

**MOVING FROM “NEED TO KNOW” TO “NEED TO  
SHARE”: A REVIEW OF THE 9/11 COMMIS-  
SION’S RECOMMENDATIONS**

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**HEARING**

BEFORE THE

**COMMITTEE ON**

**GOVERNMENT REFORM**

**HOUSE OF REPRESENTATIVES**

**ONE HUNDRED EIGHTH CONGRESS**

**SECOND SESSION**

**AUGUST 3, 2004**

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## **MOVING FROM “NEED TO KNOW” TO “NEED TO SHARE”: A REVIEW OF THE 9/11 COMMISSION’S RECOMMENDATIONS**

**TUESDAY, AUGUST 3, 2004**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON GOVERNMENT REFORM,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:04 a.m., in room 2154, Rayburn House Office Building, Hon. Tom Davis (chairman of the committee) presiding.

Present: Representatives Tom Davis, Shays, Ros-Lehtinen, McHugh, Platts, Schrock, Miller of Michigan, Turner, Carter, Blackburn, Harris, Waxman, Kanjorski, Maloney, Cummings, Kucinich, Davis of Illinois, Tierney, Watson, Lynch, Van Hollen, Ruppertsberger, Norton, McCollum.

Staff present: David Marin, deputy staff director/communications director; Ellen Brown, legislative director and senior policy counsel; Jennifer Safavian, chief counsel for oversight and investigations; John Hunter and David Young, counsels; Robert Borden, counsel/parliamentarian; Robert White, press secretary; Drew Crockett, deputy director of communications; John Cuaderes and Victoria Proctor, senior professional staff members; Mason Alinger, Brian Stout, Jaime Hjort, Susie Schulte, Shalley Kim, and Brien Beattie, professional staff members; John Brosnan and Randy Cole, GAO detailees; Sarah Dorsie, deputy clerk; Allyson Blandford, office manager; Kristina Sherry, legislative correspondent; Corinne Zaccagnini, chief information officer; Phil Barnett, minority staff director; Karen Lightfoot, minority communications director/senior policy advisor; Anna Laitin, minority communications and policy assistant; Michelle Ash, minority senior legislative counsel; Rosalind Parker and David Rapallo, minority counsels; Earley Green, minority chief clerk; Jean Gosa, minority assistant clerk; and Cecelia Morton, minority office manager.

Chairman TOM DAVIS. Good morning.

The committee will come to order. I want to thank everybody for coming.

We are here today nearly 3 years removed from that terrible day of September 11th to simultaneously look back and look forward. We grieve again for the men and women who lost their lives and pray once more for their loved ones. But it is also a time to remind ourselves of the important challenges ahead, the tasks of securing our Nation and eradicating terrorist networks around the globe.

I want to commend the work of the National Commission on Terrorist Attacks on the United States, also known as the 9/11 Commission, for its hard work and dedication in issuing its report on the 2001 terrorist attacks, once again bringing reforms to the Federal Government and that structure to the forefront of the homeland security discussion.

Yesterday, the President endorsed the creation of a Presidentially appointed, Senate-confirmed National Intelligence Director as well as the creation of a National Counterterrorism Center to coordinate and monitor counterterrorism efforts. The President's call to action demonstrated that the administration, like Congress, is working overtime to move forward with the 9/11 Commission's recommendations.

The key to success in implementing the Commission's recommendations is making sure we are not simply repackaging what we have now. We need to avoid creating another layer of bureaucracy. We need to align authority with responsibility to make sure information is reaching all the people that it needs to reach.

While the creation of a National Intelligence Director and a National Counterterrorism Center are the most highly publicized aspects of the Commission's recommendations, this committee will be focusing on the broad range of recommendations made by the 9/11 Commission. The National Intelligence Director will be the subject of considerable debate in the coming weeks and months, but the Commission's recommendations regarding border security, information-sharing data bases, emergency preparedness, homeland security funding and intergovernmental coordination are at least as important if not more so than the higher profile recommendations.

We have before us today a diverse group of panelists, from Commissioners and family members of victims of the World Trade Center and Pentagon attacks to Federal officials, public policy experts and industry representatives. The collective expertise of these witnesses along with the expertise and experience that exists among members of this committee will no doubt lead to an interesting and fruitful discussion on the future security of our Nation. We need to hear from our witnesses which recommendations they view as most urgent, which they see as important but dependent on other acts or events and which they think will require sustained effort over time to achieve. We need to discuss what is achievable administratively and what needs congressional action.

The Commission's report and the focus of this hearing are especially timely given the recent elevation of the threat advisory levels for the financial sectors of New York, Newark, and Washington, DC. The news articles about the intelligence information that led to the elevation suggests the decision was the result of shared information between the CIA, the FBI, the National Security Agency, DIA, and other senior military officials. Even if the intelligence information that the threat elevation was based on was dated, this type of coordination is critical to the future security of our homeland, and the purpose of today's hearing is to discuss whether or not it's possible to institutionalize this type of interagency coordination.

As we move forward, today, next week, next month, next year, we should be encouraged that Congress, frequently through this

committee's oversight, has already laid a sound foundation on which we must build.

Even before September 11, the committee held hearings on impediments to information-sharing and analysis. As part of the Homeland Security Act, we passed legislation aimed at encouraging the critical infrastructure industry to share information about vulnerabilities with each other and with the Government.

Beginning anew today, we need to examine what's preventing better and more accurate sharing and analysis between Federal agencies, between Federal, State, and local governments, and between the private and the public sectors.

How can we overcome those impediments? Is the voluntary information-sharing mechanism between the private sector and the Government that we established in 2002 working as we envisioned?

Unlike much of the debate and press coverage and committee hearings, we need to be talking about more than just intelligence information per se. It's not just, "intelligence information" that impacts our ability to prepare for and respond to terrorist attacks. The realm of information that's not being adequately shared is not merely the province of the CIA or the FBI or NSA; nor is it encompassed by the public sector alone. What about information on public health coordination between Federal, State and local providers? What about the fact that the private sector owns and operates 85 percent of the Nation's critical infrastructure?

This committee has also been looking long and hard at Government organizational challenges. Part and parcel of moving from a system of need-to-know to need-to-share is the need to restructure the executive branch to match the 21st century needs and requirements.

The Commission rightly recognized that we need a Government better organized than the one that exists today, with its national security institution designed half a century ago to win the cold war.

I believe the Commission's report makes the need for reauthorization of Executive Reorganization Authority all the more urgent. The absolute, redundant and duplicative nature of the Federal bureaucracy is the single greatest impediment to moving from a system of need-to-know to need-to-share.

An editorial in last week's Federal Times framed the issue well. It said,

Take any mission, say counterterrorism intelligence gathering and analysis, and divvy it up among a dozen or so agencies. Then let those agencies set their own goals and priorities, follow their own standards and practices and decide their own resources and budgets. What you end up with is a design for failure.

That's what exists now in Government, not only with counterterrorism, but with many missions, job training, combating homelessness, environmental care, food safety inspection, to name a few.

To take on a mission successfully, there must be a cohesive strategy, coordination in planning and practices, effective sharing of information, common priorities and budgeting and clear direction by a competent, accountable leader.

That's why 18 months ago the Volcker Commission called for all the Government to be reorganized around distinct mission areas. As the 9/11 Commission points out, this lack of leadership and cohesive management also plagues one of the Government's most pressing missions now, counterterrorism.

The problem of Government ineffectiveness in counterterrorism and other important missions is not a lack of solutions. The solutions to effective Government are obvious and articulated compellingly by both the 9/11 and the Volcker Commissions.

Let's be clear. I don't think any discussion of impediments to effective information-sharing can be complete without discussing the need to reorganize the executive branch. This committee has held several hearings on the need to reauthorize Executive Reorganization Authority, which expired in 1984. The authorities existed off and on for a period of 50 years, giving Presidents the ability to submit executive branch reorganization proposals to Congress for a guaranteed up or down vote without amendment. In doing so, executive branch reorganizations could come before Congress without getting buried in congressional committee jurisdictional turf battles that has spelled the demise of many governmental reorganization proposals in recent history.

I may take some heat for saying this, but we need to look no further than deliberations that led to the creation of the Homeland Security Department for evidence that Congress is not terribly well-equipped to tackle organizational challenges: Too much turf; too many egos; far too much time.

The recommendations made by the 9/11 Commission make reauthorization of this authority all the more urgent. The obsolete, redundant and duplicative nature of the Federal bureaucracy is the single greatest impediment to improving information-sharing. As hearings held by this committee over the past 2 years have shown, the same problem of poor organization exist in Federal food safety oversight, Federal child welfare functions and multiple homeland security functions.

In our battle to move forward to better protect ourselves, there are no Republicans or Democrats, only Americans. Talking to my kids and countless others in northern Virginia, one thing is clear, a whole generation of Americans will grow up with September 11 as its most formative experience. This younger generation is no longer cynical about the idea of "We, the people." They realize that these attacks were not just on the people who were killed and injured but also on the very things that define us as a society—religious freedom, equality, economic opportunity, and political choice. And this generation will know that the ruthless will not inherit the Earth.

Without further adieu, I welcome all the witnesses to today's hearing. I look forward to their testimony.

And I now recognize our distinguished ranking member, Mr. Waxman.

[The prepared statement of Chairman Tom Davis follows:]



**“Moving from ‘Need to Know’ to ‘Need to Share’:  
A Review of the 9/11 Commission’s Recommendations”**

Opening Statement of Chairman Davis  
Committee on Government Reform  
August 3, 2004 at 10:00 a.m.  
2154 Rayburn House Office Building

Good morning and thank you for coming. We are here today, nearly three years removed from the terrible day that was 9/11, to simultaneously look back and look forward.

We grieve again for the men and women who lost their lives, and pray once more for their loved ones. But it’s also a time to remind ourselves of the important challenges ahead, the tasks of securing our nation and eradicating terrorist networks around the globe.

I would like to commend the work of the National Commission on Terrorist Attacks on the United States, also known as the “9/11 Commission,” for its hard work and dedication in issuing its report on the 2001 terrorist attacks, once again bringing reforms to the federal government structure to the forefront of the homeland security discussion.

Yesterday, the President endorsed the creation of a presidentially-appointed, Senate confirmed National Intelligence Director, as well as the creation of a National Counterterrorism Center to coordinate and monitor counterterrorism efforts. The President’s call to action demonstrated that the Administration, like Congress, is working overtime to move forward with the 9/11 Commission’s recommendations. The key to success in implementing the Commission’s recommendations is making sure we’re not simply repackaging what we have now. We need to avoid creating another layer of bureaucracy. We need to align authority with responsibility to make sure information is reaching all the people it needs to reach.

While the creation of a National Intelligence Director and a National Counterterrorism Center are the most highly publicized aspects of the Commission’s recommendations, this Committee will be focusing on the broad range of recommendations made by the 9/11 Commission. The National Intelligence Director will be the subject of considerable debate in the coming weeks and months, but the Commission’s recommendations regarding border security, information sharing databases, emergency preparedness, homeland security funding, and inter-governmental coordination are at least as important -- if not more so -- than the higher profile recommendations.

We have before us today a diverse group of panelists -- from Commissioners and family members of victims of the World Trade Center and Pentagon attacks, to federal officials, public policy experts and industry representatives. The collective expertise of these witnesses, along with the expertise and experience that exists among Members of this Committee, will no doubt lead to an interesting and fruitful discussion on the future security of our nation.

We need to hear from our witnesses which recommendations they view as most urgent; which they see as important but dependent on other acts or events; and which they think will require

sustained effort over time to achieve. We need to discuss what's achievable administratively and what needs congressional action.

The Commission's report and the focus of this hearing are especially timely given the recent elevation of the Threat Advisory Level for the financial sectors in New York, Newark and Washington, D.C. The news articles about the intelligence information that led to the elevation suggest the decision was the result of shared information between the CIA, FBI, NSA, DIA, and senior military officials. This type of coordination is critical to the future security of our homeland, and the purpose of today's hearing is to discuss whether or not it is possible to institutionalize this type of inter-agency coordination.

As we move forward – today, next week, next month, next year – we should be encouraged that Congress, frequently through this Committee's oversight, has already laid a solid foundation on which we now must build.

Even before 9/11, this Committee held hearings on impediments to information sharing and analysis. As part of the Homeland Security Act, we passed legislation aimed at encouraging the critical infrastructure industry to share information about vulnerabilities with each other, and with the government.

Beginning anew today, we need to examine what's preventing better and more accurate sharing and analysis between federal agencies; between federal, state and local governments; and between the private and public sectors. How can we overcome those impediments? Is the voluntary information sharing mechanism between the private sector and government that we established in 2002 working as we envisioned?

Unlike much of the debate and press coverage and committee hearings, we need to be talking about more than just *intelligence* information per se. It's not just quote-unquote "intelligence" information that impacts our ability to prepare for and respond to a terrorist attack. The realm of information that's not being adequately shared is not merely the province of the CIA or FBI or NSA. Nor is it encompassed by the public sector alone. What about information on public health coordination between federal, state and local providers? What about the fact that the private sector owns and operates 85 percent of the nation's critical infrastructure?

This Committee has also been looking long and hard at government organization challenges. Part and parcel of moving from a system of "need to know" to "need to share" is the need to restructure the Executive Branch to match 21<sup>st</sup> Century needs and requirements. The Commission rightly recognized that we need a government better organized than the one that exists today, with its national security institutions designed half a century ago to win the Cold War.

I believe the Commission's report makes the need for reauthorization of Executive Reorganization Authority all the more urgent. The obsolete, redundant, and duplicative nature of the federal bureaucracy is the single greatest impediment to moving from a system of "need to know" to "need to share."

An editorial in last week's Federal Times framed the issue well:

*Take any mission – say, counterterrorism intelligence gathering and analysis – and divvy it up among a dozen or more agencies. Then let those agencies set their own goals and priorities, follow their own standards and practices, and decide their own resources and budgets. What you end up with is a design for failure.*

*That's what exists now in government – not only with counterterrorism, but with many missions: job training, combating homelessness, environmental care, food safety inspection, to name just a few.*

*To take on a mission successfully, there must be cohesiveness in strategy, coordination in planning and practices, effective sharing of information, common priorities in budgeting, and clear direction by a competent, accountable leader.*

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In our battle to move forward, to better protect ourselves, there are no Republicans or Democrats, only Americans. Talking to my kids and countless others in Northern Virginia, one thing is clear: a whole generation of Americans will grow up with 9/11 as its most formative experience.

This younger generation is no longer cynical about the idea of 'We, the People.' They realize these attacks were not just on the people who were killed and injured, but also on the very things

that define us as a society: religious freedom, equality, economic opportunity, political choice. And this generation will know that the ruthless will not inherit the earth.

Without further ado, I welcome all of the witnesses to today's hearing and I look forward to their testimony.

Mr. WAXMAN. Thank you, Mr. Chairman.

This does feel awfully good to sit here. Well, I want to thank you for holding this hearing. This is a timely and important hearing. Understanding and acting on the recommendations of the 9/11 Commission should be an urgent national priority.

Let me begin by welcoming the family members of the September 11 victims, those testifying today and the thousands of family members you represent. Without your resolve, the 9/11 Commission would not have been established and we would never have learned as much as we now know about the truth of what happened. And without your commitment, we would not be considering the Commission's recommendations or even holding this hearing. Because of you, our Nation will be safer, and we thank you.

I also want to thank John Lehman and Bob Kerrey who served on the 9/11 Commission and who will be testifying today. The 9/11 Commission produced an extraordinarily important report, with dozens of concrete recommendations for fighting terrorism and making our Nation safer. And the Commission did so unanimously, achieving a rare bipartisan consensus. We owe Secretary Lehman and Senator Kerrey a debt of gratitude. And we ignore their recommendations at our peril.

The recommendations of the 9/11 Commission are getting attention right now. In fact, the House has over a dozen hearings scheduled this month alone. I have been around long enough to know what is likely to happen next: Without sustained public pressure, Congress will vacillate, and the administration will temporize. And we will end up with a pale shadow of the bold action recommended by the 9/11 Commission.

Indeed, this may already have started to happen. The 9/11 Commission recommended major reforms in our intelligence agencies. The Commission recommended the creation of a National Intelligence Director who would be in charge of a new National Counterterrorism Center. The Commission proposed giving the National Intelligence Director the authority to wield real power. The director would control the budgets of the intelligence agencies and would have direct management authority over the head of the CIA and other intelligence agencies. But this doesn't appear to be what President Bush had in mind. The President yesterday spoke about giving the National Intelligence Director the authority to coordinate and monitor the actions of the intelligence agencies, but he made no mention of giving the intelligence director the authority to control the intelligence budgets. And he specifically said that a new intelligence director will not be in, "the chain of commands."

In this city, if you have a fancy title but you are not in the chain of command and you don't control the budget, you are a figurehead. And another figurehead is not what the 9/11 Commission recommended and what our Nation needs.

The 9/11 Commission made over 40 concrete recommendations. Its recommendations cover a wide range of crucial subjects, how to protect our borders, how to safeguard our transportation systems, how to support our first responders, how to conduct an assessment of risks and vulnerabilities. All of these recommendations are essential. We will be doing the Nation a grave disservice if we ignore any of them.

Let me give you an example of why I am so concerned about the fate of the recommendations. The 9/11 Commission warned about the dangers of weapons of mass destruction getting into the hands of al Qaeda. Here is a quote from the report, "Our report shows that al Qaeda has tried to acquire or make weapons of mass destruction for at least 10 years. There is no doubt the United States will be a prime target. Preventing the proliferation of these weapons warrant a maximum effort by strengthening counter-proliferation."

Here is what the Bush administration did last week: It killed international efforts to strengthen nuclear weapons inspections. This is a quote from a front-page article in the Washington Post on Saturday, "In a significant shift of U.S. policy, the Bush administration announced this week that it will oppose provisions for inspections and verification as part of an international treaty that would ban production of nuclear weapons materials. An arms control specialist said the change in U.S. position will dramatically weaken any treaty and make it harder to prevent nuclear materials from falling into the hands of terrorism."

Well, the cynicism is breathtaking. A week after the 9/11 Commission recommended greater nonproliferation efforts, the administration undermines an international nonproliferation treaty, and then it says it is doing everything possible to fight terrorism and implement the recommendations of the 9/11 Commission.

Despite their merit, many of the ideas in the report from the 9/11 Commission have encountered resistance. Nearly 3 years ago, a bipartisan group of members from this committee urged the administration to develop a coherent strategy based on a comprehensive threat and risk assessment. Over 2 years ago, Representative David Obey, the ranking member of the House Appropriations Committee, and I wrote the Bush administration to recommend the creation of a White House office that could unify the collection and dissemination of intelligence.

Over 1 year ago, Representative Jane Harman, the ranking member of the House Intelligence Committee, introduced legislation to establish a National Director of Intelligence. And over the past year, Representative Jim Turner, the ranking member of Homeland Security Committee, has repeatedly proposed initiatives that closely parallel recommendations of the 9/11 Commission.

But all of these suggestions have fallen on deaf ears. Secretary Ridge never even bothered to respond to the letter that Mr. Obey and I sent over 2 years ago, in fact, recommending what we now have before us. It could have been done 3 years ago. It could have been put into effect 2 years ago. It could have been effective 1 year ago. We rushed into creating a Homeland Security Agency, and we ignored the problems of coordinating the intelligence, which we all knew from September 11th, was the biggest problem we had.

With so much at stake, we can't let that happen again. The 9/11 Commission has spoken. Now, it is Congress' turn and this administration to work with us in order to act to make those recommendations become the law of this country.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Henry A. Waxman follows:]

**Statement of Rep. Henry A. Waxman, Ranking Minority Member  
Committee on Government Reform**

**Hearing on Moving from Need to Know to Need to Share:  
A Review of the 9-11 Commission's Recommendations  
August 3, 2004**

Thank you, Mr. Chairman. This is a timely and important hearing. Understanding and acting on the recommendations of the 9-11 Commission are an urgent national priority.

Let me begin by welcoming the family members of the 9-11 victims — those testifying today and the thousands of family members you represent. Without your resolve, the 9-11 Commission would not have been established and we would never have learned the truth about what happened. And without your commitment, we would not be considering the Commission's recommendations — or even holding this hearing. Because of you, our nation will be safer. And we thank you.

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The cynicism is breathtaking. A week after the 9-11 Commission recommends greater nonproliferation efforts, the Administration undermines an international nonproliferation treaty. And then it says it is doing everything possible to fight terrorism and implement the recommendations of the 9-11 Commission.

Despite their merit, many of the ideas in the report from the 9-11 Commission have encountered resistance.

Nearly three years ago, a bipartisan group of members from this Committee urged the Administration to develop a coherent strategy based on a comprehensive threat and risk assessment.

Over two years ago, Rep. David Obey, the ranking member of the House Appropriations Committee, and I wrote the Bush Administration to recommend the creation of a White House office that could unify the collection and dissemination of intelligence.

Over one year ago, Rep. Jane Harman, the ranking member of the House Intelligence Committee, introduced legislation to establish a National Director of Intelligence.

And over the past year, Rep. Jim Turner, the ranking member of the Homeland Security Committee, has repeatedly proposed initiatives that closely parallel recommendations of the 9-11 Commission.

But all of these suggestions have fallen on deaf ears. Secretary Ridge never even responded to the letter that Mr. Obey and I sent.

With so much at stake, we can't let that happen again. The 9-11 Commission has spoken; now it is our turn to act.

Chairman TOM DAVIS. Thank you very much. I wasn't sure I was going to get the chair back that easy. But thank you very much.

I understand our first witnesses are not here yet. So what I am going to do is—and when we get our commission members here, we will go immediately. But until that time—Mr. Waxman, with your concurrence—we will alternate with opening statements.

And I will go with Mr. Shays, whose subcommittee has led the way on so many of these issues.

Mr. SHAYS. Thank you, Mr. Chairman. This is a good day, and it can be a partisan day.

As the third anniversary of the September 11th attacks approaches, we finally have a credible, comprehensive picture of what went so horribly wrong and what needs to be done to prevent further tragedy. The recommendations of the 9/11 Commission rise from the ashes of Ground Zero to the rubble at the Pentagon and the wreckage in Pennsylvania, demanding action by the living in the cause of those who died.

The task of implementing the major reforms outlined by a unanimous bipartisan commission will not be easy. As the Commission's vice chair observed, the status quo always has an entrenched army of defenders. But the September 11th families that we will hear from today have no patience with apologists for a system which failed them so totally and so personally, nor should they. Their status quo changed forever that September morning. They ask now only that we act quickly to change the dated structures and flawed practices that contributed to their profound grief.

Many of the recommendations strike familiar chords. In the course of 20 hearings on terrorism issues before September 11th, the National Security Subcommittee which I chaired discussed the need for unified threat assessment, sharper strategic focus on the real enemy and the need to restructure Government to meet the threat. Three national commissions—Bremer, Gilmore, Hart-Rudman—presaged the Commission's call for structural and operational reforms within and between levels of Government. Many of these recommendations went unheeded until it was too late.

It took unimaginable tragedy to bring us to this moment. Only courage, foresight and imagination will propel our actions in time to prevent the next calamity. These recommendations should be a unifying force, a mandate to put past divisions and biases behind us and heed the lessons so sadly learned.

In closing, I congratulate the 9/11 Commission for a job extraordinarily well done, and I thank the families for their courage and determination and love for this country and their efforts to make sure that life will be different for the next generation.

Chairman TOM DAVIS. Thank you, Mr. Shays.

We will have one more opening statement, and then we will go right to our panelists. Thank you all for being with us.

Mr. Kanjorski.

Mr. KANJORSKI. Thank you, Mr. Chairman, and Ranking Member Waxman.

I appreciate the opportunity to offer my views at the first hearing in the House on the final report of the National Commission on Terrorist Attacks Upon the United States.

Late last month, the 9/11 Commission released its much anticipated final report which examines the circumstances surrounding the September 11th attacks and provides recommendations for preventing future terrorist strikes.

This report is the culmination of 19 days of public hearings, a review of 2½ million pages of documents, interviews with 1,200 individuals in 10 countries and public testimony of 160 witnesses. As we begin our review of the 9/11 report, I would urge my colleagues to consider the recommendations of the Commission as a whole rather than identifying a single proposed reform for review or examining these matters on a piecemeal basis. By focusing only on certain aspects of the report, we risk losing the overall intent of the Commission's recommendations. We need to see the forest and the trees, not either the forest or the trees.

Nevertheless, today's hearing is intended to consider recommendations of the Commission regarding the creation of a National Intelligence Director and the formation of the National Counterterrorist Center within the Executive Office of the President. These recommendations have already sparked considerable public debate. On the one hand, the National Intelligence Director and the National Counterterrorism Center must have independent budgetary authority and the ability to make personal changes necessary. In addition, the director must have the ability to do so without pressure from the intelligence agencies under its jurisdiction.

On the other hand, placing the center and the director within the executive office of the President may shift the intelligence operations closer to the politics within the White House and may influence the intelligence-gathering system. Such a result could cause considerable concern for me.

Moreover, I am very troubled by recent press reports that indicate that the President may unilaterally issue an Executive order to create the position of National Intelligence Director. In doing so, no congressional confirmations would be held to ensure the director is properly vetted. In implementing the recommendations of the Commission, we must provide the appropriate checks and balances.

As we begin our review of the recommendations included in the 9/11 report, we also need to ensure that Congress adequately addresses these matters in the long term. I have therefore joined with many of my colleagues in supporting legislation to extend the 9/11 Commission for 18 months in order to oversee the implementation of its recommendations. I would urge the other members of our panel to also support this bipartisan bill.

[The prepared statement of Hon. Paul E. Kanjorski follows:]

**OPENING STATEMENT OF  
CONGRESSMAN PAUL E. KANJORSKI  
COMMITTEE ON GOVERNMENT REFORM  
MOVING FROM NEED-TO-KNOW TO NEED-TO-SHARE:  
A REVIEW OF THE 9-11 COMMISSION'S RECOMMENDATIONS  
TUESDAY, AUGUST 3, 2004**

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Thank you Chairman Davis and Ranking Member Waxman, I appreciate the opportunity to offer my views at the first hearing in the House on the Final Report of the National Commission on Terrorist Attacks upon the United States.

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In closing, Mr. Chairman, thank you again for the opportunity to express my thoughts and I yield back the balance of my time.

Chairman TOM DAVIS. Thank you very much, Mr. Kanjorski.

We have our panelists with us today.

And let me just thank you on behalf of Mr. Waxman and myself for your work on this Commission. It is a very important report. Both of you had long distinguished careers in public service before you came to this Commission, which I won't outline now, but we are very pleased to have you with us today.

It's our policy that we swear in members before you testify. So if you would rise with me and raise your right hand.

[Witnesses sworn.]

Chairman TOM DAVIS. Thank you very much.

So Senator Kerrey, I think we will start with you, and then Secretary Lehman.

And thank you both for being with us.

**STATEMENTS OF BOB KERREY, COMMISSIONER; AND JOHN F. LEHMAN, COMMISSIONER, NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES**

Mr. KERREY. Mr. Chairman, right off the bat, I am going to disobey and have Secretary Lehman lead off, if you don't mind. I came off vacation as per your request, and he is much better prepared than I am.

Chairman TOM DAVIS. That is fine. All right. You don't need to take your full 5 minutes. So if you just want to be here for questions, that is fine as well.

Admiral LEHMAN. Thank you, Mr. Chairman.

We have together submitted a statement for the record. I won't belabor you with that and re-read it to you. But I would like to start by thanking all of you for the support that you have given us, both in bringing us into existence and then helping us to carry forward our responsibilities.

This has been a remarkable experience for all of us. We are five Democrats and five Republicans. None of us have been particularly known as being pussy cats in the past, and we had our strong views and positions. And through the process of deep study of these issues and the facts of the investigation, we have ended up entirely unanimous. Not a single dissent, not a single additional view and with total unity of purpose. And I am very pleased to see that this committee is approaching the issues, our findings and our recommendations, in exactly the same nonpartisan spirit, with a unified purpose to get these changes done to make this country safer.

We are very pleased, all of us, with the reaction of the leaders of Congress, the reaction of Senator Kerry and his campaign, and the reaction and action of the President in moving out very smartly to analyze and implement these recommendations. They are very important. And while the organizational recommendations are the ones that naturally attract the most attention, they are not the most important. The most important are the recommendations that we lead with: What to do, the strategy, the objectives and priorities that are needed to win this war against Islamist terrorism.

You will never ensure security by moving around organization charts. You will never determine human behavior by trying to design a better organization chart. But it's unacceptable to have institutions that have evolved since the Second World War, built over



time to deal with the cold war and its threats, hemmed in with a variety of restrictions and regulation over time that were appropriate when put in but are no longer appropriate.

It's time for an entirely new system of providing our Nation's leaders and the congressional leaders with the intelligence they need to make wise policy and decisions.

Our recommendations are not a Chinese menu; they are a whole system. If all of the important elements are not adopted, it makes it very difficult for the others to succeed.

And one last comment before going to your questions after hearing Senator Kerrey's comment. I would strongly recommend these be viewed as a whole and that the powers needed to carry out these recommendations be enacted as a whole package. And I am sure that this will result in a far more effective means of providing intelligence to this Nation going forward if they are implemented.

Senator Kerrey.

Chairman TOM DAVIS. Thank you very much.

Senator Kerrey.

Mr. KERREY. Well, Mr. Chairman, members of the committee, let me first of all say what Secretary Lehman just said, which was that a remarkable thing happened in this Commission. There were 10 of us selected by, as you know, elected officials in the city of Washington, DC, where there is a considerable amount of partisan strife. And we reached a unanimous conclusion in spite of that. And I would say, I've scratched my head and tried to figure out why.

It is in no small measure due to the assistance of the families who aren't responsible for this legislation but were present at every single one of our hearings and present with us in spirit at all of our deliberations, as well as a careful reading of the narrative. If you read the narrative, and I know that it is a long narrative including the footnotes. But if you read the narrative, I believe it will put you in the right mood. And I think that's what happened to us; we got back in the mood of that terrible day, and the mood that happened for 60, 90, whatever it was afterwards, days afterwards. And the Nation and the world truly were united.

I mean, I live in New York City today, and it was remarkable for me to see the Yankees get cheered at Kaminski and get cheered at Fenway because—not because people love the Yankees, but because people felt a unity with New York that was truly moving. And I think the narrative puts you in that spirit. The narrative allows you to go back to that terrible but also wonderful moment when the Nation rallied together.

Of the things that I have noticed in the news that has been covered—there are several that have not been covered. I presume that you will have a lot of questions on the structure of the Government, and a lot of that is dealt with in our opening statement.

The foundation for what we are talking about, however, is the belief that this is not a war on terrorism. It really is a war on, in this case, a narrow and small group of radical Jihadists that believe that killing infidels is something that's a good thing to do and believe that the United States of America is, to use Osama bin Laden's words, the head of the snake.

And we unanimously conclude that a vigorous and relentless military and law enforcement effort are going to be necessary. We unanimously concluded that we are going to have to engage in the ideas that we have for too long left in the shadows. We unanimously concluded that we need to also develop an agenda of hope that the United States of America leads to try to implement in the world.

Of the five areas of action, again, I know that the restructuring of the Government is the dominant one. But I call to your attention, Mr. Chairman and members of the committee, that there are a number of areas where funding is the problem, especially border security, especially having to do with these paper documents that we all carry around called passports. There are significant vulnerabilities that still remain simply because the time lines and the implementation of the U.S. Visit visa program extends all the way out to 2010. There are management issues that have to be addressed. That's a constant problem that you, Mr. Chairman, and this committee are constantly dealing with, with the executive branch.

Third, there is the issue of secrecy. In my strongly held opinion, secrecy is an enormously difficult problem for us. I think we over-classify to a fault. But, more importantly for the Congress, as a consequence of there being secrecy, you do not have investigative journalists doing the kind of oversight that you have in every other walk of life when it comes to the Federal Government. Simply, you don't wake up in the morning and read the Washington Times and the Washington Post and see some investigative story that's out there that provokes you to do oversight. It's not there with our intelligence agencies. And you need to recognize, I think, the limitations that imposes upon Congress.

Fourth, there is a number of areas where further investigation is necessary. Time merely ran out on us. I love John Kerry; I intend to vote for him. My confidence in him was shaken when he said that we ought to work for 18 more months. One of the reasons that I think that came about is that we were actually—because we had subpoena powers. In this unique position, we were doing congressional oversight. I would urge you to think about that and try to come up with an alternative way to do that on a permanent basis.

I know that Congressman Shays was frustrated in trying to exert oversight over the intelligence agencies. There is a rightful place for Congress here, which brings me to my fifth point: Those things where law—changes in the law are going to be necessary. I am strongly of the view that what Congress needs to do is to see this as a moment when you have to push back on the executive branch. You need more power and authority.

My first preference is a joint intelligence committee that is created in law, not by congressional resolution. These intelligence agencies respect the law and are much less respectful of congressional resolutions. Second, that law should say that Congress has to be kept fully and completely informed, not informed when there are intelligence failures, but fully and completely informed. In my view, again, because of secrecy, this committee should be required to report on an annual basis of the status of our intelligence agen-

cies. There is no such thing as an operational readiness inspection as there is with our military. There needs to be some public declaration of where we are. I believe a joint committee would be the preferable way for Congress to push back. It is a much stronger position, Congress versus the executive branch, than perhaps the executive branch would want. But from my evaluation, the stronger, the better, the more likely it is that Congress is going to get the kind of oversight necessary to make certain that we sustain this effort to strengthen our intelligence capabilities over the long term.

Mr. Chairman, I think—I don't know if I went 5 minutes or not.  
[The prepared statement of Mr. Kerrey and Mr. Lehman follows:]

**Prepared Statement of  
Commissioner John F. Lehman and Commissioner Bob Kerrey  
National Commission on Terrorist Attacks Upon the United States  
before the House Government Reform Committee  
August 3, 2004**

Chairman Davis, Ranking Member Waxman, Vice Chair Shays, Members of the Committee: It is a great honor to appear before you today, to begin testimony in the House of Representatives on behalf of the recommendations in the final report of the 9/11 Commission.

We commend you for your strong leadership in convening this hearing. We also commend the leadership in the House on both sides of the aisle, for the alacrity with which the House is taking up the Commission's recommendations. Like you, we share a sense of urgency. The United States government must take all the steps it can to disrupt and defeat the terrorists, and protect against and prepare for terrorist attacks.

Yesterday the President announced support for several of the Commission's recommendations. His announcements are an important step in the process of reorganizing the U.S. government for a new era.

We welcome his support and his action to establish a National Intelligence Director and National Counterterrorism Center, which were two priority recommendations for the Commission.

We look forward to discussions with the Administration and with Congress about the substance of these ideas. The President has stated some of his goals for that process. The fate of these reform ideas turns vitally on the specifics. We will address some of these specifics in our statement.

We also welcome Senator Kerry's unequivocal endorsement of the Commission's recommendations.

Above all, we welcome renewed evidence of a common purpose uniting our nation's leaders. They agree that we need new institutions for a new era. They agree the Executive Branch and the Congress need vital reforms. They agree on

some of the basic goals for those reforms.

Now we must convert common purpose to common action.

**What to do—and how to do it**

The Commission’s recommendations were in two parts: what to do—a global strategy in three parts; and how to do it—reorganizing the government so that it can effectively implement the strategy with unity of effort.

With respect to “what to do,” our recommendations to address the transnational danger of Islamist terrorism rest on three policies, to:

- attack terrorists and their organizations;
- prevent the continued growth of Islamist terrorism; and
- protect and prepare for terrorist attacks.

The long term success of our efforts demands the use of all elements of national power: diplomacy, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense. If we favor one tool while neglecting others, we leave ourselves vulnerable and weaken our national effort.

Our recommendations about “what to do” encompass many themes: foreign policy, public diplomacy, border security, transportation security, the protection of civil liberties, and setting priorities for national preparedness. We also make several recommendations about “how to do it”—how to organize the United States government to address the new national security threat of transnational terrorism.

We recommend some important institutional changes. We will articulate and defend those proposals. But we believe reorganizing governmental institutions is only a part of the agenda before us.

Some of the saddest aspects of the 9/11 story are the outstanding efforts of so many individual officials straining, often without success, against the boundaries of the possible. Good people can overcome bad structures. They should not have to.

We have the resources and the people. We need to combine them more effectively, to achieve unity of effort. This morning, we will address several major recommendations on how the Executive branch can work better to:

- unify strategic intelligence and operational planning against Islamist terrorists across the foreign-domestic divide with a National Counterterrorism Center;
- unify the intelligence community with a new National Intelligence Director;
- unify the many participants in the counterterrorism effort and their knowledge in a network-based information sharing system that transcends traditional national boundaries; and
- unify our national effort by strengthening the ability of the FBI and homeland defenders to carry out the counterterrorism mission.

We will address each of these in turn.

#### **The National Counterterrorism Center**

Our report details many unexploited opportunities to disrupt the 9/11 plot: failures to watchlist, failures to share information, failure to connect the dots. The story of Hazmi and Mihdhar in Kuala Lumpur in January 2000 is a telling example. We caught a glimpse of the future hijackers, but we lost their trail in Bangkok. Domestic officials were not informed until August 2001 that Hazmi and Mihdhar had entered the United States. Late leads were pursued, but time ran out.

In this and in other examples, we find that no one was firmly in charge of managing the case. No one was able to draw relevant intelligence from anywhere within the government, assign responsibilities across the agencies (foreign or domestic), track progress and quickly bring problems forward so they could be resolved. No one was the quarterback. No one was calling the play. No one was assigning roles so that government agencies could execute as a team.

We believe the solution to this problem rests with the creation of a new institution, the National Counterterrorism Center. We believe, as Secretary Rumsfeld told us, that each of the agencies needs to “give up some of their existing turf and authority in exchange for a stronger, faster, more efficient government wide joint effort.” We therefore propose a civilian-led unified joint command for counterterrorism. It would combine intelligence (what the military calls the J-2

function) with operational planning (what the military calls the J-3 function) in one agency, keeping overall policy direction where it belongs, in the hands of the President and the National Security Council.

We consciously and deliberately draw on the military model, the Goldwater-Nichols model. We can and should learn from the successful reforms in the military two decades ago. We want all the government agencies that play a role in counterterrorism to work together in a unified command. We want them to work together as one team in one fight against transnational terrorism.

The National Counterterrorism Center would build on the existing Terrorist Threat Integration Center, and replace it and other terrorism “fusion centers” within the government with one, unified center.

The NCTC would have tasking authority on counterterrorism for all collection and analysis across the government, across the foreign-domestic divide. It would be in charge of warning.

The NCTC would coordinate anti-terrorist operations across the government, but individual agencies would execute operations within their competences.

The NCTC, as we propose it, would be in the Executive Office of the President. Its chief would have control over the personnel assigned to the Center, and must have the right to concur in the choices of personnel to lead the operating entities of the departments and agencies focused on counterterrorism, specifically the top counterterrorism officials at the CIA, FBI, Defense and State Departments. The NCTC chief would report to the National Intelligence Director.

We appreciate that this is a new and difficult idea for those of us schooled in government of the 20<sup>th</sup> century. We won the Second World War and the Cold War because the great departments of government—the State Department, the Defense Department, the CIA, and the FBI—were organized against clear nation-state adversaries. Today, we face a transnational threat. That threat respects no boundaries, and makes no distinction between foreign and domestic. The enemy is resourceful, flexible and disciplined. We need a system of management that is as flexible and resourceful as is the enemy. We need a system that can bring all the resources of government to bear on the problem—and that can change and respond as the threat changes. We need a model of government that meets the

needs of the 21<sup>st</sup> century. We believe the National Counterterrorism Center meets that test.

### **The National Intelligence Director**

As part of the 9/11 story, we spent a very considerable time looking at the performance of the Intelligence Community. We identified at least six major problems confronting the Intelligence Community that became apparent in 9/11 and still continue today.

First, there are major structural barriers to the performance of joint intelligence work. National intelligence is still organized around the collection disciplines of the home agencies, not the joint mission. The importance of integrated, all-source analysis cannot be overstated. Without it, it is not possible to “connect the dots.”

Second, there is a lack of common standards and practices across the foreign-domestic divide for the collection, processing, reporting, analyzing and sharing of intelligence.

Third, there is divided management of national intelligence capabilities, between the Director of Central Intelligence and the Defense Department.

Fourth, the Director of Central Intelligence has a weak capacity to set priorities and move resources.

Fifth, the Director of Central Intelligence now has at least three jobs—running the CIA, running the Intelligence Community, and serving as the President Chief Intelligence Adviser. No one person can perform all three.

Finally, the Intelligence Community is too complex, and too secret. Its 15 agencies are governed by arcane rules, and all of its money and nearly all of its work is shielded from public scrutiny.

We come to the recommendation of a National Intelligence Director not because we want to create some new “czar” or a new layer of bureaucracy to sit atop the existing bureaucracy.

We come to this recommendation because we see it as the only way to effect what



we believe is necessary: a complete transformation of the way the Intelligence Community does its work.

A chart of our proposed organization is in front of you. It is on page 413 of the report; it is also attached here. Unlike most charts, what is most important on this chart is not the top of the chart, it is the bottom.

We believe that the Intelligence Community needs a wholesale Goldwater-Nichols reform of the way it does business. The collection agencies should have the same mission as the Armed Services do: they should organize, train and equip their personnel. Those intelligence professionals, in turn, should be assigned to unified joint commands, or in the language of the Intelligence Community, “National Intelligence Centers.” We have already talked about a National Counterterrorism Center. A National Intelligence Center on WMD and proliferation, for example, would bring together the imagery, signals, and HUMINT specialists, both collectors and analysts, who would work together jointly on behalf of the mission. All the resources of the community would be brought to bear on the key intelligence issues as identified by the National Intelligence Director.

So, when we look at the chart from the bottom up, we conclude you cannot get the necessary transformation of the Intelligence Community—smashing the stovepipes and creating joint mission centers—unless you have a National Intelligence Director.

The National Intelligence Director needs authority over all intelligence community elements, including authority over personnel, information technology and security. Appropriations for intelligence should come to him, and he should have the authority to reprogram funds within and between intelligence agencies.

The National Intelligence Director would create, and then oversee, the joint work done by the intelligence centers.

He would be in the Executive Office of the President, and would have a small staff—an augmented Community Management Staff.

He would not be like other “czars” who get the title but have no meaningful authority. The National Intelligence Director would have real authority. In our proposal, he will control National Intelligence Program purse strings. He will have

hire and fire authority over agency heads in the Intelligence Community. He will control the information technology. He will set the protocols for security. He will have real “troops,” as the National Counterterrorism Center and all the Joint Mission Centers would report to him.

We have concluded that the Intelligence Community isn’t going to get its job done unless somebody is in charge. That is just not the case now, and we paid the price: information wasn’t shared, agencies didn’t work together. We have to—and can—do better as a government.

To underscore again, we support a National Intelligence Director not for the purpose of naming another Chief to sit on top of all the other Chiefs. We support the creation of this position because it is the only way to catalyze transformation in the Intelligence Community, and manage a transformed Community afterward.

#### **Unity of Effort in Sharing Information**

What we learned in the 9/11 story is that the U.S. government has access to a vast amount of information. But the government has weak systems for processing and using the information it possesses, especially across agency lines. Agencies live by the “need to know” rule and refuse to share. Each agency has its own computer system and its own security practices, outgrowths of the Cold War. In the 9/11 story we came to understand the huge costs of failing to share information across agency boundaries. Yet, in the current practices of government, security practices encourage over-classification. Risk is minimized by slapping on classification labels. There are no punishments for *not* sharing information.

We believe that information procedures across the government need to be changed, to provide incentives for sharing.

We believe the president needs to lead a government-wide effort to bring the major national security institutions into the information revolution. The president needs to lead the way and coordinate the resolution of the legal, policy and technical issues across agency lines so that information can be shared.

The model is a decentralized network. Agencies would still have their own databases, but those databases would be searchable across agency lines. In this system, secrets are protected through the design of the network that controls access

to the data, not access to the network.

The point here is that no single agency can do this alone. One agency can modernize its stovepipe, but cannot design a system to replace it. Only presidential leadership can develop the necessary government-wide concepts and standards.

**Strengthening the FBI**

The other major reform we want to recommend to you this morning concerns the FBI.

We do not support the creation of a new domestic intelligence collection agency. We believe creating such an agency is too risky to civil liberties, would take too long, cost too much money, and sever the important link between the criminal and counterterrorism investigative work of the FBI.

We believe Director Mueller is undertaking important reforms. We believe he is moving in the right direction.

What is important at this time is strengthening and institutionalizing FBI reforms, and that is what we are recommending.

What the FBI needs is a specialized and integrated national security workforce, consisting of agents, analysts, linguists and surveillance specialists.

These specialists need to be recruited, trained, rewarded and retained to ensure the development of an institutional culture with deep expertise in intelligence and national security.

We believe our other proposed reforms – the creation of a National Counterterrorist Center and the creation of a National Intelligence Director– will strengthen and institutionalize the FBI’s commitment to counterterrorism and intelligence efforts. The NCTC and the NID would have powerful control over the leadership and budgets of the Counterterrorism Division and Office of Intelligence respectively. They would be powerful forces pressing the FBI to continue with the reforms Director Mueller has instituted.

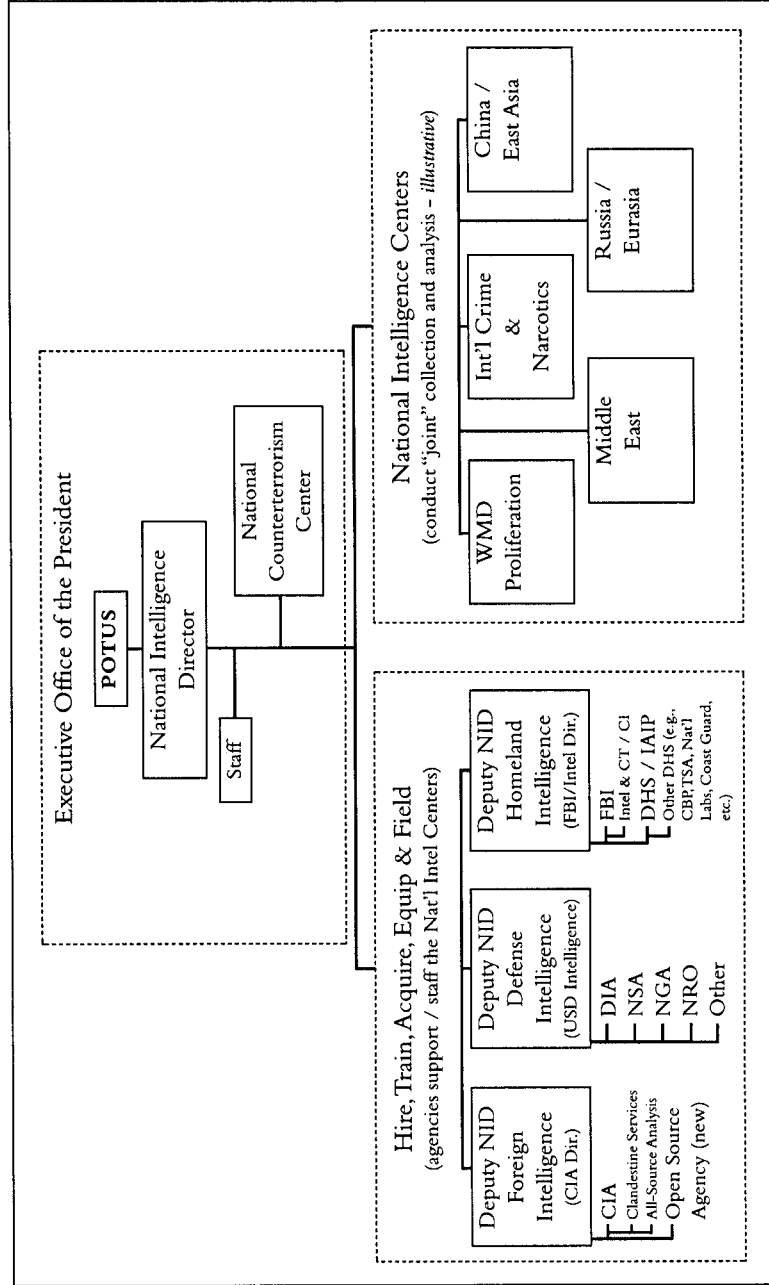
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Taken together, we believe these reforms within the structure of the Executive branch, together with reforms in Congress, and the many recommendations we have proposed for foreign policy, public diplomacy, border and transportation security, the protection of civil liberties, and setting priorities for national preparedness – can make a significant difference in making America safer and more secure.

We believe that reforms of executive branch structures, in the absence of implementing the other reforms and recommendations in our report, will have significantly less value than the value of these reforms as a complete package.

While we welcome each step toward implementation of our recommendations, no one should be mistaken in believing that solving structural problems in the executive branch addresses completely, or even satisfactorily, the current terrorist threat we face.

With these watchwords, we will close. We would be pleased to respond to your questions.



Unity of Effort in Managing Intelligence

Chairman TOM DAVIS. That's fine. Thank you very much.

Well, let me start the questioning. Let me ask you both what your views are on the President's announcement yesterday. The Commission proposed establishing a Senate-confirmed intelligence director in the White House. The White House proposed establishing such position outside the White House. We get into the line of budget control and the like. Do either of you have a reaction to that?

Admiral LEHMAN. Well, I think it is a very good start, a good opening bid. It is a responsible first step to start the process which, most importantly, I think, in working out the details, will go on up here in Congress, in your committee, and in your Senate counterparts.

The rationale for creating a National Intelligence Director is not based on creating a new layer of bureaucracy. Far from it. It makes no sense at all, unless it has the power to break up bureaucratic layers, to remove bureaucratic layers, to dismantle the vertical stovepipes that make it impossible, in many cases, for the real sharing of intelligence between agencies. That's the purpose.

So to carry it out, this National Intelligence Director has to have hiring and firing power. He has to have not just budget coordination power but budget and appropriations and reprogramming power—must have power over the IT protocols that now provide enormous technological barriers between our intelligence agencies and the sharing of data and have the power to bring rationality to the security system of classification, compartmentalization, declassification, security clearance granting and background investigations. Those four powers are essential. Without them, it will become just another layer.

Mr. KERREY. I think it's a very good start. I am pleased to see it begin. I do think that lesson under law—my mic's not on? Can you hear me now?

I think it is a very good beginning. The President deserves credit for coming out of the box with endorsement of the NID and the NCTC. This is not a new argument, especially the NID. We all who were here during the 1990's remember when the Aldridge Ames spy case broke, and suddenly, we had a commission to investigate what went wrong. Les Aspin first and then Harold Brown chaired that.

They came out with a set of recommendations, and indeed, Brent Scowcroft at the start of the Bush, the second Bush administration, did the same thing, evaluated what needed to be done. And everybody that looks at it comes to the same conclusion: The person that has the responsibility needs the authority. And, absent that, they are not going to be able to get the job done. I mean, it is a fairly simple rule in life, and it is especially important in Government. And, right now, the person that has the responsibility, the person that gets called up to the Hill, the person that gets the Senate Select Committee on Intelligence to do an evaluation and gets kicked the bejesus out of him, in the House as well, is the Director of Central Intelligence. But he doesn't have budget authority or hiring authority. And after Aspen Brown, we tried to get some of it done, and what happened was that the Department of Defense and the Armed Services Committee killed us. That's what happened.

We had to take the Armed Services Defense Authorization Bill, the Senate Select Committee did, on sequential referral in order just to get concurrent review. That's what happened. And for the rest of my time in the Senate, I didn't get a damned thing out of the Armed Services Committee because it made them mad, especially the staffers were quite upset with us for taking that bill on sequential referral. And that's the fault line.

I know that Secretary Rumsfeld is going to oppose this. If DOD wins one more time, then next time there's a dust-up and there's a failure, don't call the Director of Central Intelligence up here. Kick the crap out of DOD. Because they are the one with the statutory authority over budget. Appropriations goes to DOD for national foreign intelligence. Please don't tell me it's going to deteriorate our capacity to support the warfighters. We don't touch tactical intelligence in this recommendation.

So, if it's not done, if DOD and the Armed Services Committee one more time, then the next time you have a problem, don't call the Director of Central Intelligence up and blame them, because they have responsibility but they don't have either budgetary or personnel authority to be able to get the job done.

Chairman TOM DAVIS. Thank you.

The recommendations for reorganization in the report focus largely on the intelligence-related functions, but Senator Kerrey, let me ask you, wouldn't you agree that we don't necessarily have to stop there, that the problem goes deeper than just the intelligence community?

A number of Federal functions out there that are organized just as haphazard functions, functions that could impact Homeland Security.

Mr. KERREY. Yes. I mean, I say, it's sort of the preamble to the Constitution, we are always trying to be a more perfect union and not a perfect one. So, if somebody tells me the Government screwed up, I say, "Yeah, OK, it screwed up." It's a constant process of trying to make it better, and it is never a process where you expect that it's going to be perfect.

And, by the way, Mr. Chairman, I have no reason to blow smoke at you guys and gals here. But this committee can perform a very important function in providing oversight. I'm going to underscore, I believe one of the reasons that there's consideration being given to extending the 9/11 Commission is we really were doing oversight. People were nervous when we were showing up. They were afraid, going, "Oh, my god, what are they going to say about us?" Well, they ought to have the same sort of respect and fear, at times, when you all show up with your subpoena powers. And it seems to me that tucked in there is a very important point.

I was on the Senate Select Committee on Intelligence for 8 years. I was vice chairman under Senator Shelby and under Senator Specter. I think the committee did good oversight up to where it could. But it's not created under law. It doesn't have the kind of authority that it needs to have. It can't demand full and complete accounting. And there is no investigative journalism out there digging up stuff that we are missing.

So it seems to me, in this area, there's a real need for Congress to say: We have to create stronger capability on our part in order

to be able, in this particular area where you don't have the kind of investigative journalistic oversight, where you can influence what the executive branch is doing, regardless of who is President, more than you currently can.

Chairman TOM DAVIS. Thank you very much.

Mr. Waxman.

Mr. WAXMAN. Well, I appreciate the work the two of you and your fellow members of the Commission have done and your presentation here today. You both seem passionate that we need somebody in charge of intelligence. And then you both said you thought the President's proposal was a good start.

Don't you think we need to get on to doing what we need to do fast? Because we are going to only be here another month or two or three; and if we are going to pass a bill, we ought to pass a really good bill.

Would either of you be satisfied if we passed a bill like the one the President suggested yesterday? Because he suggested what we need is to have a director who could coordinate the budgets—not control them. Let's start with that one. Do you think that's good enough? I don't think your mic is on.

Admiral LEHMAN. Well, the devil is in the details. I think that the fact that, here we are a day after the President proposed this and you are hard at work preparing to begin to do this legislation is very encouraging. It is not enough to coordinate, and I don't think the President really was drawing the line there at all. I think that in order for him to have all hands on deck there supporting these initiatives, that he didn't have to jawbone every one of them into every last detail of our recommendations. There is time to bring them along, and you are going to play an essential roll in bringing them along.

So I don't see anything that is contradictory. I think, by the end of the process, I'm confident that the word coordinate, while it might still be there, will be subservient to direct in the executive sense. Because those powers must be given. And I don't believe the President will oppose them. I think, you know, unlike the rest of us, he has a whole administration that he has to kind of herd along and keep consensus in.

Mr. WAXMAN. I appreciate your optimism about it.

But, Senator Kerrey, what are your views? It seems to me that, unless the Commission demands that we act and keep in tact their proposal and not have it watered down and made ineffective, lest the families of the September 11 victims continue to press in the next several months, isn't it more likely than not, from your experience as a Senator, that this is all going to get watered down into coordinate and the lowest common denominator to satisfy the bureaucracies that don't want change?

Mr. KERREY. Yes.

Mr. WAXMAN. Well, that was a forthright answer. That seems to me—

Mr. KERREY. You gave me the opportunity to go yes or no, Congressman.

Mr. WAXMAN. Well, what about the management authority of this National Intelligence Director, that the President suggested that there be no operational responsibilities with this new



counterterrorism center, and they wouldn't have control over State Department, CIA, FBI, Defense, Homeland Security, and other agencies. Do you feel that there has to be more than just control over the budgets but management control over these other agencies?

Senator Kerrey, why don't we start with you this time?

Senator KERREY. Well, yes I do. I mean, in this case, I will align myself with the executive director of the 9/11 Commission who said, in some instances, and this would be one, it would be better to do nothing.

The NCTC is in response to the observation. The National Security Council's budget has gotten 50 percent bigger since September 11, but they are now down to weeds, doing operational things. They are doing planning. They are doing J-3 work to use a DOD phrase. And what we envision is to create the NCTC, not to make it a larger bureaucracy but to enable the National Security Council to get back to what it is supposed to be doing, which is the larger policy disputes. And the larger policy debates are always going to break out between DOD and the Secretary of State and others in the national security structure.

So I think, in my view—by the way, on the NID, this has been studied and studied and studied. So the fault line will always be between the Department of Defense and the national foreign intelligence. And the question will be whether or not, in this particular instance, we can rise to it. And I think you'll see—not just John and I. I think you will see the 9/11 Commission stay very unified—respectful, Congressmen. I mean, we have to be respectful of the President. It is an initiative that he has taken. We have to be respectful of that initiative. But in that moment of being respectful, point out that, if all it is is consultative, if all it is is advisory, then you are better off not doing it. You are better off not taking action if the action produces another agency that doesn't have real statutory authority.

Mr. WAXMAN. I share your concern. And if you look at the failures in our intelligence, they are really quite breathtaking. Not only in September 11, where we had some clues, but we forgot to or we were unable to connect the dots. But you look at what happened in Iraq, where they were desperately trying to find evidence, not ignoring evidence, but trying to find evidence to fit into a preconceived political notion.

And in the late 1990's, we had the FBI looking for a plot by the Chinese to interfere with our elections and our political process at the same time that Hanssen was selling information to the Russians and endangering our national security. And the intelligence agencies didn't know about the underground tests in—if I can just complete my thought, Mr. Chairman—in India, and the Chalaby debacle.

All these things, it seems to me, cry out for us to enact the kind of recommendations you have given us so we can put this intelligence system back into some coherent place.

I urge you all to continue pressing the Congress and the President to get these reforms enacted.

Chairman TOM DAVIS. Thank you.

Mr. Shays.

Mr. SHAYS. Thank you.

In spite of some of the partisan rhetoric that I know we are going to be hearing in the weeks and months to come, I think we are going to get the job done, and I think we are just by the tone that both of you are setting today. You are not getting tempted to take political shots at either side, and your report doesn't, either. And it's almost sacred to me what you guys have done—and ladies. I mean, it is almost sacred. And I believe it's going to lead to some great things.

When I look at your recommendations, I wonder what can be done administratively, what can be done through Executive order, what can be done through regulation, what can be done through law, statute, and what can be done or has to be done through House and Senate rules. And I just want to parenthetically say, I will not vote for any rule of the House that doesn't have these reforms next year.

For instance, if we don't create a committee that oversees the Department of Homeland Security, that has total oversight, I'm not voting for a rule. And I'm not going to because I think, if I did, I would be putting my country in danger. That's basically my mindset.

Tell me, what are the things—I realize this is a package. But what are the things you want us to do first? Because I don't think it's all going to come out in one bill. What would you want to see us do first before anything else?

Admiral LEHMAN. Well, I would say that the—ironically, the most important thing to do is to fix the congressional issues, as you say, the Homeland Security. We strongly endorse a joint committee on intelligence with appropriating powers. Fix that first if there has to be a priority, because the rest of the system that we are recommending will not function properly without Congress fixing its own committee structure and jurisdiction.

Next, I would say, enact the joint or the National Counterterrorism Center and the National Intelligence Director with the powers that we recommend. Again, our model here is not a super-consolidated, making one big agency or a new bureaucracy. The model is the kind of general electorate and other large successful corporate model, where you have a very small, powerful CEO at headquarters staff, where you don't try to micromanage the refrigerator division and the jet engine division. You give them objectives. You provide them the tools. If they don't produce or they don't pursue the corporate policy, you remove the people who are obstructive and replace them with people that do it. You don't try to run the operations themselves. That's the model that we are recommending here.

