

TRANSCRIPT

"LORDS OF SECRECY: THE NATIONAL SECURITY ELITE AND AMERICA'S STEALTH WARFARE"

A Conversation with Scott Horton

Moderator: Amrit Singh

ANNOUNCER:

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AMRIT SINGH:

Good evening everyone. We're delighted to introduce Scott Horton who has written a path-breaking book, *Lords of Secrecy* about secrecy in the United States and-- what it means for the state of democracy in this country. Scott Horton is a contributing editor at *Harper's Magazine*.

Where-- so Scott covers legal and national security issues and is also an adjunct professor at Columbia Law School and counsel with the London and Paris offices of DLA Piper, where he is heavily involved in emerging markets. As a practicing attorney, Scott's work has focused on investment in and advice to governments in Central Asia, the Caucasus, the Middle East and West Africa.

He had represented equity investors, international financial institutions and sovereigns. And his work has focused heavily in natural resource exploitation and development and related infrastructure. A lifelong human rights advocate, Scott served as counsel to Andrei Sakharov and Eleanor Bonner and a number of other human rights and democracy advocates in the Former Soviet Union, including the recently martyred Boris Nemtsov.

He is a director of the Moscow-based Andrei Sakharov Foundation. In 2006, 2007,

Scott advised CBS and the associate press when two of their reporters were arrested by U.S. forces in Iraq and held under security-related charges. He forced the Pentagon to put them on trial. Then represented the reporters and their trials in Baghdad.

And secured their acquittal and release, ultimately demonstrating that the accusations that the Pentagon had raised were baseless. Scott has also been a leading figure at the bar, chairing three committees and directing major research projects dealing with the U.S. Government's interrogation practices in the War on Terror.

And the practice of extraordinary renditions for the New York City Bar Association. He has regularly appeared before Congress, most recently testifying before the House Judiciary, House Oversight and Senate Armed Services Committees on questions relating to the accountability of military contractors and the Justice Departments uneven management of public integrity matters.

He has also testified before the Council of Europe and the-- and the German Bundestag. On behalf of Human Rights First, Scott supervised the production of a study of accountability for private security contractors in the War on Terror, entitled *Private-- Private Security Contractors at War: Ending a Culture of Impunity*. So I'm sure that you're eager to hear what Scott has to say. So without further ado, Scott, please-- tell us a little bit about your book.

SCOTT HORTON:

Thank you, Amrit. And I'd like to thank-- you and all your colleagues for-- and particularly Anthony Richter, who's standing here in the back-- who I think-- took the initiative in setting all this up-- for-- give me the opportunity to come and speak today.

And I'd like to give you just-- a brief introduction to my-- book and some of the ideas in it. And I think we'll go to a-- a question and answer format-- where we can have a little bit of a dialogue back and forth. But my-- my book starts with a concern about-- what's happening to American democracy today, particularly when it comes to making decisions about-- important national security issues.

And my view is-- that-- significant matters that used to be handled through democratic process-- in this country-- involving public deliberation and debate, congressional hearings, congressional action-- and not just decisions by executives at the highest level-- that this process is being changed-- that it's being short-circuited.

And that now, increasingly-- vital-- national security decisions are taken-- behind closed doors-- in a manner that's kept secret from the American public. And we only learn about such commitments sometimes only years down the road when it's presented to us as a-- fait accompli. And I view this as-- a really-- a tragic development-- that is-- putting a big question mark over our very claim to be a democracy. So in my book, I start going back to-- and-- and I believe, by the way, that secrecy is the principle reason for this problem.

That claims of secrecy are now being used very aggressively. In fact, we have vastly more secrets created every year in the United States now, than at any time in our past-- including secrets claimed-- and created about things that are utterly trivial and not remotely entitled to such claims.

And that this results in the public not having access to sufficient information to be involved in these decision making. And the-- this decision making process and this then justifies-- decisions being taken only by national security elites and-- the public being taken completely out of the loop. So in my book, I start-- with an exploration of-- the relationship between democracy and decision making about national security matters. And I go back and look at recent scholarship, just from the last 20 years that-- that develops-- in a new way, what the original idea of democracy was when it first appeared in the 4th and 5th centuries-- before the Common Era in-- in Greece and-- and Athens.

And largely, we've known about Athenian Democracy historically, mostly through the eyes of critics-- people like Aristotle and Plato and (UNINTEL) and others-- who didn't care much for-- for-- for Athenian Democracy. And who therefore gave us a somewhat jaded presentation of it.

But classic scholars of the last two decades have been-- developing a lot original materials-- that give us a much keener sense of what was really meant by democracy-- in-- in Athens in particular. And one of the things that's become completely clear in this process-- is that-- is that democracy in its original appearance focused almost entirely on questions of national security. That was the principle purpose for democracy.

People would come together. They would have discussions and they would take decisions about questions of war and peace. And that included major strategic issues, when to go to war, when to make peace, who will be allies, who wouldn't be, who will be given charge of armies and navies and so forth. This also included an accountability-- element.

And-- this was based on the notion of-- knowledge in democracy. So the theory that-- that-- lay at the bottom was that-- a community that-- you could tap all the knowledge and experience that was available in a community through public deliberation and discussion. And you could reach through this process, superior decisions. You will be able to ferret out errors-- and come to conclusions that were better informed and more likely to be successful. And we now have-- certainly a number of-- historians making the argument that-- that the old analysis of the success of Athens, that this was attributable mostly to the rise of olive oil trade or the development of a merchant marine.

This is not really nearly as compelling an argument as simply democracy. That democracy actually led-- Athens-- being able to compete very effectively in its corner of the world, in-- in a very quick period of time, establishing itself as the paramount-- power.

But this idea of knowledge-based democracy has been-- inherent in the idea of

democracy almost-- so from-- from Greece, continuously thereafter. So if we look at the Enlightenment and thinkers of the Enlightenment, they also are heavily focused on-- this idea that-- you make-- you-- you collect the totality of knowledge available in-- in-- humanity. You publish it. You make it available to everyone. Secrecy is then viewed as something that's a hindrance, a harm, something that sets mankind back-- and stands in the way of progress.

And at the time of the American Revolution, again, we see any number of important thinkers. I think most-- most significantly John Adams drawing on this idea of knowledge-based democracy. And also portraying the enemy, Britain is described as secretive. So-- public-- a right of publicity, a right of information, a right of knowledge, that's a democratic society.

That's the American ideal. Privilege, secrecy-- aristocratic values, that-- that was Britain. This is all in the-- in the dialectic that was developed by John Adams at that time. And then when we move forward into the 19th Century and the 20th Century, we see a development of these same ideas. In fact, the economists also began to use them. So if we look at Austrian school economics, they-- they draw very heavily on this notion of knowledge-based democracy and their reputation of-- Socialism.

They say the idea that just a few brilliant planners can figure out what is most needed for a society is obviously untrue. Because in fact, their knowledge base is never going to be the equal of the marketplace, or rather the entire community. And finally, we have people like Karl Popper-- who-- made this really the basis of his criticism of-- of-- Plato, for instance. And of his own notion of an open society.

I-- I also focus on the one strong example from behind-- the-- former Iron Curtain, which is-- Andrei Sakharov. So Andrei Sakharov also-- embraced this idea, saw it as something fundamental. He viewed it as a truth that could be extracted from science and the experience of the scientific community. That-- success and development and science had always-- been dependent upon-- open discussion-- in which ideas were put forward, were tested, were discussed, could be refuted by others.

So it involves necessarily a community interaction. And that this was essential to avoid mistakes, to identify mistakes. And the fundamental error, he said of the-- of Soviet society was in fact its obsession with secrecy. And this is what had led it astray. And what would lead to its ultimate-- failure.

And I think that's-- that's a criticism-- if we get down to the final days of the Soviet Union and-- and Gorbachev and his-- embrace of ideas like Glasnost, you see even the leadership at this point was recognizing the validity of that fundamental criticism. So knowledge-based democracy, not merely an important idea, fundamental idea and one who's triumphant success around the world have been-- shown over and over again. And again, societies that embrace secrecy, that rest too much on secrecy, really being doomed to failure. So I would posit this is a major lesson to have been learned from the Cold War. But was it learned?

No. Not at all. And the explanation for that, I think, turns on-- another-- area of inquiry, which is-- the behavior of bureaucracies. Because, of course, in the m-- in

modern society, we can't have-- a society in the Athenian sense, where the entire population comes together or very large parts of it-- and engage in public deliberation and decisions about key issues.

