9/11 COMMISSION'S RECOMMENDATIONS: BALANCING CIVIL LIBERTIES AND SECURITY

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

JUNE 6, 2006

Serial No. 109–203

Printed for the use of the Committee on Government Reform

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

31–096 PDF WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON GOVERNMENT REFORM

TOM DAVIS, Virginia, *Chairman*

CHRISTOPHER SHAYS, Connecticut
DAN BURTON, Indiana
ILEANA ROS-LEHTINEN, Florida
JOHN M. MCHUGH, New York
JOHN L. MICA, Florida
GIL GUTKNECHT, Minnesota
MARK E. SOUDER, Indiana
STEVEN C. LATOURETTE, Ohio
TODD RUSSELL PLATTS, Pennsylvania
CHRIS CANNON, Utah
JOHN J. DUNCAN, JR., Tennessee
CANDICE S. MILLER, Michigan
MICHAEL R. TURNER, Ohio
DARRELL E. ISSA, California
JON C. PORTER, Nevada
KENNY MARCHANT, Texas
LYNN A. WESTMORELAND, Georgia
PATRICK T. MCHENRY, North Carolina
CHARLES W. DENT, Pennsylvania
VIRGINIA FOXX, North Carolina
JEAN SCHMIDT, Ohio

HENRY A. WAXMAN, California
TOM LANTOS, California
MAJOR R. OWENS, New York
EDOLPHUS TOWNS, New York
PAUL E. KANJORSKI, Pennsylvania
CAROLYN B. MALONEY, New York
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio
DANNY K. DAVIS, Illinois
WM. LACY CLAY, Missouri
DIANE E. WATSON, California
STEPHEN F. LYNCH, Massachusetts
CHRIS VAN HOLLEN, Maryland
LINDA T. SANCHEZ, California
C.A. DUTCH RUPPERSBERGER, Maryland
BRIAN HIGGINS, New York
ELEANOR HOLMES NORTON, District of Columbia

BERNARD SANDERS, Vermont (Independent)

DAVID MARIN, *Staff Director*
LAWRENCE HALLORAN, *Deputy Staff Director*
TERESA AUSTIN, *Chief Clerk*
PHIL BARNETT, *Minority Chief of Staff/Chief Counsel*

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

CHRISTOPHER SHAYS, Connecticut, *Chairman*

KENNY MARCHANT, Texas
DAN BURTON, Indiana
ILEANA ROS-LEHTINEN, Florida
JOHN M. MCHUGH, New York
STEVEN C. LATOURETTE, Ohio
TODD RUSSELL PLATTS, Pennsylvania
JOHN J. DUNCAN, JR., Tennessee
MICHAEL R. TURNER, Ohio
JON C. PORTER, Nevada
CHARLES W. DENT, Pennsylvania

DENNIS J. KUCINICH, Ohio
TOM LANTOS, California
BERNARD SANDERS, Vermont
CAROLYN B. MALONEY, New York
CHRIS VAN HOLLEN, Maryland
LINDA T. SANCHEZ, California
C.A. DUTCH RUPPERSBERGER, Maryland
STEPHEN F. LYNCH, Massachusetts
BRIAN HIGGINS, New York

EX OFFICIO

TOM DAVIS, Virginia
HENRY A. WAXMAN, California

R. NICHOLAS PALARINO, PH.D., *Staff Director and Counsel*
ELIZABETH DANIEL, *Professional Staff Member*
ROBERT A. BRIGGS, *Clerk*
ANDREW SU, *Minority Professional Staff Member*

CONTENTS

Page

Hearing held on June 6, 2006 1

Statement of:

Dinkins, Carol E., chairman, Privacy and Civil Liberties Oversight Board, the White House, accompanied by Alan Charles Raul, vice chairman, Privacy and Civil Liberties Oversight Board, the White House 59

Fetchet, Mary, New Canaan, CT, mother of Brad, an employee of Keefe, Bruyette and Woods in Tower 2 of the World Trade Center; Carol Ashley, Rockville Center, NY, mother of Janice Ashley, an employee of Fred Alger Management in the World Trade Center; Abraham Scott, Springfield, VA, husband of Janice Marie Scott, an employee of the Pentagon; and Don Goodrich, Bennington, VT, father of Peter Goodrich of Boston, a passenger on United Flight 175 that crashed into the World Trade Center 93

Ashley, Carol 111

Fetchet, Mary 93

Goodrich, Don 136

Scott, Abraham 128

Kean, Thomas H., chair, National Commission on Terrorist Attacks Upon the United States, president, THK Consulting; and Lee H. Hamilton, vice chair, National Commission on Terrorist Attacks Upon the United States, president and director, the Woodrow Wilson International Center for Scholars 28

Hamilton, Lee H. 31

Kean, Thomas H. 28

Letters, statements, etc., submitted for the record by:

Ashley, Carol, Rockville Center, NY, mother of Janice Ashley, an employee of Fred Alger Management in the World Trade Center, prepared statement of 114

Dinkins, Carol E., chairman, Privacy and Civil Liberties Oversight Board, the White House, accompanied by Alan Charles Raul, vice chairman, Privacy and Civil Liberties Oversight Board, the White House, prepared statement of 62

Fetchet, Mary, New Canaan, CT, mother of Brad, an employee of Keefe, Bruyette and Woods in Tower 2 of the World Trade Center, prepared statement of 97

Goodrich, Don, Bennington, VT, father of Peter Goodrich of Boston, a passenger on United Flight 175 that crashed into the World Trade Center, prepared statement of 139

Kean, Thomas H., Chair, National Commission on Terrorist Attacks Upon the United States, president, THK Consulting; and Lee H. Hamilton, vice chair, National Commission on Terrorist Attacks Upon the United States, president and director, the Woodrow Wilson International Center for Scholars, prepared statement of 35

Kucinich, Hon. Dennis J., a Representative in Congress from the State of Ohio, prepared statement of 9

Maloney, Hon. Carolyn B., a Representative in Congress from the State of New York, prepared statement of 18

Ruppersberger, Hon. C.A., a Representative in Congress from the State of Maryland, prepared statement of 164

Scott, Abraham, Springfield, VA, husband of Janice Marie Scott, an employee of the Pentagon, prepared statement of 132

Shays, Hon. Christopher, a Representative in Congress from the State of Connecticut:

Prepared statement of 3

Page

Letters, statements, etc., submitted for the record by—Continued
Shays, Hon. Christopher, a Representative in Congress from the State of Connecticut—Continued
Prepared statement of Carie Lemack 91
Prepared statement of Frank Fetchet 85

9/11 COMMISSION'S RECOMMENDATIONS: BALANCING CIVIL LIBERTIES AND SECURITY

TUESDAY, JUNE 6, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:03 p.m., in room 2154, Rayburn House Office Building, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays, Ros-Lehtinen, Duncan, Kucinich, Maloney, and Van Hollen.

Staff present: R. Nicholas Palarino, Ph.D., staff director; Robert A. Briggs, analyst, Elizabeth Daniel, professional staff member; Robert Kelley, chief counsel; Phil Hamilton, intern; Andrew Su, minority professional staff member; and Jean Gosa, minority assistant clerk.

Mr. SHAYS. A quorum being present, the Subcommittee on National Security, Emerging Threats, and International Relations hearing entitled, "9/11 Commission Recommendations: Balancing Civil Liberties and Security," is called to order.

The Final Report of the National Commission on Terrorist Attacks Upon the United States gave us the first comprehensive and objective analysis of what went so tragically wrong that day almost 5 years ago. The Commission unanimously called for a reevaluation of the fundamentals of defending the homeland. The "9/11 Commission," as it is commonly called, provided the Nation with 41 recommendations addressing issues such as homeland security and emergency response, intelligence and congressional reform, and foreign policy and nonproliferation.

Seventeen months after their report was issued, Governor Kean and former Representative Hamilton asked, are we safe? Their answer: We are safer, but we are not safe enough.

Today we are safer for two reasons. We are safer because the men and women of our Armed Forces and intelligence agencies and all those who serve in our foreign affairs posts are taking the fight to the terrorists. We are also safer because Congress has provided new and stronger authority to the executive branch to protect us at home. For example, the Director of National Intelligence was created to coordinate efforts of the Intelligence Community, and the National Counterterrorism Center was established to integrate and analyze all intelligence pertaining to terrorism and counterterrorism.

However, when the Federal Government takes on a stronger and more proactive role to protect its citizens, the issue of civil liberties has the potential to become a casualty. The authors of the 9/11 Commission report foresaw such a possibility, recognized its dangers and sought to guard against it by including civil liberties protections through the establishment of a Civil Liberties Board.

Congress followed the advice of the 9/11 Commission, seeking to balance the fine line between civil liberties and security. When the Intelligence Reform and Terrorism Prevention Act of 2004 strengthened the security of our Nation, it also established the White House Privacy and Civil Liberties Oversight Board. Unfortunately the authority of the Privacy and Civil Liberties Oversight Board will not be as effective as originally proposed because the legislation which created the Board does not provide it with subpoena power, and the Board and Board investigations can be, believe it or not, vetoed by the U.S. Attorney General.

The Board needs strong powers to engage in effective oversight. The power to subpoena records and witnesses from outside the government is as crucial as is its independence.

Last month Congresswoman Carolyn Maloney and I introduced H.R. 5017, ensuring implementation of the 9/11 Commission Report Act. The legislation would require executive branch agencies to certify progress made implementing and enacting 9/11 Commission recommendations. Included in the legislation is language that will strengthen the White House Privacy and Civil Liberties Oversight Board, providing it with subpoena power and greater independence.

Issues of the past year have highlighted the value of the 9/11 Commission's foresight and also the importance of creating strong legislation that will balance security and civil liberties. We must protect our civil liberties because if we do not, the terrorists will clearly have won. At the same time, we must protect our citizens. We owe nothing less to the victims of September 11th, the families of the fallen, and the citizens of the United States of America.

The subcommittee members thank all the witnesses for taking the time to appear before us today, including Governor Kean and Congressman Hamilton. And we want to especially thank, once again, the September 11th families who continue and continue and continue and continue to ask the difficult question, are we safe enough?

[The prepared statement of Hon. Christopher Shays follows:]

TOM DAVIS, VIRGINIA,
CHAIRMAN

CHRISTOPHER SHAYS, CONNECTICUT
DAN BURTON, INDIANA
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. McHUGH, NEW YORK
JOHN L. MICA, FLORIDA
GIL GUTKNECHT, MINNESOTA
MARK E. SOUDER, INDIANA
TEVEN C. LaTOURETTE, OHIO
ODD RUSSELL PLATTS, PENNSYLVANIA
CHRIS CANNON, UTAH
JOHN J. DUNCAN, JR., TENNESSEE
CANDICE MILLER, MICHIGAN
MICHAEL R. TURNER, OHIO
DARRELL ISSA, CALIFORNIA
JON C. PORTER, NEVADA
KENNY MARCHANT, TEXAS
LYNN A. WESTMORELAND, GEORGIA
PATRICK T. McHENRY, NORTH CAROLINA
CHARLES W. DENT, PENNSYLVANIA
VIRGINIA FOXX, NORTH CAROLINA
JEAN SCHMIDT, OHIO
VACANCY

ONE HUNDRED NINTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
FACSIMILE (202) 225–3974
MINORITY (202) 225–5051
TTY (202) 225–6852

http://reform.house.gov

HENRY A. WAXMAN, CALIFORNIA,
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
CAROLYN B. MALONEY, NEW YORK
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
DANNY K. DAVIS, ILLINOIS
WM. LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS
CHRIS VAN HOLLEN, MARYLAND
LINDA T. SANCHEZ, CALIFORNIA
C.A. DUTCH RUPPERSBERGER,
MARYLAND
BRIAN HIGGINS, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA

BERNARD SANDERS, VERMONT,
INDEPENDENT

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS,
AND INTERNATIONAL RELATIONS
Christopher Shays, Connecticut
Chairman
Room B-372 Rayburn Building
Washington, D.C. 20515
Tel: 202 225-2548
Fax: 202 225-2382

"9/11 Commission Recommendations: Balancing Civil Liberties and Security"

Statement of Rep. Christopher Shays
June 6, 2006

The *Final Report of the National Commission on Terrorist Attacks Upon the United States* gave us the first comprehensive and objective analysis of what went so tragically wrong that day almost five years ago. The Commission unanimously called for a reevaluation of the fundamentals of defending the homeland.

The 9/11 Commission, as it is commonly called, provided the nation with 41 recommendations addressing issues such as homeland security and emergency response, intelligence and congressional reform, and foreign policy and nonproliferation.

Seventeen months after their Report was issued Governor Kean and former Representative Hamilton asked, "Are we safe?"

Their answer, "We are safer, but we are not safe enough."

Today we are safer for two reasons: We are safer because the men and women of our armed forces and intelligence agencies and all those who serve in our foreign affairs posts are taking the fight to the terrorists. We are also safer because Congress has provided new and stronger authority to the Executive branch to protect us at home.

For example, the Director of National Intelligence was created to coordinate efforts of the intelligence community. And a National Counterterrorism Center was established to integrate and analyze all intelligence pertaining to terrorism and counterterrorism.

However, when the Federal government takes on a stronger and more proactive role to protect its citizens the issue of civil liberties has the potential to become a casualty.

The authors of the 9/11 Commission Report foresaw such a possibility, recognized its dangers, and sought to guard against it by including civil liberties protections through the establishment of a civil liberties board.

Congress followed the advice of the 9/11 Commission, seeking to balance the fine line between civil liberties and security. When the Intelligence Reform and Terrorism Prevention Act of 2004 strengthened the security of our nation, it also established the White House Privacy and Civil Liberties Oversight Board.

Unfortunately, the authority of the Privacy and Civil Liberties Oversight Board will not be as effective as originally proposed because the legislation which created the Board does not provide it with subpoena power, and Board investigations can be vetoed by the US Attorney General.

The Board needs strong powers to engage in effective oversight. The power to subpoena records and witnesses from outside the government is as crucial as its independence.

Last month Congresswoman Carolyn Maloney (NY-14) and I introduced H.R. 5017, Ensuring Implementation of the 9/11 Commission Report Act. The legislation would require Executive branch agencies to certify progress made implementing and enacting 9/11 Commission recommendations.

Included in the legislation is language that will strengthen the White House Privacy and Civil Liberties Oversight Board providing it with subpoena power and greater independence.

Issues of the past year have highlighted the value of the 9/11 Commission's foresight, and also the importance of creating strong legislation that will balance security and civil liberties.

We must protect our civil liberties, because if we do not the terrorists will have won. At the same time we must protect our citizens. We owe nothing less to the victims of 9/11, the families of the fallen, and the citizens of the United States of America.

We thank all the witnesses for taking the time to appear before us today, including Governor Kean and Congressman Hamilton, and we want to especially thank the 9/11 families who continue to ask the difficult question, Are we safe enough?

Mr. SHAYS. At this time I would with great respect recognize Mr. Kucinich, the ranking member of this subcommittee.

Mr. KUCINICH. I thank the Chair for calling this hearing, and thank the witnesses for being here and for their service to our country.

I think it's important to begin a hearing like this by stating the obvious. When we make a reference to our troops serving to protect this country, and we have the 9/11 Commission leaders in front of us, I think it's important to state for the record that Iraq had nothing to do with September 11th. That was not necessarily the charge of the Commission to come to that conclusion. But I think that as we start to extrapolate on matters of security and matters of civil liberties, we need to go right back to first things first. Iraq had nothing to do with September 11th, and our presence in Iraq right now is, in and of itself, violating international law, and any security problems we have in this country that are tied to Iraq have to be fought squarely on the backs of the administration.

So I want to thank the chairman for holding this hearing. I can think of no more important issue than ensuring constitutional rights and fundamental freedoms of all the citizens of our country.

Mr. Chairman, Congress surely had protection of civil liberties in mind when it passed the 2004 Intelligence Reform Act, creating the Privacy and Civil Liberties Board and the position of Civil Liberties Protection Officer, yet it seems that this administration——

Mr. SHAYS. I would like to point out to the gentleman that the mic was not on. Could all of you hear the first part of what he said?

Mr. KUCINICH. No. I'll repeat it. I would hate for anyone not to have heard what I said.

Mr. SHAYS. I just want to apologize to him. We have a button here that was not on. Was it on when I spoke?

Mr. KUCINICH. Was it on when the chairman spoke?

Mr. SHAYS. Anyway——

Mr. KUCINICH. See, Mr. Chairman, coming from Cleveland, when I was mayor, the council used to shut my mic off, so I just kept speaking. So I didn't know the mic wasn't on, but I would happily ask the Chair if he wanted me to make some remarks that could go on the record.

Mr. SHAYS. No. We're on the record.

Mr. KUCINICH. OK. Once again, Iraq had nothing to do with September 11th. And if we're going to start talking about security and then from there talk about the protection of civil liberties in that context, I think it's important that we establish a ground of meaning. And since the 9/11 Report focused mostly on the domestic matters, and since we have the two distinguished gentlemen in front of us, I think it's important to remember that we're in Iraq based on lies. And it's quite possible that what issues come from that is going to continue to be a lie. The Bible says, "this which is crooked cannot be made straight." We may be in such a condition with respect to Iraq and all the policies that flow from it.

Nevertheless, Mr. Chairman, Congress surely had the protection of civil liberties in mind when it passed the 2004 Intelligence Reform Act, creating the Privacy and Civil Liberties Board and the position of Civil Liberties Protection Officer. Yet it seems that this

administration doesn't feel the same way. To the White House, the civil liberties of Americans just aren't a very high priority. They're viewed as an inconvenience. When the Bush administration increasingly snoops into the lives of Americans, from monitoring library records to eavesdropping on our phone calls to collecting data on our travel records, with virtual immunity, this administration shows it pays lip service to the protection of our privacy and civil liberties. Why else has there been delay after delay in establishing the Privacy and Civil Liberties Board? Why did they wait more than 15 months to appoint the five members of the Board? Why has the Board had to struggle with issues of budget, staff support, office space?

According to the ACLU, the Board, "only gives the illusion of oversight without doing anything real." I believe this administration does not want this Board to succeed, and in dragging its feet, it tells us that it will only follow the letter of the law, not the spirit.

The Board has no authority to carry out its mission. It is still, according to the Los Angeles Times, a "paper tiger." the Board has no subpoena power, and any requests by the Board for Federal documents can be vetoed by the Attorney General of the United States. The Board does not have to hold public hearings or issue any public material aside from the annual report to Congress. Tellingly, Americans only learned of the Board's initial meetings this year through a press release issued after the meetings took place. Clearly the Board as it currently operates cannot be viewed as either independent or effective.

Mr. Chairman, I hope this Board can get its act together and fulfill the responsibilities that the 9/11 Commission and Congress envisioned for it. We should not act hypocritically or compromise when it comes to our Nation's founding principles. These are the very freedoms and democratic values we espouse to other democratic nations to embrace, and which allegedly we're sending our young men and women in the military all over the world to protect.

Mr. Chairman, I think it would be great if we could work together to send a request to the White House. I would like to see this subcommittee get all transcripts and meeting notes from the White House Privacy and Civil Liberties Board and would ask that we subpoena those if necessary. It's vital that Congress performs its oversight duties over such an important body and ensures that the Board acts in the best interest of every American, not just those of the White House.

I want to thank Governor Kean, I want to thank Congressman Hamilton for their leadership during the September 11th investigation process and through their efforts in the 9/11 Discourse Project to enact reform suggested by the Commission. I want to welcome the members of the September 11th families who are here today and applaud their efforts to ensure that civil liberties are protected.