And it's of a piece. It all goes together. The National Counterterrorism Center and the other national centers, for instance, for proliferation that we are recommending all are enabled by a powerful National Intelligence Director. So it is of one piece. And those two, if you want symbols, are the most important.

Mr. KERREY. Well, I don't know, Congressman. I mean, I agree with John. I do think, if you can get the congressional oversight piece done and create a much stronger committee under law, with much greater enforceable requirements that we currently have, I

think a lot of it's going to take care of itself, especially since one of the—I strongly believe that one of the things that's really difficult in democracy is, it is oftentimes the little things that are most important. So it may not be a big enough deal for the Times or the Post or somebody to cover it, and because it passes unanimously, nobody is going to pay attention to it. But those little differences oftentimes determine the difference between success and failure.

The only thing, when it comes to doing things first, that I would recommend, among the things that I found to be most helpful in getting in the right mood to—you know, to agree with John. But, you know, you've got to be in the right mood to agree with John. And he has to be in an even better mood to agree with me.

If you read the sentencing statements of the 1997 trial of Ramzi Youssef, the mastermind of the World Trade Center bombing, and read the sentencing statement of Judge Duffy in that trial. There is an ideological fault line there, and you've got to come to terms with it. And if you don't come to terms with it, you get it wrong. It's not about a mechanical response to a mechanical problem. There are ideas that are being argued on the planet today, and those ideas are gaining currency and gaining ground in areas that we think that they shouldn't be gaining currency and gaining ground.

I mean, I would urge you—the report itself is too darn long to process in a short period of time, but ask your staff to get the 1997 sentencing statement of Ramzi Youssef and the sentencing statement of Judge Duffy, because it describes the fault line and describes where these arguments are.

I've heard people say, "Well, these guys are all evil-doers, and they're all cowards." Read this statement, and what you will see is a political argument, distorted, and messed up and dangerous, but you'll hear a political argument that was confronted, I think, in the absolute correct way by Judge Duffy, but you hear it in a way that I think will enable you to sustain the motivation that you are going to need through all—you know, all the difficulty of trying to change these laws.

Chairman TOM DAVIS. Mr. Kanjorski.

Mr. KANJORSKI. Thank you, Mr. Chairman.

If I could just ask a few questions about, how you envision the national director? Is he going to be of Cabinet status, or is he replaceable and fireable by the President? Does he have a term of years? How do we make sure that he isn't just a tool, as perhaps some people have suggested Mr. Tenet became in the last several years of responding to the needs of the White House rather than having an independent mind?

Admiral LEHMAN. Well, we are silent in our recommendations as to Cabinet membership. I think most of us think that Cabinet membership is not a particularly good idea. But Cabinet level, that is, executive level, one, is essential.

Mr. KANJORSKI. But would he have a term that is independent—

Admiral LEHMAN. No, we have not recommended that he or she have a specific term, because he will have such power that he

needs to serve at the pleasure of the President. He must be confirmed by the Senate, must be responsive to the Congress to—

Mr. KANJORSKI. But we would be retreating from the precedent of the Director of the FBI and the present CIA Director. They have a term of years.

Admiral LEHMAN. Well, the CIA Director, I don't believe has a term of years. The FBI does, and I'm not so sure that's a successful model to pursue, myself. But we did not address that. We are silent on the issue of term.

But I would like to follow what underlies your question.

It is essential to keep policy and intelligence separate; and in the structure that we are recommending that is maintained in the all-source National Counterintelligence Center and the other centers for fusing intelligence by professional analysts, providing the purely objective, as much as humanly possible, product; and, if you will, the National Intelligence Director is the person the President holds responsible for the integrity of this process, to bring forward to the National Security Council.

I personally think the practice that has grown up in the past few years of the President requiring that professionals be brought along for the daily briefing, that he gets to see and hear the professional analysts who are most expert in the particular area or subject matter, this provides an ideal setup for that, where the President will have visibility.

The National Counterterrorist Center Director will be confirmed by the Senate. He will be known to the President. So you will not have the danger of a National Intelligence Director becoming the monopoly source of information to the President.

Mr. KANJORSKI. Mr. Secretary, I am sort of worried. As I gather, the conclusion of the Commission is that this is a threat above and beyond what we have imagined it to be, this fundamental Islamic movement worldwide. I don't have enough information to make the judgment myself. But we have to balance that with the Constitution and the preservation of the Constitution.

The one thing that worried me, I was thinking of the old NKVD leader in the Soviet Union, Beria, who succeeded to become prime minister by virtue of the fact that he ran the secret police.

If we centralize that authority and give them a \$40 billion-plus budget to control at will, does that not eschew the authority that it may become uncontrollable, and the protection we are doing all this for, to save the Constitution, may be dissipated?

Admiral LEHMAN. It is a very legitimate question to raise and to address, and I think the answer to it is the control must be exercised by the Congress. That is why we insist that he or she be confirmed and accountable to and at the beck and call of the committees of Congress. But it is no different—in fact, if you compare the powers, the inherent powers of the Secretary of Defense, compared to this intelligence director, the intelligence director's pale in comparison to what we have put into the centralized Secretary of Defense. So we believe it is manageable. We are recommending other protections of civil liberties, an oversight board in Justice and so forth, because these are real, legitimate issues that have to be kept constant. We can't let the pendulum swing totally over to security.

Mr. KANJORSKI. Some people suggested there may be a political idea in Congress. If I may extend this, for 6 years of the last administration, all I did was sit on committees and in hearings and oversight, but I cannot remember anything in the last 3 years of oversight. We can't even get subpoenas for the Defense Department.

Chairman TOM DAVIS. Thank you.

Mr. Schrock.

Mr. SCHROCK. Thank you, Mr. Chairman and, Commissioners, thank you both for being here. Thanks for taking the politics out of it. Thanks for being brutally frank. It is most welcome and most refreshing, I can assure you.

Throughout your report, comparisons are made between the Joint Chiefs of Staff and the new structure that advocates for the NID. The Joint Chiefs are used as an example of a successful joint operations planning agency that is the type of capability that we hope to instill in our intelligence community. I don't have the exact numbers, but I know the Joint Chiefs is very large, numbering in the thousands, and exists as a separate robust agency that draws on the finest officers from the various military services.

If this type of capability is desirable, why did the Commission recommend a modest NID directorate with a relatively small staff and is just another Presidential adviser? Why not advocate a more robust capability that can truly steer the multiple intelligence agencies and make meaningful demands for their resources and budgets?

The joint duty is currently sought after, you know, a prestigious assignment for many military officers and a requirement for promotion to a general or admiral rank. Should similar joint intelligence analysis and operation and planning experience be required for promotion above a certain level in the intelligence community?

Mr. KERREY. Well, Congressman, I appreciate the question. I think the recommendations that we are making for the NID, even though we do envision it being a relatively small agency, has substantially enhanced powers. We do cross the line and say that we think that DIA, that NRO, that NGA, that NSA, that these agencies, the directors, should be recommended by the NID Director or the NID Secretary. Whatever you end up, they should have the power to make the recommendation.

Under current law, they have consultative authority, and that is all. Under current law, the appropriation goes to the Department of Defense, and we are recommending the appropriation go to the new Director or Secretary. I mean, it doesn't take a lot of intelligence to figure this out, but that will give this Director and this individual a substantial amount of power and authority.

But I also want to use this as an opportunity to point out—although I don't want to be filibustering you with my answer, I did want to point out that, in my case, my vision for this is not so much that we are creating new structures or a czar or super-agency but that we really need to be building the network that allows the person with the question to get in contact with the person that has the answer.

I would urge you again to read—there is a memorandum for the record produced by Major General Russel—I think his name is

Honore. I think he was the CINC of NORTHCOM in 2003 when we did our memorandum for the record.

Basically, what he is saying is we are heading toward a train wreck of computer interoperability, where the first responders won't be able to make contact with the person at the top. And nothing in this whole thing was more painful than listening to Mohammad Atta say, we have planes. American Airlines knew it, and the Department of Defense didn't. I mean, all the way through that day you see this interoperability problem.

So some of this is not so much giving somebody the authority but having a vision for a management network that enables that person that has the question out there, wherever they are, to get in contact with the person that has the answer, especially the person who has the answer with the capability of deploying resources to help that individual solve their problem.

Admiral LEHMAN. By the way, your idea of joint tours, that works so well now after Goldwater-Nichols, is a very good one, and I hope we will see some language to that effect in the legislation, which is why we recommend and believe firmly that the National Intelligence Director has to have personnel authorities to ensure that kind of thing happens.

Mr. KERREY. The point that John actually made right after we did our interview with former President Clinton, that one of the problems, however, with Goldwater-Nichols, and I have heard some of the concern about the NID that is sort of on this point, one of the problems you have with Goldwater-Nichols is the President is sitting there talking with his Joint Chiefs of Staff and said what is our options, and you only got one person in the room today. Twenty years ago you had four people in the room telling you a range of options. It limits the President's capabilities. We got down to this. Either we have to invade or we have to send in T-LANS. There were a lot of options in between that were never fully considered and I think were tragic consequences.

Mr. SCHROCK. In your minds, is it desirable that the term of this Director overlap different administrations so as to take advantage of institutional knowledge and experience? I have heard a lot of members of the services and the service secretaries—and you were one of those—Mr. Secretary, who said after 4 years you are just learning the job and then you are gone. Should it be an 8-year term? What should it be?

Admiral LEHMAN. My view is that the professionals, the heads, for instance, of these national centers, should have long terms, and not necessarily in statute but at least an accepted policy that it should be at least a 4, maybe a 6-year term. But I personally do not think—and, again, we, the Commission, have taken no position on terms. It could work with terms. It could work without terms. I personally do not think terms for the most powerful position is a good idea. I think it must serve at the pleasure of the President.

Mr. KERREY. I agree with that. The challenge, of course—Warren Buffett has this great line. He says he likes to buy companies that an idiot would run, because eventually one will.

Well, you have the same problem. You have to write the law understanding that every now and then somebody is going to put a real stinker in there to run the joint. You have to hope that the

body across the way catches enough of it and be able to, you know, exercise some judgment beyond just ideology.

So I think you have to—I think the NID—if you create an NID with this kind of power, I think you have to let that individual serve at the pleasure of the President.

Mr. SCHROCK. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you.

Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman, for calling these hearings so quickly. It is important, and I thank the Commission members.

I truly do believe that the 9/11 Commission is an example of government at its best. We certainly need to act on your recommendations. We do not have time to wait. The terrorists are certainly not going to wait for us to be ready.

As one who represents many of the families of September 11, and some of them are here today to testify, we thank you for your continued determination. They have expressed their desire that all of your recommendations be implemented, and they have stated they will not rest until that happens. They have even more recommendations, and I look forward to their testimony, and I certainly support their efforts.

I would like to turn to one of the areas that, Senator Kerrey, you have spoken about, many, many times, and that is the high-threat funding formulas.

Secretary Ridge testified at your Commission hearings in New York City that he believed that our Homeland Security resources should go, “Where the threat exists.” And, clearly, that is New York City. We are again in the cross hairs of al Qaeda.

But the administration has never offered a plan to Congress for actually fixing the homeland funding formulas to keep them in line with the recommendations of the Commission, that they be based on threat and risk assessment. Instead, they have continued in an almost discretionary total way of allocating these funds. Specifically, in the basic homeland form grant formula, 60 percent of it is discretionary in the hands of the administration. Yet they have not allocated that on risk assessment. I would like to know whether you believe that should be changed.

Second, they have ballooned the number of high-threat cities from the original 7 to now over 80, which resulted in aid to New York City, to give one example—and other high-threat cities have the same example—it was cut 69 percent, from \$150 million in 2003 to \$47 million in 2004.

The fire grant resulted in 9 cents going per capita to New York, with over \$9 in Montana. The basic State grant for New York is roughly \$5 and in Wyoming is over \$38.

Just last week, the chairman of the House Select Committee was getting ready to introduce a bill that was supposed to provide homeland funding based on risk, but not all of the details are known. It is not even open to the public yet. But we know that it goes away from all high-threat funding and would still guarantee a minimum to each State without the State needing to justify the need for a minimum or even being high threat.

So, in your opinion, is that the approach Congress should be adopting to avoid distributing homeland funds as pork-barrel, as you have talked about? Would you elaborate on the work on the committee on high-threat formulas and how the funding should be distributed?

Mr. KERREY. Well, Congresswoman, I spent 8 years on the Senate Appropriations Committee, and I am an advocate of pork. So I think it is basically 535 people in Congress trying to figure out how the money is going to be spent. I have argued strenuously with those who say, well, we ought to do it all by formula and turn it over to the bureaucrats and let them decide. So my hands are not clean on this one.

I don't think you are going to change that, and I am not honestly that familiar with the formula itself. It sounds like—you go from 8 to 60 cities. It does sound like one of those mistakes that are so obvious that you probably shouldn't be doing it.

But my own view on this is unless and until we recognize that the likelihood of an attack in New York City and northern Virginia or the Nation's Capital, Washington, DC, again, is very great, unless you come to terms with that, it is going to be very difficult to do the right thing.

In my view, the right thing is to create, if possible, a separate line in DOD and defense appropriations. Because anybody that is involved with fire effort or police effort, OEM effort up in the State of New York is doing the Nation's work. New York City has been attacked twice, there have been at least two additional attempts that were intercepted, and if the Nation gets attacked again, it is likely New York City is going to be attacked.

I just don't think I don't have much confidence—I am not wildly enthusiastic about getting into the mess of trying to figure out how to make Congress work better when it comes to doing appropriations. Therefore, the conclusion I reach is that what we should consider is creating a separate line in the DOD authorization so that you recognize right up front that in New York City it is the front-line of our defense efforts against terrorists.

Admiral LEHMAN. If I could just followup on that, that is a very good point. Because what we lack on today is in the connectivity among the firemen, policemen and the first responders and between them and as it escalates up through the FEMA, through the National Guard, which are going to be needed to respond in potential attacks in the future, on up into the military.

This is something where the Department of Defense has tremendous expertise, has procurement, has technology, has R&D. Fort Monmouth, NJ, the head of the Army Signal Corps, is just outside of New York. So this is something I think should be a Defense Department responsibility, to provide that kind of support to the first responders in the high-risk cities like New York.

Mrs. MALONEY. Mr. Chairman, I request permission to place in the record a letter to Congressman Cox urging that the formula be based on assessment of risk and vulnerabilities, and also the statement from this important report, which I hope does not gather dust but is implemented in its entirety, the statement that Homeland Security should be based, the funding formula, strictly on assessment of risk and vulnerabilities—



Chairman TOM DAVIS. Without objection.

Mrs. MALONEY [continuing]. And statements of other areas that are totally within the discretion of the administration now.

Chairman TOM DAVIS. Without objection.

[The prepared statement of Hon. Carolyn B. Maloney follows:]

A lot has happened in the almost two weeks since the 9/11 commission report was issued.

At first, the President and some in Congressional leadership did not seem to catch the urgency of the situation

Then that quickly turned around thanks to the commissioners and again the 9/11 families

Now we have summer hearings across the Capitol, the President announcing support for some of the commission's work and he says he is looking at other recommendations

but regrettably we have New York City again in the cross-hairs of al Qaeda.

Just Friday, Chairman Keane reminded us,

terrorists don't take vacations, the time to act is now

and then on Sunday we find out how true that statement was

I am thankful that we scheduled these hearings or there would have been a lot of embarrassment if Congress and the administration had taken the summer off as they originally wanted to.

The question before us now, is how are we going to proceed on all not just a cherry picked few of the commission's recommendations?

The sentiment is now finally there, but how we are going to get this done and done soon is not.

This is a full-service guide  
that cannot be left  
to collect dust.

The Question I have is who in Washington  
will coordinate and monitor  
our response?

While I, along with Chris Shays and other  
members have formed the 9/11 Commission  
Caucus to work to implement the 41 proposals  
of the 9/11 Commission and to bring together  
members of congress who want to make sure  
this doesn't collect dust or get lost in the maze  
of these halls.

And we plan to push a bill to extend the 9/11  
Commission's life while Congress is doing its  
work.

These actions alone are not enough,

We need to know how we are going to get this job done because if we leave it up to Congress I have my doubts that it will get done.

Lets take one recommendation near and dear to me that we haven't heard a lot about,

the need for increased assistance to high-threat communities.

Here we have NYC 1<sup>st</sup> responders poring over our streets with NYC taxpayers footing the bill, while the federal Government gives New York City firefighters 9 cents per New Yorker compared to \$9 per head for Montana.

This while the House is poised to pass a bill that is labeled as funding reform but really isn't, and isn't even available to be reviewed by the Public.

On the day this report was released Chairman

Cox was trying to get the floor a bill to revamp homeland security funding,

A bill that I believe would not be close to meeting the commission's demand that "Congress should not use this money as a pork barrel."

The bill would do away with all high threat funding, would still guarantee a minimum to each state and has other provisions that will confound getting the money to where the need is.

Now I believe Chairman Cox started out in good faith to try to fix the 1<sup>st</sup> responder programs and make them be based on threat, but the end product is not what high threat areas need.

This is why I along with my NYC colleagues Mr. Towns and Mr. Owens are sending a letter

to Chairman Cox point out our problems with this “reform” and how we think it doesn’t meet the spirit of Commissions recommendations.

Mr. Chairman, thank you for arranging this hearing in such a speedy and responsive manner

The importance of the 9/11 commission’s report can not be lost on any Member of Congress.

We must act to make America Safer.

Congress of the United States  
Washington, DC 20515

The Honorable Christopher Cox  
Chairman  
House Select Committee on Homeland Security  
208 J Adams House Office Building  
Washington, DC 20515

August 3, 2004

Dear Chairman Cox,

We are writing, as New York representatives, to express serious concerns regarding legislation you are working on to remake the formulas for first responder funding. It is our understanding that you had hoped that this legislation would be voted on under suspension of the rules before Congress adjourned for August recess. This vote would have taken place without the text of the legislation being adequately available to the public and we believe would have been counter to the recommendations of the 9/11 Commission that were released on the last day of the session.

We know that you have worked in a good faith effort to create a process that will better distribute homeland security funding a process based on based on threat but in light of the recommendations of the 9/11 Commission, your legislation should be redrafted.

In their report, the Commission posed the following question with respect to federal funding of homeland security initiatives: "How much money should be set aside for criteria not directly related to risk?" The Commission answered emphatically that homeland security funding should be based "strictly on an assessment of risks and vulnerabilities. Congress should not use this money as a pork barrel." We must be equally emphatic in Congress.

Our understanding of the legislation you authored, while an attempt to fix the problem, misses the mark. With five different Committees asserting jurisdiction, consensus may have been difficult to achieve. However, in the case of homeland security, we must not reach consensus merely for the purpose of pushing through legislation. The viability of our national security is at stake.

We are deeply distressed to learn that the legislation you propose to bring to the Floor has a built in minimum allocation to each state, at a rate of 0.45%, and that the equivalent of nearly one-quarter of all homeland security funding will be distributed without any regard to threat or vulnerability. A minimum allocation, blind to the threats posed by radical terrorists, could not possibly serve to enhance the national interest. We challenge you to redefine the funding mechanism in your bill before it reaches the Floor, to distribute ALL the money based strictly on threat and vulnerability, just as the Commission recommended. Further echoing the Commission's recommendation, we respectfully request that, "those who would allocate money



on a different basis should then defend their view of the national interest."

Another area of your bill that troubles us is the role regions play in the application process, and more importantly in the funding process. Your bill apparently will allow some regions to self-define and prepare supplemental applications through the state. As you know, the 9/11 Commission singles out only two regions in the entire nation at the highest risk, New York City and the National Capitol Region. Undoubtedly, there are a number of regions around the country in addition to New York City and the National Capitol Region that have been the subject of some intelligence reports and that should remain funding priorities; chief among them Los Angeles, Chicago, Houston, and San Francisco. Nonetheless, the Department of Homeland Security (DHS) must be the only entity charged with defining high-threat regions, and certainly not local governments defining themselves as regions.

By characterizing regional applications as supplements, two additional problems arise. First, it presupposes, consistent with the current high-threat funding available to at-risk regions, that a separate funding stream is available to fund the unique needs of these regions. Regrettably, there is no such additional funding stream in your bill for high-threat regions.

Second, as the Commission pointed out, the federal government should require each state receiving federal emergency preparedness funds to justify the distribution of funds within that state. Your bill does not do this either. Had your bill required states to distribute money strictly under a DHS approved state plan, using only threat and vulnerability as its guide, then presumably the requirements of a high-threat region within that state could be addressed in one application. As a safeguard, all that would be necessary is an additional requirement that all state plans be approved by the designated high-threat region, if there is one, before the application is forwarded to DHS.

Over the last three years the House has heard testimony, in a number of Committees, regarding the ineffective funding scheme that we currently have and the woefully inadequate interpretation of it adopted by the Department of Homeland Security. There have been reports on the September 11th tragedy and the fight against terrorism by the Gilmore Commission, the Council on Foreign Relations, and now report from the 9/11 Commission. Every single one concluded that funding must be threat-based.

We urge you to amend your bill to more directly incorporate the recommendations of the 9/11 Commission and to insure a full public debate on it when it comes to the floor.

Sincerely,

**CAROLYN B. MALONEY**  
Member of Congress

**MAJOR OWENS**  
Member of Congress

**EDOLPHUS TOWNS**  
Member of Congress

cc: Rep. Jim Turner

Chairman TOM DAVIS. Mr. McHugh.

Mr. MCHUGH. Thank you very much, Mr. Chairman. Gentleman, thank you and to your fellow Commissioners for your bipartisan approach to this very, very important issue.

Obviously, as a New Yorker and as someone who was in New York City just yesterday, the pain will never go away, nor should it. As Senator Kerrey said in his comments, this entire examination has helped remind us of that desperate day and the emotions we felt.

Just for the record, I listened to Senator Kerrey's comments about his intention to vote for President. Secretary Lehman, you are under oath. Who will you vote for for President?

Admiral LEHMAN. I am going to vote for President Bush.

Mr. MCHUGH. The record will reflect it is a tie.

Chairman TOM DAVIS. That reflects the national polls, by the way.

Mr. MCHUGH. Following up, the gentleman from Pennsylvania made some comments about civil liberties and concerns that many have expressed. You gentleman are aware that some of your recommendations—the biometric, national ID card, driver's license, etc.—has caused some concerns.

Next year, major portions of the Patriot Act are set to expire. It is going to be very controversial. I happen to believe that if you had to live under, as a Commission, pre-Patriot Act, and had to abide by the barriers that existed in Intel sharing, you probably could not have done your report.

From the perspective of the bill and the need to have a National Intelligence Director and a counterintelligence center, that ability to synthesize, how would you comment as to the efficacy and the need to maintain at least the spirit of the Patriot Act?

Mr. KERREY. Well, Congressman, first of all, I think that I have to declare that anything that has to be called the Patriot Act, I sort of felt like I probably would have voted against it without even reading the darn thing. But having examined it—and I didn't examine it at all until I got on this Commission—I think it has been misdescribed by both, in many cases, extreme supporters and extreme opponents.

What we concluded was that if you just put the burden of proof on the executive branch, don't give the government more investigative powers than are absolutely necessary, if you can get in that quiet moment where you say tell me what value added is occurring here, because if there is value added, there is no question we have gotten value added in breaking down the walls and expediting FISA, although with FISA right now we got a backlog because we don't have enough people to process the applications.

Just like if you are sitting over there right now working for the National Geospatial Agency with a Top Secret clearance, the private sector will pay you \$20,000 because there is a 15-month backlog on security clearances. So there is a number of areas here it seems to me that the Patriot Act provokes us to examine, beyond just what the law itself does.

I mean, I think if it is possible to get to that moment where conservatives that are concerned about excessive government power and liberals that are concerned about excessive government power

can actually examine the details of the statute, then I think you will extend those things that need to be extended and won't extend those things that don't. I am afraid, based upon my reading of it and my knowledge of it, which is pretty limited, that is the best I can do.

Admiral LEHMAN. I would just add I think overall it has provided a tremendous increase in our security, but, in doing that, it has raised the specter that in the future there could be abuses, which is why we have recommended that we set up in the Justice Department a board of oversight specifically to protect privacy and civil liberties and so forth.

But its contribution in dismantling "the wall" and the whole criminal justice mentality of no sharing has been invaluable. So it is important that those essential things be continued and made permanent and at the same time not losing sight that civil liberties must always be a consideration.

Mr. KERREY. Like I say, there will come a day—we may not be able to imagine it today, there will come a day when the war on terrorism is sort of back to background noise, 20 years from now, 25 years from now. You are always going to have terrorism as a tactic being used by individuals against more powerful people. There is going to come day when we are going to hear cases where the Patriot Act is sort of used like RICO, not for its intended purposes but for other purposes.

I mean, really, I know that there are times when conservatives that are concerned about the power of the government and liberals that are concerned about the power of the government can come together, and that is what I trust the most, it is that conversation that I trust the most when it comes to trying to figure out how to get the Patriot Act reauthorized so it can do what John says, it can add value where value is being added, but where it is not necessary, don't extend it.

Again, I don't come here with any very specific recommendations, but if it really isn't necessary, I urge you not to extend it.

Mr. MCHUGH. Thank you both very much. I guess that is the efficacy of sunseting.

I would say just, Senator, I would say I suspect a lot of people voted for and against it without reading it. So, business as usual.

Chairman TOM DAVIS. Mr. Kucinich.

Mr. KUCINICH. Thank you very much.

First of all, I want to thank both gentleman for serving on the Commission and, for each of you, for your long, distinguished career in public service, which certainly informed your work on the Commission.

I want to pick up a little bit from Mr. McHugh and the question that he raised. I am pleased that the 9/11 Commission identified civil liberties as an area of major concern. As a matter of fact, on page 394 of the report, it says, "While protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties. This balancing is no easy task, but we must constantly strive to keep it right."

Of course, those of us who are involved in the debates over the Patriot Act and have worked to pass amendments to it were guided by the spirit of Ben Franklin, who said, "Those who would give up

essential liberty to purchase a little temporary safety deserve neither liberty nor safety.”

Now the Commission, continuing with its recommendations, on page 395 said that we should “look across the government at the actions we are taking to protect ourselves, to ensure that liberty concerns are appropriately considered.”

You recommend, as Mr. Lehman has mentioned, “At this time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties.”

Now I have not yet seen, members of the committee, the administration concur with this recommendation, and I would dare say that we are really faced with a challenge here, so that we do not permit fear of terrorism to erode our basic liberties and thereby undermine the spirit of America itself.

The Commission says, page 395, “If our liberties are curtailed, we lose the values we are struggling to defend.” Part of what we are dealing with is terrorism, and the other part is fear of terrorism.

Senator Kerrey, you mentioned in your remarks a moment ago about there is two sides to the question of the Patriot Act, and we have the Patriot Act, which I opposed, these color-coded threat systems. You know, Americans are forever wondering, what does this mean, Code Orange? The CAPS program, total information awareness, discussions about that, there are real concerns out there around the country about the potential of these structures to curtail our essential liberties and whether or not these structures open the door to manipulation of information for political purposes.

So I think that, aside from the obvious duty that we have as Members of Congress taking an oath to defend the Constitution of the United States, this Commission recommendation to create a strong board to oversee the government initiatives and protection of our civil liberties is something that is absolutely critical and is something we should consider incorporating possibly in the form of an amendment.

I would like to ask if either Mr. Kerrey or Mr. Lehman would like to elaborate on your vision for what could be called a Federal civil liberty ombudsman, somebody to make sure that this quality that we have, that is so essential to who we are as a Nation, is not eroded.

Mr. KERREY. Well, the idea, Congressman, came actually from—at least the first time I heard the idea discussed, it came from a discussion of the detainee policy right after September 11, where we were unable to ascertain any security value added from all those detainee efforts and felt that there was going to be a need, regardless of what the effort was, to create a force inside the Justice Department that could do this kind of evaluation in an objective fashion.

I also have to say, if Ben Franklin were around today, if he had been on this 9/11 Commission and come to terms with Ramsey Yusef and Osama bin Laden and other guys who sit around and talk sort of casually about killing hundreds of thousands of Americans, I do think that he would say, well, wait a minute, we can't

sit around and worry about violating Osama bin Laden and Ramsey Yusef's civil liberties.

Remember, in 1998 and 1999—

Mr. KUCINICH. Senator, with all due respect—this is my time.

Mr. KERREY. No, Congressman, I don't need you to say "with all due respect" as you interrupt me.

In 1998 and 1999, we sat around and tried to debate whether or not we were going to pull the trigger to kill Osama bin Laden. We had that great debate because we were worried about collateral damage at the moment he was planning to kill 3,000 Americans, trying to acquire nuclear weapons to kill maybe a million. It is right in the report.

You have this stark language of us being concerned. I embrace that concern. I am glad we lead in those areas. I am glad we have this concern about civil liberties. It needs to be there. But the enemy has no concern for civil liberties. The enemy has no concern for the Geneva Convention.

You have to come with that—and I know you do in that debate—we have to come with that hard-headed attitude, or are not going to get this thing balanced right. All we are going to do is score a point to an audience that is apt to be sympathetic to our viewpoint.

Mr. KUCINICH. You did not answer my question with respect to the balance.

Mr. KERREY. Well, I answered as best as I can, or as far as I am going to go today, I guess, Congressman. I mean, where do you find my answer to be inaccurate?

Mr. KUCINICH. How do you protect civil liberties?

Mr. KERREY. I don't think you protect civil liberties absolutely. I don't have an absolute civil liberty to speak freely, to operate freely. I always have to balance what I am saying against the interests and the rights of another individual.

So if I am sitting in a mosque somewhere having a conversation that I think it is a pretty good thing what happened on September 11, to kill Americans, and I would like to perhaps support other people who are doing the same sort of thing, as far as I am concerned, I just forfeited my right, it seems to me, to not have the government of the United States interfere with either that conversation or my effort to do so.

So I can't balance it in general, unfortunately. I have to get to the specific thing that we are talking about in order to be able to do that balancing.

That is why I say, Congressman, I do think both the mechanism that we are recommending and the general thing I said earlier with the Patriot Act, you got to get to that place where you have both liberals and conservatives who say we don't want the government to have too much power, because that is, in the end, what you are dealing with. It is not so much civil liberties as it is the power of the government to investigate us without any control over that government, regardless of what it is you are doing. And I think you need—in our system of government, I think we need real limitations on what the government is able to do with individual citizens. At the same time, we are fighting a war against individuals that don't feel that way.

Mr. SCHROCK [presiding]. Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

I thank the gentlemen for your service to our country and all the Commission members for rising above the political rhetoric and the bashing and all of the partisanship that goes on, even as you have heard in this committee. You have produced a truly bipartisan report that rises above that and honors the thousands who died on September 11, honors their grieving family members and also gives hope to our men and women in uniform throughout the world who are fighting those Islamic extremists who seek our destruction and who corrupted their religious teachings in such a distorted way that they can state that they are killing for their creator.

I wanted to raise two issues that were raised in your report that is currently being debated in our committee on International Relations, and we will have you appear before us in the coming days. These legislative proposals we are putting forth have to do with the information-sharing component of your report and the need for executive branch reorganization. I wanted to ask you if you believe that each agency involved in counterterrorism efforts should reorganize their own infrastructure to better integrate and coordinate the intelligence, the policy, the operational components, and should each agency essentially have a single dedicated office or division working exclusively on U.S. counterterrorism policy that will serve as a point of contact for other U.S. agencies in the soon to be created terrorism center.

Also, another proposal that we are looking at is your observation of the Commission that has to do with the need to transform the system of need-to-know to one of need-to-share. But there are concerns that increasing the number of individuals with access to intelligence could jeopardize sources and methods; and, in turn, that could jeopardize not only our intelligence gathering capabilities but our operational response as well. How would you address those concerns and safeguard against these potential problems?

Thank you.

Admiral LEHMAN. I will start, if I might, to answer that. One of the most essential things in reforming our current structure is to rationalize the current security system, as you rightly put it, to change from a need-to-know to a need-to-share culture. That is one more very strong remedy for a National Intelligence Director who has that power that cuts across agencies.

Today, too many agencies do all their own classifying, do all their own background investigations, do all their own stamping, and when in doubt stamp it one level higher than it should be. What we are recommending is a cultural change, and that goes to the first part of your question, should each of the 15 agencies change, reorganize themselves.

I believe that the only reason for making these organizational changes is to bring about a cultural change, to provide an environment in the whole community and in each of the agencies where people can become innovative, can do the right thing. Because we have fabulously talented people in each of these agencies that are kind of in shackles because of the bureaucratic process.

So if we can change, give the power to somebody at the top to break up these shackles, to remove these obstacles, then each of the agency heads will be able to reorganize their own agencies and

bring about a culture of sharing and of putting proper responsibilities where they belong.

Specifically, in the classification issue, one of the greatest tyrannies in the classification system is what is called originator control. If NSA originates a piece of intelligence, they get to control it, nobody else. If CIA originates a piece, they get to control it, it is called ORCON. That has to be totally changed.

We have to have a system where sources and methods are detached as soon as the intelligence is gathered and then it is fed into the system of sharing free, so everybody don't have to maintain this ORCON compartmentalization throughout. That is why you are getting an idea why we believe this is a whole. It is not a Chinese menu, these recommendations.

Chairman TOM DAVIS [presiding]. Thank you.

Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. I want to thank you and the ranking member for convening this hearing. I also want to thank the witnesses for the tremendous work you have done as part of the Commission. I want to commend the family members for the role that they played in bringing the Commission about.

On Saturday, the Washington Post ran a front-page story that described a significant policy shift by the Bush administration. It announced that it will now oppose inspections and verifications as part of an international treaty that would ban the production of nuclear weapons.

Senator Kerrey, could you give us your views on this? Is the administration going in the right direction, the wrong direction, appropriate direction? What do you think about this?

Mr. KERREY. I wasn't in town Saturday, so I missed that story. I am not sure, Congressman, honestly what the administration is proposing. I do think that the chem/bio nuclear threat is very real, especially nuclear. It is almost a question of when, not if, one of these gets used. At the same time, I must tell you, I think the likelihood of the United States being attacked by a terrorist using just straight conventional weapons is a more likely thing.

You all were terrified by a couple of snipers here for a number of months, and that wasn't weapons of mass destruction. So it can still be pretty easy for me to go out and get a couple hundred pounds of C-4 and a time stick and put it someplace where it would do a lot of damage. There are a lot of conventional vulnerabilities.

So I don't think that is the question that you asked me, but it is about as far as I can go to answer your question. I don't know what the administration proposed.

Mr. DAVIS OF ILLINOIS. Let me proceed. The article went on to say the administration's position will dramatically weaken any treaty and make it harder to prevent nuclear materials from falling into the hands of terrorists.

Mr. Lehman, do you have a view on this?

Admiral LEHMAN. First of all, I do believe that proliferation efforts have to be redoubled and intensified, that this really is the most serious long-term threat. I agree with Bob that the more immediate is conventional but the catastrophic is in nuclear. So I am

a true believer in nonproliferation, and we are recommending one of the national centers be a nonproliferation center.

However, I also believe in President Reagan's dictum, "trust but verify." When you are dealing with nuclear materials, we have found—I mean, I was sent by President Reagan to try to threaten President Sia of Pakistan not to proceed with nuclear weapons. I sat right across from him at dinner, and he looked me straight in the eye, and he said I give you my word, we are not developing nuclear weapons. And about 2 years later, they had their first test.

So I used to be, in one incarnation, the Deputy Director of the Arms Control Agency. I believe in arms control. I believe in treaties. But they must be verifiable. We cannot take the words, we cannot trust a toothless international organization to verify. We have to have an international organization or national means, such as we developed with the Soviets, that are intrusive but reliable.

Mr. DAVIS OF ILLINOIS. Let me just ask—finally, the article said that the administration came to its conclusion because such a system would cost too much. The Commission report says that preventing proliferation of these weapons warrants maximum effort by strengthening counterproliferation.

I assume that the Commission felt that the cost would be warranted if we could prevent further proliferation of these weapons. Is that your understanding?

Admiral LEHMAN. The principle, as opposed to its specific—because I don't think any of us on the Commission addressed this specific move by the administration—but money spent on reducing proliferation, regardless of the cost, in my judgment, if it is effective means it is money well spent.

Mr. KERREY. It does look from the article that this weakens verification. Frankly, Congressman, I would want to ask Senator Nunn what he thought of this or somebody else that steeped themselves in trying to reduce the threat of nuclear proliferation.

Indeed, in our discussions, we pointed to the Nunn-Lugar Act as something that, with the corrections Congress made through good oversight, is something that needs additional funding and additional support. So I would seek to deflect your question to somebody that is more knowledgeable than I. As is oftentimes the case when I see something on the surface, my surface reaction would be this is going to weaken our capability to stop proliferation. I would check it with somebody more knowledgeable than I.

Chairman TOM DAVIS. Thank you very much.

[The prepared statement of Hon. Danny K. Davis follows:]



**STATEMENT OF THE HONORABLE DANNY K. DAVIS**  
**Committee on Government Reform**  
**Hearing**  
**Moving from 'Need to Know' to 'Need to Share':**  
**A Review of the 9-11 Commission's Recommendations**

**Tuesday, August 3, 2004**

Combating terrorism has emerged as one of the most important U.S. foreign policy and national security priorities. The number of terrorist groups is reportedly growing and the technology to inflict mass casualties is becoming more readily available. The United States and other cooperating nations are confronted with four major tasks, namely, 1) deterring and identifying terrorists and their sponsors and supporters 2) weakening terrorist financial ability and infrastructure 3) making potential targets extremely difficult to be accomplished and 4) to contain damage in the aftermath of terrorist attacks. Given these priorities Congress and the Administration should accept the recommendations of the 911 Commission Report as a guidance document toward effectively

combating terrorism without diminishing the people's civil liberties and rights.

Combating terrorism requires government activity designed to gather information on, and restrict the activities of individual terrorists and groups seeking to engage in direct or indirect terrorist activity. This is a challenge facing the Congress as to how—in a growing age of globalization, deregulation, democracy and individual freedom—to institute effective communication between various intelligence agencies, information sharing across federal, state and local governments and private sectors and the method of implementing regulatory and monitoring systems which will help deter, identify, and track terrorists and stop their activities.

We should support the 911 Commission report and its recommendations with the understanding that

their must be Congressional oversight and  
accountability.

washingtonpost.com

**U.S. Shifts Stance on Nuclear Treaty**

White House Resists Inspection Provision

By Dafna Linzer  
 Washington Post Staff Writer  
 Saturday, July 31, 2004; Page A01

In a significant shift in U.S. policy, the Bush administration announced this week that it will oppose provisions for inspections and verification as part of an international treaty that would ban production of nuclear weapons materials.

For several years the United States and other nations have pursued the treaty, which would ban new production by any state of highly enriched uranium and plutonium for weapons. At an arms-control meeting this week in Geneva, the Bush administration told other nations it still supported a treaty, but not verification.

Administration officials, who have showed skepticism in the past about the effectiveness of international weapons inspections, said they made the decision after concluding that such a system would cost too much, would require overly intrusive inspections and would not guarantee compliance with the treaty. They declined, however, to explain in detail how they believed U.S. security would be harmed by creating a plan to monitor the treaty.

Arms-control specialists reacted negatively, saying the change in U.S. position will dramatically weaken any treaty and make it harder to prevent nuclear materials from falling into the hands of terrorists. The announcement, they said, also virtually kills a 10-year international effort to lure countries such as Pakistan, India and Israel into accepting some oversight of their nuclear production programs.

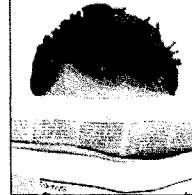
The announcement at the U.N.-sponsored Conference on Disarmament comes several months after President Bush declared it a top priority of his administration to prevent the production and trafficking in nuclear materials, and as the administration works to blunt criticism by Democrats and others that it has failed to work effectively with the United Nations and other international bodies on such vital global concerns.

"The president has said his priority is to block the spread of nuclear materials to rogue states and terrorists, and a verifiable ban on the production of such materials is an essential part of any such strategy," said Daryl Kimball, director of the Washington-based Arms Control Association. "Which is why it is so surprising and baffling that the administration is not supporting a meaningful treaty."

The U.N. Conference on Disarmament includes 66 countries as members. It had announced its intent to start negotiations this year toward a verifiable international agreement known as the Fissile Material Cut-off Treaty (FMCT) that would ban production of highly enriched uranium and plutonium for weapons. The two ingredients are used for setting off a chain-reaction nuclear explosion.

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The treaty wouldn't affect existing stockpiles or production for non-weapons purposes, such as energy or medical research. Mainly, it was designed to reinforce the Nuclear Non-Proliferation Treaty (NPT) and to impose restraints on India, Pakistan and Israel, whose nuclear programs operate outside the reach of NPT inspectors.

In 2000, all three countries, the Clinton administration and the rest of the conference members agreed to pursue negotiation of the treaty. But last year, when the possibility of starting negotiations arose in the conference, the Bush administration decided to review its position on the FMCT.

On Thursday, Jackie Wolcott Sanders, the U.S. representative, said the United States would support the treaty, but without a way to verify compliance.

The State Department later released a statement saying that an internal review had concluded that an inspection regime "would have been so extensive that it could compromise key signatories' core national security interests and so costly that many countries will be hesitant to accept it."

Furthermore, "even with extensive verification measures, we will not have high confidence in our ability to monitor compliance with an FMCT." Bush administration officials would not elaborate on the statement or on the U.S. position, except to say they would send a delegation to Geneva to better explain the position to the conference. But the conference goes on recess in early September, leaving virtually no time to begin formal negotiations on the treaty before the end of the current presidential term. Since the disarmament conference can adopt a treaty only by consensus, the American position makes it highly unlikely that a verification system will be included in a future agreement.

Democratic presidential nominee John F. Kerry has supported the verification provision and has criticized the administration's policies on weapons of mass destruction, particularly after none turned up in Iraq after the war.

Early this year, after revelations that Pakistani scientist Abdul Qadeer Khan had sold nuclear secrets to Libya, Iran and North Korea, Bush gave a major speech on the threat posed by weapons of mass destruction. He proposed several new measures, including encouraging all nations to criminalize proliferation and secure sensitive materials within their borders.

While declaring nonproliferation a priority, however, the administration has opposed other arms-control treaties that rely on inspection regimes.

In 2001, the administration opposed attempts to create an inspections regime for the Biological Weapons Convention. It has signed an arms-reduction deal with Russia that doesn't include new verification mechanisms, and in its first year in office, the administration pulled out of the Anti-Ballistic Missile Treaty.

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Chairman TOM DAVIS. Mrs. Miller.

Mrs. MILLER. Thank you, Mr. Chairman. I appreciate it.

Let me just say to the panelists here how much we certainly appreciate your dedication to our Nation. You have all had terrific careers, but I think certainly what you have done with the 9/11 Commission will be a mark of your careers as well. I appreciate your coming.

I appreciate our chairman calling this hearing and the leadership of our Speaker as well. There are a number of different committees that will be having hearings on this remarkable report that you brought out. I think it was very appropriate. I had some consternation about the Congress going on recess right as you were delivering this remarkable piece of work, and so I think there are a number of things that our committee should be looking at with your recommendations.

I am going to go to something that is so almost ridiculously simple but so fundamental in one of your recommendations and something I have a little bit of expertise in as well.

Before I got this job I was a Michigan Secretary of State and in that my principal responsibilities—one of my principal responsibilities was serving as the chief motor vehicle administrator, issuing drivers' licenses, State identification, etc.

Actually, in your Commission's report, here on page 390 you have a recommendation "secure identification should begin in the United States. The Federal Government should set standards for the issuance of birth certificates, sources of identification, such as drivers' licenses," etc.

I wonder, during the course of your hearing, as you were taking testimony there, if you found that there was—at least it has been my experience that there really has not been a Federal standard on how we are issuing drivers' licenses or State ID cards. This I think is the foundation of your identity.

You have a driver's license, that is how you are going to enroll into a flight school or get on an airplane or what have you. Yet all of the various States—there are a number that have very high secured drivers' licenses, essentially fraudulent free, but there are still a number of States who are issuing drivers' licenses, first of all, without requiring any really good, essential primary documentation as to the identity of the individual that they are issuing these licenses to, and I think we have a serious problem with that.

For instance, with commercial drivers' licenses, just reading this latest terrorist threat, we see that there is quite a bit of consternation that much of this terrorist threat could manifest itself in people in trucks, in cars, with bombs.

You have I think the possibility certainly with not having the kind of secured licensing system that we need to have with people getting commercial drivers' licenses, for instance, with hazardous materials endorsements. They are literally using our own freedoms against us. Yet the technology does exist out there for us to have not only secure licenses but biometrics, the retinal scanning, whether or not we would put fingerprints on licenses.

I think we all have to be very concerned as we use technology about privacy concerns. At the same time, there certainly is technology there, and it would seem appropriate, and as you say in

your recommendations here, that the Federal Government should be issuing Federal standards to the various States.

Again, I know we are talking about national security directors, etc., but this is such a fundamental thing that every American has and needs to have, and I do think the Federal Government would have a very appropriate role in this. I am just looking for a little comment from you two individuals on that.

[The prepared statement of Hon. Candice S. Miller follows:]

OPENING STATEMENT

Let me just say how glad I am that through the leadership of our Speaker of the House and the leadership of our Chairman – that we have come back from our August recess to hold this hearing and others on the recommendations of the 9-11 Commission.

It is incredibly important that, after the remarkable work this commission did, both the Congress and the Executive Branch move quickly to improve our government infrastructure and to protect our homeland. This process will be continuous, as the war on terror is not going away—and may be with us for a generation or more.



We see our President studying this report and assessing if he can move on some of these recommendations by Executive Order - and both Houses of Congress need to prepare legislation where necessary. President Bush has asked Congress to create the position of a national intelligence director, and his administration is working to establish a national counterterrorism center.

It is incumbent on us to look beyond our own sphere of influence, to not let our personal concerns about territory of current committee structures, or to let personalities or egos get in the way of the changes that we need to make to better prepare for this ongoing war. The unity this nation showed following the tragic events of

9-11 should never be forgotten. We are one nation, and must remain so as we proceed in fighting those who wish to destroy our freedoms.

As in all things, the largest room is always the room for improvement.

I want to sincerely thank the members of the 9-11 Commission for their service to our nation and the comprehensive work-product their hearings produced.

I have spent quite a bit of time going through the Commission's report, and there are a number of recommendations in the report that

are particularly appropriate for this committee to act on.

One theme is clear – that the gathering of intelligence and the way information sharing occurs – is critical to our success.

Our Technology subcommittee has held a number of hearings on information sharing within the Federal structure. There seems to be almost an institutional reluctance to change our nation's informational framework. In a post 9-11 world, our Federal agencies must have an open line of communication in order to maximize our intelligence strengths.

It is up to the Congress to hold the agencies accountable — and to introduce policy that allows for creativity perhaps not normally associated with bureaucracy.

Additionally, the federal government cannot operate in silos independent of the states and local governments.

I previously served as the chief motor vehicle administrator for Michigan. So I am particularly interested in the possibility of incorporating Federal standards for identification, such as uniformity for driver's licenses or state identification cards, and setting standards for the type of identifying documentation that states currently accept when they are issuing these.

Many states, including my own, continue to issue drivers license to known illegal aliens, which seems to me to be completely counter-intuitive to a secure identification foundation.

Technology is available right now that we should be utilizing so that at a minimum, we feel comfortable accepting the most common form of personal identification, and sharing that information with terror watch lists for either the F.A.A., or the F.B.I or the C.I.A. or the Department of Homeland Security.

Mr. Chairman, we have so much to do and I simply use this example because it points to

how fundamental our security lapses are, and it is also an issue that the 9-11 Commission lists as one of its recommendations.

As the 9-11 Commission has so appropriately pointed out to the entire nation. We cannot wait. We need to move quickly. We have come a long way since the absolutely horrific attacks on our nation, but we have a long way to go.

I look forward to hearing from our panelist today. I appreciate the non-partisan nature of the report, and I am certain that the Congress will proceed accordingly.

Admiral LEHMAN. Well, I am very pleased that you single this out, because I think all of us on the Commission are very proud of this recommendation, because it came from some very interesting intellectual disputation on the Commission. Because there were some of us who were sympathetic to the idea of a national identity card and others that were very concerned about the privacy and civil liberties issues.

We believe we came up with what is as near to a perfect solution as you can with this national standard, because this is not a national identity card. It keeps in the States the responsibility for those documents and for the administration that goes behind that. There will be no national identity card. Yet it gives all the security benefits that a national identity card would give. And it does not have to be enforced by the Federal Government. If there are Federal standards, it becomes enforced by the insurance industry and by private industry. If a State doesn't adhere to national standards, insurance rates are going to be a lot higher.

Similarly, we recommend the adoption of national standards for building safety and fire codes and so forth. Similarly, the Federal Government doesn't have to enforce it. It gets enforced by insurance underwriters and private industry. So we are very pleased with that and hope it will get enacted.

Mr. KERREY. I actually would have gone further with the recommendations. Just for all those folks that are worried that the national identification card is going to impinge on your privacy, get rid of your credit cards first, stop using the public e-mail second, don't travel anymore, third, and then tell me what the hell you think of it.

I mean, the problem is we have given away so much of our privacy already without knowing it; and the trouble is, absent our capacity to in a much more sophisticated way tell who that small fraction is—there is no more than 1 percent—in fact, it is less than 1 percent of the 500 million visitors of the United States of America we believe have criminal intent.

The trouble is, yes, they are slowed down a bit, but it is the 499 million others that are slowed down that cause us to basically impose upon ourselves more regulatory costs than we ought to and more regulatory delays, etc. This is about as far as we could go on a Commission.

But I will just tell you, on the Democratic side of this Commission, there was enthusiasm to push this envelope even further.

Chairman TOM DAVIS. Thank you very much.

Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

Just as the members of the families who are here today and all they represent have turned their personal pain into public service, and we thank them for that, I want to add my remarks to the Commission members, the two people here before us, and thank them for their public service. You have done a great public service to the country, and we all appreciate that.

There is no reason in my mind, having looked at all the exhaustive work the Commission has done to date, that we couldn't have in place by September 11, 2004, on the anniversary date, some legislation to move us forward, and I really hope that this Congress,

the majority, takes a direction on that, and certainly we will work with them to get that done.

In your report, you had a strong desire for a National Intelligence Director that had control over budgets, the ability to approve and submit nominations for the heads of initial agencies, a counterterrorism center that had responsibility for operational planning. I think all of those things make absolute sense, but I think they also demand incredible oversight, which is a point you both made today.

In your report, you give two suggestions of how we might do that. One is a joint House-Senate committee for intelligence, and the other, of course, is one committee in each body designated toward that goal, with combining authorizing and appropriations powers. What is the preference and why?

Mr. KERREY. Well, it is most unfortunate, from my standpoint, you found the two—

Mr. TIERNEY. Is your mic on, Senator?

Mr. KERREY. It is, yes. The two people that are the strongest advocates of a joint committee are sitting before you today, so when we say what are the preferences, we are going to leave out the preferences of the other Commissioners as we respond, because we favor the joint committee.

I favor the joint committee because I think is the strongest of the options. It gives Congress a stronger play. It gives Congress the strongest possible play.

If you go back and look at the joint Atomic Energy Commission model, the critique that was the loudest and eventually shut it down was that Congress was treading on the privileges over the executive more than it should.

In this area, where classification is the rule, you don't know what is going on. Congress has to have a strong committee.

Regardless of which option you pick though, Congressman, I would make sure it is written into law. Don't do with congressional resolutions. No matter what the critics of the CIA will tell you, the men and women who work there follow the law, and they are just a little less persuaded by a congressional resolution.

Second, require full and complete accounting. Require that in the statute. Especially if it is in law, it will be done.

The third thing is. Because it is classified, because you don't have the oversight, whichever model you pick, require in law that the committee issue a public report once a year that is not classified, that lets people know what the status of these agencies are. Are they funded well enough, where is the weaknesses, where is the strengths, etc. Get something out there that is public.

The principal reason I think that Congress may find the joint committee appealing, however, and it is a very important one—again, I was on the Appropriations Committee, and I know that combining authorizing and appropriating—in the Senate, you could probably get 60 people privately to tell you that is a great idea. But the only people who are going to vote for it when it comes to the floor are people who are, A, not a member of the Appropriations Committee or, B, hope to get something from the Appropriations Committee for the rest of the time of their career in the Senate, which is probably less than 10.



So what I believe you can do to accomplish that end is again in statute require that the committee have representation from the Foreign Relations Committee, the Armed Services Committee, Judiciary, and I would say Defense Appropriations as well.

We have additional language that keeps, as much as possible, the politics out of it. One of the things I heard earlier, our Commission had power because we had subpoena power, and it was real subpoena power. Tom Caine was willing to use it. We got access to documents, we got movement, we got things.

This is not a whack on President Bush. President Clinton probably would have done the same thing. No matter who the President is, who the executive leadership are, they are going to say, we have Executive privilege; you can't come and look at these things.

So that subpoena power and the willingness to use it—if you have a round in the chamber and they have it on “safe” all the time, nobody is going to be afraid of you. So in this particular case you have to take as much of possible the politics out of it so that subpoena means something to the executive branch.

Admiral LEHMAN. I totally agree with Bob. I am a year older than he is, so I go all the way back to actually dealing with the Joint Committee on Atomic Energy when I was on Kissinger's staff and a Deputy Director of the Arms Control Agency.

It was a powerful committee. It was very searching and probing, and it got the issues out before the Congress and provided tremendous guidance to the executive branch. It was almost a perfect model, in my judgment, of how the equal partnership between the two branches was. It attracted people like Mel Price and Scoop Jackson and Craig Hosmer. So I am equally enthusiastic with that as the proper solution.

Mr. TIERNEY. Thank you.

Mr. KERREY. Mr. Chairman, I am going to make a general point. I appreciate there has been a lot of public attention putting pressure upon you all to hold hearings during—one of the most unfortunate names that you all have—the American people have to refer to a time off as recess. You guys need a vacation. You need to get away every now and then.

One of the things we discovered is, had more of us read Tom Clancy, we might have been able to figure this out. Had more of us read *Blackhawk Down* or seen the movie, we might have understood that bin Laden was either directly or indirectly responsible for shooting down our helicopters on October 3rd and 4th, 1993.

Part of the problem is that you are so pressed for time, constantly getting briefings, constantly reading this stuff coming through your in-boxes, that when we say failure of imagination, that is what happened to all of us.

So one of the unfortunate things is you have a lot of pressure to hold these hearings during recess, and God bless for being able to do it, but take some time off. Rename it a vacation. Say we need vacation, too. We got to go away and shut down and throw our cell phones away and our BlackBerries away and not make contact with anybody other than the fiction that we are going to take with us and read.

Chairman TOM DAVIS. Thank you. You can have as much time as you need it here. If you want more time, you can have it on that subject.

Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman. I do want to thank you for holding this hearing on this important issue, and I want to thank the family members for their effort to focus on advocating for issues that will make America safer, and I want to thank the Commissioners for their effort in putting together a bipartisan Commission report and their efforts to continue the recommendations in a bipartisan manner.

One of the questions earlier I think inadvertently diminished the President's call for a National Intelligence Director, focusing on the words "coordinate." I just for a moment for the record wanted to state what the President said.

I have in front of me his statement from that day where he called for the National Intelligence Director. He said, "The National Intelligence Director will serve as the President's principal intelligence adviser and will oversee and coordinate the foreign and domestic activities of the intelligence committee. Under this reorganization, the CIA will be managed by a separate Director. The National Intelligence Director will assume the broader responsibility of leading the intelligence community across our government.

Of course, we all have to wait for the final specifics of what we are going to receive in that recommendation, but I didn't want the record to reflect a diminishing of what the President's efforts were.

Senator Kerrey, twice today in listening to your testimony you have said things that relate to how I felt in reading the report.

One, you said that in reading the narrative it will take you back to where you were that day and give you really the commitment of moving forward on these issues.

On that day I served as mayor for the city of Dayton. Our city the prior month had a weapons of mass destruction terrorist response exercise upon the urging of one of our city commissioners, the late Lloyd Lewis, who thought we in the community needed to be prepared for this looming threat. Attorney General John Ashcroft attended that event.

In reading the 9/11 Commission report, I was struck that your recommendations were very similar to the recommendations that came out of our Dayton Domestic Preparedness Action Report on what was needed for our first responders. Those recommendations were for issues of training, protection, equipment, intel on the local level, interoperability and command structure.

I know our chairman of the National Security Subcommittee, Chris Shays, similarly before the September 11 event had held hearings on the needs of our first responders.

The second thing that you had said was the issue of the statement by the terrorists that "we have planes" and the time period within which the Department of Defense was able to respond, in fact not respond.

Assuming that we put all this intelligence structure together, intelligence only provides us knowledge, knowledge of which we have to take some action with, and assuming that a terrorist event is occurring or unfolding, both our first responders and our Department

of Defense are going to need to have the resources necessary to be able to protect us and to work through a crisis.

In looking at the report, it notes that at 8:25 a.m. was the first notice of the hijacking; at 8:46, F-15s were scrambled; at 9:25, they were over New York City's air space; at 9:39, the Pentagon was attacked.

So my two questions relate to if you can comment further and expound on your issues you saw in the resources and the needs of our first responders and also, second, on the issue of our ability for the Department of Defense to have a national defense system that can respond if we do have intelligence of an unfolding event.

Mr. KERREY. Well, you know, first of all, I think there are significant vulnerabilities that are still here.

As a former mayor of Dayton, you are apt to have a greater sense of urgency in coming to terms with the training needed to prepare first responders. You can't just put an ad in the paper and hire somebody and bring them in and all of a sudden Mary or Jim or Sue can do the work. They have to be trained. If you want them to be effective against an effective biological weapon, they have to be trained to do it. Yet among all the additional things you have to do is to be able to identify somebody who can be a suspect or try to deal with the crisis once it starts going forward. So there is a huge amount of training that is required.

My experience with law enforcement is it's the one area that oftentimes gets shorted. It's hard to do. It's hard to constantly allocate the more money that's necessary for police and fire, and, in our case in New York, an Office of Emergency Management Personnel, to keep their skill level up.

Congressman, I really would urge you to look at—and I'm now trying to pronounce General Honore's name the second time. I hope I got it right the second time. He produced a memorandum for the record. He was CINC of NORTHCOM, Commander in Chief of NORTHCOM at the time, and it's a terrific memo because he's talking about exactly what you're talking about, I think, which is the first responder is the first line of defense.

And what I was talking about, when I was talking about this agony of listening to American Airlines here, where we have planes, is the issue of computer interoperability. Honore deals with it very, very passionately and very clearly, that he believes we're still headed toward a train wreck.

The second individual that I would urge you to talk to, I would call into your offices, I don't want to recommend you bring her here to a hearing, that's the last thing I want you to do, the woman who led our team in the border security, Susan Ginsburg, because Susan talks passionately and with great capacity about the shortcomings we have again in training our personnel so they are prepared to do the job, and talks as well to Congressman Miller's point earlier that we have significant vulnerabilities at the border dealing with identification; that we have significant vulnerabilities still remaining with people out there having to make a decision that don't get the intelligence that they need to make a decision on the spur of the moment.

So the fact that your former mayor of Dayton prepares you enormously well to help other Members of Congress figure out what

those responders have to do because they are the ones we are going to rely upon the most to keep the country safe or, God forbid, to handle the next crisis.

Chairman TOM DAVIS. Thank you very much.

Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

Mr. Chairman, at the outset I want to thank you and Mr. Waxman for your promptness in responding to the 9/11 Commission report.

Commissioner Lehman and Senator Kerrey, I would also like to thank you again and extend our gratitude, to join the echo of the chorus up here for the great efforts of your Commission and yourselves personally on behalf of our country.

Today's hearing offers the first opportunity for the House of Representatives to review the various proposals, both structural and policy-oriented, set forth in the 9/11 Commission final report. And I would just like to respectfully urge my colleagues when weighing these proposals to abide by the bedrock principles upon which our Nation was founded, namely our government's responsibility and obligation to ensure the basic security of our people, as well as maintaining the delicate system of checks and balances that guarantees our government's accountability to our people, and also, of course, a profound commitment to safeguarding the civil liberties that have come to be inseparable from the American way of life.