And-- there was very little government apparatus at that period either. So-- so citizens came together and did things collectively when that was necessary, particularly for-- for defense purposes. But the institutions of the state, as we understand them today, were rudimentary. Today we have enormous-- an enormous apparatus of state. In fact, from the 19th Century forward, the only-- nothing has been sure but the steady growth of this apparatus in developed countries. And with that comes another phenomenon, which is-- how bureaucracies behave. And they how they-- accumulate-- and use power on their own.

And this may be totally outside of the formal structures we have of the state, in terms of the Constitution. It's something in the background. It's a sociological phenomenon. And on this point, I think we can go back to the writings of two German sociologists-- writing, you know, a little bit more than 100 years ago, Gaylord Zimmel (PH) and Max Weber.

And they realized the-- the-- focal importance of bureaucracies to the state. They also realized that there was an incredibly important role that was played by secrecy. There was some interaction between bureaucracies and secrecy that required study and development. And over a short period of time, they put together of secrecy and democracy. Which says essentially this, bureaucracies love secrets. And whenever they're given the power to make place, they will use this power aggressively all the time.

And they will use the power for proper purposes, that is-- for military purposes, state security purposes, to protect perhaps the privacy rights of individuals. But increasingly, they will also use it for completely illegitimate purposes. And that would be-- well, what would you think?

You know, to cover up mistakes-- to cover up ineptitude-- to secure an advantage over bureaucratic rivals-- for access to greater funds, the ability to hire more people, to expand their competence, for more access to power within the state. So these things were defined as absolute constants.

And Weber thought that-- and in fact, I-- I think it's important to note that both of these sociologists felt that bureaucracies were-- an essential and important innovation, that they will be responsible for-- the-- a strong-- development-- in-- the support that states could-- offer to their-- citizens, social security, health, welfare-- in many different ways.

And that you could have conscientious highly trained bureaucrats. So they're not although hostile to bureaucracy, the contrary. But they present secrecy and bureaucracy as a particular challenge-- that, you know, they-- they tell us that-- that the attraction to secrecy will be irresistible, that it will always be used for abusive as well as proper purposes.

And that the state therefore has to exercise special safeguards and controls over this.

And they put forward a-- a view, particularly Marx Weber did, of how a state can control. And that-- that was through-- parliamentary oversight. Now, the-- the next jump is then to the American students of Max Weber who looked at this and said, "Well, you know, Germany really wasn't much of a parliamentary bureaucracy, not at the time that Weber was doing his studies and writing."

Maybe it had aspirations. And so Weber's idea were, shall we say, aspirational rather than realistic. Because we in the United States know that-- no, actually, congressional oversight-- is not that likely to be successful as a tool. And here we come particularly to the writings of Daniel Patrick Moynihan, who of course, knew what he was talking about-- you know, having served for a long time in the White House, being-- you know, one of the nation's most important sociologists.

But then in the end, also being a legislator, being-- a long-term senator from-- New York. And in fact, having responsibility for oversight of the intelligence community. In his view as a long-time chair of the intelligence oversight-- in Congress was that Congress didn't have the tools, ability or aptitude to do this.

And so to expect that Congress was going to be do-- doing this effectively was nonsense. His view was that if Congress was going to be effective, that could only occur in an environment in which we have two other factors in play. So one is media that is engaged in constant study-- and examination of the conduct of-- these intelligence community operations and is constantly exposing ineptitude, fraud, corruption and illegality.

And the next was whistleblowers. So how are the media going to get access to this information. That's really going-- only going to happen when people on the inside provide that information. So effective oversight is dependent on those two other factors. You might add a third, which would be also an active and interested public taking interest in these matters, raising questions and thereby ensuring that the matters are viewed as important to elected-- officials.

So the risk that we have-- from-- this manipulation of secrecy by-- by the intelligence community, by the defense establishment, isn't a minor one. It's a grave one. So the risk is that these entities-- create more power than they're entitled to, that they become-- that they come to form a sort of inner state or deep state-- in which they are deciding things on their own without regard to the formal, legal processes.

And that they balloon in size-- and in budget. And that they're unaccountable. And-- that's the risk. I think that's the risk that was identified more than 100 years ago by Max Weber. And I think if we wanna see the proof that those concerns are well-taken, we just have to look at America in 2015. Because, ladies and gentlemen, that's exactly what's happened. We have-- we have a bloated-- intelligence and national security apparatus-- that is essentially unaccountable. And I think I'll just cut my-- introductory remarks this way. Maybe we can just go to a discussion.

AMRIT SINGH:

Thank you, Scott. I should just add that this event is being recorded. So-- everyone in this room should consider themselves participants that could end up in the internet. So you're duly warned. Scott, thank you so much for that introduction.

The first question I have, of course-- for you, is the one that-- that one-- one really should ask every author and which-- which is why-- why did you write this book? Why-- you know, what-- what was it that-- that drove you to-- to do this exploration of-- of-- of secrecy in-- in-- in the national security establishment?

SCOTT HORTON:

I-- you know, so I was hearing the debate in Washington. And-- and it's-- it's-- it's strange the way it unfolds. Because you get this idea put out that there're just way too many secrets. It's totally uncontroversial. Everybody agrees there're way too many secrets.

But the pushback to that is that, "Well, it doesn't really matter. It's no harm that there's so many secrets. It-- it-- it in no way negatively influences our society. But, you know, if we made a mistake, if we screwed up and we allowed-- sensitive information to slip into the public sector, that could be very harmful to our national security."

"So it's a good thing probably that there're way too many secrets." And I would hear this argument constantly. And no one would ever rebut it. And I thought that-- this was-- just astonishing. So essentially-- and this is the sort of argument you hear inside the Washington belt way. And the response effectively shows that there is no value whatsoever assigned to democracy. And I believe this is characteristic of the debate that goes on inside the Washington belt way today, to the extent there really is even a debate.

These matters, particularly national security matters, are just for the elites to decide. It's only the elites who have access to the key information. You know, the public should just keep out. I mean, they'll be able to have some semblance of some discussion about a few things that we decide they can talk about around elections times, but not otherwise.

And-- and then it-- it occurred to me, looking at a whole series of issues-- the war on whistleblowers, for instance-- the rise of drones and the use of drones-- the way new wars were being waged-- in places-- and not just Iraq and Afghanistan, but places like Libya, Syria-- Somalia, Yemen. There was-- there was a consistent issue in the background that-- that sort of-- that-- that wove its way through all of that, that no one was really focusing on.

And that issue was secrecy. So secrecy was, in fact, what drove many of these tactical decisions. And it seemed to me that there were few people who even understood that. And when I would challenge people in the intelligence community about that,

they would say, "Well, yes, that's obvious. But you know, we can't talk about that because it's secret." So the secrecy is secret.

AMRIT SINGH:

It's interesting. Because you seem to equate access to information with democracy. And while at one level it's obviously true that-- for-- the public to hold the government accountable, it must have information about what that government is doing.

But on the other hand, you could argue that-- the democracy-- takes effect through the political process. It takes place through elections. And-- the step-- that Americans in-- in-- in effect are choosing governments year after year that-- that-- that-- are practicing this extreme secrecy.

So what do you have to say to the claim that in fact-- the amount of secrecy that is practiced within the national security establishment, is in fact reflective of a democratic choice by Americans to-- select governments that are extremely secretive?

SCOTT HORTON:

That's-- that's an abusive use of the-- of the phrase, democracy. That's not democracy. So-- and-- and in fact on this point-- I'll just put it in a different-- frame, too. If you look at-- a couple of op-ed pieces that were written by John Yoo (PH)-- right after the election in 2004.

He said, "Well, we have an accountability moment. The people reelected Bush." So therefore they ratified everything that was previously done, you know, whether they knew about it or not. So electing a leader-- or reelecting a leader after he's done some things, constitutes ratification of everything that leader did.

Electing a leader, that's the essence of the democratic franchise. We have the right to pick our leader. But we have no rights beyond that. Now, of course, if we go back to-- the original notion of democracy, that's not democracy. So democracy-- in fact, that is pretty close to the classical definition of tyranny.

And tyrants, in fact, frequently were elected. And then proceeded to rule and do whatever they wanted to do. In a democracy, the people had the right, not so much to fix their rulers or leaders, I mean, they would do that and they would change constantly. There would be steady turnover. But to fix the law and make vital decisions about their future, that's what democracy really means. And so I think if we use those standards and we apply them to the United States today, I'd say the United States really isn't a democratic society.

And in fact, while in some ways the franchise has expanded and it's becoming more democratic, because we have more people entitled to vote now than at the time of the

founding of the republic. In other ways, the-- the democratic franchise is actually contracting.

And essential matters are being removed. And I would just-- I would just put forward this thesis, that is, you know, no state is truly a democracy unless it gives the people some input in vital decisions of war and peace, right? So key national security decision-making.

