

# Center for American Progress



**SPECIAL PRESENTATION**

**“FISA: SAFEGUARDING BOTH SECURITY AND  
FREEDOM”**

**BLOGGERS AND ONLINE ACTIVISTS**

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MR. FAIZ SHAKIR: Good morning. Let's get started. Thank you all for being here. This event has drawn a great deal of interest and I think it's a testament to the fact that the issue of government spying is something that energizes and motivates a lot of people and it's also an issue that I think more people want to learn about. And so that's the purpose of our panel here this morning. This is the first of two panels that the Center for American Progress will be hosting today on the recent passage of the amendments to the Foreign Intelligence Surveillance Act. The second panel, which will occur in approximately a couple of hours, will take a look at the legal implications in the changes in the law.

The panel seated before you right now is much more fun. We're going to talk about – we're a group of bloggers and activists who have been at the forefront of shaping opinions online about the FISA and FISA-related issues. These are a group of bloggers who have sought to educate and inform the American public and to try to get them to do something about the issue. Before I introduce the panelists, I wanted to take a couple of minutes to set up the issue and to tell you a little bit about the context of what we're talking about today.

The Foreign Intelligence Surveillance Act commonly known as FISA, its acronym FISA, was passed in 1978 and it tried to strike a balance in on the one hand the government's need for foreign intelligence information and on the other hand, ensuring the constitutional protection that Americans have not to be eavesdropped upon without a court order. FISA has been amended a number of times over the years. In fact, it was amended shortly after 9/11. It was amended to allow the administration to have authority to go after terrorists in a new modern communications era, to give them the opportunity to go after e-mails, phone calls, internet, and so that's something important to keep in mind, because we're always told that we're trying to adopt FISA for the modern era and we've actually done that a couple of times.

In fact, President Bush said that he heralded the passage of the bill saying it gave him all the surveillance power he needed to go after terrorists, and this was in October 2001, yet the administration's been on an never-ending quest for more and more spying power and Congress, for its part, has sought to give the administration power that's warrant-based, but the administration at every turn has refused warrant-based power opting instead to seek warrantless power. That's a prerogative that President Bush has had. In fact, in 2004, he said, this is a quote from President Bush: "Now, by the way, anytime you hear the United States government talking about wiretap – a wiretap requires a court order. Nothing has changed, by the way." That was a direct quote from President Bush. Of course, what we learned is that wasn't true.

For five years, the administration had been pursuing a warrantless wiretapping program to the National Security Agency. That program did not require a court order. That program was authorized apparently by that logic of Richard Nixon who said, if a president does it, that means that it is not illegal. That logic didn't work for Richard

Nixon and it didn't work for President Bush, because in January of 2007, the administration decided to submit the FISA program – the warrantless wiretapping program to a FISA court for review. A couple of months thereafter, the Foreign Intelligence Surveillance Court apparently issued some rulings that said that some of the activities the administration was doing were illegal and thus required the administration to go back to Congress to get changes to the law, and that's why we ended up in August 5<sup>th</sup>, 2007, just a few weeks ago, President Bush signed legislation authorized by the Democratic-led Congress which gave the administration more power to spy or eavesdrop on U.S. citizens provided that the target is foreign-based.

What that practically means is that U.S. Americans are now subject to – their calls and their e-mails are subject to eavesdropping by the government for reasons unrelated to terrorism and also that doesn't require a warrant, it doesn't require a court order, and it's certainly ushering a new era of expansive presidential power, and that means, of course, there's no legal oversight. To the extent that the law talks about oversight, it says to the attorney general and the director of National Intelligence that you're in charge of ensuring that there are no abuses of power.

So as bleak as that sounds, there is one silver lining: the expansive power is really authorized for six months, now five months. So there'll be another debate in Congress in just a few months and we're preparing for that. I just want to close with the quote. The *Washington Post* wrote about the recent passage of the FISA Bill. They said, "To call this legislation ill-considered is to give it too much credit. It was scarcely considered at all." Well, we're going to try to do what Congress didn't do: we're going to give it some consideration.

So to my right is Spencer Ackerman. Spencer is a reporter, blogger for Talking Points Memo. He writes at TPMmuckraker.com and he covers the issues of national security there. He's also a senior correspondent for the *American Prospect* and a national security correspondent for the *Washington Monthly*. Spencer, why don't you give us a little opening spiel?

MR. SPENCER ACKERMAN: Thanks very much, Faiz. Thanks to the panel and thanks to the Center for American Progress for putting this on. I wanted to lead off from what Faiz was talking about to sort of get into the question of why bloggers found this issue to be so infuriating, how the issues that FISA presents ended up not really featuring too prominently in the actual bill and in the consideration of the bill in its treatment by the mainstream press.

One thing that bloggers are very good at is the aggregation of information and the shaping of a certain narrative when that information sort of gets rolling, and it's not too far out to submit that for a lot of people on the left, after *The New York Times* broke this story of the warrantless surveillance program at the end of 2005, that program sort of replaced the Iraq war as the bailiwick in the kind of main, sort of original sin that the Bush administration has committed for many on the left, and I say that for a number of reasons: first, because the Iraq war as painful as it is in the United States is still something that happens overseas, whereas here in the United States as much as the

administration's insisted that the constellation of programs that it's referred to as the Terrorist Surveillance Program occurs mainly overseas and in international communications, nevertheless it's said repeatedly that if one person in the United States is on that communications chain, that person is liable to be surveilled without any warrant.

It also presented itself in a direct context of illegality. There haven't been, I think, any legal or constitutional scholars who said the program is legal, who at one point didn't draw a paycheck from the Bush administration. The Fourth Amendment considerations just really had nothing to do with what this program was, and as a result, you had a kind of stored body of information that had been percolating for the last several months on liberal blogs, on activist sites and so forth that it really just shaped people's understanding of what was about to happen.

And then finally, over the last couple of weeks, right before this bill broke, you had so many revelations that this program had resulted in shocking occurrences like the visit to John Ashcroft's hospital bed by then White House counselor Alberto Gonzales and White House Chief of Staff Andrew Card after the Acting Attorney General James Comey had reviewed the program in early 2004 and determined that it didn't pass basic constitutional scrutiny, and furthermore, Alberto Gonzales right as this bill was being debated behind closed doors had gotten himself in trouble by saying that he didn't originally perjure himself when he had stated in 2005 that the program was uncontroversial within the Justice Department following Comey's testimony because there was in fact this broad constellation of surveillance programs that we didn't know about that nevertheless were still under a single presidential executive order (unintelligible).

So right as this bill is coming to the forefront, there had been no shortage of blogger coverage, everything that it kind of led up to this point in terms of what the Bush administration has done. What happens when the bill was considered is something that's rather interesting. When the press starts writing about it, it starts writing about it in force basically the week that it's up for consideration. When the Bush administration had started saying that the congressional session has ended and it wouldn't be responsible for Congress to leave without a bill passing, and all you really got from following that coverage, as valuable as it was, because bloggers have a symbiotic relationship with reporters was the understanding that something terrible had happened that had caused the administration to require further surveillance authority, that somehow the FISA court didn't provide, now that the program had been put under the court's authority in January.

