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A Law Terrorism Outran

We Need a FISA For the 21st Century

By Mike McConnell

In 1978, the first cellular mobile phone system was still being tested, a personal computer's memory had just been expanded to 16 kilobytes and our greatest threat was the largest nation-state on Earth, the Soviet Union. That same year, the framework governing electronic surveillance of foreign powers and agents of foreign powers -- the Foreign Intelligence Surveillance Act (FISA) -- was signed into law.

Today, cellular phones are the size of credit cards, you would be hard-pressed to find a computer with memory less than 512 megabytes and our greatest threats are independent transnational terrorists and terror networks.

FISA was created to guard against domestic government abuse and to protect privacy while allowing for appropriate foreign intelligence collection. Technology and threats have changed, but the law remains essentially the same. If we are to improve our ability to protect the country by gathering foreign intelligence, this law must be updated to reflect changes in technology and the ways our adversaries communicate with one another.

Many Americans would be surprised at just what the current law requires. To state the facts plainly: In a significant number of cases, our intelligence agencies must obtain a court order to monitor the communications of foreigners suspected of terrorist activity who are physically located in foreign countries. We are in this situation because the law simply has not kept pace with technology.

The failure to update this law comes at an increasingly steep price. The congressional joint inquiry into the Sept. 11, 2001, attacks recognized that there were systemic problems with covering communications of potential terrorists.

As director of national intelligence, I see every day the results of FISA-authorized activity and its contribution to our efforts to protect America. This surveillance saves lives -- the lives of our children and grandchildren. I also see the flaws inherent in the current law.

Because the law has not been changed to reflect technological advancements, we are missing potentially valuable intelligence needed to protect America. We simply cannot predict how communications technology will change in the coming years, but these changes may widen the gap between the law and technology. We need to adopt that understanding into FISA -- a law that does not address today's global systems in today's terms.

In seeking to update the law, in response to bipartisan congressional requests, the intelligence community is keeping faith with the foundation of credibility and legitimacy in which the law was grounded. Just as Congress in 1978 could not have anticipated today's technology, we cannot know how technology will advance in the next 30 years. Our job is to make the country as safe as possible by providing the highest possible quality intelligence available. We should not tie the nation's security to a snapshot of outdated technology.

I am encouraged that in my discussions with members of Congress, and in congressional hearings on this subject over the past year, there is recognition of the need to improve our intelligence efforts and close critical gaps created by changes in technology. We will continue to collect intelligence under strong congressional, executive and judicial oversight mechanisms. Protecting our nation against terrorist attacks and safeguarding privacy protections and civil liberties is not an either/or proposition.

The first responsibility of intelligence is to achieve understanding and provide warning. As the head of the nation's intelligence community, it is my duty to encourage changes in policies, procedures and legislation to improve our ability to warn of terrorist attacks and other threats to our security. Bringing FISA into the 21st century is one such improvement that can and should be made now. The recommended changes will protect the civil and privacy rights of our citizens while enabling the U.S. intelligence community to provide a higher level of protection against terrorist attacks.

The writer is director of national intelligence.