two million pages of documents relevant in one respect or another to our inquiries. We are still in a contest with the Administration over a handful of vitally important documents about the way in which deliberations take place in the White House — who knows what and when do they know it — and over a broader range of documents about the degree of our access to them and whether we can physically have them in hand or not.

I expect those questions all to be answered in our favor. It is clear that we have received far more than any other outside group has ever received in connection with an inquiry of this nature, infinitely more than the joint Senate and House Committee received, which was denied access to many Administration documents on the grounds of executive privilege, an executive privilege that they did not challenge. We have, in other words, a great deal of important information that was not available to our predecessor committee.

We are charged by the Congress, by the law creating us, to investigate the facts and circumstances leading up to 9/11, to investigate the immediate response of our government on and immediately after 9/11, to report as thoughtfully as we can on the lessons learned from that tragedy and the improvements to the security of the United States since 9/11, to examine the question of whether or not those improvements impinge on civil liberties in any respect, and to make recommendations for future reforms. This is all due on May 27 of next year. The task is a massive one.

Now let's get to substance. The great question that the ten of us have before us is the degree to which we can unite on coming up with a report on our deliberations. First, can we reach agreement on all the relevant facts leading up to and taking place on September 11th itself? In some respects, this is our most vital task because we will be writing history. Reaching unanimity on the facts is clearly within the realm of possibility.

Every one of the ten of us, during our first meeting, emphasized that it was vitally important that we do that and particularly that we not divide along partisan lines. Does that mean, even if we reach a unani-

mous conclusion, that it will be definitive and unchallenged? I think not. The Warren Commission is not. In fact, I read a review of a book in the last two months, challenging the received facts on the Lincoln assassination. That we will be able to succeed in satisfying everyone is unlikely. That we will be able to succeed in satisfying most people as to the pure facts leading up to 9/11 is clearly within the realm of possibility.

The second question we have before us is: Should we characterize those facts? Should we attempt to assign blame or credit? Should we go so far as to suggest that there are heads still in position that ought to roll as a result of the failures of 9/11? The joint committee did not make any such recommendations. A handful of its members, in a separate opinion, precisely did so, and none of those heads have rolled. I think unanimity on those characterizations will be much more difficult to reach on the part of all ten of us than on the simple facts themselves.

Next, a critique of the reaction, the changes in the two years since 9/11, and the results. Next, what should be done organizationally in the future? Let me for a few minutes discuss one aspect of that last question. What shall be done in the future? It is a question on which specific recommendations have been requested, at least by members of Congress. Perhaps the central question there is: How, in the future, should the United States handle the problem of domestic intelligence, domestic spying? Who is in charge of determining whether or not there are plots against the security of the United States taking place in the country? How should they conduct that activity?

There are, I think, four alternatives in that connection that the people in the Congress need to consider. First: Let's just let the FBI do it. Let me tell you, the FBI, which currently, in my view, is led by a very aggressive and very effective head, is industriously attempting to win this debate simply by doing it, simply by creating facts. It has already created a separate division for domestic intelligence. It has some but not much experience in the field, and it is going at it very aggressively.

Second, we could assign this responsibility to the new Department of Homeland Security and make it a division of that department as the FBI is of the Department of Justice.

Third, we could follow the example of the United Kingdom and many of the European countries and create our own separate and independent entity on the order of the British MI-5.

Fourth, of course, we could give that responsibility, a responsibility it has never had in the law, to the CIA.

From a purely personal point of view — and I must say here that any opinions I express are mine alone, not necessarily those of any of the other nine members of the Commission — the advantage of the FBI is that it is an existing agency and one that has carried on its traditional responsibilities in a highly effective manner. It has certain intelligence capabilities, and it is aggressively increasing them. It will fight very hard in Congress to keep them against any contrary recommendation.

On the other hand, while the FBI is perhaps the most effective and efficient in the United States or perhaps in the world, its primary duty has been to solve crimes after they have been committed and to build cases that are sufficient for United States Attorneys to take to a jury and prove beyond a reasonable doubt, a culture that is profoundly different from that of figuring out what might happen in the future, from using forms of evidence that might not be admissible in court, and from preventing terrorist activities. It is my view that this function will always be secondary to the primary function of the FBI.

OK. The Department of Homeland Security, a logical agency. Homeland security is what it was created to preserve, and it could easily take the domestic security commission. But of course it is a brand new department. Its existing parts don't fit together very well yet and probably won't for a number of years. It would create another problem of coordination with other related agencies, and where will it find the people?

Incidentally, that is one of the most profound questions that we face. Where do you find good intelligence operatives and analysts? Certainly not in the Help Wanted ads in the newspapers.

Third, an MI-5. It seems to work in other countries, all countries smaller than the United States. It would be independent and would have a single function. On the other hand, it will also create another problem of coordination, and clearly coordination among agencies was one of the great shortcomings of our responses before 9/11. To whom does it report? Directly to the President or to someone else?

Finally, and the least considered so far, the CIA. When the CIA was created in 1947, it was for foreign intelligence activities alone. Intelligence about things like terrorism are its business. They are its culture. It could probably get up to speed more quickly than any other agency, and it would be the least likely to lose

information between the cracks. But I would have to say that the present CIA has rather poor leadership. This would be a violation of history and would be the most opposed by the general public. The CIA, by and large, does not get good coverage.

Let me go back now to 9/11 itself, what we know, and whether or not we should have been able to prevent it. Could 9/11 have been pre-empted with the intelligence that was actually gathered before 9/11, with the ten or a dozen facts or groups of facts known by one agency or another at the time? The joint committee implied that the answer to that question might possibly be yes. Personally, I doubt it.

Take one example. We went through security checks in getting on airlines before 9/11. Those security checks did not and would not have discovered the particular weapons the hijackers took on board with them. They weren't violations of the law, had they been discovered. Why? To a certain extent, I suppose, that's due to a lack of imagination on the part of our various agencies.

But the United States for 20 years, with respect to airline hijacking, had the philosophy that hijackers were not suicidal, that they would take a plane and fly it to Cuba or some other place, use it for an exchange of prisoners and the like, and that they weren't primarily interested in killing the passengers on board the airplane or certainly in using it for suicidal and attack purposes.

Were there one or two indications before 9/11 that this might happen? Yes, but they were one or two instances among literally thousands. Our intelligence agencies thought that future terrorists attacks, like the ones leading up to 9/11, might be against American interests but would almost certainly be outside of the United States itself.

Second question: Could 9/11 have been pre-empted had our intelligence agencies previously been organized somewhat differently? What were the effects of the Church Committee's 1974 reforms on our intelligence gathering? Had they not been so dramatic, had they not created a different culture in those agencies, might we possibly, with less inhibited intelligence agencies, discovered more facts and enough facts to put together to prevent 9/11? Perhaps, but that is the purest possible speculation.

Third, could 9/11 have been prevented had we reacted far more decisively to earlier attacks by al-Qaida and Osama bin Laden on American people and interests overseas? I think there the answer

is almost certainly yes, had we, for example, before 9/11, determined on an invasion of Afghanistan and a destruction of the sanctuaries in which most of those terrorists were trained.

But let's look at that as a practical matter. Does anyone here think that the Clinton Administration, an administration for which I have very little sympathy, could possibly have made a decision sometime in the year 1999 or 2000 to invade Afghanistan simply by publishing Osama bin Ladan's declaration of war against the United States? Could the Bush Administration have done so in the first six months of the year 2001? I submit that was not remotely a possibility in either case, given public opinion at the time. The controversies that we have had in minor respects over Afghanistan and in a major respect over Iraq, when motivations were much much clearer, simply were not present then. In my view, while we could have prevented 9/11 in that fashion, there is no political possibility, in a free society like ours, that there could have been created by either president the degree of unity that would have been required for such an aggressive form of preemption.

What and how do we think about the nature of the threat which we, as a people and a nation, are facing today? I must emphasize here that I am speaking at this point for myself alone. Certainly it is not the threat presented by the Soviet Union for almost half a century of the Cold War. There are at least two major distinctions between this contest and that one. The first is, of course, however our dangers can be characterized, we are not faced with a nuclear-armed, sovereign power. We are not faced in any respect with a potential of a nuclear Armageddon that would simply end civilization as we know it.

Second, on the other hand, we are dealing with a much longer lasting and more firmly held anti-Western philosophy. Communism, it seemed to me, did not last as a true believer's philosophy or religion for more than about three generations. During the last twenty years of the Soviet Union, it was simply a cover for protecting the perquisites of a privileged class. Ultimately, it fell by its own weight.

On the other hand, militant Islam, in my view, has a history as old as religion itself, perhaps mostly or always a minority, but at least always a distinct minority. It is unlikely to disappear spontaneously. It certainly is impervious to western philosophical or political argument. It is likely to cease to be a threat to us only when it is a greater threat to the Muslim coun-

tries out of which it arises than those nations and those societies are willing to bear.

Now, of course, most of them, including many of the elements of the ruling classes of those countries, blame the west for their relative decline. That decline, in my view, is not only not going to be arrested but will continue as long as so much knowledge and adaptability to measures run afoul of religious dictates and particularly so long as the female half of the population of that culture is barred from significant roles in the society as a whole.

So I believe that elements of this will be in our final conclusions. Our defenses must necessarily exist on three distinct but related levels. First is the hardening of targets. In one part of that imperative, we seem to have done a fairly good job. Aircraft security is now on a far higher plane than it was pre 9/11. Even though the cost has been great, greater security exists almost entirely with respect to aviation, not with respect to other modes of transportation, not with freight mobility in ships and the like.

One of the most profound scholars that has testified before us pointed out that for a free society to attempt to defend itself simply by hardening targets is to court the same bankruptcy the Soviet Union engaged in with its defense policies. It is just inconsistent with our freedom to protect effectively every single target. So we have to set priorities within that field.

Have we been successful? Yes, in one narrow but vitally important sense, we have. There has been no repeat in the slightly more than two years since 9/11 of the 9/11 forms of attack here in the United States.

It does not mean that terrorism has been made any less of a threat. What we have done in many respects has been to displace terrorism, and because targets of the United States have been more difficult to hit, we see nightclubs blown up in Indonesia, and we see attacks in Saudi Arabia itself. We see the kind of terrorism that took place fairly recently in Morocco.

Displacement, from the point of view of our own society, is at least a partial success. Displacement, it seems to me at least, is what Saudi Arabia has been engaged in for years, perhaps encouraging directly or indirectly the export of a philosophy that leads to terrorism on the grounds that financing it elsewhere might protect Saudi Arabia itself.

So in some respects, the May attacks in Saudi Arabia may have been the most important single event since 9/11 as Saudi Arabia finds that it can no longer displace terrorism and must attack it directly.

I'm inclined to believe that its foreign policy changed profoundly a few months ago, making not irrelevant but less relevant some of the elements of our investigation as to its earlier participation.

Second, in addition to hardening targets, is the necessity for more aggressive and certainly more effective intelligence and preemption than we engaged in prior to 9/11. This whole question about how domestic intelligence should be handled is a part of that. Training and recruitment of officers to engage in those activities are a part of it.

A far greater degree of imagination is required to determine what comes next. From the hijacking of aircraft and crashing into buildings, what is required for the next time around? And most particularly, how does more effective intelligence, particularly here within the United States, relate to the liberties that they are designed to protect?

The third level, of course, is preemption on the ground. It is the Afghanistans and the Iraqs. It was not terribly controversial when it was Afghanistan and a direct attack on Osama bin Laden and al-Qaida but more controversial when it took place in Iraq.

So the questions we face in this connection are how each of those relates to one another. What are the relative effectivenesses and priorities of (1) hardening targets, (2) more aggressive intelligence, and (3) preemption? How do you set the values and policies within each one of those? What impacts do those policies have here in the United States?

To go back to my own duties. I have every hope that we can be unanimous in setting a factual background of what led up to 9/11 and the facts, minute by minute and second by second, on that disastrous and tragic morning. I hope that some of our procedural recommendations can also be unanimous. Our setting of values for a free society and our comments on some of the questions I've covered here — if indeed, we make them at all — are very unlikely to be unanimous because there is nothing close to unanimity on the part of the people of the United States themselves. The best result we can have is to set out those questions and those value judgments as dispassionately as we can and try to help that debate so that an informed American people can come up with informed answers, which do not set liberty against security but provide for securing the liberties of the United States in the future as they have in the past.

Thank you very much.

ANDRUS: What did I tell you? Analytical, insightful, constructive. Thank you very much, Senator. We appreciate your opening this conference.

Now we have about 15 minutes for some questions. If you raise your hand, Dr. Freemuth will approach you with the microphone. No speeches, please.

AUDIENCE QUESTION: You said that you wished your commission's report would not be due until after the next presidential election. Why is that?

GORTON: It's so easy for one side to say, "It's all Clinton's fault" and for another side to say, "It's all Bush's fault." No matter what we say, unanimous or divided, the political parties in a presidential year are likely to try to pick it apart to make political points between May and November. If it's to have any great and lasting value, it seems to me that if it were issued after the election is over, it would be judged more dispassionately than in the immediate run-up to an election.

AUDIENCE QUESTION: Senator, your needle in the haystack analogy. Don't you think that the rather detailed plans to fly planes into U.S. buildings — and I think the World Trade Center was among them — should have glinted a little bit more than the average needle in the haystack?

GORTON: Our hindsight is always 20-20. I can always say, "I wish they had been. I wish someone in the FBI had paid more attention to the report coming from Phoenix. I wish that the FBI had gone for a warrant to look at Moussaoui's laptop. All of these things look extremely plain in the aftermath. Obviously, they didn't at the time. As I say, it was a failure of imagination, but we were not imagining this kind of thing taking place. There was a plot from the Philippines to hijack airlines and to use them in a suicidal fashion. No one connected those dots, and I want to be very cautious about coming to a conclusion afterward that, in all of the huge numbers of findings on a wide range of subjects in which terrorism was only one for which are intelligence agencies are responsible, someone should have picked up on that. I wish someone had picked up on that. I wish someone had done something about it.

My best guess is that even if someone had said, "Hey, I think this is going to happen, and we'd better have the FAA tell all airlines to barricade doors, and we'd better create a federal agency for security at

our airports,” I don’t imagine that would have gotten through Congress. Both public opinion and the airlines would have killed those recommendations at the time. Just as I don’t think it’s appropriate to criticize President Clinton for not taking Osama bin Laden’s declaration of war as seriously as one would a declaration of war by some sovereign power. I wish it had happened. In a perfect world with perfect intelligence, it would. I am very reluctant to come to the judgment that it should have.

AUDIENCE QUESTION: So far, the Bush Administration has not had a reputation for paying much attention to the facts re the Iraq War, so what gives you the hope that this Administration would pay attention to the facts that you find in your committee?

GORTON: My opinion is that the Bush Administration has paid quite close attention to the facts and has taken a number of significant measures in the right direction. The nature of your question almost answers the first question I had. When we put this report out in the midst of a presidential election, it’s more likely to be misused than used.

AUDIENCE QUESTION: I certainly agree wholeheartedly with your suggestions that an informed citizenry is the basis of this democracy, but I find it very very difficult to reconcile that advocating secrecy results in that informed population. As an Iranian immigrant, I find it very difficult to listen to our Administration advocating taking democracy to the Middle East, knowing full well the history of my two countries and the intervention of the CIA in stifling democracy in Iran in 1953. My question is: How do we reconcile having covert operations and, at the same time, advocating an informed citizenry?

GORTON: It will be impossible for us to deal with any kind of threat — it was impossible at the time of the Soviet Union and is impossible now — of terrorism without having covert activities. In fact, if our covert activities had been more effective pre 9/11, that in itself might possibly reduced or eliminated that threat.

As for supporting democracy in the Middle East, I think that’s precisely what we ought to be doing. My own personal view, which has nothing to do with 9/11, is that there is some very real promise in Iran. It seems to me that, in that nation at least, a majority of the people yearn for greater freedom and for greater

democracy. We should be doing everything we can to encourage that movement against a repressive religious government.

AUDIENCE QUESTION: Senator, do you believe that the United States, in the long term, can economically afford the kind of foreign military intervention that the new foreign policy of preemption seems to involve?

GORTON: The answer to that question is yes. Just as a similar question in the Cold War — Could the United States afford to stay firm against the Soviet Union? — gets the same answer. It seems to me we couldn’t afford not to.

AUDIENCE QUESTION: I think it’s fair to say that a great many Americans do not understand why the Saudis were given a pass on 9/11. Perhaps more important, do we face future threats from Saudi personnel and Saudi money that would attack American interests? If so, how is that going to be dealt with?

GORTON: It seems clear that much of the money and support for a particular form of Suni Muslim extremism, including Osama bin Laden, is centered in a religious philosophy in Saudi Arabia. Much of that religious philosophy is aimed almost as much against the Saudi rulers as it is against outsiders. I personally think it’s clear, without going into any classified information and just based on the question you asked, that we certainly dealt with a very mixed bag.

I think it’s appropriate to say that the Saudis rather consciously thought that if they exported it, if they displaced it, they would be protecting themselves. That’s why I think May 14th was such a profoundly important event. The Saudis have discovered now that displacement is not the answer. But was there Saudi money involved? Is there a Saudi philosophy involved? Were we too soft on it? I would have to answer all three of those questions very much in the affirmative.

AUDIENCE QUESTION: During the Monica Lewinsky scandal and right about the time the *Wag the Dog* movie came out, there was an attack waged by the Clinton Administration on a terrorist target, which the public viewed cynically — myself included — as an attempt to divert attention from his personal crisis. Wasn’t that, in fact, an attack on Osama bin Laden or an attempt on an al-Qaida network? The question

is: That wasn't viewed very well in the public, so how could any intelligence really have been acted upon if that was, in fact, Osama?

GORTON: The last part of your question is the important part. Yes, that particular one-day attack was viewed with great cynicism by a large part of the American people. But doesn't that prove the point I made earlier? What if President Clinton, under those circumstances, had said, "Damn it. We're going to invade Afghanistan." Could he have had any believability under those circumstances? It seems to me extremely difficult to say so. I don't think, in the absence of a Monica Lewinsky in July of 2001, President Bush could conceivably have done that on the basis of what we knew at the time. Was the response inadequate? Yes. Could the response have been dramatically greater in this country at that time? I can't see it. Would Clinton have acted any differently if there had been no Monica Lewinsky? I doubt that he would have acted much differently than that because that was the type of response we had to other similar provocations at the time. We certainly didn't respond any more dramatically to the U.S.S. Cole.

AUDIENCE QUESTION: Senator, I am curious about your thoughts on our new policy of preemptive strikes when the first preemptive strike in the history of the United States seems to have been founded on poor intelligence.

GORTON: To call Iraq the first preemptive attack by the United States is a wild exaggeration. We had a little one-day war in Grenada that certainly didn't threaten the United States or its security. We went after Barbary pirates early in the 19th Century. Certainly Afghanistan was a preemptive attack. My own view is that the attack on Iraq was more than justified and has already paid positive dividends with respect to terrorism and will pay more. But, can we reach a general rule from either one of those things? I don't think we can. I think every set of circumstances is dramatically different from every other one and requires debate and judgment, based on those particular facts.

ANDRUS: Please help me thank Senator Gorton for being here today and for sharing his knowledge and wisdom.

FREEDOM & SECURITY: Trading Liberty for Security?

October 2, 2003

Boise State University Student Union

Presented by:

The Andrus Center for Public Policy

The Frank Church Institute

The Idaho Statesman

PANEL: Intelligence, National Security and Secrecy

Moderator: Patrick A. Shea

PATRICK A. SHEA: We will attempt to accomplish two things: To establish the historic context of the Church Committee and to consider its legacy to us today as we confront these issues.

I thought to begin with Dr. LeRoy Ashby, Professor of History at Washington State University and biographer of several distinguished Americans, including Senator Frank Church. I've asked him to give us a sense of where Senator Church was in 1974 and 1975.

In regard to genealogy, it should be known that Bethine Church considers me one of her wandering children, so I operate under her rules on occasion. Dr. Ashby.

LEROY ASHBY, Ph.D.: A couple of days ago, Pat called to give me my marching orders for this panel. He said, "I'd like to have you put the Church Committee in its historic context, and you have four minutes." I am an academic, and academics speak in 50- minute time slots, at the least. In four minutes, I couldn't even read two pages of Loch Johnson's excellent history of the Church Committee.

On September 11, 2001, I was stunned, numbed, and bewildered by the events. Then I began to worry that we might compound the tragedy in an effort to place blame for the attack by blaming Senator Frank Church for his work in the mid 1970s. Some said Church was to blame for the failures of the intelligence community prior to 9/11. Among the critics was Senator James Baker, the *Wall Street Journal*, and novelist Tom Clancy, who said, and I quote: "The CIA was gutted by people on the political left. As an indirect result of that, we have lost 5000 citizens," a very serious charge.

I want to step back initially, given the scapegoating, and look at why those investigations occurred in

the mid-1970s. Very quickly, I want to just tick off some things that were happening:

- 1) The impact of the Watergate scandals. They revealed increasingly staggering kinds of information on levels of corruption and conspiracy that Americans simply had not previously conceived of;
- 2) Reports that the CIA had conducted a massive domestic spying campaign against U.S. citizens;
- 3) The Vietnam War, which had raised questions about the pursuit of a foreign policy based in secrecy, lies, and deception;
- 4) A growing concern in the country about the need to rein in what was increasingly called "the imperial presidency";
- 5) The recent findings of a subcommittee that Senator Church chaired regarding the conduct of multi-national corporations abroad. That subcommittee had discovered recently and shockingly that the CIA had conspired with a huge corporation, ITT, to block the election of Chilean President Salvador Allende and, failing that objective, to de-stabilize and topple that legally-elected government.

It was against the backdrop of those developments that, early in 1975, the U.S. Senate, in a big vote (82-4), moved to establish that Select Committee on Intelligence Activities. It was supposed to operate for about nine months. It operated for a bit longer than that, as it turned out. Church was Chairman, of course. Ten senators were appointed, including Senator Mondale, and it was an ideologically balanced committee. The hearings lasted until December of 1975, and in the spring of 1976, a seven-volume report was published.

Newsweek described the report as “probably the most comprehensive and thoughtfully critical study yet made of the shadowy world of U.S. intelligence.” According to the *Washington Post* columnist Mary McGrory, “The Committee turned up some maggoty horrors,” what the *New York Times* viewed as “inexcusable products of an amoral secret bureaucracy that endangered democratic ideals, freedom, and a government of laws.” Again, very compelling assessments of the Church Committee findings.

Now controversy did surround the committee from the very moment it started and, of course, its findings. First of all was the issue of Frank Church himself. Critics claimed that his presidential ambitions compromised the investigations. Another charge was summed up in a newspaper headline that said, “Senator Church Aids Reds.” Keep in mind, that was a cold war setting. President Ford, Vice President Rockefeller, Secretary of State Kissinger — all joined in that particular chorus, I might add.

A quite different complaint came, though, from investigative journalists, such as Seymour Hersh and some staffers of the Intelligence Committee themselves. Their point was that the committee had veered down the most sensational paths and, by doing so, had been diverted from examining, as they saw it, more systemic issues regarding government and the intelligence community.

Early in the investigations, for example, Church received information about a CIA internal study, “the family jewels” as it was known. That study had some searing kinds of information and revelations, showing that, in fact, the U.S. government had plotted assassinations of foreign leaders. Some staffers at the time urged Senator Church not to focus on those revelations. They said this would lead the committee into a briar patch and turn the investigation into a kind of media circus. Church, though, believed he had no choice and that not to go into that briar patch would be a big mistake.

Church also drew fire by raising the possibility that the CIA had been operating, in his words, like a “rogue elephant.” To critics, this suggested that this was an aberration in terms of legal conduct and not something that was more deeply involved in the processes of the whole intelligence community and the government. So a political storm enveloped the Church Committee from the outset and right on through. As we can see from the post 9/11 search for scapegoats, that particular controversy continues with

the targeting, in this case, of Frank Church as the person responsible for what happened on 9/11.

Such attacks don’t take into account why that committee came into being in the first place. That’s why I spent some time talking about the setting. There was an 82-4 vote to set up the committee to investigate some real problems in the intelligence-gathering community. The criticism ignored the accomplishments of the committee and its findings. Several people on the panel are going to talk in more detail about those.

Most important, regarding the current situation, at the heart of Senator Church’s concerns were issues of government accountability and the perils of secrecy in a free society. These issues involve the sanctity of the legal and the political processes in a democracy and the idea that, under the U.S. Constitution, no one — I mean no one — is supposed to act outside the law, whether it’s under the rubric of national security or anything else. Church’s understanding of these issues bears directly on the topic that we’re looking at today.

I thought I would take a little bit of time from Steve Emerson, who is not here, so I am over my four minutes. Time and again, Frank Church warned about the dangers and ironies of destroying basic freedoms in order to save them. He noted that totalitarian governments hide behind a veil of secrecy, but our society, Church said proudly, has drawn its inspiration from the old Biblical injunction, “Ye shall know the truth, and the truth shall make you free.”

In Church’s opinion, democracy depends upon a well-informed electorate. In that context, efforts to hide governmental efforts under cloaks of misinformation, intimidation, or the denial of civil liberties eventually subvert the very system they are allegedly protecting. The United States should not, Church argued, create a security system that was, in his words, “a mere image of the evil it is designed to combat.” Church’s words, of course, came during the cold war when Americans saw communism as the central threat.

The Senator was well aware of that threat, and he advised Americans to reject the idea that since the Soviets do it, we must do it, too. Church often drew the analogy, a painful one, about Vietnam, when an officer said they had just burned the village in order to save it. Church made the point again and again that we have to be very careful in terms of protecting our own security and our own country that we don’t destroy it in order to save it.

Thank you.

PATRICK SHEA: Our next speaker is Mark Gitenstein. He is a partner at the law firm of Mayer & Brown in Washington, D.C. On the Intelligence Committee, there were 140 staff people, and my job was to be the fire person — some people said I was the fire hydrant — but there were a few people — and Mark was one of them — on whom you could always rely to give you very straight answers to often very complicated situations. He went on to be, first, the minority counsel and then the Chief Counsel for the Senate Judiciary Committee and has had a distinguished legal career with a particular focus on civil liberties.

MARK GITENSTEIN: Thank you, Pat. What I'll proceed to do here is summarize this thousand pages in three minutes. The few little bullets I want to give you now I first gave to then - Senator Mondale, our member, in his Capitol hideaway, and I think he was a little surprised.

Mike Epstein, a dear friend who unfortunately has passed away, and I summarized these facts along with John Elliff, another staffer who worked with me. He said, "You must present this to the Committee." I don't know if you remember this, Pat. It's related in Loch's story. Former Senator Phil Hart was there. I think he was so stunned with the result, he extemporaneously said, "You know, my kids used to tell me that this was happening — they are anti-war kids — and I never believed them."

Let me give you these facts very quickly. Number one: Between 1956 and 1971, the FBI engaged in a program called "Cointelpro," in which they directed over 2000 actions against basically domestic political groups like the Southern Christian Leadership Conference, the direct purpose of which was to disrupt their activities in seeking civil rights and in anti-war activities.