To this end, and in consideration of the 9/11 Commission's recommendations, I think we must dedicate ourselves to devising a National counterterrorism policy that truly promotes information sharing and cooperation and, above all, accountability, as both you gentlemen have testified to today. And I would agree with others who have noted that the 9/11 Commission, and yourselves in particular, have offered to the Congress a shining example of what bipartisanship can accomplish, and that is reflected in your report.

I think all of us here are committed to developing an effective counterterrorism policy regardless of where those recommendations may come from, whether it is the Commission or the Congress or the administration.

And, last, I would be remiss if I did not say to the families of those loved ones who were lost on September 11 that we thank you for your persistence and your loyalty and your dedication throughout this process. You have contributed greatly to this process, and it is my only hope that the weight of your sorrow will in some way be lightened by knowing that it is shared by both your neighbors and your Nation.

My question to the Commissioners is simply this: This committee has previously investigated goings-on at the FBI in the Boston office, and we found during that investigation that there was an institutional, a cultural resistance to information sharing. We found that intelligence was actually the currency of career advancement for many of those FBI agents and supervisors.

Is there one proposal, is there one formulation in your own minds that will break down that resistance to information sharing that we have seen at least in the FBI and I believe is probably prevalent through all of these intelligence agencies?

Admiral LEHMAN. This was one of the most long-considered issues that we debated and thought about and took testimony on. It certainly was a contributing factor to September 11. It is a deep cultural reality that good law enforcement people do not share evidence. It is ingrained in their professionalism, and it is needed in the law enforcement community. That is what makes it so difficult to blend or to share intelligence gathering and analysis on the one hand and law enforcement on the other.

We thought very hard about creating an independent agency, an independent domestic intelligence agency, on the MI-5 or some other similar model, like Australia or Canada has. We ultimately decided not to recommend that, but to recommend something that, we think, neatly addresses exactly the problem that you found in Boston and that we found endemic in the domestic intelligence problem in the FBI. We are recommending a semiautonomous service within FBI that is protected by the NID; that has either the Executive Assistant Director for National Security and for Intelligence perhaps combined in one strong Deputy Director of FBI that is dual-hatted to both the National Intelligence Director and to the FBI Director so that we retain the strengths of the connections of the FBI with the local law enforcement community, which is one of the great gatherers of domestic intelligence, and we keep the protections of civil liberties that the Justice Department provides, yet we protect that intelligence function within FBI from exactly the dominance of the law enforcement culture of no sharing and of case development and so forth, rather than this sharing culture of intelligence analysis.

That is another reason why this is all of a piece. If we proceed with the National Intelligence Director and do not give him hiring and firing authority over that FBI Intelligence Deputy, and give him or her that authority over the budget and appropriations for the FBI intelligence function, then you have not really made much difference. You have not brought FBI into the fusion of our intelligence.

Mr. KERREY. And may I say, we were very impressed, the Commission was very impressed, John can shake his head if I'm wrong, but we were very impressed with the progress that Director Mueller has made in a relatively short period of time to change that culture.

Part of the culture is just understandable human nature. I mean, I don't want to tell you something because I'm afraid you're going to screw me with it.

Mr. LYNCH. Either that or you'll get credit for it.

Mr. KERREY. Or I won't get credit for it. But there is also another one that I just—there are times when secrecy doesn't equal security. There are times when secrecy equals the opposite. It makes us less secure.

Ninety percent of the foreign policy stuff that we get today to make decisions that you get today you get from open sources, and the more we keep these things secret, the less debate we have. And in my view, the reason we didn't identify bin Laden as public enemy No. 1 prior to September 11 is we kept the details about who he was secret. After September 11, the full story's out there. And 75 percent of what we knew about bin Laden we knew in

1997, 90 percent we knew in 1999, and we knew 100 percent by 2001. We kept it secret, and, in my view, it made it exceptionally difficult to do what we needed to do to reduce that threat.

Mr. SHAYS [presiding]. The gentleman's time is up.

Admiral LEHMAN. One very briefly anecdote.

Mr. SHAYS. Please be brief.

Admiral LEHMAN. Very brief.

In the 1993 World Trade Center, the Justice Department had to turn over to the defense counsel the names of the coconspirators that intelligence had gathered. It went straight to bin Laden, but they could not share it with CIA.

Mr. SHAYS. Amazing. Very interesting, your responses.

At this time the Chair would recognize Judge Carter.

Mr. CARTER. Thank you, Mr. Chairman. First, I want to thank you, like everyone else here, for a really exceptional piece of work here. Bipartisanship is fantastic in this town, I commend you for it, and I'm going to treasure this.

I'm going to try to couch questions that I got back home, and one of the first questions I want to ask you is, we are in a war on terrorism. Can we lose this war on terrorism? And what would be the results of losing the war on terrorism for the American people?

Or even better, what do they expect to win? When would they say "we win" on the war on terrorism? Because the concept of a war for the American people is not fitting with what we are doing, and I think your report does fit what we are doing.

Mr. KERREY. Well, Congressman, first of all, I presume that home is—help me a little bit. You said when you go back home. I can tell it is not New Hampshire, but—

Mr. CARTER. Well, I'm from Texas, and we take war real seriously in Texas.

Mr. KERREY. Well, I mean, the first thing I'd say, Judge, is a war on terrorism is inappropriately named. Terrorism is a tactic. It would make as much sense for us to declare war on zeroes after December 7, 1941. Terrorism is a tactic. It is used by individuals to try to accomplish some objective. It's hard to get your head into that, but that's what's going on here.

And one of the more controversial things we dealt with, and you'll see it in the report, we used the language we believe that what we are dealing here with is radical Islamic jihadists who have made the decision—in this particular case they made the decision that killing Americans is the most important thing to do. They have targeted Americans.

Now, they have spread, and they have hit Spaniards in Madrid, they have gone beyond that, but the thing that made bin Laden unique was his decision to say, we're not going to try to destabilize Pakistan or Saudi Arabia or other Muslim nations, we're going to try to destabilize the United States of America by taking this tactic right to the head of the snake.

Mr. CARTER. So then would you say their purpose is to kill Americans, which they have declared; and by killing Americans, make us reach a point where they control policy in this country by threats or taking actions of terrorism?

Mr. KERREY. Yes. I think there is a combination of things. First of all, they say, well, you're all going to go to heaven and hang out

with virgins for eternity. If bin Laden believed that, he'd be sending his kids, and he's not. So, apparently, it's a device that works from time to time.

But understand, if you examine terrorism, especially in the 1990's, it's been developed in very sophisticated ways. How do you disguise explosives on your body, etc? But I believe you have to go to the ideological argument that underlies it. That's why I said earlier, to look at the Ramzi Yousef statement and compare it to—confront it by Judge Duffy's statement, I think you get the battle right there.

And we can't be unafraid to argue that point, that central argument that you hear Yousef using in trial. It is wrong, it is deadly, it's cowardly, put whatever you want on there, but you've got to get to the argument itself.

In my view, the only way to confront it successfully is to understand that you may never get to a perfect world where we're never vulnerable to terrorists. That is not likely to happen, in my opinion. Second, I think you've got to understand that vigorous military and law enforcement effort have to be used.

I had an interesting exchange earlier with Congressman Kucinich over this thing. Bin Laden doesn't, these guys don't sit around and say, geez, what about civil liberties and what about the Geneva Convention and so forth. They've got to be vigorously pursued and relentlessly pursued, because if they feel like we're going to apply moral relativism to what they do, then I think the game is over.

Third, I think we do have to have—whether you call it diplomacy or debate over the ideas or whatever, we can't just paper over these arguments. And the last thing, I think the United States of America has to continue to say that democracy, that free markets can provide you with an opportunity agenda. And we have to show it can. Whether that's trade policies or advocating good safety nets or whatever it is, if democracy doesn't make life a little bit better for the individuals who are inside of that democracy, we have a heck of a problem.

And we can't ask our law enforcement and our soldiers, sailors, airmen, and marines to fight this battle if, for example in 2006, the farm bill comes up and we say we want business as usual, just to put it right like I think it is. Now, that may not sell back down in your congressional district in Texas, I don't know, but we can't, I think, win this unless we can honestly say to the world that democracy and free markets can be a vehicle to make your life a little bit better regardless of where you live on this planet.

Mr. CARTER. Mr. Chairman, may I have just a little bit extra time?

Mr. SHAYS. The gentleman's time has run out. Is that OK?

Mr. CARTER. All right, Mr. Chairman.

Mr. SHAYS. Thank you.

At this time we would recognize Chris Van Hollen from Maryland.

Mr. VAN HOLLEN. Thank you, Mr. Chairman.

I thank both of you gentlemen for your incredible service to our country, and I, too, want to thank the families of the September

11 victims for everything you've done for our country and making the Commission possible.

Secretary Lehman, I was encouraged by your comment that your recommendations are not a Chinese menu, and that the devil is in the details, and I ask that you continue to evaluate proposals, whether they come out of the White House or the Congress, in the days ahead to see if they meet that test, because I don't think it's partisan in any way to ask you to evaluate those proposals, whether they be out of the White House or out of the Congress, and I thank you for that.

There's a line in your report on page 406 that says, "The most serious disadvantage of the NCTC is the reverse of its greatest virtue," and you go on to say that "in fighting this war against Islamic terrorism, we may have to concentrate more power in a certain entity, but we may concentrate too much power in one place," and, therefore, you call for checks and balances.

I want to ask both of you gentlemen with respect to your recommendations and observations for the Congress, because, in my observation, Congress is very good about telling other people how to change themselves and reform themselves, but it does not have as good a track record when it comes to making reforms of itself.

And, Senator Kerrey, you mentioned the challenges you had with the Armed Services Committee and others during your service in the Senate. I'm interested in your advice as to how you create pressure within this institution to create some of those changes, No. 1.

No. 2, in addition to the changes you recommended, it requires the political will of the Congress to exercise that accountability. And you mentioned the subpoena power you had. The fact of the matter is, in the last couple of years, the Congress has not issued any subpoenas with respect to Federal Government agencies. And it gets to the question—and I don't mean for this to be partisan because it could happen whether you had Democrats in control of the White House and the Congress or Republicans in control of the White House and the Congress—but the fact of the matter is we need as an institution, the Congress, to strengthen and see our role as a coequal branch of government and not necessarily endorse—see ourselves as someone who is an endorser or cheerleader of all the policies that come out of the executive branch.

I only mention the subpoena issue because I think it's a reflection of the fact that Congress has maybe not exercised its full powers, and I ask for your observations on that.

And the final question I have relates to the other part of what I see as intelligence failures. You examined intelligence failures dealing with September 11. We, of course, have a number of groups that are looking at the issue of weapons of mass destruction and failures in intelligence, or oversight of intelligence, or interpretation of intelligence in that regard. My one concern with some of your recommendations is the very thing that may have lent yourself to supporting a good response to the intelligence failures with regard to September 11, I would ask you gentlemen whether they could exacerbate the intelligence failures with respect to weapons of mass destruction in that you would have more homogeneity, more cookie-cutter approaches if you have one Director; and whether that would create additional pressures for everyone to salute



and say, yes, sir, we agree with your analysis, instead of having different centers of analysis.

Admiral LEHMAN. Well, I'll take the last part of that and let Bob deal with the first part.

I think that homogeneity is something we absolutely must get away from. Time and again through our investigation, we found that group think in the community prevented imaginative perception of what the real threat was. We think that the recommendations we are making here, the system that we are recommending ensures competitive analysis, not homogeneity, not agreement.

When there are going to be national intelligence estimates, there need to be dissenting views in those intelligence estimates when there are, and there usually are. DIA is very likely to have a differing perspective on some aspects of the same facts than CIA. And we want to make sure that many senior leaders, where there is honest differences of perception and analysis, they get to see them, that it is not an enforced consensus.

One of the tremendous things about our report is, I am sure as you read it, this is not a ground-down homogeneity of views. It is a sharp-edged report with a lot of bold statements and facts in it, yet we reach unanimity on it. That is what we have to get, and to do that you have to have someone who ensures that the environment is such that people aren't afraid to speak out, that there is entrepreneurial spirit by analysts, and that there is a willingness to take risks.

Mr. KERREY. Well, honestly, I forgot what the first part was.

Mr. VAN HOLLEN. Well, just based on your experience, how you would propose the Congress go about enforcing your recommendations? What would you do as a Member of Congress? And is there an institutional problem when—do you sense that Congress has in any way lost its ability, its more traditional role acting as a separate branch of government with respect to national security oversight?

Mr. SHAYS. This is a repeat of the same question.

Mr. KERREY. Yes, based upon my own experience, I think there is a tendency to yield ground on national security when ground shouldn't be yielded by Congress. I think, though, again, to hit the one issue I have talked about several times in this area, it's even more typical because it's all classified. I mean, you'll see ferocious debates going on in the open press about whether or not our military is at the readiness levels they need to be at. There is no such debate going on in intel. None.

Earlier, one of the members of this committee made a reference to the failure to detect the Indian nuclear detonation. We detected it the year before. We missed it by a hair the second time. And then you say, wait a minute, Vajpayee campaigned on a promise to detonate a nuclear weapon. We shouldn't need the CIA to tell us he's going to do it. He'd promised to do it, unless we expect in India they don't keep their promises, or something. I don't know.

Third, find those areas where you're doing good work and do more of it. As you know, oftentimes it's someone in a position of power that wants to make the government work better that you're not going to see them out in the press. Right now in intel, I think Senator Inouye and Senator Stevens are doing exceptional over-

sight on the Defense Appropriations Committee. They care about the subject matter. You never see it out in the press. And as a consequence, in this case, I believe that unless Congress changes the law in intel to create a much, much stronger committee than you currently have, I think you're always going to be frustrated.

And the last thing I'd say is that I don't really think that we should be extended for 18 months. I don't think it works for us to be extended for 18 months, even if I had 18 months to give to the task, because in many ways we were doing what now Chairman Shays, who is about ready to gavel me down, was trying to do with this committee. This committee can do oversight of the intelligence agencies where you see failure happening, and I think can be a very substantial force to make sure that these changes occur.

Mr. SHAYS. Thank you, Senator.

At this time the Chair would recognize Marsha Blackburn from Tennessee.

Mrs. BLACKBURN. Thank you, Mr. Chairman, and thank you for your time and patience in being with us today to talk to us. We appreciate the report and appreciate your working with us through this.

It is interesting listening to you talk about the need to fix the committee structure, to fix the vulnerabilities with immigration, and the importance of not just moving around the organizational chart, Mr. Lehman, as you had said, the need for our Intelligence Director or Czar, whatever the name may be, to have control of the budget, appropriations, of the technology protocol. And in listening to all of this, I feel that what I'm hearing you say is that through the decades government has grown far too bureaucratic, far too unable to respond quickly or in an effective and efficient manner; that the process is far too bureaucratic, and that instead of just shifting the power around and reorganizing, that you feel we need to go about recreating a different way for government to work. And I guess in all of this, we are paying a price for underfunding intelligence through the years.

One of my questions is very similar to some you have had; how you would envision this agency working without the traditional constraints of government that we address each day? I know some of the questions I am going to get from my district, where much of Fort Campbell is located, is if some of our military intelligence units would be answering to the Secretary of Defense or to the intelligence czar. I'm interested to hear your take on how this would operate without those traditional constraints of bureaucracy.

Also, Mr. Kerrey, in responding to that, I noticed on page 25 of the executive summary, you talk about the proposed need for reforms and to speed up the nomination process. And you have served in the Senate, you have served as vice chairman of Senate intelligence, and I know that you brought your background of some of the successes and failures in that committee to your view on the Commission and used that kind of as background. And I would like to know how you think that we could speed up that nomination process, with the rules of the Senate allowing a single Member to stop the process from moving forward, and if you had any thoughts on that?

And, Mr. Lehman, if you would first address how you would approach the structure, and then, Mr. Kerrey, how you think we can speed the nomination process.

Admiral LEHMAN. Thank you.

Yes, we are not recommending a structure that would not have the traditional Constitutional restraints and congressional oversight, and the committee reorganization is a major part of that. But it will also be subject to each of the agencies that make up the intelligence community, their own inspectors general, their own internal controls, and their own oversight within the executive branch.

But all good corporations have to regenerate themselves, have to go through reengineering. What has transformed the productivity of American industry is constant improvement, total quality, lean manufacturing, which is a cultural change that you never leave the organization alone. It is constantly changing and improving. The government tends not to go through those kinds of renewings and reengineerings, but when they do, they have shown—the government has shown that they can create the same kind of innovation and new energy and new ability to deal with the modern world, just as corporations can.

That is what we are recommending, a reengineering of the government process to break up the concrete layers of bureaucracy that have ossified over the last 60 years, to take apart the vertical stovepipes that have built up between the agencies to prevent the sharing. So we are not—we don't see this either a funding issue. You will look in vain for large declarations that we have underfunded intelligence over the years. Certainly there have been periods in the last 10 years when parts of intelligence, for instance HUMINT, have been very underfunded, because I'm sure very few of you have been collared by lobbyists for HUMINT, yet I would be willing to bet you've all had lobbyists from satellite manufacturers and other intelligence collection technologies. So there have been gross imbalances.

As to the service, what we are recommending here—first of all, the naval intelligence and the service intelligence corps are among the best in the intelligence community. They have their own esprit de corps, their own training program, and their own professionalism. They report to Defense Intelligence Agency as well as the Chief of Naval Operations, and they, in turn, report to the—in theory, but not in practice—to the Director of CIA. Now they will be part of an integrated yet decentralized intelligence community, each with its pockets of excellence under a National Intelligence Director.

Mr. KERREY. Well, I mean, changing the rules in the Senate having to do with one person being able to put a hold on a nomination is exceptionally difficult to do. And I think, as well as almost all the recommendations that we have made in our report, they are all difficult to do. They all have real problems and barriers in front of them.

There are areas, for example, in funding, where funding is the answer. I have dealt with deficits the whole time I was in the Congress practically, so I understand how difficult it is. But to look at our border security recommendations, the U.S.-Visit program, to

have it fully implemented by 2010 is just too darned slow. There are some management weaknesses that have to be addressed.

There are still some oversight lapses where secrecy is a barrier. Additional investigation has to occur. We just ran out of time. We couldn't get to it. And there are some changes in the law, all of which have problems attached with it. I would just urge you, again, to get into this narrative.

Nineteen guys hijacked four commercial aircrafts on September 11 using box cutters and legal knives, and it wasn't even a close call. All the defenses that were put up against them, all the security measures that we have in place failed to prevent them from attacking the United States of America. It wasn't even close. If you look at the images at Dulles Airport that were released by, I guess, the lawyer who is bringing a case against somebody, if you look at those images, we saw those images and didn't want to put them out there because we were concerned that it would give away some security issues. But if you look at those images, you say, my God, it looked like they could have walked on to practically anything that morning.

All of us—anybody that was here in the 1990's, we all need to sort of join hands and walk to the podium and say, we screwed up, and in that attitude understand we might be doing it again right now. We presumed we had time, and we were wrong. Every step of the way we'd say, well, I think I have a little more time; certainly this can wait until some other time. Maybe we can get another study or something.

If you find somebody saying, I don't want to yield privilege, which is what you're talking about with the Senate rule; I don't want to yield power; this is going to be too uncomfortable for me; I may no longer be chairman, or whatever, then you've got an argument where you just have to turn to us, I think, probably, and say, you guys have to stoke the fire a little of the public so we can do what we have to do.

Chairman TOM DAVIS [presiding]. Thank you very much.

Mr. RUPPERSBERGER.

Mr. RUPPERSBERGER. Yes. First, I thank you for your service, and I want to thank the families also for all that you've done. I think the country is really learning a lot about what we need to do, and I want to thank the chairman and the ranking member for having this hearing right now so we can get started.

I think when you look at what we need and your recommendations, both very important, to have a National Intelligence Director, you have to start at the top. You have to have one boss. You have to have that boss who will hold other agencies accountable for their performance. But in order to do that, you also need budget authority, and I would hope that the President would listen to these hearings and understand that this is very important. Just like he is the boss of the United States of America, we need to have that focus here.

Now, I would like to talk to you about another phase, and let me ask you this, too. There was a group of members on the Intelligence Committee that introduced H.R. 4104, that is the Intelligence Transformation Act, and that was in March. Did you have a chance to review that?

Admiral LEHMAN. Yes, we did, and we've had quite a bit of dialog with the sponsors and the staff, and continue to have. There were some good ideas, by the way, that have been incorporated in our recommendations.

Mr. RUPPERSBERGER. And the reason I point that out, that is an existing bill where I hope, in a nonpartisan way, we can review the elements in that bill so that we can build upon that as you all have in your report.

Now, one of the major issues is the Deputy Director of National Intelligence. If you look at the way intelligence is made up, and I think Senator Kerrey referred to this, the Department of Defense, the majority of the resources go to the Department of Defense in the intelligence community. Now, if, in fact, you're going to have the teamwork integration, which is so necessary to be effective in intelligence, you're going to have to have the Department of Defense at the table.

And I think this bill, H.R. 4104, created what they call a dual hat. Let me read to you and see if you agree with this provision in H.R. 4104. Deputy Director of National Intelligence. There is a Deputy Director of National Intelligence who should be appointed by the President, by and with the advice and consent of the Senate. The Deputy Director of National Intelligence shall also serve as Under Secretary of Defense for Intelligence.

Now, in order for us to pull together, we know the power of the Secretary of Defense, one of the most powerful positions in the world. When you have that person at the table, and then you have a Director of National Intelligence without budget authority, and you have those two together, who is going to win? Well, I don't know, but I tell you, I'd say the advantage going in would be with the Secretary of Defense. We need to pull those groups in together.

Would you be in favor of having a Deputy Director, a dual-hatted individual as is stated in H.R. 4101, to pull all of the agencies together so that we have one unit dealing with the issue of intelligence?

Admiral LEHMAN. Yes, we support that, but we also support two other deputies as well. We believe that your proposal for a deputy that is dual-hatted to the Secretary of Defense and to the National Intelligence Director is an excellent idea and can pull together all of the agencies in defense. There also has to be hiring and firing shared between the National Intelligence Director and the Secretary of Defense, but that deputy should not have authority over domestic intelligence. There should be another equal deputy for domestic intelligence, and that should be the Deputy Director of FBI, who also should be dual-hatted; that is, the Deputy Director for Intelligence National Security should be dual-hatted to both the FBI Director and the National Intelligence. And the third should be a Deputy for Foreign Intelligence, and that should be the CIA Director.

So we have taken your idea and added to it the domestic deputy and the foreign deputy as well, but we think that is essential.

Mr. RUPPERSBERGER. OK. Getting back to my question, though, do you think that by having that Deputy Director dual-hatted with the Department of Defense will deal with the issue when there could be a conflict or a power grab, so to speak, between the Sec-

retary of Defense versus intelligence? Do you think that would be enough to rectify that issue?

Admiral LEHMAN. It will be enough to ensure that this dispute gets in front of the President to decide.

Mr. RUPPERSBERGER. OK, and that's what's important.

How about you, Senator Kerrey.

Mr. KERREY. Well, I agree, so long as the National Intelligence Director has statutory authority over the appropriated moneys and has statutory authority over hiring and firing. Absent that, they simply are going to be too weak, and we'll be right back where we are today. I mean, you're better off, in my view, with nothing than creating something that just adds one more impression that this person has power that they do not have; one more moment for them to come up and answer questions from Congress about things over which they have no responsibility.

Mr. RUPPERSBERGER. OK. I see my red light is on. Thank you.

Chairman TOM DAVIS. Thank you very much.

Mr. KERREY. If I could, Mr. Chairman, can I—

Chairman TOM DAVIS. Sure.

Mr. KERREY. I'm going to volunteer either in writing or the next time I'm persuaded to leave vacation to come down and testify before the committee, there is one area in this report that I care deeply about that is not mentioned, and it does have to do with DOD and CIA, and that is we're recommending that the authority for covert operations be transferred to DOD. And if at some point you have questions about that, I think it is sort of the last step on jointness, and I think the exercises in Afghanistan and the exercises in Iraq demonstrate that this is a good move to make. It still gives CIA authority, but, in my view, it will dramatically improve the quality of those covert operations.

Chairman TOM DAVIS. Thank you.

Mr. Platts.

Mr. PLATTS. Thank you, Mr. Chairman.

Senator Kerrey and Secretary Lehman, appreciate your work and all your fellow Commissioners and your staff, a daunting task, and you've done it in remarkable fashion, both in the broad global strategy you've put forward as well as specific recommendations.

My colleague talked to you about the standards for a driver's license. I appreciate that type of detail because it is something that amazed me when I came to learn that the majority, I believe, of our States do not require proof of legal presence in the United States to get a driver's license, yet it's one of the accepted forms of government ID deeming you're supposed to be here or allowed to be here. So that type of specific recommendation, hopefully, will help us move some legislation that's out there and get some of these standards in place.

To followup the discussion with the previous Member on the NID and the personnel authority, in your statements you talk about NID having personnel and appropriation authority, but also the Chief of the National Counterterrorism Center. Can you elaborate how that's going to interact, since the Chief's going to answer to the NID; how their shared authority over personnel at these various agencies, how you envision that working?

Admiral LEHMAN. Well, I think the Pentagon provides a good example. Standards for promotion and rank in each of the military services are different. You don't have to fly airplanes to get promoted in the Army. Each Secretary of the Department governs the personnel policies, but they have to conform to Defense Department standards. So you can easily take an O6 naval captain and assign him to a joint command in an Army-commanded unit, because there are common personnel standards to be met that allow that kind of joint assignment.

Now, this is different than detailing, and it's an important point. Today, for instance, at the TTIC, the Terrorist Threat Intelligence Center, people are detailed from all the agencies, but their fitness reports are still being written by the people back at their home agencies. That is a huge difference.

When a person is jointly assigned, it's the person who, for instance, will be running the National Counterterrorism Center that will write the fitness report and really have a huge influence on whether that person, from whatever agency they came from, gets promoted or doesn't get promoted or gets assigned to a choice billet or doesn't get assigned to it.

Mr. PLATTS. So more accountability from the staff to the NID?

Admiral LEHMAN. But more real clout by the National Intelligence Director. The key is, currently the CIA Director has exhortation capability, and people sort of think he has authority, but he doesn't have authority. So he can say, oh, let's cross-assign people. But if you don't have the authority to direct, and if the person being directed doesn't do it, they get fired and replaced by that NID Directorate. That's what we're talking about. Big, big difference.

Mr. PLATTS. One of the other areas you touch on in a broad sense is more public diplomacy; us doing a better job of kind of winning the battle on the front with the younger citizens, I guess, of the Muslim nations.

Is there a specific recommendation? One of your recommendations says, "In a broad sense, where Muslim governments, even those who are friends, do not respect these principles, the United States must stand for a better future."

Is there something specific; Saudi Arabia, Egypt, any that are allies that we should be looking into?

Admiral LEHMAN. There are two that I want to draw attention to that I think would have enormous leverage. One is putting some money into schools in these areas. There is no alternative for parents in much of Pakistan and the rest of Indonesia, for instance, the rest of the Muslim world. If they want their children to have a better future, i.e., to learn to read and write, they have no alternative but to one of these jihadist madrassas. We should take the initiative, working with those governments, and put some money behind it to create schools that can teach usable skills, and it can be done at a very relatively low cost.

Another is international broadcasting. It's pathetic the number of hours that we're on the air to just tell the truth, in Farsi, in Urdu, and the various dialects of Arabic.

Mr. PLATTS. On the schools, is one of the challenges we have that we give a lot of money to the United Nations, but then that doesn't

come back to us as credit to those parents that the United States is helping their children? Do we need to do more unilateral partnerships with these nations?

Mr. KERREY. Well, the context here, and this is how great a job we've done, we saved a Muslim nation, Kuwait, in 1991. We saved Muslims in Mogadishu in 1993 from Pakistan, part of a U.N. peacekeeping force. We saved a Muslim nation, Bosnia, in 1995. We save a Muslim nation, Kosovo, in 1999, and yet you go do public opinion polling in Muslim nations, and they don't like us. I mean, that's how lousy a job we've done of communicating to the Muslim world—

Mr. PLATTS. And we've just liberated 50 million Muslims in two nations.

Mr. KERREY. Exactly.

But there's another issue that I think is important. Look, when I graduated from high school, back when dinosaurs roamed the Earth, 75 percent of the people on this planet were living in nations where democracy wasn't the rule. Now it's just the opposite. Even in China they're beginning to see democracy at local levels; not as much as I think they're going to need in order to deal with their economic challenges, but that's a separate issue.

We've got to stop, and I hear it sort of creeping back as a consequence of the problems in Iraq, saying that democracy is not suited for you, it's a Western idea. You know, Greece is not in the West, as much as we like to think. It's much closer to Afghanistan than we are. So we have to stop saying that democracy only works here.

And we all know, all of us, and those of you who are still in politics, when I was in politics, the most important thing is people need to know that democracy is making their lives just a little bit better and their kids' lives a little better and their communities a little bit better. It's not very complicated. And if it isn't, they get really mad, and they throw you all out of office.

Well, we've got to stop saying, well, I know the Saudis, every other word from the Saudis is reform these days, and we've got to stop putting our arm around them and saying, well, we understand you can't really be democratic because you've got difficulties here and there and everywhere. We have to stop doing that, because the people living in Saudi Arabia are mad because they don't have what we've got, which is the freedom to be able to throw people out of office when we don't like them.

I'm not suggesting that we have sort of a naive, pie-in-the-sky attitude that doesn't recognize that for many people democracy is one vote one time, but I believe that the most important thing for us in this battle of ideas is to say that democracy and free markets, as flawed as it is, as difficult as it is to make it work, is the best way to make your life a little better, and the life of your kids a little bit better, and the life of your community a little bit better.

Mr. PLATTS. I agree 100 percent.

Chairman TOM DAVIS. Thank you very much.

Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chairman. I would like to thank the Commission for the work that they have done. I learned a lot, either being in my kitchen in the morning listening to your staff



reports and opportunities when I had to watch the hearings on television. But most importantly, I want to thank the families. I think because of the families and the work that you have done, the report that the Commission generated, that I have been reading again, and that a woman next to me on an airplane looked at, and I said, you should read this. She said, oh, I don't know if I'd understand. I said you should read this, because you will understand it. It is written in a way that provides a wealth of information, in a way that every American citizen, every family can benefit from. So I thank you both for the work product that you have produced. And she agreed with me. She could read it, she did understand it, and she is going to buy a copy.

In chapter 12 of the report, you say counterterrorism has become beyond any doubt the top national security priority for the United States. The report goes on to say, "The catastrophe threat at this moment in history is more specific than just terrorism. It is a threat posed by Islamic terrorism, especially the al Qaeda network, its affiliates, and its ideology."

The other day, the President was asked the question, in what way would his new structure, or looking at any new structure, prevent the kind of intelligence failings that preceded the war in Iraq? I'm very, very troubled by not having the type of intelligence failings in Iraq addressed clearly. We had the intelligence failings in September 11, in Iraq.

The President's answer to me, when asked that question, was equally troubling, "And let me just say to you, knowing what I know today, we still would have gone to Iraq." And that is the end of the President's quote.

Prior to March 2003, would Iraq have been defined a top national security priority for the United States based on this report's threat definition? Has the war in Iraq helped protect American citizens from the threat of Islamic terrorism when Osama bin Laden, Mr. Omar, and thousands of al Qaeda operatives remain at large?

How can the Congress and the President use what you have in place to prevent the intelligence failure of Iraq, because it was a failure in intelligence for the reasons we did vote, for some who voted to go to war?

Admiral LEHMAN. Well, I think that it was a blessing that the intelligence failures in Iraq were not part of our mandate and we did not spend a great deal of time on those intelligence failures, and there is now a Commission studying those. So I don't feel comfortable testifying as a Commission member on the first part of your question.

But the second part of the question I feel very comfortable with, because what I've read in the newspapers and what those parts of the Iraq issue that have come before our Commission's investigation, and there are a bit of that, make it very clear that this is of a piece with the failings we found led up to September 11; that this is a Balkanized intelligence community that does not share, that does not have the ability within itself to prioritize what is important; as one Commissioner said, unable to distinguish between a bicycle accident and a train wreck in terms of raw intelligence.

It's remarkably shocking that the senior Members of this Congress and of this administration first learned of the Iranian connec-

tions from us, not from the intelligence community. It was we, the 9/11 Commission, that dug this intelligence out that existed in the intelligence community, that had been gathered, was sitting there scattered around the intelligence community. We had to put it together; we, the Commission. So that is a remarkable fact that just illustrates that we have a dysfunctional, Balkanized intelligence establishment today.

And the failures of the intelligence system in Iraq, in WMD, are entirely of a piece of everything else we have learned about the dysfunctions of this system.

Mr. KERREY. Yes, I'll stick with John's answers as well. It was outside of our envelope, but it does get connected in one way for me, and that is that among the insights I've taken away from the experience of being on this Commission is that—and it is hard to deal with it, but it's true—and that is that for the United States, the homeland is the planet. And try as you might to say, no, it's just the continental United States, Alaska and Hawaii, you're not going to get it done. If you're trying to deal with border security, or immigration issues, or whatever you're dealing with, you need the rest of the world to participate.

When schoolchildren died in a fire in Bombay here a couple of weeks ago, it felt like it was in my neighborhood. When Spaniards were killed on March 15th, it felt like it happened to us. One of the mistakes that we made, in my view, with bin Laden is as long as he was killing people over there, it wasn't as big an issue for us as it was when he killed people here.

In January and February 1993, we had the World Trade Center attack where six Americans were killed, and we had two Americans killed at CIA headquarters by a guy by the name of Kasi. We tracked both of those guys down, brought them back to the United States. They stood trial, and they got justice. But when it was killing Americans in Somalia, when it was killing Americans in East Africa, when it was killing Americans at OPM-SANG in Saudi Arabia, when it was over there, it didn't affect us as much. We didn't respond like we did when it was here.

And among the things I think Americans are going to have to get their head into, and it has lots of moving parts, is that the homeland is the planet. And I understand that imposes upon us a lot of responsibility, a burden that we perhaps prefer not to have, but it's our burden, and it comes as a consequence of our wealth, of our power, and our capability.

Chairman TOM DAVIS. Thank you very much.

Ms. Harris.

Ms. HARRIS. Thank you, Mr. Chairman.

Once again, I want to echo what all my colleagues have said. I want to thank you for your expeditious and timely handling of such an important issue for the Commission. Thank you for your service. Thank you for creating a report that may be one of the most important publications of our age, and certainly for the relatives of those who were murdered on September 11. We can't imagine the depth of your sorrow or pain, but thank you for channeling that loss into something very positive for a policy for the future and protection of our country.

I want to revisit the last question just real quickly. I wanted to clarify something. In all of the reports, sometimes it's been alleged there was a politicization of some of the intelligence activities. And I just wanted to make certain that you did not find that and the report did not reflect that you found that in your findings?

Admiral LEHMAN. That is not something that particularly emerged as a finding of our investigation.

Mr. KERREY. It is not a finding of the investigation, but if you ask my personal opinion, I think the idea that somehow we're going to take politics out of intelligence, you'll fail to get it done. If I'm afraid of the dark, and you elect me President, I'm going to bring that fear of the dark into my policies, and know that I'm going to. I'm just going to. Whether it's Bill Clinton or George Bush or Ronald Reagan, or whoever it is, when they come in to be President, the people in intelligence know what they care about, know what they're concerned about, and it's going to affect their attitude.

What's necessary is to surround yourself with people who are really prepared to argue with you vigorously when they think that you shouldn't be afraid of the dark. That's what you need; not that you can somehow cause human beings to behave differently than what human beings are going to behave, which is they want to make the boss happy.

Ms. HARRIS. I just wanted to clarify I had not found that in the report.

The point of my question—and, actually, I have two questions. One, particularly when you look back at the report and see your findings that say really basically from the 1980's the United States—that terrorism had evolved, and it presented a threat to our government that we weren't really ready to counter, and yet we've seen one of the largest restructurings of the Federal Government since the last half century.

The report gives us a broad array of suggestions to reorganize the government across agencies, cooperation, and other issues, and the President signaled yesterday that he wanted to implement some of those through his administrative Executive orders.

When you look back and understand the urgency of implementing some of these issues and suggestions, but understanding the deliberations that are necessary if we're going to move swiftly, first could you tell us what your three top recommendations are? What should we do immediately?

And then my second question is more specific. On the CAPS issue, Senator Kerrey, you have commented in some recent questions—in the 9/11 report it cited that Mohammad Atta and several others of the September 11 hijackers had actually been picked up by CAPS, so that, I guess, technology evidently was at least partially effective, but we didn't have procedures in place prior to September 11 for followup.

Now that the Department of Homeland Security has been working on CAPPS II, which is a much more sophisticated screening program, but recently they decided to halt that work because of privacy concerns. And while I'm very concerned about our privacy, I mean, I am even more concerned about being attacked by terrorists again.

Do you think that the CAPPs II was overly intrusive of our privacy, although it was really focused not at all on—it did not cite race; it really cited travel procedures and preferences. Do you think that we should continue on with CAPPs II, and do you think—I mean, just in view of protecting our homeland security, it seems like it shouldn't be too much to ask that we could track those. If Amazon.com is allowed to track buying patterns for consumers, then it seems at the very least we could track travel preferences and behaviors of those who might be suspicious.

[The prepared statement of Hon. Katherine Harris follows:]

August 3, 2004

**Hearing: Moving from Need to Know to Need to  
Share: A Review of the 9-11 Commission's  
Recommendations**

Rep. Katherine Harris' Statement:

Thank you, Mr. Chairman.

Almost three years have passed since a gang of savage murderers shattered America's misconceptions about the reach and resolve of the international merchants of hate.

This nightmare of twisted metal and broken lives will remain etched in our collective consciousness forever. So, too, will the bravery and selflessness that provided a window into our Nation's soul.

After many years during which our children looked upon athletes and movie stars as their role models,

this day of horror taught them the true meaning of the word "hero:"

The firefighters and police officers who risked their own lives to save their fellow men and women . . . the teachers who refused to budge from their classrooms until they had guaranteed the safety of every last child . . . the gallant passengers of American Airlines Flight 77, who surely saved the White House or the Capitol from destruction.

When the terrorists attacked the heart of America's financial and military sectors, they forgot about the heart of the American people. Our Nation's strength lies not in its institutions, but in the courage, character, and determination of the free people who built them.

Since September 11, 2001, the citadel of liberty, democracy, and justice has once again risen to the occasion. While our courageous men and women in uniform have taken the fight to the terrorists overseas,

everyday Americans have endured orange alerts and routine inconveniences alike, refusing to bend or buckle in the face of an evil that strives to break our will and destroy our freedom.

Periodically, the frankness of our disagreements seems to belie our unity and resolve in fighting the War on Terror. Let our enemies make no mistake, however. The vigor of our debate remains the greatest weapon in the arsenal of a free society.

The 9-11 Commission's report demonstrates the power of an honest search for the truth. Under the blinding glare of public scrutiny, the Commission carried forth the painstaking and often contentious nature of its mission with skill and integrity. As a result, the Commission report has successfully weathered the choppy waters of partisan rancor to produce a blueprint for the fight against terror that unites us once more.

I wish to salute Chairman Kean and Vice-Chairman Hamilton for their extraordinary partnership, which will stand as an enduring model of selfless, resolute bipartisanship. I also wish to thank all of the Commissioners and their staff for their tireless work in creating one of the most important publications of our age.

They have provided an indispensable service to their country. Now, it is our turn. We must embrace our sacred duty to keep Americans safe – by acting upon the Commission’s recommendations both swiftly and deliberately.

In doing so, let us not forget the progress that we have already made. Under the leadership of President Bush, Congress has enacted many key reforms that have improved and enhanced intelligence gathering, law enforcement effectiveness, and interagency coordination.



Through the largest reorganization of the federal government in over half a century, we have eliminated barriers to information sharing, while revamping institutions designed to fight the Cold War abroad and organized crime at home into agile, streamlined tools for fighting international terror.

We have seized \$138 million in terrorist assets, while killing or capturing many of the financial kingpins who underwrite terror's death and destruction. The Patriot Act has enabled the law enforcement and intelligence communities to share the information necessary to foil countless terrorist plots. Through the creation of the Proliferation Security initiative, the United States and its allies have cast a net over the oceans, preventing the transfer of nuclear weapons to terrorists.

The distance that we have traveled, however, merely highlights the length of our journey. To make America truly secure, we must recapture the bipartisan determination that marked the days and months following the 9-11 attacks.

The Commission's report has provided us with a strong foundation. Under the tremendous bipartisan leadership with which Chairman Davis and Ranking Member Waxman routinely provide this Committee, we shall not – we cannot – falter. Let us get to work.

Thank You.

Mr. LEHMAN. I will answer the top three briefly, the easy ones, and Bob can answer the tough ones.

First, Congress has to reorganize. The reason the massive changes that Homeland Security were to have brought about have not been fully realized is that the Secretary of Homeland Security reports to 88 committees. He spends more than half his time up here on the Hill, which in itself is not a bad thing, but it is totally fragmented, and no coherence in the process. It needs to be fixed. We have already talked at length about the need for the intelligence oversight to be fixed. So that's the No. 1.

Second is to recognize the nature of this problem and the policy recommendations that we are making here on what to do.

Third is to carry out the organizational changes, which start with the National Counterterrorism Center and the establishment of the National Intelligence Director and the dual-hatting of his deputies.

So those are my top three, and I think that reflects the priorities of the Commission.

Mr. KERREY. Well, I apologize. I'm not going to be very helpful because I'm not that familiar with the CAPPS II findings, whatever it attempted to do. But I do think that it's worth noting that we had two tremendous successes, human successes, in preventing people from coming into the United States and doing bad things. One of them was in your State of Florida.

And, John, do you remember the name of that individual—

Admiral LEHMAN. Melendes, Oscar Melendes.

Mr. KERREY [continuing]. Who made these—and then a woman up in the State of Washington and the millennium plots, prevented Ressay from coming across the border.

I mean, fundamentally the problem on September 11 is we weren't at a heightened state of alert, and we should have been.

Going back further, we let a guy declare war on us in 1996 and then basically operate with impunity for another half a dozen years. So—as long as he was killing people over there, it wasn't as big a problem for us.

But I think, in addition to not being in a state of alert, the thing I think of when I think of CAPPS, Congresswoman, is the huge amount of time and resources and effort that it's going to take to train the men and women that are going to be necessary to do this work, because, for my money, it's the most important thing out there. We have 500 million visitors coming in and out of the United States every year. That's a big number. And their job is to basically find the needle in the haystack. And they are not going to find it if they don't understand what intelligence is, if they don't have access to that intelligence, if they aren't trained up, etc. I mean, all of us who have the joy of flying experience this issue every single time we get on an airplane of coming to the terms with the fact that the guy may not know exactly what it is that he is doing, and he is checking you all out and so forth.

So I think you have to get the training done. And, again, I would urge you to look at the stuff that we had in the border security, that Susan Ginsburg did for us, because that team got access to things—my guess is—as John said, my guess is—talking about the Iran issue, my guess is we got access to things that you haven't

seen when it comes to border security and weaknesses and vulnerabilities in borders that you haven't seen today.

Admiral LEHMAN. CAPPS I worked, as you said. It identified six of the terrorists that—but people were looking for explosives, so they were allowed through. CAPPS II is much better, much more sophisticated. It's not perfect. And certainly civil liberties have to be protected, but we ought to get on with it. It's not perfect, but it ought to be implemented, because to put it on the shelf and suspend it because of sensitivities seems—we think is not supportable. We need to get on with it.

Chairman TOM DAVIS. Thank you very much.

Our last questions, Ms. Watson.

Ms. WATSON. Thank you so much, Mr. Chairman. I, too, want to add my thanks with my colleagues to the Commission, the families and the staff. You have done a yeoman's job. You have added your wisdom, your experience to the volume of work that I think will go down in history as a major response.

I am sitting here listening, and I have to be reminded that we are spending time reorganizing the deck chairs on the Titanic and rushing swiftly toward the iceberg. We don't even know what the iceberg is all about. But you reference it, and I think the most pertinent part of your report appears in chapter 12: What to do in a global strategy. Who is our enemy? You know, your comments on terrorism, well, where is terrorism? Who is the enemy? Are they in what location?

I believe they live and work among us. I believe they are driving those taxicabs here in the District. I believe they are in our institutions. And I truly believe they are smarter than we are.

And so I think, because of the work that you have put into the Commission, that we ought to do the following: We ought to approve all the recommendations, and the Commission ought to stay in place as applicable for the rest of this decade.

I also believe that we need to have a report on our risk assessment.

I also feel very strongly that we need an independent citizens panel. These families that have worked with you minute by minute, side by side, including the media, ought to be on an independent basis, not attached to executive branch or the congressional branch, so they can act out there in the public and see that we do the right thing.

We must focus on our global strategy. You said it—both of you did, but I happen to refer to Senator Kerrey. You know, terrorism is global, and we live on this globe. That's the only globe we live on. And unless we understand how they think, unless we understand the ideology that says they don't practice what we think, so let's just kill them, we will get nowhere. We can build great arms, and we can go after their arms. That's not going to get it.

So, what we have to keep in mind is that we need to identify the mystic terrorist. We need to have people who look like them. And that's another thing, we need diversity in the State Department. We need diversity, people who share some of the same maybe ethnic background. And we need to get into their minds. And we need to show that we are a Nation of laws and that we indeed can share. And that's what you have come up with. We must share. We must

share in this intuition that we are in. We don't do that. What do you call it, stovepiping? We are in two little stovepipes, Republicans and Democrats. We are afraid to offer and share.

So you said we have a tremendous opportunity. And I think of yin and yang. We have a tremendous opportunity to take this great tragedy that not only we face, but the world faces and turn it around. It is going to take a decade or more to do. I think you ought to be paid because you are not going to be able to pursue your other careers. You are two fine gentlemen. It is going to take time, but I don't think you ought to meet daily. And I think you ought to be seen as the advocates for this plan that's going to help us survive on this globe.

Thank you very much, Mr. Chairman. I will take the comment if there is time. And may I have permission to submit my remarks?

Chairman TOM DAVIS. Without objection, all Members can submit statements for the record.

[The prepared statement of Hon. Diane E. Watson follows:]

**Thank you Mr. Chairman. I applaud the work of this commission for their fine work on completing this report. This is a document every single American should read. It is by far the most readable government report I think I have ever seen. But more important, I am confident it will serve as the reference point for discussions about America's security for the next generation.**

**Of course, 9/11 was not the first time America has been surprised by our enemies. And I'd like to quote something written about an earlier strategic surprise, because I think it is still relevant.**

**(Quote Here)**

**The lack of focus that permitted 9/11 can happen again if we are not prepared. And as the commission has so ably pointed out, our lack of a national strategy to fight al Qaeda leaves us unprepared. Let me say that again, so every American and the President can hear. Without a national strategy to fight al Qaeda, America is not prepared to defend itself against al Qaeda. The president can hire whoever he likes. He can change the personnel rules. He can reorganize departments. But until he issues a national strategy to seek out and destroy al Qaeda, he is leaving America vulnerable.**

**Thank again for coming here today. As I said earlier, I hope every American reads this report. You have given your nation as clear a warning as anyone can. The burden is on our shoulders now if we fail to heed that warning.**



ROBERTA WOHLSTETTER

## PEARL HARBOR WARNING AND DECISION

STANFORD UNIVERSITY PRESS  
STANFORD, CALIFORNIA

1962

### FOREWORD

It would be reassuring to believe that Pearl Harbor was just a colossal and extraordinary blunder. What is disquieting is that it was a supremely ordinary blunder. In fact, "blunder" is too specific; our stupendous unreadiness at Pearl Harbor was neither a Sunday-morning, nor a Hawaiian, phenomenon. It was just a dramatic failure of a remarkably well-informed government to call the next enemy move in a cold-war crisis.

If we think of the entire U.S. government and its far-flung military and diplomatic establishment, it is not true that we were caught napping at the time of Pearl Harbor. Rarely has a government been more expectant. We just expected wrong. And it was not our warning that was most at fault, but our strategic analysis. We were so busy thinking through some "obvious" Japanese moves that we neglected to hedge against the choice that they actually made.

And it was an "improbable" choice; had we escaped surprise, we might still have been mildly astonished. (Had we not provided the target, though, the attack would have been called off.) But it was not all *that* improbable. If Pearl Harbor was a long shot for the Japanese, so was war with the United States; assuming the decision on war, the attack hardly appears reckless. There is a tendency in our planning to confuse the unfamiliar with the improbable. The contingency we have not considered seriously looks strange; what looks strange is thought improbable; what is improbable need not be considered seriously.

Furthermore, we made the terrible mistake—one we may have come

1962

close to repeating in the 1950's—of forgetting that a fine deterrent can make a superb target.

Surprise, when it happens to a government, is likely to be a complicated, diffuse, bureaucratic thing. It includes neglect of responsibility, but also responsibility so poorly defined or so ambiguously delegated that action gets lost. It includes gaps in intelligence, but also intelligence that, like a string of pearls too precious to wear, is too sensitive to give to those who need it. It includes the alarm that fails to work, but also the alarm that has gone off so often it has been disconnected. It includes the unalert watchman, but also the one who knows he'll be chewed out by his superior if he gets higher authority out of bed. It includes the contingencies that occur to no one, but also those that everyone assumes somebody else is taking care of. It includes straightforward procrastination, but also decisions protracted by internal disagreement. It includes, in addition, the inability of individual human beings to rise to the occasion until they are sure it *is* the occasion—which is usually too late. (Unlike movies, real life provides no musical background to tip us off to the climax.) Finally, as at Pearl Harbor, surprise may include some measure of genuine novelty introduced by the enemy, and possibly some sheer bad luck.

The results, at Pearl Harbor, were sudden, concentrated, and dramatic. The failure, however, was cumulative, widespread, and rather dreadfully familiar. This is why surprise, when it happens to a government, cannot be described just in terms of startled people. Whether at Pearl Harbor or at the Berlin Wall, surprise is everything involved in a government's (or in an alliance's) failure to anticipate effectively.

Mrs. Wohlsetter's book is a unique physiology of a great national failure to anticipate. If she is at pains to show how easy it was to slip into the rut in which the Japanese found us, it can only remind us how likely it is that we are in the same kind of rut right now. The danger is not that we shall read the signals and indicators with too little skill; the danger is in a poverty of expectations—a routine obsession with a few dangers that may be familiar rather than likely. Alliance diplomacy, inter-service bargaining, appropriations hearings, and public discussion all seem to need to focus on a few vivid and oversimplified dangers. The planner should think in subtler and more variegated terms and allow for

a wider range of contingencies. But, as Mrs. Wohlsetter shows, the "planners" who count are also responsible for alliance diplomacy, inter-service bargaining, appropriations hearings, and public discussion; they are also very busy. This is a genuine dilemma of government. Some of its consequences are mercilessly displayed in this superb book.

Center for International Affairs  
Harvard University

THOMAS C. SCHELLING

Ms. WATSON. Thank you.

Do you want to stay on forever, Bob? I said at the end of the decade. I gave them time.

Chairman TOM DAVIS. I didn't see them jump out of their seats. But thank you, Ms. Watson, for your comments. Thank you.

And let me just say, I think it has been incredibly informative. It was a needed dose of reality for Congress. We get so partisanized and political up here, sometimes we can't reach a consensus. You did a great job.

Mr. KERREY. Go on vacation now.

Chairman TOM DAVIS. You are my cover if anybody says anything.

Finally, let me just say, you know, five Democrats, five Republicans from fairly partisan backgrounds coming together in a non-political atmosphere to reach a consensus on these issues. I feel confident that we will meet again as expeditiously as possible, but you both, for yourselves and the Nation as well, thank you. We thank you for your testimony as well.

Admiral LEHMAN. Thank you very much.

Mr. WAXMAN. I also want to extend my gratitude. You have given us excellent testimony and set good benchmarks for successful legislation. We are going to do all we can. I think you have given us the thoughtfulness and the concrete platform that I think we need. Thank you.

Admiral LEHMAN. Thank you very much.

Mr. KERREY. Thank you.

Chairman TOM DAVIS. We will take a minute recess as we move to our next panel. We have Beverly Eckert, Sally Regenhard, and Robin Wiener, who are all family members of September 11. We appreciate your patience and indeed the leadership you have shown. Thank you all for being here, and thank you for your patience. Let's see. We are very excited about having you here today and your willingness to come forward and testify before this committee.

It is our policy to swear all witnesses before they testify. If you will rise with me and raise your right hands and be sworn.

[Witnesses sworn.]

Chairman TOM DAVIS. Why don't we start with you, and we'll move straight on down. Your testimony was submitted. Since your entire testimony is in here, we can take up to 5 minutes to read it, and then we'll have some questions.

Let's see. Your entire testimony is in here; you can take up to 5 minutes to read it, and then we will have some questions. But, again, I think all of the committee is grateful for what you have done after September 11, not only with respect for your losses, but I think some good has come out of this, and your willingness to step forward and be leaders has made a difference.

**STATEMENTS OF SALLY REGENHARD, FAMILY MEMBER OF SEPTEMBER 11, 2001 VICTIM; BEVERLY ECKERT, FAMILY MEMBER OF SEPTEMBER 11, 2001 VICTIM; AND ROBIN WIENER, FAMILY MEMBER OF SEPTEMBER 11, 2001 VICTIM**

Ms. REGENHARD. Thank you very much. Thank you, Chairman Davis, Ranking Member Waxman, Vice Chairman Shays, and

members of the House Committee on Government Reform. It's an honor to be here today, an honor that I appreciate very much.

My name is Sally Regenhard. I'm the founder and chairperson of the Skyscraper Safety Campaign. I created this organization in memory of my son Christian Regenhard, a probationary firefighter who was lost at the World Trade Center on September 11 with his entire Engine Co. 279, and they remain missing to this day.

The goals of the Skyscraper Safety Campaign include advocating for a thorough investigation into the disaster of the World Trade Center as well as making high-rise buildings safer in the future through improved building codes, design practices, and enhanced emergency response procedures and equipment. Today we would like to discuss some of the findings and recommendations of the 9/11 report. I would like to focus on chapter 9 and the some of the recommendations in chapter 12.

Overall, I feel that the 9/11 Commissioners and staff have provided us with a great amount of detail and analysis about the emergency response that terrible day. Their extensive text and notes give us new insights into what went right and what went terribly wrong that day. They are to be thanked and congratulated for their superlative and dedicated work, and they must also be thanked for the respect and honor shown to the victims and the family members. However, I do feel that some of the conclusions drawn in chapter 9 are not based upon actual substantiated facts, but rather upon unsupportable opinions.

One particular aspect of the report that is quite troubling to me and to my organization is the discussion relating to the evacuation orders of the North Tower on pages 322 to 323 of the report, and the corresponding end note No. 209. It is alleged that many of the firefighters in the North Tower heard the message to evacuate, but chose to remain in the building prior to its collapse. To the contrary. This issue of firefighter deaths is directly tied to the lack of radio communication capability in the World Trade Center on September 11. This has been well documented in the post-September 11 McKinsey Report, the New York Times, and numerous other publications and firefighter comments. Yet this theory that firefighters chose to die has been advanced by some public officials, undoubtedly hoping to deflect criticism for the inadequacy of the FDNY radios and for the absence of a functioning incident command structure in New York City on September 11 which undoubtedly could have saved so many firefighters' lives, including my beautiful son Christian.

I take specific exception to the section in the Commission Report which states, "In view of these considerations, we conclude that the technical failure of the FDNY radios, while a contributing factor, was not the primary cause of the many firefighter fatalities in the North Tower."

I and my technical advisers of the Skyscraper Safety Campaign, which represent a large professional field of fire-related professionals, have—and communication and evacuation specialists, have reviewed the substantiating documentation and have found it lacking. In essence, the report makes a very weak argument such as, "It is very possible that at least some of these firefighters did hear

the evacuation order,” as well as the most curious statement that firefighters, “were likely to have known to evacuate.”

Such statements are not conclusive. Stating that firefighters refused to evacuate the building for whatever reason and disobeyed such an important order simply cannot be confirmed and is a disservice to their memory. These people are dead. We cannot ask them these questions. The questionable findings of chapter 9 are based on interviews and transcripts which the families and the public have no access to. The information upon which these conclusions were based is secreted, is suppressed, and this information contains key knowledge that the families of the victims would like to have.

Myself and other family members here today are part of the 45 percent of family members whose loved ones were never, ever identified. Not one single piece of DNA was ever found from my son and for 45 percent of the victims. If this information and this testimony that these Commission’s recommendations and findings are based upon, I’m asking that this be made public so that at least we can find out how these very curious conclusions have come to pass.

I have to say that it may seem that it’s not that important to you, this one aspect of firefighters not obeying orders, but I must say to you to the families of the firefighters who perished that day, including myself and the mother of firefighter Sean Patrick Tallon, who is among the family members here today, we feel that the lack of radio communication capability was the primary reason that so many firefighters died. The fact is, that their equipment betrayed them at the time that they needed it the most. The fact is well documented in a new book coauthored by a New York City Fire Department battalion chief, and this book is called *Radio Silence, FDNY*. It provides a history of how these failed radios got into the hands of the entire New York City Fire Department on September 11.

Even today, nearly 3 years later, the fire department still does not have an adequately robust radio system that gives them the capability to talk in all high-rise buildings in New York City, in all subways, and in tunnels. This is not just a firefighter issue, this is an issue of public safety and grave concern for all, not only in New York City, but in other States that also can be a target of terrorism, and we don’t know how emergency communication will work.

I call on Congress today to hold hearings into the flawed September 11 emergency communications system and the fire department radios of September 11 as well as the failure of the city of New York to put useful radios into the hands of today’s firefighters. You are the last hope to provide an unbiased critical review of this significant issue.

Another issue I would like to discuss pertains to the report’s analysis of the incident command system currently utilized by the city of New York. Just days prior to the 9/11 Commission hearings this past May in New York, the city announced the creation of a new citywide incident management system intended to meet impending Federal requirements. Unfortunately, CIMS is a fundamentally flawed command system in many respects, including its

illogical split of HAZMAT responses between the NYPD and the FDNY even in the case of a terrorist attack and the lack of a single clearly designated incident commander in many emergency responses.

As a New Yorker living in this Nation's No. 1 terrorist target, I also have grave concerns about the amount of money flowing to New York City for antiterrorism preparedness. We should be receiving a much larger piece of the pie, eliminating the pork-barrel spending of the past. I agree with the 9/11 Commission in its desire to see that a risk and vulnerability assessment form the baseline for spending. I would further suggest that the likelihood of an attack play the predominant role in any risk vulnerability assessment.

Regarding the Commission's recommendations, a review of chapter 12 reveals that only three recommendations deal with all of the complex issues that surfaced in New York City and continue to haunt us to this very day. These three recommendations can be characterized essentially as mom and apple pie. They are too broad, and they are lacking the specificity to deal with the complex issues at hand. I would have hoped for many more specific recommendations dealing with each of the communications, incident command, and private sector emergency preparedness issues raised in this report.

Once again, this is not just about New York City. These have ramifications for every other State or every other city in this country which could be a likely target of a terrorist attack.

For example, the 9/11 Commission should have strongly critiqued the New York City's incident command system rather than just stating that, "emergency response agencies nationwide should adopt the incident command system." With all due respect to the Commission, most cities and States have already done this. New York was one of—was the only major city and the only State in this country which lacked an incident command structure on September 11. Why not analyze New York City's current system and detail why it is so flawed rather than just state, as the Commission stated, that it, "falls short of an optimal response plan?" Clearly, more work is needed in this area.