None of this context, none of this back story was there, and making matters worse, given that the bill was still under consideration, it was being negotiated behind closed doors, there wasn't any specific information that people could point to as to what would be within the bill, and there you had a ton of bloggers, some of whom are more or less expert, Balkanization's Marty Lederman and Jack Balkin who are really just unbelievable writers who come from their legal expertise to a very accessible way to Orin Kerr, the Volokh Conspiracy a bit more on the right, who would debate what the need for a FISA reform was and how that could be expressed in the bill that was ultimately

delivered. That ultimately helps you as a reader get a context for information that the general reporting doesn't have.

What we try to do on Talking Points Memo was let the press sort of deal with the tick-tock of how the bill was moving forward, but try and shape the issue for what you would want to look for as an interested party, as an American, as someone who's concerned about national security inside how the bill would change. Would there be before the fact FISA court review, would that review be based on individualized suspicion? Would we use a probable cause standard as we have in the past through FISA, or would there be a reasonable belief or reasonable suspicion standard, something much less than the administration had claimed in the initial debate?

What ultimately happens, our panel of activists can demonstrate very well, a really awful bill ends up moving forward that goes beyond what the stated rationale was for the revision and that leads further to bloggers just wondering what in fact the real issues are behind the bill, what are the considerations raised by it, and as a result, you've got the situation like we have now with a ton of sort of in the dark, confused and suspicious Americans just trying to figure out how this landmark legislation (moved ?) forward. The next couple of weeks of consideration after the bill passed, again, just had a kind of molasses-based paste for understanding what was in the bill and on Talking Points Memo and around the blogosphere what we're tried to do is just sort of drill down certain components within the Protect America Act and bring out their significance. That's something that bloggers do well and reporters used to do extremely well and hopefully will do again.

MR. SHAKIR: Thank you, Spencer. Next, I want to turn to Spencer's right. Caroline Fredrickson. Caroline Fredrickson is the director of the American Civil Liberties Union's National Washington Legislative Office. She is the organization's top lobbyist and she supervises a 50-person Washington legislative team. Prior to joining the ACLU, Caroline was the general counsel and legislative director for NARAL Pro-Choice America. Caroline has also served on Capitol Hill under Senator Maria Cantwell and former Senator Tom Daschle, and prior to that she served under President Clinton, on his legislative affairs team in the White House.

Caroline, thanks for being here.

MS. CAROLINE FREDRICKSON: Thank you so much. Thank you for having me. I really appreciate being here. I think Spencer really did a great job of summing up some aspects of what happened. I think mass confusion is a good way to describe sort of some of the reaction from outside, I think even some of the reaction up on the Hill.

Let me tell you a little bit about what our office does so that you understand what kind of role we play. We are the legislative department of the ACLU, but we also have organizers and communications people who are – if I could say embedded with the lobbyists – and we try and make sure that everything that we do, all of our lobbying efforts, are fully supported by a communication strategy and an organizing strategy because we understand that members of Congress, as much as they'd like to just make

their decisions based on pure substance, are often influenced by their local newspapers, by editorials in *The New York Times*, by hearing from their best friend from grade school, by getting 10,000 phone calls in one afternoon from angry constituents. So we try to ensure that all that plays into our lobbying strategies.

I have to say, we're up on the Hill all the time in constant conversations with people who work on these issues. We have been deeply involved in the FISA issue, certainly throughout the history, throughout the Bush administration's time in office, but particularly after the story came out in *The New York Times* about the illegal spying program that the administration had been running. We had done a whole variety of things including lobbying, running ads throughout the country, we have put together town halls with Gary Hart, with John Dean, with Larry Tribe, all around the country, again, we've worked – we have 53 affiliates nationwide. They have all done events. We have done a huge amount of activism at the grassroots level, in district meetings with members, lots and lots of phone calls to members, lots and lots of e-mails.

And this has really been ongoing since December 2005 when *The New York Times* story broke, and I guess one of the things that I think maybe will help people understand why there was a such a deep and resounding anger from the activists from the blogging community was that the Bush administration has been pushing for radical changes to FISA for a quite some period of time, but certainly since the story came out in *The New York Times* they are trying to get some congressional imprimatur on the program that they had been running.

The ACLU and other organizations and lots of bloggers have been on top of this, and there was no such legislation passed in a Republican Congress. We felt pretty proud of that. We had done a lot of work to ensure that we were telling people why it was so dangerous to lift warrant requirements, why the Fourth Amendment was such a critical protection, why our founding fathers believed that that was actually the cornerstone of our Constitution, the assurance that our government would not be able to intervene in people's private lives in a way that destroyed the foundations of our democracy. That was critical. That was one of the reasons why we had a very strong bipartisan coalition, why we have worked with libertarians, with the American Conservative Union, with a variety of organizations on the right who were very afraid that the Fourth Amendment was being eroded by this program.

So then, when there started to be a buzz in mid-July that there was FISA legislation on the agenda, everybody was completely mystified because guess what? It was a Democratic Congress, and although we, who work on the civil liberties issues, know that Democrats traditionally are nervous when it comes to terrorism and wars and are always afraid of being accused of being weak, of not having sufficient muscle. And so we were always aware of that, but we really thought that the main project for us and what we had been focusing on was fixing some of the horrendous policies of the Bush administration prohibiting torture. We were working to fix the Military Commissions Act and restore habeas corpus, close Guantanamo. All those were sort of the banner issues and all of a sudden, we're looking at FISA. We're looking at FISA legislation that was being moved through a Democratic Congress.

And so this is one of the reasons why there was so much anger, because when you have Harry Reid and Nancy Pelosi running Congress and you have people who were euphoric after their victories because they thought that this meant that these terrible civil liberties policies would be changed and that there will be forward motion, and all of a sudden, you see them schedule legislation. Sure, they voted against it, but I think you have to understand where the base is coming from, and the activists who understand to some extent what the power of leadership is, that's the power to set the agenda, that means that they can actually decide what goes to the floor.

I don't know how many of you worked on the Hill, but you know, unanimous consent agreement was reached in the Senate to schedule the Senate – to schedule the Republican administration bill as well as the Democratic bill. In the House, Nancy Pelosi introduced a Democratic bill which was pretty weak from our perspective, but certainly far better than the administration's bill, but she put it under a procedure where it would require two-thirds vote to pass which ensured that the Democratic vote would fail. So again, it's not a conspiracy necessarily, but you can see who people would be so mystified by what looked like a deliberate effort on the Democratic leaders to have their own legislation fail and create almost a momentum behind the administration's proposals.