Number two: One particularly heinous example of that is what was done to Dr. Martin Luther King, in which he was covertly and illegally wiretapped from 1963 to 1968. The contents of those wiretaps were then used not only to discredit him with the national media and the Congress but to be given covertly to his wife in an effort to force a divorce and, quite explicitly, to get him to commit suicide.

Number three: The third item was a covert action against the Black Panthers, which, as some of you may remember, was a civil rights group. The purpose there was basically to encourage gang violence within the Black Panther party so that they would

kill each other.

Number four: The fourth example was an extensive use of foreign intelligence informants. Indeed, it was our finding that in fiscal 1976, the FBI had twice as many domestic intelligence informants as they did organized crime informants.

Number five: The fifth example is warrantless electronic surveillance, which went on basically on the signature of the director of the FBI until 1972, when it was prohibited by a Supreme Court decision known as the Keith case. As we were investigating in the foreign intelligence area, it was continuing basically unabated.

Number six: The sixth example is warrantless entry, what was known colloquially as "black bag jobs," which was basically breaking and entering into American citizens' houses. We found examples that between 1948 and 1966, there were 200 of those that were unrelated to planting bugs or electronic surveillance, a number of them directed at American dissidents like Dr. King and anti-war dissidents.

Number seven: A seventh example is that between 1940 and 1973, the FBI and the CIA opened approximately several hundred thousand pieces of first-class mail of American citizens.

Number eight: The eighth example was that the CIA engaged in a program between 1967 and 1974, directed at American anti-war activists and involving thousands of them, probably in direct contravention of the 1947 National Security Act.

Number Nine: The ninth example is that the National Security Agency, between 1945 and 1975, intercepted the international communications of thousands of American citizens by a watch list. The watch list contained "individuals whose activities may result in civil disobedience."

So that's what we found in the 70's, and Senator Mondale did an excellent job of laying out this information in the hearings with greater detail and greater eloquence than I can. Let me just say a thing or two, so I can stick to my four minutes, Pat.

The reforms that grew out of the Church Committee work:

First, we established a structure for permanent oversight of the intelligence community. That is still in force. Second, Attorney General Levy, after some polite and some impolite conversations with Senator Mondale, established the Levy guidelines on domestic intelligence, which endure to this day.

Third: I don't know whether the Senator remem-

bers this, but he and I testified before the Senate Judiciary, together with David Aaron, on the need to establish a Foreign Intelligence Surveillance Act, the so-called FISA statute, which also endures to this day. I would make the case that those three legs of the stool still exist. None of the abuses that we talk about today could really occur today if they are honestly enforced. Notwithstanding what Senator Gorton said, I think a good and aggressive oversight committee can make that system work.

What is interesting about this period is, despite what the *Wall Street Journal* and others said about how the Church Committee reforms caused all this, after everything was said and done, nothing was really changed as to the core legs that I've described. Those structures still exist. The Patriot Act basically nibbled at the edges. That is not to say that there are not some problems, especially with the next version of the Patriot Act, but we'll get into that later.

My bottom line is that I believe, as Senator Gorton suggested, the problems that we have post-9/11 with the FBI and the CIA are structural problems within those agencies. We're going to have to deal with them, but they probably have little or nothing to do with the Church Committee reforms. We can talk more about that later.

SHEA: Thank you, Mark. Loch Johnson is a professor at the University of Georgia. He has written extensively on the intelligence community and the activities there. It was interesting that, as we went through the process of setting the agendas for the different public hearings and eventually the reports, one of my jobs was to inform the different members of the committee about the identity of the witnesses and the responsible staff person. When Loch's name came up, great attention was paid because good quality always came. With most of the staff, that was certainly true, but there were a few notable exceptions. That always caused us some heartburn. But Loch was a great staff-person. Professor Johnson, take it away.

LOCH JOHNSON: Thank you very much, Pat. How wonderful to be in Boise, one of the great places in the United States. I've missed it very much, and it's good to be back.

Pat asked me a couple of days ago what we were about and to do so within the famous four-minute rule. We were about helping to restore the government of the United State to its founding principles. Frank

Church was a dedicated student and articulate proponent of these principles. He well understood a comment from James Madison that has been etched into the wall of the Library of Congress: "Power lodged, as it must be, in human hands is ever liable to abuse."

The gift of the founders, Frank Church said, lies in the safeguards they gave this nation to prevent the abuse of power. Senator Church, Senator Mondale, and others on the Church Committee had witnessed the erosion of these principles and these safeguards, the mendacity of the executive branch during the war in Vietnam, and the Watergate cover up. Newspaper reports on CIA spying at home seemed to be the final straw. Something had to be done, and for sixteen months in 1975-76, the Church Committee took up that challenge.

As you've heard, what the committee found was a Pandora's box of horrors: spying at home by the very agencies created to protect us, not only by the CIA but by a host of military intelligence agencies as well; secret harassment by the FBI against Vietnam war dissenters and civil rights activists; assassination plots against foreign leaders; and efforts to topple the democratically elected leader of Chile. None of this information came easily. It had to be fought for, and Mr. Church and Mr. Mondale carried the banner into that battle.

Eventually the committee was able to establish genuine accountability through the creation of a new oversight committee. Congress would be a co-equal to the executive branch when it came to intelligence. The CIA would become a part of the American government with all of its checks and balances. The committee set guidelines for the FBI and the CIA and struck a much better balance between liberty and security. Above all, the Church Committee created a new attitude in Washington. We would have security, yes, but we would have it under the rule of law and with accountability.

Did it weaken our intelligence agencies? Absolutely not, no more than cleaning out some pockets of corruption in a police department would weaken the department. It strengthened the intelligence community. If you dig into the antecedents for 9/11, you'll find it has a lot more to do with our failure to focus on the Middle East and South Asia during the Cold War, our lack of human intelligence in that area, and a lot of much more complicated matters than the likes of Tom Clancy either admit or are aware of.

We did not create a perfect system. After all, Iran-Contra came in the 80's. But the Church Committee

took a giant stride forward, it took a strong stand on behalf of civil liberties, and it set statutory boundaries for intelligence operations. It established rigorous oversight — not the “overlook” we had experienced before. These reforms have stood the test of time. There has been a lot of research on these matters since 1976 — a couple of books even this year. They reinforce and add to the Church Committee findings but don’t challenge them in any serious way or change them.

I just came from a conference in Norway where people, including parliamentarians and others, from all over the world gathered to talk about intelligence oversight. What everyone was talking about was the Church Committee as a model of what they hoped to adopt for their own countries.

Robert Gates, a director of the CIA appointed by the first President Bush, summed up quite well the value of the approach taken by the Church Committee. I am reading from his recent memoir:

“Some awfully crazy schemes might well have been approved had everyone present not known and expected hard questions, debate, and criticism from the Hill. And when, on a few occasions, Congress was kept in the dark and such schemes did proceed, it was nearly always to the lasting regret of the presidents involved.”

That can be said more succinctly. The purpose of accountability is to try to prevent the executive branch from doing something stupid. That remains a worthy goal.

SHEA: Thank you, Loch. George Lardner has been with the *Washington Post* since 1963. He has written several interesting and revealing news articles on the committee. One of my other jobs was to attempt to be the plumber, to figure out where the leak had come from, and then to inform the committee. There were several reporters in Washington with whom it was like a cat-and-mouse game. I was always the mouse getting pounced upon, but for a reporter you could go to, talk with, and know he would never reveal sources or method, George Lardner was the guy. The Washington press corps was well served and is well served by him. So George, give us a sense of where the press was.

GEORGE LARDNER: Well, I was minding my own business, covering the Watergate trial and the

windup of it when Sy Hersh broke his great story in the *New York Times* about domestic spying and the CIA. So the trial ended, and the next day I was told, “Get busy.” So I covered the investigations of the CIA and the FBI and other government gumshoes in the 70’s and for some years thereafter.

I have what may be a contrarian view of them. They were a great revelation of government lawlessness, but they were also a failure, a failure that was not appreciated then and, I’m afraid, is not appreciated now. The investigators, as Loch Johnson has pointed out, were quite properly shocked at the abuses they discovered.

What they passed over too lightly, I think, was the fact that excesses in the name of national security are as old and ingrained as the republic itself. They weren’t going to be cured by the creation of Congressional committees that inevitably come to look and think like the people they are supposed to regulate. What was needed was new law, even a charter for the intelligence community. We didn’t get it. What we got were bits and pieces.

Let me emphasize first that Frank Church should be the last person to blame for this unfortunate outcome. I personally think he could have been president if he had not stuck with the investigation for so long. Once he finally got in the race, late in 1976, he beat the pants off Jimmy Carter every time they had a face-off, but it was too late. He lost, and I think the nation was a loser, too. Instead of winning his party’s nomination, Church was vilified again and again by the whining intelligence community that still likes to attribute their failures to him while ignoring their own incompetence and by complaining endlessly about the few and too feeble restrictions that have been put upon it.

The FISA Act was mentioned. Not once has a judge denied a warrant under the FISA law, except maybe once.

But back to the investigation. It would be a mistake to think they were supported by a sustained nationwide burst of indignation at the disclosures of domestic spying by the CIA and lawlessness by the FBI. The crusade was much more tenuous, confined in large measure to that minority in official Washington and around the country that is genuinely dedicated to civil liberties.

The tensions between those advocates of liberty and the advocates of order and secrecy have always been with us. To those who wrote the Constitution — in secrecy, remember — a strong central government

was the overriding goal. They saw no need for a Bill of Rights until it became plain they would not have a constitution without one.

Frontiersmen and rural folk had a different view. To them, the Revolution was or should have been a victory for liberty, freedom from far-away rules and onerous taxes, no matter whether they were imposed in London or in Philadelphia. The huge forces dispatched, for example, to crush the Whiskey Rebellion and an even milder uprising a few years later hammered them into submission. So did the Alien and Sedition Acts, which purported to counter “pro-French subversion” and which made it a crime to criticize the president.

Those salute-the-flag tendencies were in remission when the investigations of 1975 and 76 came into play, but careful handling was still required. What the Church Committee ignored was the importance of the educational function, the need for lights, camera, action day after day until the lessons were driven home. Some Senate hearings were held in public, but they had the flavor of hastily-organized afterthoughts. Decisions about what incriminating documents would be made public were made at the last minute. The records were excessively censored. In the end, the investigators were left with a tangle of loose ends.

The Senate Committee was blunt enough about the illegalities and outrages of the FBI, but it was almost sycophantic in some of its assessments of the CIA and the presidential involvement in some of those assassination attempts. Even the Rockefeller Commission, the executive branch’s investigator, had flatly branded aspects of the CIA’s domestic spy work “unlawful and improper.” Not once did a Senate staff report go that far, instead calling it “a step toward the danger” of a domestic secret police.

So what do we have now? What we had in the mid-70s was a normal Constitution, operative in days of a strong desire for peace and shock over the Watergate scandals. What we have now is what historian Robert Higgs has called “the Crisis Constitution,” which always overrides the normal Constitution in times of emergency, making the government’s exercise of power far more important than the protection of individual rights. And all this under a suffocating cloud of secrecy that reaches now into every corner of the government.

We’re almost back, I’m afraid, to the early days when excesses in the name of national security became as American as apple pie, when immigrants were

suspect, and when criticisms of the president were denounced as acts of disloyalty.

We are in trouble.

Thank you.

SHEA: What I’d like to do now is have some questions among the panelists. The question I would throw out, just at the beginning: If in 1976, as we were wrapping up the final report, Senator Church or Senator Tower had called the staff together and said, in the Utah tradition, “I’ve had a thought about the future, and I’m going to tell you that the staff director of the Intelligence Committee is going to become the director of the CIA,” what would your reaction have been?

LARDNER: Outrage. You’re referring to George Tenet. I think that would have been unacceptable. It wouldn’t have been done because the staff of the Church Committee was much more bent on curing the excesses in those agencies and never would have had a chance. The appointment of Tenet goes to the point I was making. The committees come to look and think too much like the people they are regulating over a few years passage of time.

JOHNSON: I would disagree markedly on that point. I think it’s very healthy to have someone from Capitol Hill who understands the accountability procedure to be at the top of the intelligence community and bring that understanding to those thirteen agencies. One of the biggest problems we have had in the past is that the people in the intelligence community think that Congress is an alien entity and don’t understand what its purpose really is. They would like to see it float off down the Potomac River into the Atlantic Ocean, never to be seen again. So it’s good to have someone from the Hill there.

LARDNER: Tenet, for example, is the one who recently blocked, after a couple of years of success, the publication of the intelligence budget in total and in some component parts. He’s gone over.

GITENSTEIN: I’m afraid I’m more in the Loch Johnson school on this one. I would like to use this as an opportunity to respond to one thing George said about FISA. I think it illustrates a larger point.

I’m not surprised that the court has not denied a single FISA warrant, but it could have something to do with the fact that the FBI and the Justice Department

don't take cases to that court that wouldn't be approved. I can tell you that I am absolutely dead certain that warrantless surveillance of Dr. Martin Luther King would not take place under this FISA court.

As an example of why it's important: You said that part of the purpose of this committee was to educate the American people. I certainly agree, and I think we did a good job of that in terms of the FBI. Incidentally, this whole report, which I summarized, was public.

The second point is that another function of the Committee was to educate the intelligence agencies. Barbara Bannock and I were interviewing the deputy chief of the intelligence section of the FBI about the King investigation. About 2/3 of the way through the interview, after he had told me about trying to get Dr. King to commit suicide and what the purpose was and showing me a bunch of documents, I asked, "Did it ever cross your mind that this might violate the First Amendment of the Constitution?" At that point, he asked me what the First Amendment of the Constitution was. Now, I don't think that would happen in today's world. Indeed at that point, we warned him of his rights because clearly the guy did not know that he was violating the law, the civil rights of Dr. King. He really didn't understand that. That is a big change from 25 years ago.

One of the arguments that I'm sure Senator Gorton is going to hear is not so much that any particular rule affected FBI agents but that they were scared to do things because they thought it might be a violation. I think there is some truth to that. I don't think there was any particular provision of the Levy guidelines that restricted them, but they were anxious. A lot of us believe that's healthy. A certain amount of skepticism is healthy; too much may be dangerous. We saw that in the Phoenix example.

Anyway, I would fundamentally disagree with George's point about that.

ASHBY: It's always important to have people involved on down the line after an investigation, people informed about the issue, people who might have been involved in pursuing the information. The problem historically has been that those various committees or commissions or bureaus that have been set up have eventually, in effect, become then part of the whole system that they are supposed to be surveying and watching. The watchdogs become the lap dogs, as someone has put it. I think that becomes the real danger — the danger of being co-opted and becoming

part of the system, the lobbyist making the laws, in effect.

GITENSTEIN: The structure of these committees is rotation. No one can stay on these committees more than six years. Maybe we should have greater rotation of the staff, but the members themselves, if they exercise their jurisdiction, can certainly fix that problem.

SHEA: But I think Senator Gorton was quite honest in saying that most members of the Senate Intelligence Committee — and I think this is true for the House — found that if you were actually going to spend the necessary time, you could not spend any other time. Senator Cohen is a good example of someone who did make that choice and obviously did a very good job.

There is another complexity I want to raise here. I had the fortune of serving in the Clinton Administration and had to go through the confirmation process. So instead of being behind the Senators, handing them cards to ask the nominee questions, I was the nominee. In 1969, when I first worked on the Hill, there were about 2500 Senate staffers, and at the time of my confirmation, the number of Senate staffers had grown to 11,000. So there was this constant barrage of information from the supposed watch dogs, who had become more publicity dogs than watch dogs. Any thoughts about what might be done to change that?

JOHNSON: One thing that certainly must be done is to increase the public's understanding about the role of accountability. When most Americans think about the legislative process, they think about law-making. They don't think so much about people sitting in rooms, going through budgets, and holding hearings. This is the hard work that must be done in order to make sure that the laws we do have work properly. It doesn't get enough credit. I'd like to see the Church Institute and the Andrus Center give an annual award to a legislator in Washington and maybe to one at the state level as well for doing a good job as a watch dog for accountability, not just passing another law.

SHEA: Any other questions you'd like to ask each other before we go to the audience?

ASHBY: Senator Gorton noted the frustration

that he and others on the 9/11 Commission felt early on when the information and documents you hoped to get were slow in coming. I'd like to hear from those of you who worked on the committee and observed directly at the time how you felt about some of the things you encountered, the reluctance on the part of the Administration to give documents you needed, a kind of stonewalling that took place. Could you comment a little bit on that?

GITENSTEIN: We faced exactly the same problems that Senator Gorton did, and I think Senator Mondale and Senator Church did a very good job of going public when they needed to in order to put the pressure on Attorney General Levy and the President at the time. So we got the documents; otherwise, we could never have told the story. This is just endemic to the separation of powers.

JOHNSON: I can remember some horror stories about stonewalling by the Ford Administration during our inquiry. For instance, we had requested a number of key documents from the Defense Department. It took months, and nothing ever happened. Finally Senator Church weighed in, and the next day, a half-ton truck came over to our building, filled with documents. We were elated, and we spent the next several weeks going through them. There wasn't a single useful document in the whole bunch, so I wouldn't be too impressed by the two million documents you've received.

By the way, it seems to me there are two keys for effective accountability. Number one is executive branch cooperation. The Congress only knows about executive branch operation to the extent that branch wants it to know. So we have to get the executive branch in the mood, unlike this current Administration, of comity, of sharing with Congress.

The second ingredient is member motivation. Some members of these oversight committees have been truly dedicated to accountability, and others, frankly, have not. What one would like to see is more members of these committees putting their shoulders to the wheel.

GITENSTEIN: I would add one thing, and I'm sure the 9/11 Commission has found this to be true. Documents are important, but there is nothing like interviews. I can remember going with Senator Mondale up to New Hampshire when we interviewed Bill Sullivan for the first time. That's when we first

learned about the King story. We didn't have a single document at that time. In that interview, he identified documents that we were able to get our hands on.

Look, I want to say something about FBI agents. I found them to be largely people of great integrity. The ones that were doing the domestic intelligence work were under a tremendous amount of pressure to do what they were told to do by the hierarchy of the Bureau. When you sat down with them and laid these issues out, they actually were quite honest with us about what had happened and helped us to identify documents and programs that eventually were revealed. I'm sure Senator Gorton will find the same thing in the agencies he'll be talking to.

SHEA: I did want to mention also that there were several instances when Director Colby, then the director of the CIA, in cooperation with Senator Church, Senator Mondale, and others, was very thorough in getting CIA individuals to be helpful.

In fact, a native of Idaho, who was the head of counterintelligence, Mr. Angleton, was very uncooperative when it came to investigating counterintelligence, and it was only with Director Colby's intervention that a modicum of information was obtained.

What I was suspicious of — and maybe it was simply where I was seated in the committee staff — was that there seemed to be at times something thrown over the transom at a very important time, something that everybody knew they would go after. It was almost as if there were an orchestration going on. That is, they knew the "family jewels," and then you laid them down on the table in a poker game sort of way: the dart gun, the botulism to assassinate Castro. Indeed, in the case of Bill Sullivan, that interview probably wouldn't have happened had there not been some agreement within the hierarchy of the bureau.

GITENSTEIN: Sullivan wasn't even at the Bureau any more. We found that less to be the case at the Bureau than I think you did at the Agency. I found that when you finally confronted some of these agents with some of the allegations that we had, they were quite forthcoming. There was a different level of sophistication within the Agency, and I agree with what George has suggested. The CIA was much more effective at manipulating the oversight than the FBI was.

SHEA: John, do you have some questioners?

AUDIENCE QUESTION: In regard to abusiveness, competence, and other things you have mentioned in regard to the CIA and the FBI, how would you gentlemen rate the National Security Agency?

LARDNER: I would rate it as the most secretive, and so the least known of any of the agencies. They do surveillance, satellites, things like that. They spend a huge amount of money, much more than is indicated in the \$30 billion or so budget that the intelligence community is usually thought to be spending, because they have all these thousands of military people all over the world, helping their surveillance networks. That, I don't think, is counted in the \$30 billion.

But they can see into people's homes from huge distances. One doesn't know except for the glimpses we did get in the days of the 70s about what they could do. They raided the files or telegrams of various telegraph companies. They were held to account for that, but they escaped pretty much the review that the FBI and the CIA have gotten.

GITENSTEIN: My job was primarily with the Bureau, but my last year at the Intelligence Committee, I did an extensive amount of work with the NSA over the Panama Canal Treaty and the allegations involved in the Treos brothers. We got tremendous access then, but then - President Carter directed them to give us access. They gave us extremely valuable information, which was ultimately very helpful in getting the treaty confirmed by the Senate.

The difficulty with oversight of NSA is that the disclosure of information related to NSA can truly jeopardize sources and methods because the disclosure of a bit of sentence that actually could be totally legitimate could disclose to the foreign power exactly what link you've intercepted and will do tremendous damage to our national security. So it's a very difficult thing to do. I found NSA, in my years in that particular episode, quite helpful. What they did with the intercepts of foreign U.S. citizens was bad, but the FISA statute does basically regulate that. That is subject to federal statutory control, which did not exist at the time.

JOHNSON: I think you asked for an evaluation of NSA, and I would say that signals intelligence, which it carries out, is extremely important to this nation's safety. Intercepting what our enemies are saying obviously can be very valuable. The NSA has three major problems though. Processing, processing, and

processing. That is to say, they gather so much information that it is overwhelming, and they have to sort through it and pick out what's really important.

On September 10, 2001, they intercepted a message from two al-Qaida operatives that said, "Tomorrow is zero hour." That message was translated on September 12. Getting the right information, getting it translated, and acting upon it is extremely difficult but so important, and NSA plays a major role.

AUDIENCE QUESTION: I'd like to ask the panelists how they believe the things that were put into place 28 years ago to regulate the intelligence community have been affected by the Patriot Act that was passed and the current proposed Patriot Act.

LARDNER: I think that new abuses have come up that weren't contemplated or dealt with 28 years ago. I'm not talking about the Patriot Act in particular. For example, the FBI has now developed a habit of designating "persons of interest" and surveilling them, hounding them. What is that? What law says you can be a "person of interest" and then surveilled day and night?

Then we have the secret detentions of Muslim people without any warrants, without any notice. About a year ago, I came across some FBI affidavits that justified holding people in detention because they were "persons of interest." The Bureau just held them and held them until they were completely, 100% satisfied that they had committed no crime. The burden of proof has been completely turned upside down.

ASHBY: I think we may be watching an historical maxim working out. Way back in 1917, a writer named Randolph Bourn said, "War is the health of the state." I think again and again, we've seen examples of that. In the name of security, which is understandable, there is a sense that we have to protect ourselves almost at all costs. Almost invariably, even if the laws are in place and protections are in place to protect civil liberties, the tendency is to give ground. Beyond that, if you then criticize the giving of ground, you, yourself, are labeled as disloyal.

Unfortunately, we've seen that all too recently. Just a few weeks ago, here in Boise, the Attorney General implied that the people who would question the Patriot Act basically were helping the enemy. That's where you get this vicious cycle underway, so even if the laws are in effect and the protections are in effect,

I see slippage. I worry, frankly, about Patriot I and Patriot II even more.

GITENSTEIN: I was consulted to some extent on the drafting of Patriot I. I was troubled by some of the provisions, but for the most part, not terribly troubled by the Act that was finally passed. I am troubled a considerable amount by the second version, Patriot II, especially the administrative subpoena section.

I think Senator Gorton touched on this. The problem that we're facing now is essentially the same problem we faced after Pearl Harbor. We have bits and pieces of information all over the government, and we don't know how to get our hands on it at the right moment. That's really why they created the CIA.

With computers, we have tremendous technological capability to analyze enormous amounts of information very quickly. I think what you're seeing in Patriot II and the dilemma that the 9/11 Commission and policy makers generally are facing is the notion of "data mining." We have the technological capability now to gather tons of information and bring it to policy makers and enforcement people very rapidly. It also requires us to gather a lot of personal information about people. You're seeing this in the airlines now with the Caps I and II Project, which has gotten some notoriety. When I flew out here to Boise, I wanted to know that the guy sitting next to me really was the guy he said he was. I'd just as soon land at the airport instead of flying into the hotel. So I think there is some legitimacy in gathering that data and sharing it with the right people.

The problem that Patriot Act II will face — and I predict that you, Senator Gorton, will face — is: How do you balance that? How do you allow that information to be gathered and analyzed? Huge databases are now housed in some private corporations, and they want to share them with the Bureau. The Bureau and the Agency want to have access to that information. How do you share that information, some of which is public, and some of which is not? How do you get it to the right policy makers and get it to them on September 9th instead of September 12th? That is very, very difficult.

It's easy for us, as civil libertarians, to say none of that should happen, but we are going to have to face that problem both at the borders and at the airports.

SHEA: I tell the story that when I was at the BLM, we faced a very serious problem. BLM had

bought analog radios, and the Forest Service had bought digital radios. When they showed up at the same fire, they couldn't communicate unless they pulled out a cell phone and talked to one another. Oftentimes in Washington, the jurisdictional battles get in the way of doing the data mining. The data is there, but there are such intense rivalries between different agencies of government that we, as a society, fall victim to those jurisdictional jealousies. Half of what government does — and this is where Vice President Mondale was so effective — is finding ways of getting those jurisdictional disputes not to become so intense that they can't operate.

GITENSTEIN: Pat, some of those issues are jurisdictional, and some relate to civil liberties. We don't have the FBI and the CIA seamlessly sharing data because one is an enforcement agency and one is an intelligence agency.

SHEA: I do think the point, though, about not having a charter is important because that debate went on and on. In my judgment, the attention of the American public and therefore their tolerance for change diminished over time, and there were people in those respective jurisdictions — both FBI and CIA — who did not want a charter and knew that time was on their side. Some of the problems we've been discussing today would have been avoided had there been a charter.

AUDIENCE QUESTION: I have a question on the federal Privacy Act and the Freedom of Information Act. In 1978, I had the Navy Investigation Desk, and we had to respond to public requests on air crashes, deaths, fires, explosion, but we also had to first screen and redact not only Social Security numbers but unduly sensitive matters, which, under the Privacy Act, should not be released. As we cope with the terrorism, do any of you foresee a legislative contraction of the Freedom of Information Act and possibly even a legislative expansion of the Privacy Act?

LARDNER: The Act has already been retracted legislatively and even more in the courts. For example, I think in the Homeland Security Act, there is a provision for "sensitive but unclassified information" — whatever the hell that means — that can be withheld. There is also a provision for "critical infrastructure information" that is voluntarily supplied by pri-

vate industry — let's say plans for a power plant. Well, that could be used by a terrorist to plant a bomb there. It could also be kept secret because the power plant wasn't built right, and nobody can get to it. Those problems, laws, and administrative regulations are causing increasing difficulties.

The FBI is supposed to be a law enforcement agency, but it is a law breaker when it comes to the Freedom of Information. I speak personally from that. Twelve years ago, I asked for information on a bunch of top hoodlums. The FBI had a "Top Hoodlum Program" in the 1950s when Hoover was pretending that there was no Mafia. I thought it would be interesting to get those, and I got about eleven volumes, hugely redacted, after eleven years. I am suing them now. They even took out the names of gangsters who, according to the very documents, were being prosecuted, and there were public indictments against them. It's mind-boggling.