On one final note, when we speak of setting up a civil liberties board, you would think that ought to be actually the business of the U.S. Congress, and it should be the business of the courts. When you come forward and set up a structure after the fact that somehow's supposed to monitor to make sure that our constitutional rights are protected, and any administration frustrates the

actions of that commission, go back and ask the first question: Why is this administration not taking the Constitution of the United States into account when it designs security for this country? Why has it determined that it would throw out the window so many constitutional protections? No board, the purpose of which we're here today to talk about, is going to be able to effectively answer that question.

Mr. SHAYS. Thank the gentleman.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Statement of Rep. Dennis J. Kucinich
Ranking Minority Member
House Subcommittee on National Security, Emerging Threats and International Relations
Committee on Government Reform
U.S. House of Representatives

Hearing on "9/11 Commission Recommendations: Balancing Civil Liberties and Security"

June 6, 2006

Good afternoon, Mr. Chairman, and thank you for holding this hearing. I can think of no more important issue than ensuring that the constitutional rights and fundamental freedoms of all American citizens are safeguarded.

Mr. Chairman, Congress surely had the protection of civil liberties in mind when it passed the 2004 Intelligence Reform Act, creating the Privacy and Civil Liberties Board and the position of Civil Liberties Protection Officer.

Yet, it seems that this Administration doesn't feel the same way – to the White House, the civil liberties of Americans just

aren't a very high priority. Rather, they are viewed as an inconvenience.

While the Bush Administration increasingly snoops into the daily lives of Americans, from monitoring library records to eavesdropping on our phone calls to collecting data on our travel records with virtual impunity, this Administration has shown that it only pays lip service to the protection of our privacy and civil liberties.

Why else has there been delay after delay after delay in establishing the Privacy and Civil Liberties Board? Why did the White House wait more than 15 months to appoint the five members of the Board? Why did the White House not give the Board any budget, any support staff, or even office space?

According to the ACLU, the Board "only gives the illusion of oversight without doing anything real."[1] I believe this Administration wants the Board to fail, and in dragging its feet, tells us that it only will follow the letter of the law, not the spirit.

[1] American Civil Liberties Union, *ACLU: Bipartisan Civil Liberties Board Fix Bill Long Overdue, Measure Would Take Oversight Panel Out of the "Hip Pocket of the President* (Mar. 15, 2005).

Moreover, the Board has no authority to carry out its mission. It is still, according to the *Los Angeles Times*, a "paper tiger."[2] The Board has no subpoena power, and any requests by the Board for federal documents can be vetoed by the Attorney General of the United States.[3] The Board does not have to hold public hearings, or issue any public material aside from an annual report to Congress.[4] Tellingly, Americans only learned of the Board's initial meetings this year through a press release issued after the meetings took place.[5] Clearly, the Board as it currently operates cannot be viewed as either independent or effective.

Mr. Chairman, I hope that this Board can get its act together and fulfill the responsibilities that the 9/11 Commission and Congress envisioned for it. We should not act hypocritically nor compromise when it comes to our nation's founding principles. These are the very freedoms and democratic values that we

---

[2] *Privacy Guardian Is Still a Paper Tiger: A Year After Its Creation, the White House Civil Liberties Board Has Yet To Do a Single Day of Work*, L.A. Times, A1 (Feb. 20, 2006).
[3] *Id.*
[4] *White House Civil Liberties Panel Finally Meets After 16 Months*, L.A. Times, A22 (Mar. 17, 2006).
[5] Privacy and Civil Liberties Oversight Board, *Joint Statement of the Members* (May 17, 2006).

espouse to other nations to embrace, and which we are sending our young men and women in the military all over the world to protect.

Mr. Chairman, I would like you to join me in making a request to the White House. I would like the Subcommittee to get all transcripts and meeting notes from the White House Privacy and Civil Liberties Board, and would ask that we subpoena these if necessary. It is vital that Congress performs its oversight duties over such an important body, and ensures that the Board acts in the best interests of every American, not just those of the White House.

Finally, I'd like to thank Governor Kean and former Congressman Hamilton for their extraordinary leadership during the 9/11 Commission investigation process, and through their tireless efforts through the 9/11 Discourse Project to enact reforms suggested by the Commission.

I'd also like to welcome the family members of September 11th victims who are here with us today, and applaud their efforts

to ensure that the civil liberties of all Americans are protected even while we pursue those who would harm our country.

Thank you, Mr. Chairman.

Mr. SHAYS. Mr. Duncan.

Mr. DUNCAN. Well, thank you, Mr. Chairman. Thank you once again for calling a hearing on a very important topic, as you have so many times before, and I want to welcome Governor Kean. And from what I read about him, he did just a great job in a very difficult position of being Governor of the State of New Jersey. And I want to welcome our friend Lee Hamilton, who was one of our most respected Members on both sides of the aisle in this body for, what was it, 36 years?

Mr. HAMILTON. Thirty-four.

Mr. DUNCAN. Thirty-four. I knew it was something like that.

You know we've had Secretary Chertoff here as a witness a few months ago. He said in a speech, people have to realize that we cannot protect everybody against every possible harm at every possible moment, and that was one of the most sensible things that has been said in this whole discussion since September 11th.

I remember several months after September 11th when we passed the farm bill, which had been passed many times before just being called the farm bill, but that particular year it was called the Farm Security Act, and the Wall Street Journal had an editorial and said we should give four times the scrutiny to any bill that had the word "security" in it because every department and agency was using the word "security" just to get more funding. And a whole industry has now popped up with hundreds or maybe several thousand lobbyists, a whole industry has popped up called homeland security, with thousands of companies and individuals coming at us with the latest gizmo or gimmick about security, and everybody in elected offices is scared not to say that in regard to security that we must do more, we must do more, we must do more in case something terrible happens, and some bad event will happen. But on the other hand, we do need to come to our senses a little bit and realize that we still are much more likely, hundreds of times more likely, to be struck by lightning or even more likely to win a lottery than we are to be killed by a terrorist.

And am I saying we shouldn't do anything? No. We should do more, but we also have to have some sort of balance in this whole equation.

We have expanded the FBI by, I think, about 7,000 employees since September 11th and nearly doubled its budget. We've given even bigger percentage increases to some of the other Federal law enforcement agencies. We've got every department and agency doing all these things in regard to security, and in some ways we're going a little bit overboard, and we've got to be careful that we don't create some sort of Federal police state in this process.

We all know Patrick Henry's famous statement, and so do we need to do more for security? Yes. But we've got many, many other things that the Federal Government needs to do, needs to spend money on, and many of these things that we're discussing now have a lot more to do with money and funding than they do with security. And if we just blindly approve anything that has the word "security" attached to it, we're going to end up wasting a lot of money. We're going to end up not making the country really that much safer.

And I say this, and we all sympathize with those who have lost family members in September 11th, and we're going to hear from some of them later on, and certainly we appreciate their feelings, and that's why we have them here today. And I'm sorry that previously scheduled appointments are going to force me to come in and out, but it's going to be a very difficult job to reach the proper balance between having as safe and secure a country as we possibly can without going ridiculously overboard and wasting all kinds of money and creating this Federal police state.

So for those reasons, I think it's very, very important that you call this hearing and that we have this discussion. Thank you very much.

Mr. SHAYS. I thank the gentleman.

Mrs. Maloney.

Mrs. MALONEY. I thank my colleagues and Congressman Shays for holding this hearing, and I extend a very warm welcome to the former Chair and Vice Chair of the 9/11 Commission, Kean and Hamilton, and thank them for their life-long commitment to public service. And I truly do believe that the 9/11 Commission, its report and continued followup of which you were part of today is an example of government working at its best, finding out what's wrong, coming forward with concrete proposals and working to implement them.

Your book, I nominated it for a National Book Award. We didn't win the award, but this 9/11 Commission report book literally sold more copies than Harry Potter, and we are still studying it and still trying to really implement the thoughtful suggestions you put forward.

On our second panel we have the Privacy and Civil Liberties Oversight Board, and finally on our third panel we have a group of individuals who I am truly honored to call my friends. These are the September 11th family members. They certainly must be commended for turning their tragedy into action and forcing our government to enact reforms that will make our country safer for all people.

And I wish I could tell them today that their work is done, and that they do not have to come back to Washington anymore, but sadly there still is a great deal more that does need to be done, and we appreciate your being here and your constant attention to these challenges.

We face a Congress and an administration who simply refuse to do the tough work necessary to enact and enforce all of the recommendations that came forward from the 9/11 Commission. We have made a good start with the passage of the intelligence reform bill. It broke down the old guard and opened up communications between our various intelligence agencies, and we should really be proud of the work that we did together in a bipartisan way to enact that important reform. And I really believe it's the most important piece of legislation I have worked on or had the honor of working on since I've been in Congress.

But as the 9/11 Commission reminded us in its final report card in December, Congress and the administration have a great deal more work to do. Their report card gave us more Fs than As, and certainly we are not where we need to be almost 5 years after the

September 11th attack and 2 years after the Commission released its report.

One F came in the distribution of homeland security funding. The Commission stated, and it stated it well, and I'm going to quote your report, Mr. Chair and Vice Chair, you said, "homeland security funds continue to be distributed without regard for risk, vulnerability or the consequences of an attack, diluting the national security benefits of this important program."

And you do not have to look very far beyond last week's announcement that New York and Washington, DC's homeland security funding is slashed by the Department of Homeland Security, and it clearly shows that the administration does not get it. Funding for New York City was slashed by 40 percent.

All intelligence agency directors will tell us that New York and D.C. remain terrorist targets, No. 1. And all of their intelligence and all of our briefings, New York and Washington remain terrorist targets, No. 1. So I do not understand how they come out with a formula that gives $15 per capita to Wyoming and roughly $2 and change to New York City. Believe me, there are more buffalo in Wyoming than there are infrastructure that needs to be protected, such as the rail and the air and the areas that we need to protect people.

Furthermore, the radios tragically that did not work on September 11th still do not work. And of particular concern to me and Congress, and, I believe, the Commission members, is the fact that enriched uranium is still out there. We have not located it. We have not bought it up, and we have not established an Office of Nonproliferation in the Office of the President to track this so that we can prevent having a nuclear bomb exploding in one of our highly populated cities.

So I wonder what the report card would be today from the 9/11 Commission. How in the world do you go from a terrible funding formula that does not take into account the risk to even making it worse? So your grade would have to be an F, F minus minus, or even a zero. And how can we have faith in the protection of our country if you see this type of manipulation of a formula that looks more like a pork formula than one that is addressing homeland security.

Another issue Congressman Shays and I have been working on, which is a focus of this hearing, is the Privacy and Civil Liberties Oversight Board. As it currently exists, it does not have full subpoena power. Members serve at the whim of the President. There are no assurances of a bipartisan breakdown, and we are not even required—the members are not even required to have any form of civil liberties background.

What is worse is that the House leadership has denied an effort by Mr. Shays and I five times. Five times we have tried to debate an amendment that would give the Board subpoena power that would strengthen it and give it greater teeth, and I find that extremely disturbing.

In an effort to reverse this trend and to finally enact all of the recommendations—there were 41 recommendations we've enacted roughly half of them—Mr. Shays and I have introduced H.R. 5017, the Ensuring Implementation of the 9/11 Commission Report Act,

and this legislation tracks the final report's recommendations and proposes ways in which to achieve and to implement it, and I hope that we will be working to enact those proposals.

I just want to mention that the first time Congressman Hamilton spoke to us about the recommendations, he said the hardest obstacle would be to get Congress to organize itself or reorganize itself to ensure that we are conducting proper oversight; that we have standing committees that we have clear lines of authority. And your suggestion has come true. We have made zero progress in moving toward an organization that really strengthens Congress's oversight in that area.

It is always an honor to hear from the two leaders on this important issue, and we welcome you today. Thank you for the work that you've done and that you continue to do to make America safer. Thank you.

Mr. SHAYS. I thank the gentlelady.

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

Statement of Congresswoman Carolyn B. Maloney
Government Reform Subcommittee on National Security Hearing
June 6, 2006
2 p.m.

I would like to thank Chairman Shays
for holding today's hearing and
extend a warm welcome to our witnesses.

On our first panel we have
the former chair and vice-chair
of the 9/11 Commission,
Messrs. Kean and Hamilton.

It is a pleasure to see the both of you again.
It is always a pleasure to work with you.

On the second panel
we have members of the
Privacy and Civil Liberties Oversight Board.

I appreciate that you took the opportunity
to testify before us today.

I certainly look forward to your testimony
and have a number of questions for you.

Finally, on our third panel,
we have a group of individuals
who I am truly honored to call my friends.

These 9/11 family members
certainly must be commended for
turning their tragedy into action
and forcing our government to enact reforms
that will make our country safer.

I wish that I could tell them
that our work is done
and that they do not have to continue coming
to Washington to advocate for action,
but sadly this is not the reality we face.

We face a congress and an Administration
who simply refuses to do the tough work
necessary to enact and enforce
all of the reforms recommended
by the 9/11 Commission.

We have made a good start
with the passage of the Intelligence Reform Bill

and the Commissioners and the 9/11 Family
Members should be proud of the work
they did to accomplish this.

I personally believe that it was
the most important piece of legislation
that I have had the honor of working on.

But, as the 9/11 Commission reminded us
in its final report card in December,
Congress and the Administration have
a lot of work to do before our job is done.

This report card gives us more "F's" than "A's".
Certainly not where we need be
almost five years after 9/11
and almost two years after
the 9/11 Commission released its report.

One "F" came in the distribution
of homeland security funding.

The Commission stated that
"homeland security funds continue
to be distributed without regard for risk,
vulnerability, or the consequences of an attack,
diluting the national security benefits
of this important program."

You don't have to look beyond last week's
announcement that New York and D.C.
homeland security is being slashed by the
Department of Homeland Security to realize
this Administration still does not get it.

I wonder if the Commission's report card
came out today that they would be forced
to give homeland funding an F minus.

Another issue that Congressman Shays
and I have been working on and is a focus
of this hearing is
the Privacy and Civil Liberties Oversight Board.

As it is currently exists
it does not have full subpoena power,

members serve at the whim of the President,
there are no assurances
of a bipartisan breakdown
and are not even required to have
a civil liberties background.

What is worse
is that the House leadership has denied us
five times the opportunity to even debate
an amendment that would give the board
the teeth it needs.

How can this House say they care
about the civil liberties of the American people,
when they don't even allow
Members of Congress to debate important topics
on the Floor of the House of Representatives?

In an effort to reverse this trend
and to finally enact all of the recommendations
of the 9/11 Commission,
Congressman Shays and I have introduced
H.R. 5017, the Ensuring Implementation of the
9/11 Commission Report Act.

This legislation tracks the final reports
of the 9/11 Commission on the implementation
of its recommendations
and proposes ways in which to
achieve implementation.

In this legislation we require
homeland security funding to be distributed
on the basis of risk.

We empower the Privacy and
Civil Liberties Board to more fully do their job.

We require structural changes to
the way Congress organizes ourselves
to ensure we will be conducting
proper oversight.

All common sense provisions
that we have not had the will to enact.

I would be interested from hearing from our
witnesses their opinion on this legislation and I
look forward to your testimony.

Submitted & Recd by Congresswoman Carolyn Maloney (NY)
National Security Hearing 06/06/06

THE MIAMI HERALD | MiamiHerald.com A MONDAY, APRIL 24, 2006 9/11

OTHER VIEWS

2:00p.m. - 2154 RHB

Many issues have arisen since 9/11 that could have been submitted to a real civil liberties board. They range from the NSA warrantless surveillance program to the use of watch lists in screening airline passengers to the government's treatment of detainees at Guantánamo Bay.

CIVIL LIBERTIES

Oversight board needs authority, resources

BY DAVID KEENE and DAVID COLE
cole@law.georgetown.edu

The Bush administration has argued that the president has the "inherent power" in the "war on terror" to choose "the means and methods of engaging the enemy" free of any concerns about the political checks of the other branches — even when that includes wiretapping Americans at home without a warrant and in violation of existing criminal law. That position is contrary to constitutional principle and precedent. The framers of the Constitution were skeptical of claims of absolute power and tied our fate instead to an intricate system of checks and balances.

KEENE

The fact that the administration takes such a view of its own prerogatives, however, underscores the importance of having a system of checks and balances within the executive branch itself. Internal checks are especially important where, as was the case with the National Security Agency's spying program, the executive carries out initiatives in secret, and the American public only learns about them, if at all, through unauthorized leaks to the press.

The 9/11 Commission saw the need for such internal oversight and in December 2004 Congress passed legislation creating a Privacy and Civil Liberties Oversight Board, a five-member panel with jurisdiction to review executive branch policies, regulations and programs on national security to ensure that they safeguard Americans' privacy rights and civil liberties. It has taken 15 months, however, just to get the board up and running.

Subpoena power

The administration didn't even nominate the members of the board until last June, six months after passage of the legislation, and the members weren't sworn in until just last month.

More importantly, while the legislation creating the civil liberties board recognized the need for internal oversight, it was deficient in some important respects. The board lacks subpoena power. It is not independent but is contained within the Executive Office of the President. There is no requirement that it be bipartisan. Executive branch officials are not required to seek the board's approval before implementing policies that may infringe civil liberties. And the board has been woefully underfunded.

Reps. Carolyn Maloney, D-N.Y., and Christopher Shays, R-Conn., have introduced bipartisan legislation to cure these deficiencies and "give teeth" to the board, but thus far no action has been taken on that front.

Many issues have arisen since 9/11 that could have been submitted to a real civil liberties board. They range from the NSA warrantless surveillance program to the use of watch lists in screening airline passengers to the government's treatment of detainees at Guantánamo Bay. An independent civil liberties board with real authority could play a valuable role in the debate over how to keep us both safe and free.

COLE

As co-chairs of the Constitution Project's bipartisan Liberty and Security Initiative, we have been working with a diverse group of prominent Americans — including Democrats, Republicans and independents, with experience in all three branches of government, academia, the media, and business — to forge consensus on how our government can simultaneously protect Americans' security and their civil liberties.

New legislation

We believe that the civil liberties board has been far too long in coming, but now that it is in place, the Congress and the president should work together to make certain that it has the resources and power to accomplish its mission. The only thing worse than no civil liberties board would be a sham civil liberties board.

Congress and the administration can rectify this situation. Congress should pass, and the president should sign, new legislation to strengthen the board's hand while rendering it truly independent. Security and liberty are critical bipartisan issues for our nation, and we must make it a priority to address them through a functioning, independent and bipartisan board.

David Keene is chairman of the American Conservative Union. David Cole is a professor of law at Georgetown University Law Center and a legal affairs correspondent for The Nation.

Mr. SHAYS. And, Ms. Ros-Lehtinen, thank you, and you have the floor.

Ms. ROS-LEHTINEN. Thank you so much. Thank you, Mr. Chairman. And it's a pleasure to have the Governor back with us again today and Chairman Hamilton, with whom I had the pleasure of serving on International Relations while he chaired it in such a wonderful way. It's a pleasure to see you again, Lee.

And I want to thank the many family members of the victims of September 11th who are here with us today, and we thank you, and we honor your loss each and every day.

As all of us know, the recommendations made by the 9/11 Commission relating to the protection of civil liberties speak to the core of our rights as Americans, and their full and timely implementation should be of utmost concern to all of us. And these civil liberties-related recommendations serve as a check in the context of the 9/11 Commission's broader message, which is to comprehensively strengthen our national security in hopes of preventing future acts of terror in our homeland.

The Civil Liberties Oversight Board is responsible for ensuring that the privacy and civil liberties of the American people are appropriately considered in the implementation of the 9/11 Commission recommendations. And there has been, as my good friend Mrs. Maloney has stated, legislation introduced by Chairman Shays and her seeking to increase the investigative powers of the oversight board by giving its members subpoena powers. And all of us have to debate that because, as we know, a careful balance must be maintained between our national security interests and our constitutionally guaranteed liberties, and as was stated so correctly in the 9/11 Commission Report, it said, we must find ways of reconciling security with liberty since the success of one helps protect the other.

The choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home. Our history has shown us that insecurity threatens liberty, yet if our liberties are curtailed, we lose the values that we are struggling to defend.

So we thank all of the Commission members who have done an extraordinary job making sure that we protect our homeland, but at the same time strike that delicate balance of protecting our civil liberties at the same time.

Mr. Chairman, I have another committee hearing at the same time, so I'll stay as long as I can, but I thank you for the opportunity to make a statement.

Mr. SHAYS. Thank you. Thank you very much.

And at this time we'll let you close up, Mr. Van Hollen. Thank you for being here. And then we'll get right to our witnesses. Thank you.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. And let me thank you and Mr. Kucinich for holding this hearing, and thank you to our witnesses who are here today.

Governor Kean, Congressman Hamilton, thank you for your service to the State of New Jersey, of course, Governor Kean. And Congressman Hamilton was chairman of the House International Relations Committee and the Intelligence Committee. Thank you for

your service to our country. And thank you for the great service you did to our country as part of the 9/11 Commission in issuing the report, which I really think helped frame the issues and challenges for our Nation going forward, including the very important issue we're talking about today, which is civil liberties.

I also want to thank the September 11th families for making sure this country continues to focus on the lessons that we have to learn from September 11th and for the very creation of the 9/11 Commission itself, because in the early stages, we all know not everybody supported the creation, the formation of the 9/11 Commission. So thank you to the families for that.

I think we would all agree that it would be a terrible irony if, in the effort to protect the freedoms and liberties of the American citizens, we were to take actions here at home that eroded those very civil liberties, and that's what this is all about.

Now, when you issued your most recent report card back in December under the heading of Civil Liberties and Executive Power, there were three categories. One of the categories was Privacy and Civil Liberties Oversight Board, the creation of the Board, and you pointed out that there was little urgency in the creation of the Board, and gave us all a D, the Federal Government a D, in that area.

Now, as others have said, there's been some minimal progress in establishing the Board, but I must stress minimal progress. There's still not, as I understand, much space for people to move into. In the budget submitted by the administration this year, there was no specific amount set aside for the purpose of the oversight board.

Other weaknesses have been mentioned, including the fact there's no subpoena power, and the fact that the Attorney General can essentially veto requests for documents. So that was a D then. I would be interested to hear if it's gone up at all.

The other category was guidelines for government sharing of personal information. At that time they'd not yet appointed a Civil Liberties Protection Officer, the DNI had not. That was a D at that time.

The other category was balance between security and civil liberties. It was a general category, stating a measure of robust and continuing oversight both within the executive and by the Congress will be essential, and you were very charitable there; you gave us all a B in that area.

Now, I would note it was shortly after this report card came out that the New York Times broke the story about domestic wiretapping, and I would also point out that while there's been some oversight on this issue in the Senate, the House has been essentially AWOL when it comes to that issue. I also serve on the Judiciary Committee. We've requested many hearings on that very important issue. Not a single hearing in the Judiciary Committee on that very important question that raises constitutional legal issues, and the role of this Board in relation to the whole issue, like the one that was raised by domestic—is an open question. I'm not sure the administration envisions them having any kind of role in that particular area.

So I think the questions have only grown since you issued that report card back in December, and I think the track record of mak-

ing sure we protect civil liberties suggests that we have actually been heading in a downward area, when you look at the broad picture, although there may have been progress, incremental progress, in certain areas.

So I'm looking forward to your testimony. I want to thank you both for your continued efforts in this area and for giving of your time and talents. I also want to thank your terrific staff, and I see Chris Kojm is here with you, and others, and I want to thank them for their service to our country. Thank you both.

Mr. SHAYS. Thank the gentlemen very much.

Taking care of business, I ask unanimous consent that all members of the subcommittee be permitted to place an opening statement in the record, and that the record remain open for 3 days for that purpose. And without objection, so ordered.

I ask further unanimous consent that all witnesses be permitted to include their written statement in the record, and without objection, so ordered.

We have before us the Honorable Thomas H. Kean, Chair, National Commission on Terrorist Attacks Upon the United States, and we welcome him. And we have the vice chairman of that same Commission. I think it's fair to say both of you functioned as co-chair, and you clearly were there at a very important time in this country's life, and we're very grateful to both of you.

As I think you know, this is an investigative committee, the Government Reform Committee. We do swear in all our witnesses. You would understand that the only one I ever failed to swear in in 10 years was the Senator from West Virginia, but everyone else has been sworn in. So if you would rise, I will swear you in.

[Witnesses sworn.]

Mr. SHAYS. Thank you very much, gentlemen. We look forward to hearing from you. There's no clock timing you. It's just really important we put on the record whatever needs to be put in. And you've spent the last 40 minutes listening to Members of Congress. I think we can reciprocate.

So, Governor?

STATEMENTS OF THOMAS H. KEAN, CHAIR, NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, PRESIDENT, THK CONSULTING; AND LEE H. HAMILTON, VICE CHAIR, NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, PRESIDENT AND DIRECTOR, THE WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

STATEMENT OF THOMAS H. KEAN

Governor KEAN. Chairman Shays, Ranking Member Kucinich, members of this panel, it's an honor and a privilege to appear before you today, particularly with the families who never, ever, ever give up, which is wonderful, to testify about the status of our recommendations of the 9/11 Commission.

It's almost 2 years since we completed the largest investigation of the U.S. Government in this country's long history. A mandate of the Commission was to investigate and report to the President and the Congress on its findings, conclusions and recommendations

for corrective measures that can be taken to prevent acts of terrorism.

We found in our report that the government failed in its duty to protect us on September 11th. We found failures on imagination, policy capabilities and management, and we made 41 recommendations to ensure that we do everything possible to prevent another attack.

Now, to continue our work after the Commission officially ended, we formed a nonprofit organization, the 9/11 Public Discourse Project, for the purpose of public education on behalf of our recommendations.

Now, many of the Commission's recommendations, including those to reorganize the Intelligence Community, were taken up by the Congress and enacted in the Intelligence Reform and Terrorism Prevention Act of 2004, but we all understood one thing, and that was changing the law is only the first step in changing public policy. No law is self-executing. Implementation is often the more difficult step.

The Public Discourse Project tracked both legislation and implementation of the Commission's recommendations, and we issued a report card in December 2005. That report card contained 1 A, 12 Bs, 10 Cs, 12 Ds, 4 Fs, and 2 incompletes. In other words, we found a very mixed record, but we've continued to track those recommendations since we issued our report card. But I have to say our perspective now about 6 months later is just about the same. There is still a great deal we have to do and still haven't done to protect the American people.

So what do we need to do? We analyze the 41 recommendations from another standpoint. Where do we need legislation? And where do we need to work on implementation? We found that roughly half the commissions were addressed by legislation, and at the end of 2004 Intelligence Reform and Terrorism Prevention Act, the bigger problem we found was the challenge of implementation. Even when the letter of our recommendations written into law, there has been a lack in implementation. In some cases implementation can be expected to take years. In every case, the Congress needs to provide robust oversight to ensure that these reforms are carried out.

For this reason we welcome and strongly support the bill H.R. 5017 introduced by Chairman Shays and Representative Maloney. H.R. 5017, a bill to ensure implementation of the recommendations to the National Commission on Terrorist Attacks Upon the United States, changes the law where necessary to carry out the recommendations. But just as importantly, H.R. 5017 shines a bright light on the question of implementation, and ensuring that the executive branch agencies stay focused in carrying out what the law that you passed already requires.

We believe our time before you today is best spent focusing on a few issues where the attention of the Congress is perhaps most necessary. First, scarce homeland security dollars must be allocated wisely. Right now those funds are spread around more revenue-sharing projects. Pork barrel politics, I know, is a time-honored approach in Washington, but this pork barrel approach, when we're talking about the safety of the American people, just can't be allowed to prevail.

In our report we recommended homeland security funds be allocated on the basis of the greatest risks and the vulnerability of attack. Secretary Chertoff himself has stated many times the position of the administration in support of funding based on risk and vulnerabilities, a position we all strongly support. Therefore, we were surprised and we were disappointed that analysis by the Department of Homeland Security has led to proposed cuts in homeland security funding for New York and for Washington, DC.

The terrorists targeted New York and Washington. So far as we know, they continue to target those symbols of America's strength and America's power. It defies our understanding of the nature of the threat to reduce funding designated to protect New York and to protect Washington. We await further explanation.

Last year the House of Representatives passed a very good bill—three times you passed it—which would focus scarce resources on the greatest risks and the greatest vulnerabilities. On two separate occasions, including most recently the conference committee on renewal of the PATRIOT Act earlier this year, the House provision on homeland security funding was in conference with the Senate. In both cases, nothing emerged. Senate conferees rejected the House position. Now, we gave the Congress an F because of its failure to act in a risk-based and vulnerability-based formula for homeland security funding, and we actually feel because of that, that letter grade was deserved. Until and unless the Congress sends a bill to the President allocating homeland security funding on the basis of risk, we will continue to squander dollars which are enormously scarce in this area.

In the area of emergency response, States and localities need to practice their plans for emergency response. If we hadn't learned before, we must have learned from Hurricane Katrina the lesson that we should have learned on September 11th. Every metropolitan area, every locality needs to have a working response plan that embraces a unified incident command system. A response plan needs to be practiced, needs to be exercised regularly. You cannot wait for a disaster to hit and then suddenly look for a plan. All first responders need to know from the moment they learn of a disaster who is in charge and what their individual job is to do.

The Department of Homeland Security requires a unified incident command system to be in place, or States will be unable to receive homeland security funding after October 1, 2006. And that's a good provision as far as it goes. During Katrina, Louisiana and New Orleans had a paper plan, but it wasn't executed when it was most needed. DHS needs to make sure that these plans are living documents, that first responders practice working together. If you are a first responder and you are talking to your counterpart for the first time the day the disaster hits, that emergency response plan will fail.

In addition, first responders still don't have the ability to talk to one another effectively. The Commission recommended the Congress expedite for public safety purposes the allocation of a slice of the broadcast spectrum ideal for emergency communications. Those frequencies able to get messages through concrete and steel highrises without difficulty are now held by television broadcasters. Now, they'd been promised to these brave men and women in the

public safety area. They've been promised for a decade, and now they'll finally be turned over to first responders in February 2009. H.R. 5017 includes the text of the Homeland Emergency Response Act, the HERO Act, to provide this broadcasting spectrum to first responders much earlier, by January 1, 2007. This will save lives.

We strongly endorse this earlier date. The reason is simple. Who can say that we're going to have no disasters before 2009? No terrorist attacks? Why should public safety have to be put on hold for the next 3 years in order to accommodate the broadcast industry? It is scandalous, and we call on the Congress to act.

I'd like to turn over to my friend, colleague and guy I try to emulate from time to time, Lee Hamilton.

STATEMENT OF LEE H. HAMILTON

Mr. HAMILTON. Thank you very much, Chairman Shays and Mr. Kucinich, Mrs. Maloney, Mr. Van Hollen. Thank you for the opportunity to appear before you today. Governor Kean and I appreciate very much the most gracious comments you made about the 9/11 Commission and our work.

It's a great pleasure for me, of course, to appear with Governor Kean. He is one of the great public servants of my generation and a remarkable leader. And both the Governor and I thank you very much, those of you who have cosponsored H.R. 5017, because it incorporates our recommendations.

I suspect the key recommendation of the 9/11 Commission in many respects was the requirement, we believe, for the government to share information, and we missed so many opportunities on that day, and because—with that plot because the government did not share information.

I think overall the Federal Government is doing a better job of sharing information today, but it comes very hard. It's difficult to do, and I think there is still plenty of room for improvement in the executive branch with regard to the sharing of information. There are also very huge gaps in information sharing, and we notice that particularly with regard to sharing information with State and local officials and government. The first Presidential-appointed Program Manager for Information Sharing did not receive the support that he needed to carry out his task. There is now a new program manager, but a lot of time, very precious time, has been lost.

A very important milestone is coming up in the next few days. It is the due date of the report due June 14th from the Program Manager for Information Sharing and the Director of the National Counterterrorism Center. That report will provide detailed guidance for an information-sharing environment due to be created by the end of this year. I urge this committee to review that report very carefully. It will be the blueprint for future information sharing.

Both of us continue to hear about turf fights about who is in charge of information sharing, particularly with regard to State and local governments. We continue to hear complaints from State and local officials about the quality of information that they receive. I suspect you've heard those complaints yourself. So I think the problem of information sharing is very far from being resolved.

With respect to the FBI, I think reform continues to move in the right direction, but at least, by our likes, has been far too slow. These problems have been well documented by the Commission, by the Department of Justice's inspector general, and by the very fine work of the National Academy of Public Administration.

Numerous problems still impede the Bureau: failure to improve the FBI's inadequate information technology, an extensive effort is now being made there; continuing deficiencies in the FBI's analytical capabilities, also efforts being made there; shortfalls in information sharing; too much turnover in the work force, and particularly in the leadership positions; and insufficient investment in human capital and training. All of these things are very well known to the FBI.

We have a lot of respect for the Director, Mr. Mueller. They have taken some steps forward. Sometimes they've gone backward with regard to the computer systems, for example. So it has a ways to go, and in many respects it's still struggling.

Many of you commented in your opening statements on the Privacy and Civil Liberties Oversight Board. It was of interest to me that in all of the recommendations that we had, there was just total unanimity and support on this recommendation from the very first; not a single dissent, at least as I remember, Governor Kean, and so we recommended it, and the Congress has created it. It's the only office within the executive branch to look across the government at actions we are taking to protect ourselves, to ensure the privacy and civil liberty concerns are appropriately considered.

In conducting the global war on terror, you have a huge expansion of government. That's already been alluded to by the opening statements, but not only do you have an expansion in the resources of government, you have an expansion in the power of government, the intrusive powers of government in fighting the global war on terror. In that environment, then, it is our belief that the government needs a very strong order of powers to protect us, but it also needs to have a very strong voice within the executive branch on behalf of the individual and on behalf of our civil liberties.

We commend this subcommittee for inviting the Chair and the Vice Chair of the Board to testify before you. We've had an opportunity at least to speak to them very briefly, and we want to do everything we can to encourage their work. We think their work is essential, important in the so-called war on terror.

The Board needs to move forward smartly with its important mission. The stories we read in the newspaper every day point out the importance of a strong voice, a second opinion, if you would, within the executive branch before it goes ahead with information-gathering measures.

On the question of airline passenger screening, we still confront a very frustrating situation. We still, after all these months and years, do not screen passengers against a comprehensive terrorism watch list before they get on that airplane. The airlines do the name checking, and the government wants to protect sensitive information and, therefore, does not share all names on its watch list with the airlines. So the airlines screen passengers against an incomplete list.

The solution recommended by the Commission is a straightforward one, the government should do the name checking of all passengers against its own comprehensive watch list. As we approach now the fifth anniversary, as the chairman referred to, of September 11th, there seems to be very little prospect that we can see—at least that we will achieve this solution. We understand some of the problems that stand in the way: Poor management; we believe that the Transport Security Administration is one. Attempts to integrate commercial data into the screening process are another, and they have set off a host of civil liberties and privacy issues. There are also many questions about the security of the personal data. The proper solution to passenger screening appears at this point to be delayed indefinitely.

Several of you mentioned congressional reform. Congress needs powerful intelligence and homeland security oversight committees. The Congress has provided powerful authorities to the executive branch in order to protect us against terrorism, and now it needs to be an effective check and balance on the executive.

Because so much information is classified, Congress is the only independent oversight on the full breadth of intelligence and homeland security issues before our country. Turf battles have kept the oversight committees weak. They need stronger powers over the budget, and they need exclusive jurisdiction.

The Congress cannot play its proper role as a check and balance on the actions of the executive if the oversight committees are weak. To protect our freedoms, we need robust oversight.

Finally, preventing terrorists from gaining access to nuclear weapons must be elevated above all other problems of national security. Nuclear terrorism would have a devastating impact on our people, on our economy, on our way of life. Almost unimaginable. The Commission call for a maximum effort against this threat.

We had such a traumatic day on September 11th, but we lost 3,000 people or so. We estimate that if a nuclear weapon explodes in the heart of New York City, you lose 500,000 people, dead. You can just hardly imagine what the consequences would be for the United States. So given the potential for catastrophic destruction, our current efforts fall short of what we need to do.

We see increased efforts by the administration to improve nuclear detection technology at our ports and borders, and we commend that. Those are good steps, but we cannot be safe if we rely only on our last line of defense to protect us. We need a stronger forward-leaning policy, a policy to secure nuclear materials at sites outside of the United States. If those sites are secure, the terrorists cannot get nuclear materials. If the terrorists cannot get nuclear materials, they cannot build nuclear bombs.

The President should request the personnel and the resources and provide the domestic and international leadership to secure all weapons-grade nuclear material as soon as possible in the former Soviet Union and the rest of the world. There simply is no higher priority on the national agenda, security agenda.

As we review our recommendations, it is clear that so much more needs to be done and so little time left to do it. We do not believe that the terrorists will wait. If we can make progress on our recommendations, we will make significant progress in providing for

the common defense, the first purpose of government. We believe that the task before us is urgent. We thank you for your leadership on this, members of this subcommittee, and we look forward to your questions.

Mr. SHAYS. Thank you very much, Mr. Hamilton. Thank you again, Governor Kean.

[The prepared statement of Mr. Kean and Mr. Hamilton follows:]

Prepared Statement of
the Hon. Thomas H. Kean and the Hon. Lee H. Hamilton
Former Chair and Vice Chair,
National Commission on
Terrorist Attacks Upon the United States,
before the Subcommittee on National Security,
Emerging Threats and International Relations,
Committee on Government Reform
United States House of Representatives
June 6, 2006

Chairman Shays, Ranking Member Kucinich, members of this distinguished panel: It is an honor and privilege to appear before you today, to testify about the status of the recommendations of the 9/11 Commission.

It is almost two years since the 9/11 Commission completed the largest investigation of the U.S. government in history. The mandate of the Commission was to "investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism."

We found that our government failed in its duty to protect us on September 11. We found failures of imagination, policy, capabilities and management. We made 41 recommendations to ensure that we were doing everything possible to prevent another attack.

After the Commission ended, we formed a non-profit organization, the 9/11 Public Discourse Project, for the purpose of public education on behalf of our recommendations.

Many of the Commission's recommendations, including those to reorganize the Intelligence Community, were taken up by the Congress and enacted in the Intelligence Reform and Terrorism Prevention Act of 2004.

Changing the Law – only the first step

We also understood that changing the law is only the first step in changing public policy. No law is self-executing. Implementation is often the more difficult step. The Public Discourse Project tracked both legislation and implementation of the Commission's recommendations and issued a report card in December 2005.

That Report Card contained one "A," twelve "Bs," ten "Cs," twelve "Ds," four "Fs" and two "Incompletes." In other words, we found a very mixed record. We have continued to track those recommendations since we issued the report card. Our perspective six months later is about the same. There still is a great deal we can and should do to protect the American people.

So what do we need to do? We analyzed the 41 recommendations from another standpoint: Where do we need legislation, and where do we need work on implementation?

We found that roughly half of the Commission's were addressed by legislation, primarily in the 2004 Intelligence Reform and Terrorism Prevention Act.

The bigger problem, we have found, is the challenge of implementation. Even when the letter of our recommendations was written into law, implementation has been lagging. In some cases, implementation can be expected to take years. In every case, Congress needs to provide robust oversight to ensure that reforms are carried out.