So we have been working around the country with our activists, with our affiliates – and again, we're trying to channel that anger into something more constructive. There is a sunset coming up, as Faiz said. The bill actually will sunset in February which cuts both ways. That's the middle of the primary season. That's not exactly necessarily a time when Democrats find their greatest strength in their conviction, but hopefully we can work with them. We can channel the anger into a some kind of constructive fixes to the FISA legislation.

So we are, our affiliates have been working to schedule meetings in every district in which they can find a member of Congress. We're getting reports back. We are working very hard to make sure that the ACLU members who number close to 600,000 are aware of all of the major insufficiencies of the bill, the significant problems of the legislation which Spencer went into some extent, but I think the basic fact is that there is no longer a warrant requirement and there is very little protection for American communications. The language is so vague it says basically communications concerning somebody reasonably believed to be abroad. That could be your communications: talking about your Aunt Gerta who lives in Switzerland. That is very, very vague language and there's very little assurance, I think, that the administration is going to work on the best intentions to not to go too far.

So we are running ads. We are actually running ads in Nancy Pelosi and Harry Reid's districts to let them know that we think that they need to be leaders, that they're the ones who are responsible for fixing the problems that were created. We are working to reach out to all the presidential campaigns, to make sure that they don't forget who's going to be voting in the primaries in both parties, and we are obviously finding everybody who we know who is best friends with every member of Congress who is a

critical target on this. We do want to find their first girlfriend from junior high and their college roommate and we do that working with our affiliates.

But most critical – and I think Nita probably will spend more time talking about this – but most critical, obviously the members of Congress, apart from their donors is their voters, and it's the people who contact them everyday, who go to their town halls, who send them e-mails, who make phone calls to their district offices or show up in their D.C. offices and say, this is so unacceptable. So we are having a full court press, going forward to ensure that before that sunset expires that Congress actually does something to ensure that our basic communications privacy is secure.

So thank you.

MR. SHAKIR: Thanks, Caroline. Next, I want to turn to Nita Chaudhary. Nita is a political organizer for MoveOn, a political organizing guru. She has led MoveOn.org's political actions campaign to end the war in Iraq and they just wrapped up their Iraq summer campaign with a very successful Take a Stand Day event yesterday, events all around the country from coast to coast. She also leads MoveOn.org's political actions work on civil liberties, censorship, and a whole host of other issues. Previously, she worked as the director of online organizing at the DNC, the Democratic National Committee, and she also worked at the People for the American Way.

Nita?

MS. NITA CHAUDHARY: Thanks, Faiz. And I just want to say what an honor it is for me to be on this panel with these folks who have led so much important work in this area, and I also want to say that it's an honor to be on the fun panel. (Laughter.)

I want to take a step back and talk a little bit about where MoveOn members come to this fight on our essential liberties and on our democracy. MoveOn members have been active on defending democracy and protecting our democracy throughout the ten years of the organization's history. Not long after IBN, the explosive news of the warrantless wiretapping program broke that the president had so brazenly exerted his own authority over that of the Constitution, over that of the principles that our country was founded on.

We joined that campaign soon after the ACLU following their lead in early 2006 and it was without a doubt one of the highest energy campaigns I have had the privilege of working on at MoveOn. There were well over 450,000 people involved in various ways, there were petitions, there were letters to the editor, calls to Congress. In the middle of February last year, in the middle of snow storms blanketing the Midwest, MoveOn members took to the streets and staged Bill of Rights readings in their town squares to bear witness to the president's disdain for the rule of law. This infiltrated the local press. It began to send a message that this is something that really matters to voters. And then there's, of course, what I think most people remember from that campaign, which is the TV ad that morphed President Bush into President Nixon because, quite frankly, their rationale is, as actually pointed out, for breaking the law was the same: it's

not illegal if the president does it, and the people weren't buying that, and I think that's why people remember that iconic ad campaign so much.

That was the heat of the campaign last year and soon after that, we had a process at MoveOn where there were meetings all across the country, there were surveys, there were conference calls, and what MoveOn members were doing were trying to come up with what are three issues that matter most, aside from ending the war in Iraq, that MoveOn members want to work on and make a difference on? And healthcare for all came up, clean energy came up, and so did restoring our democracy. What does this mean? This means that issues about our Constitution and our democracy matter to voters. Progressives care deeply about the Constitution. They care deeply about our founding principles. They care deeply about liberty, and yes, we care deeply about security as well, but we don't feel that there is a tradeoff. In fact, like our founding fathers, we actually believe in a very real way that preserving these liberties and this democracy is essential to our security going forward. There's no way we can lead on freedom in the world when we are denying basic rights at home.

The strength of MoveOn is our 3.2 million members. We speak through them to Congress and what they have been doing ever since this process is speaking to Congress and trying to show members of Congress that this is a voting issue as much as the economy or the war or anything else, preserving the Constitution is a voting issue. They've been active this year on FISA, on habeas, on torture and trying to speak to Congress, and their outrage on Congress' capitulation to Bush and the politics of fear is real. Two hundred fifteen thousand MoveOn members signed MoveOn's call to calling on Congress to reverse this capitulation.

Going forward, we've just joined a new coalition called the American Freedom Campaign. That coalition has a pledge. It's a very eloquent pledge: In our America we do not torture, the president operates under the law, we defend democracy, we respect the rule of law. What we hope to do is build a diverse grassroots movement and media movement from slices all across American culture on this issue, and one key piece is pushing the presidential candidates of both parties to lead on these things. If they want to lead the country, then they have to accept the fact that the Constitution is, in fact, a voting issue, and then the other thing that – the other key piece of that that we're going to try and move forward is a media war room with diverse spokespeople, regular Americans, experts to every slice of America.

And it's important to note and the ACLU has led on this better than anyone that this is not a left or right issue, and Caroline spoke to this. There's a similar pledge that was signed by a number of leading conservative scholars called "The American Freedom Agenda," and it's about what it means to be an American, and that's something that crosses party lines and ideological lines. We all care about the future of our country, where we came from and where we're going.

And another critical piece that I want to point out before we move on to Julian is that it's not a politically risky issue either. It's a terrible conventional wisdom that it is. Last year's election saw the politics of fear play out and everywhere that they were

played, they failed. It's because Americans get it that this is about more than fear-mongering and scare politics, and I want to – I brought a couple of quotes from MoveOn members that – e-mails that I've received since I've had the privilege of working on this. Janet in Fort Harbor, Washington wrote: "Respecting the roots of democracy in this country is a profound responsibility. Cowering and capitulating in fear in the name of security is a travesty. It's time to wake up to what the founding fathers envisioned: liberty and freedom, not fear and cowardice."