SHEA: I'd like to ask each of you to give a one-minute summary. Just to start it off, the one thing I would observe is that oftentimes on the Church Committee, we seemed to go from process, which I think we were very good at, to personalities because the media could cover the personality and tell the public the story, based on a face, based on an individual, when in fact the more important systemic question related to process. At times, particularly under the pressure of deadlines at the end, we slipped into the personality mode more than the process mode.

Loch?

JOHNSON: I would say that from 1789 until 1974, we were living in the Dark Ages when it came to intelligence. Intelligence was considered exceptional. It would not be a part of the government. The programs were too sensitive for legislators to be involved with. I think the Church Committee brought these secret agencies more into the open, at the same time protecting the necessary secrecy that we had to have.

I think George [Lardner] is exactly right: It has been an imperfect system, and we do need an intelligence charter. I think Senator Gorton is right: The committees can be frustrating and boring, and sometimes they don't work the way we, back in 1975, had hoped. But keep in mind that this remains the difference between night and day. We have genuine accountability in the United States, and it's very rare around the world.

LARDNER: That was one of the problems that Pat has pointed out. With all the meat that you got — the dart guns, the botulism, and all that — we tend to forget that there was another committee over in the House that did try to get into process. I think the CIA was much more frightened about that and did a hatchet job on the Pike Committee. Dan Schorer's great discovery of that report and his publication of it after the House voted to suppress it meant that most of us have never seen that report. You can't get it at a government bookstore. That committee was genuinely trying but didn't have as good a staff to get into process.

GITENSTEIN: The most disturbing thing I have heard today — and I think it was honest, and it does genuinely bother me — is what Senator Gorton said about the ineffectiveness of oversight. I think the role of conferences like this and the media generally, George, is to help the American people understand what the consequences of bad oversight are. That's partially a political problem. People on the Hill need to be more aggressive in making this a political issue.

Patriot One sunsets in December of 2005, so that's an opportunity for a genuine debate, and I hope we'll have a good, solid debate before then about this issue. One issue that is clearly going to come to the forefront is the controversy over libraries that we've heard a lot about. People on the Hill — a lot of Republicans, too — are trying to press the Justice Department, the Bureau, and the CIA to disclose more information on various provisions, how often they are being used. I hope the press will do the same. That's a form of oversight that has a very positive effect on the agencies themselves. It deters them from abusing the provisions because they are literally held accountable because they have to disclose the numbers. That's very valuable.

I worked a little bit on the FBI Charter. I found that reducing all this to statutory language became a political nightmare. It is not a productive area, at least in this environment. I think we're going to have to deal with pieces and parts of this, like the FISA statute. One thing that has a huge impact is disclosure itself and greater accountability for the number of times and the circumstances in which these provisions are being used.

One last point: I'll bet you a lot of what is done behind closed doors could be disclosed. The Church Committee did closed-door hearings, then redacted the really sensitive stuff, and disclosed them. You see very little of that now in the oversight committees.

That would be a productive thing. I hope the 9/11 Commission could recommend that.

ASHBY: Ideally, as Senator Gorton said this morning, we should have liberty and security. There shouldn't be those tensions, but in fact, historically, there have been those tensions, again and again. Civil War, World War I, World War II, Cold War. Invariably there have been conflicts between, on the one hand, the quest for security and, on the other, the need to protect First Amendment freedoms. It's part of the historical animal. It was in that context that Frank Church's committee operated.

Frank Church understood the importance of intelligence. Here was someone who had been an intelligence officer in World War II, serving in southeast Asia, so he recognized that it is not a perfect world, and you have to have information on your enemy.

At the same time, here is why the Church Committee became so important. A kind of paradigm shift took place, at least for a brief moment, from the old idea — don't ask what these various agencies are doing — to one in which suddenly the focus, the tilt at least, was more toward openness, toward trying to find out what in fact we're doing to protect ourselves.

It was a remarkable moment, a kind of opening of a window. What bothers me is that under the pressures of what is happening now, we may start closing that window more and more. What the Church Committee tried to do was to say, yes, we have to have these processes, but let's make sure those processes work around straight corners. We don't cut corners, and you get back to the matter of accountability. Who is doing what and when? It's a tough question to deal with, but we have to deal with it, we have to be aware of the dangers of the ways in which we protect our security, ways that can, in fact, threaten the very things we are trying to defend.

AUDIENCE QUESTION: I would like to ask what the role of the media is in regard to this question. I'm particularly concerned because so many people these days don't even take the newspaper. Could you explain what you think the media's role is at this point. Does it make any difference whether it is the electronic or the print media in general?

LARDNER: It shouldn't, but if you're on TV, it's easier to get your phone calls answered. I don't think there is any basic difference in what the media is all

about. In terms of government, it's holding government accountable and trying to see how power is exercised, whether it's being exercised well or being abused. It's as simple as that. That's the role of the media in reporting on any segment of society: governments, non-profits, institutions, corporations. That's its basic job, and it will never change.

SHEA: I've spent 20 years defending the media, but with the consolidation of the media, where individual companies now own 600 radio stations and potentially will be owning television and newspapers in the same market, we are faced with a real dilemma. Chris Matthews of "Hard Ball" fame started at Capitol Hill the same time I did. We were house mates for a short time, and he, as my own 18-year-old son says, has become a specialist at interrupting people. Chris is a very bright guy and well-intentioned, but the media has moved, in many instances, to rating raves rather than substantive news.

It also reflects a bit of the change in the environment in Washington. Senator Gorton, Vice President Mondale, and Governor Andrus are certainly experts in this area and saw a Washington that, in my judgment, was much more civil. People could disagree but still sit down and have lunch or dinner together or share some thoughts.

I used to go on the overseas trips because the Foreign Relations Committee had jurisdiction on that, and many times, I saw senators with exactly opposite political views being able to share five days or a week and come to have better understanding of each other. There was a holistic view of the Senate or the body politic at Capitol Hill that they needed to work out. We're now into these five-minute, hard-hitting political advertisements that don't allow serious people to come up with policy positions as they would otherwise.

The media does reflect what we as the audience want it to show us, so maybe we need to have organized efforts to reward quality newspapers. The *Idaho Statesman*, the *Washington Post*, and the *New York Times* are all good examples, but they are fewer and fewer in number. You have people in this White House, as you had in the previous White House, whose only role in life is to figure out how to get their person on the news that night with a particular message.

GITENSTEIN: One thing about the media and the current environment. I can't remember where I

saw the story about the abuse of the Patriot Act in respect to libraries, but that created a lot of energy in Washington. It actually resulted in a vote in the House of Representatives to restrict the expenditure of funds under the Patriot Act with respect to Section 215, which, in turn, prompted Attorney General Ashcroft to go on his grand tour of the United States to save the Patriot Act. The media deserves credit as does the natural common sense of Americans. It had a political impact even in this environment. The librarians themselves were politically active on it.

I'm just saying let's not give up here. I think the media has done a good job on the Act and needs to do a lot more.

JOHNSON: I spent the last year at Oxford and read a lot of British newspapers. I found them rather disappointing because they have become advocacy journals. There was very little objective reporting in my view. I see a little of that creeping into our own journalism in this country. That's a great danger.

SHEA: Let me raise one other question, and it has been a pet peeve of mine: the notion of a "war on terrorism" is almost an oxymoron. A war, in political theory at least, is between organized states, and terrorism by its very nature is not an organized state. It seems to me that, if you look at speeches that have been given both on Capitol Hill and in the Administration, there is constant use of the war metaphor because it does rally popular support and a willingness to go along. Terrorism is, at its heart, an illegal act. They are criminals, and they ought to be prosecuted as criminals, using a law enforcement model.

I agree with Mark. In the FBI, the CIA, and the NSA, the people that were doing the operations had enormous intelligence and great integrity. It was generally the people above them in political positions that caused the abuse, or as Senator Gorton said, had not thought through the process, thereby creating bad policies. If we had used the post-9/11 environment to mount a truly significant and sustained international law enforcement activity against terrorists, would we be in a better position today than we are?

JOHNSON: What you say has a lot of merit to it, but it's also a war in my view. When another country or group flies an airplane into your buildings, that's an act of war. We have responded in that way, and I think we have to. In my opinion, we have gone too

far. I really worry about predator, unmanned aerial vehicles going into these countries where supposedly there are terrorists — as happened in Yemen earlier this year — and firing missiles from a height of 10,000 feet at automobiles, thinking there might be terrorists in those automobiles. In that particular case in Yemen, one of the six passengers in that automobile was an American citizen. When did he get his day in court? Where was his counsel? He was murdered by a predator, unmanned aerial vehicle.

GITENSTEIN: I'm not terribly troubled by the war metaphor. We have a war on drugs, a war on crime, a war on energy during the Carter Administration. One of the things that has worked during this period is greater awareness on the part of the American people of the dangers and more partnering with local law enforcement. In effect, it's the citizens hardening their own targets, which is probably a healthy thing as long as it doesn't go overboard.

I return to the point I made earlier: We're not coping with the difficult problems yet, which is how to better coordinate these agencies without jeopardizing civil liberties. How can we better share this data — private data or data within these agencies — so that we find out things on September 9th instead of September 12th? Those are difficult issues that lie ahead for us, issues that I hope Senator Gorton's Commission will address.

Creating a Homeland Security Department doesn't solve that problem because it doesn't say where the FBI and the CIA are and how they are going to share data. We tried to grapple with this issue in the Church Committee, and we didn't resolve that issue. We dealt with the Bureau, and we dealt with the CIA. We didn't deal with the CIA and the Bureau.

ASHBY: You used the right word: complexity. Terrorism is such an amorphous term, and you think of the blowing up of the Murrah Building in Oklahoma City. That was done by domestic terrorists, but it wasn't terrorism. You can find all different shapes and forms, and in that sense, if you're having a war against it — getting back to your point, Pat — it's awfully difficult to know who is out there.

LARDNER: I would agree with you. The "war" is against whom? To immigrants in this country, it's against them. To the law enforcement agencies and/or the intelligence agencies, it's their job now, they perceive, to suspect everybody and to hold them account-

able until it's proven that they're innocent, not until they are proved to be guilty. I think that's the tendency we have to avoid, but that's the direction we're going.

SHEA: Thank you very much. Please thank the panel for their time.

ANDRUS: Thank you very much. A very stimulating and enlightening morning, and the afternoon session will be equally stimulating. Let me make one introduction before we go to lunch. Dave Broder has arrived. Thank you very much for making the effort, Dave. We are looking forward to listening to you this evening.

END OF MORNING SESSION

FREEDOM & SECURITY: Trading Liberty for Security?

October 2, 2003

Boise State University Student Union

Presented by:

The Andrus Center for Public Policy

The Frank Church Institute

The Idaho Statesman

LUNCHEON

Address by: Vice President Walter F. Mondale

CECIL D. ANDRUS: We used to work it around with Air Force 2, which didn't leave until the Vice President was on board. Now the Vice President needs to be out of here by 1:00 PM to catch a Northwest flight.

I'd like to introduce the lady who will introduce Vice President Mondale, the grand lady of Idaho, also the chair of the Frank Church Institute, Bethine Church.

BETHINE CHURCH: This morning reminded me. Frank came home one night, and he said, "I talked to Everett Saltonstall, [a United States Senator from the northeast], and I said, 'How do you conduct intelligence oversight because I am going on the intelligence committee?' Saltonstall said, 'Oh, Frank, there are things gentlemen don't want to know.'"

How can you do justice to an introduction of such a well-known statesman as Walter F. Mondale? Having served in the U.S. Senate and on so many important committees with Frank, especially on the Senate Select Committee on Intelligence, he will always be "Senator" to me. However, he has been Vice President of the United States, and he added to his accomplishments by serving as United States Ambassador to Japan, one of our most critical diplomatic posts. He didn't stop at that. He is a diplomat extraordinaire. He was President Clinton's special envoy to Indonesia to meet with President Suharto regarding the Asian financial crisis and economic reforms in Indonesia.

He went on to chair the National Democratic Institute for International Affairs, an important Washington, D.C. organization that conducts non-partisan programs and often oversees elections in foreign countries, thus helping to build and, when they have a chance, maintain vital democratic institutions.

This just touches briefly on his accomplishments from the U.S. Army service early to his wonderful marriage to Joan. They have three children and three grandchildren. It's my special honor and joy to introduce two special friends: Joan Mondale, a supporter of the arts and crafts all over the country and a wonderful Vice President's wife.

Now to your special enlightenment, I will introduce Walter Fritz Mondale, a fisherman, a tennis player, a skier who, like Idahoans, enjoys reading and a good barbecue. Welcome Senator, Vice President, Ambassador Mondale.

WALTER F. MONDALE: Thank you very much, Bethine, for inviting Joan and me to be with you today. Thank you for those kind words and for all those wonderful years we had together in Washington D.C. When we received your letter, inviting us to this event, unlike most invitations for me these days, I immediately called Joan, and we had an acceptance on its way within about 35 seconds. We wanted to be with you, and also this subject is so crucial to all of us and to our nation.

I really enjoyed the speech this morning by Senator Gorton. It's great to have someone who has been on these committees recently, giving us their reports. The panel this morning talked about events 25 years ago. In addition to being enlightening, it was just like being born again. I loved all of it. Then to be able to do this in the name of Frank Church, certainly one of the most gifted, effective, and caring public servants of our time, makes the whole event truly exciting.

In the early 70s, we saw the recurrent struggle between faith and fear played out in our painful national debate on Vietnam, the revelation of the government's public deceit in support of the war, and

the Watergate scandal, which ended in driving a president out of office. Then came the shocking news, disclosed in Sy Hersh's *New York Times* story, accusing the CIA of a massive spy operation aimed at American citizens here at home. Almost immediately, Senator Pastore moved to create a Senate Select Committee on Governmental Operations to Investigate the Intelligence Agencies, and of course that committee became the famous Church Committee, which we are discussing today.

That committee and its work marked the first time in the history of this nation or any other nation that intelligence agencies would be subject to this kind of thorough investigation. Frank Church asked me to serve with what he called a "domestic task force," charged with investigating the intelligence community's abuses against Americans here at home: the FBI, the CIA, the NSA, the Army, the Post Office, and the IRS.

The earlier panel this morning has already discussed much of what we uncovered. Our final report, just on the domestic part, was 396 pages. All told, the Church Committee issued 13 separate volumes of evidence as a result of its hearings and 96 recommendations for reform.

It's important to remember that none of the intelligence agencies ever questioned the accuracy of our findings, which is a remarkable thing. After all this time and all these facts, not one of them — even today — has ever been questioned. I think we did our work well.

As we've heard this morning. These agencies targeted Americans from every walk of life: women's groups, veterans organizations, academic, religious, environmental, civil rights, anti-war — almost anything was subject to being reviewed. During this time when we were holding these hearings, I was often asked about it when I came home. "Get away from that. If you aren't doing anything wrong, you don't have anything worry about. These people are looking for bad guys, so leave them alone." In fact, what we found were a lot of good guys and good women who were targeted and hurt by these activities.

The most shocking of all, which reveals the dangers of unaccountable governmental power more powerfully than anything else, is Hoover's secret war against Dr. Martin Luther King. Dr. King had violated no law. He was the nation's greatest civil rights hero, an apostle of non-violence, a religious leader acting from deepest beliefs. In fact, by insisting that the civil rights movement adhere to non-violence, he may have saved our nation.

Yet, under the Cointel program (the Counter-intelligence Program mentioned this morning), King's Southern Leadership Conference was classified as a "black hate group." King himself was described as "the most dangerous Negro leader in America." The Bureau's campaign against King involved wiretaps, paid informants, and agents who shadowed his every step.

It didn't end with spying. The Bureau set out to destroy his career and his marriage. At the height of the campaign, the Bureau mailed an anonymous letter and embarrassing tapes to King in what is widely regarded as an effort to get King to commit suicide. Whatever the reason for Hoover's anger, he hounded King for years and subjected him to vindictive and relentless harassment.

After all of those 48 years as FBI Director, Hoover had gained far too much power and was armed with a personal collection of secret files, kept in his own office. Hoover collected embarrassing information and gossip on nearly everyone in Washington. No one — not even the Attorney General under whom he was supposedly serving, not the President who appointed him — dared challenge him. With time, Hoover became a very twisted man. Respected reporters, who knew about the FBI attacks on Dr. King, later admitted that they were afraid to write about it.

But it is too easy to just talk about Hoover because he was not the sole villain. Lyndon Johnson, the Kennedys — our committee found that every president from Roosevelt to Nixon had pressed these secret agencies to go beyond the law. This was a bipartisan problem. These presidents saw the intelligence agencies as extensions of their own personal power as, indeed, they were. In an office that has driven every one of its occupants crazy, the temptation to use these secret organizations to accomplish agendas unrestrained by others is almost too much to resist. And that's what happened.

What those presidents and Hoover shared was also the fear that we might not be able to protect ourselves from our enemies without breaking the law. But these fears were always exaggerated. Hoover fed the public fears of widespread American disloyalty. When Williams, whose name came up earlier today, told Hoover that his agents could find no evidence that Dr. King was under the influence of Communists, Hoover angrily rejected his report and forced him to rewrite it. As we have just learned since they opened up the KGB files, the Soviets as well were targeting him because they thought he was too modern and wanted

to undermine him.

Throughout the long hearings, we asked government officials again and again this question: What happened to the law? The one example I will give was repeated many, many times. This was a question to Mr. Buffman, who was with the National Security Agency, when we were asking about their abuses: "Were you concerned about its legality?" Answer: "Legality?" Question: "Was it legal?" Answer: "In what sense?" Question: "Whether that would have been a legal thing to do?" Answer: "That didn't enter into the discussions." My following question was: "I was asking whether you were concerned about whether that would be legal and proper?" Answer: "We didn't consider that at the time, no." We heard a similar answer from many, many agency chiefs.

Unfortunately, what we were seeing, the victory of fear over faith, was nothing new for America. We saw it in the Alien and Sedition Acts of the 18th Century, in the notorious red-scare Palmer raids following World War I, and in the disgraceful internment of Japanese-Americans in World War II. It's what Joe McCarthy and the House UnAmerican Activities Committee were all about. We now know that all of it was based on unfounded fear. We disgraced ourselves, and we hurt a lot of innocent Americans.

The efforts by Frank Church and the Committee were astoundingly successful. In fact, later FBI and CIA directors have repeatedly said that these committee reforms helped their agencies do their jobs. If we were successful — and I believe we were — it was for many reasons. First of all, our chairman, Frank Church. He was a superb chairman, he picked a gifted staff, and he handled a very strong bi-partisan committee and kept it working together. Our House counterpart committee blew up a couple of months after it was created. They couldn't keep it working together. Church kept us working together all the way through our efforts. We did disagree, but we got it done. While we had our differences with the Ford Administration, it also should be said that they, too, wanted to work out something acceptable. Attorney General Levy was a very strong, positive force in all of our efforts.

Another factor, not widely mentioned, was the largely undisclosed concern to be found within the FBI, within the CIA, and across the board among the officers of these agencies, who were worried about what was going on in their own agencies and knew that their agencies were losing public support. Something had to be done.

The vastness of our findings, facts now replacing suspicion, drove a profound national demand for reforms. Most important, both houses of Congress created permanent intelligence legislative committees with sweeping powers to hear and investigate and to authorize appropriations. Our reforms all sought to strengthen the most fundamental of Constitutional principles: Government power must be accountable to the Congress, to the courts, to the press, and finally to the American people. Every president has resisted that principle.

The current Administration has an almost unprecedented contempt for the idea of its accountability. I have heard reports from friends that members of the Intelligence Committee, on which Senator Gorton sits, often feel that they are hearing only screened information. Some members of the special 9/11 joint committee have made that complaint, and part of its report, recommended by the committee, remains censored by the executive branch. The Kean Commission, on which Senator Gorton also sits, has recently issued a report on cooperation with the executive branch but mentioned that key executive documents have not yet been produced.

Ashcroft is proposing to substitute administrative warrants, free from court oversight. The newly-imposed blackout of presidential papers, that rich source of history that is so crucial to our understanding; the essential unavailability of the president to probing news conferences; the contempt often shown to Congressional inquiries — all should worry us. We should also worry that Mr. Ashcroft lays claim to power to detain indefinitely any American citizen, arrested on American soil, without access to any attorney, based solely on the government's unchallenged allegation that the detainee is an "enemy combatant."

The future of these citizen detainees is now decided in private by the same government that put them there. If ours is a government of and by the people, as Lincoln said and as I believe, then the highest priority must be placed on public information. I spent years in the Senate, working with the Bureau and the intelligence agencies. I spent four years in the White House at the center of the nation's most sensitive information. I respect these agencies and admire many of their leaders, but I believe a vast amount of what should be public information is routinely suppressed.

After a lifetime of public service, let me say this. Never underestimate the lengths Administrations of

either political party will go to protect themselves from public disclosure of erroneous, unethical, or illegal behavior — or just plain embarrassment. The instinct for self-protection is often disguised in the name of national security.

Nevertheless, there are secrets that must be kept. One of the greatest challenges facing these intelligence committees is to handle that information in such a way that it can drive policy without disclosure during that period.

When you place American history beside the history of the great nations that were in being at our beginning, it is striking that all of those systems are gone, many of them a long time ago. But America remains free and is becoming stronger all the time. The great difference between the two examples was that America was based on freedom and accountability of government.

You read the Federalist papers, and they wanted to make certain that public servants in America had to account. They wanted to make certain that power was separated and divided. It was a document very suspicious about what happens to people when they are in power, and they wanted to make certain that they had to account.

The other proud nations thought that they could be made strong by imperial fiat. It turned out instead that it was freedom and equality under the law that drove the reforms, built the trust, expanded our opportunity, and built the strength of this great nation. We must never abandon the Constitution in the futile, self-defeating search for security by an unaccountable government. In fact, the abuse of Constitutional rights will inevitably weaken our nation by undermining our respect for the law at home and diminishing America's global stature.

One issue kept coming up this morning, a good issue. What happens when these Congressional intelligence committees have trouble getting information out of the executive branch? I think that will be a continuing problem. We bet that what the founding fathers had in mind — that is, pitting ambition against ambition — would result in Senate and House committees constantly pressing whoever was the president to disclose this information. We need comity, but we need those members of the Senate and members of the House constantly pressing, pushing to try to get the real story.

The success of the Church committee was possible only because we got the facts. If we had been refused

the information that you find in those reports, which drove our recommendations, we would have failed. So it's not just an interesting situation; it is fundamental to the success of the whole accountability program.

Another thing that has struck me in recent months is this: What is the role of leaders of our intelligence committees when they advise the executive branch on issues of grave importance? Why is what they have stated as facts somehow not stated as clearly to the public?

In England recently, they had a judicial inquiry into how Prime Minister Blair shaped his arguments for going into the war in Iraq. It was an unbelievably searching review of inside papers and internal documents within the Prime Minister's office. You saw what happened. What happened was an Administration wanting to make the decision to go to war and trying to increase and extend justification beyond what information they had in order to make the people of England believe they would be in immediate peril if they didn't do it. It turns out that a lot of that was exaggeration, and the judge has said so.

What is the duty in the United States of our key intelligence committee officials? When they believe certain fundamental facts, they've talked about being ignored when they are in the middle of a debate like that. What are the rights of the American people? What are the rights of the committee to hear what we've paid for in these intelligence committees and hear it clearly so that it can be a part of the debate at the time when it is most useful?

Our nation will continue to struggle, as we have from the beginning, to balance our often very real fears with our belief in the strength of the law as a protector. As we do so, thanks to Frank Church, America has now before it a priceless record never before available, describing how unaccountable secret government can lose its way, how human beings can be tempted by the lack of accountability, what it can cost us, and what we can do to remain free and strong.

Frank Church had a long, rich, incredibly productive public career, and Bethine was right there with him all the way. The achievements of the Church Committee will go down as the most valuable legacy of all.

Thank you.

ANDRUS: To you and Joan, thank you very, very much for being here with us today. We will make certain that you will make that airplane, but the Vice

President has consented to respond to questions for about 12 or 13 minutes. If you have a question, John Freemuth will come to you with a microphone.

AUDIENCE QUESTION: Please comment on Pat Shea's last point: the appropriateness of a war on terrorism as opposed to a police-type operation.

MONDALE: The word "war" has been used in all kinds of ways. We had a war on poverty, etc. I don't want to get involved in the semantics. What I want to get involved in is finding a clear understanding of the difference between a war between nation states, which we can win all the time — we're the strongest, most unbelievably powerful military nation on earth — and a war against terrorism — this amorphous dark spooky threat that can come from any source at any time and that thrives on failed nations and weak governments elsewhere to find their haven. We should be careful that the word "war" doesn't confuse us so that we believe it's the same thing. It's much more difficult; it involves different strategies; and it also involves America behaving in a way that we make friends every day. We must build support around the world, so that nations find it more comfortable to cooperate with us because intelligence is very important, and that cannot be ordered all the time. Even America has to have friends.

AUDIENCE QUESTION: Several years ago when there were problems in the nuclear industry, particularly in the matter of waste, the bureaucrats at Hanford used children in their ads, trying to gain support. The children were saying, "Our dads work at Hanford, and we trust them. They wouldn't do anything to hurt us." Isn't there a parallel with our Attorney General making this grand tour, telling us, his children, to trust him because he wouldn't do anything to hurt us?

MONDALE: I believe in public trust. We need it; we need comity. But our system is based on accountability. Let us hear the facts, and then we'll decide what to trust. It's not just a general pitch for trust that American people need to hear. It's the facts, ma'am. It's what is really going on. That is why accountability is crucial to the future and the vitality of our society.

AUDIENCE QUESTION: I'd like to hear whether you have any views on the rather surpris-

ing allegation that high government officials in the White House would out CIA agents. Is this surprising to you?

MONDALE: I read the same stuff you do. Bush doesn't call me as much as he could. We're at the early stages of that. I know what the allegations are. I'm hoping that there will be an investigation of this serious charge and one conducted in a way that will inspire public confidence. Traditionally, over the last four years or so, when a sitting Administration gets into a potentially embarrassing place where they are investigating themselves and the public might not believe it is a true investigation, they reach out for some distinguished person outside the government to conduct it. I hope they will do that this time because in that way, if in fact it is without foundation, the public will accept that more readily than if it is conducted under the current Attorney General.

AUDIENCE QUESTION: Our Attorney General, John Ashcroft, has just completed a road show where he spoke to law enforcement but not to the public, and he didn't engage the public. Earlier, he spoke to a Congressional committee, saying that those who questioned the Government's reaction to the war on terrorism aid terrorists. President Bush continues to try to give the Attorney General more powers to conduct his war on terrorism. You commented on J. Edgar Hoover's legacy. To what extent do you see parallels? To what extent does our current Attorney General's behavior concern you?

MONDALE: I should have left 15 minutes ago. Too late now. I don't know what it is about Ashcroft. He has this idea almost every day of pushing, pressing, demanding more things related to freedom for him to do what he wants beyond the law. As Mark Gitenstein said this morning, his rhetoric is almost worse than what he is doing.