For this reason, we welcome and strongly support the bill H.R. 5017 introduced by Chairman Shays and Representative Maloney. HR 5017, a bill to ensure implementation of the recommendations of the National Commission on Terrorist Attacks Upon the United States, changes the law where necessary to carry out the Commission's recommendations.

Just as importantly, H.R. 5017 shines a bright light on the question of implementation and ensuring that Executive branch agencies stay focused on carrying out what the law already requires.

We believe our time before you today is best spent focusing on a few issues, where the attention of the Congress is most necessary.

Homeland Security Funding

First, scarce homeland security dollars must be allocated wisely. Right now, those funds are spread around more like revenue-sharing projects. Pork barrel politics is a time-honored approach in Washington, but the pork-barrel approach must not prevail

In our report we recommended that homeland security funds be allocated on the basis of the greatest risks and vulnerabilities of attack. Secretary Chertoff has stated many times the position of the Administration in support of funding based on risks and vulnerabilities – a position we strongly support.

Therefore, we are surprised and disappointed that analysis by the Department of Homeland Security has led to proposed cuts in homeland security funding for New York City and Washington, D.C.

The terrorists targeted New York and Washington. So far as we know, they continue to target symbols of American power.

It defies our understanding of the nature of the threat to reduce funding designed to protect New York and Washington. We await further explanation.

Last year, the House of Representatives passed a very good bill – three times – that would focus scarce resources on the greatest risks and vulnerabilities.

On two separate occasions -- including most recently the conference Committee on renewal of the PATRIOT Act earlier this year – the House provision on homeland security funding was in conference with the Senate. In both cases, nothing emerged from the conference. Senate conferees rejected the House position.

The Public Discourse Project gave the Congress an "F" because of its failure to act on a risk-based & vulnerability-based formula for homeland security funding. A letter grade of failure is fully deserved.

Unless and until the Congress sends a bill to the President allocating homeland security funding on the basis of risk, scarce dollars will continue to be squandered.

Plans for Emergency Response

States and localities need to practice their plans for emergency response. Hurricane Katrina taught us again a lesson that we should have learned from 9/11. Every metropolitan area and every locality needs to have a working response plan that embraces the Unified Incident Command System.

A response plan needs to be practiced and exercised regularly. You cannot wait for a disaster to hit and then look for the plan. All first responders need to know from the moment they learn of a disaster who is in charge and what their job will be.

The Department of Homeland Security requires a Unified Incident Command System to be in place or states will be unable to receive homeland security funding after October 1, 2006. That's a good provision – as far as it goes.

During Katrina, Louisiana and New Orleans had a paper plan, but it wasn't executed when it was most needed. DHS needs to make sure that these plans are living documents, that first responders have practiced working together.

If you are a first responder and you are talking to your counterpart for the first time the day a disaster hits, your emergency response plan will fail.

Broadcast Spectrum for Public Safety

First responders still do not have the ability to communicate with each other effectively. The Commission recommended that Congress expedite for public safety purposes the allocation of a slice of the broadcast spectrum ideal for emergency communications.

Those frequencies – able to get messages through concrete and steel high-rises without difficulty – are now held by TV broadcasters. They have been promised for public safety purposes for a decade, and will finally be turned over to first responders in February, 2009.

HR 5017 includes the text of the Homeland Emergency Response Act (the HERO Act) to provide this broadcast spectrum to first responders much earlier, by January 1, 2007. We strongly endorse this earlier date.

The reason for an early date is simple: Who can say that no disaster will strike before 2009? Why should public safety have to be put on hold for the next three years in order to accommodate the broadcast industry? It is scandalous, and we call on the Congress to act.

Information Sharing

Progress on information sharing is still lagging. As the Commission's report documented again and again, we missed opportunities to disrupt the 9/11 plot because of the failure to share information.

The federal government is doing a better job sharing terrorist threat information within its own structure, but there are still huge gaps in information-sharing with state and local authorities.

The first presidential-appointed Program Manager for Information Sharing did not receive the support he needed to carry out his task. There is now a new Program Manager, but precious time and momentum was lost.

An important milestone is a report due on June 14 from the Program Manager for Information Sharing and the Director of the National Counterterrorism Center. That report will provide detailed guidance for an Information Sharing Environment, due to be created by December 2006. I urge this Committee to review that report carefully, as it will be the blueprint for future information sharing.

Both of us continue to hear about turf fights about who is in charge of information-sharing with state and local governments. We continue to hear complaints from state and local officials about the quality of the information they receive. The problem of information sharing is far from resolved.

The FBI

FBI reform has been moving in the right direction, but has been far too slow. These problems have been well-documented not only by the Commission, but by the Department of Justice's Inspector General, and the excellent work of the National Academy of Public Administration.

Numerous problems still impede the Bureau: failure to improve the FBI's inadequate information technology; continuing deficiencies in the FBI's analytic capabilities; shortfalls in information sharing; too much turnover in the workforce and bureau leadership, and insufficient investment in human capital and training.

We have great respect for the reform efforts of Director Mueller. There are steps forward, and sometimes -- with computer systems, for example -- steps backward. The Bureau is still struggling.

The Privacy and Civil Liberties Oversight Board

We have taken a special interest in the work of the Privacy and Civil Liberties Board, which we recommended and the Congress created. It is the only office within the Executive branch to look across the government at the actions we are taking to protect ourselves, to ensure that privacy and civil liberties concerns are appropriately considered.

It is our belief that the government needs strong powers in order to protect us. It is also our belief that there needs to be a strong voice within the Executive branch on behalf of the individual, and on behalf of civil liberties.

We commend you for inviting the Chair and Vice Chair of the Board to testify before you. We have had the opportunity to speak with them, and we want to do everything we can to encourage their work.

The Board needs to move forward smartly with its important mission. Stories we read in the newspaper every day point up the importance of a strong voice and a second opinion within the Executive branch before it goes ahead with controversial information-gathering measures.

Airline Passenger Screening

We still do not screen passengers against a comprehensive terrorism watchlist before they get on an airplane. The airlines do the name-checking, and the government wants to protect sensitive information and therefore does not share all names on its watchlist with the airlines. So the airlines screen passengers against an incomplete list.

The solution, recommended by the Commission, is a straightforward one: the government should do the name checking of all passengers against its own comprehensive watchlist. As we approach the fifth anniversary of 9/11, there seems to be little prospect that we will achieve this solution soon.

The problems that stand in the way of this solution are multiple: Poor management at the Transportation Security Administration is one. Attempts to integrate commercial data into the screening process are another, and they have set off a host of civil liberties and privacy issues. There are also many questions about the security of personal data. The proper solution to passenger screening appears to be delayed indefinitely.

Congressional Reform

Congress needs powerful Intelligence and Homeland Security oversight Committees. The Congress has provided powerful authorities to the Executive branch in order to protect us against terrorism -- and now it needs to be an effective check and balance on the Executive.

Because so much information is classified, Congress is the only source of independent oversight on the full breadth of intelligence and homeland security issues before our country. Turf battles have kept the oversight committees weak. They need stronger powers over the budget, and exclusive jurisdiction.

The Congress cannot play its proper role as a check and balance on the actions of the Executive if its oversight committees are weak. To protect our freedoms we need robust oversight.

Stopping Terrorists from Gaining Access to Nuclear Materials

Finally, preventing terrorists from gaining access to nuclear weapons must be elevated above all other problems of national security. Nuclear terrorism would have a devastating impact on our people, economy and way of life. The Commission called for "a maximum effort" against this threat.

Given the potential for catastrophic destruction, our current efforts fall far short of what we need to do.

We see increased efforts by the Administration to improve nuclear detection technology at our ports and borders. These are good steps. But we cannot be safe if we rely only on our last line of defense to protect us.

We need a much stronger, forward leaning policy: to secure nuclear materials at sites outside of the United States. If those sites are secure, the terrorists cannot get nuclear materials. If the terrorists cannot get nuclear materials, they cannot build nuclear bombs.

The President should request the personnel and resources, and provide the domestic and international leadership, to secure all weapons grade nuclear material as soon as possible – in the former Soviet Union and the rest of the world. There is simply no higher priority on the national security agenda.

Conclusion

As we review our recommendations, it is clear that so much more needs to be done and there is little time left to do it. The terrorists will not wait.

If we can make progress on our recommendations, we will make significant progress in providing for the common defense, the first purpose of government. The task before us is urgent.

We thank you for your time and attention, and we look forward to your questions.

Mr. SHAYS. What we'll do is we'll do 10-minute rounds instead of the 5, and I think I'd like to defer my questions a little later. So, Mr. Kucinich, we'll start off with you.

Mr. KUCINICH. Thank you very much, Mr. Chairman.

Mr. Hamilton, given your responsibilities with the 9/11 Commission, as well as your previous role chairing the House Intelligence Committee in the 1980's, are you surprised that the administration never informed the 9/11 Commission or all members of the House and Senate Intelligence Committee, even in closed session, of the NSA programs that have been the subject of much debate? And do you agree that it's essential that there be both judicial and congressional checks on NSA spying on Americans given the abuses found by the Church Committee in the 1970's that led to the creation of the Select Congressional Intelligence Committee?

Mr. HAMILTON. I have to make clear, Mr. Kucinich, that your question calls for an answer that goes far beyond the 9/11 Commission, and so I speak personally here and not as a member of the Commission.

I think the world in which we live, with the enormous data collection capacities that we now have, calls for a new framework in dealing with this kind of technology, and it certainly needs a new law. The law that is in existence today I think was passed in 1986. I think the President was confronted with a very difficult dilemma as how to adapt these data mining techniques that produce such massive amounts of data and have become a very important tool in protecting us against terrorism.

Your question is, should he have consulted the Congress? My view on that of course is that he should have. We confronted not this kind of a problem, but similar situations in time past, and I think the appropriate way to proceed would have been for the President to call in key congressional leaders to the White House and to say, look, we've got a very tough problem here, we've got a new technology, this technology is terribly important to the national security interests of the United States. The present law is not a satisfactory law, I need your help in crafting a new law that takes into account the new technology and, in that process, to devise checks and balances so that at least key Members of Congress are adequately informed.

I know there are certain negatives to the approach that I've suggested, but I think it would have been a better way to proceed, and I do think it's necessary for the Congress to be informed on these matters because accountability and checks and balances is what the Constitution of the United States is all about.

Mr. KUCINICH. I thank the gentleman.

Governor Kean, you told the New York Times in January that the 9/11 Commission was never told about the NSA program to monitor Americans' telephone conversations without a court order. The 9/11 Commission, as I understand it, had high level security clearances, and yet the NSA program to spy on the conversations of Americans were never disclosed to the Commission.

My question, did you or other members of the Commission discuss with administration officials compliance with the Foreign Intelligence Surveillance Act, as amended by the PATRIOT Act, which would cover these types of programs? And do you agree that

the rule of law requires independent checks and balances, and that a program to monitor Americans' private calls without any proof they are conspiring with al Qaeda risks not only invading the privacy of innocent Americans, but also wastes precious antiterrorism resources on innocent Americans?

Governor KEAN. Well, I certainly agree with my colleague that checks and balances are absolutely essential in this area. No one branch of government should be doing these things without consultation with the other branch. That's my belief.

We had a very specific mandate from the Congress and from the President. This was a program that went into effect after the period which we were mandated to look at. In that regard, I think the only way in which the White House could have talked about it with us was prospectively, going forward, is this would have been one of the things that perhaps the Nation should be doing, and they chose not to do so.

Mr. KUCINICH. Well, here we are discussing civil liberties in this new era, and we see that the 9/11 Commission wasn't really informed, we see that the Congress was largely unaware, and we have a condition here where a board that you recommended establishing really isn't functioning in any meaningful way. That being the case, what would you recommend at this point that we do to protect the civil liberties of the people of the United States?

Governor KEAN. Well, one of the things I think you're doing with this hearing, and that is to ensure that the Civil Liberties Board has the prestige, the power and the attention that it needs in order to do the job that we envisioned for it in the Commission and that you envisioned for it when you passed the bill in the U.S. Congress.

Mr. KUCINICH. Does it need subpoena power?

Governor KEAN. Again, I have to talk individually here because we did not recommend that in our report; but what we did recommend is that the Board must be strong and have strong powers, and the inference would be that possibly subpoena powers or something is needed in order to make it strong.

Although we seldom used subpoena power in the work in the Commission, the fact that we had it served as a very, very good tool in helping the government agencies to expedite our requests.

Mr. KUCINICH. Your report, well, nevertheless isn't about volume, it's also work in progress as you learn more information. At this point, seeing where this issue of security and civil liberties continues to hang in the balance, would you now be willing to say that such a board, in order to give it important impact, would merit subpoena power?

Mr. Hamilton.

Mr. HAMILTON. Mr. Kucinich, I think, first of all, we're very pleased that the Congress saw fit to create the Privacy and Civil Liberties Oversight Board. We're very pleased that a civil liberties protection officer has been named in the office, I think, of the Director of National Intelligence. Those are positive steps, we are pleased with them.

I think we're very disappointed that it took us so long to get here where we are, to have a board in operation and to have a civil liberties protection officer named. It took far too long to name the Board, to find a place to operate, to staff, to fund, but these things

are now underway. You're going to hear more about that in a few minutes from people who know more about it than I do.

The challenge now is for this board to move forward smartly, aggressively with the important mission. And the challenge of your committee is to make sure that board has the powers it needs—perhaps subpoena power—but has the aggressive power to reach into every branch of government to get the information that it needs to determine whether the civil liberties and the privacy of the American people are being violated. If this board does not do it, it's not going to be done. And so I think all of us on the Commission—I think I can speak for all the Commission members here—believe that a robust board is essential.

Mr. KUCINICH. Well, I'm glad to hear you say that, Mr. Hamilton. And forgive my skepticism that in all of this process after September 11th, the American people are now having to rely more and more on a board which doesn't really function yet as opposed to investigative committees of the Congress, House and the Senate, providing effective checks and balances. I mean, we didn't need—my view, not speaking for the committee—in my view we didn't need this board. We just needed a Congress that was willing to provide effective checks to the administration's power. That's the way the Constitution was set up, three branches of government. Congress is a co-equal branch of government, but we don't need the administration to tell us that we can't go in and ask the right questions and demand the right answers. I mean, we have the ability to reign in the administration's abuse of power with respect to civil liberties.

You know, when I see that millions of phone calls can be scanned by this administration, by its orders, when I see the effect of the PATRIOT Act, I have to ask, with all due respect and gratitude for the 9/11 Commission, for its recommendation of the Privacy and Civil Liberties Oversight Board, hey, that's the job of Congress, hello.

Thank you.

Mr. SHAYS. I thank the gentleman.

At this time the Chair would recognize Mrs. Maloney.

Mrs. MALONEY. Thank you.

Governor Kean, you mentioned in your testimony today that you issued a report card on our efforts in December, and we had more Fs than As, but we got one A in antiterrorism financing, which is a very difficult area to put some strong controls on, and as a member of the Financial Services Committee, I was part of that effort and I'm glad to hear that you recognized our work.

But in your opinion, why were we able to get some things right and yet we did so poorly in other areas?

Governor KEAN. Well, some of these areas are very tough, and we knew it when we made our recommendation. I mean, we made a deliberate attempt in the Commission to make recommendations which we knew—because all of us have been around politics and government a lot—would be very, very difficult to implement, but we decided to reach, in a sense, knowing that the implementation would be difficult.

Now I'm not an expert, as my colleague is, on the Intelligence Community, but the culture I learned in those agencies, existing

for so many years, it seems to be very hard for them to communicate with one another. That whole culture is one of secrecy, and even communicating with our own intelligence agencies is very, very difficult. And I think it's starting to happen, the machinery that you set up in the bill you passed is starting to happen, but it's much too slow for the need.

You know, we talked about if I thought there was one easy recommendation that there would be no problem with is to allocate funds on the basis of risk. That just seemed to me an easy one. Who is arguing against that?

Mrs. MALONEY. But I'd like to followup on that. Governor Kean, you gave us a big resounding F on our high-risk formula, but the plan that came out last week cut aid to the city of New York and Washington, DC, the two highest threat areas, by 40 percent. And the Department of Homeland Security, almost in disbelief on my part, they're continuing to defend this formula as risk based. And would you consider a 40 percent reduction to, by all accounts, by all intelligence, all 15 different agencies looking at intelligence, that a 40 percent reduction to New York City and Washington, DC, is an appropriate risk-based distribution? And what grade would you give them now? You gave them an F before. Now this formula is even more outrageous and not based in reality or high risk in any way. How would you grade them now? And what would you suggest to those of us in a bipartisan way on this panel who would like to have a high-risk formula to better defend our country?

Governor KEAN. Well, first of all, I'm a teacher. That's what I did before I got into anything else. It's very hard to give below F, if I might at this point, but it's very difficult. Having said that, you have the bill, you've been trying hard in this in the House to get it adopted into law, that will mandate a formula based on risk. I mean, now you have—and all I know is what I read in the newspapers—now you have, I gather, a secret group of people, I mean we're not allowed to know their names, making some kind of a decision which results in a formula which defies common sense. I mean, we know bin Laden wants to target New York again, he wants to target Washington. Those are his two prime targets. He said it, his followers have said it, it's logical.

So I just do not understand the present formula or the results of whatever formula they're using. And I would suggest that you redouble your efforts and perhaps convince one or two Senators is what we need to get a proper bill through that would mandate a risk-based formula, which I think everybody basically would agree no matter where you're from. I'm from New Jersey. We need funding. We've got serious problems. We've got a nuclear facility. We've got a number of other things. But I'm mad about New York City not getting what it needs, I'm mad about Washington, because those are the No. 1 and No. 2 priorities, and we ought to feel that way nationally no matter where we come from, I think.

Mr. HAMILTON. We give an A to the House. The House has passed the bill three times, and it's exactly the legislative language you need. The problem is coming of course from the conference committee where the Senate apparently prevailed.

May I just observe on the question of homeland security funding? It has always seemed to me that the really tough job here is the

establishment of priorities. You have limited resources, you can't protect every piece of critical infrastructure, you can't defend against every tactic that the terrorists might employ. And what that means is that policymakers have to make very, very tough judgments on what they're going to protect and what they're not going to protect, what kind of things they're going to protect against and what kind of things they're not going to protect against. And when you make those judgments, you can be wrong because you're making judgments on insufficient data. But the fact that it's a very tough judgment to make, what do you protect and what you don't, is not a reason for not making the judgment.

Now the language, if you look at the rhetoric here, it's pretty good. We're going to protect on the basis of risk and vulnerabilities. I think Secretary Chertoff has said that any number of times. That's good, the problem is doing it. And here we are several years after this idea of protecting on the basis of risk and vulnerabilities and we're still not making—not just the Federal Government, but State and local officials as well and private sector people are not making the judgments that have to be made to protect infrastructure and to protect people.

Everybody in their local community knows what targets a terrorist would be after, they know their community, and in very few communities are adequate steps being taken to protect.

Mrs. MALONEY. On the line of knowing what we need to do and needing the political will to do it, I remember the first time both of you addressed the Democratic Caucus, and you spoke really passionately about stopping terrorists from gaining access to nuclear materials. Everyone talks about it, everyone knows the high threat. You wrote that possibly 500,000 people could die in New York City, my home turf, if they had a nuclear bomb, but we're not moving forward. We have bills before Congress, we have not allocated the moneys to go out and buy up the weapons grade nuclear material as soon as possible. We're not taking steps in this very dangerous direction. And it was in your testimony, but I would like both of you to elaborate further on what steps we can be taking, what we should be doing, you are both veterans of Congress, of legislation, of State government, and what can we do to move forward in this really critical and dangerous area? Five years, and we have not moved in any meaningful way in this direction for this threat.