Angela in Fort Collins, Colorado: "It's time this country led by example, especially in those places where we have taken over in the name of democracy and freedom. Our Constitution should be held sacred given its show of durability and relative fairness." And Susan in California said, "It's time for a politics beyond our narrow fear and self-interest and for Congress to act as the check and balance to the executive branch that it was supposed to be. We cannot continue to claim the promotion of democracy abroad while undermining it at every turn."

These are the voices of real Americans, not the phantom Americans who are somehow persuaded by fear-mongering in elections and that politicians are scared of when they campaign during elections. These are real people. When Democrats have the resolve to fight against the illegal wiretapping program last Congress, or to vote in large numbers against the Military Commissions Act, it was used against them. It didn't work. Why this happened now is sort of beyond a lot – certainly MoveOn members and I'm sure a lot of us on this panel. To be clear, our constitutional principles are way more important than elections, but it is worth, it is incredibly important to point out that that conventional wisdom doesn't hold. It's just not true. MoveOn members have been pivotal in proving that over the course of the past couple of years and that's certainly what we're going to continue to do.

MR. SHAKIR: Thank you, Nita. And lastly, I want to turn to Nita's right, Julian Sanchez. Julian Sanchez is a Washington-based D.C. writer and journalist. He's been a contributing editor and is a contributing editor for *Reason* magazine. He frequently writes on technology privacy and sexual politics, some of the big issues of the day. In the past, Julian has been a *Reason* assistant editor and a staff writer at the libertarian Cato Institute. Thank you, Julian, for being here.

MR. JULIAN SANCHEZ: Thanks, Faiz. I want to also give it a take on, a little bit different from Spencer's on the role of blogs in this kind of debate, and I thought as the sort of token non-progressive on the panel, I might begin in an ironic spirit by noting what is probably my unique point of agreement with Noam Chomsky.

Chomsky is fond of pointing out that the space constraints of mass media create a kind of status quo bias that gives enormous framing power to those who first begin discussing an issue like this. And this is the thing this administration has been incredibly canny about exploiting. If you look at the way that this is being spun, a narrative that is being created by the defenders of this bill – Pete Hoekstra seems to have become the sort of point man for this – but a number of others, and the Op-Ed pages, you'll see a very strange debate unfolding there if you actually have been following the issue. The way

they're describing this is as though it's is a debate about updating what is always described as the 1978 FISA statute. Right?

So you're supposed to imagine is that there are, like, baize of polyester-clad G-Men's forlorn with their big poofy headphones because all they're picking up is these tinny Bee Gees B-sides because they can't listen to a phone call from Addis Ababa that was (Euro-sent ?) without a warrant in advance. When, in fact, there is no disagreement at all about this, right? Both the Democratic legislation that was preempted and the Protect America Act that actually passed were in agreement that if international to international calls are passing through the United States that that has never been required that international to international calls intercepted overseas should require a warrant and so – there's essentially no disagreement that just because they're routed through the U.S. that should remain the same.

So the question is why is it being framed that way? Well, because that's a much easier debate to have, right? I mean, if the argument is should we be able to eavesdrop on foreign to foreign communications when people who are not in the U.S. or are not U.S. citizens? Well, obviously, the answer is yes, and that's a very easy argument to have. And the problem is, of course, that in the space of a 700-word Op-Ed, let alone a sound bite, you can make a few moves and establish rhetorical chess game. You cannot possibly say, wait, wait, wait, actually we're playing Texas hold'em and here are the rules of that game.

And so through this sort of astonishing uniformity, and I should say also an astonishing level of duplicity even for an administration with an incredibly postmodern sort relationship to the truth, they've been able to insist upon this. And the role of blogs, I think, is that they're able to spin this out in as much length as is necessary and also to create a kind of dialogue that doesn't exist, right? So if Pete Hoekstra writes in the *Washington Times* that this is – all this bill is about is updating the 1978 FISA law to allow eavesdropping on foreign to foreign communications, and someone says, that's false, he can still the next day write exactly the same thing in the *Chicago Tribune*. That's much more difficult in the blogosphere when you sort of have a kind of constant interaction that requires you if you say something like that, which is demonstrably and verifiably false, to respond to the fact that people are pointing out that you said something that's demonstrably and verifiably false.

I also think there's a second problem in the way this has been framed in a lot of the mainstream debate because even among critics of the law, this is being talked about as though it is fundamentally a shift in the kind of oversight we have over conventional sort of ex ante wiretaps where what we have is either a phone number or a particular target and what we're doing is listening in on that person, sort of sitting there with the big poofy headphones like the guy in the garret in the movie *The Lives of Others*. When in fact, there's an enormous amount of circumstantial evidence at this point that what's actually going on is something rather different. That is that at least some part of this initial terrorist surveillance program involved the kind of data-mining which in some way involved the use of computer analysis of not particularly targeted conversations or persons or even cell phones, but rather massive analysis of huge rims of data flowing

through the pipes either for particular patterns of contacts between people, or possibly even for particular kinds of key words that computers were able to pull out, say, the names of known terrorists, occurring in conversation.

And there's again, a lot of circumstantial evidence. This has never been of course confirmed by the administration that something like this is what's going on. And one of the problems with the ambiguity in the current law is that the way it's phrased could very well be seen as authorizing the director of the National Intelligence, the attorney general to not just specify particular targets, but rather to specify kind of algorithms for search, algorithms that will be used to flag particular conversations or communications for further analysis.

And there's a problem on both sides here, I think, because this is actually an incredibly complex problem. It creates really a novel question both technologically and from a legal perspective because it really differs pretty dramatically from conventional wiretaps both in its scope, but also in the threat it poses to privacy, right? If this is the kind of thing they're doing, if it's computers listening to calls, well, that's not the same level of privacy threat as a person actually trained, you know, sort of sitting there and taking notes on every word of your conversation. And so what we should be having, I think, is a kind of extended conversation about how as search technology changes, we need to rethink the way we conduct oversight of investigation, when the point of the investigation might not be to prove a known target is a terrorist, but to look out at the haystack looking for the terrorist needles.

And the problem is this is just not the kind of conversation that plays very well in a 700-word Op-Ed or even in a 1,000-word news story. There isn't, like, a peg here. There isn't something that happened last week that works as the thing to hang this story on. And so blogs are also very good at again bringing to bear, as Spencer pointed out, a lot of dispersed intelligence and a lot of the different disciplines that are necessary to begin having the conversation we ought to be about the shape of oversight over a new kind of surveillance.

And sort of the final point I want to make is more political, is that it's been pointed out sort as a defense that this law, it does sunset in six months even though anything approved under it – surveillance approved under it, can keep going for another year. One of the problems with the sunsets is that while they're regarded as a kind of check, what often seems happens – and I think the experience with the Patriot Act is a case in point – is that legislation that would never be approved, if it were regarded as permanent, kind of slips under because it's regarded as something that's a stopgap. The problem is that the institutional momentum then shifts. Six months later the question is not should we reapprove this vast expansion or surveillance power? It's if you don't reapprove it, why do you want to impose novel limits on our intelligence gathering capability? I mean, this is ironically proof of Ronald Reagan's dictum that the closest thing to immortality on this earth is a government program.