Now he is talking up the Patriot II proposal, which would expand government access to private data, allowing federal agents to issue subpoenas for private medical, financial, and other records without a court order. Lack of judicial oversight removes an important check on government misconduct, and record holders would be required to comply with those requests or face prison. They would be barred from telling anyone about the subpoena.

This is la-la land. This will not strengthen us. This

will not allow us to go after those terrorists more effectively. This is the sort of thing that divides Americans, produces suspicion. The agents in the FBI hate it. One of the problems we found in our investigations is that many agents hated what the politicians were ordering them to do. That's why you need laws and regulations that make sense, so that agents can say no to their higher-ups when silly, dangerous stuff like this is being proposed. No, I don't agree with that.

ANDRUS: Fritz and Joan, thank you for being here. You can feel the affection in that applause. Let me ask the audience: Let them leave through here, and don't stop them for autographs. Planes don't wait anymore.

Marc Johnson will start his panel a little earlier at 1:15. We will reconvene in the other room, and then meet for the afternoon panel.

FREEDOM & SECURITY: Trading Liberty for Security?

October 2, 2003

Boise State University Student Union

Presented by:

The Andrus Center for Public Policy

The Frank Church Institute

The Idaho Statesman

AFTERNOON PANEL: Freedom and Secrecy: The Clash of Values

CECIL D. ANDRUS: Let me introduce the moderator for the program this afternoon, Marc Johnson. Marc is one of the senior partners of the Gallatin Group, which is a public affairs/management issues corporation with offices in Boise, Portland, Seattle, Helena, and Washington. Marc has a journalism background and graduated from South Dakota State University. He has experience in radio, television, the print media. When I enticed him away from journalism in 1986, he was then with the Public Television station here in Idaho. He joined my attempt for my second life in politics. I cut him a deal. I said, "If I'm elected, you'll have steady employment. If I don't win, you're done." I thought he was smarter than that, but he agreed to it. He joined me and served me as Chief of Staff, an all round outstanding gentleman, Mr. Marc Johnson.

MARC JOHNSON: Thank you, Governor. Good afternoon everyone. We heard a lot this morning about a delicate balance in the American system. Our system is built around a whole series of delicate balances. The balances are designed to moderate among often - conflicting values in our system, values that we hold, generally speaking, very dear. They are such values as a free press, fair and speedy trials, public trials. Other values that we hold dear are openness in our system, and we've heard a lot of discussion today about the value that we place on being secure in our country, secure from internal as well as external threats.

But it's in that clash of values where the delicate balance brings about controversy. It's not a new debate in the United States. We've had it many, many times before in our history, but it's always an extraordinarily important debate. We're going to join that debate in a slightly different way this afternoon. We have assembled a truly outstanding panel, and I'd like to take a

moment to introduce each one of them to you. There are more complete biographies in your conference packet.

Starting right here is Andrew Malcolm. Mr. Malcolm was for 26 years a correspondent with the *New York Times*. He now works for the *Los Angeles Times* and is a member of the editorial board. In between those two newspaper stints, he served as the communications director for Republican Governor Marc Racicot in Montana and worked on the Bush 2000 presidential election campaign.

Judge Kevin Duffy is seated next to Andy. Judge Duffy is a federal judge for the District of New York and has been since his appointment by President Nixon in 1972. He has presided over many high-profile cases. One that I will mention is the first World Trade Center bombing case in 1993 and 1994.

Tom Moss is next to Judge Duffy. He is the United States Attorney for Idaho, a former prosecuting attorney, a former state legislator, appointed by President Bush to his current job in 2001.

Carolyn Washburn is the executive editor of the *Idaho Statesman* and, as you've heard throughout the day, the Statesman and Carolyn in particular have been enormously helpful in staging a number of our conferences over the last several years.

Next is Dr. John Deutch, former director of Central Intelligence from 1995 through 1996. In his long and distinguished public career, he has also served stints as the Deputy Secretary and Under Secretary of Defense. Dr. Deutch has been on the faculty of the Massachusetts Institute of Technology since 1970.

David Broder, Pulitzer Prize-winning correspondent and national political correspondent of the *Washington Post*. Mr. Broder's extremely well-regarded column is carried in over 300 newspapers around the globe, and we are particularly delighted that he is doing double duty by sitting in on this panel this

afternoon. Mr. Broder, of course, will speak at 7:00 PM tonight.

Senator Gorton, whom many of you met earlier today, probably needs no more introduction from me, but I will digress just long enough to say that there are lots of things in Slade Gorton's career that deserve honorable mention, not the least of which is that, probably more than anyone else, he kept the Mariners in Seattle. I personally want to thank him publicly for that.

Judge Steve Trott has been a member of the Ninth Circuit Court of Appeals since his appointment by President Reagan in 1988. He worked in the Reagan Justice Department as the Associate Attorney General, which is the number three job in the Department. His responsibilities included, among other things, international terrorism issues. Judge, you haven't set aside any elections today have you? Just for the record, the judge was not on the panel that decided the California recall case.

Jim Brosnahan is a very prominent trial attorney from San Francisco with the firm of Morrison & Foerster. He is a noted First Amendment authority and is respected for his defense work, including providing defense for the so-called "American Taliban," John Walker Lindh.

Pat Shea, whom you met earlier today, has a very checkered past. He is a lawyer in Salt Lake City now, former Interior Department official and Intelligence Committee staffer.

Last, but certainly not least, Pierce Murphy, Boise's Community Ombudsman, the first person to hold that position. Please welcome the panel

This is not going to be an entirely conventional panel discussion, but rather a dialogue based on a set of circumstances that I will outline for the panelists, circumstances that I hope they will respond to — based on their experience, their perspective, and frankly how far they want to press the moderator. When we run the course of that dialogue, we'll have a more conventional discussion about many of the issues that we've been probing so far today.

So let me set the scene for this hypothetical. Put yourself in the not-too-distant future in the United States. It is a very, very tense time. The global war against terrorism is continuing and so are violent attacks on American soil.

The most recent attack occurred just a month or so ago in San Francisco. A bomb was set off in a transit station. There were many casualties. There was apparently a related series of incidents in a number of com-

munities all across the western United States.

The political response in Washington, D.C. by the Administration and by Congress was to heed the call for additional law enforcement and judicial efforts against terrorism. Among the changes produced by the Congress — and I promise I didn't steal Vice President Mondale's line here — was administrative subpoenas, which did not require the approval of a judge or a grand jury. There was a provision additionally to routinely deny bail in order to keep terror suspects in custody, pending trial. Broader definitions were created for when the death penalty might apply against terrorists.

Pat Shea, very much out of type, is the FBI Director today. Mr. Shea, your agents have determined that the suspect, who could be the bag man, the financial brains behind this recent terrorist activity, has been located. We know he is somewhere in Every City, USA. We're not quite sure where he is in the city, but we think he may be holed up there somewhere. You're going to go after him, aren't you?

SHEA: Absolutely.

JOHNSON: How are you going to do that?

SHEA: After 9/11, we, with the approval of the Attorney General, implemented what we call SOILHTT, which stands for State Operation Intelligence with Librarians, Hotels, Truckers and Taxi Drivers. We believe that digital and advanced technology is very useful, but at the end of the day, we needed to rapidly expand our human intelligence capability. So we have activated the SOILHTT network in every city and believe that through the reporting from the hotels and taxi drivers, we will get information. We also brought in a group of young hackers, who have done an extraordinary job for the FBI in being able to access digital records for credit cards. We have put that operation into effect in the city and are now able, in real time, to keep track of every credit card that is used, as is required at all the hotels now, of who is checking in and who is checking out, when they checked in and when they checked out.

We are trying to expand it to the telephone operation, but given the confusion with the cell telephones, we are not as successful there. We believe, however, that within the next ten hours, we will be able to identify the hotel.

JOHNSON: But to get this man, Mr. X, are you going to talk to John Deutch at the CIA? He may have some information on this fellow.

SHEA: Well, he may, but that's another agency, and we're having a little problem up on the Hill about our budget. Quite frankly, I think the FBI is the agency that needs to handle domestic intelligence, and if I start asking for favors from the CIA, I think they will begin asking favors from me that I am not willing to fulfill.

JOHNSON: Let's assume that this terrible suspect has dual citizenship. He is a U.S. citizen, but he is also a Saudi citizen. Would that make any difference?

SHEA: If I went to the CIA? Yes. They would have better resources on Saudi Arabia, although since World War II, the Bureau has been very successful at placing our agents overseas as a preemptive measure because we need that intelligence overseas before we can do an effective job domestically.

JOHNSON: Mr. Deutch? Can you help the FBI here?

JOHN DEUTCH: Mr. President, in the way you've posed this problem, I don't see a basis for involvement by the Director of Central Intelligence. I've heard nothing about serious foreign involvement in what you've said . . .

JOHNSON: This guy is potentially the bag man for a whole network of terrorists.

DEUTCH: Let me finish, Mr. President.

JOHNSON: I still run the cabinet meetings.

DEUTCH: It's important for directors to speak out. You haven't laid the basis for an act of catastrophic terrorism involving foreign subnationals or states involved directly in the security of this country. I'm perfectly happy, in this instance, to step aside to whatever capacity the FBI may have in this matter, which I suggest to you may be quite little.

JOHNSON: The Attorney General really wants to go after this Mr. X, Mr. Shea and Mr. Deutch. Why don't you call the U.S. Attorney in this particular juris-

diction and cut him in on what your intelligence tells you about this fellow? Talk to Mr. Moss?

SHEA: I'm a little worried, Judge Trott notwithstanding. Every city is in the Ninth Circuit, so we're never quite sure what the standard is. But I have good evidence that the bag man has financed the explosion in San Francisco; we've traced that money. Our librarian was good enough to give us some information about some books that the bag man's family had checked out, and they were on financing explosive activities, so we think we have that done. As the U.S. Attorney, what other directions would you give me, given that you'll be the one prosecuting this case?

THOMAS MOSS: Well, Mr. FBI Director, since you haven't given me very much, it doesn't sound to me like you have a direct link to this person. If you have information that can help identify the bag person, I suggest that we have him picked up, advise him of his rights, and see if he'll talk to us.

JOHNSON: We know he's in the city. We just don't quite know where he is. Why don't you use this new administrative subpoena and subpoena all the hotel records or all the airlines records of people moving in and out of the city, for example?

MOSS: Well, because the administrative subpoena wouldn't give you that broad an authority. If we're operating on today's law, you couldn't use an administrative subpoena to go after this person.

JOHNSON: Well, let's put up the new law. This is the new law we are operating under. It says, "In any investigation concerning a federal crime of terrorism, the Attorney General may subpoena witnesses, compel attendance and testimony of witnesses, require the production of records, books, papers, documents, electronic data." Why couldn't you go after the hotel records under that power?

MOSS: If we had probable cause to believe a certain hotel had records to lead to this person, that is what we would recommend they do, but you don't just go out and get subpoenas for every hotel in the city to see where everyone is staying. That would go beyond the authority that we consider vested under this law.

JOHNSON: OK. Let's assume for a moment that

we have a good indication that he is at a particular location. Then what would you do, utilizing this new tool that Congress has just given you?

MOSS: When you say a particular location, are you talking about a large hotel?

JOHNSON: Let's say for the sake of the discussion that he is in a large hotel.

MOSS: If he is in a large hotel, I would recommend that the FBI go to the hotel, talk to them, and see who is at the hotel. They may or may not volunteer the information because people in those situations are concerned about civil liability. The administrative subpoena authority was created largely to protect people who wanted to give law enforcement information.

JOHNSON: But time is of the essence. This guy is very mobile. He might be gone by the time you do all that.

MOSS: Well, that's the way the system works. You're going to have to go in there and see what you can find out. If you arrive at some specifics, then you go after that specific information.

JOHNSON: Mr. Shea, as an aggressive FBI Director, are you satisfied with that?

SHEA: I might try to see if I could find another U.S. Attorney in another jurisdiction, but I think I could persuade him with the evidence our agents had brought together from our group of hotel, taxi, and truck operators, and I probably have a few things on the hotel manager that would help her cooperate.

JOHNSON: Mr. Brosnahan, does any of this bother you?

JAMES BROSNAHAN: Not until I hear some evidence. I haven't heard any evidence yet. Sometimes when you hear a discussion like this morning, it's almost like we're getting ready in America to say that having actual evidence — witnesses, documents, videos, things that prove things — has become a kind of outmoded technicality. I'm with the U.S. Attorney on this one. He's not ready to move on this one, and I understand. More credit to him.

The second thing is that if Attorney General

Ashcroft has declared in a public way on national television that the person has done something, then I know he is innocent.

JOHNSON: I wonder if you would feel differently if these were the facts. Let's assume for the moment that we have found Mr. X in this hotel. We have an administrative subpoena that has collected up his laptop, his cell phone. He didn't have much else with him. Those would be potential pieces of evidence, would they not?

BROSNAHAN: Yes.

JOHNSON: Is there anything wrong with that?

BROSNAHAN: It would depend on how they are obtained. Every officeholder in the United States takes an oath to follow the United States Constitution and to protect the country from enemies foreign and domestic, and that would include anything that they're doing. If you ask me, under present law, it would depend on how they obtained it.

JOHNSON: We're operating under this law that says the Attorney General can just issue one of these.

BROSNAHAN: Well, that's a good start for the government. The question is: Is there a Constitutional argument that can be mounted against it? Maybe the most important aspect, seriously, will be the atmosphere in which the request is made. You have described the decimation of the city in which I practice, and I am in front of a judge who is a human being, surrounded by the mourning, which is occurring there as it occurred in Virginia and as it occurred in New York City. Will I get a judge to throw it out on a technicality? The answer, seriously, is no.

JOHNSON: We use these administrative subpoenas all the time in civil cases. Would it make any difference to apply them to criminal cases?

BROSNAHAN: I think there is a big difference. I've thought about this. Is this a serious problem that is being proposed? I think it is a problem. A civil matter is for a certain purpose. Here the purpose is to conduct a criminal investigation, which is a much more serious thing. One of the great cases in the U.S. Supreme Court came right out of this part of the country where

the government tried to go into a meat packing plant without a subpoena, without a proper process. This part of the world — as you know because you all live here — breathes freedom, OK? This is going to be the last place to go, right here. So you're safe here. But the meatpacker said, "Hell no!" Which is what, in the past, America has sometimes said. It went to the U.S. Supreme Court, and the Supreme Court said, "You're right. You can't do it. It's not lawful."

JOHNSON: Judge Trott, what's going on here?

STEPHEN TROTT: The administrative subpoena, I think, is a major mistake because one of the structural ways that we deal with the inclination of human nature and people to do the wrong thing for the wrong reasons is by putting in a series of checks and balances, and we've always required in almost every respect to require one branch of government to oversee another. The administrative subpoena basically gives all the power to a single branch of government, and were I a United States Attorney, I wouldn't use an administrative subpoena. I would go the old route of getting court approval, even if those were on the books, until I had a definitive decision from the courts saying that those were Constitutional and appropriate under certain circumstances.

If you're faced with an emergency, of course, you don't have to wait for any subpoenas. The Supreme Court has made it very clear, as Justice Jackson said a long time ago, that the Constitution is not a suicide pact, and if law enforcement is faced with a dire emergency, they can run into a house and grab the bomb or the dying child or whatever it is. So I would be very wary of administrative subpoenas until I had a definitive decision from the United States Supreme Court telling me whether they were appropriate or not.

JOHNSON: Judge Duffy, stay with me for a moment. Let's assume this administrative subpoena has been issued. Mr. X's laptop has been taken into custody. All of this has happened without anybody going in front of a judge. I thought judges were supposed to issue subpoenas.

KEVIN THOMAS DUFFY: Judges at times can issue subpoenas, but I agree with Judge Trott. Who is going to use this thing if it is really unnecessary? In the factual situation you have given us, it is really unnecessary. The U.S. Attorney can appear and make

an application, or he can get the Grand Jury to issue a Grand Jury subpoena for the same purpose. Why do they need an administrative subpoena?

JOHNSON: I'm concerned that might not move fast enough.

DUFFY: Who? The judge or the Grand Jury?

JOHNSON: Either one.

MOSS: When I was a state prosecutor, we ran into that quite a lot, trying to find a judge after 5:00 PM, and they were all gone. A lot has been done with telephonic warrants and all the rest, but I'd restructure the system so that if law enforcement is going to be required to go to a judge to get assistance, there are judges that are easily accessible by telephone or in person 24 hours a day. I think that's a necessity, especially after September 11th.

DUFFY: Well, you know, that is very surprising to me because I sit in a District Court where we have a fair number of judges. I was just on the Emergency Court. I was available 24 hours a day, plus a magistrate.

MOSS: That's what I mean about one of the changes, but that isn't true in a lot of the jurisdictions, and it's especially not true in state courts where you still can't find judges after 5:00 PM.

DUFFY: I'd like to say something about state courts, but my wife is a state court judge, and I wouldn't dare.

BROSNAHAN: So is mine, and she is working all the time.

TROTT: If you're going to have to go to a judge, the judge better be available all the time. I agree with you.

JOHNSON: Mr. Brosnahan, are you as sanguine as these two judges that no prosecutor would ever use this administrative subpoena?

BROSNAHAN: No, I'm not, although I will say that if you get right down to it, there are so many prosecutors in this country who go to work every day and

do the job right. There are people in the Department of Justice who are terribly concerned about the issues you're discussing in this wonderful gathering here today. So I don't know. If it's Dave Kelly from New York City, I'll talk to Dave. He may not do this. He may think this is not appropriate, but more important is the competence issue, which we weren't able to discuss after 9/11 because it was too serious and it's our president and we have to win.

The competence issue is: "How good a job is being done? How many people speak Arabic or Pashtun, if necessary? Not that we should know this, but it should be done. What about the detectives on television who solve crimes in one hour. One hour, OK? The anthrax case is a very difficult case. The Unabomber took 17 years. You have to be honest about it. It's not easy. How good a job are they doing with what they have? And Washington — I speak as a way outsider in California — is best at distracting attention from the key issue. The key issue is — and great Americans are back there working on it as we speak — how good a job are they doing with what they have? We're all talking about what they need to do the job.

One more thing, which I have thought about. The other things I hadn't thought about. This issue is so interesting because every other issue divides us — race, age, economics, whatever. There is one group on one side, and one group on the other. Everybody in this room and everybody in the United States has a personal interest in their personal security — that it be done right and that we really find out what's going on. You get the sense sometimes that there are people in Washington who don't understand that we are following this pretty closely.

DEUTCH: I would like to say a word about competence, which I think is at the core of this. We all want to be protected, and the fact of the matter is that there are really two issues here. One is how do we build the best competence? The other is how do we protect the rights of people?

Let me say a word about competence. The notion that the law enforcement system is going to develop competence in this area is, in my mind, suspect. Let me give you an example.

In 1995, we had an explosion in the barracks in Saudi Arabia, the Khobar Towers. The reaction was that this was a crime. We sent Louis Freeh, the director of the FBI, to Saudi Arabia to investigate this crime with his Saudi counterpart, — no Thomas Jefferson

— and to look at it as a legal collection, not only a collection of information but understanding how to protect the American people. You can't do it with a national security rubric on one side and a law enforcement rubric on the other side. The law enforcement piece is (a) important to protect American rights and (b) important in those cases where you want to bring somebody to a court of law. But the principal thing is to build competence, and it can only be done if you build one organization that will collect the intelligence for you, subject to the rules that are set out by the judges here and others about what is proper behavior.

But we don't have the competence because we have two different systems, and the FBI, for all of its greatness, is never going to be able to collect information on complicated foreign terrorist groups because they have a culture, an education, and a capacity which goes to law enforcement and bringing people to justice, not collecting information which, over time, will accumulate to understanding catastrophic threats to the people of this country. I would be happy to help my friend, Director Shea, build a system for competence, but I think there has to be one national system, whether it is in the FBI or the CIA or somewhere else. Competence is the issue here.

MOSS: I think there are a couple of things that we need to clarify. The administrative subpoena is the subpoena the FBI uses. There is a good chance they wouldn't even come to the U.S. Attorney and ask for an administrative subpoena. They know they can do it, but it's very limited in the situations in which they do it. It's limited to four circumstances: health care fraud; sexual abuse of children; false claims against the United States; and threats against the president. Those are the only cases in which, currently, an administrative subpoena can be used.

Take health care fraud. One of the reasons that they allow it for those cases is that you have a criminal aspect and a civil aspect to that case. If you go strictly with a Grand Jury subpoena, then that's secret, and you can't use the information you get there in a civil case. You can't use it because it's a secret procedure. I think that's why the law developed in such a way that you can get the information, and the government can go after the dishonest doctor, who is defrauding the government. At the same time, the criminal side can look at prosecuting him. I think that's important to recognize.

My experience with the FBI is that they only use

subpoenas to get information they could probably get without any subpoena. But they have a person there who wants to cooperate with them but is afraid they will get in trouble civilly, so the administrative subpoena guarantees them immunity from a civil suit if they give up the information.

In other words, you could walk into this hotel and say, “Is there a guy staying in your hotel by the name of such-and-such?” That person could tell you that without violating anybody’s rights or any rule of law. Often they don’t want to do it. So you give them an administrative subpoena; then they do it. The penalty under the current law, if you don’t give up the information in response to an administrative subpoena, is the FBI then has to go to the U.S. Attorney, go to the court, and petition for an order to require the person to give it. There is no penalty for not coughing up the information in an administrative subpoena.

The new law is simply applying a law to terrorists that now applies to fraudulent doctors and people like that. I would suggest that if it’s good enough for doctors, it ought to be good enough for terrorists.

JOHNSON: I want to come back to Dr. Deutch’s point about competence. Dave Broder, it seems to me that the crux of at least some of this argument turns on the concern on the part of some of the American people that the government will go on some kind of a fishing expedition, that your personal information will be too readily accessible to the government, that they will have access to things they really don’t need and that aren’t going to help us in the war on terrorism, but that might reflect badly on me, John Q. Citizen. Is that part of the debate?

DAVID BRODER: Of course, it’s the heart of the debate because people know too damned much about us already, and we don’t particularly want the government messing around in our lives, sopping up even more information. We do want to be protected, and that’s the conflict, of course, that you’ve been dealing with all day here.

JOHNSON: How about this question of competence? You all seem to be discounting the fact that these administrative subpoenas, should they become law — and the language I put up on the screen a minute ago, by the way, is right out of the law that has been introduced in the House of Representatives — could be used in these circumstances.

Dr. Deutch is making the point that we really ought to be talking about the competence of our intelligence-gathering organizations.

Senator, where do you come down on all this? You touched on all that this morning in your opening speech, but is it a question of competence more than differently applying the law?

GORTON: First, I’m a bit restless with your entire hypothetical because I don’t know any of the background of the individual who is suspected of having engaged in this activity or how it is that immediately after he’s done it, we now know what hotel he’s in and in what city, but we didn’t know enough to stop it in the first place. There was obviously a failure there at some point because the primary function of our government and of our agency should be to keep it from taking place.

In some respects, your hypothetical might be more difficult to deal with if we simply suspected that this guy was about to engage in an activity of this sort. Having given you those provisos, I agree completely with the former head of the CIA, Dr. Deutch. We do have a serious question of competence, but we also have a natural and probably healthy American view, perfectly expressed by Mr. Brosnahan: We know a lot here, and those fools in Washington don’t know a damn thing and simply get in the way.

I don’t think that’s true. There is a question of competence, but we live in an extraordinarily complex world. The qualities of foresight and imagination, which are perhaps the most important characteristics of people who will work for an intelligence agency — as against a law enforcement agency trying to put together what happened after the fact — and of seeing the world from a different perspective are very difficult to find. One of the most important duties of the people who are there to protect us is to find those people, to recruit those people, to give them enough recognition so that we do have highly competent people. If I were to exhibit a prejudice, as I have, it would be that I would put an even higher value on the people who are trying to prevent these happenings than I would put on the police officer or the FBI officer who is going to catch them after it’s done. The very fact that he has to catch them after it’s done shows we failed.

DEUTCH: I think I have another way of helping Pat Shea...

JOHNSON: He needs lots of help. He's an inexperienced FBI Director.

DEUTCH: ...partly because I'm an MIT guy as well. It is possible that we can construct a computer system to do overnight data mining. Basically, every night, we will know where everybody is registered at every hotel, Hertz, airlines — so that when a question like this comes up, especially for an anticipatory act, there will be a database we can mine which will inevitably mix foreign and domestic individuals and which will be quite thorough, exhaustively so.

JOHNSON: Sounds like a great federal grant for MIT.

DEUTCH: Let me tell you that even in the more conservative parts of the country like Massachusetts, as opposed to here in Idaho, this is not a popular thought, but it is a potential reality.

What I want to stress in the most severe terms is that I do not want any FBI or law enforcement or prosecutor anywhere near such a system if we chose to put it into place. I want those guys to watch the people who are running that system, but if you start putting that kind of a collection strength in the hands of the law enforcement community, I think there is a real conflict. I would much prefer, if such a system were put in Mr. Shea's hands in order to protect Americans from perhaps catastrophic acts, that there be a separation of that activity from what the right rules are and whether they are being followed.

That's the core of my point: Get the FBI out of this intelligence business, let them do what they are good at, which is law enforcement, and, we hope, the Justice Department will worry about the rights of Americans. That's where I am.

JOHNSON: Mr. Shea, it sounds like the DCI is not going to give you the password to his new computer system.

SHEA: Let me ask a question then for the DCI. Once you've generated that information, how do you choose to present it to the policy makers who then can direct the FBI to follow up as a prosecutorial matter or to the U.S. Attorney for his follow up?

DEUTCH: I care about protecting American lives, and it is a very second order for me as a DCI to

bring him into a court of law. I care about protecting American lives. Bringing him to justice a long time after an act has been committed doesn't seem to me to accomplish that. I can't square those two notions in my head, but my primary purpose is protecting Americans, not bringing people, too late, to a court of law.

SHEA: So you take that information to the somebody in the White House you've been designated to give it to, and you let them run with it. What you see, in your judgment, is an abuse of power. Do you go to them a second time?

DEUTCH: You are kind to say that I go to the White House. I just don't do it on my own, which is another story of the past. The answer is, yes, I quite strongly believe that, as the DCI, I work for the President of the United States. The director of the FBI has a slightly different circumstance. I report all my activities, as required by law, to these Select Committees. But if I go and I find a bad person in the White House, I don't go to him again.

BROSNAHAN: I want to make a couple of points. What is it we didn't know before September 11th that requires a restructuring of the government and the creation of an entity that we need to make sure does not become a secret police? We have to be very careful with that.

MI-5 was mentioned this morning as "working." Anybody out there of Irish-American extraction? That's a whole different subject, but here did we not know that Osama bin Laden had declared a fatwah against the United States? Did Judge Duffy not sit in a case in New York that had something to do with it? Did President Clinton not send missiles in 1997 into one of the camps in Afghanistan? What is it that we didn't know that requires administrative subpoenas, holding Mr. Padia in jail without a lawyer, which is unprecedented.