AMRIT SINGH:

What do you mean by people? What do you mean by saying giving people the-- to-- the right to decisions? I mean-- is-- isn't Congress doing this already?

SCOTT HORTON:

Well, that's a good question. Are they? No, I think they're not. I think they've abdicated their responsibility. But I-- but I would say, yes. If you look at the American Constitution and-- and the way its envisioned, this is an issue-- on-- on which the founding fathers had many disagreements and many different views of how it should occur.

And so our constitution doesn't really spell out, in any meaningful detail, how this input is supposed to occur. But I think you can go back and you can look at some of the speeches that James Madison gave, for instance. And it's very clear that he thinks that you have to involve the people, the congress and the executive in a decision in some way. So in the way that's usually going to occur is that there is going to be deliberation and discussion that's led in Congress, that involves the people. So the people get to hear the debates. They're published in the newspapers. They get to express their views. They can write up ads and letters.

They can stage demonstrations and so forth. But they have this indirect-- right of participation. It may not be a direct one. And I think if we look back at-- recent American history, we can go back and look at, you know, the late 1960s, the early 1970s and we see a time when Americans really were-- highly mobilized around national security-- questions and questions of war and peace.

That-- that might be, you know, one of several peaks in American history. And what we've seen then is a gradual fading of that interest. And that fading is not coincidental. So that fading in fact flows from-- a-- some tactical decisions that national security elites in the United States took to identify what were the flash points with the American public.

What got Americans really worked up about things and caused them to take an interest? And then we saw consistently in the post-Vietnam period, a series of policies introduced, designed clearly to desensitize the American public on these critical issues. So that was compulsory military service, you end the draft.

And then it was-- you know, we use contractors-- to do these things, rather than the military. Because Americans would get upset when young men and women went overseas and were injured-- or wounded. And-- and now it's coming to-- to robotic warfare-- where there's no real risk-- or I'd say an ever-diminishing risk of physical harm-- to American uniformed personnel. I mean, they may be sitting outside of Sacramento-- California in an airbase, guiding these missiles and bombs and not being involved. In fact, we have-- a-- an opinion of the office of legal counsel-- written on April 1st-- 2011, I love that date-- in-- in which-- in which the opinion is given that-- "Well, in connection with the proposed operations in Libya, there was no real risk that any American service personnel were going to be killed in this operation."

So therefore the American public had no real interest in this. It's just for the executive to decide. That was-- I mean, I-- I read that and I was shocked by it. But this really does reflect the thinking of national security elites in the United States. And it's fundamentally outrageously anti-democratic.

AMRIT SINGH:

Thanks, Scott. With respect to the relevance of Athenian democracy to contemporary United States national security establishment-- it could be argued that-- as you-- as you acknowledged that the democra-- the Athenian democracy model that you put forward was a very rudimentary one.

It was-- and the-- the current day situation is entirely different. The United States is facing an-- an unprecedented threat by-- from terrorist groups all over-- o-- all over the world, many of which-- are interconnected. And-- in fact-- in-- counter-terrorism measures are increasingly transnational.

So in part, the reason that there is more secrecy is because is-- there's more of an extraordinary threat. And the number of secrets have multiplied because there-- because-- precisely in order to counter this extraordinary threat. What would your response to-- be to that?

SCOTT HORTON:

Nonsense. (CHUCKLE) I-- I-- I think-- in fact, it's interesting. When we go in and we look at CIA documents-- that were released to the Senate-- committee when it did its review-- one thing that emerges over and over again, you know, why is something secret? "We don't want the American people to know about it."

Yeah, well, you know, secrets are legitimate perhaps when there is a tactical interest in being sure the enemy doesn't know about something. But "Let's be sure the American people don't know about it because they might cut off our funding," is not a legitimate reason for secrets. And yet, that is one of the most common-- basis.

But I-- I think also there was-- I think it's-- it's interesting-- if you look at the

progression here. Because you look at-- the end of World War II-- and at the World War II is a period where we created the national security state. It really didn't exist before that, 1947 is the start date. And that's created based on a recogna-- recognition by our political military-- intelligence leaders that times have just changed-- and the modalities of our state are not suited to the current dangers and risks. And in particular, we have to have much more secrecy than we had before.

And that secrecy is justified by the need to safeguard-- the knowledge that we put together around nuclear weapons. And I think that was totally legitimate, totally correct. That is, you know, the state had an obligation to ensure that there was no proliferation or as little as possible. That, that information was carefully controlled.

The risk was destruction of-- the totality of humankind. Very, very serious matter. And I think what was done in 1947 was, in many ways, brilliant. It was a brilliant adaptation of-- the U.S. Constitution and system. Because one of the things that was dumb was-- senators, in particular-- and Harry Truman, you know, to his great credit, looked at this and said, "Well, you know, if we're gonna say that there're all these secrets, we nevertheless have to have a way in which we deal properly with policy formation."

"We have to have think tanks, universities, people who study this at high levels, write papers, discuss it. We have to have hearings in Congress so that we can continue our tradition of-- of democratic process here-- and civilian control over the military," and so forth. So that was-- that was done, I think, quite brilliantly. And I think that system held all the way through the Cold War when there really was a serious justification for secrecy. Now, we're dealing with adversaries who are astonishingly weakly equipped, operating in caves without access to-- weapons of mass destruction.

And note how that issue played in over and over again illegitimately and justifications for warfare. They needed it to justify. But it-- you know, couldn't be mustered. So there's no existential threat presented by any of these entities.

So-- and nevertheless, we are spending three times more on intelligence gathering-- today and to sustain our-- our intelligence community, than we did at the-- the end of the Cold War. This is nuts. It's completely nuts. So we have far weaker justifications for secrecy. But we have vastly more secret.

And that's all a result of these bureaucratic-- forces at work. And-- and in fact-- and in fact, Daniel Patrick Moynihan, the last two years of his life was running around making this point over and over and over again-- about how the reforms Congress issued, you know, the period 1994 through 1997, there were a series of reforms. There was new legislation, there were new regulations. They greatly limited the number of people who had the authority to create secrets. They created far stricter guidelines for the creation of secrets.

The Cold War was over. And Moynihan says, "And so what do you think happens? The number of secrets balloons," right? And this is ex-- this can be explained solely as a power grab by threatened or challenged bureaucrats. The only-- the (UNINTEL) explanation is the only plausible explanation. And that's right. And that's been

allowed to continue effectively unchecked to today.

AMRIT SINGH:

So let's talk about some of the applications of-- of national security-- policies. Your book opens with-- an account of the release of the Senate Intelligence Committee report on the Bush Administration's-- rendition, secret attention and interrogation program.

Does the United States not stand out by virtue of the fact that this incredibly comprehensive report-- detailed in its account of-- how they-- the U.S.-- how the CIA. secretly detain-- detained and tortured-- alleged terrorist suspect.

Does-- do-- does the release of this report not mean something? Does-- in terms of the credit that United States, as-- as-- as-- as a country-- deserves? I mean, can you think of many other-- other countries in which-- a secret program like this would be in-- uncovered in as much excruciating detail as-- as it was in-- in the Senate report?

SCOTT HORTON:

You know, I mean, that's a very good point, I think. And-- and in fact-- John MacArthur, my colleague at-- at Harpers and I-- we wrote a-- a 7,000-word-- summary essay about the report, which was published in France, I guess-- when was that-- about the beginning of February. And-- and-- and French radio and television, they're all making the same point. You know, that-- that-- that their reaction to it is-- a m-- you know, they're simply amazed that all of this could be disclosed and openly discussed in the United States.

Whereas, you know, in France it would simply be impossible for this to happen. I mean, they couldn't. I mean, France is the state that gave us, you know, the idea of Raison d-ta, is the justification for state secrecy. And that's been, I'd say, in the, you know, political DNA of France from the s-- 17th Century. Yes, that's that case. And in Britain, likewise. There's a much more deeply wired-- culture of secrecy. So I think--

AMRIT SINGH:

So you don't think that those countries are democracies either?

SCOTT HORTON:

I--

AMRIT SINGH:

In fact, they're less democratic than the--

SCOTT HORTON:

I think--

AMRIT SINGH:

--United States?

SCOTT HORTON:

I think they're less democratic than the United States. And I think they always have been. And in fact, with the U.K., I mean-- Edward Shields is one of the principle sociologists who writes about this says that, you know, the attachment to secrecy in the U.K. is one of the key indicators that shows you why the U.K. is not really a genuine democracy or is far less of a democracy than the United States.

By the way, you know, it's-- this is not the case everywhere in Europe. So one area that we see really standing out right now is Germany, where we're seeing a really remarkably robust parliamentary examination and discussion of these things with very strong interaction with the U.S. Senate report, where in fact the German parliamentarians are saying no. I mean, the U.S. Senate, under Dianne Feinstein's committee did this the right way.