In closing, you may have noticed that I am wearing some medals today. My son earned these medals for obeying orders as a recon Marine sergeant during his 5 years of distinguished service in the U.S. Marine Corps before joining the fire department. When a marine receives an order, he follows it. If told by a supervisor or superior officer to evacuate the World Trade Center on September 11, he and others would have done so if only their radios would have worked. All of these predominantly young firefighters lost at the World Trade Center on September 11, with rare exception, would have chosen life if only they were given the chance. Unfortunately, they and the rest of the 343 cannot testify before you today. I wear these medals to defend their honor, and, in doing so, I once again reiterate the need for congressional hearings into the communications and radio failures of September 11. I acknowledge the role of the first responders as far—as part of the first casualties in this war on terrorism. Please do not overlook the important problems still facing them today. The FDNY and the rest of our Nation's

emergency personnel are America's first lines of defense in this country. If they are not safe and well equipped, how can they protect the public in case of another terrorist attack? Please help them and honor those who are gone by giving your attention to this most important matter. Thank you.

Chairman TOM DAVIS. Thank you very much.

[The prepared statement of Ms. Regenhard follows:]

**Testimony of  
Sally Regenhard  
Founder & Chairperson, Skyscraper Safety Campaign  
Member of the Family Steering Committee  
Of the 9-11 Commission**

**Before the**

**House Committee on Government Reform  
House of Representatives  
United States Congress**

**“Moving from The Need to Know to The Need to Share:  
A Review of the 9/11 Commission Recommendations**

**August 3, 2004**



Testimony of Sally Regenhard, member of the Family Steering Committee of the 9-11 Commission, and Chairperson of the Skyscraper Safety Campaign, to the House Committee on Government Reform August 3, 2004

Chairman Davis, Ranking Member Waxman, and members of the House Committee on Government Reform: My name is Sally Regenhard. I am the founder and Chairperson of the Skyscraper Safety Campaign (SSC). I created this organization in memory of my son, Christian Regenhard, a probationary firefighter who was lost at the World Trade Center on September 11<sup>th</sup>, 2001 along with his entire Engine Company 279 who remain missing to this day. The goals of the SSC include advocating for a thorough investigation into the disaster at the World Trade Center as well as making high-rise buildings safer in the future through improved codes, better design practices, and enhanced emergency response procedures and equipment.

Today, I would like to discuss the findings and recommendations found within the 9/11 Commission Report. Specifically, I would like to address Chapter Nine of the report, which deals with the events at the World Trade Center. In addition, I would like to discuss the related recommendations found in Chapter 12.

Overall, I feel that the 9/11 Commissioners and Staff have provided us with a great amount of detail and analysis about the emergency response that terrible day. Their extensive text and notes give us new insights into what went right and what went terribly wrong that day. They are to be thanked and congratulated for their superlative and dedicated work. They must also be thanked for the respect and honor demonstrated to the victims and their families all along this arduous process. However, I do feel that some of the conclusions drawn in Chapter Nine are not based upon actual substantiated facts, but rather upon unsupportable opinions.

One particular aspect of the report that is quite troubling to me and my organization is the discussion relating to the evacuation orders of the North Tower on pages 322-323 of the report and the corresponding endnote numbers 209. It is alleged that many of the firefighters in the North Tower heard the message to evacuate but chose to remain in the building prior to its collapse. To the contrary, this issue of firefighter deaths is directly tied to the lack of radio communication capability. This has been well documented in the post 9/11 McKinsey Report, the NY Times, and numerous other publications and firefighter comments. Yet this theory that firefighters chose to die, has also been advanced by some public officials, undoubtedly hoping to deflect criticism for the inadequacy of the FDNY radios and for the absence of a functioning Incident Command Structure in NYC on 9/11 which undoubtedly could have saved so many firefighter's lives, including my own beautiful son, Christian.

I take specific exception to the section in the Commission Report which states: *"In view of these considerations, we conclude that the technical failure of the FDNY radios, while a contributing factor was not the primary cause of the many firefighter fatalities in the North Tower."* I and my technical advisors have reviewed the substantiating documentation and have found it lacking. In essence, the report makes very weak arguments such as *"it is very possible that at least some of these firefighters did hear the evacuation order"* as well as the most curious statement that firefighters were *"likely to have known to evacuate."* Such statements are not conclusive. Stating that the firefighters refused to evacuate the building (for whatever reason) and disobeyed such an important order simply cannot be confirmed and is a disservice to their memory. These people are dead – we cannot ask them these questions. The questionable findings of Chapter 9 are based on interviews and transcripts which the families and the public have no access to. In addition, many surviving firefighters and ranking officers referred to the Commission by the Skyscraper Safety Campaign have stated that no evacuation order was ever heard by them.

While this may seem to be a trivial matter to some, it is exceedingly important to the families of the firefighters who perished that day – including the mother of FF Sean Patrick Tallon who is among the many family members present today. We feel that the lack of radio communication capability was *the primary* reason that so many firefighters died. The fact is that their equipment betrayed them when they

needed it the most. This fact is well documented in a new book, co authored by a NYC Fire Department Battalion Chief entitled: *"Radio Silence, FDNY"* and provides a history of how these failed radios got into the hands of NYC's Bravest on 9/11. Even today, nearly three years later, the FDNY still does not have an adequately robust radio system that gives them the capability to talk in all high-rise buildings, subways, and tunnels in the City of New York. This is not just a firefighter issue – this is a public safety issue of grave concern for all.

I call on Congress to hold hearings into the flawed 9-1-1 Emergency Communication System and FD radios of 9/11 *as well as* the failure of the City of New York to put useful radios into the hands of *today's* firefighters. You are the last hope to provide an unbiased, critical review of this significant issue. Another issue that I would like to discuss pertains to the report's analysis of the Incident Command System currently utilized by the City of New York. Just days prior to the 9/11 Commission hearings this past May in New York, the city announced the creation of a new Citywide Incident Management System, (CIMS) intended to meet an impending federal requirement. Unfortunately, CIMS is a fundamentally flawed command system in many respects, including its illogical split of Haz Mat responses between the NYPD and FDNY, even in the case of a terrorist attack, and the lack of a single clearly designated incident commander in many emergency responses.

As a New Yorker living in the nation's number one terrorist target, I also have grave concerns about the amount of money flowing to New York City for anti-terrorism preparedness. We should be receiving a much larger piece of the pie, eliminating the pork barrel spending of the past. I agree with the 9/11 Commission in its desire to see that a risk and vulnerability assessment form the baseline for spending. I would further suggest that the *likelihood* of an attack play the predominant role in any risk/vulnerability assessment process.

Regarding Commission recommendations: A review of Chapter 12 reveals that only three recommendations deal with all of the complex issues that surfaced in New York City and continue to haunt us to this very day. These three recommendations can be characterized as mom and apple pie; they are too broad and are lacking the specificity to deal with the complex issues at hand. I would have hoped for many more *specific* recommendations dealing with each of the communications, incident command, and private-sector emergency preparedness issues raised in this report.

For example, the 9/11 Commission should have strongly critiqued New York City's incident command system rather than just stating that *"emergency response agencies nationwide should adopt the Incident Command System..."* With all due respect to the Commission, most cities and states *have already done this*. Why not analyze New York City's current system and detail why it is flawed rather than just state that it *"falls short of an optimal response plan?"* Clearly, more work is needed in this area.

In closing, you may have noticed that I am wearing some medals today. My son earned these medals for *obeying orders* as a Recon Marine Sergeant, during his five years of distinguished service in the U.S.M.C. before joining the Fire Department. When a Marine receives an order, he follows it! If told by a superior officer to evacuate the World Trade Center on 9/11, he and others would have done so. If only their radio would have worked. All of those predominantly young firefighters lost at the WTC on 9/11 (with rare exception) would have chosen life – if only given the chance. Unfortunately, they and the rest of the 343 cannot testify before you today. I wear these medals to defend their honor and in doing so, I once again reiterate the need for Congressional Hearings into the Communications and Radio failures of 9/11. I acknowledge the role of the First Responders as part of the first casualties in this war on terrorism. Please, do not overlook the important problems still facing them today. The FDNY and the rest of our nation's emergency personnel are America's first lines of defense in this country. If they are not safe and well equipped, how can they protect the public in case of another terrorist attack? Please help them and honor those who are gone, by giving your attention to this most important matter.

Thank you for allowing me to testify. I look forward to your answering any questions that you may have.

Chairman TOM DAVIS. Ms. Eckert.

Ms. ECKERT. Honorable Chairman Davis, distinguished members of the committee, ladies and gentlemen, my name is Beverly Eckert. I am appearing here today as a member of the Family Steering Committee for the 9/11 Commission. We very much appreciate this opportunity. We understand it is both a privilege and a responsibility. And we also extend our thanks to the Commissioners and their staff for their tireless work and the cogent recommendations which are the focus of today's hearings. Most of all, we thank the American people for their interest and support of this process. Hundreds of thousands have purchased the Commission's report. Tens of millions have accessed the Commission's Web site to read for themselves the summary of what went wrong on September 11th, and what we need to do as a Nation to correct those failings. These astonishing numbers make it very clear that it can no longer be "business as usual" in Washington. This committee's presence here today is a testament to that.

There is no recess from terrorism. And because of the transparent way the Commission operated and the accessibility of their report in bookstores and on the Internet, ordinary citizens are now well-informed about the failures of our national security apparatus. And they are engaging in much-needed debate about how our government needs to change to address those failures. This is democracy alive and at work.

Mr. Chairman, members of the committee, the roadmap is in front of you. There are 41 recommendations contained in the 9/11 Commission report. Neither the Family Steering Committee nor the American people will let those recommendations suffer the same fate as those of past commissions. There is no shelf on which they can be hidden. You and the rest of Congress are very much in the spotlight, as I am sure you are all keenly aware, and you will be held accountable by the people for your actions—or inactions—as will the White House.

To help this oversight—the people's oversight—the Family Steering Committee will make the progress of legislation, Executive orders, and agency initiatives available on our Web site. We will list cosponsors of bills as well as who voted for and against. Our hope is that legislation will be passed by unanimous consent after expedited hearings before the end of this year.

As this process moves forward, we challenge you—election year notwithstanding—to resist pressures from lobbyists who might oppose reforms that add cost to their clients' operations.

In terms of content, we respectfully require that every bill dealing with these recommendations mandate specific implementation steps and timetables, to avoid the delays that characterize the regulatory route. Families who worked so hard for aviation safety improvements after the Lockerbie tragedy in 1988 understand this need all too well.

We also require language in each bill that addresses funding, and that appropriations with flexible earmarking promptly follow. We respectfully require that the bills submitted to Congress be unencumbered by amendments, the "pork" that so often is associated with controversial legislation.

Last, we challenge the House and Senate to work together to draft complementary bills so that there will be no need for conferencing behind closed doors.

The reforms needed to build a more secure Nation must not be derailed. Nearly 3 years have passed since our Nation's security was catastrophically breached, but not enough has been done since then to make us safer. During the September 11 hearings, we heard from agency after agency that corrective measures have been implemented, only to learn from incidents reported in the news that security lapses are still rampant.

The Commission report speaks of a "failure of imagination" in Washington, a failure to understand the threat and respond to it. Going forward, we need government officials who do have imagination, who can implement legislation that's creative, responsive, and capable of addressing the challenges and threats of the 21st century.

A National Counterterrorism Center and a Director of National Intelligence at the helm is at the heart of the Commission's recommendations. Yesterday the President announced that he would support these two recommendations, but the DNI needs to have the necessary management, budget, and appropriations control. It's a critical element if they are going to succeed. And also, this control needs to extend to the Defense Department; otherwise, the effectiveness of the DNI will be undermined. Be assured that the Family Steering Committee will be monitoring these important aspects.

The report identifies Congress itself as being dysfunctional. We therefore call upon each of you to have the courage to be part of the solution and embrace fundamental change in the way the congressional committee oversight system operates.

As in the days preceding the September 11 attacks, the threat of terrorism is now high. This committee, Congress, and the President must act with great urgency. Upcoming elections must not overshadow these initiatives. These recommendations require your undivided attention. The American people will accept nothing less.

Whatever the outcome in November, we expect that you, our representatives, will use your full terms of office productively. We fully support a special session of Congress to ensure that the momentum generated by these hearings will continue. We cannot afford a lame duck session attitude to legislation still pending after the November elections.

My husband Sean was trapped in the South Tower of the World Trade Center on September 11th, but he was able to reach me by phone. When the smoke and flames drew near, and Sean knew he was going to die, he remained calm, speaking of his love for me and for his family. I will forever be in awe of the way he faced his final moments. In the days that followed, I felt somehow infused with his courage and strength, and that has helped me persevere through these difficult months. So many other family members were similarly inspired. Despite our private anguish, we shared a goal: To make this country safer so that the deaths of 3,000 people would not be meaningless.

Too many of us lost someone we cherished on September 11th. Too many of us also lost our faith in a government we had blindly trusted to protect the people we loved. After September 11th, the

country reached out to families and asked what they could do to help us heal. We now have an answer: "Help us make these recommendations happen." And our question to Congress, the President, and this committee is, are you willing to implement reforms before this year has ended and thereby restore our Nation's faith in its government?

The anniversary of September 11th approaches. What better way to honor the memory of those who perished than by enacting legislation this year, which ensures that no other family member has to experience what we have endured. I hope I never see the day another widow has to walk in my shoes. The time to act is now. Thank you.

Chairman TOM DAVIS. Thank you very much, Mrs. Eckert.  
[The prepared statement of Ms. Eckert follows:]

Testimony of Beverly Eckert  
Before the U.S. House of Representatives  
Committee on Government Reform

Hearings to Review 9/11 Commission Recommendations  
Tuesday, August 3, 2004

Honorable Chairman Davis, Distinguished Members of this Committee, ladies and gentlemen:

My name is Beverly Eckert. I'm appearing here today as a member of the 9/11 Commission's Family Steering Committee. We appreciate the opportunity you have given us to participate in this hearing. It is both a privilege and a responsibility. We also extend our thanks to the 9/11 Commissioners and staff, whose tireless work and cogent recommendations are the focus of today's hearing.

But most of all, we thank the American people for their interest and support of this process. Hundreds of thousands have purchased the Commission's report. Tens of millions have accessed the Commission's website, to read for themselves the summary of what went wrong on September 11<sup>th</sup> and what we need to do as a nation to correct those failings. Millions more will watch these hearings.

Those astonishing numbers make it very clear that it can no longer be "business as usual" in Washington. This Committee's presence here today is testament to that. There is no recess from terrorism. Because of the transparent way the Commission operated and the accessibility of their report in bookstores and on the Internet, ordinary citizens are now well-informed about the failures of our national security apparatus. And they are engaging in the much-needed debate about how our government must change so that those failures never happen again. This is democracy- alive, and at work.

Mr. Chairman, Members of the Committee, the roadmap is in front of you. There are 41 recommendations contained in the 9/11 Commission's report. Neither the Family Steering Committee nor the American people will let these recommendations suffer the same fate as those of past Commissions. There is no shelf on which they can be hidden. You, and the rest of Congress, are very much in the spotlight, and will be held accountable for your actions- or inaction, as will the White House. Elected officials who obstruct passage of these recommendations will have to answer to their constituents. To help this oversight- the people's oversight- the Family Steering Committee will make the progress of legislation, Executive Orders and agency initiatives available on our website. We will list Co-Sponsors on bills, as well as who voted 'for' or 'against'. Our hope is that legislation will be passed by unanimous consent after expedited hearings before the end of this year.

As this process moves forward, we challenge you- election year notwithstanding - to resist the pressure from lobbyists who oppose reforms that add costs to their clients' operations. We respectfully require that every bill dealing with these recommendations mandate specific implementation steps and timetables and avoid the delays that characterize the regulatory route. The families who worked so hard for aviation safety improvements after the Lockerbie tragedy in 1988 understand this need all too well.

We also require language in each bill that addresses funding, and that appropriations promptly follow. We respectfully require that the bills submitted to Congress be unencumbered by amendments - the 'pork' that so often is associated with controversial legislation. Lastly, we challenge the House and Senate to work together to draft complimentary bills, so that there will be no need for conferencing behind closed doors.

The reforms needed to build a more secure nation must not be derailed. Nearly three years have passed since our nation's security was catastrophically breached. Because of partisan gridlock and bureaucratic intransigence, far too little has been done since then to make us safer. During the 9/11 hearings, we heard from agency after agency that corrective measures had been implemented, only to learn from incidents reported in the news that security lapses are still rampant.

The Commission report speaks of a "failure of imagination" in Washington - a failure to understand the threat of terrorism and respond to it. Going forward, we need government officials who *do* have imagination - who can implement legislation that is creative, responsive and capable of addressing the challenges and threats of the 21<sup>st</sup> century. A National Counter-Terrorism Center, and a Director of National Intelligence at the helm with 'the power of the purse', is at the heart of the Commission's recommendations. Yesterday the President announced his support for these 2 recommendations and also indicated the DNI would have the necessary budget control. This is a critical element. If it doesn't extend to the Defense Department's non-military intelligence operations, the effectiveness of the DNI will be largely undermined. Be assured we will be monitoring this important aspect.

The report identifies Congress itself as being dysfunctional. We therefore call upon each of you to have the courage to be part of the solution, and embrace fundamental change in the way the Congressional committee oversight system operates.

As in the days preceding the 9/11 attacks, the threat level now is high. This Committee, Congress and the President must act with great urgency. Upcoming elections must not overshadow these initiatives. These recommendations require your undivided attention. The American people will accept nothing less. And whatever the outcome in November, we expect that you, our representatives, will use your full terms of office productively. We can ill-afford a 'lame duck' attitude to legislation at this critical time. We fully support a special session of Congress to ensure that the momentum generated by these hearings will continue.

My husband Sean was trapped in the South Tower of the World Trade Center on September 11<sup>th</sup> but was able to reach me by phone. When the smoke and flames drew near and Sean knew he was going to die, he remained calm, speaking of his love for me and for his family. I will forever be in awe of the way he faced those final moments. In the days that followed, I felt somehow infused with his courage and strength, and that helped me persevere through the difficult months that followed. So many other family members were similarly inspired. Despite our private anguish, we shared a goal to make this country safer so that the deaths of 3,000 people would not be meaningless.

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country reached out to the families and asked what they could do to help us heal. We now have an answer: "Help us make these recommendations happen". And our question to Congress, the President and this Committee is: "Are you willing to implement reforms, before this year is ended, and thereby restore our nation's faith in its government?"

The anniversary of September 11<sup>th</sup> approaches. What better way to honor the memory of those who perished than by enacting legislation this year which ensures that no other family member has to experience what we have endured.

I hope I never see the day when another widow has to walk in my shoes. The time to act is now.  
Thank you.

Beverly Eckert, Family Steering Committee for the 911/ Commission  
[www.911independentcommission.org](http://www.911independentcommission.org)



Chairman TOM DAVIS. Ms. Wiener.

Ms. WIENER. Mr. Chairman, members of the committee, thank you for inviting us to testify today, and thank you for holding these hearings. I'm truly honored to be here. My name is Robin Wiener, and I appear before you as a member of the Family Steering Committee, a board member of Families of September 11, and, most importantly, as the sister of Jeffrey Wiener, who was killed the morning of September 11th while working at his desk on the 96th floor of Tower One of the World Trade Center.

As tragic as that day was for the victims, their families, and all of our country, America was united, strongly united, for months after the attacks. Sadly, that unity eroded quickly as response to the tragedy became political. In the months following September 11, 2001, the families began to advocate for the creation of a commission to investigate the terrorist attacks, with the goal of making whatever changes would be necessary to prevent another such attack. The American spirit that drives us to seek the truth has shown itself in the sales of the report, a bestseller by anyone's calculation.

Unity and truth are vitally important, Mr. Chairman. They are very powerful forces, and they are what make this country strong. As Beverly made clear, the American people are reading this report closely. They are absorbing the recommendations, they are watching what you do here today and what you will do in the weeks and months ahead. And they, along with the families, will not be pleased if they see the Commission's recommendations falling by the wayside.

Certainly these hearings are a wonderful start, and I appreciate that the members of this committee have interrupted their recess to address the most serious issue facing all Americans. This type of response gives me hope that we are going to get things right for the safety and security of all of our citizens. However, Mr. Chairman, the encouragement that the families in our country received from the timeliness of these hearings is tempered by a very real fear. The families and the American people are expecting Congress and the administration to act expediently, but without political expediency.

It is important that the implementation of the Commission's recommendations occur in a timeline that is drawn to protect America, not to protect incumbents of any party, Democrat or Republican. It is vital for our Nation that we avoid quick fixes that are inadequate or incomplete.

We recognize that this puts you, your colleagues, and the administration in a difficult position. How can you act quickly to implement the Commission's recommendations without seeming to make political hay in the process? The solution, in my opinion, lies in the future of the 9/11 Commission itself.

The families of victims have asked that the Commission be kept alive to oversee the implementation of its recommendations. This bipartisan body is uniquely qualified to monitor implementation and to reassure the American people that the process is working; that the progress being made by our elected leaders is furthering our security, and that all of the recommendations are properly implemented.

Many of the September 11 families have endorsed the Commission's recommendations as a whole. We hope that you recognize that all of the recommendations are important, and all are part of a comprehensive package designed to work in concert to significantly diminish the terrorist threat facing our country.

The Commission report deals with issues that go beyond intelligence czars and counterterrorism centers, issues that have led the news in recent days. The Commission has important recommendations that deal with such critical issues as foreign policy, diplomacy, education, foreign aid, border security, terrorist financing, economic policy and the like. I implore you to prioritize, to enact that which can be carried out immediately, but while also moving forward on recommendations requiring longer-term discussions.

We, the families, challenge the members of this committee and all Members of Congress to recognize that the unprecedented terrorist attacks of September 11th demand an unprecedented effort on the part of Congress that will require streamlining the committee process and exceptional coordination between the House and Senate as well as coordination and communication with the administration. We challenge you to provide the American people with a timetable that Congress is prepared to follow to implement this report. And, last, we challenge you to put aside turf battles and partisan rivalries and act quickly to do everything that must be done to reduce our vulnerability to another terrorist attack. In short, Mr. Chairman, the families and the entire country are looking to you and your colleagues to do your work quickly and to do it right, an awesome responsibly.

You have a wonderful opportunity before you to take a leadership role, and we commend you for calling this hearing today. We also commend Congressman Shays and Congresswoman Maloney for forming a caucus for Members committed to enacting all of the Commission's recommendations. Hearings like this can be important, but please demonstrate to the American public that you are serious in your efforts.

Mr. Chairman, if I could take a personal moment. I was blessed on November 23rd of last year to become the mother of a beautiful little girl named Jennifer, named after the uncle she will never have the good fortune to know. The seriousness by which you take the job given to you by the 9/11 Commission will not only honor and create a positive legacy to those 3,000 souls who so tragically lost their lives on September 11, but will determine whether Jennifer and millions of other children like her will grow up in a safe, secure, and strong America.

Mr. Chairman, we implore you, please do what is required. Act smartly and act quickly. The families look forward to working very closely with you and the rest of the committee, the rest of Congress, and the administration to do what is necessary to implement the Commission's recommendations. Thank you.

[The prepared statement of Ms. Wiener follows.]

**Testimony of Robin K. Wiener  
Before the U.S. House of Representatives  
Committee on Government Reform**

**Hearings to Review 9/11 Commission Recommendations  
Tuesday, August 3, 2004**

Mr. Chairman, members of the Committee, thank you for inviting us to testify today, and thank you for holding these hearings. I am honored to be here. My name is Robin Wiener and I appear here before you as a member of the Family Steering Committee, a board member of Families of September 11, and most importantly as the sister of Jeffrey Wiener, who was killed that morning while working at his desk on the 96<sup>th</sup> floor of Tower One of the World Trade Center.

As tragic as that day was for the victims, their families, and all of our country, America was united – strongly united – for months after the attacks. Sadly, that unity eroded quickly as response to the tragedy became political. Even the families were, at times, drawn into debates that had more to do with politics than finding real solutions to what was, is, and could still be a crisis in our nation.

In the months following September 11, 2001, the families began to advocate for the creation of a commission to investigate the terrorist attacks with the goal of making whatever changes would be necessary to prevent another such attack. The American spirit that drives us to seek the truth has shown itself in the sales of the report – a bestseller by anyone’s calculation.

Unity and truth are vitally important, Mr. Chairman. They are very powerful forces and they are what make this country strong. As Beverly made clear, the American people are reading this report closely. They are absorbing the recommendations. They are watching what you do here today . . . and what you will do in the weeks and months ahead. And they – along with the families – will not be pleased if they see the commission’s recommendations falling by the wayside.

Certainly these hearings are a wonderful start, and I appreciate that the members of this committee have interrupted their recesses to address the most serious issue facing all Americans. This type of response gives me hope that we are going to get things right for the safety and security of all of our citizens.

However, Mr. Chairman, the encouragement that the families and our country receive from the timeliness of these hearings is tempered by a very real fear. The families and the American people are expecting Congress and the Administration to act expediently, but without political expediency. It is important that the implementation of the Commission’s recommendations occur on a timeline that is drawn to protect America, not to protect incumbents of any party. It is vital for our nation that we avoid quick fixes that are inadequate or incomplete.

We recognize that this puts you, your colleagues, and the Administration in a difficult position. How can you act quickly to implement the Commission's recommendations without seeming to make political hay in the process?

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The families of victims have asked that the Commission be kept alive to oversee the implementation of its recommendations. This bipartisan body is uniquely qualified to monitor implementation and to reassure the American people that the process is working – that the progress being made by our elected leaders is furthering our security, and that all of the recommendations are properly implemented.

On behalf of all families who lost loved ones on 9/11, I want to stress that last point. The 9/11 families have endorsed the Commission's recommendations as a whole. We hope that you recognize that they are all important and are all part of a comprehensive package designed to work in concert to significantly diminish the terrorist threat facing our country.

The Commission report deals with issues that go beyond intelligence czars and counter terrorism centers – issues that have led the news in recent days. The Commission has made important recommendations that deal with issues of foreign policy, border security, terrorist financing, economic policy and the like. I implore you to prioritize, to enact that which can be carried out immediately, while also moving forward on recommendations requiring longer-term discussion.

We, the families, challenge the members of this committee and all members of Congress –

1. *To recognize* that the unprecedented terrorist attacks of September 11 demand an unprecedented effort on the part of Congress that will require streamlining the committee process and exceptional coordination between House and Senate as well as coordination and communication with the Administration.
2. *To provide* the American people with a timetable that Congress is prepared to follow to implement this report. We recognize and we hope that you recognize that your responsibility reaches beyond simply passing legislation. It also includes overseeing its implementation. Legislation that is enacted in response to these recommendations must not be allowed to gather dust until another tragedy happens and another Congress is faced with remedial legislation.
3. *To put aside* turf battles and partisan rivalries and act quickly to do everything that must be done to reduce our vulnerability to another terrorist attack.

In short, Mr. Chairman, the families and the entire country are looking to you and your colleagues to do your work quickly and to do it right... an awesome responsibility. You have a wonderful opportunity before you to take a leadership role. We commend you for calling this hearing today. We commend Mr. Shays and Ms. Maloney for forming a caucus for members committed to enacting all of the commission's recommendations. Hearings like this can be important. Please demonstrate to the American public that you are serious in your efforts.

If I could take a personal moment Mr. Chairman, I was blessed on November 23<sup>rd</sup> of last year to become the mother of a beautiful little girl named Jennifer, named after the Uncle she will never have the good fortune to know. The seriousness by which you take the job given to you by the

9/11 Commission will not only honor and create a positive legacy to those 3,063 souls who so tragically lost their lives on 9/11, but will determine whether Jennifer and millions of other children like her will grow up in a safe, secure and strong America.

Mr. Chairman, please do what is required. Act smartly and quickly. The families look forward to working closely with you and the rest of the committee to do what is necessary to implement the recommendations.

Chairman TOM DAVIS. Well, thank you all for some very moving and compelling testimony.

I'm going to start the questioning with Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

And I want to thank the three of you for being here and giving us your testimony. I know you speak not just for yourselves, but for others who are in the same circumstances of having suffered a loss as a result of the attack on September 11th.

We have had the Commission due to a great part because you have all insisted on it, and now we have those committee's recommendations.

Ms. WIENER, let me start with you. Secretary Lehman said that this is not a Chinese menu, these 40 recommendations. He thought that they ought to be considered as a whole, and we ought to pass all of these recommendations because they fit together and they make it work in its totality. Do you agree with that statement?

Ms. WIENER. Absolutely. I don't believe that you can cherry-pick the recommendations. They all, as I mentioned in my testimony, work in concert to deal with the huge problem before us and must be dealt with as a package.

Mr. WAXMAN. And, Ms. Eckert, is it the view of the Steering Committee of victims of September 11 that this be done, this legislation be done and adopted into law before we leave at the beginning of October?

Ms. ECKERT. Well, we think it should be done during the terms of office, that the people who are elected right now, before their term of office is over to the extent that is possible. We just think you should be productive all the way through the end of the year. And obviously the election is going to occupy some of your attention, but we don't want it to be totally diverted from what you need to do today.

Mr. WAXMAN. Well, I would hope the fact that we have an election would be a way to drive us all together and accept these recommendations. My fear is if it gets kicked over to a lame duck session or next year, that the sense of urgency will be dissipated, and that we won't have the driving force that we now have to enact the legislation in its entirety.

Ms. ECKERT. And it's just so important. I mean, the Commission's set such an incredible example of bipartisanship. And I think, you know, the committee members of this room have evidenced that as well. And we need to continue in that, and we hope that legislation will be enacted before the end of the year through bipartisan cooperation.

Mr. WAXMAN. Well, I want to join you in support of exactly that goal. I think we ought to move forward. I was somewhat critical in questioning whether President Bush's statements yesterday reflected that same commitment. The two witnesses that we had earlier, Secretary Lehman and Senator Kerrey, both thought it was a good start that the President came out and endorsed doing something, but I think that—I don't in any way mean this in a partisan way. I think we have to work together, not to put something forward that looks like the Commission's recommendations, but are just as effective; in fact, the very recommendations of the Commission.

I thank you very much for your testimony, and I look forward to working with you and my colleagues on both sides of the aisle to accomplish what needs to be accomplished now and should have been done much earlier, but we need it now just as much as we ever did. Thank you so much.

Chairman TOM DAVIS. Thank you.

Mr. Shays.

Mr. SHAYS. You both make us a bit speechless. You have been fighting this battle for so long, and your eloquence is still with you. We have before us a son Christian, a husband Sean, and a brother Jeff, and you give us some reality to what we need to be doing.

With that in mind, I know you want this as a package, but if you told me what was the recommendation you agreed with most strongly, even if it wasn't the most important, I would like to know that. I would like to know what was the recommendation that spoke mostly to your heart and said, yes.

Ms. ECKERT. To me, I think the September 11th event could have been stopped if intelligence had operated more effectively. So I do believe that there are global issues that are going to take a long time to implement; but I think right now, because of the threat, that we really need to address integration of the intelligence stovepipes, as everybody has called them. I think that's urgent.

Ms. WIENER. I think for me it's a group of recommendations. It's the group of recommendations dealing with the global strategy, and specifically what we need to do in the Muslim world and the Arab world in order to prevent the future growth of terrorism. And there was some discussion earlier about the madrassas, for example, and of all the efforts that—the recommendations that reflect the efforts that this government should take to provide economic stability and a better future, I think, in the Muslim world through education and through other such efforts. Those are the ones probably that are closest to my heart.

Ms. REGENHARD. I agree with my colleagues in both of their statements. And the thing that has touched my heart the most is that chapter 9, and the look at what happened to New York City, what happened, why 343 firefighters died is most inadequate. The finding that the radios were not the primary cause of firefighters' death really flies in the face of so much that we know, the families know, and that has already been printed.

Also, the end notes, especially 209, contain information that materially conflicts with what some of the family members have been told regarding specific units, regarding who heard what. We are very concerned about this. And what speaks to my heart is the need for congressional hearings into the entire communications disaster of September 11.

Mr. SHAYS. Ms. Regenhard, our committee has held hearings; the chairman has made sure that we have held hearings on our whole capacity to communicate and frequencies and equipment that's necessary. So we are looking at technology and so on. And he had mentioned to me that he wants us to followup on what you have requested. But I would like you to—so I would like to say we hear you.

Ms. REGENHARD. Thank you.

Mr. SHAYS. But I would like to ask you to go beyond just that area. If you could get the communication issue done, what would be the thing that then spoke to you most?

Ms. REGENHARD. Well, certainly looking at the entire 9/11 Commission report, looking at everything in totality, what speaks to me most is that there were levels of failure in every single area of this government, of this country. There was no one held accountable or responsible for what they did. I feel, and other families of the victims feel, that their loved ones died in vain, had a wrongful death without any correction. And certainly if these recommendations could be enacted very quickly, that would be something that speaks to me. However—

Mr. SHAYS. Let me ask you this, my time coming to a close here. You did not want the report to have any redacted parts to it. You wanted it to be all. And what I want you to speak to, if you could, is the recommendation that less things be so-called intelligence, classified, not available to the public. Could you all speak to me on that issue quickly?

Ms. REGENHARD. Yes. I would like to say that myself, the families of the victims, and my organization is very, very shocked to hear that the September 11 emergency tapes that occurred on September 11 plus the 500 interviews that were done with the New York City firefighters immediately after September 11, all this information, instead of being disclosed to the public, instead of being shared with the families, is going to be secreted and put into the National Archives for a minimum of 25 years. By the time that myself and other families members are able to find out what really happened to our sons and our husbands, we will really be perhaps not even in a capacity to really appreciate or understand it, or certainly not to take any action. That's one issue.

But only recently, reading the Commission report and reading the end notes, and realizing that there is information there that contradicts what the families of the firefighters have been told—I have just recently learned that even that, even that information is going to remain secreted and to be put in the National Archives—I am calling for full disclosure. Why on Earth, with all the sensitive declassified intelligence information that has been shared, and we have gained so much from it, why on Earth would the city of New York, why on Earth would the 9/11 Commission want to keep any information about what happened in those buildings, what happened with the radios, what happened with the communication, why would they want to keep that secret? I really call for full disclosure of all this information, of all the testimony so we can really find out what happened and how can we correct it.

Again, this is not about New York. There is a possibility of a massive communication failure and radio failure in any other city in this country. I want to prevent that, and I would like full disclosure.

Chairman TOM DAVIS. Thank you very much.

Mrs. Maloney.

Mrs. MALONEY. I would like to thank all the family members for their testimony and ask unanimous consent to place in the record a statement by the Family Steering Committee regarding the



President's acceptance of certain recommendations, if that's possible.

[The information referred to follows:]

**Statement of the Family Steering Committee  
Regarding the President's Acceptance of Certain Recommendations**

**August 3, 2004**

**Presidential Directives – More Specifics Needed**

It is encouraging to hear that President Bush mentioned that he will be issuing Presidential Directives by week's end. We are anxious to learn the specific nature of these Presidential Directives. We are hopeful that each Presidential Directive will establish strict deadlines for their complete implementation. Furthermore, we are hopeful that President Bush will clearly state where the funding will be found for these initiatives. The Family Steering Committee maintains that such specific guidance given by the President will further enhance the likelihood of these initiatives being expedited.

**The National Intelligence Director – More Specifics Needed**

We also respectfully request more specific information from the President about his vision regarding the power and position of the National Intelligence Director.

In contrast to the Commission's recommendations, the White House has indicated that it does not want the National Intelligence Director to be in the Executive Office of the President, and it has not yet addressed the second qualification – that the National Intelligence Director have budgetary control. In light of these differences, we respectfully request that President Bush clearly define the budgetary authorities and management capabilities of this new position.

*For example:*

What are the advantages of having the National Intelligence Director position outside the White House?

What mechanisms, such as budgetary control, will enable this individual to assert and maintain meaningful authority over the 15 intelligence agencies for which he/she is responsible?

If this new position does not have budgetary control, where will the budgetary control be held?

Without the authority of the White House, will the National Intelligence Director be able to overcome overbearing bureaucratic static within our national security apparatus?

If the National Intelligence Director does not have operational control, how will accountability be assigned?

In short, how will this individual not just be another "title" in another "box" shuffled around our national security apparatus?

The concept of a National Intelligence Director is not novel. It has been broached both by the President's Foreign Intelligence Advisory Board (the Scowcroft Report) and recommended by the Joint Inquiry of Congress' Final Report.

Because the concept of a National Intelligence Director is not a novel one, we must question why this position has not been created in the past three years. We would hope that any previous opposition from the Pentagon or certain congressional committees would yield to the best interests of national security.

We appreciate ancillary concerns over the shifting of budgetary controls and management power. Nevertheless, three years post 9/11 this nation needs a National Intelligence Director equipped with all authorities as envisioned by the 9/11 Commission. All members of Congress and officials of the Department of Defense must recognize that the time has come to accept the concept of a National Intelligence Director with budgetary authority over all 15 intelligence agencies. We remain hopeful that President Bush will make this clear to both the Pentagon and the various congressional committees. The nation will not tolerate any further delay in the immediate implementation of this vital position because of any real or perceived "turf wars".

We are also hopeful that President Bush will assuage concerns that the National Intelligence Director might be persuaded by "policy," by vetting potential appointees to Congress and the American people immediately. Certainly, the integrity and competence of the individual who might fill this post will play a key role in whether the American people can feel confident with regard to the creation of this new position. The American public must trust that any National Intelligence Director will not infringe upon privacy rights, separations of powers principles, or abuse his/her power. We firmly believe that the individual must be apolitical, nonpartisan, highly qualified with a keen imagination, and capable of encouraging the sharing of information across intelligence agencies.

**August Hearing Schedule--Need for Attendance**

We encourage all Americans to read the Commission's Final Report. We also encourage all Senators and Congressmen to attend the upcoming hearings throughout the month of August. Admittedly, not all elected representatives can directly participate in these hearings. Nevertheless, all elected representatives can learn from these hearings so that they are better prepared to support this legislation once Congress reconvenes in September. Thus, we call upon all members of Congress and all Administration officials to attend the public hearings scheduled for the month of August. Their attendance at these hearings will send a clear message to the American people that our national security is a number one priority.

**Legislative Language Put Forth by Congress**

All legislative bills encompassing these recommendations must be stand-alone bills. They should not have attachments. Towards that end, the American people will be able to clearly discern who supports these recommendations and who does not. All recommendations must be implemented into law in their purest form as set out by the Commission so as to not lose the integrity of the Commission's intent.

As always, we look forward to working cooperatively with the President and our Congress so that these vital recommendations can be implemented into sound legislation prior to the next attack.

In conclusion, we look forward to President Bush's endorsement of the remaining 39 recommendations.

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Mrs. MALONEY. I would also like to followup on what Ms. Sally Regenhard was saying. This is a lot of contradiction over the radios, and I, for one, Mr. Chairman, see absolutely no reason why we should not look at these tapes and look at this information, especially since the preceding panel talked about the need to have dissent, to have all of the information out there.

To this day some people say the radios worked; some people say they don't. One leading official in the fire department told me the other day, "The radios that did not work on September 11 still do not work."

We need to look at this information in order to protect our citizens and our first responders in other situations.

On a personal note, on September 11 I went to the One Place Plaza, which was the temporary headquarters for response given that our headquarters were destroyed on September 11. The one thing I was asked to do was to get radios, because our radios do not work. I reached out to Bill Young, chairman of Appropriations, and he arranged to fly in military radios so that we could communicate on the mound when we were looking for survivors.

So I would like to followup on your statement, Ms. Regenhard. What do you think we would gain from these hearings that we have not already heard? What benefit would be going further into exploring what exactly happened and look at all relevant documents? What would we gain?

Ms. REGENHARD. I think the benefit would be, first of all, that we could get a true accounting of what really happened in those buildings. What were the factors that led to this demise of so many first responders; not only firefighters, but police officers and Port Authority officers? We could examine all the issues and find out—the relevance to today is we can find out what has been corrected and what still needs to be corrected. Without a thorough, comprehensive examination of all the issues, all the facts, we will never be able to know that we have corrected the problems.

We cannot let anything remain hidden. There is no reason for it. We have to have the courage to really see why there was such a massive failure, and, in doing so, protect not only the city of New York, but, as I said, the ramifications are across this country in every State. If there were another catastrophe, how do we know that emergency fire radios in different States could work? How do we know? We had so many shortcomings especially in the 911 system; when people called up, they wanted to know what should they do, how do they get out of the building, should they stay, should they go up, should they go down. There was no system between the Police Department of the city of New York and the fire department and the 911 emergency operators.

That cannot be allowed to continue. Every State needs to have a framework whereby if there is a major catastrophe, and people are calling and saying, what should I do, it should not be up to a minimally trained 911 operator who has no input from the fire department or from the police department or from the HAZMAT units or the emergency services or environmental protection. We have to create a better system.

In the past, we said we could never anticipate what happened. That's very questionable. However, be that as it may, we can an-

ticipate that more terrorist attacks may be coming. And another matter that we can look into is to see what happened in that building and how did that building fail? And perhaps we can look at strengthening building codes practices, and think, when we are building, toward blast-resistant and antiterrorist construction.

Thank you very much.

Mrs. MALONEY. I would like to very briefly ask all of the panelists to comment on how you view the 9/11 Commission should go forward. Some think it should be privately funded; some think its responsibility should be assumed by Congress. What do you see for the future of what has been, I think, a remarkable example of public service? And I ask all of you to comment.

Ms. ECKERT. I agree that they have a continuing role to educate and to be available for hearings like this one. They have indicated they themselves would prefer private funding, and we support them in that. On the other hand, if for some reason that funding isn't available, I do think that their role—they do have an important role. And they are not going to stay together the same way and operate the same way they have with subpoena power and calling hearings that people have to attend. I don't think they envision doing that, and neither do we. But they are an important source of educating the public and keeping everybody aware and focused, and if it comes to pass that Congress wants to appropriate money for that endeavor, that would be fine.

Mrs. MALONEY. Ms. Wiener.

Ms. WIENER. I would have to agree with Beverly. And I would have to say that I would defer to the Commission itself and its preferences in this regard for private funding. They do play a critical role in the future to keep this issue alive and make sure that the recommendations do move forward into action. And so I would also hope that if for whatever reason private funding does not materialize, then Congress would step in to provide the support that's needed.

Ms. REGENHARD. I would like to consider perhaps a combination of private funding and the Federal Government funding, Congress. And, also, I would like to see funding for technology for the New York City Fire Department come really from technology that's available through the Department of Defense currently. I think—and not only in the New York City Fire Department, but every major fire department, police department, and emergency service throughout this country. They should be able to take advantage of the Department of Defense technology. It's there. You know, let's use it to protect the American public, the people that you represent so well.

And I want to thank you, Mrs. Maloney, for your leadership. I want to thank every single person here for the wonderful job that you are doing. And we appreciate what you are doing, because you are helping to protect America. Thank you.

Chairman TOM DAVIS. Thank you very much.

Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman.

Ms. Regenhard, when you were talking about the issues of the equipment and the training for both the fire department and the police department, the response, it was an issue that perhaps you

heard in the first panel that I had raised as an issue and share with you your concern. I notice in your testimony, you say review of chapter 12 reveals that only three recommendations deal with the all complex issues that surfaced in New York City and continue to haunt us to this day, and that you would have hoped for more specific recommendations.

My first question, the city of New York had a weapons of mass destruction/terrorist response exercise a month prior to September 11th, and what struck me in reading the 9/11 report is that when I reread the domestic preparedness report of the exercise that occurred in Dayton and with the September 11 incident being a real incident, they read very similar. In the city of Dayton's report it says, participants agree that the amount of information transmitted in and out of the command post was overwhelming. Fire department engine or truck company personnel should be trained how to properly support on a joint command post with the incident command and management, managing the incident by identifying issues and reminding them to request necessary resources required for this type of incident. Participants agreed direct radio communications between fire department and police department units would have been beneficial and desirable. Improving interagency incident communications should be addressed.

All of the recommendations, all of what occurred in an exercise occurred in the actual incident that we had in September 11th in New York.

Ms. REGENHARD. Yes.

Mr. TURNER. And I said earlier that John Ashcroft had attended the exercise that we had in Dayton. I know that you have a continuing concern that we are not doing enough in this.

Chairman Shays, the chairman of our national security subcommittee, has been really pushing on the issue of what we needed to do for first responders in case all of our efforts on intelligence still result in our need for our first responders to be there defending our country. I want to give you another opportunity to speak on that.

Ms. REGENHARD. Yes. I want to say it's really amazing and both horrifying that this type of procedure exists. The knowledge is there. You know, it wasn't a matter that New York City, you know, the technology didn't exist or whatever. The knowledge was there. What you described was something that was well known, it was an established procedure. But yet how could a city like New York, purportedly the greatest city in the world, how could they not have taken part in any of this technology, in any of this practice and procedures? How could we have been left so defenseless, lacking an incident command structure?

You know that on September 11 the police department did not and could not communicate with the fire department, so that the—when the second tower—the police department and the fire department and the city of New York for decades, I imagine, have had a turf war. Instead of working together in an incident command structure under a unified head, at times they actually engaged in fisticuffs.

This is something that has gone on and on, and it has not been addressed. It has been a failure of leadership in the city of New

York for quite some time to not bring New York City up to this level of technology and practice that you described.

I hate to—I am sorry to say this: We have made some progress since September 11, but I have to tell you the city of New York still does not have an adequate incident command structure, and there is no reason for this. We really need to look at what is happening right now in the city of New York and what needs to be done to assure that this catastrophe will not happen again. We have a long way to go.

The other aspect is the radios that you mentioned. The radios that failed in the World Trade Center attack in 1993 were the same radios that the New York City Fire Department were sent into the World Trade Center with in 2001. This is an outrage. I would like you to look into this. How could this happen? If this could happen in New York City, what is happening in other States? What is happening in other cities? Do we have such a failure of responsibility?

You know, I deeply regret the lives of these beautiful people, these young, beautiful people—there were 97 unmarried firefighters lost in the World Trade Center. There were 17 probationary firefighters, including my son. And the rest of the 343 wonderful, beautiful people, military people, Marines, people who were the salt of the Earth, they met a needless death because of the failure of emergency preparedness in the city of New York—lack of incident command structure, lack of a police department and fire department that were able to work together, and lack of radios that worked.

This is simple. This is not something that is so beyond the scope of technology. We should have had it. We need to look at this. We need to find out how did this happen to this city? How did this happen?

My son believed in the city of New York. He loved the city of New York. He loved his country. These are only 3 of 12 medals and awards that he won; and the saddest part is, when I was looking at these medals closer last night, one of the medals in the back has three words: “fidelity, zeal, obedience.” My son and those firefighters would have obeyed an order to leave that building. My son was betrayed by a system that put him in there with radios that did not work.

My son was a proud Marine. He obeyed orders. He was a shining example of the best of this country. I want to know why he was sent into a situation with equipment that did not work, a hopeless situation. And if I can save the sons and husbands of other people in the future, that is my goal. That is what I want to do.

Chairman TOM DAVIS. Thank you.

Mr. Davis, any questions?

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman.

I wanted to thank all three of you for your very well-thought-out, developed and passionate testimony. Even though you are not elected officials, you know about timetables, you know about schedules, and you know about the legislative process. I think it may have been you, Ms. Eckert, who indicated that terrorism did not take a recess or did not have a recess.



While most people that I hear are in agreement that the recommendations need to be implemented, we are already beginning to hear some people suggest that there may not be enough time this year or that maybe the implementation should occur after the election. It seems to me that we need to move as expeditiously as is possible in order to put in place as quickly as we can this set of recommendations.

Do you think that there is—and each of you might respond—there is actually enough time to do a good review of looking at the recommendations, going through the process, before the election in November, rather than after the election?

Ms. ECKERT. I do, because, even this position of director of national intelligence is not new. We are new at this, and we are trying to learn the ropes and to keep up. But, honestly, as far as I have heard, this debate has been going on since 1947. So I think the time for debate on something like that is over. It failed. We did not have a director of national intelligence, and therefore the process did not work.

I think if people simply acknowledge you do have the information. The Commission worked long and hard to compile, to do these hearings and get testimony, and I know you are going to hear from some of the same people. It is your responsibility to do that.

But I want to use the phrase expedited. This is not a real good example of an expedited hearing, because I know it is lasting very long. But I think it can be done. I think it can be done, if there is zeal, energy and commitment.

Ms. WIENER. If I could add to this, we certainly recognize that a number of the recommendations are longer term. But longer term does not mean you start later. You still start now. It just may take a longer amount of time to get them ultimately implemented.

My fear is if we wait until after the election to start even discussing some of these other recommendations that we will never get to them.

There are—looking at the list again—the ones closest to my heart: Preventing the continued growth of Islamic terrorism, define the message, stand as an example of moral leadership in the world—quoting from the report—over an agenda of opportunity that provides support for economic education and openness. You can't achieve those by election day. I wish you could. But certainly the discussion has to begin now or it will never occur.

So I urge you that when we say all the recommendations have to be done simultaneously, we are talking for some of the longer-term ones about at least starting the discussion simultaneously. Because some of these will certainly require a certain amount of debate, and they all don't—for some of these, I recognize it is not just passing a bill. There is work that has to be done within agencies. There are policy shifts that have to occur. But, please, I really urge you to start thinking about them now.

Ms. REGENHARD. I have to say again I agree with my colleagues on their statements. I have to also say that I really appreciated hearing from Ms. Watson her comments regarding to keep some of these Commission members involved. I think it would be a shame to have this wonderful Commission just go away now and leave it up to agencies and other people to start reinventing the wheel.

In some way, shape or form, I would like to see people who have become experts in this arduous process to be part of the solution now, part of the implementation. Let them guide the agencies and people whose responsibility it will be to enact it in some type of way. Keep them connected with it and keep that momentum.

One of the Congresspersons said something about losing the momentum, you know? We cannot really lose the momentum, because so much of life is in the momentum, and we don't have time to waste to lose it.

Mr. DAVIS OF ILLINOIS. I certainly agree with each of you, and I want to commend you again for your courage, tenacity and fortitude and thank you very much for your testimony.

Chairman TOM DAVIS. Thank you.

Mrs. Blackburn.

Mrs. BLACKBURN. Thank you, Mr. Chairman and I thank you for the extra effort today to bring us here for the hearing.

I thank all of you, each one of you, for taking your time to come and to talk with us. I appreciate the comments that you just made about what we need to have the debate, and there will be policy shifts that we will need, too, that will need to take place.

I think that we can all agree that the Commission and this committee agree that information sharing is essential, that increasing the information sharing is essential; and the report definitely makes it very clear that has to be increased at all levels of government, the local, the State and the Federal Government, if we are going to combat terrorism and the terrorists that are causing these activities.

It seems like sometimes political decisions allow loopholes or cause loopholes in that data that is available for sharing. One of the things we have seen is that the Department of Homeland Security has made a decision to accept from the U.S.-Visit border crossing system people entering from Canada and Mexico, and we already know that al Qaeda is trying to sneak terrorists in posing as Mexican nationals. I would like to hear from each one of you if you agree that the U.S.-Visit system should apply to everybody coming into this country, everyone that is not a U.S. citizen coming into this country. Because it seems that we are only going to be able to address the situation and make some good decisions if we have a complete data set that we are working from.

I would like to hear from each of you on a response for that.

Ms. ECKERT. I would say—and I am not an expert on that topic—but I would say that until we have a more effective system of screening people that we do need to make it universal. We have, I don't know, 12 million illegals here already. Clearly, we make it too easy for people to infiltrate. We need to be able to identify people who are terrorists who are already here, but clearly we need to stop them before they enter the country.

We made exceptions before. We had—what was it called—Visa Express, I believe, that allowed the Saudis—they actually targeted that system and used it because they knew how easy it was to get into the United States through that.

So I think that is just an example. We have to learn the lessons of our mistakes before. So without necessarily elaborating on any one system, I don't think that we should have exceptions.

Ms. WIENER. I am not an expert on that system either, but it would appear to me that we would be better off without exceptions, and it should be universally applied. But, again, I do need to state I am certainly no expert on this system.

Ms. REGENHARD. I would like to thank you very much for that question and tell you that the families of the victims have formed many different groups. One of the groups that was formed by the families of the victims—and certainly many of us are members here—is 9/11 Families for a Secure America. This is a group of people who have lost their loved ones who are working for the driver's license reform legislation and for the issues that you just mentioned. And, yes, they agree, we agree, it should be across the board. We cannot let certain people in and then not let someone else in and pay the price of the people who sneak in some way.

We need to really get strict about our border security. We need, of course, while looking with certainly a sharper eye at fundamental Islamic militants or people from known terrorist countries, we certainly have to look with a more critical eye. However, we need to have strict guidelines across the board, and whether it is Canada or Mexico or whether it is another country, yes, we have to have that. Until we can re-refine it in such a way, we need to really get serious about immigration.

All of these issues that you mentioned today, there were failures across the board; and if any one of them could have been, you know, not failed, even one could have stopped it, that is how I personally feel.

So, yes, we have to get serious about immigration and drivers' licenses.

Chairman TOM DAVIS. Thank you very much.

Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

I think everybody understands the kind of loss that each of you suffered and other victims suffered can be paralyzing. The fact that for all of you, you have just turned that pain into public service, as I mentioned earlier, is beyond commendable. It is absolutely inspiring, and I hope that you are able to inspire the prompt action that I think this warrants and deserves.

One of you mentioned earlier about having a Web site or something that is going to keep people's feet to the fire, and I think it is an excellent idea. I commend Chris Shays and Mrs. Maloney for forming a caucus to support the recommendations.

Just for what it might offer to you as a benchmark on it, we could certainly have a bill drafted almost immediately with the help of legislative counsel here that encompasses and embodies all of the recommendations of this report can be implemented soon. We could have committee hearings in almost no time at all.

During the Homeland Security consideration, this committee met and marked up the bill in one long day, and at least two other committees with jurisdiction did the same, and then a select committee that the Speaker put in place held a couple of days of hearings, and then the matter went to the floor. So these things can move.

If it goes to the floor for debate, I obviously think we should have more than the customary 1 hour that sometimes important matters are given, but it need not go on for weeks or months.

And if it isn't brought to the floor immediately, there is a process around here called discharge petition that you all probably have heard of in another context where we could demand that somebody file a discharge petition and people sign on until we get a majority that forces it to the floor, and that would be where your Web site or whatever would be instructive to people to see who is for moving this bill and who is not for moving it. Not certainly who is voting for it or who is voting against it, because we have to respect people's opinions about what they feel about the actual legislation, but who is moving it forward for consideration and debate and deliberation, during which time it could be amended or amendments could be offered, and then it could be passed.

This certainly, in my estimation, could be done before the anniversary date of September 11, 2004, but definitely by the end of this year, and that is even with time off for other things.

So if that is any kind of a benchmark to you, I offer it to you, and we have past examples of how we have moved rather quickly on things.

Getting aside from some of the particulars on the security matters, I wanted to ask for your respective opinions about the broader issue of Islamic terrorism and the comments made in the report about the fact that we have to move and do something about that.

What generally has been the reaction of the families with respect to those statements to talk about offering an agenda of opportunity that includes support for public education and economic solution and openness, defining the message and standing with it, moral leadership in the world and those types of things? Is the Steering Committee and other families solidly behind those statements? Do you want to expand on those at all?

Ms. WIENER. Two comments. First of all, on the first point you made about how quickly you can move, I just want to say thank you. I hope that happens.

Also, the Family Steering Committee and the families in general, through our Web site as well as other means, are very prepared and willing to help you in whatever way we can to help legislation move through grassroots action. We are certainly most of us are located in the Northeast corridor. There are relatives everywhere. We are throughout the country.

Mr. TIERNEY. Let me just inject, you should know, so it hopefully gives you some comfort on this, that there have been bills filed by Members of this Congress, without mentioning the names, but there have been bills that have been sitting there for months without yet being moved for hearing or not. So there are people willing to act on that, and you know who they are, can find out who they are. But there are certainly vehicles already filed for parts of this, but I think we can get one solid vehicle that encompasses it all and move that, too.

Sorry to interrupt you.

Ms. WIENER. I appreciate that, and I think we would very much welcome an opportunity to sit down with you outside the hearing process, sit down with you in your offices and talk about the bills that have been filed and which ones we should help move. That would be something we would be very anxious to do.

With regard to your second point or your question, I can't speak for all the families on that, but I know that there has been discussion certainly in the Family Steering Committee and beyond where families are concerned with regard to the issues raised by the Commission in terms of the global strategy. And certainly we are concerned not only with protecting our homeland and doing everything we can to reorganize the debt shares—I think someone used that term earlier—but we also need and fully recognize there needs to be significant policy shifts and actions taken by our government to prevent the future growth of terrorism. Because, as we have all heard from the Pew opinion polls and other studies that have been done, there certainly is not a love for us in the rest of the world and certainly in that part of the world. If we do nothing about that the problem becomes even much larger than we can imagine right now. That failure of imagination the commissioners talked about I think is only going to grow.

So certainly there is a recognition on the part of a lot of the families that we need to do something in order to address that. I use the term "something" because something I know I have been struggling with ever since the Commission came out with its report is how do you address those things. This is where a meeting might be helpful. I don't know that it is simply legislation, because some of these are policy initiatives. But there are also some very simple things that the Commission mentioned in terms of additional funding, for example, for broadcast and TV broadcasts in the Islamic world to get our message out. The funding of the schools has been mentioned already several times.

So there are certainly small things that can be done and large things as well. I think Commissioner Kerrey mentioned this morning we shouldn't forget those small things. But in terms of the larger group of recommendations and the concept of a global strategy, certainly the families, as far as I am aware, are certainly behind that. When we say all the recommendations need to be implemented, we certainly include those recommendations.

Mr. TIERNEY. I may leave you with the thought that I think leadership has a great deal to do with that in setting the tone of the Nation.

Ms. REGENHARD. I would like to add, regarding your question, that we can never forget that fundamentalist Islamic militants hate us; and their main goal is to destroy this country. That being said, I favor a multi-disciplinary approach. In addition to the awareness and the hyper-vigilance that we must have against our enemies, I also favor a disciplinary approach of education and many other different ways to deal with this serious problem.

But these people are in our midst. They proved that on September 11. The recent terrorist plot or the information that we found out only yesterday proves these people are here, they are taking pictures, they are planning, they are here. We have to do a better job of tracking these people, finding out where the money is going. We need to do that. That is No. 1.

No. 2 and No. 3 can be the multi-disciplinary approach to try to change their philosophies and try to stop them from hating us and trying to kill us.

Ms. ECKERT. I have one short comment, and that it is an overall policy issue. It has to do with our dependence on foreign oil. I think that we really need some changes in that regard, because it has caused this country to make unholy alliances and support corrupt regimes. So I think we can—every American can address that by fuel consumption. But we can address it as a Nation by alternative sources of energy.

Mr. SHAYS [presiding]. Thank you.

[The prepared statement of Hon. John F. Tierney follows:]

**Opening Statement of Congressman John F. Tierney  
Committee on Government Reform**

**“Moving from ‘Need to Know’ to ‘Need to Share’:  
A Review of the 9/11 Commission’s Recommendations”  
August 3, 2004**

Thank you Chairman Davis and Congressman Waxman for holding this hearing today. I thank the witnesses for making the time to be at today’s hearing and I look forward to receiving the benefit of their thinking on this important matter.

I commend the families who lost loved ones on September 11, 2001 who turned private pain into public service in pushing for the creation of the 9/11 Commission, challenging the federal government for answers to causes of the 9/11 attacks and solutions to prevent such acts in the future.

Now, nearly three years later, as the 9/11 Commission Report sets forth our capacity to better ensure the safety and security of all Americans, the question is whether we have the political will to do so. Today, we begin the first in a series of Government Reform Committee hearings on this critical issue and I would hope that President Bush encourages his colleagues who control the Congress to act with all deliberate speed to turn the Commission’s unanimous bipartisan recommendations into concrete legislative reality.

There is no reason that, given the exhaustive work of the Commission, Congress could not have in place by September 11, 2004 the necessary legislative changes to improve our intelligence systems. As we mark the third anniversary of the attacks, we must salute the 9/11 families with results and our first responders with resources.

Mr. SHAYS. At this time, the Chair recognizes Mr. McHugh.

Mr. MCHUGH. Thank you, Mr. Chairman.

Ladies, let me just add my words of welcome and admiration. I am in awe of your courage, of how you have taken a tragic circumstance and made it a positive force in memory of your lost loved ones.