Fortunately, one thing that bloggers are extraordinarily good at, as you know if you read political blogs, is discussing even the most trivial thing forever. I mean,

political bloggers are like remora: they will latch on to something and stick and not let go. There are people still talking about how two years ago, you know, they exposed the forged documents on *60 Minutes*. I mean, they will – people will cling to issues and keep them alive in a way that shifts that kind of institutional momentum back in the favor of people who consider this an expansion and not something that is now part of the new status quo and now something that must be justified if it is to be changed again.

MR. SHAKIR: Now, would be a good time to introduce myself. I imagine I didn't do that early on, so I'm Faiz Shakir. I'm the research director at the Center for American Progress. I'm also the editor of our blog ThinkProgress.org along with my colleagues, Amanda Terkel and Matt Corley, Satyam Khanna. We run a blog that has been dealing a lot with FISA-related issues primarily because the Bush administration continues to give us good reason to do so and we continue to bang the drum, and I hope that Julian approves.

I'm going to ask some questions. I'm also going to ask that you, if you have a question, we have a microphone going around in the back of the room, a young lady carrying a microphone, Paige. If you'd like to ask a question, please, get her attention. I'm going to ask the first one, and then we'll go from there and see what kind of interest there is in the audience for asking others.

I want to turn to Spencer first. Spencer, there's this conservative claim that I hear often in the blogosphere and around that: Spy on me, I've got nothing to hide. I'm sure we've heard it all, and I think what the right is trying to paint, those of us who are concerned about the bill is moonbats, as conspiracy theorists, who are simply beating a drum for no reason. There's no reason to be concerned here. So spy on me, I've got nothing to hide. What's the response to that kind of argument?

MR. ACKERMAN: Well, first off, it misunderstands what the bill does. The bill isn't just spying on you. In fact, if you go through the language of the Protect America Act, one thing it doesn't use is the term – except for, I think, one (Aaron ?) mentioned – subject. What it talks about is collection. What it talks about is what the proper circumstances are for acquiring certain sorts of communications, which is to say it doesn't have to say, you know, Faiz Shakir, I've been reading so many awful things you've been writing about the Bush administration on ThinkProgress.

What it does is say – you know, there's a category of information that I believe is, first, reasonably believed to have information about – and this is the one from the bill – foreign intelligence information, pretty broad latitude there. Then secondly, it says that of that information, the administration, the attorney general and the director of National Intelligence would have to specify that the avenues of collection are reasonably believed to occur outside the United States. This is what it seems like, this section of the bill that Julian is referring to when he talks about algorithmic surveillance instead of a direct surveillance. So out of that all, you may be caught up in that.

Furthermore, we don't know what it is when collected, there's any sort of minimization requirements about. So for instance, whatever it is that you find yourself

swept up in, is it simply that matter of triggered communication where you use, in Julian's example, the name of a known terrorist, or some sort of reference to a point of origin of known terrorist communication and financing and so on and so forth? It could really be anything, and according to one reading of the bill, you don't even have to have the attorney general and the director of National Intelligence turn to the Congress and say, this is what our guidelines for keeping certain information, or all they have to do on at least one reading of the bill is turn to Congress every, I think, it's six months and say, this is how we're not abusing this power, that we're not even defining.

So whether you do or do not have anything to hide, they'll be determining that and you won't. A court won't be determining that. Who knows where it ends up? And that's not the America that I think a lot of us thought we were living in.

MR. SHAKIR: Caroline – if there aren't other questions around – Caroline, I wanted to turn to you and ask about something that you said in your opener, which is that you have a – the ACLU has a campaign targeted at Senator Reid and Speaker Pelosi, and also the Democratic presidential candidates. As I read the vote that occurred in the House, it seemed to me that what we really lost were the Blue Dog Democrats, right? A lot of the – I guess so-called conservative Democrats. Is there a campaign to target them, or how confident are you – what's the campaign to win over people who are persuaded that they need to be tough and strong on this, but yet are Democrats?

MS. FREDRICKSON: Well, absolutely. Clearly, we need to win back or win at some level for the first time some of the more conservative Democrats and some of the more allegedly progressive Republicans. They are members of Congress who should be more concerned about the Constitution, about the implications of this legislation, and we will and we are already doing a lot. We're just getting intelligence back, not from the NSA, but from our affiliates who've been meeting with the variety of members of Congress.

Our targeting is such that we're looking – we are looking primarily at those members, but we also think it's really important, and this is what I'd like to emphasize from what Nita said which is really critical that the Democratic leadership needs to understand that it cannot and should not run away from arguments about terrorism, that they have a role to play. They're going to be accused by this administration, by Republicans regardless of what they do of being weak on terrorism. So what they need to do is come up with their own policies that are strong on terrorism and are strong on the Constitution, and that is what the voters are going to understand. They did reject the politics of fear.

The Military Commissions Act, as all of you may recall, was passed right before the last election when President Bush was out. He found Sheik Mohammed, brought him to Guantanamo, they produced the 14 high-level terrorists, made a big deal out of it, he pushed for the Military Commissions Act, said that we need to have this, this is critical to our safety. A lot of Democrats actually did vote against that bill and they survived, and not only did they survive, but they took back control of both Houses of Congress.

So I think part of our effort is definitely directed at those Democrats and Republicans who are in swing districts, who did vote for the administration bill, but it's also to ensure that those who control the agenda of Congress are confident that the people who are in their districts and elsewhere across the country actually understand and are angered by what happened and want to see a fix.

MR. SHAKIR: I want to turn to some questions from the audience. If you don't know who you're directing your question at, just ask the question and I'll pick somebody to answer it. If you do know, just address it to that person. First question.

Q: Alan Milliken, affiliated with Washington Independent Writers. How important do you see the next attorney general being – and will it make a difference what that person may do and say particularly when compared with their predecessor, Alberto Gonzales?

MR. SHAKIR: Julian, why don't you take the first stab at that one?

MR. SANCHEZ: Yes, actually my worry would be that Bush is sufficiently cowed that he will pick someone sufficiently unobjectionable, that Democrats will lose a kind of talking point against FISA so far as – I guess more disconcerting when it's Alberto Gonzales is deciding how this is going to happen, given that he displayed the kind of shocking ineptitude. Although, you know, perhaps I shouldn't fear that. The administration does seem to have, like, decided on a kind of chicken methodology where they just do, like, the most reckless possible thing in every instance as a way of forcing – it's like ripping your steering wheel off and you're playing a game of chicken which is, like, insanely reckless, but then the other person has to veer. So I'm hoping they'll be sufficiently reckless that they'll pick someone so offensive that it will allow this to continue to be a live issue.

MR. SHAKIR: Does anybody else have something? Go ahead, Caroline.