We're gonna follow in the wake of that. So there had not been such a tradition in Germany. The German parliament is now moving towards that sort of oversight tradition. And we can look at several other states, too. Hungary is one of them. The-- and several of the Scandinavian states where there is this growing sense that we have a real problem with oversight of the intelligence services.

You know, we want all these intelligence services-- in the West and inside of NATO to be cooperating with one another. We want them to be dealing with terrorist threats in real time. We want them to be sharing information. But we do not want them to be conspiring with one another to overcome the constitutional and legal limitations that each of our respective democracies imposes on them. And they are doing that right now.

I mean, the evidence of that is quite overwhelming. I mean, especially in Germany. I mean, it's just been laid out. I mean, it's at the point now where, you know, the B and E (?) in Germany no longer denies that they've been engaged in these machinations. Now, they just admit it.

So I think we're s-- so I think the U.S. is a positive example all around. And I think

that example of that report is-- if you had to cite just two cases where oversight functioned effectively, this is certainly one. And the church committee is probably the other. Now, let me c-- caution that a little bit by saying that, look, there supposed to do oversight in real time. This whole investigation was only launched after the program was terminated. And one of the things progra-- the-- the report itself demonstrates very, very clearly is that while the program was active, they were not engaged in any meaningful sor-- form of oversight.

So they did-- what they gave us was a brilliant and well-done exercise in writing history. (CHUCKLE) That-- that's not oversight. So, you know, great. I love it. It's a model. But it doesn't demonstrate effective oversight. And by the way, you know, the baton's now been passed-- from Dianne Feinstein to-- to Richard Burr, who announced, you know, on his first day that he thinks there's been way too much oversight. So this is the head of the oversight committee, (CHUCKLE) telling us that there isn't going to be anymore oversight, thank you.

AMRIT SINGH:

What about the argument that-- maybe Americans don't actually want much more oversight. And again, sort of going back to this idea of-- of-- democratic choice. And there was a report-- a recent report-- just this last month that s-- that showed that six out of ten Americans support-- the use of drones to kill terrorists. And that these figures actually p-- cut across party lines.

SCOTT HORTON:

Absolutely.

AMRIT SINGH:

What's your response to that?

SCOTT HORTON:

And-- and I think we can also establish clearly that of all major democracies in the world today, the country where the people are least informed about the American drone program is the United States. So people have the least information about it.

Pretty much the only information they get is what the government wants them to know. And they get a steady stream of all these marvelous successes, every strike hits the person it's supposed to strike. There's no collateral damage. Isn't this just a wonderful vindication of our technology? They don't hear what people read in their newspapers in Pakistan the next morning about innocent being killed and so forth.

So I think-- and-- and why is that? That's because of secrecy. So secrecy is used principally, in this regard, to affect the perception of these programs by the American people. So it's another example of the-- of the unwholesome dangerous use of secrecy.

And I'd also say American journalists are really not doing a good job on this, not at all. I mean, you know, we actually-- we get some decent articles once in a while in the *New York Times*, okay? But-- if you look at-- at-- at print and broadcast media coverage overall in the U.S., it's astonishingly bad. So I think Americans are-- are-- their opinions reflect what they've been fed, which isn't very good.

AMRIT SINGH:

You seem to locate the probably over and over again with-- with the national security-- establishment, with the Lords of Secrecy. But isn't that-- isn't that an oversimplification of-- of-- of the issue? I mean, isn't it-- isn't it that-- I mean, if-- if the secrecy was in fact-- so bothersome to the American public, would it not-- would it not vote governments out that practiced excessive secrecy?

SCOTT HORTON:

Oh, that's a brilliant question. The answer is no. No, because the-- and one thing we see is it doesn't matter what government is installed in Washington, D.C., whether it's a liberal democratic, moderate democratic, conservative Republican government.

Or even what the government's attitudes are towards-- the intelligence services, whether they want more oversight. They're hostile, they wanna reign in funding. What we can track the creation of secrets and the claims of secrecy and it's a straight line, which is completely oblivious to policy, law and political changes in Washington.

So no, I think the political process has-- or has, in the last several decades, had remarkably little effect on the Lord of Secrecy. Which is the reason why I call them lords. You know, they're not elected. And they rule as if they were lords. And in fact, today I wonder, you know, is the decider of national security policy in the United States really Barack Obama? Or is not in fact John O. Brennan.

AMRIT SINGH:

You say a lot about the-- the Lords of Secrecy, the executive branch. And you also talk about how Congress-- has largely failed and if-- in-- in-- conducting effective oversight over the national security establishment. You say little about the courts except to-- except to note-- in one-- to characterize the courts as a supine-- institution. Is that really fair, especially in light of the recent Second Circuit-- decision finding-- mass surveillance programs of the United States to be-- be-- illegal?

SCOTT HORTON:

Well, I'm told it's, like, bad to complain about one's editors. But I'm gonna do it anyway. 'Cause, of course, I have a chapter in my book (CHUCKLE) talking about the courts. And I was told when they looked at it, (MAKES NOISE) "We have to keep-- keep this under or about 300 pages. Something's gotta go. We think that's what's gotta go."

"Because this is so technical. The only people that are gonna carry about this-- or care about this are lawyers. So we can just easily slice that out and save a lot." So, yes. And, you know, all the footnotes citing cases and so on. Who wants to read that?

So-- so it's not in the book as it was finally written. But-- but indeed, you know, my analysis was that the-- that the role played by courts has been exceptionally weak on all these issues. That most federal judges are not prepared to challenge-- the government on calls of secrecy. And this is something that goes back to, you know, the period right after the end of-- of World War II.

I mean, historically they've not wanted to go there. They've accepted whatever the government-- comes-- says. And it's really only been pretty extraordinary cases in which the claims made by the U.S. Government don't pass the ha-ha test. They're just so completely absurd that the courts have said, "Now, wait a minute, you can't do that."

So I mean, we have now two significant rulings in the Second Circuit. You know, one forcing disclosure of-- of-- documents relating to-- oh-- of the legal opinions. And now the second decision dealing with Section 215 of the Patriot Act-- which I think are remarkably brave decisions, both of them. And in fact, I-- I have to say, I am really impressed with this-- most recent Second Circuit opinion because I think they did it exactly right all the way down the line.

So I think they look at the cute game that's being played in Washington with respect to the use of secrecy to cover things up and then to claim, "Well, Congress actually approved this because it ratified it later on and so therefore Congress must have known that this was part of the deal even though the authors of the legislation had no idea about it, blah, blah, blah, blah, blah."

And, you know, they say, "Nonsense. We're not gonna say that this is constitutional or unconstitutional yet. But we are gonna say that-- on a decision of such gravity, Congress and the national security establishment cannot operate as if they're playing a game of Three Card Monty. They have to very clearly say exactly what their decision is and what they intend to do. So we're saying right now that legislation did not authorize data trolling."

"And if you want to authorize data trolling, you've gotta do it explicitly." And now, watch how Congress has chocked over that. It's-- it's pretty interesting seeing how all this has played out. But I think that was exactly the right role for the court, which is not to substitute their judgment on it. But to say the political process must fairly and

openly decide these things.

And a lot of my points here are I think, you know, that-- that-- in a democracy you could easily go either way on many of these different issues. There could be-- could well be strong arguments for it one way or the other. But my objection is to making decisions in secret. I think the decisions have to be made publicly with full disclosure by the government of what the government intends to do. And then there should be political buy-in by the population and by Congress or rejection. That's the way the process is meant to work.

AMRIT SINGH:

Since we're talking about the-- the-- court decision on U.S. mass surveillance-- (THROAT CLEARING) I was curious to know-- there's a whole section in your book about whistleblowers. Who in your view is a whistleblower and is there any difference between, say-- Julian Assange and-- and Edward Snowden?

SCOTT HORTON:

Well, the first point I'm gonna make is-- that I believe in systematically avoiding this question of whether these individuals are heroes or traitors. The answer is they're obviously neither. And then one thing I point out is, you know, I have seen-- strategic documents that were prepared inside the U.S. Intelligence community about how to deal with a leak if a leak occurs. And point number one, is demonize the person who leaked the information. And make the story all about that person. And they go on in these papers explaining why you would do that.

Because that diverts public attention from the disclosed information. We don't want people looking at or thinking about or talking about the disclosed information. So make it all about the personality of Edward Snowden or Julian Assange or something like that. I think, you know, the question of their personalities and their motivations is relatively uninteresting and unimportant.