One of you said earlier that your loved one died in vain. I understood the reference, but I think through your work and through hopefully the work of this Congress and this committee, we can ensure that on a very important level that doesn't happen. I know that is a great motivation for you.

As I said, I am in awe of you. Thank you for gracing us here today.

I think you heard a little bit earlier some of the concerns about civil liberties. I will say to my colleagues I have found some of the comments earlier today and pontificating rather interesting. The fact of the matter is we are going to have a real struggle in this Congress when we get to issues about civil liberties, about transgression of those individual rights.

I think it was pretty well evidenced just a few weeks ago on the House floor where we had an initiative on the floor that would have placed sanctions on communities that today are refusing to deal with the Immigration and Naturalization Service and Customs and other Federal agencies to get ahold of this immigration issue. This House, some of my colleagues who have been most vociferous today in their support of this blanket initiative, voted that down. I was stunned.

We actually sanctioned in the House communities in this Nation not dealing with immigration authorities. That is where we are, and we have to be I think as realistic as these ladies have been and the surviving families in general about the challenge.

One of the greatest assets I think I found in the pages of this report is, as Senator Kerrey said, they identified the threat. It is Islamic fundamentalists, terrorism, and to call it anything else in the interest of PC is a huge, huge disservice. Whether we are talking about the Patriot Act, whether we are talking about the initiative to identify through biometrics or others who is coming into this Nation, who is leaving, etc., we need to get serious about the larger incentive. To the extent this report lets us do that and get beyond the political correctness of the moment, I think it is important.

My simple question to you ladies would be, drawing on your experiences not just on that terrible day but through this process, what would you say to the American Civil Liberties Union, for example, that has already expressed some concerns about portions of this report, as to the need to step forward and judiciously but perhaps in different ways choose between those civil liberties that we all cherish and the laws and the initiatives contained in this report? Because it is going to be a question we have to deal with.

Ms. ECKERT. I think as long as there are checks and balances, there is oversight, there is recourse for people, that it doesn't get out of control. I think some of the sensitivities about our civil liberties are an extreme reaction. Let's say for privacy, because we don't have a lot of privacy. Let's say whether we fly or not, or took



a particular airline flight. I know since I charged this to my credit card the record is there.

So as a family member who suffered the direct consequences of lack of security, I tend to want to try the experiment of going further than we have in terms of information that is necessary in order to identify suspicious behavior. But, as I said, I think it is really necessary that there is oversight.

I think another part of the equation I heard at one of the hearings, someone said we don't need all of this, because we pretty much know the 75,000 people or so who are suspects, and we should be focusing on that and not everybody in the entire country. So I think there is some merit to that.

I just hope that whatever is put into place does it. You can have too much data, and it is not going to mean anything. So I think we should focus on those areas where people, terrorists, are known to utilize, for lack of a better word, methods and focus there, and I think we need to have protection of our civil liberties. We already do have that, but if there are going to be privacy issues that are more in the forefront, then I think we should strengthen the protections as well.

Mr. MCHUGH. Thank you.

Mr. SHAYS. At this time, the Chair would recognize Chris Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman.

We have covered a lot of territory today, and I just wanted to take my time to first thank you for your powerful and eloquent testimony and thank you for dedicating yourselves to doing everything in your power to prevent another September 11 and to prevent other families from suffering the terrible loss that you have.

My colleague, Mr. Tierney, talked about the potential timetable in the Congress, and I just want to underscore that point and also add that the parts of the reform that deal with congressional oversight can be done even more quickly in the sense they don't even require any interaction with the executive branch. We can do that on our own. It affects only the Congress. It does not necessarily require getting any testimony or input from the executive branch. Yet I predict that will be one of the most difficult pieces to put in place, even though it is totally under control and it is our own House.

So I ask you as you monitor the situation to make sure you hold Congress's feet to the fire and not just with respect to the recommendations that deal with the executive branch but our own House as well.

I think you know better than anybody that you were the driving force behind the creation of the 9/11 Commission. There are many people that did not want to see the Commission established. If it had not been for your voices, we would not have the Commission, we would not have the recommendations we have heard today from the Commission and from all of you.

I think the same may well be true, unfortunately, with respect to the recommendations of the Commission. Without your continued driving force behind these recommendations, there is a real danger, as I know you recognize from your testimony, that many of them will be left by the wayside.

Even today, you have heard differences, interpretations about the remarks made by the President yesterday. I am not going to try and interpret his remarks. I would just ask you in the days ahead, rather than us debating exactly what he meant, to make sure you work with us to seek clarification. Because, as Secretary Lehman said, this is not a Chinese menu. These are all parts of a whole, and if you take parts of the recommendation without enacting another part, it really does upset the balance within them.

So thank you for your testimony. If you have anything to add with respect to your plans in putting—maintaining public pressure on the Congress, I would welcome it.

Ms. WIENER. I thank you for your comments, and I want to assure you that all the families will push you as hard as we are going to push the President and the executive branch. There has already been discussion about how critically important congressional oversight is, and changes in the committee structure is discussed in the Commission's report. We will be pushing you as well, we promise.

Ms. REGENHARD. I would like to add something regarding the bills and regarding the procession of this legislation, it being posted on the Web site and the families during committee monitoring it. Certainly things such as immigration reform issues will be one of the types of things that we will be looking at and who is really supporting this and who is working against this.

I wanted to say one word about immigration reform. The families of the victims are certainly concerned with illegal immigration. We certainly all—I am a child of immigrants myself. I am a first-generation American. My parents were legal immigrants to this country. So a lot of times when we speak about illegal immigration there is really a confusion regarding what exactly is said.

We are certainly for legal immigration in this country. We support it. It is a country of immigrants. It will continue to be so, to our credit. But it is illegal immigration that has to be monitored, it has to be stopped, if we want to remain safe.

Ms. ECKERT. I think people forget we have an incredibly compassionate immigration policy. We do let an enormous number of people here legally, and I think we have to keep that in mind. It is important, and there are some programs—sometimes there is talk of amnesty as some kind of solution. Before we consider something like that, I think the public needs to know that Ramsey Yusef was a beneficiary—he is the World Trade Center bomber in 1993. He is a beneficiary of amnesty. So any of these programs have to be dealt with very carefully.

Mr. SHAYS. Thank you.

What we will do is Mr. Platts has agreed to allow Mr. Lynch to go. I think he has to catch a plane. You have the floor.

Mr. LYNCH. Thank you, Mr. Chairman, and my colleagues.

I want to thank you and all the families who have been willing to come here and help this committee in its work.

So much of today's testimony from the earlier panel and yourselves focuses on accountability, and so much of this report—and it is stunning in its simplicity and directness—focuses on accountability. Whether it is the accountability created by intelligence sharing or immigration reform which you have spoken about, by oversight of the Commission or continuity of the Commission itself,

it is the thread that runs through all of what you are talking about.

I just wanted to ask you how important whatever we adopt in the end—and we all hope it is basically what the Commission has recommended here, but how important is that strain of accountability in getting the answers that you are looking for, at trying to find out about your loved ones and their last hours and in terms of getting some reliability in terms of every firefighter or every public servant who answers a similar call? How important is the fact that accountability be in that plan that we come up with eventually through this legislation?

Ms. REGENHARD. I would like to say that certainly accountability and responsibility are the hallmarks of a democratic society. In September 11, we have had an absence of accountability and responsibility, and the people who perished were pinnacles of accountability and responsibility. They led lives characterized by that. And yet people who caused their death, through omission or through commission, there has been no accountability and responsibility for all the levels, if it is the INS, the DOT, the CIA, the FBI. Members of our Family Steering Committee 2 years ago sat in the joint Intelligence Committee hearings, and we saw the FBI person with the hood on weeping and saying he tried to tell, he tried to share, people did not want to listen to him. He begged them and so on and so forth.

Every time we hear that this plot could have been stopped in some way, or at least a bump in the road, it is a knife in the heart of the families.

Yes, accountability and responsibility mean everything to us, everything, and unless we have that, what is the impetus? What is going to force people to do their job and to be responsible?

Yes, I want that. My son lived his life by accountability and responsibility. He deserves that as a legacy to protect people in the future.

Ms. ECKERT. Well, I don't really know that I can add to that. The report is replete with a flavor that no one was in charge, so that the Commission did not make an effort or—I am sorry, they sidestepped I think for good reasons in order to focus on the reforms, but names were not named. But I think that is a one-time pass.

I think we do have to have somebody who is in charge and who is accountable, and that is why the Director of National Intelligence position, with authority, is so important, because with that there will be accountability.

Ms. WIENER. I think what Sally said is key, in that it is only through accountability that you can ensure that there is some mechanism that people have an incentive essentially to do the right thing, because if they do not, they will be held accountable. So accountability is certainly a key to make sure that this is not repeated.

Mr. LYNCH. I just want to emphasize what Mr. Tierney spoke of earlier, and that is the good that you can do, the moral imperative that you have at your command, the passion that you have, because of what you have gone through. Even though we talk incessantly about the politics and how things might get bogged down,

there is no politics in the face of that type of testimony, the testimony that we have heard from you today, and it will fall away, it will fall away. We need the power of your passion and your conviction on behalf of your loved ones, and we need to have that power to help move this process.

Thank you.

Mr. SHAYS. I thank the gentleman.

The Chair recognizes Mr. Platts.

Mr. PLATTS. I want to add my words of sympathy to our witnesses as well as other family members here who have lost loved ones. As best we try, there is no way we can truly feel the emotions that you each do. Your courage in being here with us is certainly commendable, and your ability to take very personal tragedies and seek to turn them into public good is remarkable, and that is what you are doing by your persistence in working with the Commission and being here today and assuring all of us that you are going to continue to keep the pressure on.

Because in the earlier panel Representative Van Hollen asked Senator Kerrey, based on his experience in the Senate, how can we succeed in transforming this place, Congress, the House and Senate. And I think the best answer to that question really is you, because you speak with that personal passion because it was your loved ones. That is important in overcoming the innate nature of this institution and its resistance to change and the turf battles and the unfortunate partisanship. Your message and your efforts will help us overcome that and truly embrace these recommendations, embrace the good work of the Commission and allow us to truly ensure a safer America.

I personally thank you for your efforts. As the father of two young children who wants them to grow up in a safe and strong America, what we do with this effort is critical to their future. So we are looking out not just for the memories and legacies of your own loved ones but for the loved ones of all Americans. I commend you for that.

Thank you, Mr. Chairman.

Ms. REGENHARD. Thank you very much.

Mr. SHAYS. I thank the gentleman.

[The prepared statement of Hon. Todd Russell Platts follows:]

COMMITTEE ON GOVERNMENT REFORM  
SUBCOMMITTEE ON GOVERNMENT EFFICIENCY AND FINANCIAL MANAGEMENT  
TODD R. PLATTS, CHAIRMAN



*Opening Statement*  
of  
**Chairman Todd Russell Platts**  
August 3, 2004

*Oversight Hearing*  
***“Moving from Need-to-Know to Need-to-Share:  
A Review of the 9-11 Commission’s Recommendations”***

Thank you, Chairman Davis, for calling this important hearing today. As we have seen with the creation of the Department of Homeland Security, great economies of scale and increased effectiveness can be achieved by reorganizing the way the government operates. In the case of fighting terrorism, cooperation and synergy are critical.

The findings in the Commission’s report echo concerns we see, from a management perspective, throughout the Federal government. As Chairman of the Subcommittee on Government Efficiency and Financial Management, I have seen how stove-piped operations hinder effectiveness. Convoluted chains of command and control make it difficult to effect real change and difficult to lead. As the report aptly stated, the events of 9/11 were evidence of “the government’s broader inability to adapt how it manages problems to meet the new challenges of the 21<sup>st</sup> Century.”

As we transform our government to counter the threat of terrorism, we must also be able to adapt to the next threat even as we continue to use our intelligence assets in the traditional sense. When setting priorities and allocating resources, we need to ensure that our goals are clear and that we see the whole universe of the intelligence and law enforcement community. In other words, we can’t just do what’s politically expedient. Many of the recommendations focus on the long term. This is where we will see real change, and this is where Congress should make a commitment to seeing the recommendations through. Of particular importance is the creation of a National Intelligence Director. Building on President Bush’s call to action, Congress must move swiftly on this recommendation, but we must do it right. This new office must have the appropriate authority to effect real change.

I applaud the Commission for its thorough and forward-looking approach. The innovative thinking espoused in the recommendations will improve not only the workings of the intelligence community but also the management of the entire Federal government. I look forward to working with the President, as well as my colleagues in the House and Senate, to address these problems in the most effective manner possible.

Mr. SHAYS. At this time, the Chair would recognize Ms. Watson.

Ms. WATSON. Again, we appreciate and we thank you for your sincere devotion to all of our causes.

I just wanted to say very quickly, I feel the need to move very quickly, as you do, and I would hope that you would take an example of MADD, Mothers Against Drunk Driving, which originated in the capital, Sacramento, CA. Many years ago, a young girl was killed, and her mother organized a group of neighbors, and now they are nationwide.

Ms. Eckert, you said that there are relatives all over the country. What I would like to see is you organize yourself into chapters around the country and you visit your representatives, wherever the locations are. You visit and you talk to each and every one of them about what you as family members, as Americans, as citizens, would like to have them do to represent you.

MADD, as you know, is a very effective and instrumental organization that has been the basis of many of the laws we have introduced not only in California but across the country. I see you as being a model for that kind of organization. I would like you to follow up. My staff is going to give you—I have some more information for the three of you—I will give to you privately. So we will see you afterwards.

Thank you. I will be leaving shortly. But I hope we can stay in close touch.

Ms. ECKERT. A real quick comment on that, it is funny, we realize we need to take quick steps. There are 12 of us on this committee, and we are here for the long haul. But we could use reinforcements. I think you have made an excellent suggestion, and we have actually been talking about kind of a subcommittee. God knows, we don't want to get too bureaucratic, but we do know that there is a need to, as the Commission is doing, traveling the country and explaining to people exactly what this is all about. So it sounds like an excellent suggestion.

Ms. WATSON. Some distant cousin on the West Coast of California could be the surrogate and could visit my office and the office of our large delegation of 54, their offices respectively.

Ms. REGENHARD. I wanted to say one of the family groups, 9/11 Families for a Secure America, does visit individual Congresspeople to advocate for immigration reform and driver's license reform. It is a difficult job because they are not always, you know, received the way they would like to be and a lot of times their goals are misinterpreted. But I think it is a wonderful idea, and we have to continue to do that. Thank you very much for that suggestion.

Ms. WIENER. I also want to thank you. Rest assured, actually, there are a number of family groups out there that we are all trying to coordinate, and a number of us do maintain data bases that we have been able to put together of family members beyond this geographic area and are trying to locate families throughout the country so that we can be—we are in, I would imagine, almost every district when you span out to cousins and uncles and aunts. So we will make sure we fan out as deep as we can and try to reach everyone.

Ms. WATSON. I commend and congratulate you on your efforts, your compassion. We all share your feelings. I know that something good is going to come out of this. Thank you very much.

Mr. SHAYS. Before we go to our next panel, is there any last comment, brief comment, you would like to put on the record?

Ms. REGENHARD. Yes. I would like to acknowledge the firefighter families who have come here today. I would like to ask them to stand up.

Mr. SHAYS. Let's have all the families who came stand up.

Ms. REGENHARD. As well as the civilian families who joined us today. Please stand up.

Mr. SHAYS. You all have been wonderful witnesses. I would like to give you an opportunity to make closing comments.

Ms. ECKERT. Thank you for arranging this, Chairman Davis and the whole committee, and for hearing us.

I think what I would like you to come away with is not a sense of just almost why is this happening to me at this particular time but that you have an opportunity to go down in history as performing something so noble and so urgent and so monumental, that you also have an opportunity of going down in history for doing the right thing. I would like to leave you with that thought.

Mr. SHAYS. Thank you.

Ms. WIENER. I also wanted to just say thank you. We are so grateful to you for taking time out of your recess and coming back.

I also wanted to echo what Beverly said, that you have a unique opportunity before you; and we ask you to please not think of yourselves as Democrats or Republicans but to think of yourselves as Americans and leaders trying to do the right thing and know that we are here with you standing beside you and behind you and in front of you, everywhere we need to be, in order to help you move whatever legislation needs to move forward. We will be there with you to help in any way we can.

Ms. REGENHARD. I would like to thank you also for everything you are doing, and I would like to end by saying God bless America. Thank you.

Mr. SHAYS. Thank you very much. We have many reasons to say God bless America, and we have a great deal of gratitude for all three of your testimony and remembrance and the legacy of your loved ones.

Ms. Eckert, we do know we have a solemn responsibility and a tremendous opportunity. There would not have been a 9/11 Commission without the work of the families of September 11th. I know that role continues, and you give us a great deal of strength and pride in our country. Thank you all very much.

At this time, we will adjourn this panel.

We have two more panels. I am thinking that we will ask them to join collectively—you know what? I just want to say it is now almost 3 o'clock. We will have the GAO go separately, and we will do it that way.

If you would stand, Mr. David Walker, thank you very much for being here. I will swear you in. It is our policy to swear witnesses in.

[Witness sworn.]

Mr. SHAYS. Let me say, Mr. Walker, it is right that you testify individually. We will have the next panel, and we will hear them separately. But it is important that your testimony be singularly focused on. We thank you for coming and thank you for your patience. You could have asked to speak sooner, and we appreciate that you waited to hear from the families and to hear from the Commission.

So, with that, you have the floor. We welcome your testimony.

**STATEMENT OF DAVID WALKER, COMPTROLLER GENERAL,  
GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. WALKER. Thank you, Mr. Vice Chairman, members of the committee. It is good to be before you to speak to certain recommendations of the 9/11 Commission report.

As you know, GAO is in the business of trying to help maximize the government's performance and assure its accountability for the benefit of the American people.

Mr. SHAYS. I am going to ask you to start over again and get that mic closer to you.

Mr. WALKER. Is that better?

Mr. SHAYS. Staff, move that other mic away.

Mr. WALKER. Mr. Chairman, I am pleased to be with you and other members to discuss certain aspects of the 9/11 Commission recommendations at your request.

As you know, GAO is in the business of helping to assure to maximize the performance of the government and an ensure its accountability for the benefit of the American people. We issued over 100 reports on the issue of Homeland Security before September 11, 2001, and we have issued over 200 since then, with hundreds of recommendations and almost 100 hearings before the Congress.

I have been asked to address two issues and would like my entire statement to be included in the record so I can summarize, if that is all right, Mr. Chairman.

Mr. SHAYS. Yes, and don't feel you have to rush. I should not say it is getting late. You just take your time and we will take each issue as it comes.

Mr. WALKER. Thank you. I have been asked to address two issues, basically the need to enhance information sharing and analysis and also to discuss some of the reorganization and transformation needs dealing with the intelligence community.

As we all know, yesterday, on August 2, the President asked the Congress to create a National Intelligence Director position to be the principal intelligence adviser appointed by the President with the advice and consent of the Senate and serving at the pleasure of the President.

He also announced that he will establish an NCTC whose director would report to the National Intelligence Director and that this center would build upon the analytic work of the existing terrorist threat integration center.

These are positive steps. However, it is important to note there are substantive differences between the President's proposal and the Commission's recommendations.

With regard to information sharing, there is a continuing, critical and heightened need for better and more effective and more com-



prehensive information sharing. We agree that the intelligence community needs to move from a culture of need to know to need to share.

The 9/11 Commission has made observations regarding information sharing and recommended procedures to provide incentives for sharing and to create a trusted information network. Many of the Commission's recommendations address the need to improve information and intelligence collection sharing and analysis within the intelligence community itself.

It is important, however, to note that we must not lose sight of the fact that the purpose of improving information analysis and sharing is to provide better information not only throughout the Federal Government but also to State and local governments, its private sector and to America's citizens so that collectively we are all better prepared.

I want to make it clear that such information sharing must protect confidential sources and methods and we do not propose any changes that would infringe upon those important protections.

Nonetheless, in order to be successful in this area, the Federal Government must partner with a variety of organizations, both domestic and international, in the public sector, the private sector and the not-for-profit sector. As you know, Mr. Chairman, GAO has done quite a bit of work in this area in connection with information sharing, and I have summarized that in my full statement, but I will move on to the organization transformation in the interest of time.

With regard to the organization and transformation issues, on the basis of GAO's work in both the public and the private sector over many years and in my own fairly extensive change management experience, it is clear to me that many of the challenges that the intelligence community faces are similar or identical to the transformation challenges applicable to many other Federal agencies, including the GAO.

As I touched on earlier, while the intelligence agencies are in a different line of businesses than other Federal agencies, they face the same challenges when it comes to strategic planning, organizational alignment, budgeting, human capital strategy, management and information technology, finances, knowledge management and change management. They are generic challenges faced by every single agency and government.

The intelligence community for years has said we are different. In some ways, they are. In most ways, they are not.

For the intelligence community, effectively addressing these basic business transformation challenges will require action relating to five key dimensions—namely, structure, people, process, technology and partnerships. It will also require a rethinking and cultural transformation in connection with intelligence activities both in the executive branch and the Congress.

With regard to the structure dimension, there are many organizational units within the executive branch and in the Congress with responsibilities in the intelligence and homeland security areas. Basic organizational and management principles dictate that, absent a clear and compelling need for competition or checks

and balances, there is a need to minimize the number of entities and levels in decisionmaking, oversight and other related activities.

In addition, irrespective of how many units and levels are involved, someone has to be in charge of all key planning, budgeting and operational activities. One person should be responsible and accountable for all key intelligence activities within the executive branch, and that person should report directly to the President. This person must also have substantive strategic planning, budget, operational integration and accountability responsibilities and authorities for the entire intelligence community in order to be effective. If this person has an out-box but no in-box, we are in trouble.

In addition, this person should be appointed by the President and confirmed by the Senate in order to help facilitate success and assure effective oversight.

With regard to the oversight structure of the Congress, the 9/11 Commission noted that there are numerous players involved in intelligence activities and yet not enough effective oversight is being done.

With regard to people dimension, any entity is only as good as its people. As I stated earlier, the intelligence community is no exception. In fact, they are in the knowledge business.

Believe it or not, Mr. Chairman, there is a tremendous amount of parallel between the GAO and the intelligence community. The reason I say that is the intelligence community is supposed to be in the business of getting facts and conducting professional, objective analysis that is nonpartisan, non-ideological, fair and balanced. And, in fact, our No. 1 competitor on college campuses today for talent is the CIA and the FBI. So there are a lot of analogies and a lot of common denominators that can be shared.

In addition to having the right people and the right tone at the top, agencies need to develop and execute work force strategies and plans helping to ensure that they have the right people with the right skills and the required numbers to achieve their missions. They also need to align their institutional unit and individual performance measurement reward systems in order to effectuate the needed transformation.

With regard to procession and technology dimensions, steps need to be taken to streamline and expedite the processes and integrate the information systems that are needed in order to expeditiously analyze and effectively disseminate the tremendous amount of intelligence and other information available to the intelligence community.

With regard to partnerships, it will take the combined efforts of many parties crossing many sectors and geopolitical boundaries over many years to effectively address our Homeland Security challenges, but we must start immediately.

With regard to the cultural dimension, this is both the softness and the hardest to deal with. By the softest, I mean that it involves attitudes and actions of people and entities. By the hardest, I mean the changing, longstanding cultures can be a huge challenge, especially if the efforts involve organizational changes in order to streamline, integrate and improve related capabilities and abilities and especially if it involves changing power bases, responsibility

and authority, whether it be in the executive branch or in the legislative branch.

In conclusion, we at GAO stand ready to constructively engage with the intelligence community to share our significant government transformation and management knowledge and experience in order to help members of the community help themselves engage in a much-needed and long-overdue transformation effort. We also stand ready to help the Congress enhance its oversight activities over the intelligence community, which in our view represents an essential element of an effective transformation approach.

In this regard, we have the people with the skills, experience, knowledge and clearances to make a difference for the Congress and the country.

Thank you, Mr. Chairman. I would be happy to answer any questions that you or other Members may have.

Mr. SHAYS. Thank you, Mr. Walker.

[The prepared statement of Mr. Walker follows.]

United States Government Accountability Office

GAO

Testimony  
Before the Committee on Government  
Reform, House of Representatives

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9/11 COMMISSION  
REPORT

Reorganization,  
Transformation, and  
Information Sharing

Statement of the Honorable David M. Walker  
Comptroller General of the United States

On 8/4/04 this testimony was reissued because: On page 12, in footnote 11, "OGC" was changed to "OCG" to correct a transposition error. On page 21, in the next to the last sentence in the final paragraph, "might" was changed to "must," and "challenges was changed to "responsibilities and opportunities." In the same paragraph, in the last sentence, "executive" was changed to "effective." These correct transcription errors.



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Mr. Chairman and Members of the Committee:

We at GAO applaud the efforts of the 9/11 Commission and the dedicated family members of the victims of that tragic day whose combined efforts have resulted in a definitive account of the past events, and a number of constructive recommendations for the future. The sorrow, loss, anger, and resolve so evident immediately following the September 11, 2001, attacks have been combined in an effort to help assure that our country will never again be caught unprepared. As the Commission notes, we are safer today but we are not safe, and much work remains. Although in today's world we can never be 100 percent secure, and we can never do everything everywhere, we concur with the Commission's conclusion that the American people should expect their government to do its very best.

GAO's mission is to help the Congress improve the performance and ensure the accountability of the federal government for the benefit of the American people. GAO has been actively involved in improving government's performance in the critically important homeland security area both before and after the September 11 attacks. For example, GAO issued over 100 reports on homeland security-related issues and recommended the creation of a national focal point for homeland security before the attacks. We have also been privileged to actively support this Congress and the 9/11 Commission through details of key personnel, testimony before the Congress and the Commission, and sharing our research, products, and experiences.

Just a few days after the tragic events of September 11, I testified about various challenges and strategies to address both our short- and long-term homeland security needs and outlined a framework for addressing our nation's efforts. I emphasized that we as a nation must find the best ways to sustain our efforts over a significant time period, and leverage our finite human, financial, and technological resources in ways that would have the greatest impact. At that time, I identified several key questions that our government needed to address in order to improve the security of the homeland:<sup>1</sup>

1. What are our vision and national objectives to make our homeland more secure?

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<sup>1</sup>U.S. General Accounting Office. *Homeland Security: A Framework for Addressing the Nation's Efforts*, GAO-01-1158T (Washington, D.C.: Sept. 21, 2001).

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2. What essential elements should constitute the government's strategy for securing the homeland?
  3. How should the executive branch and the Congress be organized to address these issues?
  4. How should we assess the effectiveness of any homeland security strategy implementation to address the spectrum of threats?

During the past few years, we have seen major efforts to address these questions, such as the formation of the Department of Homeland Security (DHS) and major initiatives such as strengthened passenger and baggage screening, increased border patrols, reform of the Federal Bureau of Investigation (FBI), and the creation of the Northern Command. However, as the 9/11 Commission and our own work indicates, these questions are yet to be fully addressed.

GAO has continued to explore these topics on behalf of this Committee and the Congress, issuing over 200 homeland security related products since the September 11 attacks, developing over 500 recommendations for action, testifying on over 90 occasions before the Congress, and working closely with the Congress and federal agencies, including the FBI, the Department of Defense (DOD), and DHS, to implement key recommendations to improve homeland security mission performance, improve government efficiency, and promote enhanced accountability and oversight to assure the American people that the federal government is doing all that can reasonably be expected.

In your request, you have asked me to address two issues: the lack of effective information sharing and analysis and the need for executive branch reorganization in response to the 9/11 Commission recommendations. Further, you have asked me to address how to remedy problems in information sharing and analysis by transforming the intelligence community from a system of "need to know" to one of a "need to share." The 9/11 Commission has recommended several transformational changes, such as the establishment of a National Counterterrorism Center (NCTC) for joint operational planning and joint intelligence and replacing the current Director of Central Intelligence with a National Intelligence Director (NID) to oversee national intelligence centers across the federal government. The NID would manage the national intelligence program and oversee agencies that contribute to it.

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Yesterday, on August 2, 2004, the President asked Congress to create a NID position to be the principal intelligence advisor, appointed by the President, with the advice and consent of the Senate and serving at the pleasure of the President. Unlike the 9/11 Commission, the President did not propose that the NID be within the Executive Office of the President. He also announced that he will establish a NCTC whose Director would report to the NID, and that this center would build upon the analytic work of the existing Terrorist Threat Integration Center. He suggested that a separate center may be necessary for issues of weapons of mass destruction. Finally, he endorsed the 9/11 Commission's call for reorganization of the Congressional oversight structure. There are, however, several substantive differences between the President's proposal and the Commission's recommendations.

While praising the work of the 9/11 Commission, and endorsing several of its major recommendations in concept, the President differed with the Commission on certain issues. These differences reflect that reasoned and reasonable individuals may differ, and that several methods may exist to effectuate the transformational changes recommended. However, certain common principles and factors outlined in my statement today should help guide the debate ahead.

Although the creation of a NID and a NCTC would be major changes for the intelligence community, other structural and management changes have occurred and are continuing to occur in government that provide lessons for the intelligence community transformation. While the intelligence community has historically been addressed separately from the remainder of the federal government, and while it undoubtedly performs some unique missions that present unique issues (e.g., the protection of sources and methods) its major transformational challenges in large measure are the same as those that face most government agencies.

As a result, GAO's findings, recommendations, and experience in reshaping the federal government to meet Twenty-First Century challenges will be directly relevant to the intelligence community and the recommendations proposed by the 9/11 Commission. Reorganizing government can be an immensely complex activity with both opportunities and risks. As a result, those who propose to reorganize government must make their rationale clear and build a consensus for change if proposed reorganizations are to succeed and be sustained. All key players must be involved in the process.

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The goal of improving information sharing and analysis with a focus upon the needs of the consumers of such improved information for specific types of threats can provide one of the powerful guiding principles necessary for successful transformation. The elevated threat advisory (orange alert) issued this past weekend for certain financial institutions in particular regions dramatically illustrates the value of improved analysis and sharing of information specific enough to guide effective and efficient preparedness actions by those most at risk. Earlier threat advisories issued by DHS were criticized for lack of specificity, "one size fits all" applicability, and lack of "actionable" information.

In my testimony today, I will cover four major points. First, I describe the rationale for improving effective information sharing and analysis, and suggest some ways to achieve positive results. Improvements would include, for example, developing a comprehensive and coordinated national plan to facilitate information sharing and relationships. Second, I provide some overview perspectives on reorganizational approaches to improve performance and note necessary cautions. For example, the Congress has an important role to play in the design and implementation of a new structure, and oversight will be key to success. Third, I illustrate that strategic human capital management must be the centerpiece of any serious change management initiative or any effort to transform the cultures of government agencies, including that of the intelligence community. Strategic management includes, for example, consideration of human capital flexibilities. Finally, I emphasize the importance of results-oriented strategic planning and implementation for the intelligence arena, focusing management attention on outcomes, not outputs, and the need for effective accountability and oversight to maintain focus upon improving performance. For example, much more attention needs to be paid to defining goals and measures, and providing for increased oversight of the performance of the intelligence community. I conclude by applying these concepts and principles to the challenges of reform in the intelligence community.

This testimony draws upon our wide-ranging, completed, and ongoing work, and our institutional knowledge on homeland security, combating terrorism, and various government organizational and management issues. We conducted our work in accordance with generally accepted government auditing standards.



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**Stronger Intelligence  
Sharing Is Needed**

Mr. Chairman, there is a continuing and heightened need for better and more effective and comprehensive information sharing. We agree the intelligence community needs to move from a culture of "need to know" to "need to share." The 9/11 Commission has made observations regarding information sharing, and recommended procedures to provide incentives for sharing and creating a "trusted information network." Many Commission recommendations address the need to improve information and intelligence collection, sharing, and analysis within the intelligence community itself. In addition, we must not lose sight of the fact that the purpose of improving information analysis and sharing is to provide better information throughout the federal government, and ultimately also to state and local governments, the private sector, and our citizens, so that collectively we are all better prepared. I want to make it clear that such information sharing must protect confidential sources and methods, and we do not propose any changes that would infringe upon those protections.

In addition, as the Congress considers the Commission's recommendations, I would also recommend that it consider the role that state and local agencies and the private sector should play as informed partners in homeland security. The Commission's work, as is the case with our own observations, notes the changing perspective of "federal" versus "other entities" roles in homeland security and homeland defense. In performing its constitutional role of providing for the common defense, we have observed that the federal government must prevent and deter terrorist attacks on our homeland as well as detect impending danger before attacks occurs. Although it may be impossible to detect, prevent, or deter every attack, steps can and must be taken to reduce the risk posed by the threats to homeland security. Furthermore, in order to be successful in this area, the federal government must partner with a variety of organizations, both domestic and international.

Traditionally, protecting the homeland against threats was generally considered a federal responsibility. To meet this responsibility, the federal government (within and across federal agencies) gathers intelligence, which is often classified as national security information. This information is protected and safeguarded to prevent unauthorized access by requiring appropriate security clearances and a "need to know." Normally, the federal government did not share national-level intelligence with states and cities, since they were not viewed as having a significant role in preventing terrorism. Therefore, the federal government did not generally grant state and city officials access to classified information. After the September 11 attacks, however, the view that states and cities do not have

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a significant role in homeland security changed, and the "need to share" intelligence information became clear.<sup>2</sup>

However, reconciling the need to share with actually sharing has been at the heart of the 9/11 Commission's recommendations and our own findings and observations on practices to improve information sharing. In work begun before the September 11 attacks,<sup>3</sup> we reported on information-sharing practices of organizations that successfully share sensitive or time-critical information. We found that these practices include:

- establishing trust relationships with a wide variety of federal and nonfederal entities that may be in a position to provide potentially useful information and advice on vulnerabilities and incidents,
- developing standards and agreements on how shared information will be used and protected,
- establishing effective and appropriately secure communications mechanisms, and
- taking steps to ensure that sensitive information is not inappropriately disseminated.

As you might recall, we also testified before this committee last year on information sharing. GAO has made numerous recommendations related to sharing, particularly as they relate to fulfilling DHS's critical infrastructure protection responsibilities.<sup>4</sup> The Homeland Security Information Sharing Act, included in the Homeland Security Act of 2002 (P.L. 107-296), requires the President to prescribe and implement procedures for facilitating homeland security information sharing and establishes authorities to share different types of information, such as grand jury information; electronic, wire, and oral interception information; and foreign intelligence information. In July 2003, the President assigned

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<sup>2</sup>U.S. General Accounting Office, *Homeland Security: Efforts to Improve Information Sharing Need to Be Strengthened*, GAO-03-760 (Washington, D.C.: August 2003).

<sup>3</sup>U.S. General Accounting Office, *Information Sharing: Practices That Can Benefit Critical Infrastructure Protection*, GAO-02-24 (Washington, D.C.: Oct. 15, 2001).

<sup>4</sup>U.S. General Accounting Office, *Homeland Security: Information Sharing Responsibilities, Challenges, and Key Management Issues*, GAO-03-1165T (Washington, D.C.: Sept. 17, 2003); GAO-03-715T (May 8, 2003).

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these functions to the Secretary of Homeland Security, but no deadline was established for developing such information sharing procedures..

To accomplish its missions, DHS must gain access to, receive, and analyze law enforcement information, intelligence information, and other threat, incident, and vulnerability information from federal and nonfederal sources, and it must analyze such information to identify and assess the nature and scope of terrorist threats. DHS must also share information both internally and externally with agencies and law enforcement on such things as goods and passengers inbound to the United States and individuals who are known or suspected terrorists and criminals (e.g., watch lists).

As we reported in June 2002,<sup>5</sup> the federal government had made progress in developing a framework to support a more unified effort to secure the homeland, including information sharing. However, this work found additional needs and opportunities to enhance the effectiveness of information sharing among federal agencies with homeland security or homeland defense responsibilities, and with various state and city law enforcement agencies that have a key role in homeland security, as well as with the private sector.

As we reported in August 2003,<sup>6</sup> efforts to improve intelligence and information sharing still needed to be strengthened. Intelligence- and information- sharing initiatives implemented by states and cities were not effectively coordinated with those of federal agencies, nor were they coordinated within and between federal entities. Furthermore, neither federal, state, nor city governments considered the information-sharing process to be effective. For example, information on threats, methods, and techniques of terrorists was not routinely shared; information that was shared was not perceived as timely, accurate, or relevant; and federal officials have not established comprehensive processes or procedures to promote effective information sharing. At that time, we recommended that the Secretary of Homeland Security work with the heads of other federal agencies and state and local authorities to:

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<sup>5</sup>U.S. General Accounting Office, *Homeland Security: Key Elements to Unify Efforts Are Under Way but Uncertainty Remains*, GAO-02-610 (Washington, D.C.: June 7, 2002).

<sup>6</sup>GAO-03-760.

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- incorporate the existing information-sharing guidance that is contained in the various national strategies and information-sharing procedures required by the Homeland Security Act,
  - establish a clearinghouse to coordinate the various information-sharing initiatives to eliminate possible confusion and duplication of effort,
  - fully integrate states and cities into the national policy-making process for information sharing and take steps to provide greater assurance that actions at all levels of government are mutually reinforcing,
  - identify and address the perceived barriers to federal information sharing, and
  - use a survey method or a related data collection approach to determine, over time, the needs of private and public organizations for information related to homeland security and to measure progress in improving information sharing at all levels of government.

DHS concurred with the above recommendations.

DHS and other federal agencies have instituted major counterterrorism efforts involving information and intelligence sharing over the past 2 years. For example, the Terrorist Threat Integration Center (T-TIC) was designed to improve the collection, analysis, and sharing of all counterterrorism intelligence gathered in the United States and overseas. The DHS Information Analysis and Infrastructure Protection (IAIP) Directorate is intended to receive intelligence from a variety of federal sources and act as a central fusion point for all intelligence relevant to homeland security and related critical infrastructure protection. Furthermore, the FBI has created a new Office of Intelligence, established a National Joint Terrorism Taskforce, expanded its Joint Terrorist Task Forces (JTTFs), and recently made operational an interagency joint Terrorist Screening Center.

Although improvements had been made, we continue to identify needs, such as developing a comprehensive and coordinated national plan to facilitate information-sharing on critical infrastructure protection (CIP); developing productive information sharing relationships among the federal government and state and local governments and the private sector; and providing appropriate incentives for nonfederal entities to increase information sharing with the federal government and enhance other critical infrastructure protection efforts. As we recently reported,

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information sharing and analysis centers (ISACs) have identified a number of challenges to effective CIP information sharing between the federal government and state and local governments and the private sector, including sharing information on physical and cyber threats, vulnerabilities, incidents, potential protective measures, and best practices. Such challenges include building trusted relationships; developing processes to facilitate information sharing; overcoming barriers to information sharing; clarifying the roles and responsibilities of the various government and private sector entities that are involved in protecting critical infrastructure; and funding ISAC operations and activities.<sup>7</sup>

Although DHS has taken a number of actions to implement the public/private partnership called for by federal CIP policy, it has not yet developed a plan that describes how it will carry out its information-sharing responsibilities and relationships, including consideration of appropriate incentives for nonfederal entities to increase information sharing with the federal government, increase sector participation, and perform other specific tasks to protect the critical infrastructure. Such a plan could encourage improved information sharing among the ISACs, other CIP entities, and the department by clarifying the roles and responsibilities of all the entities involved and clearly articulating actions to address the challenges that remain.

The department also lacks policies and procedures to ensure effective coordination and sharing of ISAC-provided information among the appropriate components within the department. Developing such policies and procedures would help ensure that information is appropriately shared among its components and with other government and private sector CIP entities. GAO recommended that the Secretary of Homeland Security direct officials within DHS to (1) proceed with the development of an information-sharing plan that describes the roles and responsibilities of DHS, the ISACs, and other entities and (2) establish appropriate department policies and procedures for interactions with other CIP entities and for coordination and information sharing among DHS components. DHS has generally agreed with our findings and recommendations.

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<sup>7</sup>U.S. General Accounting Office. *Critical Infrastructure Protection: Improving Information Sharing with Infrastructure Sectors*, GAO-04-780 (Washington, D.C.: July 9, 2004).

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DHS has also implemented the Homeland Security Advisory System. Utilizing five color-coded threat levels, the system was established in March 2002 to disseminate information regarding the risk of terrorist acts to federal agencies, states and localities, and the public. Our recent work indicates that DHS has not yet officially documented communication protocols for providing threat information and guidance to federal agencies and states, with the result that some federal agencies and states may first learn about changes in the national threat level from media sources. Moreover, federal agencies and states responding to our inquiries indicated that they generally did not receive specific threat information and guidance, and they believed this shortcoming hindered their ability to determine whether they were at risk as well as their ability to determine and implement appropriate protective measures.<sup>8</sup>

In addition, there is a need for an improved security clearance process so that state, local, and private sector officials have the access to information they need, but with appropriate security safeguards in place, while efforts to improve information sharing continue. In a recent report,<sup>9</sup> we described the FBI's process for granting access to classified information for state and local law enforcement officials. The FBI's goal is to complete the processing for secret security clearances within 45 to 60 days and top secret security clearances within 6 to 9 months. While the FBI's processing of top secret security clearances has been generally timely, that was not the case for secret clearances. However, the FBI made substantial improvements in 2003 to the timeliness of processing secret clearances.

We also have conducted a body of work that has found that long-standing security clearance backlogs and delays in determining clearance eligibility affect industry personnel, military members, and federal employees. For example, as we reported in May of this year,<sup>10</sup> more than 187,000 reinvestigations, new investigations, or clearance adjudications were not completed for industry personnel alone within established time frames.

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<sup>8</sup>U.S. General Accounting Office, *Homeland Security: Communication Protocols and Risk Communication Principles Can Assist in Refining the Advisory System*, GAO-04-662 (Washington, D.C.: June 25, 2004).

<sup>9</sup>U.S. General Accounting Office, *Security Clearances: FBI Has Enhanced Its Process for State and Local Law Enforcement Officials*, GAO-04-596 (Washington, D.C.: April 30, 2004).

<sup>10</sup>U.S. General Accounting Office, *DOD Personnel Clearances: Additional Steps Can Be Taken to Reduce Backlogs and Delays in Determining Security Clearance Eligibility for Industry Personnel*, GAO-04-632 (Washington, D.C. May 26, 2004).

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Delays in conducting investigations and determining clearance eligibility can increase national security risks, prevent industry personnel from beginning or continuing work on classified programs and activities, or otherwise hinder the sharing of classified threat information with officials having homeland security or homeland defense responsibilities.

The FBI has also taken a number of steps to enhance its information sharing with state and local law enforcement officials, such as providing guidance and additional staffing. The FBI has further increased the number of its JTTFs, increasing them from 35 prior to the September 11 attacks to 84 as of July 2004 and state and local law enforcement officials' participation on these task forces has been increased. The FBI has at least one JTTF in each of its 56 field locations and plans to expand to 100. The FBI also circulates declassified intelligence through a weekly bulletin and provides threat information to state and local law enforcement officials via various database networks.

These critical needs for better information and information sharing identified by federal, state, and local governments and the private sector must form the clear rationale and basis for transformation of the intelligence community. Reorganization isn't the objective; rather it is improving government performance to meet twenty first century information sharing requirements. 9/11 Commission Chairman Thomas H. Kean and Vice-Chairman Lee H. Hamilton, in their testimony before the Senate Governmental Affairs Committee on July 30, 2004, noted:

"There is a fascination in Washington with bureaucratic solutions—rearranging the wiring diagrams, creating new organizations. We do recommend some important institutional changes. We will articulate and defend those proposals. But we believe reorganizing governmental institutions is only a part of the agenda before us. Some of the saddest aspects of the 9/11 story are the outstanding efforts of so many individual officials straining, often without success, against the boundaries of the possible. Good people can overcome bad structures. They should not have to. We have the resources and the people. We need to combine them more effectively, to achieve unity of effort."

GAO agrees with this comment, and we have noted several related suggestions below.

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### While Changes May be Needed, Caution and Care Must be Taken

As the committee is aware, GAO has done extensive work on federal organizational structure and how reorganization can improve performance. The 9/11 Commission has recommended major changes to unify strategic intelligence and operational planning with a National Counterterrorism Center and provide the intelligence community with a new National Intelligence Director. As the Congress and the administration consider the 9/11 Commission's recommendations, they should consider how best to address organizational changes, roles and responsibilities, and functions for intelligence-sharing effectiveness.

In response to the emerging trends and long-term fiscal challenges the government faces in the coming years, we have an opportunity to create highly effective, performance-based organizations that can strengthen the nation's ability to meet the challenges of the twenty first century and reach beyond our current level of achievement. The federal government cannot accept the status quo as a given—we need to reexamine the base of government policies, programs, structures, and operations. We need to minimize the number of layers and silos in government, emphasize horizontal versus vertical actions, while moving our policy focus to coordination and integration. The result, we believe, will be a government that is effective and relevant to a changing society—a government that is as free as possible of outmoded commitments and operations that can inappropriately encumber the future, reduce our fiscal flexibility, and prevent future generations from being able to make choices regarding what roles they think government should play.

Many departments and agencies, including those of the intelligence community, were created in a different time and in response to challenges, threats, and priorities very different from today's world. Some have achieved their one time missions and yet they are still in business. Many have accumulated responsibilities beyond their original purposes. Many are still focused on their original mission that may not be relevant or as high a priority in today's world. Others have not been able to demonstrate how they are making a difference in real and concrete terms. Still others have overlapping or conflicting roles and responsibilities. Redundant, unfocused, uncoordinated, outdated, misaligned, and nonintegrated programs and activities waste scarce funds, confuse and frustrate program customers, and limit overall efficiency and effectiveness.<sup>11</sup> These are the

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<sup>11</sup>U.S. General Accounting Office, *Managing in the New Millennium: Shaping a More Efficient and Effective Government for the 21st Century*, GAO/T-OCG-00-3 (Washington, D.C.: Mar. 29, 2000).



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charges highlighted by the 9/11 Commission's findings and recommendations.

The problems the 9/11 Commission has described with our intelligence activities indicate a strong need for reexamining the organization and execution of those activities. However, any restructuring proposal requires careful consideration. Fixing the wrong problems or even worse, fixing the right problems poorly, could cause more harm than good.

Past executive reorganization authority has served as an effective tool for achieving fundamental reorganization of federal operations. As I have testified before this committee,<sup>12</sup> the granting of executive reorganization authority to the President can serve to better enable the President to propose government designs that would be more efficient and effective in meeting existing and emerging challenges involving the intelligence community and information sharing with other entities. However, lessons learned from prior federal reorganization efforts suggest that reorganizing government can be an immensely complex activity that requires consensus on both the goals to be achieved and the process for achieving them. Prior reorganization authority has reflected a changing balance between legislative and executive roles. Periodically, between 1932 and 1984, the Congress passed legislation providing the President one form or another of expedited reorganization authority.<sup>13</sup>

Congressional involvement is needed not just in the initial design of the reorganization, but in what can turn out to be a lengthy period of implementation. The Congress has an important role to play—in both its legislative and oversight capacities—in establishing, monitoring, and maintaining progress to attain the goals envisioned by government transformation and reorganization efforts. However, as the 9/11 Commission has noted, past oversight efforts in the intelligence area have been wholly inadequate.

To ensure efficient and effective implementation and oversight, the Congress will also need to consider realigning its own structure. With

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<sup>12</sup>U.S. General Accounting Office, *Executive Reorganization Authority: Balancing Executive and Congressional Roles in Shaping the Federal Government's Structure*, GAO-03-624T (Washington, D.C.: April 3, 2003).

<sup>13</sup>Ronald C. Moe, Congressional Research Service, *The President's Reorganization Authority: Review and Analysis* (Washington, D.C.: Mar. 8, 2001).

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changes in the executive branch, the Congress should adapt its own organization. For example, the Congress has undertaken a reexamination of its committee structure, with the implementation of DHS. The DHS legislation instructed both houses of Congress to review their committee structures in light of the reorganization of homeland security responsibilities within the executive branch. Similarly, the 9/11 Commission recommends realigning congressional oversight to support its proposals to reorganize intelligence programs.

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**Addressing  
Intelligence Human  
Capital Needs  
Requires Strategic  
Management**

The 9/11 Commission stresses the need for stronger capabilities and expertise in intelligence and national security to support homeland security. For example, the Commission recommends rebuilding the Central Intelligence Agency's analytical capabilities, enhancing the agency's human intelligence capabilities, and developing a stronger language program.

We believe, Mr. Chairman, that at the center of any serious change management initiative are the people involved—people define the organization's culture, drive its performance, and embody its knowledge base. They are the source of all knowledge, process improvement, and technological enhancement efforts. As such, strategic human capital (or people) strategy is the critical element to maximizing government's performance and ensuring accountability of our intelligence community and homeland security efforts.

Experience shows that failure to adequately address—and often even consider—a wide variety of people and cultural issues is at the heart of unsuccessful organizational transformations. Recognizing the “people” element in these initiatives and implementing strategies to help individuals maximize their full potential in the new environment is the key to a successful transformation of the intelligence community and related homeland security organizations. Thus, organizational transformations that incorporate strategic human capital management approaches will help to sustain agency efforts and improve the efficiency, effectiveness, and accountability of the federal government. To help, we have identified a

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set of practices that have been found to be central to any successful transformation effort.<sup>14</sup>

Committed, sustained, highly qualified, and inspired leadership, and persistent attention by all key parties in the successful implementation of organizational transformations, will be essential, if lasting changes are to be made and the challenges we are discussing today are to be effectively addressed. It is clear that in a knowledge-based federal government, including the intelligence community, people—human capital—are the most valuable asset. How these people are organized, incented, enabled, empowered, and managed is key to the reform of the intelligence community and other organizations involved with homeland security.

We have testified that federal human capital strategies are not yet appropriately constituted to meet current and emerging challenges or to drive the needed transformation across the federal government. The basic problem has been the long-standing lack of a consistent approach to marshaling, managing, and maintaining the human capital needed to maximize government performance and ensure its accountability to the people. Thus, federal agencies involved with the intelligence community and other homeland security organizations will need the most effective human capital systems to address these challenges and succeed in their transformation efforts during a period of sustained budget constraints. This includes aligning their strategic planning and key institutional performance with unit and individual performance management and reward systems.

Fortunately, the Congress has passed legislation providing many of the authorities and tools agencies need. In fact, more progress in addressing human capital challenges was made in the last 3 years than in the last 20, and significant changes in how the federal workforce is managed are under way. For example, the Congress passed legislation providing governmentwide human capital flexibilities, such as direct hire authority, the ability to use category rating in the hiring of applicants instead of the "rule of three," and the creation of chief human capital officer (CHCO) positions and the CHCO Council. In addition, individual agencies—such as the National Aeronautical and Space Administration (NASA), DoD, and

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<sup>14</sup>U. S. General Accounting Office, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, GAO-03-669 (Washington, D.C.: July 2, 2003).

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DHS—received flexibilities intended to help them manage their human capital strategically to achieve results.

While many agencies have received additional human capital flexibilities, additional ones may be both needed and appropriate for the intelligence, homeland security, national defense, and selected other agencies. While the above authorities are helpful, in order to enable agencies to rapidly meet their critical human capital needs, the Congress should consider legislation granting selected agency heads the authority to hire a limited number of positions for a stated period of time (e.g., up to 3 years) on a noncompetitive basis. The Congress has passed legislation granting this authority to the Comptroller General of the United States and it has helped GAO to address a range of critical needs in a timely, effective, and prudent manner over many years.

Recent human capital actions have significant precedent-setting implications for the rest of government. They represent progress and opportunities, but also present legitimate concerns. We are fast approaching the point where “standard governmentwide” human capital policies and processes are neither standard nor governmentwide. As the Congress considers the need for additional human capital authorities for the intelligence community, it should keep in mind that human capital reform should avoid further fragmentation within the civil service, ensure reasonable consistency within the overall civilian workforce, and help maintain a reasonably level playing field among federal agencies in competing for talent. Importantly, this is not to delay needed reforms for any agency, but to accelerate reform across the federal government and incorporate appropriate principles and safeguards.

As the Congress considers reforms to the intelligence communities’ human capital policies and practices, it should require that agencies have in place the institutional infrastructure needed to make effective use of any new tools and authorities. At a minimum, this institutional infrastructure includes a human capital planning process that integrates the agency’s human capital policies, strategies, and programs with its program goals and mission and desired outcomes; the capabilities to effectively develop and implement a new human capital system; and, importantly, a set of appropriate principles and safeguards, including reasonable transparency and appropriate accountability mechanisms, to ensure the fair, effective, credible, nondiscriminatory implementation and application of a new system.

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**Managing for Results**

As Chairman Kean and Vice-Chairman Hamilton caution, organizational changes are just a part of the reforms needed. The Commission rightly says that effective public policies need concrete objectives, agencies need to be able to measure success, and the American people are entitled to see some standards for performance so they can judge, with the help of their elected representatives, whether the objectives are being met. To comprehensively transform government to improve intelligence and homeland security efforts, we must also carefully assess and define mission needs, current capabilities, resource practicalities, and priorities. And we must implement our plans to achieve those mission needs.

The federal government is well short of where it needs to be in setting national homeland security goals, including those for intelligence and other mission areas, to focus on results—outcomes—not inputs and outputs which were so long a feature of much of the federal government's strategic planning. We are concerned that the tenets of results management—shifting management attention from inputs, processes, and outputs to what is accomplished with them (outcomes or results)—still are elusive in homeland security goal setting and operational planning. We advocate a clear and comprehensive focus on homeland security results management, including the mission of intelligence and information sharing. Results management should have the elements to determine (1) if homeland security results are being achieved within planned timeframes, (2) if investments and resources are being managed properly, (3) if results are being integrated into ongoing decision making and priority setting, and (4) what action is needed to guide future investment policies and influence behavior to achieve results. These actions go far beyond a limited focus on organizational structure.

As the Gilmore Commission stated, a continuing problem for homeland security has been the lack of clear strategic guidance from the federal level about the definition and objectives of preparedness and how states and localities will be evaluated in meeting those objectives.<sup>16</sup> The 9/11 Commission's broad recommendations, if adopted, will require a thoughtful, detailed, results-oriented management approach in defining specific goals, activities, and resource requirements.

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<sup>16</sup>The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *V. Forging America's New Normalcy*, (Arlington, VA: Dec. 16, 2003).

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The track record for homeland security results management to date is spotty. The *National Strategy for Homeland Security*, issued by the administration in July 2002, was intended to mobilize and organize the nation to secure the homeland from terrorist attacks.<sup>16</sup> Intelligence and warning was one of its critical mission areas. Despite the changes over the past two years, the National Strategy has not been updated. In general, initiatives identified in the strategy do not provide a baseline set of performance goals and measures upon which to assess and improve preparedness, stressing activities rather than results. For example, for intelligence and warning, the National Strategy identified major initiatives that are activities, such as implementing the Homeland Security Advisory System, utilizing dual-use analysis to prevent attacks; and employing "red team" techniques.

Establishing clear goals and performance measures is critical to ensuring both a successful and a fiscally responsible and sustainable preparedness effort. We are currently doing work on the extent to which the National Strategy's goals are being implemented by federal agencies. Senator Lieberman has recently introduced legislation requiring executive branch efforts to produce a national homeland security strategy. We support the concept of a legislatively required strategy that can be sustained across administrations and provides a framework for congressional oversight. Before the administration's National Strategy for Homeland Security was issued, we had stated that the strategy should include steps designed to (a) reduce our vulnerability to threats; (b) use intelligence assets and other broad-based information sources to identify threats and share information as appropriate; (c) stop incidents before they occur; (d) manage the consequences of an incident; and (e) in the case of terrorist attacks, respond by all means available, including economic, diplomatic, and military actions that, when appropriate, are coordinated with other nations.<sup>17</sup> Earlier this year we provided a set of desirable characteristics for any effective national strategy that could better focus national

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<sup>16</sup>The White House, *The National Strategy for Homeland Security*, (Washington, D.C.: July 2002).

<sup>17</sup>U.S. General Accounting Office, *Homeland Security: Challenges and Strategies in Addressing Short- and Long-Term National Needs*, GAO-02-160T (Washington, D.C.: Nov. 7, 2001).

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homeland security decision making and increase the emphasis on outcomes.<sup>18</sup>

Strategic planning is critical to provide mission clarity, establish long-term performance strategies and goals, direct resource decisions, and guide transformation efforts. In this context, we are reviewing the DHS strategic planning efforts. Our work includes a review of the manner by which the Department's planning efforts support the National Strategy for Homeland Security and the extent to which its strategic plan reflects the requirements of the Government Performance and Results Act of 1993.

DHS's planning efforts are evolving. The current published DHS strategic plan contains vague strategic goals and objectives for all its mission areas, including intelligence, and little specific information to guide congressional decision making. For example, the strategic plan includes an overall goal to identify and understand threats, assess vulnerabilities, determine potential impacts, and disseminate timely information to DHS's homeland security partners and the American public. That goal has very general objectives, such as gathering and fusing all terrorism-related intelligence and analyzing and coordinating access to information related to potential terrorist or other threats. Discussion of annual goals are missing, and supporting descriptions of means and strategies are vague, making it difficult to determine if they are sufficient to achieve the objectives and overall goals. These and related issues will need to be addressed as the DHS planning effort moves forward.

In another effort to set expectations, the President, through Homeland Security Presidential Directive 8,<sup>19</sup> has tasked the Department of Homeland Security with establishing measurable readiness priorities and targets appropriately balancing the potential threat and magnitude of terrorist attacks, major disasters, and other emergencies with resources required to prevent, respond to, and recover from them. The task also is to include readiness metrics and elements supporting the national preparedness goal, including standards for preparedness assessments and strategies, and a system for assessing the nation's overall preparedness to respond to major

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<sup>18</sup>U.S. General Accounting Office, *Combating Terrorism: Evaluation of Selected Characteristics in National Strategies Related to Terrorism*, GAO-04-406T (Washington, D.C.: Feb. 3, 2004).

<sup>19</sup>The White House, *Homeland Security Presidential Directive 8 (National Preparedness)*, (Washington, D.C.: Dec. 17, 2003).

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events, especially involving acts of terrorism. However, those taskings have yet to be completed, but they will have to address the following questions:

- What are the appropriate national preparedness goals and measures? What are appropriate subgoals for specific areas such as critical infrastructure sectors?
- Do these goals and subgoals take into account other national goals such as economic security or the priority objectives of the private sector or other levels of government?
- Who should be accountable for achieving the national goals and subgoals?
- How would a national results management and measurement system be crafted, implemented, and sustained for the national preparedness goals?
- How would such a system affect needs assessment and be integrated with funding and budgeting processes across the many organizations involved in homeland security?

However, even if we have a robust and viable national strategy for homeland security, DHS strategic plan, and national preparedness goals, the issue of implementation remains. Implementation cannot be assured, or corrective action taken, if we are not getting the results we want, without effective accountability and oversight. The focus for homeland security must be on constantly staying ready and prepared for unknown threats and paying attention to improving performance. In addition to continuing our ongoing work in major homeland security mission areas such as border and transportation security and emergency preparedness, GAO can help the Congress more effectively oversee the intelligence community, and any changes should consider, in our view, an appropriate role for the GAO.

With some exceptions, GAO has broad-based authority to conduct reviews relating to various intelligence agencies. However, because of historical resistance from the intelligence agencies and the general lack of support from the intelligence committees in the Congress, GAO has done limited work in this community over the past 25 years. For example, within the past 2 years, we have done a considerable amount of work in connection with the FBI and its related transformational efforts. In addition, GAO has



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recently had some interaction with the Defense Intelligence Agency in connection with its transformation efforts. Furthermore, GAO has conducted extensive work on a wide range of government transformational and homeland security issues over the past several years. As always, we stand ready to offer GAO's assistance in support of any of the Congress' oversight needs.

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### The Challenges Faced in Intelligence Reform

In conclusion, on the basis of GAO's work in both the public and the private sector over many years, and my own change management experience, it is clear to me that many of the challenges that the intelligence community faces are similar or identical to the transformation challenges applicable to many other federal agencies, including GAO. Specifically, while the intelligence agencies are in a different line of business than other federal agencies, they face the same challenges when it comes to strategic planning and budgeting, organizational alignment, human capital strategy, and the management of information technology, finances, knowledge, and change.