MS. FREDRICKSON: I want to say – I have to say I love that metaphor – (laughter) – fits the Democratic Congress really perfectly.

But actually, I don't think it really matters. Alberto Gonzales was clearly incompetent. He was inside the room and creating all these terrible policies from torture to surveillance, and yet, I think it's the same issue as with the Patriot Act, right? I mean, the national security letter provisions of the Patriot Act were widely abused by the FBI. The inspector general did a very thorough audit. The FBI did its own internal report which showed that the inspector general himself had actually under reported how many violations there were. The problem there is that the law is so vague, it's so permissive, there is no independent oversight that the potential for abuse is rampant and likely, and I think that's exactly the case here where you have – you have this administration that now has no need to get a warrant to engage in anything that has to do with foreign intelligence surveillance, and you know, I think we have a history in this country – and not to be too much of a conspirator – but we have a bad history.

We have had a government that has engaged in politically targeted surveillance that has used the powers of the FBI and other parts of the government to go after political opponents. I don't know that that's this administration. I don't know that that's the next administration, but we certainly now have a system in place where there is no check because it's neither the court nor Congress that will have access to any of the day-to-day information, or will have any role in approving the specific intelligence that goes on.

MR. SHAKIR: Let's turn to some more questions from the audience. Yes, this gentleman here.

Q: Hello. My name is Ted Gotsch. I'm with Telecommunications Reports. For Ms. Fredrickson or anyone else who would like to comment on it, I know obviously there's a lot of concerns with what Congress has already approved and people are looking to the six-month sunset deadline to make changes. But that said, as I'm sure you all know, the administration actually has initially wanted more, wants more, specifically what I'm thinking about is the telco immunity which they continue to press forward on and try to make clear that they want that included in a permanent, or shall we say, the next fix as they would say for FISA. And just was wondering what you think of the chances, what you plan to do to fight that, what do you think the chances are realistically that that could get included, and how much of a worry that is for you all?

MS. FREDRICKSON: It's a huge worry. It's something we have been very focused on and there's actually been legislation that has been pushed by a variety of members of Congress, and then at the end of the last Congress, right before the election, we felt like we were playing whack-a-mole because these provisions kept appearing in completely unrelated legislation that would have provided the telecommunications companies with a complete immunity from involvement in turning over records to the administration without a court order. They did so knowing that there was a legal framework that required a court order, but went forward anyway that violated numerous state and federal laws. There are lots of lawsuits that proceeding, most of them consolidated in the northern district of California. It's imperative that those lawsuits proceed.

I think it's really interesting, and we haven't talked that much about the role of the Director of National Intelligence, Mr. McConnell, but I don't know how many of you followed those stories about his interesting interview with, I think, it was the *El Paso Times* where he laid out many details about the role of the telecommunications companies, as well as some of the other aspects of the rulings of the FISA court, things that this administration has called state secrets up to this point and has used that argument to try and dismiss these very cases that has not confirmed nor denied the involvement of the telecommunications company until for whatever reason, the director of National Intelligence decided that it was in the administration's interest to put this story out there.

Well, you know, it is something we're going to be focused on. I think again, there are sort of the inside strategy, there's the outside strategy, but I think it's critical that people out in the districts of members of Congress know that these members of Congress might be giving this kind of immunity to their biggest donors, and that would be really a

sad episode when, I think, the Democrats have really tried to make a campaign out of restoring ethics to Congress and sort of cleaning up the cesspool that is the Capitol.

So I think that would be an element of something we would talk about. It's certainly an element of what the telecommunications companies are talking about because they're the ones who host probably more fundraisers for members of Congress than any other industry.

MR. SHAKIR: Nita, I wanted to talk to you about something that you mentioned in the opening, some e-mails that you've received from MoveOn, from people who are concerned about this and one issue that's always kind of interested me is what motivates Americans about this particular issue? It seems to be something in the ethos of America that we value privacy and we're very concerned when the government is expanding its power, particularly when that power involves spying and surveying and eavesdropping. I wonder if you could get the sense from your community and the feedback that you get, what is it that really motivates them and drives them around this issue?

MS. CHAUDHARY: Yes, I'd love to actually, and if I could digress just – I come to it from a unique personal perspective as well. As a first generation Indian here, the identity of being an American was not something that was always comfortable to me or that I felt was mine. I was a student when September 11<sup>th</sup> happened. I remember being angry by what began to happen soon after the Patriot Act debacle. I talked to my father who was my best friend – and I lost him just a few years later – and I would ask him how can this be the greatest country in the world? And he said to me, you know, it is, and it's because we have these rights here and they're worth fighting for and they were rights that I was never able to call my own. And he talked to me at length about the struggles that he had in pre- and post-independence India, and that's when I began to really feel like I owned the identity of being an American and that these were my rights to fight for as well. I think that that's where a lot of activists, progressives voters come from.

Being an American is a wonderful thing, being a patriot is a wonderful thing. It's something to be very proud of. Over the last six years, we've watched these rights that we hold close to our hearts, because they're more than political debates or words, be completely and totally trampled and to some extent, we blinked and they've kind of been gone and people are starting to realize that and they get it. They get it now that the politics of fear doesn't work and it makes them angry that it keeps getting played over and over again. And I think that there is, from where I sit and what I hear from MoveOn members and others around the country, there is – you know, it's time – there's a feeling that now is the time to reclaim what it means to be an American, to restate the nonnegotiable truth about what it means to be a democracy, that we don't torture, we don't wiretap people without warrants, the president operates under the law, really basic things. And it's time to reclaim that because we're waking up now and we're seeing everything that's been lost over the last six years.

And if you don't mind, if I could sort of also address what comes next in this fight in Congress. I think Caroline is incredibly, like, totally right. We've done some work on

the telecom accountability through our sister organization Civic Action. We have an immense challenge ahead of us with members of Congress. It's not just that they think that voters don't care and only elites care about the Constitution. They think people don't pay attention to what happens with their dealings with these cable companies and telcos as well. My sincere hope is that members of Congress have began to wake up and seen the outrage that this debacle over FISA has caused between what's going on in the blogs, the ACLU's ad campaign and grassroots campaign, the 215,000 MoveOn members who have signed this petition. I think that they are starting to get it, but the one cause for hope – and it's scary even to call it that because of what Julian said – it's the six-month sunset. It is – we have six months to wage this campaign and wage it right.

It's a sort of controversial thing to say, but I think the fact that his happened at all means that we haven't done our job, any of us, well enough. The fact that this passed means that we've got a lot of work to do. We haven't gone on the attack on politicians who claim to be America, but don't understand what it means to be American. We haven't put the pressure on presidential candidates who want our votes to lead on these issues. This is all a tremendous amount of work that we need to get done and we need to ratchet up the pressure and the volume a lot in these six months, because it could be our last chance before we say goodbye to this forever.