A great book to read, by the way, is *Nazi Saboteurs on Trial*. It will cheer you up. The Nazis that were arrested in World War II got lawyers, and they had evidence. Then they were electrocuted. The process we are grasping for here today was met. The lawyers felt good. Justice Stone felt OK. He had helped Roosevelt do what they wanted to do, but there had been some process in accordance with the Constitution.

My only background and knowledge about

Afghanistan comes from representing one individual, none of which information is privileged or secret. The Saudis were all over Afghanistan. They were everywhere. There are charities in Chicago. They have money. That's going to be one of your problems in the hypothetical. Was this guy working for a charity? He's raising money for people. There are these issues.

But it's interesting to me, just as a citizen, that we are distracted from the real issue. The real issue is how to protect ourselves. We knew everything we had to know. That's my opinion. It's not classified. We knew everything we needed to know. That's true of the Clinton Administration and the Bush Administration. It's not a partisan remark. So before we say that throughout the United States the government is going to have roving wiretaps that you might be on, and that they may have a problem with that, you should remember that this issue is not a spectator sport. You may speak to someone about a confidential matter, and it may be not only listened to by agents but recorded. Have you said anything on the phone in the last two years that you would not like us to play now? So this is for all Americans, and it's serious stuff.

JOHNSON: I'd like to know how the judges here feel about Dr. Deutch's computer system and whether it could be made to work in the way he would like to see it work to protect Americans but also to protect civil liberties. Judge Duffy?

DUFFY: I'm fearful of it, but we almost have one of these systems set up. When was the last time you used your American Express card? Every time you use it, it enters into a computer. My wife and I got an American Express Delta card because she likes to get miles. Everything is recorded: every place we go, every time we fly, every time we go to a hotel, every time we have dinner out. It's all there; it's just a matter of who gets to use it. You think American Express isn't using it now? I think they are. That's why you get those annoying phone calls, just when you sit down to dinner, telling you how to do better on your next flight.

TROTT: To be facetious, why don't we plant a computer chip in every child at birth and every immigrant that comes into the United States? Then we could have a satellite and a printout, and we could tell where everybody is with a computer chip. Obviously, by reducing it to that absurdity, it raises the question

of how much are we going to distort who we are, how we got here, and what we enjoy in terms of the blessings of liberty to cope with these problems?

It's easy to over-react and to sell out the principles that make us a great nation. I think we have to be very, very careful when we use anything that intrudes on our personal liberty, that it's carefully balanced against these principles, that it's not unreasonable, and that it's not overkill.

Vice President Mondale mentioned a while ago that we locked up all the Japanese-Americans during World War II. That was a reaction of fear, and fear caused us to do something that we look at now and say, "Gee, that probably was a really big mistake." With the lessons of history clearly in our minds, we have to look at every one of these proposals — computer systems, computer chips, administrative subpoenas — and ask ourselves, "Is this absolutely necessary to protect these principles, or is it overreaching, and are we selling them down the river?"

So far, terrorists have done more than anyone I can think of to take away our liberties. We had a tremendous thing going for us prior to 9/11, and we've dropped back a couple of notches. If you go to the airport now, I think you'll see what I mean. I showed up in San Francisco the other day with a letter in my suitcase "We searched your suitcase while you were eating a hamburger in the airport," or something like that. It's true. I think we're now feeling very edgy. The Attorney General — and I don't say this in a negative way — is on the tube and many people in Congress are saying, "We need this, and we need that." Every one of us gets nervous when we hear these things. They sound like they are invading our liberties and our private lives. To a degree they are. You have to look for that balance.

As I said before, the Constitution talks about *unreasonable* searches and seizures. What is unreasonable depends on the circumstances. Right now, we have a difficult task on our hands. It's called "preventing these kinds of terrorist attacks."

By the way, terrorist attacks can touch off world wars. Look back at history. If the September attacks had gone down as planned, it's probable that there would be no White House, no Capitol Building, and five planes might have hit on the west coast at the same time. I suggest that, under those circumstances, if that had been pulled off the way it was originally planned, somebody may have very well have launched a nuclear attack on Afghanistan.

So it's not only important to prevent these attacks simply because they are terrible, but they lead to terrible things including the erosion of our own basic civil liberties. So we have to be very careful that we don't overreact and sell these rights down the river and that we respond appropriately to the challenges that we face as we try to stop the next one. It's a tough task.

I might add one thing: I'm nervous about that word "competence." I'm not sure what is meant by that. I worked for 23 years in law enforcement, and I never ran into any more competent people in my entire life than the agents of the FBI. I won't stop here and waste your time with all the attacks that were prevented or all the arrests of terrorists and others that were made all over the world. I thought they were tremendously competent and also had a remarkable store of information on the various terrorist groups that we took apart. Using the rule of law and using prosecution, I personally was involved in driving two terrorists organizations out of the United States because they figured everything they did was under a wiretap or some kind of surveillance, so they left the country and went elsewhere. So you can use the rule of law and law enforcement to prevent terrorist attacks.

JOHNSON: Dr. Deutch, I want to go to the reporters and editors on the panel.

CAROLYN WASHBURN: It is a mess out there. We have rallies down the middle of Main Street against the new law. We have somebody tied to the flagpole on the top of the Statehouse in protest. Complaints are pouring in to credit card companies because somebody has hacked in and is charging things on somebody's credit card.

We do know something about the suspect because one of our FBI sources outed one of the hotel agents, and we know who the person is and where they are. We've done a little homework on them and can't figure out how in the world they could have done anything wrong. They are foreign nationals, they are in the country, they are here for education. As far as I can tell, they haven't been out of the city for about a week. We're confused about that.

Now the FBI knows that we have been on it, so they have come and subpoenaed us, which we're fighting because we don't want to share our notes, but they want our notes. We're pursuing all of those angles as well as the mess of the investigation.

As much as we're worried about violations of

everybody's privacy, credit card fraud, and all of that, we're worried about reporting on the quality of the investigation. This terrible thing has happened, there is a legitimate threat out there, and as much as we want to protect individuals' rights, we want to make sure that our government is doing the proper kind of investigation. The FBI and the CIA aren't talking to each other, aren't sharing anything. We think our local criminal intelligence unit has some stuff, but they're not talking to anyone either. It's a mess.

JOHNSON: Just another day in the newsroom. Andy?

ANDREW MALCOLM: The first thing I'd do is take the guy's name and run it through Google, which has the capability, unlike the CIA and FBI, to process a lot of information in 3/10 of a second. I was at the Little League game, watching my son play, when I saw the U.S. Attorney get a cell phone call and leave just before his kid came to bat, so I knew there was something up. I called the Chief of Police, and he said, "I don't know what it is but they told us to bring in the SWAT team right away." Then I would call him on his cell phone and say, "Now about the SWAT team... what's going on?" He wouldn't want to talk, and we might go back and forth a little bit. Then I would say, "OK, this is a big story, and I don't know all the details, and I don't want to mess up what you're doing. If you promise to tell me everything that's going on tomorrow or what went down last night, I won't put it in this morning's paper." But I couldn't find my editor because she is out playing golf with the judges. (I'm just joking about that.)

JOHNSON: One of the delicate balances here is the job that the press wants to do, which Carolyn helped articulate quite well. On one hand, you want to understand the scope of the investigative powers of the government, how they are proceeding to find these terrorist suspects, what kind of techniques they are using. At the same time, Mr. Shea at the FBI and other agencies of the government think they have a legitimate need to keep a lot of that information secret. They don't want to tip off other suspects out there that they might find. How do we strike that balance?

BRODER: Well, we start with our basic business: to help people understand what is going on. As Carolyn said, a lot of people are aware already that

something big is going on here. This is not a story we are going to keep out of the paper, so when I go to Mr. Shea, what I am going to say to him is essentially, "We are going to write about this story tomorrow because it is the talk of the town. You can make a decision as to whether what we write is as well informed as we can be or whether we are going to have to speculate a lot about it. If you are cooperative and make a case to me that there are some parts of this story that we should not write about, I am prepared to listen to that argument, but ultimately it will be our judgment, not your judgment, about what we put in the paper."

DEUTCH: Isn't that great? First of all, I don't take calls from reporters, but I will tell you what decides what goes in the paper is the publisher. Every time I've seen a serious problem, you call the publisher and say, "There is a life at risk," rather than a policy embarrassment. The press respects that. If you're in public office, my recommendation is: Don't talk to the press. It will get you into trouble.

JOHNSON: Mr. Shea, it sounds as though Broder has pretty good sources here. He is really going to work the story. Maybe we ought to wire up his phone and see whom he is talking to.

SHEA: A better idea would be to talk to his neighbors and probably have his garbage collector go through his garbage and see what we might find. There is another thing we ought to think about. The Attorney General has approached me, as director of the FBI, and indicated that his deputy is going to be leaving and that I ought to be thinking about applying for that position. He really is looking for some good examples of where, in the field, a good U.S. Attorney would prosecute with vigor the right to have these new administrative subpoenas. All those award systems are in place.

With Mr. Broder, what I would do is call him up. Unlike Mr. Deutch, I do return reporters' calls because I have ambition. What I would tell him is that we have three incredible leads into a potential future terrorist event involving threats to life and that if he goes with the story the next day, that will disappear. We would like him to cooperate and when we have the three identified to the point that the U.S. Attorney will begin to announce, he'll have an exclusive for the entire process.

JOHNSON: I thought you were going to say you would give the story to the *Los Angeles Times* then. Are you comfortable with that, Mr. Broder?

BRODER: I'm not comfortable with it, but it's the kind of transaction that I've seen play out. At that point, I would probably want to talk to my editor and publisher, because it is a little bit above my pay grade to make that decision.

DEUTCH: I have to ask a question here. So in fact, what happens here is that the reporter who originally called you will tell you, "I got this from a leak in your own agency." So when you then call the publisher and editor and say, "Please don't print this because a life is at risk," or "You've interrupted an important operation," they will say yes, but they will worry, usually correctly, that the leaker will go to another paper, and it will get published. Also a very important part of this is that the information often comes, for reasons we don't know, from leaks within the agency. A very serious matter.

MALCOLM: I was working for the Governor of Montana at the time, but when we arrested the Unabomber, we knew about it three hours before because the FBI had alerted CBS. There was a satellite truck sitting a half mile down the road from his house, and the sheriff was clueless. This is not necessarily the press making trouble. Internal things are the cause.

JOHNSON: Let's examine two other aspects of the power that the government could have under some of these changes that are proposed. Let's say that Mr. X's computer does turn up some suspicious e-mail traffic and that the FBI does arrest him as a likely participant or a bag man for the attacks that took place a month ago in San Francisco. Mr. Moss, you don't want him out on bail, do you?

MOSS: Well, based on what you've told me, I don't know whether I do or whether I don't. I need more information.

JOHNSON: He is thought by the FBI to be the specific bag man, the financier, for this network of terrorists that helped stage these attacks all across the west.

MOSS: I don't care what the FBI thinks. I want to know what their evidence is of that fact.

SHEA: Let me give you the evidence we have. There is a bank transfer from Saudi Arabia to the Dutch Antilles. From the Dutch Antilles, we have five leads into U.S. banks, and this individual is the only signator on the accounts. Two of those banks have money that went to San Francisco, and we have cash receipts at stores that carry the material to build the bombs. We think that there are three other sites in the United States where similar transactions are about to occur, and we don't want him to have access to any of those accounts.

MOSS: Then you're telling me that you can actually show that the money that came to him was used for the terrorist attack?

SHEA: The material that our explosive labs have demonstrated was used originated from the purchase with his money.

MOSS: With that kind of information, you bet. Let's keep him in wraps.

SHEA: And would you keep his wife?

MOSS: No

SHEA: Or any of his neighbors?

MOSS: No, not unless they are involved. If you could show a connection, that's another matter. But no.

SHEA: Well, in one instance, we found that there was another signature card. It had never been used, but his neighbor had signed and was of the same ethnic background. They were in the same charity for that ethnic background.

MOSS: That wouldn't rise to the level of bringing criminal charges.

DEUTCH: The charity cover is a big problem in this issue right now. A big problem.

JOHNSON: Mr. X really needs you right now, doesn't he, Mr. Brosnahan?

BROSNAHAN: Well, he might. Am I being asked to represent him?

JOHNSON: Yes, sir. He's on the phone. He says, "They've got my computer. They're detaining me. It doesn't look like they are ever going to go in front of a judge with any of this information relating to the computer." What do you do?

BROSNAHAN: Let me tell you what my standards are, and they are very low. But they're relevant. I remember Ed Williams saying in Washington, years ago, "If you don't control the case, you shouldn't be in it." I can't tell you how many times that has helped me. So is this somebody seemingly related to the Saudi family? Will I ever find out what's going on in the case? Will I control the case? If I'm not going to, I hope that I have the wisdom to let someone else do this case. That's number one.

Number two, which might be number one, is: Am I getting paid? Is this pro bono? Am I going to be cursed and threatened for no money? What's going on here?

Number three. It's an important scene. I would go down to the jail and take the metal out, take the shoes off, schmooze up the sheriff, go up into a little cell where this person sits where the government has put him. That's a scene that the defense lawyers see. When everybody is finished with all the policies and all the stuff, it comes down to somebody in a cell, and I would talk to him. I would find out whether this is somebody I want to represent. Is this somebody in trouble?

It is amazing to me, after 44 years, how often the defendants in criminal cases are not guilty of what they are charged with. They may be guilty of a lot of other things, but they are not guilty of what they are charged with. So is there a role that I can play for this guy?

The other thing I would do is talk to my partners and prepare them once again for this crazy Brosnahan effort, and I would be guided by their thoughts, including people in the New York office and the Virginia office. Here, your hypothetical is in San Francisco.

Here is another thing. If I emotionally couldn't do it, I wouldn't do it. This might not be the case for me. There are certain types of clients I just can't do, just for personal reasons. You're saying downtown San Francisco, where I commute and where my buddies are, and everything has been blown up. If I think I can't stand on my feet, question the government, and fight like hell for this person, then I'm not the person to do it, and I might say no.

SHEA: Director Deutch, a quick question. Using your model of pure intelligence, would it be appropriate — if you had seen the evidence that there was a very clear link between the money and the activity that caused the explosion in San Francisco — then for intelligence purposes only, to bug the interrogation room where the lawyer was going to be conferring with the defendant?

DEUTCH: The use of the word “pure” in relation to intelligence is certainly not a connection I’ve ever made. I don’t believe there is any circumstance where I, as Director, would encourage, approve, or allow that kind of activity to take place without following the law. I’d have Jamie Gorelick tell me whether I was good shape or not, since she was my Counsel of Defense.

BROSNAHAN: I accept that and have in mind when you served. It is being done now. My colleagues in the law are being listened to in their conversations with clients.

DEUTCH: It is certainly not being done by the intelligence community.

BROSNAHAN: Oh, no.

DEUTCH: What those other guys do...

BROSNAHAN: OK, I understand your point.

DEUTCH: It’s a very important point because I felt very strongly this morning that — everybody knows this — as a result of the reforms that have been put in, these activities don’t take place by the intelligence community.

BROSNAHAN: I agree with that.

WASHBURN: But you’re getting big pressure from the community because this terrible thing happened. Everybody seems to want to do the high-road right thing, but you’re getting enormous pressure. We came into this incident with already two-thirds of Americans saying that government intrusion on their lives is perfectly justified, given terrorist activity...

JOHNSON: ...as long as we go after the bad guys.

WASHBURN: ...as long as we go after the bad guys. Two-thirds of them are saying the media shouldn’t question you, so the letters to the editors are flooding in, abusing us for asking questions and abusing you for not using all of these new tools at your disposal. Especially if you have ambitions, how do you respond?

GORTON: Oh, come on. If you can’t stand the heat, get out of the kitchen. I spent more than thirty years getting abused by letters to the editors. That is so minor that it shouldn’t even rise to something that causes you to consider a different course of action.

WASHBURN: I didn’t say that we were considering a different course of action, but I suggest that I have seen public officials consider different courses of action under big public pressure.

GORTON: At one level at least, perhaps they should. Public officials are supposed to reflect the views of the people they represent. We do, obviously, have a Constitution that says that some things aren’t subject to the majority view, but a hell of a lot are. A public official who doesn’t respond to public criticism or public points of view probably doesn’t belong as a public official. You’ve got to make judgments as to whether or not it is valid under the Constitution, but it’s perfectly appropriate for people to say, “I want you, Congress, or you, State Legislature, to change the law and to provide me with more protection than I feel that I have now.” And you’d damn well better respond to that.

BROSNAHAN: I was just going to say that during the Lindh representation and reading history about the internment of the Japanese-Americans, many of whom were citizens, one of whom now sits on the Ninth Circuit, the First World War, and the Lindh matter, you could feel it. The image that came to mind is a very disturbing one, depressing even. What would it be like in this country after the third attack like New York? What would be the picture? The only thing I could think of to do — just to try to do something — was to talk to lawyers, the ABA, and to think about what that might be like. We have to capture the psychological imperatives on our leaders and on our judges. The most distinguished judge in the Third Circuit, whom I know and respect highly, wrote an opinion deferring to the executive.

These pressures are real, and they are enormous. If we don't handle them right as a people, they will sweep aside what we were trained as kids to believe was part of our country.

GORTON: That validates much of what John Deutch has said. The concentration should overwhelmingly be on the side of preventing these events from happening in the first place, so that we don't have to face that. Mr. President, I was deeply disturbed earlier in this conversation when you said, "We had all the knowledge we needed before 9/11."

BROSNAHAN: We did.

GORTON: We did not.

BROSNAHAN: This is my fantasy. People are really listening to me. I'm not just sitting in my kitchen...Go ahead.

GORTON: We did not know the locations of the nineteen men who actually engaged in that hijacking. There are those now who think in retrospect that we should have known it, had all of the handful of facts been put together by someone with real genius, but we didn't. We didn't know where those people were who were here with expired visas. We had no particular way of checking people who were applying for visas.

If we want a hypothetical that is far more immediate than the one that our moderator here has given us, it was just day before yesterday, I believe, that the *New York Times* reported that the Department of Homeland Security, with a several hundred million dollar appropriation, desires that whenever someone, a non-citizen of the United States, applies for a visa, that person's fingerprints will be taken and the visa will be computerized so that we know where that person is in the United States and be able to go after him or her if and when that person's visa has expired.

The ACLU has denounced that. I think that is an extreme over-reaction. Why shouldn't we know more about people who have asked to be guests in the United States and have no constitutional right where they are to come here? Shouldn't we be able to trace them and see whether they have outlived their right to be in this country?

BROSNAHAN: I would like to see the question of competence higher up on the food chain inside the

Washington establishment. I don't think we ought to just criticize agents because they didn't gather stuff. From a policy standpoint, I assume that at the Berlin meeting in July of the 6 + 2, which the former ambassador to Afghanistan told me all about and which is not classified, they discussed Afghanistan and what they were going to do. I assume that was part of a policy, and those who are in charge of policy should step forward, whether they be Democrats or Republicans, and say, "You know, we didn't quite act."

Number two. For forty years, I've been investigating cases on both sides. Aren't we going to go out and check where this guy lives? Aren't we going to talk to his neighbors? Aren't we going to talk to people who know him? Where did he come from? When did he come into the United States? Did he visit Afghanistan? By the way, he was at a camp. Do we have people on the ground there, the way did in Iran, as I understand it from reading public things? We had people on the ground there.

Why don't we go after them and not the American citizenry. Every time I take my shoes off to come up here to Idaho, they are catching me every time, but they don't have Osama bin Laden.

GORTON: My question, however, had nothing to do with any citizen whatsoever. It was visa applicants.

JOHNSON: A final comment, and then I want to pose another quick hypothetical.

SHEA: To me, a political leader has an obligation to reflect her constituency, but also at times — very important to the history of this country — to restrain that very virulent public opinion that can sweep away things. To my mind, it's the restraint we're missing now because the drums of war create a frenzy where you have to reflect the reaction rather than imposing some kind of civilized restraint.

JOHNSON: Mr. Brosnahan, a new set of facts here.

BROSNAHAN: Oh, good.

JOHNSON: The FBI has detained a citizen, a foreign national, in this country on an educational visa. He is studying medicine at a major research hospital, and at this research hospital, there has been an

anthrax contamination. He is being detained as a suspect in that case. As a foreign national, what is going to happen to him?

BROSNAHAN: Well, it's my area. Immigration is not really my area. I dabble in it, but I don't really know. I suppose the first reaction after 9/11 was to deport everybody, but a terrorist being deported and going to Canada and having coffee in Vancouver and then coming back is not a foolproof plan. So there may be a secret hearing in the Third Circuit but not in the Sixth Circuit, if I have it right. That will go to the Supreme Court, and that will be important. What evidence is there about what he did or why he should get crosswise with the law? What did he do?

JOHNSON: Can you get this guy's case in front of Judge Duffy?

BROSNAHAN: If it's deportation, I don't think so. Habeas, maybe.

DUFFY: Possibly habeas, but it would be a long reach, a very long reach. I don't think it would fly. I don't think I would have jurisdiction

JOHNSON: Judge Trott, what's going on here? What is going to happen to this foreign national? He is just a suspect. We don't know that he did anything.

TROTT: There would probably be the equivalent of an immigration hold put on him. He is subject to being held by the government until they figure out what they are going to do with him. People who come here on visas pretty much come here at our invitation and our pleasure, and if we decide to revoke the visa and send them back, that's a reasonably simple process that can happen fast. They're not going to send him back, but they're going to hold him for a time until they can figure whether they have a problem or not.

JOHNSON: It turns out that the local police have been shadowing this guy for a long time. Mr. Murphy, this fellow's family has come to you as the city's law enforcement ombudsman. They think he has been harassed because he is a foreigner. They want you to investigate what the police have been doing with their Special Intelligence Unit to harass this fellow. What can you do?

MURPHY: The first thing I would do would be to interview the family and try to find out what facts they have, what evidence they have, and what the basis is for their belief that the local police department was gathering intelligence...

JOHNSON: Well, there are plain clothes officers around the neighborhood all the time.

MURPHY: Prior to his detention?

JOHNSON: Prior to his detention. He's just a medical student.

MURPHY: Again, there would have to be, on the basis of the information I receive from the family, some specific allegation of wrongdoing on the part of the police.

JOHNSON: OK. The police watch him just because they don't like him?

MURPHY: No, obviously, they can't. So I think we talked earlier about the concept of fishing expeditions. As the ombudsman, I don't have the authority to go on fishing expeditions either, so the first thing I would need to have is some basis, offered to me by the complainant, to believe that there was a policy violation or constitutional violation by some member of local law enforcement.

JOHNSON: They think some of his mail has been intercepted; maybe there has been a wiretap. They are very, very concerned about this.

MURPHY: As I said, that would be my first step, as any time a citizen approaches our office, to begin a preliminary review with the information that the complainant can provide us, just to try and assess the information to determine whether it provides a basis to believe reasonably, if it is true, that there has been a policy violation or that the local police might have overstepped their authority.

JOHNSON: Let's say that the suspicion is that the local police had been sharing this information with Director Shea. He's going to help you, isn't he?

MURPHY: I don't think so. He may want to, but he probably and perhaps surely is prohibited under

federal regulations from sharing any information with me. So I wouldn't go to him, and he certainly wouldn't be coming to me.

JOHNSON: How is he prohibited under federal regulations?

MURPHY: Under federal regulations, my understanding is that I am not cleared for reception of intelligence information from a federally-funded intelligence arm or law enforcement activity.

JOHNSON: But you're the public advocate here.

MURPHY: With regard to the activities of local law enforcement, so certainly I can go to local law enforcement, those that I have local oversight jurisdiction over, and I can compel them to answer my questions. I can compel them to produce documents, evidence, and records, but as to the FBI or federal agencies, I have no authority to compel them to produce anything.

JOHNSON: Mr. Deutch, you could care less about his investigation, right?

DEUTCH: Correct. I have two different reactions here. First, if it's known that there is a foreign national who is in possession of anthrax at location X in the country, my first concern is not an orderly collection of evidence to present to a court of law or whatever you guys do. I'm concerned about whether there are fifteen other places in the country in the same circumstances. So my first worry is to get a warning out around the country and say to people, "There may be many places where this anthrax is in the hands of a few willful men and women who may try to perhaps poison locally."

So my first notion then is warning and protection, which is completely contrary to what you describe here, which is a secret collection of evidence in the custody of law enforcement officials, trying to hang this person or not. What about warning other communities where this anthrax may be?

Let me further say that if hadn't been for the really quite instructive anthrax letter problem in Washington, nobody in the community I live in would know how to spell anthrax. They wouldn't know what it is.

Indeed, perhaps the best example of the danger of careful custody of information in a law enforcement-

controlled investigation is the anthrax scare. It didn't say what is completely possible as a threat to America today: A group of determined people might bring in anthrax or, much worse, smallpox, and we discover it in Community One. How do we get possibly fragmentary information as to the possibility of anthrax out to other communities of the country? That's my concern. Defend the American people from harm.

There is a perfectly good case about how, if you track it as a legal problem to a particular defendant who deserves every protection under the law, you lose sight of the security threat to our communities. It's not that I want to violate personal rights to get at that; I have to figure out ways to advance protection to American citizens. It's a very real threat.

TROTT: The FBI does not see those two things as mutually exclusive. I was involved in umpteen situations where the idea was to arrest people, to stop crimes, and also to warn the community.

DEUTCH: It's a fair point. I just don't think the mechanisms are there.

TROTT: They are. I was involved in them for seven years in the federal government and for seventeen in the state government. We saw it as two sides of the same coin. We never, ever once said, "Oh, well, we can just look at this criminal case and ignore the possible dangers to somebody else." I never saw it happen in 23 years. Tom, did you ever see that happen?

MOSS: I never saw it happen. I prosecuted for five years, and I knew great FBI agents, fantastic ones.

DEUTCH: I'm not trying to speak to a particular special agent. I'm talking about the natural problem of weighing collection of evidence for a case versus the entirely different dissemination of information and warning to communities and making sure it is in place in different communities. I'm delighted if you've had that experience. It has not been mine — by a lot!

TROTT: One of the reasons is that there was an iron curtain drawn between the FBI and the CIA for a long time. That's one of the things that has been taken down after 9/11, so the agencies can now talk to each other and share information.

DEUTCH: If I can switch for a moment, certainly

in the area of counterintelligence, great progress has been made on this subject after Aldrich Ames. But if you look at counter terrorism — and I haven't looked at it in the last couple of years in any detail — I'm very concerned about whether it has been bridged sufficiently. But I am delighted that yours has been that it works smoothly. It is not mine.

JOHNSON: Mr. Brosnahan, let's go back for a moment to our detained suspect here. This guy is out of luck. You can't get him in front of Judge Duffy. His family, who is complaining to the local authorities, can't get any satisfaction. The guy is sitting in detention. What happens to him? Where is the due process for this guy?

BROSNAHAN: If we bring it to the current day, am I allowed to actually go talk to him? That's a big thing now. If I'm allowed to talk to him, at least I can think about legal things that I can do.