For the intelligence community, effectively addressing these basic business transformation challenges will require action relating to five key dimensions, namely, structure, people, process, technology, and partnerships. It will also require a rethinking and cultural transformation in connection with intelligence activities both in the executive branch and in the Congress.

With regard to the structure dimension, there are many organizational units within the executive branch and in the Congress with responsibilities in the intelligence and homeland security areas. Basic organizational and management principles dictate that, absent a clear and compelling need for competition or checks and balances, there is a need to minimize the number of entities and levels in key decision making, oversight, and other related activities. In addition, irrespective of how many units and levels are involved, someone has to be in charge of all key planning, budgeting, and operational activities. One person should be responsible and accountable for all key intelligence activities within the executive branch, and that person should report directly to the President. This position must also have substantive strategic planning, budget, operational integration, and accountability responsibilities and opportunities for the intelligence community in order to be effective. In addition, this person should be appointed by the President and confirmed by the Senate in order to help facilitate success and ensure effective oversight.

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With regard to the oversight structure of the Congress, the 9/11 Commission noted that there are numerous players involved in intelligence activities and yet not enough effective oversight is being done. As a result, a restructuring of intelligence and homeland security related activities in the Congress is also needed. In this regard, it may make sense to separate responsibility for intelligence activities from personal privacy and individual liberty issues in order to ensure that needed attention is given to both while providing for a check and balance between these competing interests.

With regard to the people dimension, any entity is only as good as its people, and as I stated earlier, the intelligence community is no exception. In fact, since the intelligence community is in the knowledge business, people are of vital importance. The people challenge starts at the top, and key leaders must be both effective and respected. In addition, they need to stay in their positions long enough to make a real and lasting difference. In this regard, while the FBI director has a 10-year term appointment, most agency heads serve at the pleasure of their appointing official and may serve a few years in their respective positions. This is a problem when the agency is in the need of a cultural transformation, such as that required in the intelligence community, which typically takes at least 5 to 7 years to effectuate.

In addition to having the right people and the right "tone at the top," agencies need to develop and execute workforce strategies and plans helping to ensure that they have the right people with the right skills in the required numbers to accomplish their missions. Many of these missions have changed in the post-Cold War and post September 11 world. This is especially critical in connection with certain skills that are in short supply, such as information technology and certain languages, such as Arabic. In addition, as the 9/11 Commission and others have noted, it is clear that additional steps are necessary to strengthen our human intelligence capabilities.

With regard to the process and technology dimensions, steps need to be taken to streamline and expedite the processes used to analyze and disseminate the tremendous amount of intelligence and other information available to the intelligence community. This will require extensive use of technology to sort and distribute information both within agencies and between agencies and other key players in various sectors both domestically and internationally, as appropriate. The 9/11 Commission and others have noted various deficiencies in this area, such as the FBI's information technology development and implementation challenges. At

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the same time, some successes have occurred during the past 2 years that address process and technology concerns. For example, the Terrorist Screening Center, created under Homeland Security Presidential Directive 6 is intended to help in the consolidation of the federal government's approach to terrorism screening.<sup>29</sup> This center has taken a number of steps to address various organizational, technological, integration, and other challenges, and it may serve as a model for other needed intra- and interorganizational efforts.

With regard to partnerships, it has always been difficult to create an environment of shared responsibility, shared resources, and shared accountability for achieving difficult missions. Effective partnerships require a shared vision, shared goals, and shared trust in meeting agreed-upon responsibilities. Partnerships also mean that power is shared. Too often we have seen both public and private sector organizations where the term "partnership" is often voiced, but the reality is more a jockeying for dominance or control over the "partner." The end result is that resources are not shared, the shared mission is never complete or adequate, and opportunities for true strategic alliance are squandered. In the intelligence arena, we know the potential end result is failure for the nation.

With regard to the cultural dimension, this is both the softest and the hardest to deal with. By the softest, I mean it involves the attitudes and actions of people and entities. By the hardest, I mean that changing long-standing cultures can be a huge challenge, especially if the efforts involve organizational changes in order to streamline, integrate, and improve related capabilities and abilities. This includes both execution and oversight-related activities. As the 9/11 Commission and others have noted, such a restructuring is needed in both the executive branch and the Congress. This will involve taking on the vested interests of many powerful players, and as a result, it will not be easy, but it may be essential, especially if we expect to go from a "need to know" to a "need to share" approach. As I have often said, addressing such issues takes patience, persistence, perspective, and pain before you prevail. Such is the case with many agency transformational efforts, including those within our own GAO. However, given the challenges and dangers that we face in the post 9/11 world, we cannot afford to wait much longer. The time for action is now.

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<sup>29</sup>The White House, *Homeland Security Presidential Directive-6* (Integration and Use of Screening Information), Washington, D.C.: Sept. 16, 2003.

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**Conclusion**

Mr. Chairman, in its final report, the Gilmore Commission stated:

"There will never be an end point in America's readiness. Enemies will change tactics, citizens' attitudes about what adjustments in their lives they will be willing to accept will evolve and leaders will be confronted with legitimate competing priorities that will demand attention....In the end, America's response to the threat of terrorism will be measured by how we manage risk. There will never be a 100% guarantee of security for our people, the economy, and our society. We must resist the urge to seek total security—it is not achievable and drains our attention from those things that can be accomplished."<sup>21</sup>

Managing risk is not simply about putting new organizations in place. It requires us to think about what must be protected, define an acceptable level of risk, and target limited resources while keeping in mind that the related costs must be affordable and sustainable. Perhaps more important, managing risk requires us to constantly operate under conditions of uncertainty, where foresight, anticipation, responsiveness, and radical adaptation are vital capabilities.

We can and we must enhance and integrate our intelligence efforts as suggested by the 9/11 Commission to significantly improve information sharing and analysis. Several models to achieve this result exist, and despite the unique missions of the intelligence community can readily be adapted to guide this transformation.

We at the GAO stand ready to constructively engage with the intelligence community to share our significant government transformation and management knowledge and experience in order to help members of the community help themselves engage in the needed transformation efforts. We also stand ready to help the Congress enhance its oversight activities over the intelligence community, which, in our view, are an essential element of an effective transformation approach. In this regard, we have the people with the skills, experience, knowledge, and clearances to make a big difference for Congress and the country.

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Mr. Chairman, this concludes my statement. I would be happy to answer any questions that you or members of your committee may have at this time.

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<sup>21</sup>*V. Forging America's New Normalcy*, p. 2.

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**Contacts**

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Mr. SHAYS. That was an excellent statement. At least for me, it put in perspective some questions I have.

For instance, you add a director. Aren't you adding a layer? The message I am hearing from you is a person in charge could eliminate a lot of layers in the process of running an agency or in charge of being in charge of a variety of agencies.

I am interested to know, and I am going to expose my ignorance here, technically, my subcommittee has jurisdiction of the intelligence community in Government Reform for programs, for ways to cut waste, abuse and fraud. But whenever we want the CIA to testify, they would get a permission slip from the Intelligence Committee that said they didn't have to testify. One of the times was we wanted to know how well they communicated with the FBI. We weren't looking at sources and methods.

What kind of cooperation does the GAO get from the intelligence community? Do you have oversight? Are you able to get in and see what you need to? Is it a constant battle, and do you usually win those battles?

Mr. WALKER. Mr. Chairman, with the exception of certain accounts and activities, so-called black accounts or funds, GAO has extensive oversight authority with regard to the intelligence community.

However, during the past number of years, we have not had extensive involvement in doing work in the intelligence community for two reasons: No. 1, tremendous resistance from the entire intelligence community, which resistance was manifested in a memo by the then CIA Director in 1994; and, second, because there has been a lack of request and support from the intelligence committees to have oversight in this area for a number of years. This is a problem.

As I mentioned to you before, Mr. Chairman, sources and methods are one thing. As you acknowledged yourself, you weren't looking at getting into sources and methods, we aren't interested in getting into sources and methods, but the fact of the matter is a vast majority of the challenges that the intelligence community faces are the same challenges that every other government agency faces. They need attention. They need oversight.

Mr. SHAYS. When I met with Governor Kane and also spoke with Lee Hamilton, they both expressed concern before the report had come out with all the documents that were classified. I think Lee Hamilton was more aware that was happening, but Governor Kane was astounded at the documents he read that basically seemed so mundane. And one of their recommendations is to get rid of some of that so you know what the jewels are that need to be shared, and this other information can be out there, digested by a community, a democracy that doesn't get into sources and methods and so on. Can you speak to that issue?

Mr. WALKER. Well, yes. I think there's no question that we have to look at the basis for classification. As you know, right now each agency makes its own decisions with regard to whether and on what basis to classify information. And there has been a tendency in the past—as this committee noted in calling this hearing, there's been a tendency to hoard that information, and there's been a tendency to only provide it to those who "need to know." And there's



been a cultural barrier to sharing information, and there's also been a cultural barrier to providing a reasonable degree of transparency.

Let me state that there is absolutely no question that sources and methods need to be protected. However, that being stated, there is a need for additional transparency in this area. In order for a healthy democracy to work, you need incentives for people to do the right thing, reasonable transparency to provide assurance they will because someone is looking, and appropriate accountability if they do not do the right thing. And we have work to do in these areas.

Mr. SHAYS. What would be the benefit if you were able to see less—if there was more openness and less classified documents, what would be some of the benefits that would occur from that, and what are some of the disadvantages by having classified documents that maybe simply don't need to be classified?

Mr. WALKER. Well, again, recognizing the need to protect sources and methods, that's of critical importance, and focusing the classification on that, to protect sources and methods, that needs to be protected. However, I think we've seen a tendency for people to classify beyond what is essential.

Mr. SHAYS. I'm not asking that question. I want to know benefit.

Mr. WALKER. The benefit? OK, the benefit would be, quite frankly, that the Congress would be in a much more effective position to conduct meaningful and constructive oversight. Right now, the Congress is not in an effective position to do that, for a lot of reasons, and that's one.

Mr. SHAYS. My time has come to an end. Let me call on Mrs. Maloney. You have the floor for 5 minutes.

Mrs. MALONEY. Thank you very much, and welcome.

Mr. Walker, I have here a report that you issued on July 2, 2004 to Jim Turner, who is the ranking member of the Homeland Security Committee. He asked you to assemble in one place all of the recommendations to improve the homeland security of our Nation so that we could assess where we are 3 years after September 11, and in this report you identify 104 recommendations that you consider key to the agency's ability to effectively secure homeland security for our Nation. You have made these recommendations, you compile them over 3 years, and is that a fair statement, that you have issued this report with 104 recommendations; is that correct?

Mr. WALKER. We have. I don't recall the exact number. I will say it is my understanding that we've issued over 500 recommendations in total, of which at least 100 remain outstanding.

Mrs. MALONEY. Well, your report states that as of June 28 only 40 of the 104 in this particular report—you may have issued other reports—but in this particular report there are 104 recommendations, and only 40 of them have been implemented. That means there are 64 specific recommendations that to date are unfulfilled but that you and your department consider key to the homeland security of our country, to protect our people, our infrastructure; is that correct?

Mr. WALKER. I don't have the numbers in front of me, but in general terms they sound reasonable.

Mrs. MALONEY. Well, I'll put it in the record.

Mr. WALKER. I'll be happy to do that.

Mrs. MALONEY. Has anything changed over the last month since you issued this report to Congressman Turner with respect to the status of these recommendations?

Mr. WALKER. I have not been given an update, but let me just assure you that one of the things we do at GAO is when we make recommendations we actively followup on those recommendations, because one of our basic success measures is to what extent do they adopt them and, if so, what benefit occurs from that.

Mrs. MALONEY. Your report states that you issued 12 recommendations to the Information Analysis and Infrastructure Protection Directorate, and these involve both intelligence-related functions and infrastructure information. But your report also states that none of your 12 recommendations to this office has been implemented. Is that correct?

Mr. WALKER. That's my understanding, not fully implemented. My understanding is that there has been some progress. In some cases, they have partially implemented but not fully implemented.

Mrs. MALONEY. Your report also states that there are 33 pending recommendations within the Border and Transportation Security Directorate alone, and your recommendations there are key to reducing security vulnerabilities and passenger screening, border security, and ports. What is the status of these 33 recommendations?

I have them here, and I'm particularly interested in them. I just want to mention some of them. One is to develop a risk-based plan that specifically addresses the security of the Nation's rail infrastructure. Has that been done?

Mr. WALKER. To my knowledge, it has not been completed.

Mrs. MALONEY. Another one you recommended was to develop a comprehensive plan for air cargo security. Has that been done?

Mr. WALKER. I would have to check to find out. To my knowledge, it has not been completed.

Mrs. MALONEY. And it goes on and on with specific examples.

A great number of these recommendations, especially those that relate to border security, were reiterated and became part of the 9/11 Commission report; is that correct?

Mr. WALKER. Many of them were incorporated in the 9/11 report; that's correct.

Mrs. MALONEY. But you made many, if not all, of the recommendations before the 9/11 Commission report; is that correct?

Mr. WALKER. In many cases, that is true.

Mrs. MALONEY. Well, my question basically is, do you have any recommendations for how we, as Congress, can help instill a greater sense of urgency at the Department of Homeland Security to implement both your recommendations and those of the 9/11 Commission? You outline these in great detail. Many of them are part of the report. Most of them have not been implemented.

Mr. WALKER. Well, I think it's important to note they have implemented a number of recommendations. We continue to followup. The Department of Homeland Security has challenges along a couple of dimensions, one of which is to make sure they are taking the needed steps to enhance our homeland security. The other is to try to be able to integrate 22 to 23 different departments and agencies

in what is the largest reorganization since the establishment of the Defense Department in 1947.

I believe, relating to the subject of today's hearing, that there are at least four things that need to be done to help in this regard: No. 1, the adoption of a National Intelligence Director I think is of critical importance, but it has to be a substantive position with real responsibilities and authority; second, the establishment of the NCTC as a way to make progress in integrating activities, rather than just coordinating activities; third, to look at congressional reorganization and to enhance congressional oversight; and, fourth, and frankly pretty basically, to complete a comprehensive threat and risk assessment in the area of homeland security and to use that as a basis to finalize the Department of Homeland Security's strategic plan for allocation of resources for determination of performance measures and for effective oversight by the Congress.

Mrs. MALONEY. Thank you. Actually, the acting chairman and I have introduced legislation to actually achieve just that.

My time has expired. Thank you for your report.

Mr. SHAYS. Thank you. Thank the gentlewoman.

Mr. Schrock, you have the floor.

Mr. SCHROCK. Thank you, Mr. Chairman.

General Walker, thank you. I agree with everything you said. But the interesting thing is, we can sit here in these hearings all day long, but what are we going to do about it? When the rubber meets the road and we have to stick this voting card in to vote yes or no, what are we going to do?

You've sort of insinuated, I believe, that we don't have the ability to take charge of things, and I think you're right. We've rolled over and played dead. If you don't think so, the Supreme Court legislates from the bench and the Federal courts legislate from the bench. They're taking away the responsibility we have. The way to get some of these people under control is just to subpoena them and bring them up here and make them do what we tell them to do, but we haven't done that, and I think that's why we have a lot of the problems that we have.

Our borders. What are we going to do about our borders? Political correctness seems to be the name of the game anymore. I was only privileged to serve with Congressman Bob Ehrlich a short time. He is now the Governor of Maryland, and he finally said, political correctness be damned, we're going to do what's right for the people of Maryland and people like that.

It's time we get over that sort of stuff, because it is this political correctness that's getting us in trouble. You'll hear Members say they are willing to do certain things when they get on the floor, but political correctness will dictate otherwise when it comes time to vote, and they won't get things done.

But we have extremists in this country. We are really in deep trouble in this country if we don't start listening to people like you and others and this 9/11 Commission that has put together this magnificent document. I don't know where we go from here. I am generally worried and generally concerned about that. And this committee can sit here all day, but unless we're willing to take action, strong action, then we will fall back into the same old trap we were in before.

So I really appreciate your being here and your comments, because I agree with everything you say. And I don't usually agree with everything everybody says, but I really agree with what you're saying.

Mr. WALKER. Thank you, Mr. Schrock. If I can comment briefly—

Mr. SCHROCK. Yes, please.

Mr. WALKER [continuing]. It might be helpful.

First, I think if you look at all the recommendations of the 9/11 Commission, many of those recommendations don't require legislation.

Mr. SCHROCK. That's right.

Mr. WALKER. So I think one of the first things that needs to be done is to go through and analyze which one of those would require legislation and which one wouldn't.

Mr. SHAYS. Would the gentleman just yield a second?

Mr. SCHROCK. Sure.

Mr. SHAYS. We would like that document. We would like you to go through and tell us specifically what is an administrative effort, a regulation, Executive order, law, or a rule change. That would be very helpful.

Mr. WALKER. Mr. Chairman, I will be happy to talk to our staff and see if we can come up with a first cut as to which requires legislation versus those that could be done through executive action.

Mr. SCHROCK. Mr. Chairman, we might be surprised. There might be more that can be done without legislation than we imagine.

Mr. WALKER. I think there are quite a few that can be done without legislation, so we'll do that. That's No. 1.

No. 2, you then are going to have to obviously prioritize what is most important.

I mentioned four things I felt are critically important. Of those four things, two require legislation, one requires congressional action to organize itself and to reinvigorate oversight, and the other—

Mr. SHAYS. Can you be specific which ones are which?

Mr. WALKER. The two that I mentioned that I think require legislation would be the creation of the National Intelligence Director, that position, to make sure it's substantive, to make sure it meets certain criteria. Certain aspects of the NCTC may require legislation. For example, the fact that they want to create the deputies, the deputy positions to have certain responsibilities. That might require certain legislation.

The third item I talked about was Congress reorganizing itself and reinvigorating oversight. That would not require legislation. The Congress could do that on its own.

Mr. SCHROCK. But will we?

Mr. WALKER. That's a good question.

And, last, the need for the Department of Homeland Security to finalize its comprehensive threat and risk assessment and its strategic plan. That, obviously, doesn't require legislation.

So what items require legislation? Realistically, you're going to have to focus on the most important things first and to address certain issues on an installment basis. But, in the final analysis, the

Congress has a responsibility to address all recommendations of the 9/11 Commission and make a conscious decision as to whether or not it is going to accept them and, if not, why not.

Mr. SCHROCK. Thank you, Mr. Chairman.

Mr. SHAYS. Thank you.

Mr. Tierney, you have the floor, if you would like to ask questions.

Mr. TIERNEY. Thank you, Mr. Chairman.

Thank you, Mr. Walker, for your usual great testimony and hard work that you do.

I want to ask you a little about a letter that was actually sent from this committee to the administration on October 15, 2001. It was a bipartisan letter that then Chairman Dan Burton and the Ranking Member Henry Waxman, as well as Representative Shays and the ranking member of the subcommittee Dennis Kucinich, all signed onto.

It requested the administration to conduct a comprehensive threat risk and vulnerability assessment, to prioritize our spending as part of the overall strategy to counterterrorism. It was based on large part on your agency's work. The basic idea which you have urged, I know, at numerous hearings on occasions before September 11 as well as afterwards was that we don't know whether we're spending correctly on counterterrorism or Homeland Security efforts until we have a threat risk and vulnerability assessment. Am I right in making that judgment?

Mr. WALKER. That's correct. It's pretty fundamental.

Mr. TIERNEY. My concern has been and continues to be, as I think it has been with members on both sides of the aisle on this particular committee, we never received a response. Today, nearly 3 years later, the Commission is making the same recommendations.

When I look at page 428: The Department of Homeland Security should regularly assess the types of threats the country faces. Further on page 428: The Department of Defense should regularly assess the adequacy of the Northern Command strategies of planning. Page 396: Homeland Security assistance should be based strictly on an assessment of risks and vulnerabilities.

Now, Mr. Walker, you and numerous others at the GAO have been monitoring the progress of the administration on this. Can you tell me why this recommendation is still necessary?

Mr. WALKER. Well, first, significant progress has been made in developing threat and risk assessments for certain sectors, but the Department of Homeland Security has yet to complete a comprehensive and integrated threat and risk assessment, which is important, which would also be used to inform a strategic plan, which would be used as a basis for allocating limited resources to finding desirable outcomes and holding people accountable for results both within the executive branch as well as congressional oversight. So that recommendation is still outstanding.

As you know, Mr. Tierney, the transformation of the Department of Homeland Security is on GAO's high-risk list, and there's good reason for that.

Mr. TIERNEY. And the reason is?

Mr. WALKER. Well, the reason is, because, No. 1, they have a massive undertaking, including to complete this comprehensive threat and risk assessment, to do a strategic plan which ends up making sure that we're focusing on the most important things, because there's no such thing as zero risk and we have finite resources; and, second, because they have to integrate the policies, the systems, the practices of 22-plus agencies that were not together until within the last 2 years, many of which, quite frankly, their primary mission was not homeland security before September 11, 2001, and yet most of which it either is their primary mission now or clearly a major part of their mission.

Mr. TIERNEY. I just asked you that to drive the point home, more than anything here. This committee, as I said before, is bipartisan. This is not a partisan statement. The letters that have gone out, the votes that we've taken, the hearings and meetings that we've held continue to try to pound home that point, that we think these priorities have to be set.

Independent commissions—I think of the Bremer Commission, the Hart-Rudman Commission—have all made the same point, but, 3 years later, we're still waiting for that to be done. So let's hope that this hearing as well as others, and the Commission report, may bring that point home and we get something done on that. Because, frankly, it's really amazing that Congress has continued to appropriate money and purport to give direction to different people and they haven't really had that kind of assessment from which to work.

Let me ask you, from your experience and your observations as well, the Commission has advised that the Congress reorganize itself and set up either a joint committee on intelligence for the House and the Senate or individual committees within the House and the Senate that have the goal that the Commission set forth and to have budgetary control and things of that nature. From your perspective, is there a preference as to which would work more effectively or better?

Mr. WALKER. I hesitate to suggest exactly what the right answer is for the Congress. I will tell you this. I think there's absolutely no question that you need to consolidate. You need to have as few as necessary in order to get the job done and yet provide important checks and balances.

Let me give you an example to what I mean by that. To the extent that you have a committee focused on intelligence and possibly one focused on homeland security, I would respectfully suggest that when you're dealing with issues like personal privacy and individual liberty, that they should be in a different committee, because you probably want checks and balances between the security and intelligence and those other issues. They both need to be considered, but you probably want the checks and balances. So I would say as few committees as possible.

I think it's interesting to note that within a few days of the 9/11 Commission issuing its report there are numerous committees holding hearings. Now, in part that symbolizes the need to try to consolidate things. On the other hand, in fairness, I think if you look at the scope of the 9/11 Commission's recommendations, they cover a lot of areas. They cover foreign policy, they cover a variety

of different areas, and all of those cannot be and should not be consolidated into one committee, obviously.

Mr. TIERNEY. Thank you.

Mr. SCHROCK [presiding]. Thank you.

I know you said, General Walker, you didn't think that—you didn't want to be so presumptuous as to tell Congress what to do. I wish you would. As Mr. Tierney said, we appropriate, but we don't watch over these folks, and we have to get this under control and under control fast.

Mr. WALKER. There's absolutely no question that there needs to be much more extensive oversight than has been the case, and we can help the Congress in that regard, but we can do it in a constructive way. It doesn't have to be adversarial oversight.

Mr. SCHROCK. Well, I'm not sure I agree with that. A little brickbat once in a while.

Mr. Turner.

Mr. TURNER. Mr. Walker, we have had discussions about the legislative versus administrative action, but I was wondering if you could comment on, in reviewing the Commission's report, what do you consider to be the most important recommendations and what recommendations, if any, do you disagree with?

Mr. WALKER. Well, I have not had an opportunity to analyze each and every recommendation, so I wouldn't want to say if I disagreed with any. I agree with many.

The four actions that I mentioned that I believe are arguably the most important are, No. 1, to create the National Intelligence Director position and to make it a substantive position and to make sure that it is consistent with the criteria that I articulated in my statement; second, to create this National Counterterrorism Center to be able to integrate activities of the existing intelligence community without necessarily restructuring the entities below that; third, to look at congressional reorganization and invigorate the oversight activities; and, fourth, for the Department of Homeland Security to complete its comprehensive threat and risk assessment, its related strategic plan, which would serve as a basis to allocate its limited resources and to help enhance congressional oversight.

So those would be four thoughts.

Mr. TURNER. Thank you.

Mr. SCHROCK. Mr. Kanjorski.

Mr. KANJORSKI. Thank you, Mr. Chairman.

Mr. Walker, when I visit my district, I often get questioned on just what we're doing; and listening to your testimony, we're still drawing up plans and organizational charts 3 years after the fact. It sort of reminds me of something that struck me in the Commission's report that on the President's desk the day of September 11 they had just spent 7 or 8 months reorganizing the administration's new approach to terrorism.

Would it be reasonable to say that we just may be muscle bound as a government and incapable of responding to this type of a threat? Or at least over the last 3 years we haven't displayed a potential to do that.

Mr. WALKER. Candidly, Congressman, as I touched on before, I believe a lot of the challenges that the Homeland Security Department and the intelligence community face are challenges that are

faced by virtually every major department and agency in this government. And to a great extent my experience, having headed two executive branch agencies and now one legislative branch agency, is that a large part of government is structured to focus on challenges that existed and to try to address those challenges based upon means and methods and management models that existed in the 1950's and the 1960's. We are in need of a fundamental review reassessment and reengineering of how we do business.

Mr. KANJORSKI. I understand that, but struggling over the management in a time of peril, and taking 2½ or 3 years to do it strikes me as a pretty slow pace if in fact we're faced with the threats that we periodically hear from Homeland Security and from other agencies of the Federal Government. Seems to me we're in the fourth quarter, the last 2 minutes, and we're still drawing up the game plan.

Mr. WALKER. Well, as you may recall, before September 11, 2001, the GAO had recommended the creation of an Office of Homeland Security within the President to try to bring together some of these things. My view is that a lot of the things that are going to have to happen, that require more fundamental transformation, are going to take time. To engage in a fundamental transformation of any organization is a 5 to 7-year effort at a minimum, no matter whether you're in the public sector, private sector, or not-for-profit sector.

As a result, that's why I think the idea of having a National Intelligence Director, trying to move with this NCTC concept and to do some of the things I talked about are the most pragmatic and the most meaningful things we can do short term in order to try to help us get from where we are to where we need to be, while you can take more time to determine whether you want to do other things that may take considerably longer.

Mr. KANJORSKI. You talked about resources. Has anybody made an analysis of the amount of money that will be necessary to provide border control, shipping control, rail control protection, etc., for the country? Has that analysis been done?

Mr. WALKER. Not to my knowledge.

Mr. KANJORSKI. We really don't know then what the cost of the war on terrorism is?

Mr. WALKER. Part of the thing that has to be completed is to engage in a comprehensive threat and risk assessment, because there's no such thing as zero risk in today's world, and yet we have finite resources. So one of the reasons we felt so strongly to complete that is that it would then be able to form a discussion and debate within the executive branch and with the Congress about what should be done and what should be appropriated.

Mr. KANJORSKI. When you say "finite resources," why do you say that? Do you have any figure on what the war on terrorism will cost? What will it cost us for Homeland Security?

Mr. WALKER. First, it depends upon how you define homeland security in determining what the cost is. I guess when I say finite resources what I mean by that, Congressman, is that we need to spend whatever we think it takes in order to try to provide for reasonable security, recognizing we can't do everything and that we're



facing large structural deficits that are likely to increase in the future.

Mr. KANJORSKI. I understand, but this is wartime, basically—

Mr. WALKER. I understand that.

Mr. KANJORSKI [continuing]. So we're not necessarily going to have the best plan, the most efficient plan, but we have to have a plan, and we have to get on our way to do it.

I mean, is this going to cost \$2 trillion or \$5 trillion?

Mr. WALKER. Until you have the comprehensive threat and risk assessment and the strategic plan from the Department of Homeland Security, it is impossible to answer that question.

Mr. KANJORSKI. Absolutely impossible?

Mr. WALKER. It would be imprudent and inappropriate for me to answer without knowing that.

Mr. KANJORSKI. Well, Senator Kerrey just suggested that maybe 10 or 20 years from now terrorism would no longer be a threat. If it's going to take us 7 years to draw up a plan and then take 5 or 7 years to implement it, maybe we shouldn't do anything, because the threat may be over by then?

Mr. WALKER. Candidly, it shouldn't take that long to draw up a plan. And when I talk about implementation, there are things that have been implemented already. I think it's important to note there are a number of things that have happened in the last several years. I give several examples in my testimony. There are other things that can happen quickly.

When I talk about 5 to 7 years, I'm talking about that being how long it takes in order to effectuate a cultural transformation in any organization; and it could be IBM, it could be the Department of Homeland Security, whatever, that's how long it takes. So what we need to do is to do other actions that can be done quickly, that move us in the direction we want to go, recognizing that some of the heavy lifting is going to take more time if you're talking about cultural transformation.

Mr. KANJORSKI. Thank you.

Mr. SCHROCK. Mr. Ruppertsberger.

Mr. RUPPERSBERGER. Well, first, I agree with you, there's going to be time for transformation, but you have to start. And I think we have come a long way since September 11. Unfortunately, we always tend to criticize a lot and put blame, and we have to stop the blame game and learn from mistakes, set up the appropriate system that's going to work.

Now, you've been here most of the day and a lot of the testimony has been about the creation of a National Intelligence Director, which I feel very strongly that needs to be done. I think, from a management perspective, you need one boss, one person that's going to hold all agencies accountable for their performance. You also need that person, in order to be able to have really the power to fulfill those obligations, you need to have fiscal responsibility. We don't need window dressing. We need results.

I'd like your opinion about whether or not you feel that the National Intelligence Director should have fiscal authority and should that person be in the White House, outside the White House?

A good analogy that I've seen so far is Greenspan. He has the independence to do what he feels based on his expertise is right for

the country, and yet he does work with the President and the Congress. So let me have your thoughts on that issue.

Mr. WALKER. Well, first, I don't think it would be a good idea for this person to be in the White House.

Mr. RUPPERSBERGER. And why?

Mr. WALKER. Because the White House is comprised of many very capable and talented individuals who are not just concerned with policies, they're also concerned with politics.

Mr. RUPPERSBERGER. Good point.

Mr. WALKER. And I do not think you want a person to be physically in the White House, no matter what party controls the White House, because they are going to be interacting day in and day out for many hours of the day with people who are concerned not just with policy but also with politics. That would be like the Comptroller General of the United States having an office next to the majority leader or the minority leader of Congress. I think that would be a mistake, too.

I do think it's important that this person be a Presidential appointee, Senate confirmed, report to the President, removable by the President for cause.

Mr. RUPPERSBERGER. What type of term, too, 10-year term?

Mr. WALKER. My personal opinion would be is that for the top person, the National Intelligence Director, no, that they should be removable by the President. But then, below that, if that's the person who is going to be responsible and accountable, you may want to look at the players below that. You may want to look at the CIA Director, and you may want to look at some of these others and decide whether or not they should have term appointments. Because, right now, as you know, the CIA Director is also the DCI, therefore, the person on the point in theory, not necessarily in practice, and that is one of the reasons they do not have a term of appointment.

So I think you could look at that. I think there has to be solid-line reporting responsibility by key players to the National Intelligence Director, although they could have to report to other players as well. They need to have budget authority. They need to have substantive authority.

As I mentioned before, if all they have is an out-box suggesting that people do certain things or giving input, forget it, it won't work. They need to have people reporting to them, and they need to have substantive authority.

Mr. RUPPERSBERGER. I agree, and this is why I hope the President or his staff are listening to these hearings. I really applaud the President for coming out and saying we need a National Director, because I know he had a lot of advice to go the other way. But if you're going to do it, you do it right, and you have to have this person with authority.

Now the other issue that isn't talked about a lot, but I think it's a major issue here, because we're talking about integration and teamwork, is the Department of Defense. What most people don't realize is that over 80 percent of the intelligence personnel and budget and resources go into the Department of Defense—that is a lot of people, and that is a lot of power, and that is a lot of

money—and then the CIA and the FBI and other agencies get the rest.

Now I think it's extremely important that the DOD be at the table here. There is a bill that a group of us introduced in April, the Intelligence Transformation Act, which also recommended that we have the national director. And that recommendation would be to have a Deputy Director from the Department of Defense who is dual-hatted. There would be an under secretary in the Department of Defense but also the Deputy Director under the National Director of Intelligence. That way you do have the DOD at the table, and yet when it comes to intelligence budgeting, they will have input.

Because what I'm concerned about, we know that the Secretary of Defense is one of the most powerful positions in the world. Not as powerful as the President, but it's close, especially when you're at war. Now they have sometimes a different focus than maybe what intelligence might; and I think it's extremely important that all the agencies come together, CIA, FBI, NSA, military coming together.

What is your opinion about having a dual-hatted Deputy Director for the DOD?

Mr. WALKER. Well, first, I think it's critically important that DOD be part of this. They, as you properly point out, represent over 80 percent of the resources. Let's face it, whether you're in the government, the public sector, or the private sector, whoever controls the people, the money, and the technology is who you pay attention to. And that's all the more reason why there has to be substantive responsibility and authority with regard to those things or else the position doesn't mean anything with regard to that.

My understanding is the 9/11 Commission is recommending three deputy directors and that one of which would be the Under Secretary of Defense for Intelligence. And I think it's also important that the Congress think about, if you're going to have this DCI, do you want term appointments for some of the other players and what are you going to do if an administration turns over? Who is going to be in charge?

You may have to have a principal deputy, a principal deputy who, hopefully, would have a term appointment, who then could be able to provide some continuity in changes between administrations. And I would be happy to provide additional information on that.

Mr. RUPPERSBERGER. Just one question. The only thing about—and whether or not the director themselves—I think it might be wise—just have your opinion on this and then my time is up—to have everyone have a term and then they'll be held accountable at the end of that term to see whether they're going to be reappointed. It's an accountability factor. So instead of just saying you have one person that could be there for life, like Herbert Hoover or someone like that, everyone has a term.

Mr. KANJORSKI. J. Edgar.

Mr. RUPPERSBERGER. Who?

Mr. KANJORSKI. J. Edgar Hoover.

Mr. RUPPERSBERGER. What did I say? Herbert Hoover?

Mr. KANJORSKI. Herbert Hoover.

Mr. WALKER. He only got one term.

Mr. RUPPERSBERGER. He only had one term; right. I don't want to get into that right now. There are fiscal issues involved there, too.

But the Hoover issue, I think, is extremely important so that you do have terms for all the deputies and whatever and also the director. But then they have to come back for confirmation, and their performance would be analyzed by Congress. What do you think of that?

Mr. WALKER. I think there are certain positions where there's strong merit to considering having a Presidential appointee, Senate confirmation for a term appointment, with a performance contract geared toward trying to achieve demonstrable results. Now I think you have to be careful which ones. Right now, you have that for the FBI Director.

Mr. RUPPERSBERGER. Think it works?

Mr. WALKER. I think it works pretty well. I think you could consider it for other key positions in the intelligence community, where you're talking about national security, which would be a nonpartisan issue. This is below the Director for National Intelligence. You could consider it for the CIA Director. You could consider it, possibly, for the Under Secretary of Defense for Intelligence.

But my personal opinion is that, whoever is on the point, the President has to be comfortable. Whoever it is, the President has to be comfortable, because that is the person they are looking to for primary advice and to integrate different activities and to make sure the right things are being done and the right people are being held accountable.

Mr. RUPPERSBERGER. Thank you, Mr. Chairman.

Mr. SCHROCK. Thank you, Mr. Ruppertsberger.

Thank you, General Walker. Thank you for your indulgence. Thank you for your patience. Thank you for your testimony. It really makes a lot of sense. It's just common sense stuff, and we certainly need to address a lot of things you've talked about, and I think it's incumbent on this Congress, this committee, to do that. So thank you very much for being here.

Mr. WALKER. Thank you, Mr. Chairman.

Mr. SCHROCK. We'll take about a 5-minute break here while we set up for the fourth panel.

[Recess.]

Mr. SCHROCK. We will now move on to our fourth and final panel. We thank you all for your indulgence as well.

We are happy to have today Mr. Paul Light, who is with the New York School of Public Service; Mr. Bob Collet, vice president of engineering, AT&T Government Solutions; Mr. Dan Duff, vice president of government affairs for the American Public Transportation Association; Mr. John McCarthy, executive director of the critical infrastructure protection project—boy, that's a mouthful, critical infrastructure protection project—and Jim Dempsey, who is executive director, Center For Democracy and Technology.

Gentlemen, it is the policy of this committee that all witnesses be sworn, so if you will please stand and raise your right hands.

[Witnesses sworn.]

Mr. SCHROCK. Let the record show that all witnesses answered in the affirmative.

We would ask that you try to hold your testimony to 5 minutes to allow for some questions and answers, and of course your entire statement will be made part of the record.

We'll start with Dr. Light.

**STATEMENTS OF PAUL C. LIGHT, ROBERT F. WAGNER SCHOOL OF PUBLIC SERVICE, NEW YORK UNIVERSITY; BOB COLLET, VICE PRESIDENT, ENGINEERING, AT&T GOVERNMENT SOLUTIONS; DANIEL DUFF, VICE PRESIDENT, GOVERNMENT AFFAIRS, AMERICAN PUBLIC TRANSPORTATION ASSOCIATION; JOHN MCCARTHY, EXECUTIVE DIRECTOR, CRITICAL INFRASTRUCTURE PROTECTION PROJECT; AND JIM DEMPSEY, EXECUTIVE DIRECTOR, CENTER FOR DEMOCRACY AND TECHNOLOGY**

Mr. LIGHT. Thank you for this hearing. Thank you for your work. We have been here before.

Mr. SCHROCK. I know you have.

Mr. LIGHT. No, we have.

Mr. SCHROCK. Yes.

Mr. LIGHT. We've been here on a dozen issues over the last 10 years dealing with duplication, overlap, lack of communication across Federal agencies. We were here talking about IRS taxpayer abuse, the nuclear security issue at the Department of Energy. We've talked about FBI reorganization several times, homeland security, food safety, you name it.

In my testimony, you will see a reference to these issues and my support for reorganization authority, properly defined and properly limited. But I believe that as part of whatever legislation you produce that you should give the President authority to be more proactive by way of reorganization than reactive.

We have heard a lot of testimony today. It is moving and important. I have heard these recommendations made before in other commissions. We have on the table, for example, a number of solutions that we've seen before, some that have worked, some that have not. We have had czars, some that have been strong, some that have been not strong. We have had reorganizations that have worked and some that haven't.

On the issue of the National Intelligence Director, let me be clear, and off my testimony, that I believe the position should be separate from the White House. It should be at executive level one. That is Cabinet-level status. That does not mean the person has to sit at the Cabinet table. That individual should have a term of office.

A term of office does not imply you cannot be fired. It is hortatory in most cases, except for the Comptroller General, whom we hire for 15 years and hope he will stay. But a term of office sends a message to the rest of the Federal bureaucracy that this person is going to be around and the presumption is in favor of continuity. The President can always fire, the question being whether you want it to be so strict as to fire for cause, which is a more extreme measure, or whether you just want to give the President that authority.

I absolutely strongly encourage you to give the National Intelligence Director some budget and personnel authority. This current proposal that's floating around today at least is no carrot and no stick; and the czar is going to have to have some authority to make agencies respond, including authority to require streamlining plans from the agencies that he or she receives information from.

Let me suggest to this committee as you proceed with your deliberations that you be proactive so that we're not revisiting this over and over again in reaction by addressing reorganization authority, that you deal with the significant thickening of the bureaucracy that reports to the National Intelligence Director. It doesn't make any sense to add a new layer of bureaucracy if we don't delay the existing agencies. We've got to do that.

In the 6 years since I last looked at these issues, all of our intelligence agencies, in fact, all agencies in the Federal Government, have grown both taller and wider. At the FBI, we've added an entirely new layer of executive assistant directors. I'm sure they perform an important service and that the accountability that came with the new layer was essential. We also added a chief of staff to the director. You see this at the CIA, you see it at the NSA, you see the proliferation of titles. We've got to do something about it. Because it's like the childhood game of gossip or telephone where we're just passing information back and forth.

We absolutely must use this opportunity to fix the Presidential appointments process. What difference will a National Intelligence Director make if he or she cannot be nominated and confirmed in a reasonable amount of time? The average time to get in office for the Bush administration was 8¼ months. That is a long time to wait, especially if we are in a transformation that's going to take 7 years.

Finally, we have to address the personnel issues embedded in the Department. I believe you should give the national director, the intelligence director, the same authorities embedded in the defense personnel reforms and embedded in the Homeland Security reforms. I think those are important in terms of the discipline in the work force at the new agency. It wouldn't be a bad thing for you to extend those authorities down into the intelligence community at large as part of holding people accountable.

I will submit my testimony for the record, and I will await any questions you might have. Thank you very much for having me.

Mr. SCHROCK. Thank you, Dr. Light.

[The prepared statement of Mr. Light follows:]

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IMPLEMENTING THE 9/11 COMMISSION REPORT

TESTIMONY BEFORE THE GOVERNMENT REFORM COMMITTEE  
UNITED STATES HOUSE OF REPRESENTATIVES

PAUL C. LIGHT

ROBERT F. WAGNER SCHOOL OF PUBLIC SERVICE  
NEW YORK UNIVERSITY

CENTER FOR PUBLIC SERVICE  
THE BROOKINGS INSTITUTION

AUGUST 3, 2004

Thank you for inviting me to testify today on the implementation of the 9/11 Commission report. The Commission has provided the essential outlines for strengthening our intelligence community and homeland security institution. It is now up to Congress and the president to exercise its judgment on whether and how to proceed, including areas that the Commission did not address.

Doing so would be easier if we were building from scratch, of course. We could erect a new intelligence organization with ease, putting the pipes and windows exactly where we wish. But we are dealing with existing structures, with all the peril that comes from past remodeling, outmoded technologies, creaky stairwells, and a patchwork of top-heavy structures, antiquated personnel systems, competing priorities, and incompatible protocols.

I do not need to remind this committee that the task is fraught with uncertainty. Move a pipe here, and you could weaken a load-bearing wall there in the war against terrorism; drill a hole here, and you could spring a leak there, both literally and figuratively, that could undermine the very security we seek. Thus, I applaud your decision to lay the foundation for thoughtful legislation by taking time from the August recess to hold this hearing.

I do not need to remind this committee that the overhaul now proposed would continue the task that began three years ago when Congress created the new Department of Homeland Security, and continued with the Defense Department personnel reform. You worked hard to smooth the bureaucratic boundaries in the new department, give the senior leadership the tools to build a performance-sensitive organization, and assure accountability throughout chain of command. So have the senior leaders of the new department. They deserve great credit for avoiding the needless layering that plagues so many federal agencies, including many directly affected by this hearing.

My purpose today is to highlight four issues that I believe must be considered as part of the proposed 9/11 reforms. First, we must reduce the thickening of the federal hierarchy that produced so much of the balkanization that the 9/11 Commission highlighted in its report. Second, we must address the need for reorganization across the entire federal government. Third, we must streamline the presidential appointments process. And fourth, we must provide the personnel flexibility needed to assure that our intelligence agencies will be able to recruit talented replacements for our maturing workforce.

Simply put, it makes little sense to create an entirely new super-structure to oversee and coordinate our intelligence agencies if (1) our intelligence agencies do not streamline their own hierarchies, (2) Congress and the president cannot move more quickly to address organizational confusion wherever it happens to arise, (3) presidential appointees continue to wait months to clear the nomination and confirmation process, and (4) the federal government cannot move talented recruits onto the job and into position more quickly.

Let me briefly address each of these issues in order.



### 1. *The Thickening of Government*

The past half century has witnessed a slow, but steady thickening of the federal bureaucracy as Congress and presidents have added layer upon layer of political and career management to the hierarchy (height), and more occupants to each layer (width). According to my most recent assessment, which was released in late July, there have never been more layers at the top of government, nor more occupants at each layer.

Although national security prevents a full analysis of the intelligence hierarchy, my best guess is that the thickening has occurred within most, if not all of the agencies addressed by the 9/11 Commission. The federal phone books I use for this analysis show, for example, that the Federal Bureau of Investigation added a two new layers at the top of its hierarchy since my last analysis in 1998, including a chief of staff to the director, and a new layer of executive assistant directors, and has increased the width of its hierarchy by exactly half, widening from 30 senior title-holders to 45.

Although some of the current thickness is due to creation of the new Department of Homeland Security, which grew from just 3 layers and 3 occupants in the winter of 2003 (secretary, deputy secretary, and under secretary) to 21 layers and 146 occupants in the spring of 2004, the expansions have occurred in almost every department, including many that are not involved in homeland security or the war on terrorism. Moreover, the increase would have been greater but for the significant thinning of the management ranks at the departments of Defense and Treasury, both of which obviously remain engaged in the war on terrorism.

Two points stand out from my analysis:

- The federal hierarchy has never been taller than it is today. There were 17 different executive layers open for occupancy across the cabinet departments of government in 1960, 33 in 1992, 51 in 1998, and 58 in 2004. Although the Bush administration left six of the Clinton-era titles vacant, it added 13 new titles to the hierarchy, leaving a net gain of seven. Roughly half of the executive titles involve career appointments, while the other half involve political appointments not subject to Senate confirmation. (See the list of titles open for occupancy appended to this testimony.)

The fastest spreading titles continue to be “alter-ego” deputies, including chiefs of staff to secretaries, deputy secretaries, under secretaries, deputy under secretaries, assistant secretaries, deputy assistant secretaries, associate deputy assistant secretaries, associate assistant secretaries, administrators, deputy administrators, associate administrators, and assistant administrators.

- The federal hierarchy is also wider than it has ever been. The total number of senior title holders increased from 451 senior executives, political or career, in

1960 to 2,409 in 1992, 2,385 in 1998, and 2,592 in 2004. Although the Clinton administration added much more height to the hierarchy than the second Bush administration, the second Bush administration has added much more girth. Whereas the number of senior title holders fell by 1 percent between 1992 and 1998, albeit almost entirely because the Social Security Administration became an independent agency and was not counted in the 1998 inventory, the number increased by 9 percent between 1998 and 2004.

Although 2,500 senior title-holders may seem like an insubstantial number in a government of 1.8 million civilian (non-defense, non-postal) employees, it is not the number that counts, rather the layers they occupy. My best guess is that these 2,500 officials occupy between a third and half of all the layers through which information must pass on its way up the chain of command.

It makes little sense to me, therefore, to add another coordinating layer at the top of the intelligence community without a deliberate effort to streamline the hierarchies that it would oversee. Absent such an effort, we risk merely adding even more delay as information moves up the chain of command and guidance moves down.

## *2. Reorganization Authority*

There is an obvious and palpable sense of déjà vu in these hearings for anyone who follows government organization and reform. Strike the word "intelligence" from the conversation about duplication and overlap, and we could substitute a hundred other areas of responsibility in which that would ring just as true. We have seen the same problems in foster care, job training, food safety, nuclear security, trade policy, education, children's health care, and so on down a long list of concerns.

As we saw three years ago in the case of homeland security, reorganization offers a significant opportunity to align agencies by mission rather than constituencies. If done well, which I believe has been the case in homeland security, it can strengthen accountability, reduce wasteful duplication and overlap, tighten administrative efficiency, improve employee motivation, and provide the kind of integration that leads to impact.

The question before this Committee today is not whether reorganization can provide needed improvements in government performance, however, but whether Congress should give the President of the United States reorganization authority of some kind. This is not a new question, and I believe the answer is absolutely yes.

In April of 2001, five months before 9/11, former Republican Senator from Kansas, Nancy Kassebaum Baker, and former OMB Director in the Clinton administration, Franklin D. Raines, testified before the Senate Governmental Affairs Committee that "The Congress should grant the president renewed executive reorganization authority for the limited and specific purpose of de-layering the senior management levels, both career

and political, of all executive departments and agencies.”<sup>1</sup> They also advised that the “urgency of this task could not be greater.”

In January 2003, Congress was again asked to give the president reorganization authority through the expedited model envisioned by the National Commission on the Public Service chaired by former Federal Reserve Board chairman Paul Volcker. Reorganization was the number one recommendation of the commission last year when members testified before this committee, and would no doubt be the number one recommendation today. It also remains the most difficult recommendation to implement. That is why the Commission believed Congress should create a procedural presumption in favor of reorganization through enacted of a “fast-track” or expedited authority. Such a presumption would not assure that all presidential reorganizations would succeed, but it would certainly give them a fighting chance.

The threshold question in restoring some form of reorganization authority is whether there is any reason to believe that such authority holds the promise of better government performance, whether in the intelligence community or more broadly across government. Based on the historical record, I believe the answer is “yes.”

1. *Reorganization can give greater attention to a priority such as homeland security or food safety.* That was certainly the case in the creation of the National Aeronautics and Space Administration following the launch of Sputnik in 1957, and to the creation of the Environmental Protection Agency in 1970.
2. *Reorganization can reduce overlap and duplication among widespread programs, thereby increasing accountability and efficiency.* Consider, for example, the potential impact of finding some way to integrate the 12 agencies currently involved in administering the nation's 35 food safety statutes, the 15 departments and agencies currently involved in administering more than 160 employee and training programs, or the 11 agencies and 20 offices involved in the federal government's roughly 90 childhood programs.
3. *Reorganization can force greater cooperation among large, quasi-independent agencies such as the Coast Guard and Federal Aviation Administration.* That was certainly the goal of the early reorganizations of energy agencies, which eventually spurred creation of the Department of Energy. And it was the goal in creating the Department of Transportation in 1966. This is particularly important given the flaws described in the 9/11 report regarding the FAA failures in communicating with the military on 9/11.
4. *Reorganization can create greater transparency in the delivery of public goods and services to and on behalf of the public?* That was clearly the goal in creating the Department of Health, Education, and Welfare in 1953, which was originally

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<sup>1</sup> The Presidential Appointee Initiative, *To Form A Government: A Bipartisan Plan To Improve The Presidential Appointments Process*, (The Brookings Institution, April, 2001) p.4;16.

submitted as a reorganization plan before emerging as separate legislation, and is the case in the 9/11 recommendations.

5. *Reorganization can improve employee satisfaction and performance.* Surveys of federal employees suggest that roughly a third (1) cannot easily describe the mission of their organizations, and, therefore, (2) cannot easily describe how their jobs personally contribute to the mission of their organizations.<sup>2</sup> Assuming that employees who know their mission are more satisfied and productive, reorganization can be a source of improved performance.

It is important to note that reorganization cannot compensate for poorly designed programs, inadequate funding, or contradictory statutes. Merely combining similar units will not produce coherent policy, nor will it produce greater performance, increase morale, or raise budgets. It most certainly will not make broken agencies whole.

If an agency is not working in another department, there is no reason to believe that it will work well in the new department. Conversely, if an agency is working well in another department or on its own as an independent agency, there is no reason to believe that it will continue to work well in the new department.

If one believes that reorganization holds significant promise for improving government performance, the question becomes how to assure that reorganization efforts have at least some chance of passage. The answer, I believe, is restoration of presidential reorganization authority.

Recognizing the need to place constraints on the president's reorganization authority to assure congressional review, it is imperative that Congress give reorganization plans expedited consideration in the legislative process. Such consideration can be created under several options suggested by the Volcker Commission. It is relatively easy to construct a fast-track mechanism to give Congress enough time to review a reorganization plan, whether through a Base Closure and Realignment Act mechanism requiring an up-or-down vote on all elements of a plan, or through some kind of "most-favored" status requiring expedited consideration in the legislative process.

Ultimately, reorganization is best seen as merely one of several steps for improving organizational performance. It may create a greater presumption in favor of performance, but can only succeed if this and other committees are successful in helping the executive branch achieve its other management goals. At the same time, the executive branch cannot achieve its other management goals, most notably the strengthening of human capital, if it does not undertake the aggressive restructuring that reorganization authority would encourage.

Management improvement and reorganization are, therefore, two sides of the same coin. It makes no sense to improve recruiting systems if new employees are condemned to work in poorly structured departments with fuzzy missions and needless layers of

<sup>2</sup> Paul C. Light, *To Restore and Renew*, (The Brookings Institution, November, 2001)

political and career bureaucracy. At the same time, it makes no sense to streamline agencies and endure the political battles of reorganization if management systems continue to creak along at sub-glacial speed. Why bother to reorganize if human capital continues to atrophy? Why both to invest in human capital if the bureaucracy continues to stifle performance?

### *3. Presidential Appointments*

In testimony last week before the Senate Governmental Affairs Committee, 9/11 Commission Chairman Tom Kean expressed his disappointment that the Commission's recommendation regarding improving transitions and accelerating the presidential appointments process has not received enough attention. I could not agree with him more. Having led the Brookings Institution's Presidential Appointee Initiative, which focused on transition reform as the centerpiece of improvement, I feel his pain.

We have now waited three years for the Senate and White House to reach agreement on streamlining the presidential appointments process, which has slowed to sub-glacial speed. I cannot explain why the Senate and White House have not been able to achieve even a modest streamlining of the process, but do know that the paperwork, delays, and frustration have all gotten worse with each passing administration, contributing to increased delays.

The delays affect every agency, but are particularly troublesome for positions associated with the war on terrorism. As of November 1, 2001, seven weeks after the terrorist attacks against New York and Washington, half of the 164 positions involved in the war were still vacant (22 percent) or filled by someone who had arrived after July 1. These crucial positions included the Undersecretaries of the Air Force and Army, the Assistant to the Secretary of Defense for Nuclear, Chemical and Biological Defense Programs, the Director of the National Institutes of Health, the Commissioner of the Food and Drug Administration, the Deputy Director of the Federal Emergency Management Administration, and the Deputy Administrator of the Federal Aviation Administration.

In his testimony before the 9/11 Commission on March 23rd of this year, Secretary Rumsfeld confirmed that the deteriorating state of the presidential appointments process adversely affected the already truncated transition process in 2001. The result was that critical posts in the administration remained vacant, with no one in place to oversee vital functions of the federal government, including defense planning activities.

Even if the various intelligence agencies had connected the dots before September 11, it is not clear that the information would have made it to the right person. From late 1998, when Clinton administration officials began the mass exodus out of office, to September 11, 2001, when the attacks occurred, the federal hierarchy was riddled with vacancies that created a kind of "neckless" government in which information was easily lost or misinterpreted.

Of particular concern are the science, technology and engineering positions that are becoming increasingly difficult to fill, according to the National Academy of Sciences, this at just the time we may need them most.

The delays come at both ends of Pennsylvania Avenue, and reflect an accumulation of bureaucratic sediment that has grown with each appointee controversy over the past four decades. The process starts with 60 pages of forms that are filled with repetitive, nonsensical questions, almost all of which had to be answered on a typewriter until recently, when our project helped to produce an online version. It continues with a Federal Bureau of Investigation background check that lasts a month or more, a financial disclosure process that requires so much detailed information that the result is tantamount to a net worth statement, and a Senate confirmation process that introduces an entirely new set of questions and forms to the process. It all leaves many candidates wondering just why they answered "yes" to the call to service in the first place.

The process has become so burdensome that it favors exactly the wrong kind of candidates for selection. The perfect candidate is no longer a citizen with the kind of qualifications and judgment needed to manage an international crisis like China or an economic upheaval like the recent stock market collapse, but individuals with so little experience that they can slip through the process with relative ease because they have no background to investigate. Although Congress has recently paid more attention to the management qualifications of these individuals during the confirmation process, given the sober scenarios outlined in the failures described by the 9/11 report, leadership and management capabilities are more valuable than ever.

If the president wants to move fast, for example, he would veto candidates with international experience to avoid the investigation of the dates and purposes of every foreign trip they have taken over the past fifteen years, including short trips to Canada and Mexico. He would also reject candidates with more than one employer to shorten the number of references in the FBI background check. He would almost certainly avoid candidates with extensive stock and bond portfolios to reduce the search for conflicts of interest by the federal Office of Government Ethics that drag on too long, and would concentrate on candidates already living in Washington, D.C., to avoid the long delays involved in moving to one of the most expensive housing markets in the country.

There is nothing wrong with asking tough questions about qualifications, curing obvious conflicts of interest, and ferreting out national security risks, of course. In fact, it is essential to ensuring the public trust in those to whom we give great public responsibility. But in its zeal to prevent flawed appointments, the process has created an ever-lengthening review that now exposes the nation to a very different risk: a government filled with persistent vacancies among some of the most important jobs in the world.

Fixing this problem will take more than the ample dose of ridicule the current process has earned. It will require a long-overdue streamlining of the more than 230 questions every Senate-confirmed appointee must answer, a flattening of what has become a bloated, over-layered political hierarchy, and a commitment from the Senate to speedy action once

nominations arrive. This Committee could act immediately by simply adding the Presidential Appointee Improvement Act to whatever legislation it produces this fall. The act was drafted in 2001, and was reported favorably out of committee to the floor, but languished there over an objection that the bill should apply to the legislative and judicial branches, in addition to the executive branch. That may be a laudable goal, but surely we can start with the executive branch. Senator George Voinovich re-introduced the bill in 2003, but it has not moved an inch. It is clearly time to act now.

#### 4. *Human Capital*

This Committee clearly understands both the nature and urgency of the human capital crisis in government. You have held hearing after hearing outlining the problems, and developing legislative solutions. Whatever you decide regarding reorganization of the intelligence community, I believe you must give agency directors greater authority to recruit and manage their workforces—authority modeled on the performance-sensitive approach adopted in the recent Defense Department personnel reforms and embedded in the Department of Homeland Security statute.

Although I believe that there is no level of the current human resources system that does not need immediate reform, I am particularly concerned about problems on the front lines of government where non-supervisory personnel bear so much of the burden for the inefficiency. They are the ones who have to wait months for replacements to work their way through the process, and the ones who must deal with the layer-upon-layer of needless managerial oversight.

The problems are particularly apparent in the international affairs community, government, where dozens of task forces, commissions, and study groups over the last two decades on the need for fundamental public service reform, be it in the Departments of Defense or State, the intelligence agencies, or government as a whole. None have been more blunt in describing the problems than the U.S. Commission on National Security/21<sup>st</sup> Century, co-chaired by former Senators Gary Hart and Warren Rudman.

As it enters the 21<sup>st</sup> century, the United States finds itself on the brink of an unprecedented crisis of competence in government....This problem stems from multiple sources—ample private sector opportunities with good pay and fewer bureaucratic frustrations, rigid governmental personnel procedures, the absence of a single overarching threat like the Cold War to entice service, cynicism about the worthiness of government service and perceptions of government as a plodding bureaucracy falling behind in a technological age of speed and accuracy.<sup>3</sup>

Although many talented Americans have been called to service by the war on terrorism, they still confront a government hiring process that is frustrating at best. And once in government, they often complain of antiquated systems, needless hierarchy, and broken

<sup>3</sup> U.S. Commission on National Security/21<sup>st</sup> Century, *Roadmap for National Security: Imperative for Change*, Phase III Report (U.S. Commission on National Security/21<sup>st</sup> Century, February 15, 2001), p. xiv.

promises. Again, it hardly makes sense to create new coordinating mechanism for handling information if the human capital that produces the information is not given the tools to do its job well.

That means we must have a personnel system that is agile, responsive, and performance-sensitive. That might also mean the creation of a new intelligence service corps that can provide the pay and incentives needed to assure a steady stream of talent as the retirement wave begins to cut into the core capacity of our intelligence community.