Governor KEAN. We're moving, but very, very slowly. I mean, we are doing some things, but it's going to take us 14 or 15 years to get these sites tapped down. Enriched uranium, there are about 100 sites in the world. If we gave it the necessary priority, I've been told we can do it in about 3 years. But that means everybody's got to be talking about it. I mean, the President has said that it's the most dangerous threat facing the country, he said that. All right. Then if it's the most dangerous threat facing the country, then you've got to talk about it a lot more, you've got to devote more resources do it. It should be on the front pages of the papers, not the back pages. It should be on the talk shows, it's what we should be talking about.

I was delighted, by the way, to get a note just the other day from Congressman Andrews, my State, who said he and Jim Leach had just gotten an amendment through to the Energy, Water and De-

velopment appropriations bill which is going to put some dollars in this area, adding $27.8 million, he said, to the Global Threat Reduction Initiative. I mean, that's a help. People I know in the Congress are working on it, but I think we've got to redouble our efforts. And we've got to let the American people know. If this is the greatest threat, we've got to talk about it, I think, a lot more, because only by talking about it and recognizing it are we going to deal with it, what this would do to our economy, let alone the number of lives lost.

And I tell you to talk to Senator Sam Nunn and a number of others who are working on this, and the threat is very, very real. And there is nobody in our government right now who's going to be able to ensure us that there is not right now a terrorist who's working toward our borders already with those materials in their possession, some the size of a football. It's not hard to do.

Mrs. MALONEY. Congressman Hamilton.

Mr. HAMILTON. It's of course a matter, basically, of political will, and it's a judgment about priorities, what is most important in terms of the national security of the United States. The Commission was unanimous on this point, too. You look at all of the national security issues before us—and there are literally hundreds of them—we said this is at the top of the heap; this is the No. 1 national security issue, bar none, not because it's the most likely event but because the consequences of it would be so horrendous.

Governor Kean mentioned a moment ago that we should re-double our efforts. The Commission did not comment on this specifically. My personal opinion is we should triple our efforts. We've got the program in place, you've got the Cooperative Threat Reduction Program in place, it's a matter of funding it much more generously than we have. This has been in place for I don't know how long, 10, 15 years. And it has had some results, but they're terribly, terribly slow, and so it just has to be accelerated.

I think it's important to say that a lot of progress has been made on nuclear detection technology at our ports and borders, a lot of work is being done here, but it's our impression that most of that work is being done here. And the real challenge is to get at the source, and the source are the nuclear materials abroad. And that creates a lot of problems in terms of going into other countries and examining their nuclear program and their nuclear materials, getting their cooperation. The defense establishment of Russia doesn't particularly like us hunting around their nuclear program any more than we like them looking at our nuclear program.

So it's a tough matter, but I think progress has been made slowly, and it just has to be accelerated. It needs a lot more money and it needs a lot more people who are willing to go over into Russia—this is not easy work—and work to secure these materials.

Governor KEAN. But the American people, by the way, don't understand—I've been speaking on this. What they don't understand is that once the terrorist gets these materials out of the site that you can read on the Internet how to put the bomb together, and then we all know getting it into this country with the current border situation is not that difficult. So you have to contain it at the site. Once the American people understand that, at least when I've given talks on it, they get very alarmed and they want something

done but I don't think they really understand the threat and how important it is that we do this program.

Mrs. MALONEY. Thank you. My time is up.

Mr. SHAYS. Thank you. I can't wait to jump in, but I'd like Mr. Van Hollen to go and then I'll jump in. I just want to make this one point.

You have clearly pointed out what you consider the most serious threat, but it seems to me that it also points out that the new strategy of detect and prevent means that we want to have the kind of capability to detect so that if they unfortunately do get this weapons grade material we know about it and can stop it. And it seems to me that goes with it.

Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. And I thank both of you gentlemen for your testimony today.

Let me just start out with the issue of congressional reform and oversight——

Mr. SHAYS. Could I ask the gentleman to suspend? I would like Mr. Duncan to go and then to have you go, if you don't mind, and you will go next.

Mr. VAN HOLLEN. That's fine.

Mr. SHAYS. I thank you for your patience. You've always been very gracious with me. Thank you.

Mr. Duncan.

Mr. DUNCAN. Thank you very much, Mr. Chairman. And once again I apologize for popping in and out——

Mr. SHAYS. Not necessary. Let's get to the questions.

Mr. DUNCAN. I'll just go back to Mr. Van Hollen. I will say this; I did come back in, enough to hear the Governor express how difficult it is to set priorities and that he was mad about New York City, and there is a lot of concern about that. And of course as Congressman Hamilton said, that's our job to make these tough decisions.

But you know, the problem, as I see it, in addition to what I said in my opening statement, there is not any congressional district hardly in the country that's not real close to some high priority facility. I mean, so many districts have major military installations. In my own home, while I don't represent Oak Ridge, it's very close to the Oak Ridge operations. And I live about 15 miles from the Oak Ridge facility. I mean, every district in the country is in that situation, and so that's another one of the difficulties we face.

But I agree with what Congressman Hamilton said, that's what we have to do. And I apologize, I hope I can stay for a little while now, but I'll just turn it back over to Congressman Van Hollen.

Mr. SHAYS. Mr. Van Hollen, you have your 10 minutes starting now.

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

Let me start with the issue of congressional reform and oversight. You stated in your testimony Congress needs powerful intelligence and homeland security oversight committees, that Congress has provided powerful authorities in the executive branch in order to protect us against terrorism, and now there needs to be an effective check and balance on the executive. I think that's very good advice and I think you put it very diplomatically in your testimony.

From my own perspective, with few exceptions, the House of Representatives has been totally AWOL on this issue. This has been an oversight free zone. You talked about the need for checks and balances. We have been much more of a blank check and a rubber stamp, and I think that's gotten us into a lot of trouble as a country. And I think that much more vigorous oversight is needed in that area.

There's no need for further comment, other than the fact I assume you haven't changed your grade from a D to any higher grade, have you?

Governor KEAN. No.

Mr. HAMILTON. We may lower it.

Mr. VAN HOLLEN. I would suspect so. I mean, as the Governor said, you can't get lower than an F, but I think an F might be more suitable at this point in time.

I just want to also associate myself with the remarks you both have made and Congresswoman Maloney has made with respect to the distribution formula. It defies common sense to see cuts in the amounts that are going to New York City and the Washington metropolitan area, clearly two of the top terrorist targets. Obviously we don't want to focus on the last war, we always want to look at future threats and evolving threats, but I think anyone knows that those two centers remain highly symbolic and important targets and it just makes no sense at all to cut the moneys in those areas.

With respect to the No. 1 threat that you both focused on, which is the danger of nuclear materials falling into the hands of the terrorists and the fact that we have not addressed this with the urgency that we should, I'm interested in whether you've changed your grade. You're right, there was the Andrews-Leach amendment. It did provide an additional amount of funding; it has to get through the process. The administration didn't request that money. Have you seen anything that's significant enough to change the grade in that area from a D?

Governor KEAN. No, no. It is not top of the priority list as we think it ought to be.

Mr. VAN HOLLEN. Right. I think that's clear. And I agree with the chairman's remarks, I'm sure he'll elaborate on them, that we do need to, in the event someone does get their hands on these nuclear materials, be in a position to go after them effectively.

Let me ask you with respect to the Civil Liberties Board, because we're going to have an opportunity to talk to them in a little bit. Under your vision of the authorities of that board, would oversight of the type of activity that's going on at the NSA with respect to domestic wiretapping be covered? Under your vision of what the responsibilities of that board would be, would they not include some oversight and jurisdiction over the type of activities that are going on at the NSA with respect to domestic wiretapping?

Mr. HAMILTON. Absolutely.

Governor KEAN. Yes.

Mr. VAN HOLLEN. And would it be your vision that board would have the authority to get the information necessary regarding those activities to draw some conclusions and recommendations?

Mr. HAMILTON. Absolutely, the answer is yes. Look, if the Board does not have the power to get the information they need, you may

as well not have the Board. They have to have that power, and they've got to be able to reach into every nook and cranny of the Federal Government to get the information that they need.

Mr. VAN HOLLEN. I agree, and I'm concerned that as it was set up it wasn't much of a tiger to begin with, and it will be totally a paper tiger if it doesn't have those authorities. And I think we understand the challenge; I mean, this is an administration that has refused to even give at least provisionally the members of the intelligence committees in the House and Senate sufficient information to determine what was going on in this program. I mean, as you said, Mr. Hamilton, we have to make a decision about whether or not to amend the law to bring this program within the jurisdiction, but not knowing enough about the program, it makes it very difficult. And it would be interesting to find out whether or not the members of the Board have had any luck, whether they've asked for it and whether they've had any luck in getting information about that important program.

Let me ask you—you didn't cover it in your testimony, but it was one of your items on your report card back in December, which is the question of long-term commitment to Afghanistan.

Mr. HAMILTON. The question?

Mr. VAN HOLLEN. The long term commitment to Afghanistan.

Now, I think this is an important time, as Mr. Kucinich actually mentioned in his comments, to remember that September 11th began, launched from Afghanistan, Al-Qaeda that was sheltered by the Taliban regime, that this country was united in going after Al-Qaeda and demanding that the Taliban turn over Al-Qaeda, when they refused to do so, taking the appropriate military action.

As we've all been seeing recently, there has been a resurgence of Taliban activity in southern Afghanistan, and they have been clearly testing the resolve of the NATO force and the U.S. forces. There are some of us who believe that this is not the right time, both in terms of actual manpower, but also symbolically, to be reducing the number of U.S. forces in Afghanistan, especially those in that southern region. We also found out recently that the administration has modified its original plan with respect to the size of the Afghan army. It was originally planned to be on the order of about a 70,000-man size army, they've recently reduced the funding associated with that for about a 50,000-man army, which has created considerable concern in Afghanistan, President Karzai and others. I don't know if you've had an opportunity to look at this as a Commission, but certainly if you haven't, I'd be interested in your personal views with respect to what we need to be doing now with respect to Afghanistan, both on the military side, but also a commitment in terms of the economic support aspects.

I'll close with this because I'm interested in your responses—just remembering that the seeds of Al-Qaeda and the Taliban were really created when the Soviet Union left Afghanistan and the United States decided at that point in time no longer to really engage in Afghanistan. You then had a civil war there, the Taliban emerged, Al-Qaeda took advantage of what was clearly a failed state, and September 11th followed after that.

So if you could please give us your assessment of what's happening now in Afghanistan and what more, if anything, we should be doing.

Mr. HAMILTON. Well, I know that you come by your interest in Afghanistan from a family angle, your mother having served—I think in INR, was it—State Department in Afghanistan over a period of years, and I think Governor Kean and I very much appreciate your interest in it.

We mean what we said in the report. We think there has to be a long-term commitment. You point out the history. In the nineties, I guess it was, when the Soviets withdrew, we withdrew. And I suppose most Americans thought that there was very few spots on the face of the Earth that we had less of an interest in than Afghanistan. But somebody else noticed our withdrawal, and that was Osama bin Ladin, and he goes into Afghanistan and he creates the mechanism and does the planning that has brought about September 11th.

I would hope that Americans have learned from that, and that it will be necessary for us to have a long-term commitment to Afghanistan, and that means sufficient military power, whether it's the United States or NATO, to be able to secure that country. It means that we have to stop that country from falling under the control of the opium trade and of the warlords, and it means that we have to support President Karzai fully with political and economic support in that country. And I know that's costly, and not all Americans will agree with it, but I think it's a terribly important commitment that we have to follow through on. And if we do not, then I think we'll repeat the history of the early nineties.

Governor KEAN. We recognize in the Commission report that Afghanistan can be one of the most dangerous countries in the world. Just its location between Iran and the Soviet Union and Pakistan would make it vital if nothing else did. And then the fact there are still largely ungoverned areas, one of which well may harbor Osama bin Laden today. This is where the enemy still is, and we'd better darn well pay attention, because if we again allow Afghanistan to become a training camp for the Taliban and Al-Qaeda, if we avert our gaze because we're interested in other parts of the world, we're going to suffer the consequences.

Afghanistan is an enormously important place. We should be not only dealing with military, by the way, but we should be dealing with economic aid, we should be dealing with educational aid. This is an area, this is a part of the world where we cannot afford again to have a lack of attention.

Mr. HAMILTON. Many of our recommendations are long term in the Commission report, and that was certainly true with regard to Chapter 12, which set out a policy really toward these countries that Governor Kean has talked about, Pakistan, Afghanistan, Saudi Arabia. And we've been pleased, really, that the Congress and sense of Congress resolutions have supported the concepts and ideas in our report. Likewise, we've been pleased that the administration has said many positive things with regard to those recommendations. The real key here, of course, is implementation and follow-through, not over a period of a few months or a year but over a period of a decade or more.

Mr. VAN HOLLEN. Well, that's right. And I'll close, Mr. Chairman, that the President took a trip not too long ago to India and Pakistan, stopped off in Afghanistan. And as you pointed out, Governor Kean, he probably is as close as he'll ever get to Osama bin Laden, who is suspected to be in Pakistan along that border area. And I do think it was a reminder that we have not completed the mission, that this is not mission accomplished, that we have a long way to go, and that the future success of the government of Afghanistan is a big part of that success.

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman. Governor and Congressman, I am so grateful for the work that you all have done over a long period of time. I got carried away at one point in which I said the work of the Commission was sacred, but it comes damn close to that.

This subcommittee had 22 hearings before September 11th, and we've had a total of now 90 on the terrorist threat, and what I'm struck by is before September 11th we had a gentleman who was a noted doctor of a major medical magazine, and he said to us his biggest threat was that a small group of dedicated scientists would create an altered biological agent that would wipe out humanity as we know it, and I looked around and there weren't many people. Now there are a good number of folks here today, but I'm just fearful that we kind of are going through this exercise, and there's something that has to ignite the public's will and ultimately the will of Congress and the White House.

What rings in my ear is what you said, Governor Kean. You said what the people don't understand—or maybe you said that, Congressman Hamilton—and they don't understand it because, in my judgment, in the last Presidential debate we debated whether someone had earned three Purple Hearts or someone had fulfilled their national service. I believe if you tell the American people the truth, they'll have you do the right thing.

I had the good fortune to go into Russia and see what we do to capture their weapons grade material and to see how we're helping them destroy their chemical stockpile, and also to see how poorly they secure their biological agents, literally a refrigerator and a string with wax on it so they know if someone's opened it up.

So I think the potentials are huge for people to get weapons grade material, to get dirty radioactive material. A thousand lighthouses in Russia, all unmanned, powered by a power plant that is basically a radioactive battery, a nuclear-powered battery. And so I just fear that when you say, Governor Kean, that you are fearful of the consequence of a nuclear attack, that we will have a nuclear attack, that's what I believe. And so what we're doing here in this grading is not just an exercise, it is hugely important.

Having said how much I love what you've done, I'd like to ask, is there anything that should have been part of the 41 recommendations that isn't? Something that you all debated or something now that you think, my God, how could we have overlooked it? Do you think it's a pretty complete list?

Mr. HAMILTON. Well, I think the answer is we've probably been so focused on trying to get the recommendations we put forward implemented that we haven't tried to think of additional rec-

ommendations. But many of our recommendations are very general, including the ones I mentioned with regard to Chapter 12. But even the recommendation with regard to the Privacy and Civil Liberties Oversight Board, for example, it's a very general recommendation and needs much more refinement and precision.

Governor KEAN. The recommendation is there, but again they were vague by necessity in the area of foreign policy, and changing our approach really to particularly these parts of the world so that we're not simply a fish swimming in a tank, we've thought of other ways. The change in the view of America in Indonesia after we gave the aid to the tsunami victims, and you saw the soldiers, the feeling about the United States changed dramatically. It's much cheaper than war. And I think we should look at other ways—many of which, by the way, we pursued toward the end of the cold war in Eastern Europe, with libraries and exchanges and all of that; use some of those approaches particularly in this part of the world who really don't know us very well and we don't know them very well.

Mr. SHAYS. Well, you all have endorsed and spoken favorably of 5017. It's really not my bill or Congresswoman Maloney's bill, it's really a bill that was designed to help people you work with as well as people we work with to implement what you all have done, not what we have done. It would implement what hasn't been done, but it would also say to the various departments and agencies, OK, you were tasked with this, now how are you doing? And they would write a report. And if they haven't gotten an A grade, in essence, then—or at least a passing grade—and I don't mean C a passing grade, I mean getting it done—they would have to, every 30 days, come back and say how much closer they're getting to it.

For both of you to come here and say, having given a grade way back when, that you really don't see anything that you would give a higher grade to is rather stunning. You say it in a rather calm way, but what I'm hearing you say is that most of these grades that you're giving out, you're not seeing much improvement, unless I'm wrong and there's one or two areas where you want to say we've seen an improvement here. That, to me, is stunning, because it just says to me that I'm back before September 11th, having 22 hearings, hearing people just say something and we're not making progress.

So I would like to ask you, is there anything on this chart where the grade goes up? And I'm going to say that you are both so fair minded and so—I'm not going to say apolitical, but not political, that your comments are huge in the implication to me, at least.

Governor KEAN. Well, I would say one area, when we made the report, we did not have a Civil Liberties Board, now we have one, and I'll say the people that have been appointed reached out to me to ask my advice as to ways in which they could do their job better, and that was gratifying to me because we have not—this is not a government that reaches out that much, particularly to people who—I'm not in a sense in their role anymore, and I was appreciative for that. So I have high hopes with the oversight of this Congress that the Civil Liberties Board that's been appointed——

Mr. SHAYS. I don't, so I'm going to come back——

Mr. HAMILTON. You take an issue like the radio spectrum we gave an F and a C, I think both there, the radio spectrum law has been passed, that's an improvement, but the date for the change is 2009. You can certainly improve upon that. So there has been improvement there for sure, but not enough.

You're very close to making substantial improvements on the risk-based homeland security, if that law goes through—and it could go through in the balance of this session—then we would move an F to an A. So there are several areas like that where action is pending in the Congress right now where you could dramatically improve, in our judgment, performance with regard to the recommendations.

Mr. SHAYS. I'm going to put it in my words. What I'm hearing you say, Congressman Hamilton, is that—it's hard to know what to call you, should I call you chairman of this, vice chairman of that?

Mr. HAMILTON. Everything that's been used so far is OK with me. I've heard a lot worse.

Mr. SHAYS. What I hear you saying is, since nothing has come to fruition, they get the same grade, but there's stuff pretty much in process that change the grade noticeably.

Mr. HAMILTON. That's right.

Mr. SHAYS. Governor, while I take issue, frankly, with your hopes of the Commission, if I heard my colleague, Mr. Kucinich, I kind of agree with him, I think it's a train wreck. Having good people is great, but good people without power is frustrating. It took too long to get established, not their fault; not funded enough by Congress, our fault. It has no subpoena power of any consequence. They have to go to the Attorney General to basically ask permission if the Attorney General doesn't want them to move forward. I don't see how they have the instruments in the various 16 agencies to be able to know what the heck's going on. So I'll be interested to have them tell me.

But for me—and this is where Mr. Kucinich and I part company, but respectfully so, I happen to believe that the cold war strategy of containment, reaction and mutually assured destruction is now an absurdity, I happen to believe it has to be protect and prevent. I happen to believe that somebody is going to get weapons grade material. Now if we can prevent 20 people from just getting it and just one, that's great, but we have to break into the cell. I happen to believe it is easy as can be to get radioactive material, and it astonishes me that someone hasn't combined radioactive material with a regular conventional weapon. I happen to believe that if suicide bombers worked in places like the Middle East, they got the leader of India way back when, it is destined to happen in Europe and then in the United States. We have to be able to detect. So that gets me to this vital point. Since I want to give more power to be able to detect, I want to give more power to make sure that the civil liberties are there. And you're going to have to explain to me, both of you, how you can succeed without subpoena power, how you can succeed when your appointment can be taken away by a President who appoints you and doesn't move forward.