But on the other hand, the role of whistleblowers is critical. So-- and I think that this goes back again all the way to the sociologists who've looked at this. So if you're gonna hold abuses in check, you know, you're not able to do that without these outside radicals floating around-- who are releasing information. And you'll have people who are well-intended, patriotic, release information-- where it's-- where the release is justified by any reasonable standard. And they're exposing-- something that's-- criminal conduct or inept or embarrassing to government officials.

But should be known by the public. And you'll have people who may be well-motivated but, you know, they are harming the country. And you'll have people who aren't well-motivated and are releasing things that are harmful to the country. Now, there's no-- just no way to say in advance which of these-- patterns is met.

But I think the system has to ultimately take into account the effect. So-- you know,

so I do believe that at the end of the day, if someone has disclosed information that positively advances democratic process, leads to the people knowing something they should know and changes the public views about a matter, that person should definitely not be prosecuted under the Espionage Act. That's pretty clear.

AMRIT SINGH:

But that's a pretty impossible standard to meet, right? Especially when it comes to questions where it's not clear whether the-- the-- the practice that issue is actually illegal. So I mean, there were-- there were d-- there was a difference of opinion-- amongst legal scholars as to whether the surveillance-- aspects of the surveillance programs practiced by the United States were illegal.

And so the test you are-- you are-- you are-- you're putting forward is that whistleblower should think to himself, "Well, what's the public interest associated with this particular disclosure?" And depending on the amount of public interest-- he dec-- he-- he may or not disclose that information.

That-- that wouldn't-- doesn't have-- if you are a government official that is genuinely guarding some legitimate secrets, which you-- which you admit there are some legitimate secrets, the-- the-- it would be-- it would be devastating for-- for the-- for preserving those legitimate national secrets to impose-- a regime where just about anybody can make-- an assessment, an individual assessment about public interest associated with disclosure of fact and then go off and disclose it. There's a reason why you get to sign on the dotted line when you join-- you know, when you have access to classified information, that you actually cannot disclose that information?

SCOTT HORTON:

Yes, and-- let me-- let me just make a couple points here. One, is I think we're dealing with-- Section 215 as a justification for data trolling. You saw there's a division of opinion. And I agree.

AMRIT SINGH:

I said on different aspect of--
(OVERTALK)

SCOTT HORTON:

On-- on different aspect.
(AMRIT SINGH: UNINTEL)

SCOTT HORTON:

I think-- I think there a division of opinion. It's a division op-- of opinion between government employed national security lawyers who believe they have a duty to up-- to support and uphold whatever the government has done. And independent scholars who almost uniformly came to a different view.

And I think, you know, the fact of the matter is the Second Circuit ruled unanimously the way it ruled. The president's own civil liberties board said it was illegal. I mean, I think the arguments for legality in this case-- bordered on other le-- being utterly frivolous.

And-- but it's a great testimony to the fact that when the great mass of the government apparatus stands behind a proposition, that's accepted by an awful lot of people, no matter how ridiculous it is, as we saw previously with torture and some other points.

So-- so but I don't think that there was a legitimate major difference of opinion on that. I mean, I think there was-- a "we're gonna cover our rear ends," opinion. And then I think there was, "an objective analysis of the law," opinion. But-- but again, what I said was-- that in such a case-- I think that there-- there can be an affirmative defense for someone if they've made a positive contribution.

And I presented that as an affirmative defense that would rule out-- an espionage act prosecution. So my-- my main point here is that in so many of these whistleblower cases, the government overreacts. It instantly goes to its biggest club, which is the Espionage Act, which was never enacted for this purpose to begin with. Very clearly was never enacted for this purpose. And instead what-- what they're ignoring are a great number of other tools that they have to deal with a case of the leak. So I not think it's appropriate to say, "Oh, well, there should just it's no punishment." You know, I-- I think if someone like-- Edward Snowden, you know, discloses the information he does-- he clearly shouldn't be-- shouldn't have his security classification.

He clearly shouldn't have a job inside of the government going forward. He clearly should be forfeiting his pension rights and other benefits. And I think there are whole series of other penalties that can be tacked on, which would have highly adverse consequences for him and make it very, very different. Certainly, he would never be able to function inside of that national security community-- anymore.

But the Espionage Act prosecution just is way over-- over the top. And-- and of course, they go to that because, you know, Congress looked several times at-- a-- an official secrets type piece of legislation and consistently said, "No, that's the Brits. We don't do that." (CHUCKLE)

Which I think sort of underscores the basic problem of criminal prosecution in these cases. Now, that being said, I'd say there is a different situation-- in play with respect to persons who wear a military uniform, where I think criminal justice-- you know, military criminal justice norms should apply. And would-- would apply a harsher

standard, necessarily.

And people who were previously employed at-- the NSA or the CIA. I mean, I think there, the expectations that secrets are gonna be kept are much higher expectations. So-- and so I-- my point is-- is to say first of all that this-- this resort-- immediate resort to place4 prosecutions is not legitimate, is ridiculous, frankly I would like to see a lot of these cases go to trial because I think the government would lose most of them. And I'd like to see them defeated in these cases over and over again. But, you know-- maybe-- it would be wiser that they just stop bringing such cases. Other than in cases of actual espionage. Then it's fine.

AMRIT SINGH:

Let's talk about the variation within bureaucracies and within Lords of Secrecy. You-- you say at one point in your book-- why-- why aren't the dr-- why isn't the dr-- drone programs under the military, why-- why is it being run by the CIA. Do you really think that it'll make any difference-- if it-- if the drone program was run by-- by the military? After all, they are also, I assume, part of the Lords of Secrecy as you-- as you describe them in your book?

SCOTT HORTON:

Yeah, that-- that's an interesting point. And in fact-- if you look at the evolution of secrecy and claims of secrecy over time, historically, we go back again to the period after the-- from the end of World War II through the '50s, '60s, early '70s, it's the Pentagon that's-- overwhelmingly the Pentagon.

Now, something really changed happened on 9/11. Which is the dominance of the intelligence community. We s-- just see this dramatic shift where suddenly, you know, the claim of secrecy by the military are greatly reduced. And the claims of secrecy by the CIA. and the NSA explode. I mean, the NSA is itself under the-- you have to note that.

So-- so there is something of a shift and readjustment. But I think many of the major problems with-- with the drones have to do with the fact that this a secrecy weapon which is being used for covert action by the CIA. And if it were being used for military action by the Department of Defense, most of these problems would not exist. So when we decide we're engaging in military activities, through the Department of Defense, using Department of Defense resources, then by and large, this goes through normal processes of con-- of congressional deliberation, public discussion.

The president gives a speech in the Oval Office saying, "I have decided to do so and so." We see, you know-- opposing views and op-ed columns. We see-- an endless parade of talking heads on television, most of whom know nothing about those areas in which they supposedly expert, talking about these issues.

But we have this-- public discussion. It's when the CIA. does it, that we don't have these discussions. And I think if we have to s-- just give one example of doing things the wrong way, the perfect example is the drone war in Pakistan. Because this-- this war wen-- has gone on for more than ten years, has involved more than 300 strikes, more than 3,000-- maybe now, more than 4,000 people, casualties. It's had an immense impact-- on-- the political environment inside of that country. And the U.S. Government won't acknowledge that it exists.

It's a war. And-- and-- what is the rationale for keeping this secret? The rationale is the covert action-- provision of the National Security Act. And-- and if you look at that section, it says provide that it cannot be a military activity, right? Well, this is utter nonsense.

I mean, you know, one single strike, yeah, you can call that covert action. That's not what we're seeing in Pakistan. What we're seeing in Pakistan is a sustained military campaign lasting a decade. And it was a gross error in judgment to make that secret. And that has been done on the back of a secret agreement between the ISI, Inner Service Intelligence-- in Pakistan and the CIA. A secret agreement which is not secret because everybody knows about it. But it's secret for purposes of American law. And that agreement reflected the institutional interests of the CIA. and the ISI to keep everything secret from their respective democratic societies.

Now, how legitimate is this? And to me, it's just amazing that, you know, you hear, like, these whispered references to it in Washington. People are afraid even to talk about it, you know? But no one realized how farcical this entire thing is. It's completely ridiculous. And you do a war on the back of that, ridiculous.

And it's not the only case. I mean, the U.S. did a similar agreement with the dictatorship in Yemen also for purposes of keeping the activities in Yemen secret from whom? From the American public, of course. Not from the Yemenis, they see the drones flying overhead, they know what's going on. From the American public, to be kept secret, right? And the same thing in the Sahel countries right now, the same agreements. U.S. goes in with its-- cooperation agreements.

And the U.S.-- and these agreement, the U.S. says, "You have requested of us that this be kept secret." And I know African leaders who said like, "We never requested anything like that. They insisted that we sign an agreement that said, 'You're requesting it be kept secret.'" That's so it can be a CIA operation. This is just completely-- complete nonsense.