## LAYERS OPEN FOR OCCUPANCY IN 2004\*

Secretary\*\*  
 Chief of Staff to the Secretary\*\*  
 Deputy Chief of Staff to the Secretary\*\*

Deputy Secretary\*\*  
 Chief of Staff to the Deputy Secretary  
 Deputy Chief of Staff  
 Deputy Deputy Secretary  
 Principal Associate Deputy Secretary  
 Associate Deputy Secretary\*\*  
 Deputy Associate Deputy Secretary  
 Assistant Deputy Secretary

Under Secretary\*\*  
 Chief of Staff to the Under Secretary  
 Principal Deputy Under Secretary  
 Deputy Under Secretary\*\*  
 Chief of Staff to the Deputy Under Secretary  
 Principal Associate Deputy Under Secretary  
 Associate Deputy Under Secretary  
 Principal Assistant Deputy Under Secretary  
 Assistant Deputy Under Secretary  
 Associate Under Secretary  
 Assistant Under Secretary

Assistant Secretary\*\*  
 Chief of Staff to the Assistant Secretary\*\*  
 Deputy Chief of Staff to the Assistant Secretary  
 Principal Deputy Assistant Secretary\*\*  
 Associate Principal Deputy Assistant Secretary  
 Deputy Assistant Secretary\*\*  
 Chief of Staff to the Deputy Assistant Secretary  
 Principal Deputy Deputy Assistant Secretary  
 Deputy Deputy Assistant Secretary  
 Associate Deputy Assistant Secretary\*\*  
 Chief of Staff to the Associate Deputy Assistant Secretary  
 Deputy Associate Assistant Secretary  
 Assistant Deputy Assistant Secretary  
 Principal Associate Assistant Secretary  
 Associate Assistant Secretary\*\*  
 Chief of Staff to the Associate Assistant Secretary  
 Deputy Associate Assistant Secretary  
 Principal Assistant Assistant Secretary  
 Assistant Assistant Secretary\*\*

Chief of Staff to the Assistant Assistant Secretary  
Deputy Assistant Assistant Secretary\*\*

Administrator\*\*

Chief of Staff to the Administrator\*\*

Deputy Chief of Staff to the Administrator

Assistant Chief of Staff to the Administrator

Principal Deputy Administrator

Deputy Administrator

Chief of Staff to the Deputy Administrator

Associate Deputy Administrator

Deputy Associate Deputy Administrator

Assistant Deputy Administrator

Deputy Assistant Deputy Administrator

Senior Associate Administrator

Associate Administrator\*\*

Chief of Staff to the Associate Administrator

Deputy Executive Associate Administrator

Deputy Associate Administrator

Assistant Administrator\*\*

Chief of Staff to the Assistant Administrator

Deputy Assistant Administrator

Associate Assistant Administrator

Associate Deputy Assistant Administrator

\*The list includes all positions defined in statute as Executive Level I –V, and includes positions that are not necessarily called secretary, deputy secretary, under secretary, assistant secretary, and administrator titles. The assistant secretary list includes a long list of Executive Level IV titles, for example, including inspector general, chief financial officer, general counsel, assistant commandant, and so forth. Hence, some titles such as assistant assistant secretary sound odd, but actually refer to positions such as assistant inspector general, assistant general counsel, and so forth.

\*\*Title exists in at least seven departments out of 15

Mr. SCHROCK. Mr. Collet, welcome.

Mr. COLLET. Good afternoon. My name is Bob Collet. I'm vice president of engineering for AT&T's Government Solutions division. Thank you for inviting us here to discuss AT&T's view on the need to share critical network infrastructure information. We applaud the consistent efforts of this committee to improve the overall infrastructure security of the Federal Government and the Nation.

At AT&T, we take our responsibility to protect against information or infrastructure vulnerability very seriously, and we are constantly updating our network security in response to ever-changing threats against the network.

Following the tragic events of September 11, we have meaningfully increased our efforts by deploying new technologies and infrastructures. For the recent Democratic convention, for example, we applied what we have done in all our critical nodes with a location-specific network recovery strategy in case of terrorist action, and we stationed a response team in Boston to be ready to implement that plan if it should be needed. Obviously, we will be doing the same for the upcoming Republican convention, and we do the same thing for other high-profile events.

As you know, most of our country's critical infrastructure is owned and operated by the private sector. Thus, the private sector does play a role in ensuring the safeguarding of the infrastructure. Now, while our contribution can't compare to sacrifices of the first responders, the availability of telecommunications infrastructure is essential, and we are concerned about well-meaning but fundamentally unsound initiatives to collect infrastructure information outside the methods and procedures that have served our Nation so well in the past.

In particular, a concern is that critical telecommunications infrastructure information should not be collected in multiple places where the information, in its collected form, would be vulnerable to intrusion. With regard to telecommunications, this country has a tested, trusted approach that we should continue to use and optimize. In this context, let me describe two of these public-private partnerships.

First, within the Department of Homeland Security, and that is the National Coordination Center Information Sharing Analysis Center. The good news for telecommunications is that this sector has been a leader in forging a public-private partnership to address infrastructure security. Telecom carriers have shared information informally with the NCS, or the National Communication System, since its inception in 1984; and since March 2000, the NCS's NCC, or National Coordinating Center, has served as the Information Sharing and Analysis Center [ISAC], for telecommunications. The participants include industry and government representatives, including the FCC; and they gather and share information about threats and vulnerabilities.

There are three reasons why this is successful. The first is the government routinely provides specific threat and alert information to industry representatives. Second, the NCC Telecom-ISAC has demonstrated an ability to handle corporate proprietary information and government classified information in a secured manner.

And, third, in times of crisis, they act as an ombudsman on behalf of industry, helping industry complete its mission.

So, for example, during September 11, the NCC helped network providers obtain access to Ground Zero. We have an atmosphere of trust and cooperation in which industry feels confident in sharing sensitive information with the government and with our competitors in times of crisis.

The second institution is another example of the partnership that has worked and should be a model for any government industry problem solving, and that is the Network Reliability and Interoperability Council of the FCC. This was organized back in 1992. It is a forum where industry, consumers, and government come together for the sharing of work-specific issues. A good example of its ability to perform was during the Y2K. Since then, there has been a focus, understandably, on homeland security, with teams addressing both physical and cyberlevel security.

NRIC VII is further enhancing this work. The product is an extensive set of best practices for service providers, network operators, and equipment vendors. There are literally hundreds of best practices that have been developed.

Now, the NRIC also monitors and analyzes information prepared or received from the public network over the last 10 years. In order for this effort to be successful, it must be voluntary. This is to encourage the utmost in the sharing of information and experience. Second, it must be developed by industry experts that make it. And, third, it must be adaptable and usable by the country's infrastructure providers, and they are us.

Now, let me address the issue of safeguarding or sharing private information.

As a private sector operator of a major part of one of America's most important critical infrastructures, we clearly have to safeguard all information about our physical locations, capabilities, and components of our worldwide infrastructure. An ongoing major concern of the industry remains the public dissemination of the availability of critical information who has a desire to do harm to the national communications network.

Despite these concerns, we have been asked by various well-meaning government agencies for specific but we consider extremely sensitive information about capabilities, including maps, network facilities and infrastructure. Now, in the wrong hands, the compilation of this critical infrastructure assets only increases the vulnerability of the telecommunications infrastructure. So, while well-intentioned, we believe such requirements would greatly hinder our ability to protect the survivability and availability of the network.

So in order to ensure that all information provided which contains critical infrastructure information is protected from our adversaries through public disclosure, we recommend that it be routed through one Federal Government agency. We believe that agency should be the Department of Homeland Security, because of the very good track record of the NCS.

By initially providing voluntary reporting to the DHS in the event of a terrorist attack or an act of nature that affects all major utilities and communications, including the communications infra-

structure, of course, one agency would maintain the responsibility for leadership in coordinating restoration efforts. The coordination of a unified response should result in greater efficiency and effectiveness in the restoration and recovery process.

Accordingly, we believe the DHS process for administering the protection of critical infrastructure should continue to reside with those entities that have the mission to assure continuous connectivity.

In closing, in this time of elevated terror threat levels, we must take every step necessary to protect America's citizens. This committee's work, among its responsibilities to be responsive to the issues highlighted by the 9/11 Commission, is to ensure that survivability and security be key features of the next-generation telecommunications service in the Federal Government.

We at AT&T are living up to that responsibility in the fullest manner every day. But, in some cases, a need to know better protects America than a well-meaning but undefined need to share. Therefore, we ask that you carefully consider the security ramifications of wider information sharing as you proceed in your deliberations.

AT&T would like to thank Chairman Davis and members of this committee for holding this hearing on this important issue, and I offer AT&T's assistance in your endeavors on this matter. Thank you.

Chairman TOM DAVIS [presiding]. Thank you very much.  
[The prepared statement of Mr. Collet follows:]

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TESTIMONY TO THE COMMITTEE ON GOVERNMENT REFORM

TOM DAVIS, CHAIRMAN

U.S. HOUSE OF REPRESENTATIVES

August 3, 2004

BOB COLLET

VICE-PRESIDENT FOR ENGINEERING

AT&T GOVERNMENT SOLUTIONS

AT&T CORP.

Good morning, Mr. Chairman and Members of the Committee. Thank you for inviting me here today to discuss AT&T's views on the need to share critical network infrastructure information. At AT&T, we take our responsibility to protect against infrastructure vulnerability very seriously, and we are constantly updating network security in response to ever-transforming threats.

As the nation's largest Internet backbone provider, interexchange carrier and provider of network services to businesses, we are routinely challenged to engineer and operate a network of unparalleled scale. Like our colleagues in the industry, the National Communications System has tasked us since the peak of the Cold War to provide a variety of National Security/Emergency Preparedness (NS/EP) services built to meet very unique requirements. We regularly exercise these capabilities and our proprietary disaster recovery strategies are unique and unparalleled in the industry. We exercise our Disaster Recovery Program under a simulated, and, unfortunately, sometimes a real incident environment, as evidenced by our response to the terrorist attacks of 9/11. We have an overarching interest in preserving and promoting a safe, secure and robust infrastructure that will be a key enabler of economic growth and prosperity of the United States. We therefore very much appreciate the opportunity to offer these comments today.

Following the tragic events of September 11, 2001, we have redoubled our efforts. For the recent Democratic National Convention, for example, we developed a location specific network recovery strategy in case of terrorist action, and stationed a response team in the area ready to implement that plan if necessary. The same will be

done for the upcoming Republican Convention, and for similar important, high-profile events.

As you know, most of the country's critical infrastructures are owned and operated by the private sector, thus the private sector must play a key role in safeguarding those infrastructures. Much has been said about the need for an effective "public-private partnership" to share security-related information and to address security-related threats and vulnerabilities. These are laudable goals, and in fact, AT&T and other telecommunications companies have been working together to identify and address security risks, and to develop security-related best practices in partnership with government, for many years. Two of the most significant partnerships are noteworthy.

#### **The NCC Telecom-ISAC**

The good news for telecommunications is that this sector has been a leader in forging a public – private partnership to address infrastructure security. Telecommunications carriers have shared information informally with the National Communications System (NCS) since 1984. In 1991, the National Security Information Exchange (NSIE) was established as a forum in which government and industry could share information in a confidential, trusted environment. Since March of 2000, the NCS's National Coordinating Center (NCC) has served as the Information Sharing and Analysis Center, or "ISAC" for Telecommunications. NCC Telecom-ISAC participants, including industry and government representatives, gather and share information on threats, vulnerabilities and intrusion attempts. Information is analyzed to help avert or minimize disruptions to the telecommunications infrastructure. The results are aggregated and disseminated as provided by agreement among the ISAC members. In



addition, the NCS hosts the NCC and is the lead agency for the telecommunications support functions under the Federal Emergency Response Plan. In that capacity, the NCC is specifically charged with assisting in the coordination of telecommunications restoration and provisioning during national disasters through government and industry cooperation on a 24-hour basis. NCS and the telecommunications carriers also collaborated on the development of the “Government Emergency Telecommunications Service” or “GETS”, which provides government and industry personnel with key national security or emergency preparedness responsibilities with the ability to gain priority access to the public switched telecom network in times of significant network congestion.

Much of the benefit attributed to a partnership between government and industry involves the need to encourage robust, timely, two-way information sharing about threats, vulnerabilities, intrusions and anomalies. New protections provided in the Homeland Security Act significantly reduce the possibility that sensitive information shared voluntarily for these purposes might be disclosed publicly. Nevertheless, companies will only engage in sustained and meaningful information sharing when there is a compelling business case for doing so, and only in a trusted environment

There are three related reasons why we believe that the NCC Telecom-ISAC has been particularly successful. First, the NCC Telecom-ISAC is the only joint government – industry ISAC and is funded largely by government appropriations, so the core infrastructure and round-the-clock staffing is not borne exclusively by the private sector, as is the case with some of the other ISACs. Government “partners” provide value back to the industry participants. The information-sharing goes two ways. The government

routinely provides specific threat and alert information to industry representatives. Second, the NCC Telecom ISAC has demonstrated its ability to handle corporate proprietary and government classified information in a secure manner. Third, in times of real crises, the government NCC representatives quickly engage as ombudsmen on behalf of industry, helping industry gain access to impaired locations for purposes of restoration and recovery. They represent the needs and concerns of the industry in terms of coordinating successful rapid response. On September 11, 2001, the NCC helped network providers gain access to Ground Zero to restore communications, including arranging for military air transport for some of our key disaster recovery personnel who were stranded in California when commercial aircraft were grounded. The ability of government to deliver this kind of assistance, proven repeatedly in crises of differing degrees over the years, has led to an atmosphere of trust and cooperation in which we in industry have felt comfortable sharing sensitive information with the government and with our competitors in times of crisis.

This level of trust is essential because in order for information about security concerns and incident response activities to be useful to companies and to the government, it must be shared quickly. This need for expediency may result in reports that are initially incomplete and potentially inaccurate, and there can be unintended consequences if the information is not treated with the appropriate care. This trusted environment has also allowed industry and government partners to engage in periodic “exercises” to test the potential impact of different threat scenarios based on accurate network data assessment from multiple carriers.

**The National Reliability and Interoperability Council (NRIC)**

Another example of the partnership that has worked and should be the model for any government and industry problem solving is the Network Reliability and Interoperability Council (NRIC). First organized by the Federal Communications Commission (FCC) in 1992, the NRIC was established following several telecom outages to study the causes of the outages and to make recommendations to reduce their number and effects on consumers. Since then, some 50 telecom carriers, equipment manufacturers, state regulators and consumers have participated. This has been a standing committee for over 10 years, and is a forum where industry and government come together for the good of the industry to work specific issues. Y2K was one such issue. NRIC VI was focused on Homeland Security with teams addressing both physical and cyber security and NRIC VII is further advancing this work. The product is a extensive set of best practices (proven processes used in the industry) for service providers, network operators, and equipment/software vendors to use to mitigate risk of attacks, as appropriate, based on internal analysis.

Another feature of NRIC is the monitoring and analysis of the performance of the public switched network based on reliability data collected during the last 10 years. The Network Reliability Steering Committee (NRSC), a voluntary industry committee, reviews each outage report submitted to the FCC, looks for trends, publishes the results quarterly and annually, and looks for ways to improve the collective performance of the network. A new phase of this work, currently underway in the NRSC, is collecting similar outage data on wireless, cable and ISP networks in order to conduct data analysis, enable performance improvement, and develop new best practices. In order for this effort

to be successful, it must be: 1) voluntary; 2) developed by industry experts; and 3) adaptable by different network providers to reflect differing architectures and approaches.

**Safeguarding sensitive proprietary information:**

As a private sector operator of a major part of one of America's most important critical infrastructures, we carefully safeguard all information about the physical locations, capabilities and components of our world-wide infrastructure. An ongoing major concern of the industry remains the public dissemination and availability of critical infrastructure information (communications that have been identified as part of the national critical infrastructure) to someone who has a desire to do harm to the national communications network.

Despite these concerns, we are increasingly solicited by various governmental entities for very specific, extremely sensitive, proprietary information about our capabilities and maps of our network facilities and routes.

States are attempting to compile lists of the critical assets of AT&T and other carriers for purposes of critical infrastructure protection. New York, for example, is seeking to establish a state-wide database that would reflect the location of all telecommunications infrastructure in the state and the number of customers that would be impacted if each location failed. New York has also approved a recommendation to ask local telecommunications carriers to offer certain "critical" customers access to information on where their circuits are routed. This would effectively provide a partial map of AT&T's overall infrastructure assets, and would potentially be aggregated with infrastructure assets of other service providers as well. In the wrong hands, this compilation of critical infrastructure assets only increases the vulnerability of the critical

telecommunications infrastructure. In Michigan and Maine, carriers are required to provide detailed infrastructure information, including routing maps. Other states have also imposed similar requirements. The FCC, too, has sought to require telecommunications carriers to file periodic reports with the Commission that include extensive information on problems and vulnerabilities identified in the telecommunications network. The FCC's proposed network outage reporting requirements, for example, would require telecommunications carriers to identify the location of every network outage and document the magnitude of its impact.

While well-intended, such requirements would greatly hinder our security efforts. As a practical matter, we must be able to react and respond immediately to new information, rather than first comply with a government mandated process. In this very important area, we need to be able to modify our designs and plans with a continued primary focus on reliability and security, not regulatory compliance.

More importantly, extremely sensitive network information is best kept closely guarded by the individual provider. In the past, as a result of such information gathering efforts, maps have actually been published in newspapers, in an attempt to inform citizens where an attack might be most likely to occur and what impact could be expected. In one prominent New York City newspaper, for example, a map was published showing the location of every chemical plant in the area along with the number of citizens that would be harmed if that facility were attacked.

If our critical infrastructure maps and information were filed and amassed with similar information from other providers, it would create a significantly enhanced security risk. Unlike other parts of the nation's critical infrastructure, such as dams and

power facilities, there is currently no ready way for terrorists to identify and develop a comprehensive list of communications networks and infrastructure locations. Such locations are numerous, often out of sight, and in the control of different providers. The lack of centralized information provides a degree of security for these facilities that should not be disrupted.

Filing such information with numerous government agencies and constituencies would greatly raise the risk of its release. While various agencies have the full intention to keep such information confidential, the fact is that persons less familiar with the network are not always able to identify that data which is most sensitive, and could unintentionally expose information that makes our network vulnerable to attack. Agencies outside the “security triangle” do not always have specific procedures for housing and handling information critical to national security.

In order to ensure that all information provided, which contains critical infrastructure information, is protected from public disclosure, it should be routed through one federal governmental agency. That agency should be the Department of Homeland Security. By initially providing voluntary reporting to the DHS, in the event of a terrorist attack or act of nature that affects all major utilities, including the communications infrastructure, one agency would maintain responsibility for leadership of all coordinating restoration efforts. The coordination of a unified response would result in greater efficiency in the restoration and recovery process. Further, the DHS process for administering the protection of critical infrastructure information should be refined to limit access to those entities on a need-to-know basis.

AT&T is concerned about the breadth, open-endedness, lack of specificity, potential cost, and ability to safeguard and keep confidential any information that is provided. Neither states nor the federal Government should expect to receive this information directly from the network operators. First, security-related information that is provided to government entities outside the federal Department of Homeland Security may not be adequately protected from federal and state Freedom of Information laws. Even more importantly, it is not clear that information collected on a wholesale or generalized basis advances homeland security in any way, and may inadvertently create greater risks to homeland security. In fact, proper analysis of any potential vulnerability requires a detailed assessment of the specific facilities of concern, the services they support, and the impact mitigation strategies applicable to those services. Instead of making arbitrary requests for massive downloads of extremely sensitive information, states should work with the Department of Homeland Security (DHS) and directly with critical infrastructure providers to determine what specific information is really needed and to establish coordinated processes and procedures. The DHS should be the appropriate focal point for the coordination across the regions, states, and municipalities, as well as across key industry sectors, to ensure that the information is useful, responsive, and properly managed.

In this time of elevated terror threat levels, we must all take every step necessary to protect America's citizens. At AT&T, we are living up to that responsibility in the fullest manner every day. But in some cases, a "need to know" better protects America than a "need to share." We ask that you carefully consider the security ramifications of wider information sharing as you proceed in your deliberations.

AT&T would like to particularly thank Chairman Davis and the Members of this Committee for holding a hearing on this important issue. I offer AT&T's assistance to the Committee as well as my own, and I would be glad to answer any questions you may have.



Chairman TOM DAVIS. Mr. Duff, welcome.

Mr. DUFF. Mr. Chairman and members of the committee, thank you for this opportunity to testify on the 9/11 Commission report and related issues. We commend the House Committee on Government Reform for holding this hearing today.

Let me start, if I could, with just a word about my organization, the American Public Transportation Association, which is a non-profit international trade association of over 1,500 public and private member organizations, including transit systems and commuter rail operations and the businesses that provide the goods and services to the industry. Some 90 percent of persons using public transportation in the United States today are served by APTA member systems.

A few background facts about public transportation. Over 9 billion transit trips are taken annually on all modes of transit service. People use public transportation vehicles over 32 million times each weekday. To put this into perspective, this is more than 16 times the number of daily travelers aboard the Nation's domestic airlines. The vast number of Americans using public transportation each and every day creates ongoing challenges for enhancing security within our transit environments.

Since the events of September 11, State and local public transit agencies, in fact, all State and local entities, have spent significant sums on police overtime, enhanced planning and training exercises, and capital improvements related to security. In response to a recent APTA survey, transit agencies around the country have identified in excess of \$6 billion in transit security needs.

These include both immediate capital investments and recurring operating expenses related to security.

In the months following the September 11th terrorist attacks, transit agencies of all sizes worked to identify where they might be vulnerable to attacks and increased their security investment for both operation and capital activities. The agencies subsequently upgraded and strengthened their emergency response and security plans and procedures, taking steps to protect transit infrastructure and patrons and increase transit security presence.

All transit system buses and trains are equipped with two-way radio communication systems that are connected to their respective operations control centers. Many transit systems have been in the costly process of upgrading these systems to ensure their reliability.

While many transit agencies are more secure than prior to September 11th, much more needs to be done. And one of the key measures that the transit industry recognized it needed to do was focus on enhanced communications. In that regard, public transportation is recognized by the Federal Government to be one of our Nation's critical infrastructures. And APTA is pleased to have been designated public transportation sector coordinator by the U.S. Department of Transportation. And in that capacity, in January 2003, APTA received a \$1.2 million grant from the Federal Transit Administration to establish and fund a Transit Information Sharing Analysis Center for its initial 2 years of operations.

This ISAC for public transit provides 24/7 a secure two-way reporting and analysis structure for the transmission of critical alerts

and advisories. It collects, analyzes and distributes critical cyber and physical security information from Government and numerous other sources. These sources include law enforcement, Government operations centers, the intelligence community, the U.S. military, academia and others. Best security practices and plans to eliminate threats, attacks, vulnerabilities, and countermeasures are drawn upon to protect the sector's cyber and physical infrastructures.

The public transit ISAC also provides a critical linkage between the transit industry, the Department of Homeland Security, the Transportation Security Administration, and the Department of Transportation, as well as other sources of security intelligence.

Transit systems are public agencies and rely upon Federal, State, and local funding. Consequently, the public transit ISAC is available without cost to all transit systems. There are currently over 130 transit systems participating in the public transit ISAC, and these numbers continue to grow. Funding for this ISAC will, however, end by February 2005. We agree with the recent GAO report on ISACs where it identified as a challenge requiring further Federal action the funding of ISAC operations and activities. APTA has made a request for funding to continue the public transit ISAC to the Department of Homeland Security in January of this year, and we currently await their support of this request. Failure to fund this project on an ongoing basis would mean that public transportation systems would be without the very resource that the Federal Government has encouraged for our Nation's critical infrastructures.

Let me turn briefly to the 9/11 Commission Report. And with respect to transportation security, that report recommends that the U.S. Government identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so and then develop a plan, budget and funding to implement the effort.

I spoke earlier about the needs that we have identified in the area of \$6 billion, and we would urge the Department of Homeland Security to take up that initiative, because, while we appreciate the funding that has been made available to date, in the \$100 million range, we think there are much greater needs.

One other final point I would like to make, Mr. Chairman, is that we also think it would be useful if the Department of Homeland Security and the Department of Transportation together worked out a memorandum of understanding to address the roles of those two agencies in working with public transportation security. DHS clearly is the lead in that regard, but DOT has years of experience in working with local public transportation entities, and DHS should utilize that experience.

Mr. Chairman, we look forward to building on our cooperative working relationship with the Department of Homeland Security and Congress to begin to address these needs. We again thank you and the committee for allowing us to testify today and your commitment to addressing the security information needs of our Nation's critical infrastructure.

[The prepared statement of Mr. Duff follows:]

TESTIMONY OF  
DANIEL DUFF  
VICE PRESIDENT - GOVERNMENT AFFAIRS  
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION  
BEFORE THE  
HOUSE COMMITTEE ON GOVERNMENT REFORM  
ON  
THE 9/11 COMMISSION RECOMMENDATIONS

\*\*\*\*\*

August 3, 2004

SUBMITTED BY

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APTA is a nonprofit international association of over 1,500 public and private member organizations including transit systems and commuter rail operators; planning, design, construction and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. Over ninety percent of persons using public transportation in the United States and Canada are served by APTA members.

Mr. Chairman, thank you for this opportunity to testify on the security information and other security related needs of the public transportation industry. We commend the House Committee on Government Reform for holding this hearing today on the 9/11 Commission Report and Recommendations.

#### **ABOUT APTA**

The American Public Transportation Association (APTA) is a nonprofit international association of over 1,500 public and private member organizations including transit systems and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient, and economical transit services and products. Over ninety percent of persons using public transportation in the United States and Canada are served by APTA member systems.

#### **PUBLIC TRANSPORTATION SECURITY**

Mr. Chairman, America's public transportation services are by design and necessity an open environment. Over 9 billion transit trips are taken annually on all modes of transit service. People use public transportation vehicles over 32 million times each weekday. This is more than sixteen times the number of daily travelers aboard the nation's domestic airlines and over 450 times the number used by Amtrak intercity services. The vast numbers of Americans using public transportation each and every day create ongoing challenges for enhancing security within our transit environments.

In addition, transit employees are on the front line in our nation's effort against terrorism. Public transit is, in fact, a first responder. They are the first responder evacuation teams who will assist in getting the public out of critical incident areas and our cities in the event of a terrorist attack. This was evident on September 11, 2001, when public transportation in New York City, New Jersey and Washington, D.C. helped safely evacuate citizens from center cities. Indeed, this same story was true around the country as transit systems quickly and efficiently evacuated people from closed airports and downtown areas. We remember that the interstate highway program was begun by President Eisenhower as a national defense interstate highway program. It is clear now that public transportation, too, has a significant national defense component and is a fundamental element in responding to community disasters and emergencies.

In that connection, APTA is honored to play a critical role in transportation security and works closely with a number of federal agencies in this regard, notably the Federal Transit Administration (FTA) and the Federal Railroad Administration (FRA) of the U.S. Department of Transportation, and the Transportation Security Administration (TSA), the Office of Domestic Preparedness (ODP), and the Directorate of Information Analysis & Infrastructure Protection of the U.S. Department of Homeland Security. At

the program level, APTA works closely with the FTA and FRA to administer an industry audit program that oversees a system safety and security management plan for transit systems around the country. Our safety audit program for commuter rail, bus, and rail transit operations has been in place for many years and includes elements specific to security planning and emergency preparedness. In connection with Presidential Decision Directive Number 63, we are pleased to have been designated a Public Transportation Sector Coordinator by the Department of Transportation, and we have established a Transit Information Sharing Analysis Center (ISAC) that provides a secure two-way reporting and analysis structure for the transmission of critical alerts and advisories to transit agencies around the country.

Since the events of 9/11, state and local public transit agencies, like all state and local entities, have spent significant sums on police overtime, enhanced planning and training exercises, and capital improvements related to security. In response to a 2004 APTA survey, transit agencies around the country have identified in excess of \$6 billion in transit security needs. These include both immediate capital investments and recurring operating expenses related to security.

#### **BACKGROUND**

Mr. Chairman, prior to and following September 11, 2001—the date of the most devastating terrorist attack in U.S. history—APTA has played a key role in addressing the safety and security issues of our country. American public transportation agencies have also taken significant measures to enhance their security and emergency preparedness efforts to adjust to society's new state of concern. Although agencies had a wide range of security initiatives in place at the time of the World Trade Center and Pentagon attacks and already had developed emergency response plans, the September 11 incidents focused, strengthened and prioritized security efforts throughout the industry.

Transit agencies have had a solid safety record and have been working for many years to enhance their system security and employee security training, partly responding to government standards, APTA guidelines, and by learning through the attacks on transit agencies abroad. For example, the 1995 sarin gas attack in the Tokyo subway system caused U.S. transit properties managing tunnels and underground transit stations to go on high alert. The San Francisco Bay Area Rapid Transit District, for instance, responded to the possible threat of chemical weapons attacks by sending a police team to Fort McClellan, Alabama, to learn response tactics from U.S. Army chemical weapons experts.

In the months following the September 11 terrorist attacks, transit agencies of all sizes worked to identify where they might be vulnerable to attacks and increased their security expenses for both operations and capital costs. The agencies subsequently upgraded and strengthened their emergency response and security plans and procedures, taking steps to protect transit infrastructure and patrons and increase transit security presence while giving riders a sense of security.

Some initiatives around the country include:

- Increased surveillance via closed circuit TV.
- Increased training for employees.
- Hired more police, K-9 units added.
- Chemical detection systems being tested.
- Infrastructure design to eliminate hiding places.
- Drills are routinely held with first responders.
- Encouraging riders to be vigilant for suspicious activities or items.

After September 11, many transit organizations worked to prevent unauthorized entry into transit facilities. The need for employees and passengers to stay alert and report suspicious occurrences became a key goal of many agencies. All transit system buses and trains are equipped with two-way radio communication systems that are connected to their respective operations control centers. Many transit systems have been in the costly process of upgrading these systems to ensure their reliability. While many transit agencies are more secure than prior to September 11, more needs to be done.

Since the attacks, APTA and the FTA have emphasized the need for effective transit security and emergency preparedness. FTA has sent security resource toolkits to transit agencies; completed security-vulnerability assessments of the nation's largest transit systems; and provided technical support and grants of up to \$50,000 to fund agency emergency drills.

FTA continues to provide emergency preparedness and security forums nationwide. In emphasizing the importance of enhancing transit security, FTA Administrator Jennifer L. Dorn noted that thousands of lives were spared on September 11 in New York City and Washington "because of the quick action of first responders and transit workers."

APTA has launched many additional efforts to further transit industry security and preparedness, collaborating with FTA in developing emergency preparedness forums, and sponsoring and organizing security-related conferences and workshops. Moreover, APTA developed a list of critical safety and security needs faced by the transit industry, which it has provided to the Department of Transportation and the U.S. Congress. Mr. Chairman, I would be pleased to submit this and other data discussed in my testimony for the record.

**PUBLIC TRANSPORTATION INFORMATION SHARING ANALYSIS CENTER  
(ISAC)**

Presidential Decision Directive Number 63 authorized and encouraged national critical infrastructures to develop and maintain ISACs as a means of strengthening security and protection against cyber and operations attacks. Public transportation is recognized by the federal government to be one of our nation's critical infrastructures. APTA is pleased to have been designated the Public Transportation Sector Coordinator by the U.S. Department of Transportation, and in that capacity, in January 2003, APTA received a \$1.2 million grant from the Federal Transit Administration to establish and fund a transit ISAC for its initial two years of operation. As the designated Sector Coordinator, APTA serves as the primary contact to organize and bring the public transportation community together to work cooperatively on physical and cyber security issues. Upon receipt of that grant, APTA formalized an agreement with a private company to implement the ISAC and make it available to public transit systems around the country. Unlike many other ISACs that have been established for private industry, the Public Transit ISAC has been created for a public domain.

This ISAC for public transit provides - 24 hours a day, 7 days a week - a secure two-way reporting and analysis structure for the transmission of critical alerts and advisories as well as the collection, analysis and dissemination of security information from transit agencies. It collects, analyzes and distributes critical cyber and physical security information from government and numerous other sources. These sources include law enforcement, government operations centers, the intelligence community, the U.S. military, academia, the International Computer Emergency Response Community and others. Best security practices and plans to eliminate threats, attacks, vulnerabilities and countermeasures are drawn upon to protect the sector's cyber and physical infrastructures. The Public Transit ISAC also provides a critical linkage between the transit industry, the U.S. Department of Homeland Security, the Transportation Security Administration, and the Department of Transportation as well as other sources of security intelligence.

Transit systems are public agencies and rely upon federal, state and local funding. Consequently, the Public Transit ISAC is available without cost to all transit systems. There are currently over 130 transit systems participating in the Public Transit ISAC and these numbers continue to grow. Funding for this ISAC will, however, end by February 2005. Consequently, as the Department of Homeland Security has been made the federal administration responsible for security, including public transportation security, a request for funding to continue the Public Transit ISAC was submitted to the Department of Homeland Security's Directorate of Information Analysis & Infrastructure Protection. This request was submitted to the Department of Homeland Security in January of this year and we currently await their support to this request. Failure to fund this project on an ongoing basis would mean that public transit systems would be without the very resource that the federal government has encouraged for our nation's critical infrastructures.

**THE 9/11 COMMISSION REPORT: TRANSPORTATION SECURITY**

As *The 9/11 Commission Report* notes in its section on Transportation Security, “[a]bout 6,000 agencies provide transit services through buses, subways, ferries, and light-rail service to about 14 million Americans each weekday.” And: “[s]urface transportation systems such as railroads and mass transit remain hard to protect because they are so accessible and extensive.” The Report further notes that current federal security efforts do not reflect a forward-looking strategic plan systematically analyzing assets and risks, and recommends that the U.S. government identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so, and then develop a plan, budget, and funding to implement the effort.

We urge that this be done, and are pleased to offer any support we can provide to the Department of Homeland Security and the Department of Transportation in this effort. APTA works closely with a number of federal agencies in this regard, notably the Federal Transit Administration and the Federal Railroad Administration of the U.S. Department of Transportation, and the Transportation Security Administration, the Office of Domestic Preparedness, and the Directorate of Information Analysis & Infrastructure Protection of the U.S. Department of Homeland Security.

Our nation’s transit systems have a direct and cooperative working relationship with DOT’s Federal Transit Administration which allocates federal capital investment quickly to the local level, and we believe this is an excellent model that we would like to see developed over time with the DHS. In that regard, we think it would be very useful for DHS and DOT to develop a Memorandum of Understanding to specify the responsibilities of each agency with respect to public transportation security. DHS clearly is the lead in that regard, but DOT has years of experience in working with local public transportation entities, and DHS should utilize that experience.

**OTHER ONGOING TRANSIT SECURITY PROGRAMS**

Mr. Chairman, while transit agencies have moved to a heightened level of security alertness, the leadership of APTA has been actively working with its strategic partners to develop a practical plan to address our industry’s security and emergency preparedness needs. Shortly after the September 11 events, the APTA Executive Committee established a Security Task Force under the leadership of Washington Metro’s CEO, Richard A. White. The APTA Security Task Force has established a security strategic plan that prioritizes direction for our initiatives. Among those initiatives, the Task Force identified the critical need of public transit systems to be able to access and receive security information. That identification led to our actions to develop the Public Transit ISAC.



The APTA Security Task Force also serves as the steering group for determining security projects that are being implemented through over \$2 million in Transit Cooperative Research Project funding through the Transportation Research Board. Through this funding, APTA held four transit security workshop forums for the larger transit systems with potentially greater risk exposure. These workshops provided confidential settings to enable sharing of security practices and applying methodologies to various scenarios. The outcomes from these workshops were made available in a controlled and confidential format to other transit agencies unable to attend the workshops. The workshops were held in New York, San Francisco, Atlanta, and Chicago.

In partnerships with the Transportation Research Board, the APTA Security Task Force has also established two TCRP Panels that identified and initiated specific projects developed to address Preparedness/Detection/Response to Incidents and Prevention and Mitigation. The Security Task Force emphasized the importance for the research projects to be operationally practical.

In addition to the TCRP funded efforts, a generic Checklist for Transit Agency Review for Emergency Response Planning and System Review has been developed by APTA as a resource tool and is available on the APTA website. Also through the direction of the Security Task Force, APTA has reached out to other organizations and international transportation associations to formally engage in sharing information on our respective security programs and directions and to continually work towards raising the bar of safety and security effectiveness.

Within this concept of partnership and outreach, APTA also continues in its ongoing collaboration with the Federal Transit Administration to help in guiding and developing FTA programs. Among these are regional Emergency Preparedness and Security Planning Workshops that are currently being delivered through the Volpe Center and have been provided in numerous regions throughout the U.S. The primary focus of such workshops has been to assist particularly smaller transit systems in building effective emergency response plans with first responders and their regional offices of emergency management. Also within this partnership, APTA has assisted the FTA and the National Transit Institute in the design of a new program "Security Awareness Training for Frontline Employees and Supervisors." This program is now being provided by NTI to transit agencies throughout the nation.

Collaborative efforts between APTA, FTA, Volpe Center, and the National Transit Institute are also underway to establish a joint website that will specifically gather and disseminate effective transit practices with initial emphasis on safety and security.

**SECURITY INVESTMENT NEEDS**

Mr. Chairman, since the awful events of 9/11, the transit industry has invested over \$2 billion of its own revenues in enhanced security measures building on the industry's considerable efforts already in place. At the same time, our industry undertook a comprehensive review to determine how we could build upon our existing industry security practices. This included a range of activities, some of which I discussed earlier in my testimony, including research, best practices, education, information sharing in the industry, surveys and the like. As a result of those efforts we are now at a phase where we know what we can most effectively do in terms of creating a more secure environment for our riders and have accordingly identified critical security investment needs. Without question, the on-going access, availability, and sharing of security information through the ISAC remains a critical need.

Our latest survey of public transportation security identified needs of at least \$5.2 billion in additional capital funding to maintain, modernize, and expand transit system security functions to meet increased security demands. Over \$800 million in increased operating costs for security personnel, training, technical support, and research and development have been identified, bringing total additional transit security funding needs to more than \$6 billion.

Responding transit agencies were asked to prioritize the uses for which they required additional federal investment for security needs. Priority examples of operational needs include:

- Funding current and additional transit agency and local law enforcement personnel.
- Funding for over-time costs and extra security personnel during heightened alert levels.
- Training for security personnel.
- Joint transit/law enforcement training.
- Security planning activities.
- Security training for other transit personnel.

Priority examples of security capital investment needs include:

- Radio communications systems.
- Security cameras on-board transit vehicles and in transit stations.
- Controlling access to transit facilities and secure areas.
- Automated vehicle locator systems.
- Security fencing around facilities.

Transit agencies with large rail operations also reported a priority need for federal capital funding for intrusion detection devices. To this extent, we are seeking \$2 billion in funding for transit security in the FY 2005 Homeland Security Appropriations bill. Within the \$2 billion in funding, we are seeking \$1.2 billion for capital investments, and an immediate \$800 million in operational expenses.

To date the DHS has allocated some \$115 million for public transportation security through its Office of Domestic Preparedness, and we appreciate this support from the Department. We trust that we can now begin to build on those initial investments and address the \$6 billion in critical needs the transit industry has identified. The Administration's FY 2005 budget, however, does not specifically call for investment in public transportation security. We think it should. Currently ODP grants for transit systems are made available through the states, which means that our transit systems do not have a direct relationship with DHS, and which also means that the process of getting the funds to the local transit systems can be lengthy.

#### CONCLUSION

Mr. Chairman, in light of our nation's heightened security concerns post 9/11, we believe that increased federal investment in public transportation security by DHS is critical. The public transportation industry has made great strides in transit security improvements since 9/11 but much more needs to be done. Public transportation clearly requires security funding support through the federal government and the funding support to sustain the Public Transit ISAC. We look forward to building on our cooperative working relationship with the Department of Homeland Security and Congress to begin to address these needs. We also look forward to a memorandum of understanding being finalized between the Department of Homeland Security and the Department of Transportation to delineate security responsibilities between these two federal agencies that are so closely tied to public transportation. We again thank you and the Committee for allowing us to testify today and your commitment to addressing the security information needs of our nation's critical infrastructures.

Chairman TOM DAVIS. Thank you very much.  
Mr. McCarthy.

Mr. MCCARTHY. Good afternoon, Mr. Chairman, members of the committee. Thank you very much for having me today. I am John McCarthy, the director of the critical infrastructure protection project at George Mason University School of Law. I would like to quickly discuss the project and give you the context of why our testimony today is relevant.

George Mason about 2 years ago started a program to build an interdisciplinary program around critical infrastructure. The guiding principles were interdisciplinary research—to build an interdisciplinary research curriculum. It would be multi-institutional, and that the work support the national agenda. To date, we have sponsored close to 100 researchers around the Nation, with upwards of 70 schools to do work in the area of homeland security critical infrastructure protection.

Two programs which are especially relevant to this discussion today that we have spun off as separate projects and received separate funding for are as follows: One is the work we do with the National Capital Region. The Commonwealth of Virginia, the State of Maryland and the District of Columbia have pooled their Homeland Security research money and asked the critical infrastructure project to provide oversight for their work in the National Capital Region relative to critical infrastructure protection. So we are operating a consortium of scholars and researchers from some 10 area universities looking at vulnerability assessment in the National Capital Region. So that's looking at the problem from a very local perspective.

Also, we have been asked by the Department of Homeland Security to, in essence, be the executive directorate for the sector coordinators in the Information Sharing and Analysis Centers. Our goal is to build out those private sector entities, assist them with strategic planning, assist them in organization and moving the national agenda forward and working with Homeland Security to make logical connections between the entities that the private sector has built, some of which have been articulated here, and what's being built inside the Department of Homeland Security.

Relative to the 9/11 report, I have a brief comment on three areas that were raised in the report. First is that our Nation's decision to consolidate Homeland Security has improved information sharing in significant ways in the opinion of the project. DHS has focused and energized on sharing threat information. In providing a single point of contact, the new Department is working to provide an efficient way to share threat analysis and disseminate sensitive information to the right people at the right place at the right time. I don't want to sound like a cheerleader, because it's not a perfect system, and I think you will probably hear testimony relative to this weekend as an example of some issues.

But the fact is that we have moved significantly from where we were 3 years ago during September 11 in terms of being able to disseminate and have discussion simultaneously with an incident as opposed to after the fact when everyone's either been left out of the decisionmaking process or improperly briefed.

A second point is that the committee should consider ways to involve the private sector in the Government-wide information-sharing reforms discussed today. This idea was mentioned by several of the previous panels. While you are focused on the formation and reformation of the intelligence community, one critical piece that cannot be left out is all the work that's being done in the private sector, the ISACs and the sector coordinator activity and how that can roll up in a logical way and touch these new entities.

And we at CIP project feel very strongly that this single point of contact with the private sector right now should remain with the Department of Homeland Security. So any mechanisms that are built to connect to this new national director to the private sector should be through DHS.

And the third point speaks to the technology. We vigorously applaud the 9/11 Commissioners for promoting the critical role of technology to this agenda. Within the research project portion of the CIP element that I mentioned before, we have invested a great deal in the area of technology balanced with a look at the business governance, and the economic and the legal implications of that technology. We've set priority goals at CIP for looking at developing a comprehensive understanding of infrastructure vulnerability, developing tools to assess these vulnerabilities, offering research on complex interdependencies between the infrastructure's sectors, developing concepts, metrics and models to support decision allocating resources, the Homeland Security initiatives, measuring progress and developing effective systems of public-private partnership that afford true information sharing.

One key emphasis when you are looking at technology, again, relative to the intelligence agenda, is this notion of the amount of data that's out there and building programs that begin to help the decisionmakers sort. Its biometrics and other access clearance-type technologies are very important to this, but the ability to find the needle in the haystack—the data stream is massive and huge. It's a major paradigm shift in the intelligence community, and that technology and that focus on research, I think, is very useful. And we very much support that agenda at GMU.

One question that I would like to address that was brought up in some of the previous testimony was the idea of moving the Commission forward. One project that we sponsored using the CIP money was an oral history of the President's Commission on Critical Infrastructure Protection, another feeding commission into the body of knowledge that's led up to the discussion today.

And one of the key lessons that we learned in analyzing that previous commission's work was that the commission, almost immediately after it reported out—and the result of that was the signing of Presidential Decision Directive 63—the commission was disbanded, and there was very little interaction between the entities that took over to implement the findings of the commission and the former commissioners.

And one major theme that's come out of our preliminary study and the oral history is that you should not let that happen. And I think I heard that message loud and clear, and I hope that was recognized by the committee.

And one final point, while outside the scope of the CIP project and my testimony today, I'm sure I will be asked, in terms of the National Intelligence Directorate and the formation of that, based on my prior Government experience, I strongly support my colleagues and the suggestions today that it should be outside the White House, but for another kind of reasoning. And it goes back to a prior life as a Coast Guard officer and a commanding officer of a ship, the notion that the CO never stands watch. When you put a critical function like that intelligence integrator into the White House, you are, in essence, co-locating that person with the President. And it's an extension of the CO's authority. The CO should be standing back and watching and managing and having activity develop and be able to step in when problems arise. And when that's co-located in the White House, I don't think that can happen. And if a problem does arise, it puts it at the foot of the President as opposed to out in the Departments where operational decisions should be made.

Thank you very much for the opportunity.

[The prepared statement of Mr. McCarthy follows:]

080204  
15:15

**Testimony of John A. McCarthy  
Executive Director of the Critical Infrastructure Protection Program,  
George Mason University School of Law  
Before the House Committee on Government Reform**

Thank you, Mr. Chairman and distinguished members of the Committee for the honor of appearing before you today. I am here to testify about issues and challenges explored by the National Commission On Terrorist Attacks Upon the United States. In their report, the 9-11 Commission proposes bold actions that Congress and the Administration may undertake to enhance critical infrastructure protection. We believe that the recommendations, many of which this Committee has considered prior to and since the 9/11 attacks, are worthy of the Committee's time and attention.

As a preliminary matter, I'd like to introduce the Critical Infrastructure Protection (CIP) Program of George Mason University School of Law, where I serve as Executive Director. The CIP Program has a unique role in building an inter-disciplinary research program that fully integrates the disciplines of law, policy, and technology. We are developing practical solutions for enhancing the security of cyber networks, physical structures, and economic processes underlying our nation's critical infrastructures.

The CIP Program is specifically charged with supporting research that informs needs and requirements outlined in the various National Homeland Security Strategy documents. The CIP Program was launched almost two years ago, since then sponsoring more than 70 substantive research projects, touching leading scholars at 20 universities – with James Madison University as a leading partner – and focusing more than 200 graduate and undergraduate students on security related studies. CIP Program sponsored research ranges from highly technical efforts to design new security protocols for cyber systems,

to mapping the vulnerabilities of various infrastructures, nationally and internationally, exploring the legal and business governance implications of information sharing, and experimental economic analysis of the energy sector under the direction of Dr. Vernon Smith, the 2002 Nobel Laureate in economics.

In addition, GMU leads an academic consortium of regional scholars, supporting CIP vulnerability analysis and interdependency identification for homeland security planning efforts here in the National Capital Region. We are working with the Department of Homeland Security to ensure that vulnerability assessment and modeling tools are developed locally and are capable of national deployment.

On behalf of the Critical Infrastructure Protection Program at George Mason University, I would like to emphasize three themes today:

**First, our nation's decision to consolidate homeland security has improved information sharing in significant ways.** The Department of Homeland Security is focused and energized on sharing threat information. In providing a single point of contact, the new Department of Homeland Security is working to provide an efficient way to share threat analysis and to disseminate sensitive information -- to the right people, at the right time, and in the right manner.

The Administration's issuance of Homeland Security Presidential Directive 7 has favorably influenced information sharing initiatives. The new directive, which updates Presidential Decision Directive 63, sets expectations to share information as widely as possible, clarifies roles and responsibilities, and marshals the Administration's resources so that information sharing programs are managed effectively.

Since the 9/11 attacks, we have witnessed the private sector commit to improving security exchanges with the government in this new consolidated environment. Of course there are impediments that undermine more robust information sharing. We are, however, impressed with the relationships formed between the Information Analysis and



Infrastructure Protection directorate and the infrastructure sectors. With IA/IP's encouragement and assistance, the private sector has deployed a range of important programs and initiatives for sharing sensitive threat data -- including efforts that:

1. Organized and expanded cross-sector collaboration for information sharing among critical infrastructure owner/operators in the private sector and to the government;
2. Developed an early notification system, which public and private sectors deployed this weekend surrounding the recent threat alerts;
3. Identified common physical and cyber issues for public and private sector collaboration and consideration; and
4. Identified and developed exercises related to critical interdependencies.

These could not have been accomplished prior to the 9/11 attacks.

**Second, this Committee should consider ways to involve the private sector in government-wide information sharing reforms.** Critical infrastructure owners and operators provide goods and services essential to national security, economic security, public health and safety and public confidence, the goals of Homeland Security. These owners and operators are not always treated as having a need to know. They do, however, have a compelling need for threat information.

In many cases, critical infrastructure operators are the first to respond to an incident. Industry owners and operators are, in many cases, the first line of defense. Critical infrastructures have a weighty responsibility to protect employees, service customers, and support the markets by restoring essential services from an attack quickly and effectively. These corporate responders should have access to information that Federal, State, and local responders have as well, allowing for restrictions of specifically classified information.

In this vein, we applaud the 9/11 Commission recommendations on Protecting Against and Preparing for a Terrorist attack. The Commissioners pinpoint potential areas of change, such as inclusion of private sector needs in any new national intelligence

program. We hope that this Committee will go one step further and treat private sector as inseparable from other government agencies, such as first responders and others that rely on intelligence warnings to service the public sector.

In the event the Committee decides to recommend any restructuring directives, we believe that it is important that such initiatives build upon rather than replace the initiatives already underway.

**Third, we vigorously applaud the 9/11 commissioners for promoting the critical role of technology.** Leveraging technology is critical at several levels – for analyzing substantial amounts of data, for disseminating that data, and for prioritizing who gets what, how, and when.

George Mason University, like our academic partners across the United States, is focusing research on ways to integrate technology smartly for information sharing purposes. Our priority goals at the CIPP include:

1. Developing a comprehensive understanding of infrastructure vulnerabilities;
2. Developing tools to assess these vulnerabilities;
3. Offering research on complex interdependencies between infrastructure sectors;
4. Developing concepts, metrics and models to support decisions allocating resources to homeland security initiatives and measuring their progress; and
5. Developing effective systems of public-private partnerships that afford true information sharing.

We also applaud the 9/11 Commission for recognizing the critical importance of privacy and civil liberties. One of our distinguished Professors, John O. Marsh, served on the Technology and Privacy Advisory Panel established by Secretary Rumsfeld. Prof. Marsh is now entering his fifth year of working with law students to consider new theories of privacy and ways to enhance both security and privacy rights. We encourage the Committee to consider how the 9/11 Recommendations impact existing privacy responsibilities, such as those contained in the Federal Information Security Management Act.

**Thank you. I look forward to addressing any questions you may have.**

Chairman TOM DAVIS. Thank you very much.

Mr. Dempsey.

Mr. DEMPSEY. Good afternoon, Mr. Chairman, members of the committee. Thank you for the opportunity to testify today at this first hearing in the House of Representatives on the recommendations of the 9/11 Commission. It's a privilege to sit here at this table following the commissioners, Secretary Lehman and Senator Kerrey, and the families of the survivors. To both the commissioners and the families, our Nation owes a debt of gratitude for their dedication and commitment and insight.

There are three issues confronting the President and the Congress, today and in the coming weeks, that I would like to address. The first question is how can we better share intelligence information, law enforcement information, at all levels of Government in order to prevent terrorism? Important progress has been made since September 11 to improve information sharing, but still we do not have a decentralized dynamic network for the sharing of information. Still there are technological barriers as well as institutional barriers.

The Markle Foundation has a Task Force on National Security in the Information Age. This task force has been in existence now for 3 years. It is made up on a bipartisan basis of experts with national security backgrounds from the Carter, the first Bush administration, the Reagan administration, and the Clinton administration, and experts from the technology and privacy fields. They've issued two reports. The most recent one was in December of last year, "Creating a Trusted Information Network for Homeland Security." They spell out in that report how, using off-the-shelf technology, it is possible to build a network to better share information. The tools are available. It's based upon write-to-release. It's based upon federated searches across agencies. It's a system that promotes horizontal sharing of information and downward sharing of information as well as the stovepiped and upward sharing of information. It is based upon writing reports to be disclosed, for using tear lines to protect sources and methods.

We need to get on with building this network. There are steps that we can take beginning immediately with establishing directories and pointers so that at least we know what we know, and so that we can find out who has the information.

The second question confronting the President and this Congress is who should be in charge of the information and intelligence sharing and analysis effort? Now, with the recommendations of the 9/11 Commission and with the decision of the President yesterday, that question has been answered to some extent. If we establish and move forward as the President has said he will with the director of national intelligence, there are many important questions to be addressed, including eliminating duplication and correcting or clarifying the lines of authority between existing analysis centers. But, certainly, a key part of the role of the director of national intelligence should be the answering of those questions.

The third question is how to do this while protecting the privacy and the civil liberties of ordinary citizens. Now, the 9/11 Commission was 100 percent clear that we can and must address this threat of terrorism consistent with our civil liberties. They called

for an enhanced system of checks and balances to protect precious liberties that are vital to our way of life.

The Gilmore Commission chaired by former Virginia Governor Gilmore reached the same conclusion. The TAPAC—the Technology and Privacy Advisory Committee appointed by Secretary Rumsfeld also stressed the importance of protecting privacy, as did the Markle Task Force.

Part of the answer is in the technologies themselves, anonymization technologies that will minimize the amount of information that is collected, quality control measures, auditing trails to make sure that information is not being abused or misused or compromised, and also the policies. The wall is now down; no one is proposing re-erecting it. Intelligence agencies and law enforcement agencies are sharing information as they never did before. The Government agencies have broad collection authority. There is really not any information that the Government does not have the legal authority to get. But the Privacy Act and our other rules are outdated, and the guidelines have not been put in place for this new information-sharing environment.

And these guidelines need not tie the hands of investigators and law enforcement and intelligence officials. In fact, the guidelines can empower the officials as well as constrain them by telling them what is permissible and what they are authorized to do. We will need oversight, both congressional and in the executive branch. This Congress was wise in creating a privacy officer and a civil rights and civil liberties officer when it created the Department of Homeland Security. Similar mechanisms need to be created for the new information-sharing structures. At the end of the day, the oversight and accountability mechanisms will benefit both national security and civil liberties. Well implemented accountability need not impede intelligence operations. Checks and balances result in clear lines of responsibility, well-allocated resources, protection against abuse, and the ability to evaluate and correct past mistakes.

As this committee moves forward to implement the recommendations of the 9/11 committee, the Center for Democracy and Technology and the members of the Markle Task Force are at your disposal to work with you and move forward in achieving our shared goals. Thank you, Mr. Chairman.

[The prepared statement of Mr. Dempsey follows:]

**Prepared Statement of  
James X. Dempsey  
Executive Director  
Center for Democracy and Technology**

**before the**

**House Committee on Government Reform**

**“Moving from ‘Need to Know’ to ‘Need to Share’  
A Review of the 9-11 Commission’s Recommendations”**

**August 3, 2004**

Chairman Davis, Congressman Waxman, members of the Committee, thank you for the opportunity to testify today at this first hearing in the House of Representatives on the recommendations of the 9/11 Commission.

I am Executive Director of the Center for Democracy and Technology. CDT is a non-profit, public interest organization dedicated to promoting civil liberties and democratic values for the digital age. Our core goals include enhancing privacy protections as government and businesses adopt new technologies for collecting and using personal information. Among other activities, CDT coordinates the Digital Privacy and Security Working Group (DPSWG), a forum for computer, communications, and public interest organizations, companies and associations interested in information privacy and security issues. I am also privileged to serve as a member of the steering committee of the Markle Foundation Task Force on National Security in the Information Age and as chair of one of its working groups. The Markle Task Force, co-chaired by Zoë Baird and Jim Barksdale, is comprised of leading experts from the fields of national security, technology, and privacy, including CDT’s President Jerry Berman. Its members have extensive experience in and out of government at the federal and state level, in both the legislative and executive branches, from the administrations of Presidents Carter, Reagan, George H.W. Bush and Clinton. The Task Force has published two reports, “Protecting America’s Freedom in the Information Age” (2002) and “Creating a Trusted Information Network for Homeland Security” (2003).<sup>1</sup> The Task Force, which is continuing its work, has offered concrete recommendations for strengthening national security while protecting civil liberties by creating a decentralized network for sharing and analyzing information within a framework of accountability and oversight.

Terrorism poses an imminent and grave threat to our nation. Hostile groups are continuing to plan attacks in this country and abroad. To prevent terrorism to the greatest extent possible and to swiftly punish it when it occurs, the government must have adequate legal authorities and must develop a strong organizational structure. Improved

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<sup>1</sup> Available at <http://www.markletaskforce.org>.

intelligence collection and better sharing of information are central to success. Information sharing will be effective only if --

- it is managed well, with some entity within the Executive Branch having clear responsibility for setting standards and ensuring implementation;
- it takes full advantage of available technology, which can be leveraged both to facilitate appropriate information sharing and to protect privacy; and
- it is subject to guidelines and oversight mechanisms that will protect civil liberties.

The importance of protecting civil liberties bears emphasizing as Congress and the President move forward implementing the recommendations of the 9/11 Commission. Privacy protection, checks and balances, accountability and redress are not incompatible with effectively fighting terrorism. To the contrary, clear guidelines and oversight mechanisms are part of the solution. As the 9/11 Commission stated: "The choice between security and liberty is a false choice." The shift in government power and authority that is occurring in response to terrorism, the 9/11 Commission concluded, "calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life."

This conclusion -- that privacy protection and accountability must be built into the design and implementation of counterterrorism information sharing systems -- is central to the recommendations not only of the Markle Task Force but also of other recent bipartisan expert bodies that have taken the time to carefully study information technology and its role in fighting terrorism. "We must not sacrifice liberty for security," concluded the Technology and Privacy Advisory Committee (TAPAC) appointed by Secretary of Defense Rumsfeld to study the Total Information Awareness program and related activities. Likewise, the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, chaired by former Virginia Governor James Gilmore, repeatedly stressed that personal freedoms must be at the foundation of the nation's efforts to counter terrorist threats.<sup>2</sup>

The elements of an effective oversight and accountability framework must involve each branch of government, as well as the public, and should include:

- clear and publicly available guidelines on the collection and sharing of information to ensure investigative focus and prevent fishing expeditions;
- robust and regularized periodic internal audits of information collection, retention and dissemination;
- privacy technology -- anonymization, permission controls, audit trails -- built into the design of information sharing systems;
- more effective congressional oversight;

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<sup>2</sup> The five reports of the Gilmore Commission are available at <http://www.rand.org/nsrd/terrpanel/>.

- due process redress mechanisms when individuals face adverse consequences from the use of information.

### **Sharing Information More Efficiently**

In the past three years, steps have been taken at the federal, state, and local levels to broaden the sharing and improve the analysis of terrorist-related data among government agencies at all levels. To date, however, the government still does not have a dynamic, decentralized network for sharing and analysis of information. The sharing of terrorist-related information between relevant agencies at different levels of government is still dependent on multiple systems that cannot communicate with each other and still limited by institutional and technical barriers. Fragments of data collected by different agencies are likely to remain in different places with no way to find them and therefore no way to make sense of what is happening.

A key finding of the Markle Task Force is that technologies exist *today, off-the-shelf*, that can both facilitate information sharing and protect privacy. The second Markle Task Force report explains in detail how commercially available technologies can be adopted to create a government-wide information sharing network. The Task Force calls this the SHARE Network, for “Systemwide Homeland Analysis and Resource Exchange Network.” It is intended to foster better analysis and sharing of information among all relevant participants at every level of government, with built-in practical and technological safeguards for civil liberties.

The SHARE Network would represent a fundamentally new way of using information to facilitate better, faster decision-making at all levels of government. It has several key features:

- SHARE is a decentralized, secure network that sends information to and pulls information from all participants in counterterrorism efforts, from local law enforcement officers to senior policy makers.
- SHARE is based on the concept of “write to share.” Instead of the Cold War culture that placed the highest value on securing information through classification and distribution restrictions, SHARE uses an authorization system to encourage reporting that contains the maximum possible amount of sharable information. Organizations that originate information would not exercise the kind of control over its dissemination they did in the past. “Write to share” nevertheless allows for tear lines to protect sources and methods.
- SHARE is a hybrid of technology and policy. The system would use currently available technology to share and protect the information that flows through it. And when paired with clear guidelines that would determine the collection, use and retention of information and who should have access to information, it can both empower and constrain intelligence officers, and provide effective oversight.