So maybe I'll do it in a more general way. Do you believe that it's essential to have subpoena power?

Mr. HAMILTON. Mr. Chairman, we really did not address that. I don't pretend to be an expert on that. It raises a lot of legal questions, I think, the executive branch subpoenaing itself, for example, and to what extent that can be done. We did not get into the legal questions of whether or not you should have subpoena power. All we said is that you should have robust power so that you can get the information you need. Now that can come about through cooperation. It may have to come about through subpoena power, I just don't know.

Mr. SHAYS. Let me ask you this; were you part of the executive branch or were you part of the legislative branch? You were neither? Your Commission.

Governor KEAN. We were legislative branch. We were appointed by the congressional——

Mr. SHAYS. And I realize I have a red light, but this is something I'd love just to have a sense of because you argue maybe it should be taken out of the executive branch. I mean, the issue, it seems to me, shouldn't be whether the process would allow the executive to subpoena the executive branch, it seems to me what we should be asking is, can they do their job without subpoena power? And it seems to me that this committee couldn't do it—and you raise a point, we're a separate branch. But you had subpoena power. Should it be a separate independent agency that by definition isn't under the thumb of the executive branch?

Mr. HAMILTON. Look, you now have a Civil Liberties Privacy Board. The challenge before us now is to make it work, OK, and that's what your attention and their attention ought to be focused on. If they go for a couple of years and we find out they're weak and ineffective and they're not getting the information they need, then you're going to have to go back to the drawing board and figure out a way to give them the power they need. But I think where you are today is you've got a board, let's go forward and see if we can make it work.

Mr. SHAYS. Do you want to——

Governor KEAN. Yes, this was such an important part of our recommendations because we did everything else and we started to address some of the concerns that Congressman Kucinich was talking about earlier. We've got to have a balance if we're going to make government stronger, if we're going to make it more intrusive because we think to do so increases our security. Then we've got to be aware how that is encroaching on our liberties, and we figured we needed a very strong board based internally to do that. Now we used the word "strong" without defining it, and that's what you're getting into. If it needs subpoena power to be strong, then it ought to have subpoena power, but whatever you can do to make sure this board can work, to make sure it's strong, to make sure it will do its job, to make sure it alerts us when we're in danger of losing some of our civil liberties so we understand we're making some of these choices, that's what we're after.

Mr. SHAYS. Let me ask the question this way and it would help me understand.

I think the bottom line is, I'm sitting next to a gentleman that would put a great deal more weight on the civil liberties part of the equation, and I happen to be putting a great deal more weight on

the detection part and the power that this administration or the next administration needs to be able to detect and prevent so we don't have to deal with consequence. But having taken that position, I feel an absolute obligation that we have a Civil Liberties Board that has tremendous power. In H.R. 5017 what we did is said Presidential appointment, Senate ratification, fixed term so you can't be replaced, subpoena power, and that you have a representative in each of the 16 different intelligence agencies, so that you're getting information, a full-time chairman as well. And is there anything conceptually that you would object to that in the bill? Is there anything that you would find of concern, Mr. Hamilton, and Mr. Kean, any——

Mr. HAMILTON. Look, what impresses me about this discussion is that we are asking this board to get all of the information they need to determine whether or not civil liberties have been violated or privacy has been intruded upon. And they are going to be asking for information from all kinds of agencies and departments that don't want to give it to them and will resist giving it to them.

We confronted that in the 9/11 Commission. Tom and I spent hours and hours and hours negotiating to get access to information. We would request the information and it didn't come flowing to us in an avalanche the next day, it took us 6 months, 7 or 8 months to get it. Now this board is going to confront that problem over and over again, and the question is going to be how tough is the Board in demanding the information and getting the information that they ask for? That's going to be their tough problem. Now they will have to analyze and you will have to analyze what powers they need and how those powers should be stated. I'm not enough of an expert to tell you.

Mr. SHAYS. I'm going to just invite both of you to just have a closing comment after Mr. Kucinich just asks one question. I know you both need to get on your way and a place to go, and it is 4 p.m.

Mr. KUCINICH. I'll be brief. One of the things I think anyone who is in this room or anyone watching this will have come away with is the statements that we made today about how the No. 1 priority should be securing ourselves against a potential nuclear strike. I don't know of anyone who would disagree with that. In connection with that, Governor and Congressman, have you ever had any discussions about the merit of an international effort toward nuclear abolition? Governor.

Governor KEAN. I'm an old veteran of the freeze movement, so I had those discussions years ago. But the immediate problem that we saw work in the Commission—and we were enlightened a lot by Sam Nunn and his work—was 100 sites, many of them totally unsecured with rusty fences or with one person guarding them, and that we saw as the immediate problem. International agreements I would be very much for if we can achieve them, but they take time. And in the meantime, there are unguarded or little guarded sites that the terrorists know about and our borders that are not as secure as we want them to be, and not too hard to put these things together. And so we saw the immediate threat as trying to secure these sites to the best of our ability as fast as possible.

Mr. KUCINICH. Congressman.

Mr. HAMILTON. We did not discuss the abolition of nuclear weapons. I don't recall that the word "abolition" even came up at any time during our discussions.

My reaction to your statement is that I think most experts now agree that we're on the cusp of a period of time in which you could see a very great proliferation of nuclear weapons. We've been very fortunate in the past 50 years that we've been able to constrain it as much as we had, but most of the experts I think recognize you're now in a very, very different climate and the proliferation of nuclear weapons is likely. Will that, just thinking out loud for a moment, bring back the demand of abolition of nuclear weapons? I wouldn't be surprised that would happen. If you come with me down to the Wilson Center and listen to the Third World countries—if I may still use that word—the developing countries, believe you me, they're interested in the abolition of nuclear weapons. The people who are not interested in it include ourselves in the United States and most of the powers that have nuclear weapons, and we have been unwilling to discuss it.

Mr. KUCINICH. I want to thank the gentlemen and just conclude by saying since we know that's a great threat, this might be the time for us to have a national discussion, an international discussion again about nuclear abolition. Thank you.

Mr. SHAYS. I thank both gentlemen. Would either of you, Governor, or Congressman Hamilton, like to make a closing point before we get to the next panel?

Mr. HAMILTON. Mr. Chairman, we've been very appreciative of your personal interest in the work of the 9/11 Commission, your willingness to support our recommendations. We took note of our hearings that occurred before September 11th, which were very valuable, and the hearings that occurred since our report came out and your sponsorship of 5017, and we're grateful to that.

Governor KEAN. I would second all of that. You and the work of this subcommittee, as far as we're concerned, you have done as much as anyone in the Congress, you personally, as well as this committee, to try to make sure that our recommendations get adopted, and we hope therefore to have a safer country for us and for our children. We thank you and members of the committee very much.

Mr. SHAYS. Well, the subcommittee thanks both of you and the members of the committee and all your staff. It's just been one of the bright spots in this country in the last few years. And thank you both for working so well with each other. Thank you very much.

We're going to have a 1-minute recess, and then we'll start with our second panel, which will be Carol Dinkins, accompanied by Alan Charles Raul, Civil Liberties Board. We thank them for being here.

[Recess.]

Mr. SHAYS. This hearing is called to order. I want to thank you both for being here. I understand, Ms. Dinkins, you will be making a statement. Both will be responding to questions. Is that correct?

Ms. DINKINS. Yes, that is correct, Mr. Chairman.

Mr. SHAYS. I need to swear you both in and then we'll go from there.

[Witnesses sworn.]

Mr. SHAYS. Note for the record our witnesses have responded in the affirmative. Ms. Dinkins, you'll need to hit that button in the front there to just get it on, turn it on. I want to say to you, whatever feelings I have about the Commission in terms of power and so on don't reflect on either of you as newly appointed members. I know you are starting, of course, and it may be that you will be able to tell me that you have the capability to do what you need to do. So, you know, I just want to make sure that you know that you're both very welcome here.

We appreciate you being here, and we just really want to learn what your task is and how you think you can go about getting it done. And then we'd like you to respond to the concerns that we have and so on. So, welcome.

STATEMENT OF CAROL E. DINKINS, CHAIRMAN, PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD, THE WHITE HOUSE, ACCOMPANIED BY ALAN CHARLES RAUL, VICE CHAIRMAN, PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD, THE WHITE HOUSE

Ms. DINKINS. Thank you, Mr. Chairman. Mr. Kucinich, we appreciate very much——

Mr. SHAYS. Bring that mic a little closer.

Ms. DINKINS. Do I have it on? I think it's on now.

Mr. SHAYS. Yes.

Ms. DINKINS. That sounds better, doesn't it?

Mr. SHAYS. Yes.

Ms. DINKINS. Thank you very much, Mr. Chairman. We very much appreciate the opportunity to testify on the organizational efforts of the Privacy and Civil Liberties Oversight Board. We are pleased to be here with you today.

Since being administered our oaths of office on March 14th of this year, the five Board members have worked diligently to organize, hire staff, educate ourselves, and begin to exercise our statutory responsibilities. The Board does take these responsibilities very seriously, and we seek to convey this to you today.

The scope of the Board's authority under the Intelligence Reform and Terrorism Prevention Act is obviously broad. Congress envisioned the Board being empowered to carry out its mission in two equally important ways. First, to advise policymakers on the development of the law, regulations and policy; and second, to conduct oversight by reviewing government actions after those laws, regulations, and policies are implemented.

In exercising these authorities, the five members of the Board seek to operate largely by consensus. We have met with a number of organizations and individuals considered experts in privacy and civil liberties matters, both within the Federal Government and in the private and not-for-profit sectors. In these meetings, we have sought to gather the information necessary to begin prioritizing those issues most in need of our attention. We have made great progress in this regard. We have met with senior leadership of the American Civil Liberties Union, the Center for Democracy and Technology, and the former Clinton administration OMB Chief Counselor for Privacy, Peter Swire. We are scheduled to meet in

the near future with senior officials of the American Conservative Union and the Markle Foundation, which has spent a great deal of time studying issues of privacy and civil liberties in the context of homeland security and the Information Age. Additional fact-finding will take members of the Board to the National Counterterrorism Center and the National Security Agency within the next few weeks.

Additionally, Vice Chairman Raul and I had a very helpful telephone conference last month with the chairman of the 9/11 Commission, Governor Kean, to discuss with him the status of our efforts to stand this Board up. We deeply appreciate the Governor's support of this Board and its efforts.

Within the Federal Government, we have met with many senior administration officials, including the then White House chief of staff, Andrew Card; with Stephen Hadley, assistant to the President for national security; Frances Townsend, assistant to the President for homeland security and counterterrorism; and Harriet Miers, counsel to the President. We have also met with John Negroponte, the Director of National Intelligence and with then Deputy Director, General Michael Hayden. And we have received guidance from the Department of Justice, Department of Homeland Security and the Office of Management and Budget.

Our support staff has begun to build constitutional lines of communication and working relationships with the privacy and civil liberties officers in the executive branch, all of whom we expect to work with closely. All of these meetings have been immensely useful; and through them, we have been able to identify several areas of initial interest where we believe the Board can play the constructive role envisioned by Congress when it enacted the Intelligence Reform and Terrorism Prevention Act.

The specific issue mandated by our enabling statute obligates the Board to assist the executive branch in the implementation of information sharing guidelines; and to that end, at our most recent Board meeting, we met with Ambassador Thomas McNamara, program manager at the Office of the Director of National Intelligence. Ambassador McNamara, as you know, has been selected and designated to oversee the implementation of the information sharing environment, including drafting appropriate guidelines.

Beyond information sharing, the Board hopes to focus its energies on those issues of practical concern to the American public as the Federal Government protects the Nation from terrorism. The President has made clear that the war on terrorism must also respect the privacy rights and civil liberties of the American people. We will assist the executive branch in fulfilling this commitment.

The Intelligence Reform and Terrorism Prevention Act gave the Board a broad mandate to review and provide advice to the President and to Federal agencies, and it contains specific provisions which help ensure that the Board will have access to the information that it needs to do its work. This will be done to the extent allowed by law and consistent with national security. The executive branch agencies, within those confines, are required to cooperate with the Board. Any disagreements between the Board and an agency head will be presented to the Attorney General for resolution.

The Board has no authority to veto or to delay executive branch actions or to order specific remedial actions. The Board's legal authority derives primarily from the compelling power of persuasion, the ability to know what is going on, to develop informed assessments of whether privacy and civil liberties are being or have been appropriately considered, to make observations and provide comments, and to render advice to appropriate executive branch leadership, up to and including the President, when issues are identified. The Board's opportunity to report annually to Congress regarding its advice and oversight functions also provides a further vehicle for advancing the Board's mission.

In creating the Board, Congress considered and declined to give it subpoena power. We agree with that determination of Congress. The Board has and expects to continue to enjoy the support of the White House staff and Department of Justice in obtaining the executive branch information it needs to carry out its responsibilities.

With regard to interaction with the public in general, while the Board is not designed or equipped to handle individual case work, citizens with concerns they would like to report to the Board may do so through its Web site or e-mail address.

Setting up any new institution takes time and energy. We are proud of how far we have come in the short time since our swearing-in less than 3 months ago. Personnel security clearances are in place. Our Executive Director, Mark Robbins, is building a professional and administrative support staff through the direct hires and detailees. We have a new suite of offices within the White House complex, half a block from the Eisenhower Executive Office Building, and that space includes secured space for classified matters. And our budget and resources are sufficient to pursue our mission.

Most importantly, we are grateful that we have received tremendous support from all levels of the White House staff, the Executive Office of the President, and the Federal departments and agencies with whom we will continue to work.

Congress conferred important responsibilities on this Board, and we look forward to working with Congress as we embark upon this important mission. Thank you again for having us. Vice Chairman Raul and I will be pleased to take your questions.

[The prepared statement of Ms. Dinkins and Mr. Raul follows:]

TESTIMONY BEFORE THE U.S HOUSE OF REPRESENTATIVES COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS
JUNE 6, 2006

THE HONORABLE CAROL E. DINKINS
CHAIRMAN
PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD
THE WHITE HOUSE
ACOMMPANIED BY
THE HONORABLE ALAN CHARLES RAUL
VICE CHAIRMAN

Introduction

Chairman Shays, Vice-Chairman Marchant, Ranking Member Kucinich, and Members of the Subcommittee:

Thank you for providing this opportunity to testify on the organizational efforts of the Privacy and Civil Liberties Oversight Board. Vice Chairman Raul and I are appointed by the President with the advice and consent of the Senate and our Board is, by statute, a part of the Executive Office of the President, but is not part of the President's immediate staff. We appear before you today like any agency official subject to Senate confirmation would, and we are pleased to be here with you today.

Since being administered our oaths of office on March 14, 2006, the five Board members have worked diligently to organize, hire a staff, educate ourselves, and begin to exercise our statutory responsibilities. Within the context of protecting the Nation against terrorism, at the heart of our American identity and heritage is the Federal government's commitment to balance national security needs with the privacy and civil liberties that are guaranteed by our

Constitution. The Board takes its responsibilities very seriously, and we seek to convey this to you today.

Organization, Mission and Responsibilities

Recommended by the July 22, 2004 report of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission), the Privacy and Civil Liberties Oversight Board was established by the Intelligence Reform and Terrorism Prevention Act of 2004. It consists of five members appointed by the President. The Senate confirmed Vice Chairman Raul and me on February 17, 2006. The other Board members are Lanny J. Davis, Theodore B. Olson and Francis X. Taylor. We held our first meeting on March 14, 2006.

The Intelligence Reform and Terrorism Prevention Act authorizes the Board to advise the President and other senior executive branch officials as to whether privacy and civil liberties protections are appropriately considered in the development and implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism. This includes advising as to whether adequate guidelines, supervision, and oversight exist to ensure appropriate protection of privacy and civil liberties.

In addition, the Intelligence Reform and Terrorism Prevention Act specifically charged the Board with responsibility for reviewing the terrorism information sharing practices of executive branch departments and agencies to determine whether they are following guidelines designed to protect privacy and civil liberties, including those issued by the President in his memorandum to executive departments and agencies of December 16, 2005, and additional guidelines currently being developed by the Information Sharing Environment Program Manager in the Office of the Director of National Intelligence.

Free of day-to-day management or operational responsibilities for homeland security, the Board is able to review and analyze information and policies and render advice that reflects an objective view as to whether privacy rights and civil liberties are being appropriately considered in efforts to protect the Nation against terrorism. We will provide our advice and make our recommendations to the President and executive branch department and agency heads as appropriate, and we expect to have broad access to information necessary to fulfill our vital advisory and oversight roles. Additionally, the Board will provide an annual report to Congress.

Fact Gathering and Issue Identification

The scope of the Board's authority under the Intelligence Reform and Terrorism Prevention Act is obviously broad. Congress envisioned the Board being empowered to carry out its mission in two equally important ways. First, it is to advise policymakers in the development of laws, regulations, and policy. Second, as stated previously, it is to conduct oversight by reviewing government actions after those laws, regulations and policies are implemented. In exercising these authorities, the five member Board seeks to operate largely by consensus.

Given this scope, the members must exercise judgment in gathering information and reviewing the numerous policy issues in which the Board might play a role to determine where it can be of most value to the American people, the President, and the executive branch in exercising these broad responsibilities.

The Board has met in person four times to date, with additional meetings scheduled throughout the rest of the year. The Board has also relied on conference calls and other ongoing communications to continue to make substantial progress in between formal meetings. In addition, we have met with a number of organizations and individuals considered experts in

privacy and civil liberties matters, both within the federal government and in the private and non-profit sectors. In these meetings, we have sought to gather the information necessary to begin prioritizing those issues most in need of our attention. We have made great progress in this regard. We have met with senior leadership of the American Civil Liberties Union (ACLU), the Center for Democracy and Technology (CDT), and the former Clinton Administration OMB Chief Counselor for Privacy, Peter Swire. We are scheduled to meet in the near future with senior officials of the American Conservative Union and the Markle Foundation, which has spent a great deal of time studying issues of privacy and civil liberties in the context of homeland security and the information age. Additional fact-finding will take members of the Board to the National Counterterrorism Center and the National Security Agency in the next few weeks. Additionally, Vice Chairman Raul and I had a very useful and productive telephone conference last month with the Chairman of the 9/11 Commission, Governor Thomas Kean, to discuss with him the status of our efforts to stand this Board up. We deeply appreciate the Governor's support of this Board and its efforts.

Within the federal government, we have met with many senior administration officials, including then-White House Chief of Staff Andrew Card; Stephen J. Hadley, Assistant to the President for National Security; Frances F. Townsend, Assistant to the President for Homeland Security and Counterterrorism; and Harriet E. Miers, Counsel to the President. In addition, we have also met with John Negroponte, Director of National Intelligence and then-Deputy Director, General Michael Hayden, and have received guidance from the Department of Justice (DOJ), Department of Homeland Security (DHS), and the Office of Management and Budget (OMB). Our support staff has begun to build institutional lines of communication and working

relationships with the privacy and civil liberties officers in the executive branch, with whom we expect to work closely.

All these meetings have proven to be immensely useful. Through them, we have been able to identify several areas of initial interest where we believe the Board can play the constructive role envisioned by Congress when it enacted the Intelligence Reform and Terrorism Prevention Act.

Issue Prioritization

The specific issue mandated by our enabling statute obligates the Board to assist the executive branch in the implementation of information sharing guidelines. To that end, at our most recent Board meeting we met with Ambassador Thomas McNamara, Program Manager in the Office of the Director of National Intelligence (ODNI). Ambassador McNamara, as you know, has been selected and designated to oversee the implementation of the Information Sharing Environment, including drafting appropriate guidelines.