AMRIT SINGH:

So-- I'm just thinking out loud about what would the-- what would the effect of further disclosure on these-- of these programs, these counter-terrorism programs be? What would-- obviously there's some procedural value to them being disclosed.

There's certainly-- it-- disclosure of information is more democratic. But-- in terms of the sort of substantive rights at issue, so-- and-- and I understand you may not

want-- ultimately, you-- you say in your book, you don't take a position on whether or not these drone strikes are good or bad or illegal.

But in terms of-- what is the value of this information beyond the sort of procedural democratic value? If say, for example, now it's-- it's-- it's-- even the administration has ad-- you know, it's well-known in U.S. Government documents that the U.S. Government-- that the Bush Administration-- instituted a torture policy, that numerous terror-- alleged terrorists were secretly detained and tortured and-- and then sent to Guantanamo-- where they languish, many of them with-- still without charge, without any hope of-- of release.

And, you know, even after the Senate report was released, there are opinion polls that s-- show that Americans still-- a majority of Americans still support-- think that torture would still be justified-- in-- in the-- in the-- encountering terrorists.

SCOTT HORTON:

They-- they all saw *Zero Dark Thirty*.

AMRIT SINGH:

Right.

SCOTT HORTON:

A complete piece of fiction.

AMRIT SINGH:

So but, you know-- but that-- that doesn't-- what does that say about the value of information for-- informing public opinion? You have-- you have a direct example of a vast amount of information about the U.S. torture program now in the public domain. That does little to in fact illicit-- any-- any-- opposition to the-- to the torture program. What does that say?

AMRIT SINGH:

Well, the-- I mean, there're two different strands in that question. Actually, there's several different strands. One of them I think we need to note-- about secrecy in the drone program is that-- we've got the question of compensating-- innocent victims of drone strikes.

And we have an extraordinary case in which the president came forward and acknowledged that-- an Italian and an American the-- they-- they were wrongfully

killed and their families would receive compensation. That was good. But actually there are thousands of innocent people who've been killed. And the U.S. Government, even in case where they-- they clearly shouldn't have been killed, it was clearly a mistake by the United States.

And it will be very helpful for U.S. and U.S. interests to offer some sort of compensation-- in areas where pretty modest sums of money would be accepted as-- graciously accepted and good compensation, we can't do that because this program is secret. And making these payments would be seen as acknowledgement of the program. So I think we've got-- you know, so secrecy weighs in, in our ability to effectively manage the program and fairly manage the program, too. And secrecy also affects-- the public perception of these things. Results in greater control by the intelligence community, the information that's available to Americans, but not other countries. With respect to the torture issue, look, the bottom line is that the Senate-- the Senate committee was absolutely unable to compete effectively with the CIA.

The CIA. are master propagandists. And to me, the most amazing thing that came out of-- that report, something I really was not expecting, was the extensive discussion and review of the CIA's manipulation of American media. And that's, by the way, entertainment media, Hollywood, television programs.

But also news media, in which we see, you know, the CIA. putting out lines, which in internal discussions the CIA. people are acknowledging are not true, but they know that they can put it out there and they know the *New York Times*, the *Washington Post* and other imminent publications will report it anyway because we give it to them.

And in Hollywood, we can get feature films put out there with our propaganda line, *Zero Dark Thirty* or *24*. What is-- what did Dianne Feinstein have to compete with that? And-- and also the Senate committee had-- had agreed basically that prior to release of the report, they were gonna be quiet relatively about this.

But the CIA. had launched a propaganda campaign coordinated by John O. Brennan with people meeting in the offices at the CIA. discussing what to do, going out and doing this, using the resources of the CIA. for this purpose. By the way, activities which were clearly illegal under U.S. law, which contained explicit appropriations prohibitions on the use of any appropriated funds to advance torture. They did it anyway. And is anybody gonna hold them to account for doing it, right?

So I mean, the CIA. are just far more effective manipulators of y-- of public opinion in the United States, than their political adversaries are. And they have far better resources to use in the match. That's the problem. And I think for us, as a democratic society, you know-- many countries have this same issue. Around the world it's a big issue.

And most democratic societies have rules that say we don't prohibit our intelligence services from engaging in propaganda. We understand that they may do that outside of the country. But inside the country, you're not going to be engaged in propagandizing this democracy's public opinion. That is the rule in the United

States. But we've fallen away from enforcement of that rule. And I think this is an issue that needs a lot more attention and discussion.

AMRIT SINGH:

Thank you, Scott. I'm sure there are lots of people in the audience who have questions. Okay, a gentleman right in front.

* * *TRANSCRIBER'S NOTE: AUDIENCE MEMBERS NAMES SPELLED PHONETICALLY WHEN PROVIDED. * * *

MALE VOICE 2:

Okay. Good. We know about COINTELPRO-- national, the F.B.I. (UNINTEL)-- national political police. We know about MK Ultra-- the manufacture of LSD and all kinds of other (UNINTEL PHRASE) by the CIA.-- as you say form-- people's opinions and kill a lotta people.

We now know through Seymour Hersh-- that the Osama Bin Laden story-- was-- a fabrication because CIA. and the ISI-- were trying to hide the identity of the Pakistani leaker. Nine Eleven, more and more evidence comes out through architects and engineers for 9/11-- more and more there was fore-knowledge.

I'm not saying Cheney had it. Maybe he did. May-- but there's more and more evidence that those powers were pre-wired with C4 explosives. The planes hit it but the planes didn't bring 'em down. What's your opinion? Do you know anything about the 9/11 ideas?

SCOTT HORTON:

Nine eleven I-- well, I-- I-- I-- let's see. No, I believe that-- that-- that there was an Al Qaeda conspiracy that took down the towers at 9/11 and also stuck the Pentagon. And I think the evidence for that's very, very strong evidence.

But, you know, it's interesting that in the information just released yesterday-- about Osama Bin Laden's library-- we see that he had 9/11 truther texts in his library and was studying them. That-- that, to me, is very interesting. I-- I think-- there's a big problem in the background here of what you're saying, which is-- accountability and reliability of information that comes from our intelligence services. And-- this also, to me, is an absolutely huge issue. And I think it goes back to things that happened in the period between about 1947 and 1953-- when-- when the CIA. and the intelligence service was being set up.

Harry Truman, but also several others, thought that, you know, we really shouldn't be allowing these people to engage in operations. We just shouldn't be allowing that. They should be detached from all sorts of operations. They should be culling

intelligence, analyzing it and presenting to the p-- legal departments of the government to inform decisions and strategies that are being t-- being developed.

And Truman in particular was outspoken saying that instant they become involved in any sort of operations, it will necessarily taint their judgment and intelligence presentation and analysis. And I think, you know, one thing that-- the one thing that is inescapably clear from this most recent episode, and it emerges very clearly from the Feinsein report, is that Truman was completely correct about that, absolutely correct.

So one thing we see that that report documents over and over again, is how, you know, CIA. engaged in operations. CIA. had a strong interest in defending and protecting the people who were engaged in operations. And therefore all history will be rewritten to show that they made no mistakes.

Or that they're above reproach. They made positive contributions. That's essential to-- protect them. But-- what does that say about intelligence gathering and analysis? It shows it's completely perverted and distorted, right? So-- I mean, so I think you can look at this and say, like, "Hmm, well, the CIA. was created for intelligence collection and analysis. The CIA. does not do that anymore. Maybe we just need another agency that's responsible for (CHUCKLE) intelligence collection and analysis."

I mean, this is supposed to be their principal mission at their performance at it is terrible. And by the way, I don't even need to-- I mean, you know, look at what happened in Iran with the-- with the-- with the fall of the Shah-- of the Shah. Look at the Arab Spring. Look at Putin's invasion of the Crimea and on and on and on and on. They're always absolutely sure and absolutely wrong about everything.

I-- I think for far less investment, you can pick up the economist or the economist intelligence unit and get much better intelligence analysis than we get from the CIA., much more reliable. So this investment, \$50 billion a year, hmm. It's an awful lot of money to be spending on performance that is so abysmal. That's a legitimate point.

AMRIT SINGH:

If you could just identify yourself before the question.

DIANNE WILDMAN:

I'm-- my name is Dianne Wildman. I'm a freelance-- journalist. But I've been on various staffs in the past. I'm fascinated by your topic. Thank you for this. This is an extraordinary work-- and much needed.

I-- I'm looking at this from-- I wished you-- you had mentioned the media higher in your discussion, only because I think it's such a huge factor. And I call it the OJ Simpson factor. Because in-- before 9/11 and before the internet, '93 to '97, the first

Clinton Administration, OJ Simpson was a huge story, as we all remember, that are old enough.