Mr. Padia, who has been mentioned briefly here is the central case to keep your eye on when you hear the Administration talking about what they want to do. Padia is a U.S. citizen, reported to be a Chicago gang banger, arrested, and put in a jail cell. No lawyer has been allowed to see him. Now it's over a year. Right? He is a U.S. citizen. He's been declared an unlawful combatant, which in our hypothetical — to come back to that — is not the case. This fellow has not been declared an unlawful combatant.

JOHNSON: So you might be able to get in to see him?

BROSNAHAN: Assuming I get in to see him, then I can start to think about the question of what evidence they have and so forth. He may not want to talk to me. I will ask him, "What have you been doing the last three months? Where have you been?" I give him the fishy, trial-lawyer look, and if he keeps looking at the shackles on his feet, I know that we have serious problems here. But I will do what I can for him. This is not my area, but I suppose I'm going to go to a hearing, even if it's in secret, and I'm going to argue: "You don't have anything. What have you got? You've got his credit card. He checked into a hotel in Boise, Idaho and attended some kind of conference. What have you got?" This is a healthy thing in the legal system. "What have you got?" That's what I want to know. Somewhere there is an immigration person

or a prosecutor, and I'll say, "What have you got?" They might tell me.

TROTT: Judge Duffy knows more about this than I do, but it would seem to me that the basic writ of habeas corpus, which is in the Constitution and protected by the Constitution, is always available at some level or another for somebody to go into court and say, "You've got the body. Show me your authority for holding the body."

So at the very least, in the case of the Nazi saboteurs, the lawyers were allowed to go into the court on a habeas corpus. Then you get into the question, once you get into the court, of the government having to make some kind of showing, under the Constitution and the law, that permits the holding of the body. Wouldn't you think somebody could at least come to you on a habeas and that you would have to look at the situation?

BROSNAHAN: Up to now, it's been the normal way, but then you have Padia.

WASHBURN: What do you do if the reason for holding him is a sham? Twenty miles west of here, Sami Al Hussayen has been sitting for five months in the Canyon County Jail and, as far as we know, will continue to sit there at least until January when he has a court hearing. He was theoretically picked up because they were sure he was involved in a terrorism ring, but there is no evidence of that. So he is being held because he had some wrong things on his visa application, so for that reason, he is sitting in the Canyon County Jail.

TROTT: I can't speak to a particular case, but theoretically, every time somebody goes into a federal court and says, "You've got a body. Show the authority for holding that body," the government has to show some lawful authority. If the government can't, the judge is empowered to say, "Let that person go."

JOHNSON: Mr. Moss, can you talk about this specific case?

MOSS: In a very limited way, but I can certainly talk about his reason for being incarcerated. The reason this man is incarcerated is that he was arrested on 12 charges, 8 of which could get him 25 years for each charge, depending on what the evidence is.

A hearing was held on his detention, and the judge said, "I'm going to rule this way. Number one, Mr. Al Hussayen, you've got to resolve your issues with INS." INS had put a hold on him after he was arrested on the felony charges. "Number two, if you get that straightened out, I will put you on house arrest in your home with all the restrictions. You can't have a computer and other restrictions necessary for the protection of society."

He then had an INS hearing before a federal judge. He not only had his criminal attorney there, he had one of the best INS attorneys in the northwest accompany him. They had a two-day trial. The INS judge said, "You lied to come into this country, and therefore you are out of status. You no longer have a visa." Given that set of circumstances, his attorney agreed that he should be transferred back to the authority of the criminal court and be detained. That's why Mr. Al Hussayen is in detention today.

His trial is set for the 12th of January, and that's not a very late date for a case as enormous as this case is. If you want to get into the terrorism aspects of it, go read the indictment. It's all there. It's public record.

JOHNSON: Andy Malcolm. Back to our terror suspect for a moment. Are you going to editorialize about this guy being detained with what sounds like very little recourse here?

MALCOLM: This one or the previous one?

JOHNSON: The one I posited, the one Mr. Murphy is trying to investigate but can't get anywhere with.

MALCOLM: Yes, eventually, but certainly not the night of the breaking story. A day or two later perhaps if we can get some independent explanation, assuming the reporters get it. If they don't, we'll go get it ourselves before doing an editorial.

I also might mention the subject to the publisher.

JOHNSON: Dave Broder?

BRODER: If this fellow's family is at all smart or sophisticated, when they get turned down by the city ombudsman, their next stop will be the newspaper office. They will go to you and say, "They are not doing right by our son. They have him locked up, we can't talk to him, and we don't know what the charges are. Can't you do something about it?" I would guess

you would assign your equivalent of George Lardner, who will drive them crazy with questions like, "Why the hell do you have this guy locked up? What is your justification?"

JOHNSON: What can you do, Carolyn?

WASHBURN: I think that's right. I think we would be the next stop. It's happened. We do the best we can to try to get to the bottom of it. In this kind of case, our best opportunities are interviews because we'll start the process of trying to get documents, but we will be rebuffed at every turn. So we will start legal proceedings to get documents that we have a right to but with the full expectation that it will take months or years to get those. Where we can get them, they will help.

MALCOLM: Another editorial comes into play to help there as well.

DUFFY: I have a problem with that. The prosecutor doesn't want to try the case in the newspaper. He wants to try it in the court. If he starts giving out interviews, if he starts giving out all of this evidence, then basically he is trying it in the newspapers. Then he shows up in front of a guy like me, and I say, "That's very interesting. You just had your case. Why do you bother coming to me? I can't get a jury here." All right? Without a jury, I'm not going to be able to hear the case. Do you want me to move the case to Camden, New Jersey? By the way, I once threatened to do that to a group of lawyers, and they said, "Oh, no. Judge. We'll withdraw the motion."

But that's what happens.

JOHNSON: Carolyn, do you care about that at all, that you may taint the jury pool? This guy really is not in good shape.

WASHBURN: To be honest, I really don't care about tainting the jury pool because I don't buy that we're tainting the jury pool. Every time there is a high profile case, somebody wants change of venue. It's very rarely given, and people always seem to come out OK. So I think it's mostly an excuse.

MURPHY: I just want to add that, even though the ombudsman's office doesn't have the authority to look into what the federal agents are doing, that

fact at the 11th hour when this individual is incarcerated wouldn't insert itself in trying to advocate on his behalf. Somewhat as Carolyn said from the newspaper's perspective, with regard to the actions of local law enforcement, the complaint wouldn't go away. While it might take months and maybe even years, we would relentlessly follow the complaint and finally get down to the bottom of whether local law enforcement followed their procedures and followed the requirements of the Constitution.

BROSNAHAN: From the defense viewpoint, you don't want the jury to hear the defense before they get in there for another reason, and Judge Duffy is quite right. The first word we are going to tell them is, "Nobody has ever heard this. I know you know about this case, but nobody ever heard this."

But there are exceptions. In Lindh, we picked our spots. There were only two. The Attorney General had made statements beyond what I was used to in pending criminal cases, and a sitting federal judge in the Eastern District of Michigan wrote a letter to the *New York Times*, condemning what the Attorney General had done. So we were kind of in the paper already. Finally, we put out this picture. It's a photograph of John, strapped to a gurney when we discussed theoretical questions about interrogation. He was naked, and he had this bullet in his right thigh, which was there for fifteen days after he was apprehended. It's a large, ugly bullet, which had hit metal before it hit him. This is about two minutes before he is interrogated by a single FBI agent.

Here I join the distinguished former chairman of the CIA in criticizing the FBI.

DEUTCH: I wasn't criticizing the FBI.

BROSNAHAN: OK, I withdraw it then. In any event, John did not want this put out because in the Koran, there is a discussion about modesty. You are not, man or woman, to expose a part of the body below your upper chest and above your knees. He didn't want to put it out. We did put it out, and we began to hear from people. "I don't care what he did; this is not right." It helped us a little bit in a hopeless situation of public attitude.

My point is what defense lawyers do. As we sit here today in Idaho, I have no doubt there are criminal defense lawyers fighting like crazy to do the right thing for their client, but the mood in some of these

cases is just extraordinary. It's the mood that governs change of venue.

They land prisoners at Dulles so they can try them in the Northern District of Virginia. It's a scandal. They pick the judges, they pick the juries, and it's a scandal. Let me repeat that word. It's a nice one, and you're not going to read about it in the newspapers, but it's a legal scandal, and they do it. What is a defense lawyer to do except to think about how to try to turn public opinion a little bit to the idea that this defendant we're talking about is actually a human being, a U.S. citizen, and has rights? Who's interested in that subject? That's the point of view from the criminal defense lawyer.

TROTT: When I was there, we landed them at Andrews Air Force Base. When did they switch to Dulles?

BROSNAHAN: When several judges were appointed.

JOHNSON: Senator Gorton, help us frame this discussion about the foreign national that's detained. How would you have us think about that person's rights and the responsibility of our system to that person in this environment of his potentially being a terrorist?

GORTON: Well, there is a continuum. Mr. Brosnahan has spoken about the most troubling situation, the one in which we are dealing with a citizen of the United States. We could be dealing with a foreign citizen here on a perfectly valid visa, perhaps even with a green card. We could deal with the situation that this U.S. Attorney is dealing with right now: someone here on an invalid visa or a visa that was presumably obtained by fraud. We could deal with someone who never had a visa at all.

There really is a continuum, and I think that continuum involves the status of the person. We can take the foreign combatant who was taken outside the United States to Guantanamo or one who has never set foot in the United States. It's at least valid to consider that different rules apply, given those different circumstances with obviously the greatest degree of consideration having to be given, it seems to me, inevitably to a person who is a citizen of the United States.

DUFFY: I tend to agree that we have to have something for citizens and have judicial oversight

of what's going on with citizens. In fact, I feel very strongly about that. As to the combatants, people who are out in the field fighting, give them the right that they have under the Geneva Convention, which, believe it or not, is the right to be heard by a military tribunal and nothing else.

I don't think, as we have some people arguing from time to time, that we ought to have the activities of the CIA and the FBI viewed from the point of view of the person, "the victim," and have that measured by, "Well, they didn't give him his Fifth Amendment rights, or they didn't do this or do that."

Let me give you an example. The Egyptian government arrested a defendant for a plot to kill the president of Egypt. They questioned and — I don't think there is any doubt about it — tortured him. He said, "Oh, I didn't plan to kill the president. I was here because I was running away because I blew up or attempted to blow up the World Trade Center." They said, "Oh wonderful, he made a complete confession." After they had the complete confession, they turned the matter over to the American delegation in Egypt, but the defense counsel, believe it or not, was heard to argue — and a great hullabaloo ensued over this — that the prosecutor could not use the confession he made to the Egyptians since they didn't give him his Miranda rights. Interesting, but I didn't accept it.

JOHNSON: Mr. Murphy, is there anything we could do to change your ability to look into this case we've been talking about? What would it require to give you, as an advocate for the citizen and the public, more access to information relating to these kinds of situations?

MURPHY: In terms of the local level, the only question that is still out there is the ability of the ombudsman's office to look into local intelligence files. There has been a debate about that. We requested a waiver from the U.S. Attorney's office and were denied that waiver. There is a city ordinance that gives me access to those files and that access has not yet been tested. If we didn't expand the authority beyond local law enforcement, that would be the one area where there is still a question out there.

JOHNSON: We want to open this up for some of your questions, but I have at least a couple more topics I want to touch on briefly. Out of the realm of the hypothetical, John Deutch, I can't get you here and

not ask you about the imbroglio of the last few days in Washington, D.C. with the alleged outing of a CIA operative. Tell us your reaction to that, how serious it might be, etc.

DEUTCH: I have no knowledge of the specifics of this case, but it strikes me as being the kind of thing that is invented in Washington, bruted about, and has no particular consequence one way or the other. It will go away. I don't think it has any significance. That's my own view.

JOHNSON: Dave Broder? You guys have been spilling a lot of ink for a story that will go away.

BRODER: That's our habit. I don't think this one has large life, largely because I don't think we are ever going to know the names of the specific people who were making these calls to reporters. Absent that, this story will go away. It reflects oddly to me on the purported purpose of the Administration in doing this. They had a public relations problem with a seemingly credible, experienced diplomat coming along and saying, "I went there, and I told them that there was no evidence to support this notion that there was the yellow cake going from Niger to Iraq." That was a public relations problem for them.

Where in their mindset they decided they could minimize this story by revealing that the wife of this diplomat worked for the CIA is the puzzling part to me. It isn't as if she worked for the Democratic National Committee, and even in Washington, I think people are capable of making that distinction.

JOHNSON: Andy Malcolm, what's the view from the left coast of this Washington story.

MALCOLM: Speaking on behalf of 35 million Californians, we're a little bit busy at the moment.

JOHNSON: Did you say dizzy or busy?

MALCOLM: Yes, dizzy and busy. I guess I'm in David's camp on this one. It reminded me of the episode in "The Pirates of the Caribbean" this summer where Johnny Depp is a pirate, doublecrosses the good guy, and gets his sword back. The good guy complains that he was doublecrossed. Depp says, "Pirate." It strikes me the same way, "Spies, hello."

But in terms of a manipulation through a leak

— and I've read several versions, which gives me great suspicion — if it happened generally that way, it's extremely clumsy. It would tell me, from some limited experience — not that I've ever leaked anything — that it's a freelancer. It's very clumsy.

First of all, if you had several people doing it, that's too many tracks. Second, if several people called several people, that doubles it. So if one person called several people, that's still a problem. Where is the exclusivity in that? You don't call the second guy until the first guy doesn't do anything. To have one or several people call lots of people doesn't wash. I know nothing about the specific case beyond that.

I have seen similar situations where somebody is sitting as an aid in a meeting and hears people complain about this guy. They say, "By the way, his wife is a CIA agent." The aid talks to a friend at lunch, who goes back to the Hill and mentions it. Not that it was leaked intentionally to do anything, but it goes back and becomes the gossip in the place, which is currency. We all like secrets. I loved secrets on the playground when I was in third grade. I know something you don't know. That becomes a currency that is exchanged, my experience suggests, in centers of government, most particularly in Washington.

JOHNSON: John Deutch, apparently there is a great deal of outrage in some sectors that they outed an operative, destroyed her sources, and perhaps even endangered her life.

DEUTCH: I don't understand this sheet of music on any one of the lines. First of all, you don't usually find an important case officer in Washington. That's the first thing. There is a whole set of circumstances here. I don't know everything about this individual, but it just doesn't strike me as being an authentic issue. I guess it's part of the chatter that comes in the public and in the press about intelligence. Everything is exciting and interesting, but it does not go to the core of any important issue that I know about. Just none. There is nothing about it that I think is important in relation to the issues we have discussed here today.

JOHNSON: Senator Gorton? Same view?

GORTON: I don't know that I know enough about it. I was just going to ask David Broder. At least one of the few stories I've read about it indicated that her assignment in the CIA wasn't one that was pro-

tected in any event...

DEUTCH: That's my point, too, sir.

GORTON: ...which means there is nothing to investigate.

TROTT: I was in charge of a lot of these things, and the big thing to watch out for is something like this simply turning into a partisan political spear. Both parties, since the Nixon Administration and since Watergate, think that if you can get an independent counsel appointed to investigate the president, that gives you political advantage. So it's like a game back there with these things. They start demanding an independent counsel for political reasons and not for reasons really related to the law or to national security. I'm not saying that nothing happened here that violated the law, but too often, the independent counsel thing simply became a partisan political effort to try to overturn the person in the White House. It got very much out of control.

DEUTCH: That's the reason the law was not extended.

TROTT: That's why it was knocked off. It was being abused rather than used properly.

BRODER: As I said to you at lunch, that would be consequential if somehow this revived that independent counsel law. Getting rid of it was one of the few good things that you can actually say Congress has done in the last few years.

WASHBURN: The real core in all of this is how ready people are to be distrustful of their government, which is why all of this openness is so important in the first place.

TROTT: Part of that is the legacy of the Watergate era, Richard Nixon, and the kind of stuff that the Church Committee uncovered.

MALCOLM: I would suggest another aspect to it. Of course I went into government after 26 years in journalism. Governor Racicot used to always introduce me as a "recovering journalist." I found accountability to be the ultimate defense. That is, if you could be open, then it's been there all this time. So then it's

not your responsibility for hiding it; it's somebody else's responsibility for not looking or not finding or whatever.

We had some disputes in the state administration — nothing to do with national security — over openness. I went to the Governor, and I said, "Now you have five kids. When you go home tonight, if four bedroom doors are open and one is closed, what do you want to do?" He said, "Well, I'm going to look in the fifth one." I said, "Right. Do you want to fight this every day for four or eight years?" He said, "No."

The next day, he issued an executive order and totally turned the presumption around. That is, you didn't have to prove you had a right to get the information. All information was open. It was up to the state to prove that something was proprietary and should be kept secret. He also opened his cabinet meetings, all phone calls, all of his correspondence. Anybody could come in.

You know what happened? The reporters didn't have — as he called it — the "butt power" to come in and sit through an entire cabinet meeting. The only person who ever asked for a secret meeting with the Governor after that was a newspaper publisher. So there was an element of hypocrisy on both sides, and we get involved in these constant feuds, which then take on a life of their own and get away from the issue.

JOHNSON: Question from the audience, John?

JOHN FREEMUTH: We have a couple, Marc.

AUDIENCE QUESTION: A question for Judge Duffy. We've heard a lot today about conducting the war against terrorism as a criminal prosecution. I wonder if you could comment on something I've heard and read happened in your courtroom regarding the first World Trade Center bombing. During the testimony, an expert witness was called, and he testified that the only way to knock down those towers would be to fly large fuel-laden aircraft into those buildings. Seated in the back of your courtroom that day were a number of friends of the Muslim extremist perpetrators, and they were copiously taking notes. Is that true, your honor?

DUFFY: No. The only testimony that came out about that was from the engineer who took the stand and testified that a 707, taking off from JFK, if it ran

into the World Trade Center, the Center would withstand the blow. Apparently, the problem came about, not because of the impact of the airplane, but because of the fire, something that he never testified about at all. This was an open trial, but everybody who came to the trial — and I mean everybody — had to produce picture I.D. and had to sign in. Amazingly, we did not have too many followers of Osama bin Laden show up. I don't think we will. I have a couple more to go. I have the U.S.S. Cole, and I have the residue of the embassy cases to do. I don't think we'll be bothered with them.

At the first World Trade Center trial, we had more than 200 requests for press credentials. I said, "All right, the press can have half of the courtroom, and the regular folks will be in the other half." Most of the trial had one or two people in back. One young lady was there every day, and she was the only reporter who was there every day. Hangers-on would come in, but not everybody attended every day. Most of the time, we played to an empty house.

AUDIENCE QUESTION: My question is in regard to the administrative subpoena. Earlier, during the hypothetical, Tom Moss referred to the four different areas in which they are usable currently. My question is this: To me, a doctor is very understandable and easy to identify. Do you think a terrorist is that easy to identify?

MOSS: No, but I don't know what that has to do with your question.

AUDIENCE QUESTION: Using that comparison, it seems like we're comparing apples and oranges.

MOSS: What I'm saying is that under the present law, one of the four areas of investigation that allows for the use of administrative subpoenas is health care fraud. The proposal is simply applying that same law to terrorists. My point is simply this: If we're going to keep the laws in place that we have, is it so bad to extend that law to include terrorist investigations? I agree with you that doctors and terrorists are a lot different, but in both cases, they are difficult to investigate.

DUFFY: This has reference to the penultimate question. A comment was made this morning about the Manila bombing case, which I also tried. Ramzi

Yusef in the Manila bombing case had a computer, and we went through the computer at great length. In the computer was a plan of Ramzi Yusef's to blow up eleven airplanes, 727s or whatever the big ones are, over the Pacific Ocean, all at the same time, with the assumption that there would be 400 people on each one. Now he tried out the plan on a Japan Airlines plane, maybe it was Philippine Airlines.

The plane flew. It did not blow up because Ramsey didn't want it to blow up. It landed in Okinawa. That was part of this entire thing. Ramzi never suggested and never would suggest that he wanted to sacrifice himself.

By the way, one of the four people who were going to put the bombs aboard was Wali Khan, a guy I used to call "Fingers" Khan because he'd blown off most of his fingers but still constructed bombs. Another was Khalid Mohammed, who shows up from time to time in the newspapers now, under arrest, and supposedly talking to our country.

There is no suggestion that any one of the four of them would have sacrificed themselves. I would almost guarantee that. Ramzi is not the type of person to commit suicide. I know only two others of the four. I don't know Khalid Mohammed on a personal basis. I don't even know Ramzi on a personal basis, but I watched him for about eleven months. I'll tell you this much: Those fellows would not commit suicide under any circumstances. There was no suggestion that the United States knew about suicide bombers taking airplanes into buildings, or at least not from the cases I tried. I don't know whether someone else knew about it, but I sure didn't.

JOHNSON: One more question, and then we'll thank our panel.

AUDIENCE QUESTION: I'd like to know whether anyone on the panel — this was suggested by our U.S. Attorney Moss, at least in my mind — believes that a foreign national, like the hundreds or thousands at Guantanamo, has any legal rights whatsoever for counsel, or are they subject to indefinite detention under the laws of this country or the Geneva convention?

MOSS: I'll attempt to explain it as best I can. The people at Guantanamo are mostly al-Qaida and Taliban. The way our government is treating them is under the terms of the Geneva Convention, which

says that when you have enemy combatants, they can be detained until the hostilities subside or until they are determined to be no longer a threat.

I understand that several dozen have been released because they have been determined to be no longer a threat to the security of the United States. That's being done in spite of the fact that the government's position has been that they do not have those rights because to be entitled to rights under the Geneva Convention, first, you have to represent a sovereign power. Al-Qaida does not. Number two, you have to have a line of authority within your ranks that takes you to the government. You also have to wear a uniform with an emblem that clearly defines who you're fighting for. Most of the people at Guantanamo don't satisfy those requirements. However, the government's position is that we are treating them like enemy combatants. They've been allowed to contact their families to let them know where they are. That is as far as it has gone. The determination has been that hostilities are ongoing, and we're not going to turn them loose so they can go home, get their rifles, and start fighting us again. That's the status as I understand it.

BROSNAHAN: I just want to say a couple of things if I might on Guantanamo. My public knowledge is that the people there were taken from the field in Afghanistan and that they were taken there approximately December or January of 2002, which means they don't have any intelligence. They have been in cages, and they don't know anything unless these spies they have just arrested have been taking things in to tell them. So what they know is — and I don't work in the intelligence field — what they knew as of January of 2002. How helpful that is, I don't know.

Number two is an excuse for me to recommend that you read a book by Hugo Grotius [*On the Law of War and Peace*], who lived in the late 1500's. The king of France said he was one of the brightest people in Europe, and he wrote on war, the rights of war, and the law and war, which is what we've been talking about all day. He lived around the time of Vermeer, who did those wonderful paintings and showed the interiors at Delft and all of that.

What interests me about the book — you might want to take a look at it. It's out there; you can get it — is that in order to lay a basis for humane treating of prisoners in war, he examined the Bible, the same one that is available to all of us now. It says, among other things, "You will not vex your prisoners." That is

God's word. There have been over 30 attempts at suicide since they were put down there. It is government action by the United States government. The question we've been looking at all day is: What are we becoming? That's the issue for all of us. Where are we going? Who is leading us? What are we becoming? What price are we paying?

JOHNSON: I am going to publicly beg the indulgence of Congressman Otter, who made a real effort to be here today. The press of business in Washington wouldn't allow him to do that. We thought we might continue this discussion a little longer this afternoon and include him, but we've abused our panelists here for two hours, and I don't want to take any more advantage of them. Please join me in thanking these panelists.

APPLAUSE

Now, before you all leave, we're going to have some quick closing comments from Dr. Forrest Church.

FORREST CHURCH: We've all been enormously privileged today to witness these thoughtful, committed patriotic men and women, grappling with the issues of such enormous importance to all of us in this nation.

It was just seventy years ago that President Franklin Roosevelt — not always perfect as none of our presidents has been perfect — said, "The only thing we have to fear is fear itself." The only thing we have to fear is fear itself. He wasn't using fear to frighten us; he was trying to alert us to the danger of being overly frightened because our responses to the reality — always difficult, always challenging — confronting us with all of its dangers would be only compromised and our difficulty compounded by the fear we felt.

There is a golden mean somewhere between fear and security. In a way, liberty and security or freedom and safety are opposites. Somewhere in between, in the Aristotelian sense, there is a golden mean, which we will never find. We do know that it is dangerous to sacrifice too much of our freedom to secure our safety.

Finally, the only time we will be safe is when we're dead. That is the only thing that will bring us complete safety. Safety is a chimera. It can't be maintained; it can't be secured.

How safe do we want to be? This is really the question we have to ask ourselves. The Greeks had a virtue that describes this golden mean somewhere between security and freedom. It seems like an obvious word to mention here because in our contemporary lingo, it has a kind of fear-laden sense to it. The word is "prudence." It meant originally "to know the good and do it," to exercise right thinking and balance the best we possibly can. What we really are calling upon our leaders to exercise and ourselves, in our own responses, to exercise is a certain amount of self-enlightened prudence.

To obsess over threats to safety while ignoring threats to liberty demonstrates as little enlightened self-interest as would a person who thought nothing about borrowing logs from the walls of his home to replenish his supply of firewood. As the house grows draftier, in order to keep the fire burning brightly to make up for the lost heat, he must take more and more wood from the walls. Tending his hearth, he destroys his home. Since we can purchase no security whose warranty will not one day expire, wisdom counsels lavishing at least a little security in exchange for liberty, especially in this nation, which is founded upon the principle of liberty.

Once we as a nation have done all of the obvious and defensible things to protect ourselves against another terrorist attack, each additional fraction of protection will exact a proportional sacrifice of freedom — and not only freedom. When our alarms warn us only against threats that imperil our safety, they fail to alert us to dangers that may jeopardize our humanity. Whoever fights monsters should see to it that, in the process, he does not become a monster, wrote the philosopher Frederic Nietzsche. When you look into an abyss, the abyss also looks into you. When President Roosevelt reminded the American people that the only thing they had to fear was fear itself, he sought to make us less vulnerable to our enemies, not more like them.

Thank you.

FREEDOM & SECURITY: Trading Liberty for Security?

October 2, 2003

Boise State University Student Union

Presented by:

The Andrus Center for Public Policy

The Frank Church Institute

The Idaho Statesman

Evening Address By David Broder

CECIL ANDRUS: To those of you who were unable to be with us all day today, we had a long, full day. It was exciting, very analytical, and it was a day in which we had the opportunity to listen to some of the greatest minds in America give their views on where we are today, particularly when it comes to the question of freedom versus security. Do we want security? Absolutely. Will we do whatever is necessary? Certainly. But how much is enough? What is the balance?

You're here tonight to listen to David Broder, who is, without question, one of the greatest journalists that America has ever known. When you ask someone inside Washington, D.C. and the Beltway to name the most respected reporter in town, the answer, nine out of ten times, will be Dave Broder. When you ask a person outside the House of Mirrors, the same question elicits the same answer. It is Dave Broder, a man of great intellectual honesty, a man who tells it the way it is, a man who has his column in more than 300 newspapers around the globe. He is also not only in the print media, he is very good on television. If you watch "Meet the Press" or "Washington Week in Review," you find that he doesn't pound on the table and shout as some do. He actually has something to say. His comments are informed, insightful, and interesting.