Beyond information sharing issues, the Board hopes to focus its energies on those issues of practical concern to the American public as the Federal government protects the Nation from terrorism. The President has made clear that the war against terrorism must also respect the privacy rights and civil liberties of the American people. We will assist the executive branch in fulfilling this commitment.

Board Operations

The Intelligence Reform and Terrorism Prevention Act gave the Board a broad mandate to review and provide advice to the President and to federal agencies, and contains specific provisions which help insure that the Board will have access to the information it needs to do its work. To the extent allowed by law and consistent with national security, executive branch

agencies are required to cooperate with the Board. In fact, the statute requires agency heads to ensure agency compliance with requests for information. Any disagreements between the Board and an agency head will be presented to the Attorney General for resolution.

As noted by Senator Lieberman during the legislative debate, the Board has no authority to veto or delay executive branch actions or to order specific remedial actions. The Board's legal authority derives primarily from the compelling power of suasion: the ability to know what is going on, to develop informed assessments of whether privacy and civil liberties are being, or have been, appropriately considered, to make observations and provide comments, and to render advice to appropriate executive branch leadership – up to and including the President – when issues are identified. The Board's opportunity to report annually to Congress regarding its advice and oversight functions also provides a further vehicle for advancing the Board's mission. The Board is neither charged with nor equipped to handle case specific adjudication or resolve individual constituent problems. Any specific matters involving particular parties that are brought to the attention of the Board will be referred to the appropriate agency for investigation and/or resolution.

In creating this Board, Congress considered and rejected giving it subpoena power. We agree with Congress' determination. Indeed, it is incongruous to even consider an office within the White House requiring subpoena power to compel executive branch agencies or officials to provide it with information. The Board expects to enjoy the support of the White House staff and Department of Justice in obtaining the executive branch information it needs to carry out its responsibilities.

With regard interaction with the public in general, while the Board is not designed or equipped to handle individual case work, citizens with concerns they would like to report to the

Board may do so through its web site or e-mail address (www.privacyboard.gov or privacyboard@who.eop.gov)

Conclusion

Setting up any new institution takes time and energy. We are proud of how far we have come in the short time since our swearing-in. Personnel security clearances are in place. We have hired our Executive Director who is building a professional and administrative support staff through direct hires and detailees. We have a new suite of offices within the White House complex, half a block from the Eisenhower Executive Office Building, which includes secured space for classified matters. And our budget and resources are sufficient to pursue our mission.

Most importantly, we are grateful that we have received tremendous support from all levels of the White House staff, the Executive Office of the President, and the Federal departments and agencies with whom we will continue to work. Congress conferred important responsibilities on this Board, and we look forward to working with Congress as we embark upon this important mission. Thank you again for having us. Vice-Chairman Raul and I would be happy to take your questions.

Mr. SHAYS. Thank you both very much for being here. If I were starting out doing what you are required to do, I would like to be able to do it the same way all of you are doing it. I think it's essential that you develop relationships with the various folks that you've mentioned. So I congratulate you for doing that.

I am just having a hard time understanding how the system actually works. For instance, maybe you could describe to me what you think your ultimate product needs to be. In other words, besides giving advice, what are you going to be able to do? And how do you—because I'm sure you've wrestled with this in your own minds. I could give you—for instance, let's just say the NSA is reporting doing some information gathering that strikes many people as conflicting with the law of our land; that it involves basically getting records of Americans outside the FISA Court.

One, how would you even know about it? And, two, what powers would you have to deal with it?

Ms. DINKINS. Mr. Chairman, you've——

Mr. SHAYS. And I'm going to ask both of you to respond to every question that I ask.

Ms. DINKINS. Thank you, Mr. Chairman. You have identified that the central function of this Board is to give its advice to the President and to the executive branch. And in fulfilling that mission, we intend to take a hard look to examine carefully the matters at hand and the matters that we believe should fall within the purview of the Board's responsibility. And we will do that both as the policies and programs are formulated, and then provide oversight as they are implemented.

Mr. SHAYS. I'm going to ask you, Mr. Raul, to respond and then I'm going to come back to you, Ms. Dinkins, in response to your point, just to have you react to it.

Ms. DINKINS. In terms of our work products, which our Board has given a great deal of thought to, obviously advice and even more importantly, perhaps, influence in terms of the products of other agencies with regard to the development of policies and implementation of policies and practices to fight the war against terrorism, it's our mission, I think, to continually review these matters, become informed, see what processes have already been undertaken by others who are focused on privacy and civil liberties, and to suggest where those processes are in our view sufficient, insufficient, could be improved, streamlined, or otherwise.

One of the things that we've already learned is that it's a mistake to believe that the new Board, which I and all of us are on, to serve on, is the exclusive means by which privacy and civil liberties issues are considered and protected within the executive branch. That's not at all correct. There are many places in each department and agency where that's considered. But we have found that already, I believe, that we can make suggestions to improve the work products of other agencies and perhaps even bring personnel together who have related functions and help bring them together to improve the overall product.

Mr. SHAYS. I like to be candid, but let me be as direct as I can possibly be. If you view your role as advisory and giving counsel, I see logic in some measure with how we've constructed the Board. I viewed it—and tell me if I'm wrong—that we wanted you to also

be on the ground, aware of what was happening and say, "Hello, don't think you can do that. There's a law that says this. You all are doing this. Stop it."

Now, I don't think you have the capability, one, to find out about it. And second, I'm not sure you have the capability to stop it. Because I asked Ms. Dinkins—a particular issue with NSA: Who would you have in NSA who would even tell you about it? Who would be working and answerable to your Board that would let you know that, by the way, we might be spying on American citizens, that's a borderline issue of whether it's legal or not. Who would be there for you? How would you know about it? And then, how would you be able to stop it?

And I don't want you to—obviously, I'm not asking you to suggest that you have powers you don't have. I just want to know within the framework that we've given you how you would do that. And, frankly, do you even think that's your responsibility?

So maybe I'll start with you, Mr. Raul. And then I'll come back to you, Ms. Dinkins.

Mr. RAUL. Well, Mr. Chairman, there are two models you've alluded to as I have been thinking during this informative hearing so far. There's kind of an arm's length adversarial model, which is one way of doing this Board; and the other, which would be a more cooperative influential Board within the process.

I was struck by Congressman Hamilton, whose reference in his response to some of your questions spoke about giving the Board a chance to work and to focus on the cooperation that the Board can get from within the executive branch. The statute obviously chose, in my view, the cooperative internally influential model.

So if that's correct, that it is the cooperative influential model rather than the arm's length adversarial one, then I would submit, Mr. Chairman, that the answer to your question of how we find out is really with the support, active support, of the many most senior officials in the administration that Chairman Dinkins referred to.

While I certainly recognize comments that have been made regarding independence and where this Board is placed and is it in the executive branch or independent, there are benefits of being in the White House, located in the White House, and with the active support and cooperation of the White House.

So the way we find out about these issues in principle would be through developing working relations with the National Security Adviser, the counsel to the President, and Director of National Intelligence and so on.

Mr. SHAYS. OK. Before you respond, Ms. Dinkins, let me just kind of respond to what I think I'm hearing you say. I'm trying to—and I mean no disrespect to either gentleman, but I have not seen Secretary Rumsfeld be the kind of person that allows you to sit next to him and be an equal or, frankly, the Vice President. They're very extraordinarily intelligent, both of them, very strong willed. I don't see them having the mentality that says, hey, we're doing something in NSA which I'm aware of but I'm not sure the Board would like to know about—I mean, they may like to know about. I'm not sure I want the Board to know about it. If I let them know about it, then I've raised an issue I'd just as soon not even

address. And frankly, this is so Top Secret, why even let them know in the first place?

I mean, there's no logic that tells me that these two individuals would choose to have you even know about it, and if you did know about it, even want you to get involved. I think they would dismiss you so quick. That's my sense of it. Sort that out for me.

Mr. RAUL. Well, I think that it will be our mission to develop the kinds of relationships and to be perceived as providing the kind of value that would encourage the senior officials in the administration to share the information with us and to get, as Congressman Hamilton said, a second opinion, a second opinion on what's being considered and developed.

Can we tell you here today that we will in the future have those relationships, having just started 3 months ago? It's hard to say. But there's everything about the crafting of the statute, about the support that we believe we've received to date from the administration, and from the White House in particular, that suggests we will get the support that we need from the agencies and departments, and the law would certainly require that.

Mr. SHAYS. OK. Let me just pursue a little bit more. There have been more than one instance in the last few months of people being surprised by the activity of particularly the NSA, the administration general as it relates to civil liberties. Do you think, one, you have a right to say, what the heck's going on here? Do you think you have the right to go to the head of the NSA and say, I want to know, and I want to know as quickly as possible?

Do you think that—I mean, it is—I mean, if they only told the top four people in the House and the top four people in the Senate, why are they going to tell you about it? I mean, I just don't know under what basis you're going to be able to exert that authority.

Maybe, Ms. Dinkins, you can tell me. I mean, this is a real-life example. This is highly classified information. What makes them want the administration to say, OK, now that it's been public, we're just going to just—I mean, let's say now it's public, you're going to say we didn't know about it, and you want to find out about it. How's that system going to work?

Ms. DINKINS. Mr. Chairman, let me go back to what Vice Chairman Raul said. In the statute, we are provided with the authority to seek information from executive branch agencies. And there's an exception in the statute, and that is if the Director of National Intelligence concludes that it should not be provided, if the Attorney General concludes for very specific reasons that it should not be provided to the Board, that is a statutory mechanism for us not to receive information.

We expect that as we develop the areas that we will be addressing our attention to, that we will make various requests of agencies. And I'm speaking here generally. And to go to the specific point that you raised, we would expect that if we make those requests of agencies, that if they choose not to provide us information that we have sought, that they would go through the exception process that's laid out in the statute as it was established by Congress.

Mr. SHAYS. Let me thank you for responding to my questions, and now turn it over to Mr. Kucinich.

Mr. KUCINICH. I thank the gentleman.

Ms. Dinkins, can you name any example where the White House Privacy and Civil Liberties Board has objected to or at least raised concerns with a program initiated by the administration?

Ms. DINKINS. Mr. Kucinich, we have not existed for very long, and being a new Board, we are developing not only the administrative matters I described—getting space and hiring staff—but we are also evaluating the areas where we believe we can provide advice and be of substantive support and assistance in the area of privacy and civil liberties. And as we move into that area, we will be getting into specific matters. It is premature yet to be at that point.

Mr. KUCINICH. Well, does the Board intend to review the administration's snooping into Americans' library records?

Ms. DINKINS. The Board is considering and we have sought input, as I said earlier, from the American Civil Liberties Union and from others, as to what areas they believe the Board would be well advised to look into.

Mr. KUCINICH. Do you intend to review the administration's NSA shopping program?

Ms. DINKINS. As I said in my testimony, we have recently received all of our clearances, and within the next few weeks we will be getting briefings at NSA and at the National Counterterrorism Center. And as we get those briefings and as we understand the processes, the procedures, the programs that are in place to protect privacy and civil liberties, that will enable us to develop what we believe is the agenda that is most immediate for this Board.

Mr. KUCINICH. Do you intend to review the administration's NSA domestic telephone record data-mining program?

Ms. DINKINS. We will be looking at data-mining issues, and, as part of that, evaluate and then determine specific programs and policies we think the Board should take a look at.

Mr. KUCINICH. Do you intend to review the administration's Department of Defense talent program that uses domestic surveillance on peace groups?

Ms. DINKINS. That is another area where we will evaluate the possible role of the Board in considering that program.

Mr. KUCINICH. Ms. Dinkins, would you permit the Board's own phones to be tapped if you knew it was in the interest of national security?

Ms. DINKINS. I haven't thought about that question. I think there are probably a number of laws that would govern that.

Mr. KUCINICH. OK. One final question, Mr. Chairman. Ms. Dinkins, would you be able to provide the subcommittee copies of meeting transcripts or notations?

Ms. DINKINS. We will consider that.

Mr. KUCINICH. Thank you very much.

Mr. SHAYS. Just before the gentlelady goes—and she can have as much time as she wants—when you're asking—when you say you haven't thought of the security level, it would seem to me that you would have to have the highest security level, if I'm hearing this right, so that you could get into the areas which may in the end be the most evasive to civil liberties. I can't imagine that you would want to have anything less than the highest, and even if it ended

up being that the chairman and vice chairman would have the very highest, I would think that would be essential. And I'm—I mean, maybe we can—in the part of dealing with—as you explain how you're sorting this out, it's so helpful it might be helpful for us to have continued dialog with our subcommittee because we've thought about this for 6 to 8 years, and we have opinions that may be helpful to all of you. You need the highest security level possible, otherwise you'll never even dent NSA.

Mrs. Maloney, you have as much time as you'd like.

Mrs. MALONEY. Thank you. What is the status of the Privacy and Civil Liberties Board Oversight Board's hiring of staff? How many staff members will the Board have in total?

Ms. DINKINS. We have an executive director and brought him on board at our very first meeting. And we have an administrative assistant. We are in the process of hiring a deputy executive director, general counsel, and then Congress provided us a very important opportunity for staff by providing that we would be able to have detailees from the various agencies and departments on a nonreimbursable basis. And so we have reached out and begun the process of bringing detailees into our work.

Mrs. MALONEY. So right now you have one staff member, the executive director; is that correct? And reaching out to how many detailees, 5, 10, 20?

Ms. DINKINS. We also have an administrative assistant, and we are seeking to engage a deputy executive director, general counsel. And as to detailees, as we develop our agenda, then we will bring on board the detailees that we need to further our work.

Mrs. MALONEY. So as of today you have two employees.

Ms. DINKINS. Yes, that's correct.

Mrs. MALONEY. And is the Privacy and Civil Liberties Oversight Board reviewing the following publicly reported matters that have been all over the papers? Just say yes or no. The NSA's reported domestic eavesdropping program?

Ms. DINKINS. That is among the matters that the Board has considered and we will have a large number of items that we will consider what role it will have in our agenda.

Mrs. MALONEY. But right now the answer's no, correct? You have not requested any documents or interviews in connection with this publicly reported matter; is that correct?

Ms. DINKINS. What the Board is doing, as I explained earlier, is meeting——

Mrs. MALONEY. I heard that. I heard that. I just wanted to know, have you requested any documents on this program? So far the answer's no, correct? So far the answer's no, you're still getting ready.

Second, has the Privacy and Civil Liberties Oversight Board, have you looked at the NSA's reported domestic phone data collection program; have you requested any information, documents or interviews on that particular program?

Ms. DINKINS. As I said earlier, we have just recently——

Mrs. MALONEY. OK. So that's a no.

Ms. DINKINS [continuing]. Received our clearances, and we are going to be.

Mrs. MALONEY. By the way, is your clearance level a TS level or SCI level?

Ms. DINKINS. SCI.

Mrs. MALONEY. SCI. OK, great. OK.

Has the Board looked into the DOJ's reported data retentions request to Internet companies, again, publicly in the papers all the time?

Mr. RAUL. Mrs. Maloney, may I respond?

Mrs. MALONEY. Sure.

Mr. RAUL. One of the important attributes of our role as providing advice and retaining credibility to have influence, which was suggested in the earlier panel, and which I think is very important to us, really obligates us to preserve that ability by not prematurely getting into what the nature of the internal discussion is.

We really do—I believe I can speak for the Board—take our role very seriously and want to ensure that privacy and civil liberties are appropriately considered in many of these topics that you've raised, and I think that it wouldn't be appropriate for us to say yes or no, we've provided advice, requested documents on them, when our ability to influence the executive branch really turns on our credibility, on our not prematurely getting into whether we, you know, think it's good or bad or what.

So I would just suggest that if—with respect, if we could do what we can to maintain our power internally, our credibility and influence, by not touching on some of these very sensitive subjects before, you know, before appropriate.

Mrs. MALONEY. Well, this body, Congress, is practicing oversight, and I think it's a totally legitimate question when an oversight board has been created by the Executive and by the Congress, that we inquire what you're looking into. I don't think that the whole purpose of oversight is not to keep everything secret. We're not making a determination whether it's appropriate or not. I am reading reports in the press. There's a list of them that I'm concerned about. And I'm wondering if you've requested any documents, requested any interviews, if you've initiated any investigation or oversight.

I feel that for me not to ask what my constituents are bringing to me as their top concerns would be, why have a hearing?

Mr. RAUL. Sure.

Mrs. MALONEY. So I think it's totally legitimate for me to ask. You can answer no, we don't think it's appropriate now, but at least answer.

Mr. RAUL. Mrs. Maloney, I didn't mean to suggest that the question isn't appropriate. I believe it entirely is, and the issues you've raised are certainly relevant issues. The question is, if we start discussing what requests we've made and what information we've received, then the people who—as it was said earlier by I believe both Governor Kean and Congressman Hamilton who—I mean this—the people that we need to talk to are appropriately very sensitive about all this information. And so it seems critical to the success of our job, our mission, if while the questions are all together, completely legitimate, it can nonetheless undermine our ability to play an influential role, which I think is the purpose of the statute.

Mrs. MALONEY. OK. Well, I'm not requesting you or asking you to judge the programs. I just want to know whether or not you care about it, whether or not you're taking steps to look into it. This is

called oversight. My constituents call me and say, are you looking into this? And I think it's totally appropriate to ask whether you're looking into what has been publicly reported. But the questions I'm asking have absolutely nothing to do with secrecy. These are programs and activities that have been on the front page of all the major newspapers and regional papers in the entire country. I don't feel that——

Mr. SHAYS. Would the gentlelady yield?

Mrs. MALONEY. Yes.

Mr. SHAYS. We obviously know you have just started. You haven't gotten to this point where you're in full operation, but are you in a process now where you are starting to ask questions about particular programs? Just—or have you not even begun that process?

Ms. DINKINS. Yes. Mr. Chairman, we are looking at a wide array of areas that we believe might be appropriate for the Board to focus on. And we will do that through a number of mechanisms, perhaps by having one of our Board members——

Mr. SHAYS. Let me just make sure. You can respond to the other party. I don't want to take Mrs. Maloney's time right now, given she can use as much time as she wants. I just want to know, because I'm trying to set up a point in which we can figure out how we can get a response to questions without going too far. The bottom line: You have started operation, but you're in the beginning stages; is that correct?

Ms. DINKINS. Yes, that's correct, Mr. Chairman.

Mr. SHAYS. So it would be logical if there's something in the news that is of interest to the public, the press, to Congress, for you to say we're looking at it—if you are. If there are things that aren't in the news and you choose not to make them news, that's another issue. I think that Mrs. Maloney would understand because we want you to be able to pursue issues where you have concern.

So I guess what I'm saying, it seems to me you can respond to Mrs. Maloney if she's asking are you looking at, for instance, the issues in the NSA that have been so public. I don't think—I think it would be shocking if you weren't, and I don't think it reveals much if you say yes. Probably reveals more if you say no. But do you understand?

If we can figure out how we can have a meaningful dialog without pressing you too much on two issues, one, we know you're just getting started, and second, you'll be back. We'll have you back, and there will be an opportunity to get into greater depth. Do you have a sense of where I'm coming from?

Ms. DINKINS. Mr. Chairman, we were trying to answer the question and what we're trying to say is because we are in the initial stages of getting the Board up and running and we do believe that we've made great progress in that regard, we are assembling an array of areas that have been expressed to us by those whom we have met both within the executive branch and outside, and we have made ourselves available to meet with Members of Congress and would welcome such meetings so that we can understand, as Congresswoman Maloney said, what her constituents are bringing to her attention that they're interested in. We welcome all of that

input so that we can then evaluate where we think it would be best for us to spend our time and the resources of the Board. And we are not at a point yet, because we have just been taking in these suggestions and developing our own ideas about what we might pursue. We're not at a point where we can say, yes, we're looking at that, or no, we're not looking at that; because at this point, many things are on the table for us.