We never left the-- the-- channel-- CNN. And we never stopped thinking of-- from there on out, the rise of-- of cable news. This was huge. It wasn't even-- it was the 24-hour cycle, still. But what it engendered was a training of government officials to deal with the media, including the security agencies.

To the extent where you can bring that all the way up and connect it to last week on Charlie Rose. I mean, he has everybody. He has Brennan, he has Michael Morell, he has-- and they-- talk like they're your neighbor over the fence, very, very accessible, very friendly, very honest, very earnest.

And I think they feel it. But it's an extraordinary difference from the startup of the securities. And certainly as they-- those agencies and as they progressed. And I think OJ started (CHUCKLE) it all. It's just a personal theory.

SCOTT HORTON:

No, I think that's-- that's really an excellent point. And-- and-- and I think, you know-- I think we largely don't appreciate how effective they are in media management. And how attuned they are to the way cable news operates, in particular, the cable news likes certain sorts of stories, gives them sensationalist treatment.

And-- and this can be tremendously effective. And frankly, I think, you know, we've seen them operate contrary to the interests and policy positions of their own administration many times. But consistent with their own budget and their-- their want-- their need for funds and staff and so on.

And you know-- a recent example of this is the rise of ISIS. You know, I mean, ISIS-- suddenly ISIS-- there's a-- Defense Intelligence Agency document that I just examined this morning that was written in August, 2012-- which is talking about strategies for dealing with the Assad Government in Syria. And it's looking at the strategic assets the United States has in Syria, organizations and groups there that maybe supported to help topple the Assad Government. And there near the top of the list is ISIS. (CHUCKLE) You know, so 2012, August, "This is an asset, let's work with them." Who knows what they did. Did they give them arms support? That's unfortunately not a crazy idea. It's quite possible 'cause they've done things like that many other times.

And then we jump forward to a few weeks before-- the-- the 2014 election and suddenly ISIS is the new threat, the new challenge. They're decapitating people. Of course, not nearly as many people as Mexican drug lords decapitate. But, you know-- suddenly this is presenting an imminent threat to the United States.

I've sort of wondered like-- really, how? So sensationalized, not really rationally thought through as part of the sort of systematic analysis of what the security

interests of the United States are. And how this figures amongst many, many other things.

It's just sensationalized, spectacular. And of course, this justifies exactly the salary lines and budget lines that we have out there now, right? The same thing with Boko Haram and-- and-- and Nigeria. I mean, I've worked in West Africa and north-- North Africa for most of my life. And there have always been organizations like Boko Haram running around out there.

But they've not commanded the front page of the *New York Times* and prominent space in-- in broadcast media in the United States before. And what's the reason for that? The reason for that is that this justifies continuation of budget lines. I mean, it's-- you know, it's-- it's that sort of reach.

AMRIT SINGH:

Gentleman--

MALCOLM ARNOLD:

Thank you very much. You mention the media--

AMRIT SINGH:

Introduce yourself?

MALCOLM ARNOLD:

My name is Malcolm Arnold. You mentioned the media and the propaganda machine as far as inserting stories in Hollywood and-- and also if you look at the *New York Times* reporting on yellow cake and then, you know, those stories being fed by Dick Cheney's apparatus. Then Dick Cheney-- you know, going on-- Sunday morning talk shows and then quoting the *New York Times* and saying, "Look, it's in the *New York Times*." But they-- they--

SCOTT HORTON:

Quoting the *New York Times* in an article that he placed in the *New York Times*--

MALCOLM ARNOLD:

Right.

SCOTT HORTON:

--right?

MALCOLM ARNOLD:

Exactly. Exactly.

SCOTT HORTON:

"As I said to Judy Miller," yes. (CHUCKLE)

MALCOLM ARNOLD:

Yes, so my question is, is this. You mentioned Dianne Feinstein, but if you look at Dianne Feinstein, in her questioning of the CIA. and the intelligence apparatus, there really is not much questioning going on. And what I'm wondering is that I didn't elect the *New York Times*.

You mentioned that, you know, we depend upon the media and we depend upon whistleblowers. Well, I didn't elect the *New York Times* to be the media guardsman of the-- the state apparatus. And I didn't elect whistleblowers. But-- someone can elect Dianne Feinstein. The aspect is her not questioning the ap-- the intelligent apparatus and the security apparatus, how is it in her self-interest?

And what I'm wondering is, is that is not democracy a flawed system in the way that it is now if you're not going to have-- the Republicans aren't gonna question it. And it's-- and-- you know, and I've been a lifelong Republican. The Republicans are not gonna question it. The Democrats and Dianne Feinstein are not gonna question it. Who is going to question the security apparatus and is our system not inherently flawed?

AMRIT SINGH:

No, I think that's-- that's an excellent question. And-- and Dianne Feinstein, I think is-- she's a fascinating example. I think, you know, if you look at all the Democrats in the Senate, it will be hard to identify anyone who was closer to the CIA. and the intelligence community than she was.

She was their reliable defender at every turn. So that she then comes around to the views that appear in this report is a pretty remarkable conversion. And I think shows you how powerful, you know, these-- these facts were, as they were developed. But generally, yes, we don't have functional congressional oversight. That's-- that's just a fundamental-- and if you look back historically, it becomes clearer. I mean, I've spent

some time looking at the way-- at the way House and-- and Senate military dis-- oversight occurred in the '50s and '60s.

And it was far more rigorous than anything we have today. And Democrats and Republicans competed with one another to show that they could be more vigilant, that they could find more waste and more fraud and more abuse. And that's the way the system's supposed to operate.

You know, I-- in fact-- in fact, just on claims of secrecy, I mean, I interviewed-- an old geezer from the intelligence community who told me about how in the-- mid-1960s he had been called up to the hill on a-- request for information from J William Fulbright. And he said, "You know, my people at the agency tell me we can't give you this information, it's highly classified. You know, sorry. It'll have to go through a process. It may take some time. It may be declassified and made available to you later. But for right now, the decision is not to give it to you."

And Fulbright, you know, not missing a beat said, "I completely understand your problem. I have full sympathy for you. And now I'd like you to go back to the director in Langley and tell him that-- we-- we're sympathetic. But he has to understand that the budget for the agency is not going to advance for review and approval until we have that information." And that's the sort of game that was played back then and it worked. I mean, Fulbright, of course, within the week got all the information he wanted.

And-- and I-- I would say those old masters of the game really-- they were not daunted for a second they the intelligence community. They understood their role and their prerogatives. They got the information they wanted. Today, they're wimps and pushovers. They really-- they don't stand up for their rights. And-- and their par-- and in fact, you look at the whole history of how Feinstein negotiated this with the CIA. I mean, why did this process of review take years? The CIA. played it. They played the game of slow ball. I mean, documented step by step in the book, how they did this.

They took a review that should've been done in one year, they made it take six years. Do-- I mean, just a whole series of completely ridiculous procedural demands that were derogation to the rights and prerogatives of the Senate.

And Feinstein said-- "Okay, we'll do that. Okay, we'll do that." I mean, J William Fulbright never would've done that, right? So-- so I think the weakness of our-- and this is an absolutely bipartisan phenomenon, the weakness of our congressional leadership is just astonishing.

And I think also campaign finance has an awful lot to do with this. And you go back and you look at-- at Eisenhower's farewell speech in which he talked about the military industrial complex. Actually-- one of-- I-- I spoke recently with one of-- President-- Eisenhower's aides who was involved working on that speech, who pointed out to me that the original draft of the speech said the congressional military industrial complex. Because he was really concerned that-- the captains of industry, who ran the defense industry would use campaign funding to manipulate and control

Congress.

And he was persuaded. You know, that would be read and just being a little bit too harsh by people in Congress. Take it out. So we took it out. But that was his major concern. And I think when-- when--I gave that speech-- in-- in 1962, it was actually sort of a stretch to make that argument. Today, it's absolutely clear and correct. And it a congressional military industrial complex. It's a little bit different from what existed in the '60 and the intelligence community has a huge role today. But I would say the incuriousness of Congress has a lot to do with-- who gives campaign contributions to Congress.

And in fact, if we look at, you know, the one major test to the-- the-- Justin (UNINTEL) amendment-- striking down the prison program that came up for a vote in the House of Representatives where-- Republicans and Democrats divided evenly on the case.

And so it was defeated by a very, very narrow vote. But if you go back and you look at the roll call of who voted, the one factor that would allow you with absolute-- accuracy to predict how someone was going to vote was this, how much money did they get from defense and intelligence contractors. All the people who got money from those contractors, voted with the NSA.

AMRIT SINGH:

Gentleman here.