I could go on a long time about all the accolades and honors he has received, but I'm going to read just one little paragraph out of *Esquire* magazine, in the intellectual part of that magazine. "Broder has few challengers as the most influential political journalist in the country." Media critic Ron Powers on CBS-TV said, "Broder is not famous like Peter Jennings. He's not glamorous like Tom Brokaw, but underneath that brown suit, there is a real superman."

Besides that, I like his hair style. Any man that works hard to get it looking like that, I know what he does through. He's won the Pulitzer Prize and

has received many awards for many years. I first met this man when I was a greenhorn Governor back in the early 1970s, my first life. He gets outside of the Beltway to places where he can find the people and discuss the politics and issues of the world.

Ladies and gentlemen, please help me welcome David Broder.

DAVID BRODER: Thank you. Governor Andrus, I thank you very much for your willingness to sacrifice on my behalf whatever little credibility you have might built up with this crowd.

It has been a spectacular day here. I missed the morning because I was flying in from Chicago, and I particularly regret not having heard Senator Slade Gorton. The parts that I heard have just been wonderful, and I congratulate all of you who had a part in putting this program together. It reminds me, as I mentioned just moments ago to Mrs. Andrus, of a line that Mo Udall used to use when he was the last speaker on a long program. Mo would say, "Well, everything has been said, ladies and gentlemen, but not everybody has said it."

So we're going to go on. The only difficulty with the program that I heard this afternoon was that it made me go back to the hotel and re-write these comments because really everything that's important has been said and been said much better than I can possibly try to summarize it.

I'm not going to try to summarize all of those wise observations that have been made. I think what I might try to do would be to put it into a little bit different context, a Washington, D.C. context, and then just simply try to put a framework around it that may or may not be of any use to you.

As all of us all day have been starting, I am starting with the acknowledgment that our lives, as individu-

als and the life of this country, changed and changed in a fundamental way on September 11th. The oddity for me, in repeating that date, is that it happens to be my birthday. It's a bad date to celebrate your birthday, but luckily, I have a daughter in San Francisco whose birthday is on September 12, and Lauren has generously said, "You can share my birthday with me." So we celebrate together now on September 12th.

Certainly in the city where I work and have worked for a long time, the atmosphere, the environment — in almost every way that you can measure it — is very different now from what it was. Those of you who have been to Washington in the last couple of years know that all over the city now, you have physical barriers that were not there before. The security checks in your old department and other departments that seemingly have no direct relationship to national security — all of them now have their own security checks.

The whole psychology of the city has changed from what it was before. It's reflected in the legislation that was passed and that we've been discussing here today. It is certainly reflected also in the way the administration of justice is being carried out in Washington and around the country. We know now — and it's been the topic all day — about the Patriot Act. We know that it is there, but we know not nearly as much as we need to know in terms of information about the way in which that new authority is being used.

In June, Attorney General Ashcroft reported that he had asked 170 times now for what they are referring to as authority for "emergency surveillance," which gives them the authority to examine the papers, records, and so on for up to 72 hours before a court says, "You are authorized to use that kind of surveillance."

There was a survey I read about what was done by the library science school at the University of Illinois in which they talked to 1500 major libraries around the country. They found that 178 of them reported that they had been visited for one reason or another by FBI members, asking them about somebody's use of the library. Clearly those statistics represent only the tip of the iceberg of what has been going on since September 11th.

We have learned that there have been 215 reported surveillances of financial and other records that have been reported to Congress, but again I suspect that is only the tip of the iceberg. We know that Section 215 of the Patriot Act has allowed a number

of broader inquiries into the records than would have been permissible under law before that. We know that immigration statutes have been used for long-term detention of people and for the rapid repatriation of people and that there has been a stinging report from the Justice Department's own Inspector General about conditions in which some of those detainees have been held. We know that there has been expanded use of the material witness statute to detain people and to keep them in detention.

My paper and George Lardner, who has been part of the program today, examined 44 cases of those material witnesses and found that in almost half the cases, the so-called material witnesses had not even been called to testify before a Grand Jury. Of course, during the day, we've had a good deal of discussion about the use of the "enemy combatant" status, including the cases the judges talked about of two American citizens, who have been placed in the hands of the military, held incommunicado, denied lawyers, and facing — at some point, one presumes — military courts.

All of these various areas have properly caused a good deal of controversy and discussion. That controversy has been the topic of our meeting here today. What strikes me is that it may be useful just to organize our thinking about the monitoring of this process by focusing on three sets of institutions that traditionally we have relied on in our country to keep the checks and balances, which the founders wanted to have, particularly when it came to the administration of justice. The institutions I'm thinking about are the courts, the Congress, and the press.

I want to try to talk briefly about each of those institutions, what they have attempted to do and what they have been able to do.

Let's start with judicial review, which is built right into the Constitution as probably the most important of the safeguards for individual liberties. I think that, in the two years since September 11th, judicial review has not really been able to put much of a dent into some of the more controversial Justice Department activities.

Something I was not very familiar with until we started covering this whole area is the Foreign Intelligence Surveillance Court, known by its acronym as FISC, made up, as I understand it, of 11 District Court judges, who routinely are asked to review FBI requests for wiretaps or electronic surveillance. Over the last 25 years — I couldn't find any breakout of the

last two years — but over the last 25 years that court has been in existence, the figures show something like 15,000 applications for that type of surveillance, and the stunning figure is that in all of that time, they have been refused only five times. Either the FBI is being very careful about its applications, or the courts are being very permissive about going along with these applications.

This court did, in fact, rule in one case that the mixing of national security surveillance with routine criminal prosecutions raised serious problems. But when that case was appealed to the appellate level of that FISC Court, judgment was reversed, and the government was allowed to go ahead with the blending that the Patriot Act involved and allowed the use of intelligence data in normal criminal prosecution.

Last May, there was a case that came to the District Court in Washington, D.C., a press kind of case, an appeal to use the Freedom of Information Act to disclose the names and the numbers and the types of cases to which the Patriot Act was being applied. The District Court in Washington said Freedom of Information Act does not apply to those cases.

In December of last year, a district judge ruled that the United States, in the Padia case we talked about today — the American citizen who is being held someplace in a military brig — could hold Padia under those conditions but that he must be given access to an attorney and allowed to challenge that status. But that judgment by a District Court has now been appealed and is still pending, at least that is my best information.

As was referred to this afternoon, two separate circuits in this country have given opposite judgments about the Constitutionality of holding deportation hearings in secret when the government asserts that there is a special security interest in the alien that is up for deportation. So we don't know what the final judgment will be on those matters.

On the question of keeping secret the names of those who are being detained as material witnesses, a District of Columbia circuit court has held that Attorney General Ashcroft is well within his rights in keeping those proceedings secret. So at best, it's a mixed record that we have in terms of the judicial role.

Congress obviously has a Constitutional duty to maintain oversight over the administration of justice by the Justice Department and the FBI, and it's clear that Congress has run into great difficulty in trying to fulfill that role. The material that was obtained, finally, from the Justice Department and the FBI, constituted

several hundred pages of information, but almost all of it was blacked out, "redacted," to use the technical term, so that the members of Congress could only guess what was really being done in these cases.

The Judiciary Committee on the Senate side sent about 50 questions to the Attorney General and asked him to respond to their queries about the use of the Patriot Act. When the answers came back, this is what the Judiciary Committee reported:

"We are disappointed with the non-responsiveness of the Justice Department and the FBI. Although the DOJ and the FBI have sometimes cooperated with our oversight efforts, often legitimate questions went unanswered or the DOJ answers were delayed so long and were so incomplete that they were of minimal use in the oversight efforts of this committee."

As all of you in Idaho know, your member of Congress, Butch Otter, did succeed in getting the House of Representatives to delete funds for one of the key provisions of the Patriot Act, the one he refers to as the "sneak and peek" surveillance provision, which allows them not only to examine records of people that are of interest to them but to insist that those who have custody of the records not inform the person whose records were being examined of the fact that the surveillance had taken place. By a very large margin, 309 to 118, Mr. Otter was able to strike the funds in the House Appropriations Bill that would have been used to carry out that provision. But there is no similar provision in the Senate version of that Appropriation bill, so we do not know, at this point, what the effect of this will be.

Now we turn to the third institution, the press. I should say here not just the press but a wide variety of public interest groups that are also attempting to monitor the use of this new authority. What we find is that the private organizations have done really an excellent job of trying to compile information and an excellent job, in my judgment, in raising the kind of issues that were being discussed here this afternoon. We in the press have covered the controversy about those interesting provisions and, in some cases, have fought hard to break through the barriers, the curtain of secrecy behind which some of these laws are being administered.

Once again, the results have been rather meager. I have to say, in candor, that in journalism, we

are facing a kind of built-in conflict of interest when it comes to our roles as monitors, specifically of the FBI, the Department of Justice, and the other parts of our Executive Branch that have prosecutorial authority. The reporters who cover the Department of Justice and the FBI depend on the Department of Justice and the FBI for much of the information they need to report on the enforcement of these laws.

We cannot blind ourselves to the fact that there are serious, important, and legitimate cases involving security, which those agencies are dealing with. In our world as reporters, having access to the people who can help us understand those highly publicized cases is of great importance to us. I suppose that a news organization could have a Team A, which would deal with the law enforcement agencies as sources of information about prosecution, and a Team B, which was dedicated to monitoring the behavior or even the misbehavior of those same agencies. I know of no news organization that has the luxury of that kind of staffing arrangement. So all of the reporters who are in part monitors are also in part dependent on those very same agencies for the daily information that is vital to their covering the beat.

Let me try to conclude these comments by going back to what I began with, which is to try to emphasize the environment in which these decisions are made and these actions are being carried out in Washington, D.C. since September 11, 2001. Washington, perhaps, was more affected by the attacks that day than any other place in the country, except for New York. Washington saw what happened at the World Trade Center. We saw and heard and lived with and smelled what happened at the Pentagon. In my neighborhood, two miles from the Pentagon, filled with military families, we didn't lose anyone from the neighborhood, but all of my neighbors lost personal friends, colleagues, and comrades in that attack, and it is a living memory for them and for all of us who share that space with them.

Soon after the attack of September 11th, we of course had the anthrax attacks in Washington, which, in some ways, affected the psychology of the city much as — or perhaps even more — than the September 11th attacks because that was an unexpected and insidious intrusion, and we still don't know where it came from. At the *Washington Post*, to give you a trivial example, we still do not bring any unopened mail onto to the newsroom floor of our building. If we want to open our mail, we go down to an isolated dark floor, one floor

below the newsroom, and we open our mail there and then bring whatever we want back into the newsroom. We are that afraid of possible contamination.

I ride the Metro, which you all were nice enough to build for us in Washington, into work every day. I have noticed that when the spacing on the trains in the Metro gets a little off and they stop your train between stations to get the spacing right, since September 11th, people look around rather nervously at each other and ask, with their eyes if not their voices, "What's going on? Why have we stopped here? What's happened?"

There is this real sense that the threat of terrorism has not been forgotten in Washington, and as I travel the country, it seems to me that in most places in our country, most people are living their daily lives very much as they did before September 11th. Unless you happened to be going through an airport that day, the likelihood is that your routine is probably very much what it was on September 10th. That is not the case in Washington, and it affects the way in which Washington is weighing the balance between security and individual freedom.

There is one other aspect of the Washington environment that I think needs to be understood. That is the internal environment, the mindset of the people who are governing in Washington. The President always sets the tone in Washington. He sets the agenda. This president said explicitly in the days immediately after September 11th that the war on terror, to use his phrase, was now *the* priority for his Administration. In fact, he has remarked to people more than once that he believes that he now understands why he became president. It was not clear to him before September 11th what his mission was, but he now understands that protecting this nation from terrorism is the mission that he was sent to Washington to accomplish. That sets the tone for the entire government. It sets the priorities for the budget. It sets the priorities in law enforcement.

I came across something a few days ago that I want to read to you. It's from a publication called *The Presidential Studies Quarterly*, published by the Center for the Study of the Presidency. It is written by a woman named Nancy Baker who is a political scientist at New Mexico State University. I just want to read you one paragraph because I think it makes the point that I'm trying to make here about where the priorities of Washington lie. She is talking particularly about Attorney General Ashcroft and she says:

“The Administration characterizes its anti-terrorism measures as fully consistent with civil liberties and denies that any of its actions constitute restrictions. ‘A commitment to civil liberties extends up to the President,’ according to Attorney General Ashcroft. ‘President Bush insists that our responses to evil respect the Constitution and value the freedoms and justice the Constitution guarantees.’ The Attorney General has been the most outspoken member of the Administration on this theme. He told Senators this past spring, ‘The Department of Justice has acted thoughtfully, carefully, and within the Constitution of the United States, that framework for freedom.’

Throughout the past two years, he has made similar assurances in press releases and public statements when discussing anti-terrorist measures. For example, he described the plan to end the informational firewalls between federal prosecutors and intelligence officers as ‘rooted in our Constitutional liberties.’ Interrogation of thousands of foreign nationals he described as exhibiting ‘full respect for the rights and dignity of the individuals being interviewed.’ In a talk to FBI agents regarding revised guidelines that would allow them to monitor public gatherings, he described them as a ‘demonstration to the American public that the agency would protect them from terrorism with a scrupulous respect for civil rights and personal freedoms.’”

And there are other examples. The comment about this that I want to leave you with comes from a former dean of the Washington and Lee Law School in Virginia, who was running a forum at the opening this past summer of the Center for the Constitution, which is open now in Philadelphia. The former dean told me this story. He said, “I wish that it were possible for the press to have been in this session. I didn’t see any reporters in the room when we were having this discussion. A recently-retired Justice Department official, who was there in effect representing the Bush Administration, made this comment to the forum:

“You need to understand that President Bush today, in his role as the leader of the war on terrorism, is in very much the same position as President Lincoln during the Civil War. Like Lincoln, he will try to preserve the Constitution, but he is determined to preserve the Union.”

Thank you very much.

ANDRUS: Ladies and gentlemen, you’ve just heard from the best of the best in the area of journalism in America. David, thank you very much. Now we’re going to have some questions. We have Dr. Freemuth and Marc Johnson here with microphones. But remember what I said earlier today: questions, yes; speeches, no way.

AUDIENCE QUESTION: All day we’ve been talking about preventive measures and the consequences of all that. I’m just curious. What are we doing to deal with the root of the problem so we are not creating enemies faster than we can kill them.

BRODER: The root of the problem? Can you spell it out a little bit?

AUDIENCE: Why do people hate us? What is it that we are doing that causes such great animosity?

BRODER: Well, that’s a question that is way above my pay grade. I think to the extent that the problem is rooted in Middle East, we know some of the causes, the historic causes of the conflict in that part of the world. The difficulty — I almost used the word futility, but I don’t want to say futility — the extraordinary difficulty that successive American administrations have had in trying to find a pathway to peace and ending the struggle between the Palestinian people and Israel. That’s part of the story.

Part of the story, which frankly I do not understand very well — and I’m sure there are others in this room that could speak to it much more clearly than I can — is in the nation of Saudi Arabia and our checkered relationship with them, our dependence on their oil, and our difficulty in finding a way to express American values to the rulers of that country. But those are just two of the elements of something that is a very large question.

I have to say for myself that I think we need, in our policy, to be addressing both the symptoms and the causes of terrorism. I don’t think we can give ourselves the luxury of saying, “If we can just get to the roots of this, there would be no problem.” There are people who are products of these forces who do intend us evil. We have to be prepared to confront that evil. But if we stop at that point, we have simply consigned ourselves, our children, and our grandchildren to living perpetually in

a land that is less free and has fewer resources to deal with its other needs than would otherwise be the case.

AUDIENCE QUESTION: If I may, I'd like to ask a question about the recent allegation of a leak identifying a CIA operative. The Statesman had a front page article today with a *Washington Post* byline, I believe, indicating a very recent poll suggesting that over 80% felt that was a very serious issue, and over 70% felt there should be independent investigation of those allegations. I thought I heard you suggest this afternoon that that was an issue that would soon blow over. Can you tell me what you know about the issue that perhaps I don't? I happen to be in the majority reflected by that poll.

BRODER: Thank you for the question. I'm unclear in my mind as to what degree, if any, the life and work of the operative in the CIA was put in jeopardy by the publication of her name. This is a difficult area for a journalist, but I think it behooves us to give great heed to the plea that was made to my friend Bob Novak to withhold the name. I don't think that the name added any great value to the public, and I do think that if it is at all a serious jeopardy for the woman, the name should not have been published.

When I said that I don't think this is likely to be a major continuing controversy, I did so because the life cycle of "scandals" in Washington tends to be rather brief, particularly when they run into a dead end in terms of adding names or information to it. I will be very surprised if we ever learn the names of the people who leaked this information, and I will be very surprised if this story continues indefinitely without names attached to it. I hope I did not suggest that I thought that outing a CIA operative was, in itself, unimportant. If this puts the woman in jeopardy, it is a very important thing, and it is something that should not have happened.

AUDIENCE QUESTION: If it is a serious matter, do you fault Robert Novak for publishing it?

BRODER: I will give you a longer answer than you probably want. The view at our paper, George Lardner's and mine, is very simple. It is the government's responsibility to keep the government's secrets secret. That is not our job in the press. When people in the government start talking about subjects that others in government wish they would not talk about,

that is an internal problem for the government. It is not, in itself, a press problem.

What we routinely do, when we are dealing in an area of national security, once information comes to us that we believe is credible — and we will make every effort to test its credibility — a conversation takes place between some official at some level at the *Washington Post* and some official at some level — including sometimes, as in the past, the President of the United States — about what we are about to do. The conversation goes something like this:

"This is what we have learned. This is how far we have come in our reporting. If our reporting is wrong and you can prove to us that it's wrong, we would like you to give us that proof. Second, if our reporting is incomplete and you can supplement what we know, we would like you to provide that additional information, context, or background so that we can be as accurate as possible. Now, this information is in our hands. It is out of your hands. Now you have an opportunity to persuade us to do something that is contrary to our nature, which is not to share what we know with the people who read the newspaper. Our inclination and our likely judgment is that we will publish what we have found out, but you have an opportunity now to persuade us that we should not, in this instance, publish it."

That conversation takes place. There have been instances, which have since become public, where the persuasion worked.. The Post learned about a ship called the Glomar Explorer, which was going to try to retrieve a Soviet submarine. The people in the government said, "We would like you to withhold that story until we have a chance to try to lift the submarine. We don't want to have an incident on the high seas with the Soviet Navy about whether or not we can try to lift that ship of theirs." We did what they asked us to do. Other publications did not, so it became public. So there is that kind of dialogue that takes place.

From what I know about the case Bob has written about, Bob talked to the CIA, and they made a representation to him that it would be contrary to the interests of the agency and of the woman for her name to become public. He decided it was not a serious enough case that he wanted to withhold the

information. Whether he made the right judgment or not, in my view, depends very much on what, in fact, this woman's job was at the CIA, and I'm not clear what that job really entailed. If she has been put in jeopardy, as I said before, or if her contacts have been put in jeopardy, I think he made the wrong call.

But the basic fact is that it is the government's job to protect its secrets. We do not have an official secrets act in this country. Thank goodness. It's the government's job to protect the government's secrets.

AUDIENCE QUESTION: With the recent changes in the FCC rulings on how many papers and radio stations a person or corporation can own, in your opinion, could this jeopardize a journalist's ability to get the truth and information to the public?

BRODER: Thank you. I think the FCC should proceed with great caution in this deregulation. What happened in radio after they deregulated radio has resulted in a concentration of ownership that has been well publicized in that field, one that is inimical to broad public discussion in that medium. I think they would have been well advised to proceed with great caution in applying the same rules to other media.

There is a reality, which they cite, which is that we now have, all of us, access to a far greater variety of sources of information than any previous generation of Americans had. Wherever you live in this country now, in addition to all your local media options, you have three national newspapers, two of which are among the very best in the country: *The New York Times* and the *Wall Street Journal*. The third, *U.S.A. Today*, is rapidly becoming a more serious and substantive newspaper. You have all of the resources of National Public Radio, to which I am addicted. You have the cable news channels in all of their varieties, and of course now you have the wonders of the Internet.

I see the change in my reporting as a political reporter. You now can go into any community of any size anywhere in this country, and you will find a group of people, self-selected, who are every bit as engaged in public affairs, every bit as knowledgeable as any group that you would find at the Brookings Institution or Cato or AEI or any of those Washington policy think tanks. They get it. They have made it their business to exploit these information sources.

Even so, I would still think that we would be better off with additional owners and additional

enterprises rather than allowing what happened in radio to happen in other media.

AUDIENCE QUESTION: Mr. Broder, prior to your birthday, German visitors to this country used to express amazement at our freedom to travel, our freedom to be left alone. They were just in awe of this because it was something unknown to them. Given the direction in which we're going now, isn't there a very real danger that we might be facing a re-run of an old World War II movie whereby, if we want to travel from New York to Philadelphia or Boise to Mountain Home, we might be faced with checkpoints where someone in uniform says, "Your papers, please"?

BRODER: My instinct is to say that's probably not in our future, and it's certainly not inevitable. But as soon as I say that, I have to say that what you are describing is daily life within the borders of the District of Columbia. You can't go anywhere in the District of Columbia, you can't enter a single building of any size in the District without producing an identification for yourself, whether you are talking about the *Washington Post* or any other office building in the city or any government building in the city. So it's happening already within the borders of the District of Columbia. So I should not be so quick to say it can't happen in the broader range of the country.

We are sacrificing freedom. There is no question about that. All you have to do is watch, as I did this morning, the people lining up at the checkpoint, dutifully removing their shoes and putting them in the little bin, then hopping on one foot and the other to put their shoes back on. That is an infringement on freedom. You didn't have to do that to go an airplane flight until now. Yes, it's possible. I don't think — fingers crossed — it's going to happen to us very soon.

AUDIENCE QUESTION: I was wondering why this big deal in Iraq, which evidently was false information, about weapons of mass destruction. It's so scary to the United States when we have a man over in North Korea who says he is making them and will send them to other rogue nations. I don't get the connection.

BRODER: You will understand that I am not a State Department or Pentagon spokesman. They would not accept me in their wildest dreams in that role. Why was it scary? Well, two reasons. First, Iraq

is a large country sitting on top of a vital resource and located in the heart of a strategic part of the world. So what happens in that country is of consequence to the region and therefore of consequence to the United States. The man who was running that country was a thoroughly bad actor, and if he had access to those weapons of mass destruction, I think it would be a safe presumption that our security would be, by that fact, somewhat more jeopardized.

Could we have done it by continuing containment and the embargo, etc.? That is an argument that people made seriously and that can be made seriously. But I don't think it was hallucinatory to think that we had security stakes in Iraq. Does that excuse what appears to be faulty intelligence? Absolutely not.

The question of why we so badly misjudged, apparently, what he had available and how quickly he could have used it is a terribly serious question, which we are still in the very early stages of unraveling. I don't pretend to know why that intelligence appears to have been as faulty as it was.

North Korea is a different country in a different part of the world, also important but also one that presents a totally different strategic challenge. They have a huge army that jeopardizes their immediate neighbor, South Korea, and could cause problems in the wider area. So it is perfectly logical to think, yes, we're going to deal with that situation but in a different approach and method. I think, fingers crossed, that the situation in North Korea may still be manageable without the kind of direct military confrontation that we saw in Iraq. But will it be an easy proposition to bring that about? Clearly not. There were false starts at the beginning of this administration that probably have delayed and perhaps ultimately made it more difficult to deal with the North Korean situation.

AUDIENCE QUESTION: Bill Clinton reportedly learned about the massacres in Rwanda by reading a news magazine. Do you have any sense about how much information and breadth of opinion the President actually has access to on a day-to-day basis?

BRODER: I don't know the answer to that. He has access to everything in the American government and a good many things that come from allied governments. How he uses that information is a question that I cannot give you any firsthand information about. What we are told is that the President begins each day with a rather lengthy security briefing,

overnight intelligence, and discussion of both the international and the domestic intelligence as to what may be taking place that might require a response from the American government. Beyond that, I can't really give you much in the way of definitive information.

AUDIENCE QUESTION: Regarding the war in Iraq, if the President was wrong — I'm not saying he is — if he was wrong about the weapons of mass destruction and the connections to al-Qaida, considering the resources and lives we have expended, is it possible we have already lost the chance to win the war against international terrorism?

BRODER: Well, what I can understand about the war on international terrorism is that it is not a single struggle taking place in a single location but rather an effort to discover and then to counter efforts that are probably being fostered by loosely-linked organizations, exploiting local and international grievances and using a whole variety of tools. So while Iraq represents obviously a huge policy gamble on the part of the United States and this administration, a huge investment of lives and dollars, I don't think that it probably is the definitive or ultimate battle in the war on terrorism.

I'm inclined to think that those who say we are looking at something analogous to the Cold War in terms of the variety of forms it will take, the variety of places where the engagements will be found, the length of time it will require, and the tenacity it will take on our part and our allies' part are probably correct. So I would not think that this is, in any realistic sense, the definitive battle that has determined the outcome of the war on terrorism.

Thank you all very much.

ANDRUS: Ladies and gentlemen, you've just been treated to an evening with one of the fairest analytical minds in America, and we appreciate your being here with us. I say that on behalf of my colleagues, fellow sponsors, the Frank Church Institute, the *Idaho Statesman*. The three of us banded together this time to put together the conference today.

I've been asked by the press several times, "What did you hope to achieve?" What we would like to see is an enlightened citizenry who will take it upon themselves to help make the determination on how much of our freedom we must sacrifice, how much is necessary? It's not necessarily what the governmental

entity says it's what they need. I'm not convinced that they need everything I hear about.

I'm a veteran of Korea, and I'm as patriotic as anyone else, but I also want to know that my government is the same government it was when I went to Korea some fifty years ago.

Ladies and gentlemen, we're not asking that anybody accept our viewpoint. We're asking that we share viewpoints with one another and come up collectively with the right answer. Do I know what that is? No. Does Bethine know? No. Do the people at

the Statesman know? No. But it's someplace short of what I think they're asking for.

We hope you have been enlightened, and once again, I'd like to express our collective appreciation to the outstanding group of individuals who joined with us today to discuss this issue. Many are still here this evening. I would hope you have a safe journey back to your homes, and we're pleased to have had the chance to spend the day with you.

Thank you again, Mr. Broder.

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Conference Participant Biographies

Governor Cecil D. Andrus: Chairman, Andrus Center for Public Policy; Governor of Idaho, 1987 to 1995; Secretary of Interior, 1977 to 1981; Governor of Idaho, 1971 to 1977. During his four terms as Governor of Idaho and his four years as Secretary of Interior, Cecil Andrus earned a national reputation as a “common-sense conservationist,” one who could strike a wise balance between conflicting conservation and development positions. He played a pivotal role in the passage of the Alaska Lands Act and the National Surface Mining Act of 1977 and in the creation of the Frank Church River of No Return Wilderness Area, the Snake River Birds of Prey Area, and the Hell’s Canyon National Recreation Area. Governor Andrus elected not to run again in 1994 and subsequently established the Andrus Center for Public Policy to which he donates his service as chairman. His awards include seven honorary degrees, the William Penn Mott Park Leadership Award from the National Parks Conservation Association, Conservationist of the Year from the National Wildlife Federation, the Ansel Adams Award from the Wilderness Society, the Audubon Medal, and the Torch of Liberty award from B’Nai Brith. In 1998, he authored with Joel Connelly a book about his years in public service: *Cecil Andrus: Politics Western Style*. He and his wife, Carol, have three daughters and three grandchildren.