- SHARE allows for vertical and horizontal co-ordination and integration. Information would be able to flow not just up the chain of command, but also horizontally, to the edges of the system.
- SHARE enables analysts, law enforcement agents and other experts to find others with common concerns and objectives, to come together in “virtual,” informal teams to exchange information and ideas.

Many of these principles are reflected in the information sharing recommendations of the 9/11 Commission report, which calls for the horizontal sharing of information across new networks that transcend individual agencies. The Commission summarized the decentralized network model at the core of the SHARE Network concept:

“Agencies would still have their own databases, but those databases would be searchable across agency lines. In this system, secrets are protected through the design of the network and an ‘information rights management’ approach that controls access to the data, not access to the whole network. An outstanding conceptual framework for this kind of ‘trusted information network’ has been developed by a task force of leading professionals in national security, information technology, and law assembled by the Markle Foundation.”

The tools for this kind of system are readily available. They include common interfaces; directories and pointers; federated search engines; information resource management technologies, anonymization tools, , auditing systems, and other technologies that facilitate sharing and collaboration. What is needed is the leadership to force adoption of these technologies and to guide their implementation in a way that respects privacy and due process. Under the structure recommended by of the 9/11 Commission, that should be an important responsibility of the new National Intelligence Director,.

Senators Collins and Lieberman have introduced S. 2701, the Homeland Security Interagency and Interjurisdictional Information Sharing Act of 2004, legislation that would create the SHARE Network, even using the name adopted by the Markle Task Force. The bill, in addition to providing resources to help first responders and preventers to purchase the interoperable communications equipment they need to execute effective emergency responses, would require the Secretary of Homeland Security, with intelligence and other federal agencies, to establish a SHARE Network to assist in the sharing of homeland security information among all levels of government.

#### **Privacy and Due Process Guidelines**

Government use and dissemination of personal information raises privacy and related due process issues. Appropriately, therefore, the 9/11 Commission recommended, “As the President determines the guidelines for information sharing among government

agencies and by those agencies with the private sector, he should safeguard the privacy of individuals about whom information is shared.”

The “wall” that previously separated law enforcement and intelligence agencies is down. No one is proposing re-constructing it. Foreign intelligence agencies and domestic law enforcement and intelligence agencies are sharing information. On the collection side, government agencies have expansive authority. Communications intercepts under the criminal wiretap law increase almost every year. There have been even more dramatic increases in recent years under the Foreign Intelligence Surveillance Act. In this information age, vast quantities of data are generated as we go about our daily lives – records about travel, store purchases, credit, financial and medical matters. Under current law, there are few restrictions on the government’s ability to gain access to this kind of information for counterterrorism purposes. The Privacy Act and other privacy laws are not adequate for the modern digital data environment.

The government undeniably needs access to information to prevent terrorism. However, the Markle Task Force concluded that different considerations apply to the government’s acquisition and use of personally identifiable data, even when it is widely available to the public. Although there are consequences associated with the data’s being available in the private sector, the consequences of government access to and use of data can be more far-reaching and can include loss of liberty and encroachment on the constitutionally rooted right of privacy. Therefore, the Task Force concluded, the government should not have routine access to personally identifiable information even if that information is widely available to the public. At a minimum, the Task Force concluded, that information should be collected by the government only if it is relevant to preventing, remedying, or punishing acts of terrorism and that this showing should be documented and subject to periodic audit. Markle Task Force, “Creating a Trusted Information Network for Homeland Security” (December 2003) at pp. 33-34.

Similarly, the Defense Secretary’s TAPAC recommended that government access to personally identifiable information, wherever located, should be subject to clear rules and meaningful oversight. At a minimum, even access to “publicly available information” should be subject to written authorization and compliance audits. The approval process should specify, among other findings, the need for the data, that the data are necessary and appropriate for the intended use, the consequences that will flow from use of the data, that the approach has been demonstrated to be effective, and that there is a system in place for dealing with false positives. For all other government data mining efforts involving personally identifiable data about U.S. persons, the TAPAC recommended that government access should be permitted only pursuant to a court order. TAPAC, *Safeguarding Privacy in the Fight Against Terrorism* (2004), at pp. 47-52.

In framing the guidelines recommended by the 9/11 Commission and the Markle Task Force, it should be made clear that the collection under counterterrorism authorities of personally identifiable information about U.S. persons or within the United States should be in accordance with priorities established nationally through a clear and politically accountable process, possibly by the new National Intelligence Director.) As a

minimum standard, the guidelines should specify that personally identifiable information regarding U.S. persons should be collected for counterterrorism purposes only if relevant to preventing, remedying, or punishing acts of terrorism. Compliance with this standard should be subject to audit, and collection should be conducted in such a way as to minimize the impact on privacy of persons not suspected of any involvement in terrorism.

The guidelines should implement these principles through oversight procedures and privacy-protective technologies, including:

- anonymization technologies that can minimize unnecessary disclosure of personal information not relevant to counterterrorism purposes;
- search and sharing techniques that can leave information with the originator and minimize unnecessary transfers of data to central repositories;
- strong data quality and corrective mechanisms, including automated mechanisms that can identify and correct errors in shared data that may cause harm to individuals;
- access control and permissioning technologies that can protect against improper access to personal information, including the ability to restrict access privileges so that data can be used only for a particular purpose, for a finite period of time, and by people with the necessary permissions;
- automated audit trails that can protect against misuse of data, improve security, and facilitate oversight; and
- oversight processes and redress mechanisms within each participating department and agency.

Internal review and approval procedures ensure that agents are focusing on priority issues and promising leads, while clear rules empower agents to take actions without fear that they will be second-guessed. Such rules and procedures can both define clear limits and avoid irrationally tying the hands of investigators. These internal guidelines should be made public. Few *procedural* rules have national security implications requiring them to be classified, and public confidence and trust will grow with a full understanding of the policies in place to protect the public – both from a terrorist attack and from an overzealous intelligence agent.

#### **Accountability and Internal Oversight**

The Markle Task Force emphasized, “Guidelines must also address the question of how we assure compliance with the required policies and procedures and foster accountability.” The 9/11 Commission has recommended the creation of a board within the executive branch to oversee adherence to the guidelines and the commitment the government makes to defend civil liberties. This may be desirable, but is probably not sufficient. As the Markle Task Force concluded in the context of use of private sector data, in a decentralized system, there is no single entity with the ability to monitor day-to-day decisions to acquire, retain or disseminate information. Therefore, the Task Force recommended a blended system. Government-wide rules will be necessary, and some agency must have overall supervisory responsibility to oversee the application of the

guidelines, including the training of personnel, the implementation of auditing procedures, and the imposition of consequences for failure to comply. At the same time, each agency has the responsibility to develop its own procedures to ensure compliance.

Several mechanisms are available. Congress, in creating the Department of Homeland Security, created a privacy officer and a civil rights and civil liberties officer. Earlier this year, I testified that, based on the short but significant record of the DHS Privacy Office, it is clear that a statutory Privacy Officer, participating in senior level policy deliberations and using the tools of the Privacy Act notices and Privacy Impact Assessments, can be an important mechanism for raising and mitigating privacy concerns surrounding the government's use of personal information. Legislation has passed the House to create a Privacy Officer for the Department of Justice and other legislation has been introduced to create a privacy officer at OMB and each cabinet agency.<sup>3</sup> The Inspectors General will also have a role to play. Inspectors General, in particular, provide a critical internal ability to identify civil liberties violations, and should regularly review agency actions to assess their privacy implications. Inspector General reports and other internal reviews should not only identify vulnerabilities and mistakes, but should also provide recommendations for avoiding them in the future. They should not only respond to public outcries; they should also regularly review agency effectiveness and safeguards to constantly improve operations and safeguards.

Technology can also be built into information systems to assure accountability and transparency. For example, personally identifiable information can be anonymized so that identity is not revealed. Auditing technology, too, can provide built-in recordation and documentation capabilities to track how information is used, and shared. Strong auditing capabilities could also allow individuals to make Privacy Act and FOIA requests to see what was done with data about them. Markle report, p. 35..

Another aspect of oversight is ensuring the accuracy of data brought into the system. Accuracy is vital not only to protect the privacy and civil liberties of individuals who can be harmed by inaccurate data, but also to ensure that information has real value to the counterterrorism effort. "False positives" that mistakenly suggest that an innocent person is somehow tied to terrorism can have significant adverse consequences for the individual involved. They can also waste scarce investigative resources. Technologies can help assure that information is up-to-date. Software can ensure that information is

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<sup>3</sup> Section 305 of the Department of Justice Appropriations Bill (H.R. 3036) requires the Attorney General to appoint a Privacy Officer for the Department of Justice. The bill was passed by the House but has yet to be introduced in the Senate.

On May 20, Reps. Meek and Turner introduced the SHIELD Privacy Act (H.R. 4414), which would require the President to appoint a Chief Privacy Officer at OMB, the head of each federal and independent agency to appoint a privacy officer; and would establish a Commission on Privacy, Freedom, and Homeland Security to conduct a comprehensive study of U.S. efforts to further homeland security in a manner that protects privacy, civil liberties, and individual freedoms.

updated regularly and that it is unusable after a certain date if not refreshed. Other technology can permit users to track where information came from and who received it and alert users if the original data is subsequently disproved or corrected.

Finally, oversight includes redress – processes that allow individuals to respond when they are about to face adverse consequences based on information. This includes the right to challenge inaccurate information.

Oversight and accountability, done right, will benefit both national security and civil liberties. Not only will appropriate, well-implemented accountability mechanisms *not* impede intelligence operations, they will actually help to ensure that failures do not occur. Checks and balances result in clear lines of responsibility, well-allocated resources, protection against abuse, and the ability to evaluate and correct past mistakes.

### **Congressional Oversight**

The 9/11 Commission calls for more effective Congressional oversight. Non-partisan Congressional oversight is one of the pillars of a system of checks and balances. The Markle Task Force has not explored this area in depth. The 9/11 Commission report leads to the conclusion, I believe, that the oversight committees should hold more public hearings and should conduct annual reviews and issue public reports on the impact of counterterrorism efforts on privacy and civil liberties. If the Intelligence Committees are to get more deeply into the details of intelligence operations, they need to assess the civil liberties implications of those operations as well. The Commission recommends the consolidation of oversight efforts but also expressly calls for the creation of a subcommittee dedicated specifically to oversight, freed from the consuming responsibility of working on the budget. Among the duties of this entity should be the monitoring of civil liberties issues.

### **CONCLUSION**

We now have the possibility of achieving a major enhancement in our nation's security by development of an information sharing network based on write for release. An integral part of that revolution must be the establishment of checks and balances to preserve civil liberties. As policymakers seek to reform the Intelligence Community and enhance information sharing and analytical capabilities, they need not do so at the expense of civil liberties.

Chairman TOM DAVIS. Let me just thank all of you for being patient, staying with us today. This testimony is important as we contemplate where we go from here as a committee and as a Congress.

Let me start the questioning with you, Mr. Light. You are no stranger to this committee. In addition to the other elements, you hit on two major themes in your testimony: One, that there are too many layers of bureaucracy in our Federal Government; and two, that Congress needs to reauthorize Executive Reorganization Authority.

To me, these two issues seem to be intertwined. Will you agree that much of the bureaucracy comes from congressional micromanagement and that reorganization authority would be one way to try to diminish some of the micromanagement and free Congress to focus on broader policy goals?

Mr. LIGHT. I agree, absolutely, with the second. The layering of Government, this thickening that I talk about is like Kudzu; it grows from many sources. Some of it's micromanagement. Some of it's perfectly legitimate expansion due to congressional decisions and executive decisions on policy priorities. Some, as you know, from your hearings on the Civil Service system, reflect backdoor pay raises. And, you know, it's like the stalagmites and stalactites problems. Some of it drips down; some of it rises up.

You need a mechanism that the President can take hold of to attack it. You have to be persistent about it. And I believe that reorganization authority properly constrained to allow congressional action on an expedited timetable is an appropriate device for constraining it. It's the kind of thing that grows unless you check it.

Chairman TOM DAVIS. And the separation of powers is no way to do that? Is it because it's difficult once the Federal program gets created? I mean, there is nothing closer to eternal life, it seems to me.

Mr. LIGHT. Well, you need to make agencies pay a price for each new layer they create. We don't do that in the Government. The private sector does. There is a price to be paid on the profit line. So you have to be diligent about tracking it. And I think that requires a strong executive authority. And, also, the credible threat that you are going to do something about it as you see the layering occur.

Chairman TOM DAVIS. Your testimony explains that there were long gaps in the management during the administration change, creating an environment where intelligence and information is either lost or misinterpreted or you lose some history. What steps need to be taken to ensure that the appointment process runs smoothly and within a reasonable timeframe to prevent these types of problems?

Mr. LIGHT. Well, there is a perfectly reasonable first step that's already been drafted out. Your professional staff was involved in it on the other side. We could make enormous progress from simply streamlining the forms that we have our appointees fill out, by making them all electronically available, by populating information across forms. We could get the Senate and the White House to agree on some simple technological fixes and, in doing so, lead them toward the kind of compact that would allow for some tight rules regarding movement of nominations forward.

It makes no sense again to create a National Intelligence Directorate if it's going to take you 8½ months to get somebody in that position and if the turnover is 18 to 24 months, if people are only staying that long. And so that's why I think a term of office encourages the kind of presumption in favor of at least staying long enough to make an impact. But there are some very easy fixes that I would attach to whatever legislation you push out here. And, of course, the 9/11 Commission made recommendations on the appointments process.

Chairman TOM DAVIS. Let me ask the other panelists. Currently, the private sector really collects the information about critical infrastructure vulnerabilities and threats through the ISACs. Last week, GAO issued a report on critical infrastructure protection which found that this system's ineffective, because the private sector is concerned its information being shared with Government will be made public, and that has a lot of ramifications from business liability. Do all of you share that concern? Mr. Collet, I'll start with you, from AT&T's perspective, and move straight on down.

Mr. COLLET. Sure. As I mentioned, we have been working with the Department of Homeland Security and the NCS since its inception, when it was organized under the White House. And during those years we have continuously shared information with the Federal Government. It's a very good relationship. I am unaware of any deficiency that we have in what we report to the NCS within DHS. So perhaps our industry is blessed, because, since 1984, we have had the equivalent of an ISAC, and over the years a level of trust and confidence has developed for both parties.

So today, as telecommunications expands to include things like wireless and satellite and other media besides wireline, I think the scope of what they do will be expanded a bit. But it seems to be a good working model, and perhaps all that we need to do there is continue working with what we have because it has a very good track record.

Chairman TOM DAVIS. Any other panelists want to address that?

Mr. DUFF. Just a quick point, Mr. Chairman. The public transit ISAC is a little bit different. I think it is one of the few that is in the public domain. Most of the members of that ISAC are public bodies, and we are protected by a provision in the Patriot Act that preempts any State's Sunshine Laws. So there is an element of protection there that makes our members feel comfortable in sharing information, and many of them have joined up with it.

Mr. MCCARTHY. Yes, sir. In working with virtually all the ISACs and the emerging ISACs, along with DHS, what you are hearing is three or four different business models, the NCS being a well-established, close relationship between the Government and private sector. What's behind that, when you go back historically is a very significant amount of Government funding, along with private sector contribution, and a firm commitment on both sides.

You flip all the way over the financial sector, and their's is a totally private sector entity without Government interaction. And then there is everything in between, and people trying to pick.

So the issue is much more—trying to pick one as the model is very difficult to do. The information sharing issue is, in my mind, radically changing as we move from the PDD 63 environment

where the ISACs were the brain child and generated from out of the original President's commission, and now we are in the Homeland Security HSPD 7 model where there is money on the table with significant funding. With that comes responsibility and accountability back.

So that's a challenge that both the private sector and the Government have to work through relative to this. If the Government is putting money on the table to fund ISACs or pieces of ISACs or sector coordinator activity, what kind of responsibility and information sharing comes back from that? I think that's a key question that I see out there for both parties.

Chairman TOM DAVIS. OK.

Mr. DEMPSEY. Mr. Chairman, I'm not familiar with the GAO study you mentioned. I'm surprised a little bit by it. Speaking just for CDT, I thought that the FOIA issue was taken care of in the legislation that was passed. I have to say, quite honestly, that CDT was skeptical that FOIA exemption was necessary or that it needed to be as broadly drafted as it was.

But now that's in place, and it's in place in a very broad fashion. If there is not sufficient information sharing still going on, then we need to look elsewhere for the cause of that.

Chairman TOM DAVIS. Thank you very much.

Mr. Kanjorski.

Mr. KANJORSKI. Thank you, Mr. Chairman.

Mr. McCarthy, when you were testifying—I now came to the realization why the unemployment hasn't moved up. Apparently, we are hiring an awful lot of people to do a lot of thinking and writing a lot of articles. It seems all our entities have to go out there and come up with these plans that we are talking about.

You heard earlier testimony today about—from Mr. Walker—this may take 5 to 7 years to come up with a structured plan of how to handle the war on terrorism? Do you have any experiences at the table that could short-circuit that and get us on our way? It struck me that the terrorists, for \$500,000 and 19 men killed 3,000 Americans and drove right through the strongest Nation in the world in a relatively short period of time, several years. Why in the world such a sophisticated Nation as this has to struggle so hard to get a plan and policy together to meet the challenge?

I was just commenting to one of the reporters who asked me the question, I think General Eisenhower planned and put together and implemented the invasion of Normandy in 18 months, and the Manhattan Project less than 18 years. Have we become so muscle bound as a country and as a Government that we are not capable of re-instituting some of our institutions to be able to meet this threat? What seems to be the problem?

Mr. DEMPSEY. Congressman, if I could venture to answer that. I don't think it takes that long. I think we have to all recognize and appreciate that very important strides have been made since September 11 in improving information sharing and increasing cooperation between law enforcement and intelligence agencies. The President said it. The 9/11 Commission said it: We are safer, but we are not safe.

Mr. KANJORSKI. Well, I think they say that. But if you get out in the country and you talk to the first responders, they are going



to tell you they don't have any damned equipment to handle any biological attack, chemical attack. They have no training. They don't have the vehicles.

Mr. DEMPSEY. Well, the State and local piece is often the most overlooked piece of this on the information-sharing side as well as the preparedness side.

Mr. KANJORSKI. Well, that's what bothers me. I mean, that's where the people are going to die out there on the street. They are not going to die in the Capitol here, or maybe a few of us will. But the ones we are worried about are out there on the street, and the first responders of them, and they haven't heard any of the—I think I talked to Tom Ridge the other day. And a minimal amount of the Homeland Security money is starting to trickle out through the various established State entities.

Mr. DEMPSEY. Well, I won't comment upon the equipment issue because that's not really my area of expertise.

But on the information-sharing piece, we heard today from both the commissioners as well as from members of the committee the concern about the fact that, in the past, so much information was tightly held, for a variety of reasons, both good and bad.

Mr. KANJORSKI. Information is power.

Mr. DEMPSEY. But we have the opportunity now to move to a situation, as the title of the hearing is, of need to share and of write to release, and breaking down some of the rigid classification systems.

Mr. KANJORSKI. You heard some of the testimony earlier. It disturbed me, this movement to put somebody in the White House. I agree with all of you saying, if you put it in the White House, God forbid, you may have the next dictatorship in the United States if you do that. And I'm not just talking about this White House. I'm talking about any White House, putting an intelligence person who controls that much information and money in a political home such as the White House.

It just seems to me—I'm not old enough to remember when J. Edgar Hoover was hired, but I know there was a great threat of prohibition and criminality in this country, and they took this young kid from wherever he came from, and they started the FBI, the first Federal Bureau of Investigation. And, by God, by the time it got to Lyndon Johnson, they couldn't fire him because he had a book on everybody, not only those who lived in the White House but everybody up here on Capitol Hill. And if he lived to have been 200, he would still be the Director of the FBI.

And we are talking, right here and now, this great fear of terrorism, throw away all the protections, all prior experiences, get a czar in place, give him all the power, all the money, and, hopefully, this great white knight, whoever he is, will not be ambitious politically or otherwise. I mean, I don't hear anybody talking about if we put all this power and all this money in one person's hands, where are our protections that he literally couldn't become a dictator and the very thing we are trying to save, democracy, he could take away of from us?

Mr. DEMPSEY. Congressman, the thrust of my testimony is that director and the other structures that we are creating need to be subject to oversight, checks and balances, and internal and exter-

nal auditing. There is no choice that we have other than to create a web of controls and checks and balances and mechanisms of accountability. This committee and this Congress have a role in that. The other two branches of Government do as well.

Mr. SHAYS. I want to give Mr. Schrock a chance to ask some questions. Thanks.

Mr. Schrock.

Mr. SCHROCK. That was going pretty well, I thought.

Thank you, Mr. Chairman.

I believe the point that the 9/11 Commission Report makes about the inherent weakness of an identification system that relies solely on paper-based identification such as the passport is certainly thought-provoking. And I'm a supporter of efforts to develop a biometric-based method of identification, because I believe that it has multiple benefits, including reduction and reducing the burden on security screeners in a variety of settings and in making identity theft and fraud a lot more difficult. I believe that we can achieve a workable and secure biometric-based system that is practical and affordable.

And I am also aware that there is great potential for infringing upon civil liberties which we've heard a lot about today. But I just cannot accept that, as a Nation, with all the dedicated people in Government and private industry, and with all the organizations dedicated to protecting civil liberties, that we cannot come up with a workable solution that makes us more secure in our homes and workplace and in our civil rights. I would like to get your thoughts on what you believe the greatest challenges are in achieving a system of biometric-based identification similar to what the Commission recommends, any of you.

Mr. MCCARTHY. Individual acceptance. I think it boils down to the individual accepting it. You can go back to the implementation of any technology. Go back to seafaring. For many years, you look at the pictures in the museums, and you see this beautiful ship with four or three huge masts with sails and smokestacks, because the sailors would not accept the fact that those boilers are going to take me—get me under way. All the stories about the people not using the ATM machines when it first came out, that it's going to steal your money instead of giving the money back. It's acceptance on the part of the people. And I'm not sure, no matter what kind of time lines directed or driven or pushed, that's ever going to change.

Mr. DUFF. And reliability?

Mr. MCCARTHY. And the reliability of it.

Mr. COLLET. I also think we have contemporary examples to look at. I think, just a few years ago, people were concerned about shopping over the Internet because they were concerned about identity theft or security. And now, people are buying over the Internet all the time. So there was a tipping point that was reached in which it became very commercially viable and attractive, and you know, e-commerce is doing very well now because of that. The same thing might be true for cell phones.

Mr. SCHROCK. So time? It's just timing and education and understanding and trying to accept something that they are not used to then?

Mr. COLLET. True. And clearly, I'm sure when you use your computer either at home or in the office you have to log in every time to every particular application that you use, and that's inconvenient. I think a biometric system may be coming sooner than people think from the commercial sector because it will make commerce easier. It will make office automation easier. It will make life more pleasant. I think a lot of people will go for it.

Mr. SCHROCK. Dr. Light.

Mr. LIGHT. Well, I think that Chapter 12 of the 9/11 report is quite detailed and quite important and has received almost no attention whatsoever. We have been focused on the intelligence czar and appropriately so. But you have to talk with your Appropriations Committee chairs, subcommittee chairs about injecting some money into this effort.

I talked to the people at DHS, and they are telling me that they are being nickel-and-dimed to death, and they don't have access to the dollars they need. Now, I'm not saying you have to double their budget, but, you know, we are at a point where you may need to raise the budget and also allow the Department to hire more people. Much as we hate bureaucracy and big Government and so forth, it may mean that we have to inject some more resources into the effort.

Mr. DEMPSEY. Congressman, if I could.

Mr. SCHROCK. Yes, sir.

Mr. DEMPSEY. As Mr. Light said, the recommendations of the Commission on biometric identification and screening are some of its most important and detailed recommendations.

At the same time, the Commission also notes that there are very important and very difficult unanswered questions about moving forward. They recommend what has, I think, become the accepted path, which is strengthening the State driver's license. The Center for Democracy and Technology last year issued a report looking at practices at the State DMVs, and they have a serious security problem. They have people getting officially issued but fraudulently obtained State driver's licenses. They have people breaking into DMVs and stealing the machines and stealing the blank cards and then being able to mass produce their own very authentic-looking, biometrically based ID cards. They obviously have a corruption problem in a decentralized system where one employee can earn some money on the side.

The National Academy of Science issued a report a couple of years ago on IDs, and the title of it was something like, "Harder Than You Think." The process of issuing, on a massive basis, an ID card, not a national ID card but improving biometrics, even using the State driver's license, is hard.

The Government is working through DHS with the U.S. Visit Program to establish a biometric entry-exit visa system under the U.S. Visit Program. That is beginning, 500 million visitors a year. It's only been partly implemented. I think we need to learn from some of the lessons there.

The Center for Democracy and Technology and the Heritage Foundation—which you might think of as one organization on the left of the political spectrum and one on the right of the political spectrum—we recently issued a joint report, one of several joint re-

ports that we have issued on information technology issues. We recently issued a report on biometrics, laying out some of the concerns and factors that need to be taken into account both on the privacy side as well as on the security side.

Mr. SCHROCK. Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman.

I will have a number of questions that—I want you to know that sometimes the last panel—it's the end of the day, we seem to talk a little more softly and so on. But I learned some of my most interesting information from the panel sometimes that goes last. So I am eager to ask you all a few questions.

I want to know—and you don't have to go in any particular order. But I want you to basically tell me the following: What do you think was the most important proposal? What do you think was the least most important, or maybe a proposal that you frankly don't like? And I want you to tell me where you think the hardest challenge will be.

So the first thing, just talk about the proposal that you like the most in this, the thing that you are happy to see in the report. And I'm going to say to you up front, and it may be evident, I think they did a hell of a good job. And I think it's almost inspired, inspired in this sense: I feel like they had a higher calling. I think they all of a sudden said, wait a second, we are out too much. We are politicizing. This can crash. And then I think Senator Kerrey, when he described, when they talked about the events, it kind of woke them up. That's the feeling I get. So I view this as a very important work, and I want to treat it with the importance it deserves.

Tell me what you think was the most important recommendation or one or two of the most important. Who wants to go first?

Mr. DUFF. Mr. Chairman, I can say that, from our perspective, from the public transportation industry's perspective, on page 391, the Commission Report talks about the need for a forward-looking strategic plan system, systemically analyzing assets and risks and recommending that the U.S. Government identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so, and then develop a planned budget and funding for them. So from the perspective of my industry, we felt that was very important.

Mr. SHAYS. And that would be out of the Department of Homeland Security?

Mr. DUFF. That's correct.

Mr. SHAYS. And your testimony is that, if it's happening, it's really in the infant stages?

Mr. DUFF. If it's happening—we have critical transportation needs that we have brought before the Department, and they have begun to look at those, but we think they are not looked at in a really comprehensive way. I think they need to look at all aspects of transportation and, as the report says, analyze them and determine what is the best way to proceed in terms of an overall plan.

Mr. SHAYS. So you were happy to see that in the reports?

Some other comments?

Mr. MCCARTHY. Sir, mine is actually combined. My favorite is my least. It has the most problems or issues. And that's the standard of care for the private sector. I think that the—it talked about the lack of a private sector standard deemed principal factor and lack of private sector preparedness, and they mentioned the number of standards that they endorsed.

I think that the adoption of a standards-based view of implementation of Homeland Security is the way to go. Where the report I don't think went far enough is that one standard doesn't fit all even across critical infrastructures and even within a critical infrastructure.

Mr. SHAYS. Give me an illustration.

Mr. MCCARTHY. A chemical plant. OK? The security of a chemical plant. If you have a chemical plant that's located in a totally isolated area away from a population, you need minimal security. Somebody should not be able to walk on to that plant freely, etc. All the horror stories you hear. However, do you need the same level of care relative to a potential terrorist attack, a physical assault or a cyber assault on that plant when the plant is located in a populated area?

Mr. SHAYS. I believe we have like 123 plants that could impact a million people each. Is that not the statistic? In other words, there are a number of chemical plants that are in the heart of urban areas.

Mr. MCCARTHY. Right.

Mr. SHAYS. And if they were attacked, the outcome would be horrific.

Mr. MCCARTHY. And I think this is where the GAO is going with the risk-based view of if you have limited resources to invest in chemical plant security, you have to have a differentiation. If the standard—if a single standard calls for the same level of protection across all of them, one or the other, and where that also lacks in the area of standards is the idea of what picks up. And we have even, I think heard some of the reference in the testimony—previous testimony of insurance and tax incentive. Well, you know, there isn't in many areas relative to security—

Mr. SHAYS. You're telling me a little more than I want to know right now. I want to know what is the proposal that you like the most.

Mr. MCCARTHY. It was the implementation of a standard. It needs to be refined.

Mr. SHAYS. Mr. Dempsey.

Mr. DEMPSEY. The most important were two-fold, really. One is the endorsement of the SHARE network concept and specifically citing the Markle Foundation Task Force. Coupled with that, on pages 393 and following of the report, a very, very strong endorsement of civil liberties protection, and of the need for checks and balances, and in Chapter 13, the recommendations for stronger congressional oversight.

Speaking just personally from a civil liberties perspective, I don't see anything that I would per se oppose in that report from a civil liberties perspective. The thing that is going to be hardest and is going to pose the greatest challenges—

Mr. SHAYS. We'll come back to greatest challenges.

Mr. DEMPSEY. OK.

Mr. SHAYS. The thing that you were most happy to see in the report, Mr. Collet?

Mr. COLLET. I also agree that—

Mr. SHAYS. Your mic is—you have a terrible mic.

Mr. COLLET. Is that better now?

Mr. SHAYS. Yes.

Mr. COLLET. I also agree that it's the shared network concept. Five years ago, none of this would have been possible. But with the development of virtualization across network layers and information technology, it is now very doable and achievable. So, as a network company, we find that very attractive.

You are asking, what is it that we didn't like? And I would have to say, perhaps, maybe an overemphasis on the need to know versus the need to share. You know, as I mentioned in my testimony, we're concerned about the proliferation—

Mr. SHAYS. We'll get back to the one you disliked the most.

Yes, sir.

Mr. LIGHT. Before this committee and this chamber, I think you need to remember one statistic that just continues to echo for me. On September 11th, half—half of the 164 senior Senate-confirmed jobs were either vacant or occupied by an individual with less than 1 month on the job. We were so vulnerable because of the lack of leadership at that point.

For me, before this body, I think you have to focus on the transition process and the Presidential appointments process. It's a disaster. And we are so vulnerable in the first 6 to 9 to 12 months of a new administration; it's shocking.

Mr. SHAYS. I hear you. And what's interesting is, I think, this is one thing that will probably escape the attention of a lot of people.

Mr. LIGHT. You can't let it happen. I mean, I have been on the staff on both the House and the Senate side, and sometimes, House people will say, "Well, you know, the appointments process is really the Senate's business." You know, the White House and Senate struggle.

But, you know what? We have been unable after 3½ years of very hard work to convince our colleagues in the Senate to move forward on this issue. If not you, it's just not going to happen. You have the distance perhaps to argue favorably for action on improving the appointments process.

Mr. SHAYS. Fascinating.

One of the things that I would like each of you to suggest is, my subcommittee, National Security Subcommittee, Emerging Threats and International Relations Committee, is going to have two hearings at the end of this month. We want to take a part of the bill that we think won't get the attention that it might get from others. In other words, there are some wonderful big fat crumbs that will fall from the table of some more important committees. And we want to identify those, and that may be one.

Tell me the thing that concerns you the most about the report. Not which is the hardest to pass, but the thing that, you know, you look at and say, gosh. I mean, I will tell you the one that concerned me, just to give you an example of where I'm coming from, the concept that somehow the White House would have operational re-

sponsibility. And I'm not sure I'm being fair to the Commission, but that was the one area that I thought, you know, it just had too much the feeling of Watergate and people in the White House and power to—well, you get the gist. What are the areas that might have concerned the five of you?

Mr. MCCARTHY. One area, and it speaks to the organizational piece, not necessarily the intelligence, but the broader strategic organizational piece. And that is building into this a—just that, a view that's beyond the immediate threat out to the next 6 months. How do you build into the organizations a longer view? In DOD, you have two kind of activities going on simultaneously. One is that immediate activity to support the needs—

Mr. SHAYS. I want to follow you, this is an important part. But does that relate to the report? Was there something in the report that was in there that you disagreed with, or are you talking about something that wasn't—

Mr. MCCARTHY. It's something that belonged—it needed more emphasis in the report. There are subtleties in there.

To give you an example. In critical infrastructure, if you look at the organizational structure for Australia, for instance, for their CIP, and you compare our IAIP to what Australia has, they have a piece built into it that's called the Futures Group. Their sole responsibility is to be removed from the immediate day-to-day activity of working with the private sector, trying to build the alliance and trying to move the agenda forward. And their view is to look at, what will the economic environment look like? What will the threat environment look like? And then, how do you need to adjust all the mechanisms in the Government to respond?

Mr. SHAYS. That's interesting. You broke out of my box a little bit, and we're thinking of something that wasn't being addressed that concerned you. So, something that was addressed that you didn't like or something that wasn't addressed that should have been there.

Any others?

Mr. DEMPSEY. At CDT, we are most concerned about the border screening and the broader screening questions. Not because of any anything that's wrong in the report, but just because of how hard these issues are.

The report does not mention the question of watch lists, CAPPS II, in a way, or the airline passenger screening system in a way is dependent upon watch lists. The FBI has the Terrorist Screening Center. We have 14 agencies developing watch lists coordinated by the TSC, Terrorist Screening Center at the FBI. Completely unanswered are questions of data quality, how someone gets on the list, how they get off the list, how they respond if they are denied a job based upon screening.

Mr. SHAYS. So when Senator Kerrey spoke, and I'm saying yes, you are saying, uh, oh.

Mr. DEMPSEY. I'm saying—

Mr. SHAYS. I mean, I was cheering when he spoke, inside.

Mr. DEMPSEY. Well, we already have a border screening system through the visa process.

Mr. SHAYS. That doesn't work.

Mr. DEMPSEY. We have an airline passenger screening system. We have various employment screening systems for a variety of sensitive jobs. All of those have gaps. All have limitations. There are efforts under way to try to improve them, and the Commission recommends the linking together of those various screening systems into what they call a comprehensive screening system.

I think, inevitably, we are moving that direction, but the issues that the report highlights of due process, of how you identify people—

Mr. SHAYS. I hear you. You have some deep concerns about that.

Mr. DEMPSEY. Crucial issues that concern us.

Mr. SHAYS. And I hear you.

Some others. Yes, Mr. Duff.

Mr. DUFF. This may be similar to Mr. McCarthy, and I'll be brief. But it's the issue of the roles—clarification of the roles and responsibilities of agencies. You have this huge new Department of Homeland Security, and yet you still have the U.S. Department of Transportation with somewhat overlapping roles and responsibilities. Isn't there some way to clarify that and make it clear which Department is responsible for what?

Mr. SHAYS. OK. So, but is that—so your concern is that they didn't address it deeply enough?

Mr. DUFF. That's correct.

Mr. SHAYS. OK.

Mr. Collet.

Mr. COLLET. We have no concerns.

Mr. SHAYS. OK.

Mr. LIGHT. I have a big fat target for you.

Mr. SHAYS. OK.

Mr. LIGHT. And a concern.

The target is the current structure of the intelligence community, which was pretty much left off the table.

Mr. SHAYS. Right.

Mr. LIGHT. We are up against a highly agile adversary, a networked adversary, and in many ways, we are trying to defeat him with a smokestack, to mix our metaphor.

Mr. SHAYS. I would like to pursue that point.

Mr. LIGHT. Well, just the point that, at the subcommittee level, you need to take a look at what needs to happen in the intelligence community to speed information to the National Intelligence Directorate. It's the issue that the comptroller general was talking about, about a full outbox with no inbox. And I think that the intelligence community has gotten a pass on its basic organizational structure.

Mr. SHAYS. All of you have spoken about your concerns.

Let me tell you my concern and have you react to it. My concern is that you have—and since there is hardly anyone here, I can say this now. But you have an Armed Services Committee, in my judgment, that's captive to the military. You have various committees in Congress that develop these relationships.

I have a belief that the Intelligence Committee was a captive of the intelligence community in some ways. But I don't know how they were captive, but I didn't feel they were in control. And the reason I can speak about that is that this is the committee that has



360 degrees jurisdiction. My subcommittee oversees the Defense Department. Again, we kind of pick the crumbs from what's not done by the Defense, the Armed Services Committee. But we are not in the same—a four star means a lot to me, but it doesn't mean quite the same thing to the members of the committee. And we don't necessarily feel we have the same—well, I had better be careful there.

What I'm trying to say is that we don't have those same relationships that—and so I feel like we are freer to be a little more aggressive. And what's surprised me about this is that, frankly, if the intelligence agency didn't succeed, the Intelligence Committee of Congress didn't succeed. And yet we are saying we want to make them more powerful and give them more responsibility. And that's kind of the thing I'm wrestling with. I'm wrestling with, when we wanted to have a hearing, as I mentioned earlier, the Intelligence Committee gave the CIA permission so they didn't have to participate. And I went up to the chairman and complained about it, and it was just, you know, that's the way it was.

And so I'm wondering how we get a better handle on the intelligence community if we are basically empowering only one committee of Congress to have oversight with no judgment on whether they are doing their job or any other committee to kind of pick up the crumbs that they may not see falling from the table. Any reaction to that? If not, I will just take my last question. OK.

Tell me the thing you think is most difficult to achieve. The thing that you think is, "Good luck, ain't going to happen, or, if it happens, I will be amazed." Do you think most of this report will be incorporated? Let me put it this way, do you think most of this report will be adopted? And, if not, what are the parts that you think will most likely not be adopted?

Mr. LIGHT. I think we are right now at the beginning of the process, and we saw yesterday with the President's proposal a process of dilution that happens in politics. The proposal now on the table would create the weakest agency out of the gate that I've seen in terms of a response to a problem like this. By my view, the proposed National Intelligence Directorate would be so weak, it might as well be located in Baltimore. That's a tough statement, but it's just the way it is.

Mr. McCARTHY. We have a pattern here of too many massive parts in play. Immediate reaction: Form TSA. Forget about DOT. Now you have to deal with TSA. TSA started to feel growing pains. We shifted it to form the Department of Homeland Security. And you talk to the guys at DOT, and they are—TSA, and they are kind of rambling around. Now the shift is going to be into intelligence. We just keep doing this, and in the process, we leave a path of starting to implement massive change without the follow-through, without the piercing follow-through that's needed both from the oversight side and within, how do you align this up in the executive branch, budget, people, the whole 9 yards? None of the foundation's been laid.

Mr. SHAYS. OK. Some other points?

Mr. DEMPSEY. Congressman, I don't know if it is the hardest, but one of the hardest things will be making sure that this director of national intelligence does not merely serve the President. I think

one of the initial problems that the TTIC faced and to some extent still faces is there is such a premium placed on moving information up to the President and getting your little nugget or your piece of analysis in front of the President. The President isn't going to be the one who prevents the next terrorist attack. It's going to be some alert Customs officer or some TSA screener at an airport. The goal has to be to push that information down and out to all levels of Government and to allow people who are on the frontlines—to have that information.

Mr. SHAYS. That's an important point to make. Just tell me the hardest thing that we are going to—in this report to—I'm making an assumption that you basically support the recommendations of this Commission. I mean, for the most part, you do. What is the part that you think—what concerns that you have expressed, what do you think is not going to happen because it's just going to be too difficult or there won't be the kind of attention to it? I mean, your point was very valid.

Mr. DEMPSEY. This is one that I see is a very hard thing to legislate in the first place, hard to accomplish.

Mr. SHAYS. Anybody else?

Now we are going to close up here. You don't want to—Mr. Collet?

Mr. COLLET. I really don't have much of an opinion on it.

Mr. SHAYS. Why don't you turn your mic on?

Mr. COLLET. I am sorry. Perhaps the most difficult thing will be finding the money for the budget. It is as simple as that.

Mr. SHAYS. Anybody want to make a last comment before we close up?

Mr. MCCARTHY. Not just finding the money but allocating it, making those hard decisions about how you allocate it across the transportation sector, for example. That will be very difficult, and that is why we support the idea of a strategic plan to do just that.

Mr. SHAYS. OK. It is going to be an interesting fall, isn't it?

Gentleman, thank you for all your good work, and thank you for spending your whole day with us.

If there are no further comments, we will adjourn.

[Whereupon, at 5 p.m., the committee was adjourned.]

[Additional information submitted for the hearing record follows:]

**STATEMENT OF**  
**MAUREEN A. BAGINSKI**  
**EXECUTIVE ASSISTANT DIRECTOR**  
**INTELLIGENCE**  
**FEDERAL BUREAU OF INVESTIGATION**  
**BEFORE THE**  
**HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON GOVERNMENT REFORM**  
**August 3, 2004**

**Introduction**

Good afternoon, Mr. Chairman and Members of the Committee. It is my pleasure to come before you today to discuss the recommendations of the 9-11 Commission, specifically information sharing issues that face the Federal Bureau of Investigation and other members of the Intelligence and Law Enforcement communities. As Director Mueller has said, the FBI has worked closely with the Commission and their staff throughout their tenure and we commend them for an extraordinary effort. Throughout this process, we have approached the Commission's inquiry as an opportunity to gain further input from outside experts. We took their critiques seriously, adapted our ongoing reform efforts, and have already taken substantial steps to address their remaining concerns. We are gratified and encouraged that the Commission has embraced our vision for change and has recognized the progress that the men and women of the FBI have made to implement that vision.

Just yesterday, in his remarks in the Rose Garden at the White House regarding the report of the 9/11 Commission, the president announced important steps he is taking, consistent with the Commission's recommendations. The President specifically noted the continuing need for, and importance of, information sharing among the relevant agencies. We at the FBI certainly recognize that a prerequisite for any operational coordination is the full and free exchange of information. Without procedures and mechanisms that allow information sharing on a regular and timely basis, we and our partners cannot expect to align our operational efforts to best accomplish our shared mission. Accordingly, we have taken steps to establish unified FBI-wide policies for sharing information and intelligence both within the FBI and outside it. This has occurred under the umbrella of the FBI's Intelligence Program, and is my personal responsibility as the FBI executive for information sharing.

**Intelligence Program**

The mission of the FBI's Intelligence Program is to optimally position the FBI to meet current and emerging national security and criminal threats by (1) aiming core investigative work proactively against threats to US interests, (2) building and sustaining enterprise-wide intelligence policies and human and technical capabilities, and (3) providing useful, appropriate, and timely information and analysis to the national security, homeland security, and law enforcement communities. Building on already strong FBI intelligence capabilities, Director Mueller created in January 2003 the position of Executive Assistant Director (EAD) of Intelligence and an Office of Intelligence. I was honored to join the FBI in May 2003 as the first EAD Intelligence.

### **Core Principles**

We built the FBI Intelligence Program on the following core principles:

- C *Independent Requirements and Collection Management:* While intelligence collection, operations, analysis, and reporting are integrated at headquarters divisions and in the field, the Office of Intelligence manages the requirements and collection management process. This ensures that we focus intelligence collection and production on priority intelligence requirements and on filling key gaps in our knowledge.
- C *Centralized Management and Distributed Execution:* The power of the FBI intelligence capability is in its 56 field offices, 400 resident agencies and 56 legal attaché offices around the world. The Office of Intelligence must provide those entities with sufficient guidance to drive intelligence production effectively and efficiently, but not micro-manage field intelligence operations.
- C *Focused Strategic Analysis:* The Office of Intelligence sets strategic analysis priorities and ensures they are carried out both at headquarters and in the field. This is accomplished through a daily production meeting that I chair.
- C *Integration of Analysis with Operations:* Intelligence analysis is best when collectors and analysts work side-by-side in integrated operations.

### **Concept of Operations**

Concepts of Operations (CONOPs) guide FBI intelligence processes and detailed implementation plans drive specific actions to implement them. Our CONOPs cover the following core functions: *Intelligence Requirements and Collection Management;*

*Intelligence Assessment Process; Human Talent for Intelligence Production; Field Office Intelligence Operation; Intelligence Production and Use; Information Sharing; Community Support; Threat Forecasting and Operational Requirements; and Budget Formulation for Intelligence.*

### **Accomplishments**

What follows are some of our key accomplishments:

- C We have issued the first-ever FBI requirements and collection tasking documents. These documents are fully aligned with the DCI's National Intelligence Priorities Framework and we have published unclassified versions for our partners in state, local, and tribal law enforcement.
- C We are full members of the National Intelligence Collection Board and the National Intelligence Analysis and Production Board, and soon will be participating in the drafting of National Intelligence Estimates and the National Foreign Intelligence Board.
- C We have created a collection capabilities database that tells us what sources we can bring to bear on intelligence issues across the FBI.
- C We have created FBI homepages on INTELINK, SIPRNET, and Law Enforcement Online (LEO) for dissemination and evaluation of our intelligence product.
- C We have established a daily Intelligence Production Board to ensure that timely decisions are made regarding the production and dissemination of all analytical products. The Board reviews the significant threats, developments, and issues emerging in each investigative priority area, and identifies topics for intelligence products.
- C We have completed the first-ever FBI intelligence dissemination manual.
- C We have proposed and are building an Intelligence Officer certification program for Agents, Analysts, Surveillance Specialists and Language Analysts. Once established this certification will be a pre-requisite for advancement to Section Chief or Assistant Special Agent in Charge, thus ensuring that all FBI senior managers will be fully trained and experienced intelligence officers.
- C We have completed and begun to implement the CONOPs for Intelligence Analysts. We have set unified standards, policies, and training for intelligence analysts. In a new recruiting program veteran analysts are attending events at

colleges and universities throughout the country and we are offering hiring bonuses to analysts for the first time in FBI history.

- C We are in the process of changing the criteria on which Agents are evaluated to place more emphasis on intelligence-related function.
- C We are on course to triple our intelligence production this year.
- C We have placed reports officers in our Joint Terrorism Task Forces (JTTFs) to ensure vital information is flowing to those who need it.
- C We have developed detailed metrics to judge the results of our intelligence initiatives and are prepared to regularly report performance and progress to Congress and other stakeholders, partners, and customers.
- C We have established Field Intelligence Groups (FIGs) to integrate analysts, Agents, linguists, and surveillance personnel in the field to bring a dedicated team focus to intelligence operations. As of June 2004, there are 1,450 FIG personnel, including 382 Special Agents and 160 employees from other Government agencies. Each FIG is under the direct supervision of an Assistant Special Agent in Charge.
- C From October 2003 to April 2004, the FBI participated in more than 10 recruitment events and plans to add at least five additional events through September 2004. A marketing plan also was implemented to attract potential candidates. In February 2004, an advertisement specific to the Intelligence Analyst position at the FBI was placed in *The Washington Post*, *The Washington Times*, and the *New York Times*, and has since been run several more times. Our National Press Office issued a press release that kicked off an aggressive hiring campaign.
- C The College of Analytic Studies (CAS), established in October 2001, is based at the FBI Academy in Quantico, Virginia. Since FY 2002, 264 analysts have graduated from the College's six-week Basic Intelligence Analyst Course. 655 field and headquarters analysts have attended specialty courses on a variety of analytical topics. 1,389 field and headquarters employees have attended specialized counterterrorism courses offered in conjunction with CIA University, and 1,010 New Agent Trainees have received a two-hour instructional block on intelligence.
- C The Basic Intelligence Course currently offered by the CAS is being revised and updated to incorporate key elements of our intelligence program. Upon completion of this effort, the course will be retitled: Analytical Cadre Education Strategy I (ACES I) as outlined in the Human Talent CONOPS. An intermediate

course entitled ACES II is anticipated in the future that would target more experienced analysts. Practical exercises and advanced writing skills will be emphasized, as well as advanced analytical techniques.

- C The ACES I course will incorporate seven core elements of intelligence relevant for new agents and new analysts. Additionally ACES I will focus on assimilation, analytic tradecraft and practice, thinking and writing skills, resources, and field skills.
- C Complementing ACES I and ACES II, the Office of Intelligence, in coordination with the FBI Training and Development Division, will identify, facilitate, and exploit training partnerships with other government agencies, academia, and the private sector to fully develop the career choices of FBI analysts. Whether an analyst chooses the specialized, interdisciplinary, or managerial career path, s/he will have the opportunity to attend courses offered through the Joint Military Intelligence Training Center, other government training centers, and private companies.
- C The Office of Intelligence is also establishing education cooperative programs where college students will be able to work at the FBI while earning a four-year degree. Students may alternate semesters of work with full-time study or may work in the summers in exchange for tuition assistance. In addition to financial assistance, students would benefit by obtaining significant work experience, and the FBI would benefit through an agreement requiring the student to continue working for the FBI for a specific period of time after graduation. This program will be implemented in FY 2005.
- C An Analyst Advisory Group has also been created specifically to address analytical concerns. I established and chair the advisory group B composed of Headquarters and field analysts. The group affords analysts the opportunity to provide a working-level view of analytic issues and to participate in policy and procedure formation. They are involved in developing promotional criteria, providing input for training initiatives, and establishing the mentoring program for new FBI analysts.
- C The Career Mentoring Working Group of the Analyst Advisory Group is creating a career mentoring program to provide guidance and advice to new analysts. Once implemented, all new Intelligence Analysts will have a mentor to assist them. The career mentor will have scheduled contact with the new analyst on a monthly basis throughout the analyst=s first year of employment.
- C As of this year, the Director=s Awards will feature a new category: the Director=s Award for Excellence in Intelligence Analysis. Nominees for this award must display a unique ability to apply skills in intelligence analysis in furtherance of the

FBI's mission, resulting in significant improvements or innovations in methods of analysis that contribute to many investigations or activities, and/or overcoming serious obstacles through exceptional perseverance or dedication leading to an extraordinary contribution to a significant case, program, threat, or issue.

- C Turning to intelligence training for our agents, we are now working to incorporate elements of our basic intelligence training course into the New Agents Class curriculum. We expect that work to be completed by September. A key element of this concept is that agents in New Agents Training and analysts in the College of Analytic Studies will conduct joint training exercises in intelligence tradecraft. The first offerings to contain these joint exercises are expected in December of this year. In addition to this, we are in the process of changing the criteria on which agents are evaluated to place more emphasis on intelligence-related functions and information sharing.

On March 22, 2004, Director Mueller also adopted a proposal to establish a career path in which new Special Agents are initially assigned to a small field office and exposed to a wide range of field experiences. After approximately three years, agents will be transferred to a large field office where they will specialize in one of four program areas: Intelligence, Counterterrorism/ Counterintelligence, Cyber, or Criminal, and will receive advanced training tailored to their area of specialization. In our Special Agent hiring, we have changed the list of Acritical skills@ we are seeking in candidates to include intelligence experience and expertise, foreign languages, and technology.

- C Our language specialists are critical to our intelligence cadre as well. The FBI=s approximately 1,200 language specialists are stationed across 52 field offices and headquarters, and are now connected via secure networks that allow language specialists in one FBI office to work on projects for any other office. Since the beginning of FY 2001, the FBI has recruited and processed more than 30,000 linguist applicants. These efforts have resulted in the addition of nearly 700 new linguists with a Top Secret security clearance. In addition, the FBI formed a Language Services Translation Center to act as a command and control center to coordinate translator assignments and maximize its capacity to render immediate translation assistance.

#### **Information Sharing - Our Relationship with the Intelligence and Law Enforcement Communities**

The FBI shares intelligence with other members of the Intelligence Community, to include the intelligence components of the Department of Homeland Security (DHS), through direct classified and unclassified dissemination and through websites on classified Intelligence Community networks. The FBI also shares intelligence with



representatives of other elements of the Intelligence Community who participate in Joint Terrorism Task Forces (JTTFs) in the United States or with whom the FBI collaborates in activities abroad. FBI intelligence products shared with the Intelligence Community include both raw and finished intelligence reports. FBI intelligence products shared with the Intelligence Community include Intelligence Information Reports (IIRs), Intelligence Assessments, and Intelligence Bulletins. To support information sharing, there is now a Special Agent or Intelligence Analyst in the JTTFs dedicated to producing Araw@ intelligence reports for the entire national security community, including state, municipal, and tribal law enforcement partners and other JTTF members. These reports officers are trained to produce intelligence reports that both protect sources and methods and maximize the amount of information that can be shared. It is the responsibility of the FIGs to manage, execute and maintain the FBI's intelligence functions within the FBI field office. FIG personnel have access to TS and SCI information so they will be able to receive, analyze, review and recommend sharing this information with entities within the FBI as well as our customers and partners within the Intelligence and law enforcement communities.

In addition, classified intelligence and other sensitive FBI data are shared with cleared federal, state, and local law enforcement officials who participate in the JTTFs. The JTTFs partner FBI personnel with hundreds of investigators from various federal, state, and local agencies, and are important force multipliers in the fight against terrorism. Since September 11, 2001, the FBI has increased the number of JTTFs from 35 to 84 nationwide. We also established the National Joint Terrorism Task Force (NJTTF) at FBI Headquarters, staffed by representatives from 38 federal, state, and local agencies. The mission of the NJTTF is to enhance communication, coordination, and cooperation by acting as the hub of support for the JTTFs throughout the United States, providing a point of fusion for intelligence acquired in support of counterterrorism operations. The FBI will continue to create new avenues of communication between law enforcement agencies to better fight the terrorist threat.

The FBI has also established a robust channel for sharing information with the Terrorist Threat Integration Center (TTIC) by providing direct electronic access to classified and unclassified internal FBI investigative and operational databases, with narrow exceptions for certain types of sensitive domestic criminal cases unrelated to terrorism. TTIC also has direct electronic access to internal FBI headquarters division websites and e-mail capabilities on the FBI's classified intranet system. Both FBI and non-FBI personnel assigned to TTIC have access to this information.

The FBI has agreed to provide a substantial permanent staff to TTIC. TTIC's mission is to enable full integration of terrorist threat-related information and analysis. It creates a structure to institutionalize sharing across appropriate federal agency lines of terrorist threat-related information in order to form the most comprehensive threat picture.

Although the FBI retains authority to approve dissemination of raw FBI information by TTIC to other agencies, the FBI authorizes the TTIC to share FBI intelligence products by posting them on the TTIC Online website on Intelink-TS. The TTIC Online website provides additional security safeguards, and access is granted to Intelligence Community users who have a need-to-know for more sensitive classified intelligence on international terrorism from the FBI and other agencies. The FBI also authorizes the National Counterintelligence Executive (NCIX) to share FBI counterintelligence products on the Intelink-CI(iCI) website with similar safeguards and access by users who have a need-to-know for more sensitive classified counterintelligence products.

In addition to this, the Bureau also fully contributes intelligence analysis to the President's Terrorist Threat Report (PTTR). These products are coordinated with the Central Intelligence Agency (CIA), DHS, and other federal agencies. In addition to the PTTR, the FBI provides Presidential Intelligence Assessments directly to the President and the White House Executive Staff.

The FBI is also committed to providing those tools which assist law enforcement in intelligence-led policing -- from the National Crime Information Center, the Integrated Automated Fingerprint Identification System, and the Interstate Identification Index, to Law Enforcement Online (LEO), a virtual private network that reaches federal, state, and law enforcement agencies at the Sensitive but Unclassified (SBU) level. LEO users total nearly 30,000 and that number is increasing. That total includes more than 14,000 state and local law enforcement members. LEO makes finished FBI intelligence products available, including Intelligence Assessments resulting from analysis of criminal, cyber, and terrorism intelligence. Our LEO Intelligence Bulletins are used to disseminate finished intelligence on significant developments or trends. Intelligence Information Reports also are available on LEO at the Law Enforcement Sensitive classification level. The FBI also recently posted the requirements document on LEO, which provided state and local law enforcement a shared view of the terrorist threat and the information needed in every priority area.

LEO also has secure connectivity to the Regional Information Sharing Systems network (riss.net). The FBI Intelligence products are disseminated weekly via LEO to over 17,000 law enforcement agencies and to 60 federal agencies, providing information about terrorism, criminal, and cyber threats to patrol officers and other local law enforcement personnel who have direct daily contacts with the general public. The FBI will use an enhanced LEO as the primary channel for sensitive but unclassified communications with other federal, state and local agencies. LEO and the DHS Joint Regional Information Exchange System (JRIES) will also be interoperable.

The FBI, in coordination with other federal, state, and local law enforcement agencies, also has plans for the National Data Exchange (NDEx) to be a repository of national indices and a pointer system for state/local/federal and inter-governmental law

enforcement entities. The NDEx will also be a fusion point for the correlation of nationally-based criminal justice information with certain national security data.

On February 11, 2004 the Attorney General announced the creation of the Justice Intelligence Coordinating Council (JICC). I currently chair this Council, which is comprised of the heads of Department of Justice (DOJ) agencies with intelligence responsibilities. The Council works to improve information sharing within DOJ, and ensures that DOJ meets the intelligence needs of outside customers and acts in accordance with intelligence priorities. The Council will also identify common challenges (such as electronic connectivity, collaborative analytic tools, and intelligence skills training) and establish policies and programs to address them.

On February 20, 2004 the FBI formed the Information Sharing Policy Group, comprised of Executive Assistant Directors, Assistant Directors, and other senior executive managers. I serve as the co-chair. This group is establishing the FBI's information and intelligence sharing policies.

At the same time, we have intelligence analysts from other agencies working in key positions throughout the Bureau. The Associate Deputy Assistant Director for Operations in the Counterterrorism Division is a CIA detailee. This exchange of personnel is taking place in our field offices as well.

We have also worked closely with DHS to ensure that we have the integration and comprehensive information sharing between our agencies that are vital to the success of our missions. The FBI and DHS share database access at TTIC, in the National JTTF at FBI Headquarters, in the Foreign Terrorist Tracking Task Force (FTTTF) and the Terrorist Screening Center (TSC), and in local JTTFs in our field offices around the country. We worked closely together to get the new Terrorist Screening Center up and running. We hold weekly briefings in which our Counterterrorism analysts brief their DHS counterparts on current terrorism developments. The FBI and DHS now coordinate joint warning products to address our customers' concerns about multiple and duplicative warnings. We designated an experienced executive from the Transportation Security Administration to run the TSC, a DHS executive to serve as Deputy Director of the TSC, and a senior DHS executive was detailed to the FBI to ensure coordination and transparency between the agencies.

In order to improve the compatibility of information technology systems throughout the Intelligence Community and increase the speed and ease of information sharing and collaboration, the FBI's information technology team has worked closely with the Chief Information Officers of DHS and other Intelligence Community agencies, to develop our recent and ongoing technology upgrades to ensure the interoperability of the various information systems. To facilitate further coordination, the FBI Chief Information Officer (CIO) sits on the Intelligence Community CIO Executive Council. The Council develops and recommends technical requirements, policies and procedures,

and coordinates initiatives to improve the interoperability of information technology systems within the Intelligence Community.

The CIO is also working with DOJ on interfaces between the Intelligence Community System for Information Sharing (ICSIS) and the Law Enforcement Information Sharing (LEIS) initiative, with the FBI's Criminal Justice Information Services (CJIS) Division, to increase the sharing of intelligence-related information to and from state and local officials.

In conclusion, the FBI has a responsibility to the nation, Intelligence Community, and federal, state, and local law enforcement to disseminate information, and to do so is an inherent part of our mission. Sharing FBI information will be the rule, unless sharing is legally or procedurally unacceptable.

#### **Next Steps**

We have made great progress, but we have much work to do. Our plan is solid and we believe we are heading in the right direction. We have enjoyed much support from your committee and we are very appreciative of the time your staff has spent in learning about our initiatives and giving us advice. What we need more than anything else is your continued support and understanding that a change of this magnitude will require time to implement. With your help, we will have that. Thank you for allowing me the opportunity to testify before you today and I will be happy to entertain any questions you may have.

**Homeland Security Related Products**

**U.S. Government Accountability Office  
Washington, D.C.**

**August 3, 2004**

This is a bibliography of homeland security related products issued by GAO since September 11, 2001. This bibliography is organized into the following categories, with products listed in the category to which they are most applicable:

General Management

Intelligence and Warning

Border and Transportation Security

Domestic Counterterrorism

Critical Infrastructure Protection

Defending Against Catastrophic Threats

Emergency Preparedness and Response

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