SHAWN BREW:

No, I got the mic. (CHUCKLE)

AMRIT SINGH:

Oh, sorry.

SHAWN BREW:

Shawn-- Brew (?), Street (?) International Center. I wanna get your opinion on the president bill before Congress. What do you think about the speech-- yesterday by Rand Paul, 11-hour speech. Do you think he influenced any of his colleagues or do you think-- McConnell will-- water down the-- the bill so that-- it doesn't serve its purpose? But what is your-- opinion on that?

The second part of-- my second question is-- Apple-- Google and Facebook are encrypting their devices. And-- the-- F.B.I. director, Comey, is leading the charge against that. It wants to have backdoor and keys to these devices. And so what is

your-- opinion on that?

SCOTT HORTON:

Well, you know, Congress is always engaged in making sausages. But in this area what they do it particularly difficult to detect. So the current legislation, one of the question is what is the attitude of this legislation towards the principle concern, the prison program.

And-- I thought it was very, very interesting looking at press accounts after the legislation worked its way through Hou-- the House. I found three press accounts saying, "Congress votes to put an end to the prison program." And I found three accounts saying, "Congress upholds-- upholds the data trolling program of the NSA."

So okay, this (CHUCKLE) is media. No one-- and the-- and the answer is-- it's hard to say. And I think this was the concern of the Second Circuit and their opinion. So their opinion was designed to make that uncertainty much more difficult. So they've said it can't occur by mere conti-- continuation. There has to be an explicit decision to grant this right to engage in collection of met-- meta data.

So I think the legislation as its drafted now, would terminate it, okay? And so I think-- I think the-- the first set of headlines are probably correct. What will emerge on the Senate side, though, is a much more difficult question. 'Cause I think the-- odds are stacked more against civil l-- liberties in that-- chamber. And I think there-- there is more of a tendency to deal with things behind the screen and produce language that none of us will understand, but some geniuses on the legal staff at the NSA will say, "It does the trick for me."

So I would say we would all be on our guard about this entire process. But I think at least we're getting a healthy debate about this. And one of the major changes that's occurred is that now, even many of the re-- of the Republicans who support-- the NSA and data trolling, if you listen to their public speeches, they have a clear enough sense of how public opinion has changed.

And the fact that even now a majority of Republicans against it, that they are much more equivocal in their own presentations. So they'll usually lead in saying that they recognize that reasonable people have problems with this. But then they'll make their point about civil liberties. Before, they would completely deride people-- who raised the civil liberties-- issue as Government Christie did.

SHAWN BREW:

What about the medical-- what about the-- devices.

SCOTT HORTON:

The--

SHAWN BREW:

The encryption?

SCOTT HORTON:

The encryption devices, I-- I think this largely drawn by-- economics. That-- that is-- you know, these are products on which the U.S. dominates the-- the globe. And it presents a challenge for American manufacturers trying to sell their wares outside of the United States, that the U.S. Government has these keys and back doors.

So I think the U.S.-- so I think the-- I think-- Silicon Valley is taking a very reasonable position on that. And I think the position that Comey has taken, "Well, once you've gotten a certain right, you never wanna give it up." It sorta reflect that. But they didn't that right fair and square.

AMRIT SINGH:

There's a gentleman at the back who's--

NICHOLAS ARENA:

Nicholas Arena, I'm a lawyer. Is this being recorded?

AMRIT SINGH:

Yes.

NICHOLAS ARENA:

I think that-- Scott Horton properly-- discussed how the-- press and whistleblowers can help mitigate some of the abuses that he-- described. I believe there's a third element, which was touched upon. Perhaps not as sufficiently-- emphasized. And that was what Madison and the Federalist Papers referred to as the virtue of the people. To what extent-- do you believe that the-- the public at large-- bears some responsibility for what's going on? (CHUCKLE)

SCOTT HORTON:

I-- I-- I really think-- well, I-- I think, you know, of course, amongst our founding fathers, we had differing views about whether the public could-- public discourse could play any meaningful role in dealing with sophisti-- cated questions of diplomacy and national security. You had Hamilton thinking that was nonsense. It was only, you know, "A small group of elites who could meaningful do anything there. So we shouldn't involve them in this." And then we had Madison who said, "Well, at least with respect to the most fundamental questions of war and peace, the public should be informed and should be involved."

I think, you know-- we have a far more sophisticated public today than they did. We have a much better educated public today than they did. So that there's every reason to expect broader public participation. Should we then blame the people for not being so involved? You can do that.

I mean, the people should be-- they should care about these things. They should educate and inform themselves about these things. They should participate in these debates. The levels of participation, the levels of information are weak. But I wouldn't-- I wouldn't I-- sort of unload on the people over that, principally. 'Cause I think this is largely the decision of national security elites in the United States who don't want them involving themselves in these issues. And therefore are using secrecy and other techniques to reduce their levels of interest and involvement. That's the core problem.

But I will say one other thing, I was talking with Amrit about this earlier. I mean, I give these presentations based on my book. I've given them around United States. I've also given some in-- in Britain and in-- in Europe. And one thing that just-- I find just astonishing is I give the-- I give a talk like this in Germany.

And I don't have to explain to people in Germany what meta data is. You know, even though it's like in a foreign language, they-- they know. I don't have to tell them what Section 215 of the Patriot Act is. They know. People in Germany are following this-- with a much higher level of sensitivity than people in the United States are, which is pretty amazing.

And-- and I'd say, you know, if we had the level of public engagement on these issues that already exist in Germany, this will be a big advancement for our country. By the way, this hugely embarrassed Barack Obama. Because he went to Germany recently and gave an interview-- on German television in which he sort of-- articulated the same blather that he does here in response to these questions. And the German moderator, she cut him to ribbons in no time. And just did not accept this nonsense. So he can get away with that nonsense with an American newspaper or broadcast person, but not over there, you can't.

* * *TRANSCRIBER'S NOTE: ACCENT IS DIFFICULT. * * *

MALE VOICE:

I-- I met with you-- sorry, my-- I try to manage. I met with you 24 years ago when I came from Soviet Union. It was about Sakharov Foundation and I sound (?) as representative of evil empire secret society (UNINTEL PHRASE) by secret recommendation of them. But if you could mention military intelligence (UNINTEL), you would go to jail. And you sound as a representative of (UNINTEL PHRASE) Open Society. So when I speak here to you, I wonder it--

(OFF-MIC CONVERSATION)

MALE VOICE:

--(UNINTEL) aspect for you so dramatically change your attitude. For me, of course, I'm not impressed. Those that came from society where secrecy is not in comparison what we have in Soviet Union. But what impressed me when they came to live in America, at my job, one director, my director had a mistress from his same place.

And it was a scandal. And it was in papers immediately. It was given order that we would never talk to press, that we would not say (UNINTEL). In Soviet Union, we never had limitation like this. So I'm more impressed with cooperate secrecy. And they were not about technology and economy, but about most obvious thing. "No, you cannot speak about this. If you speak, you would be punished."

SCOTT HORTON:

This is discipline in the workplace. This is what goes with a free economy. That is your boss has the right to silence you. And-- and in fact, this is an area where we-- we're talking mostly about national security whistleblowers. But if we deal with whistleblowers in the regular work place dealing with-- corruption and fraud and abuse in a commercial setting, the protections that are given to such whistleblowers are minimal and we have court rulings that are absolutely disgraceful in this area.

But-- but I-- I wanna go back to just the Soviet example. 'Cause I think of all the thinkers that I looked at who dealt with the secrecy question, the most impressive one is definitely Sakharov. You know, he-- he clearly sees this need for information and publicity for the public. He sees is at the way to get to the right decisions to have an economy that works well, to have scientific progress and everything else.

But then he also says, you know, I mean, "I gave my promise to keep certain things secret." So there's this clash. He's-- and he feels-- he feels bound. He's-- feels-- "I gave this promise. I have to observe this promise." So his view was that those who have the secrets need to find a way to be sure that the public is informed about the things that the public must know.

So he puts this imperative responsibility on those who hold the secrets. And I think that is-- that is the essential solution to what's going on. And I think, you know,

actually Barack Obama two or three times has given-- statements in which he's recognized that exact principle. That is those who have secrets need to be constantly thinking about what it is that the public needs to know.

I mean, he twice now has given orders to his director of national security to review big quantities of data and start releasing things so that the public knows what the public needs to know. So that's a correct attitude. But the problem is that, you know, it's not the way our national security bureaucracy works. They believe in hoarding secrets. So it's only when they're put under tremendous pressure to do something, we see any shift.

AMRIT SINGH:

I think we have to end there. It's 8:00. Thank you very much, Scott, for a very, very interesting talk. (APPLAUSE)

* * *END OF TRANSCRIPT* * *