LeRoy Ashby, Ph.D.: Professor of History, Washington State University. Dr. Ashby received his doctorate from the University of Maryland in 1966 and has enjoyed a distinguished career as an author and professor of 20th Century American History and Popular Culture. He was awarded the WSU President’s Faculty Excellence Award and honored as the 1990 and 1993 CASE Professor of the Year for the State of Washington. His books include *The Spearless Leader: Senator Borah and the Progressive Movement in the 1920’s* (University of Illinois Press, 1972); *Saving the Waifs: Reformers and Dependent Children* (Temple University Press, 1984); *William Jennings Bryan: Champion of Democracy* (Twayne 1987); *Fighting the Odds: The Life of Senator Frank Church* (WSU Press 1994); and *Endangered Children: Dependency, Neglect, and Abuse in American History* (Twayne, 1997).

David Broder: National political correspondent for *The Washington Post*. Broder writes a twice-weekly column that is carried by more than 300 newspapers around the globe. He was awarded the Pulitzer Prize in 1973 for distinguished commentary and named “Best Newspaper Political Reporter” by *Washington Journalism Review*. A survey for *Washingtonian* magazine found that Broder was rated “Washington’s most highly regarded columnist” by both editorial page editors and members of Congress, leading 16 others in ratings for “overall integrity, factual accuracy, and insight.” Broder won the White Burkett Miller Presidential Award in 1989 and the prestigious 4th Estate Award from the National Press Foundation in 1990, which also honored him with the Distinguished Contributions to Journalism Award in 1993. In addition, he won the 1997 William Allen White Foundation’s award for distinguished achievement in journalism and, in the same year, was given the National Society of Newspaper Columnists Lifetime Achievement Award. Before joining the Post in 1966, Broder covered national politics for *The New York Times*, *The Washington Star*, and the *Congressional Quarterly*. He has covered every national campaign and convention since 1960, traveling up to 100,000 miles a year to interview voters and report on the candidates. He is the author of seven books, the most recent of which are: *Democracy Derailed: Initiative Campaigns and the Power of Money* (Harcourt 2000); *The System: The American Way of Politics at the Breaking Point* with Washington Post alumnus Haynes Johnson (Little, Brown & Company, 1996); and *Behind the Front Page: A Candid Look at How the News is Made* (Simon & Schuster, 1987) Broder was born in Chicago Heights, Illinois. He received his bachelor’s degree and an M.A. in political science from the University of Chicago, served two years in the U.S. Army, and began his newspaper career at the Bloomington, Ill. *Pantagraph*. He has been a Fellow of the Institute of Politics of the John F. Kennedy School of Government at Harvard University and a Fellow of the Institute of Policy Sciences and Public Affairs at Duke University. Broder and his wife (the former Ann Creighton Collar) have four grown sons and make their home in Arlington, Virginia.

James J. Brosnahan: Senior Partner with Morrison & Foerster of San Francisco and a much-sought-after public speaker. Mr. Brosnahan received his B.S.B.A. degree in 1956 from Boston College and went on to attend Harvard Law School. His post-law school career led to five years as an Assistant U.S. Attorney, prosecuting federal cases in Phoenix and San Francisco. He has particular expertise in civil and criminal trial work and continues to be regularly engaged in civil and criminal trials, having tried more than 130 jury cases on issues including patents, money laundering, libel, murder, manslaughter, mail fraud, insurance bad faith, environment, property damage, divorce, child custody, tax evasion, bank embezzlement, theft of government property, real estate fraud, narcotics, obstruction of justice, perjury, conspiracy, interstate transportation of wagering information, antitrust, wrongful death, maritime personal injury, product liability, professional misconduct, immigration and other miscellaneous civil and criminal cases. Most recently, he is best known for his defense of the “American Taliban,” John Walker Lindh. Mr. Brosnahan has argued both civil and criminal cases in state and federal court, including two cases in the U.S. Supreme Court: *United States v. Caceres*, 440 U.S.741(1979), and *Eu v. San Francisco County Democratic Central Committee*, 109 S.Ct. 1013 (1989). His honors include induction into the State Bar of California’s Trial Lawyers Hall of Fame in 1996 and selection as Trial Lawyer of the Year by the American Board of Trial Advocates in 2001 and as “Legend of the Law” by the Lawyers’ Club of San Francisco in 2002. His lecture series, “Great Trials and Great Lawyers,” was featured in The Teaching Company’s *America’s Superstar Teachers*.

Bethine Church: Chair of The Frank Church Institute, President and Founder of the Sawtooth Society. Bethine Church, widow of Senator Frank Church, returned to Idaho following his death in 1984 and is best known now for her own achievements. In addition to chairing the many Frank Church Seminars at Boise State University in the intervening years, she has spearheaded the movement to save Idaho’s scenic Stanley Basin in Idaho through her inspired leadership of the Sawtooth Society. She is the daughter of Idaho Governor Chase Clark, who later served as a federal judge; the niece of another governor, Barzilla; and the cousin of a United States Senator, D. Worth Clark. During Senator Church’s three terms in the Senate,

Bethine was active in many civic organizations in the Washington, D.C. area, including the Kennedy Center for the Performing Arts, the U.S. Capitol Historical Society, Meridian House, and the Center for Responsive Politics. She has contributed energy, time, and treasure to many of Idaho’s most worthwhile charities: the Anne Frank Human Rights Memorial, the Terry Reilly Health Services, the Basque Museum and Cultural Center, the Martin Institute for Peace Studies, and the Governor’s Task Force on Home Care. Her awards include an honorary degree from Lewis Clark State College, Boise State University’s Silver Medallion Award for Public Service, and the Lifetime Achievement Award from the Silver Sage Girl Scout Council. Her special interests are senior citizen advocacy, environmental protection, home health care issues, and children’s programs. She enjoys the company of her two sons, Chase and Forrest, and of her grandchildren. Her memoir, *A Lifelong Affair: My Passion for People and Politics*, has just been published by Frances Press, Washington, D.C.

Forrest Church, Ph.D.: Rev. Church is currently serving his twenty-sixth year as Senior Minister of All Souls Church (Unitarian) in Manhattan. He was educated at Stanford University, Harvard Divinity School, and Harvard University, where he received his Ph.D. in Early Church History in 1978. Dr. Church, who is 55 years old, has written or edited 20 books, including *Father and Son: A Personal Biography of Senator Frank Church of Idaho*; *Our Chosen Faith: An Introduction to Unitarian Universalism*; *God and Other Famous Liberals*; *Life Lines*; *Lifecraft*; *Bringing God Home*; and *The American Creed*. His is the editor of *The Essential Tillich* (University of Chicago, 1999); *The Macmillan Book of Earliest Christian Prayers* (1988), a new edition of *Thomas Jefferson’s Bible* (Beacon, 1989); and *Restoring Faith: America’s Religious Leaders Answer Terror with Hope* (2001). Eight of his addresses have been selected for inclusion in the annual anthology, *Representative American Speeches* (Wilson & Co.). Dr. Church is a member of the Executive Board at the Franklin and Eleanor Roosevelt Institute. Mayor Giuliani appointed him Chairman of the Council on the Environment of New York City in 1995. Now serving in his eighth year as chair, he directs, among other programs, 32 green markets in the city. He is married to Carolyn Buck Luce and has four children: Frank (25), Nina (22), Jacob (19), and Nathan (16).

John M. Deutch, Ph.D.: Institute Professor at the Massachusetts Institute of Technology. He served as Director of Central Intelligence from May 1995 to December 1996. From 1994 to 1995, he served as Deputy Secretary of Defense and as Undersecretary of Defense for Acquisition and Technology during 1993-1994. Dr. Deutch also served as Director of Energy Research, Acting Assistant Secretary for Energy Technology, and Undersecretary in the U.S. Department of Energy. In addition, he served on the President's Nuclear Safety Oversight Committee (1980-81; the President's Commission on Strategic Forces (1983); the White House Science Council (1985-89); the President's Intelligence Advisory Board (1990-93); the President's Commission on Aviation Safety and Security (1996); the President's Commission on Reducing and Protecting Government Secrecy (1996-97); and as Chairman of the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction (1998-99). Dr. Deutch serves as director of the following publicly-held companies: Citigroup, Cummins, Raytheon, and Schlumberger Ltd. He is a director of the Council on Foreign Relations, Resources for the Future, and the Urban Institute and an overseer of the Museum of Fine Art in Boston. Dr. Deutch has been a member of the MIT faculty since 1970 and served as Chairman of the Department of Chemistry, Dean of Science, and Provost. He has authored over 160 technical publications in physical chemistry as well as numerous articles on technology, energy, international security, and public policy issues.

Judge Kevin Thomas Duffy: Judge, U.S. District Court, New York. Judge Duffy received his LL.B from Fordham University School of Law in 1958 and began his distinguished legal career as clerk for Judge Edward Lumbard, U.S. Court of Appeals, Second Circuit. From there he moved to the U.S. Attorney's Office for the Southern District of New York and became Assistant Chief of the Criminal Division. In 1961, he joined the firm of Whitman, Ransom & Coulson and subsequently Gordon & Gordon. In 1969, he was named Administrator of the Securities and Exchange Commission in the New York Regional Office and was appointed to the federal bench by President Nixon in 1972. He has served as Adjunct Professor of Trial Advocacy in the Fordham University, Pace University, and New York University Schools of

Law. His many honors include Honorary Doctor of Humane Letters from the College of New Rochelle in 1998, the Dean's Medal from Fordham Law School in 1997, Community Leadership Award from the Federal Law Enforcement Foundation in 1995, the Lifetime Achievement Award (Justice William O. Douglas Award) from the Association of Securities and Exchange Commission Alumni in 1995, the Distinguished Public Service Award from the New York County Lawyers' Association, and numerous others. Judge Duffy is a prolific writer, and a sampling of his articles includes: "The Civil Rights Act: A Need for Re-Evaluation of Non-Exhaustion Doctrine Applied to Prison Section 1983 Lawsuits," *Pace Law Review*, 1983; "Amended Rule 11 of the Federal Rules of Civil Procedure: How Go the Best Laid Plans? The Actual Operation of Amended Rule 11," *54 Fordham Law Review* (1985); and "Cross-Examination of Witnesses: The Litigator's Puzzle" (with Aron and Rosner), Shepard's McGraw-Hill, 1989. The long list of his notable decisions includes: *USA v. Mohammad Salameh et al., 1993-1994 (The World Trade Center Bombing Case)*; *National Basketball Association et al v. Charles L. Williams et al., 1994*; *USA ex rel Israel v. Mkousa Mohammed Abu Marzook 1996 (extradition of Hamas Chief for murders)*; *USA v. Yousef, et al, 1997 (Manila Bombing Case)*; *USA v. Yousef and Ismoil, 1997 (The World Trade Center Bombing Case II)*. Judge Duffy and his wife of 46 years, Judge Irene Duffy, who is retired from the New York Supreme Court, have four children: Kevin Thomas Jr, Irene Moira, Gavin Edward, and Patrick Giles.

Mark H. Gitenstein: Attorney, Mayer, Brown, Rowe, & Maw, Washington, D.C. Mr. Gitenstein was counsel to the Senate Intelligence Committee (1975-1981). He was deeply involved in the Committee's investigation of domestic security matters at the Department of Justice and the Federal Bureau of Investigation. He served as Minority Chief Counsel of the Senate Judiciary Committee (1981-86) and as Chief Counsel of the Committee (1987-89). In those positions, he directed the Democratic staff's substantive work on all matters before the Committee. Among his responsibilities was overseeing the Committee's review of all judicial nominations. Mr. Gitenstein led the Democratic staff in 1987 when the Committee rejected the nomination of Robert Bork to the Supreme Court. His book on the subject, *Matters of Principle: An Insider's Account of America's Rejection*

of Robert Bork's Nomination to the Supreme Court, was the recipient of the American Bar Association's 1993 Silver Gavel Award. He became a partner in the Washington, D.C. office of Mayer, Brown, Rowe & Maw in 1990 and founded the Government Practice Group at the firm. Mark is a 1968 graduate of Duke University, and he received his law degree from Georgetown University Law Center in 1972.

Senator Slade Gorton: Three-term U.S. Senator from Washington State, now a member of the Seattle law firm of Preston Gates & Ellis LLP and a member of the 9/11 Commission. Gorton's years in the Senate saw him appointed to powerful committee posts, including Appropriations, Budget, Commerce, Science and Transportation, and Energy and Natural Resources. Gorton served as the Chairman of the Interior Appropriations Subcommittee (1995-2001), the Commerce Subcommittees on Consumer Affairs (1995-99) and Aviation (1999-2000). He was a member of the Republican leadership as counsel to the Majority Leader (1996-2000). Senator Gorton began his political career in 1958 as a Washington state representative; he went on to serve as State House Majority Leader. In 1968, he was elected Attorney General of Washington state where he argued 14 cases before the Supreme Court. His most popular achievement as Attorney General came when he sued the American League in 1970 to keep baseball in Seattle. To this day, Slade Gorton is remembered by fans across the state for "saving the Mariners." In June 1980, he received the Wyman Award as "Outstanding Attorney General in the United States." He also served on the President's Consumer Advisory Council (1975-77) and on the Washington State Criminal Justice Training Commission from 1969-1981. He has served on the board of the Fred Hutchinson Cancer Research Center since 1987. In April, 2003, Senator Gorton became the first non-Estonian to receive the 1st Class Order of the Cross of Terra Mariana, the country's highest national award. The honor was the culmination of Gorton's many years of interest in and support of Estonia and the other Baltic states, Latvia and Lithuania.

Leslie Hurst: President and Publisher of *The Idaho Statesman*, she was named to her present position in May of this year. She relocated to Boise from Huntington, West Virginia where she was president and publisher of the *Herald Dispatch* and served

previously in that role for the *Hattiesburg American* in Hattiesburg, Mississippi. Ms. Hurst has extensive experience in both the reporting and marketing sides of journalism, having reported for the *Shreveport Journal* and the *Columbia Missourian*. She was director of marketing for the *News-Press*, Fort Myers, Florida; the *Pensacola News Journal*, Pensacola, Florida; and *The Times*, Shreveport, Louisiana. Leslie is a recipient from the Gannett Company of the president's rings for excellence as both a marketing director and a publisher. Her civic involvement includes the West Virginia Roundtable; the Executive Committee of the Huntington Area Development Council, the Board of Directors of the Shreveport Economic Development Foundation, the Chambers of Commerce in Huntington, Hattiesburg, and Shreveport, and a *guardian ad litem* in Fort Myers. She is active on the Diversity Committee of the Southern Newspaper Publishers Association as well as the Board Diversity Committee for the Newspaper Association of America. Leslie was born in Turkey into an Air Force family and grew up all over the world, living in such diverse places as Taiwan, France, and Germany. She is a graduate of the University of Missouri with a bachelor's degree in journalism. She is married to John Severson, a photojournalist with *The Indianapolis Star*. Her enjoyments include reading, traveling, and contemporary visual art.

Loch K. Johnson: Regents Professor of Political Science at the University of Georgia, author of several books on U.S. national security, and editor of the journal *Intelligence and National Security*. He has won the Certificate of Distinction from the National Intelligence Center and the V. O. Key Prize from the Southern Political Science Association. He has served as secretary of the American Political Science Association and president of the International Studies Association, South. Johnson was special assistant to the Chair of the Senate Select Committee on Intelligence in 1975-76, staff director of the House Subcommittee on Intelligence Oversight in 1977-79, and special assistant to the chair of the Aspin-Brown Commission on Intelligence in 1995-96. Born in Auckland, New Zealand, Professor Johnson received his Ph.D. in political science from the University of California, Riverside. At the University of Georgia, he has won the Josiah Meigs Prize, the University's highest teaching honor, as well as the Owens Award, its highest research honor.

Marc C. Johnson: Boise partner of the Gallatin Group, a Pacific Northwest public affairs/issues management firm with offices in Boise, Seattle, Portland, Spokane, Helena, and Washington, D.C. He serves in a volunteer capacity as President of the Andrus Center. Mr. Johnson served on the staff of Governor Cecil D. Andrus from 1987 to 1995, first as press secretary and later as chief of staff. He has a varied mass communications background, including experience in radio, television, and newspaper journalism. He has written political columns and done extensive broadcast reporting and producing. Prior to joining Governor Andrus, Mr. Johnson served as managing editor for Idaho Public Television's award-winning program, *Idaho Reports*. He has produced numerous documentaries and hosted political debates. Several of his programs have been aired regionally and nationally on public television. He is currently at work on a biography of progressive era Senator Burton K. Wheeler of Montana. Johnson is a native of South Dakota and received a B.S. degree in journalism from South Dakota State University. His community involvement includes a past presidency of the Idaho Press Club and the Bishop Kelly High School Foundation. He is a past board member of the St. Vincent De Paul Society and the Ada County Historic Preservation Council. Currently, he is chairman of the Idaho Humanities Council and a member of the boards of the Federation of State Humanities Councils, the City Club of Boise, and the Idaho Housing Company, a non-profit corporation devoted to developing low-income housing projects in Idaho. Mr. Johnson is married to Patricia L. Johnson, Ph.D., a senior planner with the Idaho Department of Health and Welfare. Their two sons, Rob and Nathan, both attend college in Idaho.

George Lardner Jr.: Staff writer for the Washington Post since 1963, working for most of those years as an investigative reporter on the newspaper's national staff. He has covered presidential campaigns, major court trials, and beats ranging from the White House and Congress to the CIA and the FBI. He won a Pulitzer Prize in 1993 for stories about the 1992 murder of his youngest daughter, Kristin, in Boston by a young man under court order to stay away from her. He later expanded that work into a book, *The Stalking of Kristin*. He has written numerous articles for national magazines and is chairman of the Fund for Investigative Journalism, which provides grants to free-lance journalists to expose governmental, corporate, and institutional wrongdoing and failings.

Andrew H. Malcolm: Member of the Editorial Board of the *Los Angeles Times*. Previous to joining the Los Angeles Times, Mr. Malcolm served as Deputy Communications Manager for *Bush 2000*, as press secretary to Laura Bush, and as a member of the transition team, Washington, D.C., July 1999-January 2001. Mr. Malcolm has roots in Canada but was educated at Culver Military Academy and Northwestern University, where he earned a B.S. and an M.S. in journalism. He is the author of ten books, including *The Canadians* and *Fury: Inside the Life of Theoren Fleury*, the true story of Theoren Fleury, the smallest player in the National Hockey League (McClelland & Stewart, Canada, November 1997). Malcolm's awards include the American Society of Newspaper Editors Award for Editorial Writing (2003); the *Los Angeles Times* Editorial Award (2002 and 2001); New York Page One Award from the New York Newspaper Guild (1975 and 1985), the *New York Times* Publisher's Award, 18 times; the George Polk Memorial Award for National Reporting (1975), and the Peter Lisagor Award for Reporting, Chicago Newspaper Guild (1983).

Walter F. Mondale: Vice President of the United States, U.S. Ambassador to Japan, U.S. Senator, and Minnesota's Attorney General. In addition to those offices, Fritz Mondale was also the Democratic Party's nominee for President in 1984. He is currently a partner with the law firm of Dorsey & Whitney LLP, headquartered in Minneapolis with 16 offices worldwide. He serves as chair of the firm's Asia Law Practice Group. Vice President Mondale is the product of the small towns of southern Minnesota where he attended public schools. In 1951, he earned his B.A. in political science from the University of Minnesota and, after completing service as a corporal in the U.S. Army, he received his LL.B (cum laude) from the University of Minnesota Law School. In 1960, he was appointed by Minnesota Governor Orville Freeman to the position of State Attorney General. Mondale was then elected to the office in 1962 and 1964 when he was appointed to fill the U.S. Senate vacancy created by Hubert Humphrey's election to the Vice Presidency. The voters of Minnesota returned Mondale to the Senate in 1966 and 1972. Jimmy Carter and Walter Mondale were elected President and Vice President of the United States on November 2, 1976. He was the first Vice President to have an office in the White House, and he served as a full-time participant,

advisor, and troubleshooter for the Administration. During this period, Joan Mondale served as a national advocate for the arts and Honorary Chairman of the Federal Council on the Arts and Humanities. He ran unsuccessfully as the Democratic candidate for President in 1984, returned to Minnesota where he practiced law, and was appointed in 1993 by President Clinton as Ambassador to Japan. During that period, he helped negotiate several U.S.-Japan security agreements, including a resolution to the controversy about the U.S. military presence in Okinawa. He also helped to negotiate numerous trade agreements between the United States and Japan, and he promoted the expansion of educational exchanges between the two nations. Mondale has authored the book *The Accountability of Power: Toward a Responsible Presidency* and has written numerous articles on domestic and international issues. Mondale is married to the former Joan Adams. They have three children - Theodore, Eleanor Jane, and William - and three grandchildren.

Thomas E. Moss: United States Attorney for the District of Idaho. Tom Moss graduated from the University of Idaho College of Law with a Juris Doctor in 1965. He practiced law in Blackfoot and served as Prosecuting Attorney for Bingham County for 25 years. From February 2000 until his appointment as United States Attorney in August, 2001, he served as member of the Idaho House of Representatives. Mr. Moss has been a presenter to Idaho attorneys on behalf of the Idaho State Bar Association and the Idaho Prosecuting Attorneys' Association in the area of trial advocacy, media relations, and legal ethics. He has also served on the faculty for the National Advocacy Center in Columbia, South Carolina. Moss has presented many lectures and training sessions to law enforcement officers on preparing and presenting a criminal case, including crime scene investigation, preserving evidence, writing reports, and testifying in court. Mr. Moss is past president of the Idaho State Bar Association and currently serves on two subcommittees of the U.S. Attorney General's Advisory Committee concerning Native American issues and Borders and Immigration. He also serves on the Executive Working Group, whose objective is to maintain and improve working relationships among federal, state, and local law enforcement. Tom and his wife, Bonny, have raised seven children.

Pierce Murphy: Boise's Community Ombudsman. Murphy was appointed by the Mayor and the City Council on March 2, 1999 and began work on April 5, 1999. Mr. Murphy has extensive experience in human resource management, facilitation, mediation and investigation. He earned a Master of Pastoral Studies degree from Loyola University of New Orleans, a Master of Arts degree in Counseling Psychology from Gonzaga University in Spokane, Washington, and a Bachelor of Science degree in Commerce from Santa Clara University in Santa Clara, California. Mr. Murphy began his career in 1972 as a law enforcement officer with the City of Menlo Park in California. Following his graduate studies and from 1986 until 1994, Mr. Murphy maintained an active Human Resource Management consulting practice with clients throughout the United States, Europe, Asia, and Latin America. In 1994, Mr. Murphy joined the Paper Division of the Boise Cascade Corporation as Manager of Human Resource Development. Mr. Murphy is married, and he and his wife have seven children.

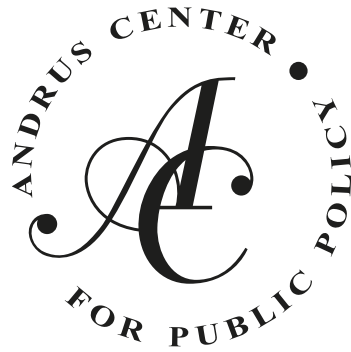
Patrick A. Shea: Attorney, Ballard Spahr Andrews & Ingersoll, Salt Lake City, former Deputy Assistant Secretary of the Interior for Land and Minerals Management. In that role, he oversaw the Bureau of Land Management, Minerals Management Services, and the Office of Surface Mining – agencies responsible for the management of over 270 million acres of land and for all offshore drilling for oil and gas production in the United States. Before entering government service, Mr. Shea was a lawyer, educator, and businessman in the Intermountain West. Along with practicing law in Salt Lake City and the District of Columbia, Shea was an Adjunct Professor of Political Science at the University of Utah and taught at the Brigham Young Law School. In September 1996, he was appointed by President Clinton to serve on the White House Commission on Aviation Safety and Security. Mr. Shea teaches seminars on Land Use Management and Biotechnology for Federal judges. Prior to his private law practice, he served as General Counsel and Assistant Secretary to a private communications company, operating television, radio, and newspapers. He also served as counsel to the Foreign Relations Committee of the U.S. Senate. Shea is a native of Salt Lake City and received his

undergraduate degree from Stanford University in 1970, a master's degree from Oxford University in 1972, and a law degree from Harvard University in 1975.

Judge Stephen S. Trott: Judge, U.S. Court of Appeals, 9th Circuit. Judge Trott was nominated by President Reagan and sworn in on April 19, 1988. From 1983 until April 1988, he served in the Justice Department. During that time, he had primary responsibility for the Department's initiatives against international terrorism, drug trafficking, and money laundering, and he was required to approve personally all applications to the federal courts for electronic surveillance. From 1986 until 1988, he was the Department's Associate Attorney General, the third ranking position in the Department of Justice. He also served as U.S. Attorney for the Central District of California and as prosecutor for the District Attorney's Office of Los Angeles County. Judge Trott has been on the faculty of the National College of District Attorneys at Houston and is a member of the American College of Trial Lawyers. Born in Glen Ridge, New Jersey, he holds a degree in French literature from Wesleyan University, a law degree from Harvard Law School and honorary Doctor of Laws degrees from Santa Clara University and the University of Idaho. Judge Trott is an active member of "The Highwaymen," a folk music group best remembered for its gold 1960's record hit, "Michael Row the Boat Ashore" and "Cottonfields." He is past President of the Boise Philharmonic Association and is on the board of Directors for the Children's Home Society in Boise.

Carolyn Washburn: Executive Editor of *The Idaho Statesman*. Washburn has held the position of executive editor of *The Idaho Statesman* since March 1999. A Cincinnati native, Carolyn holds a bachelor of arts in political science and journalism from Indiana University at Bloomington. She started her journalism career at the *Lansing State Journal* in Michigan as a business reporter covering Oldsmobile and General Motors. She worked for ten years at the Gannett newspapers in Rochester, NY, a community of about 1 million people on the shores of Lake Ontario, from 1987-1993. She was a business reporter covering Eastman Kodak Co., business editor and AME/metro. She returned to Rochester as managing editor of *The Democrat Chronicle*, after serving as managing editor in Boise from 1993 to 1995, and held that position from 1995 until her return to Boise in 1999. Carolyn served for two years as the chair of the Reporting, Writing and Editing Committee of the Associated Press Managing Editors Conference. Carolyn, an avid reader, is married to Perry, a journalist by trade and now a stay-at-home dad. She has three children—a 13-year-old son and daughters 6 and 5. The entire family enjoys hiking and camping in Idaho's mountains.

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