MR. SHAKIR: Great. Thanks. Another question from the audience. This gentleman right over here.

Q: Yes. I'm Ed Spannaus. I write for *Executive Intelligence Review*. One thing which has not been brought up which is critical is the role of Dick Cheney and whether any of this could be dealt with adequately as long as Cheney is still in office. I mean, this was Cheney's – if you drill down, as Spencer says, from the beginning, this was Cheney's program. He's the one that went to the NSA after 9/11, argued for warrantless wiretaps, he's the one who briefed the gang of eight, he's the one that sent Comey to the – not Comey, Gonzales and Card to the hospital, and then that McConnell's interview in the *El Paso Times* – (laughs) – he says, you know, what convinced him that he couldn't accept the legislation that had been agreed upon was a certain mysterious hand that came out from the vice president's office and handed him this bill which was not acceptable, right?

And then – I don't know if Caroline, if you were there – but this briefing, background briefing that was given by the Justice Department to a group of people afterwards, that Bruce Fein reported on *New York Times*, that their view – and this is Addington and Cheney's view – was that this legislation is just advisory anyway, that the president's Article Two powers trumps anything that Congress can do. So while supporting the details of the bill are important, fundamentally, as long as Cheney remains in office, I don't think any of it on a deeper level makes any difference, because their attitude is we're going to do what we want to do and there's nothing you can do about it. So without going to the step of impeaching Cheney, is any of this really going to get anywhere? That's my question.

MR. SHAKIR: Spencer, it does seem that the philosophy of Dick Cheney is one that resists any oversight, resists any constraints on his power. Is there anything we can do if Dick Cheney is still vice president?

MS. FREDRICKSON: If I could answer just briefly. I was at the briefing at the Justice Department, and Bruce who is a wonderful ally, a conservative who understands the value of the Constitution, he put it to them very directly, just as you said. He said, well, okay, assuming that you still believe in this Article Two powers that the president has, what happens at the end of this period? What if you don't get what you want? What if you don't have a permanent legislation? Would you think that the president doesn't have the power anymore? And they said, well, we still believe in that basic philosophy, and that is the Cheney imprimatur on this administration and his view of the very expansive role of the presidency: If the president does it, it can be illegal. It's exactly right.

But I do think there is something that can be done, and certainly that is up to Congress to conduct very meaningful oversight as well as to change this law, and if the administration continues to flout it, then hopefully there would be repercussions. It doesn't necessarily have to be impeachment, but I mean, FISA itself has criminal penalties attached to it and the Congress, even Senator Leahy is pursuing his subpoenas about the variety of documents that underlie the program, the legal theories that this administration was advancing internally in other related documents, and he hasn't said anything definitive exactly, although Mary DeRosa's here – I don't know if she's here yet – but she'll be speaking to you on the next panel – maybe she'll speak to this – but he has made some very strong statements about moving forward in the face of administration defiance of the subpoenas and engaging in some kind of legal action.

MR. SHAKIR: Spencer, do you want to add something?

MR. ACKERMAN: All I would add is that the vice president may assert this authority, but no one who's not ever drawn a paycheck from him from other aspects of the administration believes that this authority exists, and Julian's excellent example of ripping the steering wheel off when you're playing chicken really comes into play here. If members of Congress allow themselves to believe that they're simply impotent in the face of this assertion of power, then what other laws should we just might as well decide we're going to abandon?

As strongly as the point is taken about the difficulty of repealing these authorities after the six-month provision, Nita is exactly right. You have basically six months to shape this debate in order to figure out if this fundamental assertion of the vice president is going to be allowed to stand.

MR. SHAKIR: Julian, you're the only non-progressive on this panel as you noted earlier. So I'm going to turn to you with this question. I don't expect you to represent conservatives on this panel, but I do – I'm going to ask you talk about them. The conservative blogosphere and generally conservative activists, I don't feel – it's my impression that – have been as active on this and have actually largely been silent and

compliant with the Bush administration's perspective on this and its agenda. Why do you think that is? Doesn't there seem to be something that would defy conservative values?

MR. SANCHEZ: I would – well, I would – (unintelligible). They've been silent in the sense that they haven't been fighting back that hard either. If you look on the discourse on this, there's a bunch of people sort of in the Op-Ed pages defending this bill, I guess because they feel the obligation to run, you know, one for and one against. But if you look at the conservative blogosphere, there's not nearly as much when you get outside the kind of official sort of GOP cheerleader places where this is being defended. The most you seem to be seeing is, well, this is temporary and it's a stopgap and it's okay for the moment. And I think in part that's because again, it's very difficult to just say things that are false and not be challenged on them as a blogger.

Why they're not taking a harder stand against it is the impression I think – I think in part is that they're worried that something needs to be done, and I think it's true. An interesting debate needs to happen at some point about what kind of different standards are required for a different kind of surveillance, and I think in part just they're reluctant to broach that debate because they are deferential enough, that they're willing to suggest – they're willing to accept it, even raising it at a very high level of abstraction, the question of what kind of vacuum cleaner style that (unintelligible) program we're doing might be tipping off terrorists who are presumed – I guess terrorists who are presumed to be less attentive than bloggers to what the government is probably doing to listen to them.

MR. SHAKIR: Spencer, I want to turn – and Caroline, to a question that we've turned on this label that it's tough and it's strong to be for expansive administrative power, it's the frame that the conservatives use to talk about this, that when you're strong, you want unfettered power. And I want to try to hit that with a kind of a substantive argument and that is when you have this expansive power, it of course means that to the operatives who are actually conducting the program there's less guidance to them about what to do because they're not sure what the restraints on them are, and also that in general, the unfettered power means that there are going to be legal problems down the road and it may jeopardize legitimate attempts to get terrorists. I want to get both of your perspectives on combating this. What is actually tough and what is actually strong on this issue and how our side of this would be considered tough?

MS. FREDRICKSON: Well – do you want to go?

MR. ACKERMAN: If you wouldn't mind, just – I want to make –

MS. FREDRICKSON: Okay. Go ahead.

MR. ACKERMAN: – you know, one quick point. Is it strong to waste intelligence resources? Does that actually strengthen national security or does it diminish it? When Attorney General Gonzales and then NSA chief Michael Hayden made their first unveiling – actually, I think Hayden was head of the CIA then as well, so pardon me – of the program called the Terrorist Surveillance Program in December 2005, you know, someone at a press conference asked him: well, who's determining, if not the FISA court,

what's legitimately – something that you need to go after, and Hayden says, well, it's two guys and a shift supervisor.

You know, at what point when you have two guys and a shift supervisor determining – I think he said analysts – what you're going after do you not make mistakes, do you not gather too much information on the basis of too little individualized suspicion. Something that we've been debating in the intelligence community basically since 9/11 is the under-reliance on human intelligence and the over-reliance on signals intelligence and collected electronic information.

The National Security Agency doesn't have the capability to adequately translate what it has collected already. There have been a variety of different software programs that the NSA has invested in, but opening the floodgate beyond simply a targeted program, or beyond what individualized suspicion will allow beyond what investigators already believe they can demonstrate, hardly correlates very well to a reasonable use of resources in the existing constraints that we have. The counter argument will come up, how do you end up connecting the dots, knowing what the dots are, if you have? Well, if you can't identify already what certain connections stand, it will become all the more difficult to do so when you've got to collect it, on the other hand of that, the opposite argument.

The Fourth Amendment in individualized suspicion works very well. You can find on this communications train starting from a known terrorist which you no longer have to do, as Julian pointed out. You can easily get thrown off into marginal discussions of what constitutes a link, let alone who constitutes a chain of – an actual node in that chain. So it's not something that's up for immediately being ceded to say that expanding this power in this way leads to some kind of advancement in national security.

MS. FREDRICKSON: Yeah, I agree completely with Spencer. I think Julian used the analogy before, the metaphor of the needle in the haystack, but I think when you have a haystack and you just add lots of more hay, it's harder to find the needle. So I think it's not just that there's a waste of intelligence resources that could be deployed more effectively elsewhere, but the entire sort of intelligence sector is deployed ineffectively whereas there's so many things that have been pointed out in terms of the use of human intelligence including the use of translators. I think our government is still very deficient in the number of translators that it has who were capable in a variety of languages, Farsi and Arabic and Urdu and all sorts of languages that at least people have seen to be the relevant ones for that region of the world.

And so, I think there are obviously lots of things that could be done or resources could be placed, but ultimately, it's a question of what is the role of the Fourth Amendment, and although it's primarily a protection for people's privacy, it also puts the mandate on the law enforcement community to articulate a basis for what they're going after. It forces them to actually think about the process that forces them to use their resources effectively so that we actually have some results in keeping us safer and not just more of a vacuum cleaner operation.

MR. SHAKIR: I think we're running out of time here, but I want to give all the panelists an opportunity to give some closing thoughts. I want to begin with Julian, if you have something to add here at the end, a takeaway message for the audience and –

MR. SANCHEZ: I did want to circle back very quickly to the point that was originally about the immunity for the telecom providers and to point how important that is just because – right, I mean, it's not just the Fourth Amendment. There are two points of judicial contact, of potential oversight here. One the sort of ex ante warrant requirements, they're just utterly defense-related, but then after the fact when a provider is served. You know, they have the opportunity even in the current bill to challenge the order that they're given to hand over information. And it's just important to recall that these are complementary here because if they're immune from liability after the fact, then they have no motivation to do anything but comply except out of pure public spiritedness. So both points of contact with any kind of oversight have been removed.

I think the important this to recall here is that – as a more general point is that the debate is being described in ways that are not necessarily accurate, and that if we have an argument about whether we like listening to terrorists or let it be described that way, (we lose ?), because listening to terrorists is a good thing. What we need to insist on is that major changes in the way we conduct surveillance in this country may be necessary, but they need to be discussed if they're going to happen.

MR. SHAKIR: Nita?

MS. CHAUDHARY: Yeah. I will be incredibly brief. I mean, the last point that I wanted to make I had already made in terms of the importance of these next six months and getting active and being heard and organizing a really hard-hitting campaign that can't be ignored.

My closing thought is to the extent that it matters, fig leaf fixes are not going to work and legislating in the dark is only going to serve to make activists and voters more upset than they already are about the debacle that happened a couple of weeks ago in Congress. Congress can move no bill unless it is ready to fight for and pass the right bill that protects these principles that restores these rights. What we've seen too often is stuff happens, deals happen in backrooms and behind the curtain, like it happened this past August, and that's just not going to work this time. If leadership has learned anything, I hope that what they have learned is that they have to come back ready to fight for the right thing.

MR. SHAKIR: Caroline?

MS. FREDRICKSON: Yeah, I just want to bring up one final point which is sort of an interesting one to think about which is the sunset has another function which is not just to sort of reinvigorate the debate on the Hill, but actually to sunset the legislation, and honestly, in some regards, the best thing to happen would be just to have the sunset happen and have Congress do nothing. So it's a strategic matter. It's not necessarily so that there has to be some kind of legislation, but then of course, that brings us back to the

question of what would the president do in such a situation? Would he continue to spy on Americans without a warrant regardless? And I would guess he probably would.

MR. SHAKIR: Spencer?

MR. ACKERMAN: To add something to what Caroline said and what Julian said about what sort of debate will follow in the six-month period, probably just the best guidance that we can receive from this came from General Hayden when he testified as head of the National Security Agency before the joint House and Senate inquiry into 9/11. He gets up before the inquiry in September 2002 and he basically just issues a plea in which he says, we're the National Security Agency. We have really broad scope in terms of what capabilities we can bring to bear for intelligence collection. Please, please, please, tell us where the balance between liberty and security needs to be drawn and have that debate forthright and have it ensure that there's some kind of stability so we know what it is we can and should be focusing our resources on, and it's – you know, depending on your perspective ironic or hypocritical that all this time, the one surveillance program is ongoing, yet it's hard now, in retrospect, to read a kind of sole protest into that, that Hayden understands that this program can't remain secrets forever and that when it ultimately comes out, there's going to be both necessary response and probably overreaction.

You know, I worry when – I look at this and is my perspective going too far is the result of how far the debate's already moved. Ultimately, what would be the most productive occurrence of this next six months is to try and have what Julian has been calling for up on this panel: some kind of understanding out in the open of where technological abilities have driven us, and how they do and don't impact legitimate privacy concerns in an environment of increased security threats. One of the reasons this bill did pass in the summer is because we have a National Intelligence Estimate that says, you've got a reconstituted al Qaeda – we haven't even mentioned al Qaeda really on this panel – in Waziristan, and there's the greater prospect of post-Iraq jihadist infiltration of the United States ongoing, and there have been a number of people who worry that the summer of '07 looks a lot like the summer of '01 that we've got to pray (unintelligible) some kind of attack. If that, God forbid, occurs, we won't have a second chance for this debate. It's going to move so far in the realm of unfettered authority for intelligence collection in the United States that we really have an obligation, I think, to understand what it is we really are discussing and come up with what can be some sort of stable fix over the long-term knowing that we're going to face an environment of increased threat to national security for quite some time.

MR. SHAKIR: And with that, I want to thank all of you for attending, and thank those of you watching for listening. If you want to learn more about this, I'll plug the work of Spencer at TPMmuckraker, Julian at *Reason* magazine and other places. If you want to join the effort, join ACLU, join MoveOn.org's campaigns on these, read our work at ThinkProgress. I thank you all for attending, and I want to make sure if you have time, please stick around for the second panel that will have more esteemed jurists and legal scholars to talk about this.

Thank you.

(Applause.)

(END)