Mr. SHAYS. I'm sorry. Thank you.

Mrs. MALONEY. It has been publicly reported extensively, DOD's reportedly increased role in domestic surveillance activities. Is this an area that you are considering looking into?

Ms. DINKINS. We are certainly cognizant of the reports on those programs and those are things—that is the sort of thing that we have on our list of areas to consider.

Mrs. MALONEY. OK. And DOD's also reported data-mining activities. Is that on your list of things to possibly consider?

Ms. DINKINS. Yes.

Mrs. MALONEY. It is? Good. And what information has the administration provided to you to date? Have you even requested any information from the administration to date? Have you requested any information, any documents, any reviews, any interviews, have you requested anything from the administration to date?

Ms. DINKINS. Speaking in a general sense, as I have said earlier, we have had a substantial number of briefings, and we have requested information that will help us learn the areas that we might have an interest in studying, and we will continue to do that.

Mrs. MALONEY. Has the administration denied access to any information that any of its members have sought in connection with the activities—of the privacy over in Civil Liberties Oversight Board?

Ms. DINKINS. As I said earlier, we have had a very great amount of support and assistance from the administration, and we have felt that we have been provided with a great deal of cooperation.

Mrs. MALONEY. So I assume the answer is no, that the administration has not denied you any access to any information. Have you requested information and they have denied to give it to you? That's my question.

Ms. DINKINS. As I have said earlier, the way the statute is set up, it's very clear under what circumstances if we make a specific request, that information can be denied.

Mrs. MALONEY. So, has the administration invoked the legislative process not to provide information you have requested?

Ms. DINKINS. We have not gotten to that stage where that would have been an issue.

Mrs. MALONEY. OK. So you have not been denied any information you've asked for, but you may not have asked for any information at this point. OK.

Is there a process in place for the administration to seek review or consideration of new policies and procedures for the Privacy and Civil Liberties Oversight Board so that you could assess the potential impact on privacy and civil liberties prior to implementation? In other words, there have been some programs put in place that some of the American public has protested to it. Do they have a

process to speak to you first about what they intend to do, to see whether or not there might be an objection because it violates privacy from your Board?

Ms. DINKINS. We have established a Web site, and we welcome information, and if anything is brought to our attention, we will consider it; or if it's something that is about a specific matter that is not within our purview, then we would refer it to whatever we thought to be the appropriate entity to review it. We're not established as a Federal advisory committee, and we're not open—we're not subject to the open meetings requirements of Title 5.

So if your question is whether we have a process for open meetings or for public hearings, no, that is not part of the statute that established us.

Mrs. MALONEY. The question was, was there a policy in place for the administration to seek review or consideration of new policies and procedures to the Board so that you can assess the potential impact on privacy and civil liberties prior to implementation? In other words, a preventive step or a review before taking policies that might be controversial?

Mr. RAUL. Mrs. Maloney, I'll just address that. We have established certain processes that are standard within the administration; namely, the OMB clearance process, the White House staff secretary process, and establishing both a Board level and staff level coordination within the White House with the relevant counsels.

I think anyone would—that the most sensitive matters are not necessarily going to go through the OMB clearance process, although as former general counsel of OMB, sometimes I thought that everything should go through that. But as Chairman Dinkins indicated, our meetings with the individuals that she described in the testimony is intended as a basis to establish dialogs and relationships and systems and processes so that we can carry out the statutory mandate, which is to be in a position to continually review the development of these policies. So as a Board, we certainly intend to establish those processes. We've begun to do so in what I'll call the more standard White House clearance mechanisms, but we recognize that we do need to speak with other agencies that are relevant.

Mrs. MALONEY. Is there a process in place for government employees to approach the Privacy and Civil Liberties Oversight Board in confidence, to alert the Board of policies or practices that they believe unduly infringe upon the privacy and civil liberties of Americans?

Ms. DINKINS. As I said in my testimony, our executive director is part of the community of these who are concerned with privacy and civil liberties throughout the government, and he is working with his counterparts in the various departments and agencies. We expect that by virtue of the Board being visible and being accessible through his work and the fact that our members are known and we have offices here in D.C., that those who might wish to contact us would have every opportunity to do so.

Mrs. MALONEY. And how will the Board, your Board, make its findings and conclusions and advice known to the administration? How often will you do so, and will you do it publicly?

Ms. DINKINS. As Vice Chairman Raul said, we believe a big part of our effectiveness is that we are working within the executive branch, that we can bring to bear the suasion that I described in my testimony and that was recognized, we believe, by the 9/11 Commission, and that much of that will be done, and the opportunities to meet with people one on one, to meet with them in groups as we work through various issues.

But we also under our statutory authorization are to provide an annual report to Congress, and so we expect that will be one of the mechanisms by which the members and the public will have the opportunity to see the work of the Board.

Mrs. MALONEY. Mr. Shays, some questions?

Mr. SHAYS. No. I'd like to make sure that Mr. Van Hollen goes, and then we'll come back to you if you have some followup. Mr. Van Hollen, thank you for your patience.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. And I also thank you, Mrs. Maloney, for all your leadership on these issues. And I understand and appreciate the fact that the Board is just beginning to get up and running, and there's a large amount of material to cover and catch up within a short amount of time. So I am interested, though, in how you perceive your authority, and how would you go about resolving potential issues that arise in terms of trying to get potential information from the administration?

As the co-chairman and vice chairman of the 9/11 Commission, Governor Kean and Congressman Hamilton, pointed out in their efforts on the 9/11 Commission, the fact that they had subpoena power was a very important tool. On at least three occasions they had to issue subpoenas to get material that they sought. They were able to resolve those cases amicably. But the fact they had subpoena power, in their opinions, allowed them to get a lot of other information that they didn't have to issue subpoenas for.

So I guess the question is—and I know the statute sort of lays out a process by which you can request information and that the agency can then deny it; it gets reviewed by the Attorney General and others make a final determination. Yet, what recourse will you have if you go through that process? Do you think that there's information essential to your function as an oversight board and you're unable to get that information? This piggybacks a little bit on the questions Mrs. Maloney was asking you. That was something I assume you would be willing to come before Congress and testify about. Or is it not?

Ms. DINKINS. We expect that as part of the executive branch, and certainly given the fact that we are located within the Executive Office of the President, that the executive branch departments and agencies will understand the important role of this Board and that they will cooperate with the Board as we seek information. We believe the process that's laid out in the statute is for those instances when the head of an agency and our Board simply cannot agree on whether we should receive information or not, and so there is the process for our Board to go to the Attorney General and ask that the information be provided us. We think that is a process that is clear. We think it is a process that is workable, and we expect that when we seek information, that—in virtually all instances, we will get it. And if we invoke the process laid out in the statute, it will

be because there is a very real concern on the part of the head of an agency about providing it to this Board. We think the Attorney General is the right place for the ultimate decision to rest.

Mr. VAN HOLLEN. I understand the process. My question's a little different than that because I want to understand what you perceive the role of Congress to be. After all, this Board was a creation of the Congress. It was part of the statute passed by Congress, and we are going to be relying in many cases on the Board to fulfill the function of guaranteeing civil liberties, at the same time we provide for the security of the Nation, that you strike that correct balance.

So my question is how forthcoming you're going to be with Members of Congress or how you perceive your responsibilities to Congress? If, for example, you go through this process and you don't obtain the information that you requested—and the 9/11 Commission was stymied on several occasions—and you're in front of a committee hearing just like this, would you agree that it's part of your responsibility, if asked, at least to inform Congress when the administration has, through the process outlined in the statute, denied you information that you think is needed to conduct your responsibilities?

Ms. DINKINS. Congressman, we haven't faced that situation because we haven't been in existence——

Mr. VAN HOLLEN. No, I understand that. I understand that. That's why I prefaced my comments by saying I understand you're just in startup mode. But I'm trying to understand how you envision your responsibilities and the oversight role of Congress with respect to your activities.

Mr. SHAYS. Would the gentleman yield?

Mr. VAN HOLLEN. Yes.

Mr. SHAYS. I think that's really an essential question. Maybe it's that you haven't had a chance to talk to your other members of the Board just to have them all have a buy-in. But I'd like to think if you didn't feel you were getting cooperation, that you would make sure that it was known; because if you're not getting cooperation, then you're not going to be able to do your job. We have a right to know if you're going to be able to do your job. And if you don't, then we have to appraise what needs to happen.

It strikes me that's kind of logical. If you kind of wrestle with that comment, maybe you could explain to Mr. Van Hollen and me why you would be reluctant to be able to respond to that now, you know.

Ms. DINKINS. Thank you, Mr. Chairman. And I understand, I think, what it is you're asking. I don't feel that we are yet in a position to really look down the road and anticipate how this might arise and in what context. And I think what would be best is for the vice chairman and I to take back to the other members of our Board the questions that you have raised and the concerns that you have expressed about your oversight function and about your ability to understand whether the Board feels that it is able to pursue its mission, and let us please contemplate that as the Board is moving forward and getting underway with its work. It's hard to anticipate the specifics that would put us in a place where that would be the next step, and I think that we need to understand

that and work through it as we move into getting the important work of the Board done.

Mr. SHAYS. I'm sorry. It's hard for me to contemplate, though, and you raised the question. You know, why don't you just respond——

Mr. VAN HOLLEN. No. No. I appreciate your jumping in on this, because I do think this is an important area, and I hope the Board will review it quickly because, again, I think that the statute's clear. There are certain steps you have to go through in terms of this information gathering process, but at the end of the day, if you're denied information that you think is essential to your function, and I—I believe you should approach Members of Congress. But at the very least, if you're asked a question at a hearing, it seems to me you have a responsibility to allow the Congress to know.

Another thing that's going to come up down the road is not just whether you're getting cooperation with respect to documents you're seeking but with whether or not the recommendations you're making in terms of protecting civil liberties are being followed by the administration. I can assure you the chairman of this committee and other members of this committee are going to want to know, not the details classified—I mean, if that can be done in a classified forum—but they're going to want to know if the Board that is established to provide oversight over civil liberties makes recommendations to the administration, if those recommendations are being ignored or not ignored.

So if you haven't considered that issue as a Board, I encourage you to do so because I understand your view that this is somehow a creature within the executive branch. On the other hand, I believe it is very much your responsibility to the American people and Congress.

Let me just ask this question. I asked Governor Kean and Congressman Hamilton, when they were testifying, whether or not the information that's come out with respect to domestic wiretapping would be something that you thought would be under your purview. The answer was yes from both. Whether you should seek documents and information on that, the answer was yes. And whether you should have a role in oversight there.

Now, the fact of the matter is if the New York Times hadn't broken that story back in December, the American people would not have known about it. And the question is whether you, as a Board, would have known anything about it, No. 1.

No. 2, if you had, whether you would have been able to get access to any of the information that they have denied to members of the Intelligence Committee, a majority of the members of the Intelligence Committee, and if you had made recommendations, whether they would have been heard. And it doesn't do the American people very good to have a Board that's supposed to be oversighted of civil liberties if you're denied that information or you make recommendations that say this is a breach of civil liberties and nobody ever knows, and we still have to rely on the New York Times rather than the Board.

So I'm very interested in how you view your responsibilities with respect to congressional oversight and the extent to which you're

going to vigorously pursue documents and information. You have a much more sanguine view of the degree of cooperation you may be getting. Maybe it's because this administration has essentially thumbed its nose at many congressional requests for information. I hope you're more fortunate. I don't think the track record is good, and that's why you are getting questions from a number of people as to what recourse, what recourse do you think you have if you are denied information beyond the provisions in the statute and whether or not you're willing to be public about it. So I hope you will consider those issues.

And let me just end with a question I quoted with respect to recommendations. If you make a strongly felt recommendation that's ignored by the administration and you're before the Congress and you're asked whether or not you think the administration, any administration, is adequately protecting the civil liberties and you made a recommendation that has been ignored, are you going to feel free to divulge to Congress that your recommendations were ignored?

Ms. DINKINS. As I said earlier, that's putting us in a place where we have not been and a place where we are not yet experienced with. And we are certainly mindful of the oversight role of Congress, and one of the things that we will be considering is what goes into the report to Congress when we provide that. And part of that will be as well what would be the level of detail about the work that we have done.

And may we have a word from our vice chair?

Mr. RAUL. If I may, Mr. Van Hollen, add a general comment. I think it's important for us to convey the sense that we very much hold, which is, it is critical to the success of our mission of our Board's mandate to maintain good relations with Congress. I mean, we are here today at the invitation of this subcommittee. We wanted to appear and testify before you. We have reached out to Members of Congress and the Senate to make ourselves available to them to hear their thoughts. I think that Chairman Shays earlier said that this subcommittee has lots of experience and knowledge in these areas, and we're very well aware of that. We would like to benefit from that.

I think you heard Chairman Hamilton, Governor—I'm sorry, Governor Kean say that we've reached out to him, we've reach out to the ACLU, to the Center for Democracy and Technology, we've been scheduling other meetings. And we really have tried to reach out to hear the suggestions, the comments, the criticisms as well from knowledgeable parties not—who may be coming from lots of different perspectives. We do intend for the work of the Board to proceed robustly, and part of that is having a good constructive dialog we hope with this committee and other congressional entities as well. So that's very much a part of the way we see our operation.

Mr. VAN HOLLEN. Well, I'm glad to hear that. We obviously don't know the end of the story. It's an evolving process.

But I must just close by saying, Mr. Chairman, that I believe an essential part of our role here is reporting and keeping Congress informed of the extent to which you're successful in your own views of protecting civil liberties as we go about protecting the national

security interests of the people of this country. And I can assure you that, in addition to the annual report, there are going to be congressional committees like this one—at least there's some in the House of Representatives who are interested in providing the necessary oversight. And beyond just an annual report, people are going to be asking you the kind of questions that we're asking today, and it will be at a point in time where it will not be premature in the sense that you haven't asked and been denied. And so I just ask of you to prepare for that because in order for us to have this productive relationship, I think that the Board's going to have to be forthcoming on these important issues. And I hope the next time we meet—you know in this area of civil liberties, the 9/11 Commission gave out two—there were three grades. Two of them were Ds. One of them was a D with respect to this Board. And I'm hoping, when they're invited back, they will raise your grade, and I guess the jury is still out on that question.

Thank you, Mr. Chairman.

Mr. SHAYS. Thank you.

I know Mrs. Maloney has one or two more questions. I want to get to our third panel, and I look forward to their reaction to the first two panels.

But what is coming across to me is obviously the fact that we have the adversary model, and we have the cooperative influential model, and given the structure of the committee, you're arguing that it's going to be a cooperative influential model. In other words, you're going to seek cooperation and try to influence in an advisory role to the White House. And I tend to believe, given the powers you have, that's probably the only way you could proceed. Even if in an adversary model, it's nice to find ways you can cooperate.

But what I'm struck with is that all of us up here know that you're going to have a point in time where you need to get information, and you're not going to get it. You're just simply not going to get the information. And what will be curious is how you deal with it after you have done everything under the sun to get the information. You're not going to get the information. I mean, we have worked with the administration—I speak as a Republican. They have a view about this kind of stuff, and it's not one that seeks to facilitate. I think particularly of two strong personalities who are very involved in this, and that would be the Secretary of Defense, who has control over more of the intelligence than anyone else, and a Vice President who I think he appears to support the view of the Secretary of Defense. So there will be a point in time where you're going to have a head to head. And the question we have is, are you going to just sweep it under the carpet? Or, eventually, are you going to get the information? And if you don't get the information, are you going to make sure one way or the other that at least it's known that you didn't get the information and you weren't able to do the job? That's kind of where we're coming from. I'm not looking for an answer, but I'm just explaining to you that we've got some issues here.

And the Attorney General basically can veto what you do. That's a fact. He can facilitate, or he can veto. He plays a huge role here. And it raises questions about what happens when he doesn't take your side and you don't get information that you need. Do we just

walk away? And then how can we up here have confidence that the civil liberties of the American people are being protected? If I'm giving more power to this administration as a Member of Congress, I want to make sure there is more oversight and greater safeguards. And so it will be good to have you back when you have been there a little longer.

And I will say, I believe there is only one Democratic member on the Board; is that correct?

Ms. DINKINS. We have one Democrat, and we have as well a career military officer who's retired now.

Mr. SHAYS. Does that mean he's not affiliated or is he a Republican member?

Ms. DINKINS. I don't know.

Mr. SHAYS. Well, it does matter. It does matter, because it does matter to me that there be—in the 9/11 Commission, there were six Republicans and six Democrats. I think if you were to have 12 Republicans, even if they came up with the same results, people wouldn't logically feel very comfortable, and I wouldn't blame them.

Ms. DINKINS. Mr. Chairman, may I say just a word about the Board? It is intended, specified in the statute that it be an independent and experienced group of Board members. And the Board, as I have said, has met a number of times, and it's been very collegial. And it's been very enthusiastic about its mission and very committed to carrying out the function that was assigned it by Congress.

Mr. SHAYS. Yes, I don't know how we have given you independence the way we set it up. I just don't know how we've made you independent. You're part of the White House; most are of one party; yet you have to use the cooperative model. The adversary model isn't in your powers. You don't have subpoena power, and just having subpoena power, frankly, we have threatened—in this subcommittee, as a Republican chairman in a Republican controlled Congress trying to get information from the White House, we have sometimes had to threaten use of subpoena power. If we didn't have that capability, we never would have gotten the information, never, ever. So, but, you know, it's just what we're going to wrestle with. But Mrs. Maloney, and then we'll get on to the next panel.

Mrs. MALONEY. Following up on the chairman's questioning, when you reach a point where they will not provide the information to you, will the Board request additional powers, additional authorities such as subpoena power? Would you publically request it if you could not get the information you needed to make a determination?

Ms. DINKINS. Yes.

Mrs. MALONEY. You would?

Ms. DINKINS. No, I did not say yes. I was going to say that we do not see that subpoena power would be a useful addition to the powers of the Board because the Board rests within the executive branch, and the executive branch doesn't subpoena itself. The executive branch is one of the three parts of the Federal Government, and so it is a different relationship than that between Congress and the executive branch. It would be incongruous for one part of the executive branch to subpoena each other. And we think that's

recognized in how the statutory authorities are established and the processes that are established that we've already discussed.

Mrs. MALONEY. So you're testifying that you are not independent. You are part of the executive branch, and you would not be requesting—if you could not get information that you asked for, you're part of the administration and you would not push for it is basically what you are saying. Your title says Oversight Board, oversight.

You have now two employees. Would you request additional funding so that maybe you could have a research assistant to help you look into some of these publically reported alleged violations of privacy?

Ms. DINKINS. As I said earlier, we are in the process of hiring additional staff, and we are reaching out to bring detailees. We also are authorized to engage consultants on a contract basis. So we have a number of mechanisms to bring people on board to help this Board with its work.

Mrs. MALONEY. Have you engaged any consultants yet?

Ms. DINKINS. We have not.

Mrs. MALONEY. And do you believe you have appropriate funding to carry your responsibilities for it?

Ms. DINKINS. Yes, we do.

Mrs. MALONEY. How will the Privacy and Civil Liberties Oversight Board decide what issues or matters to prioritize for review? There are so many out there in front of us now, I just mentioned five that I would be looking into if I were in your position, but how are you going to prioritize the issues coming before you?

Ms. DINKINS. The Board is actively reaching out to seek the input of those who work closely in the area of privacy and civil liberties. We are asking what they think the priorities of the Board might be and should be, and we are also asking the officials, who I set out in my testimony, what they think the Board can most effectively focus on and prioritize. And when the Board has taken in that information, then we will work hard to evaluate the various suggestions and set the priorities based on our own look at and examination of all the input that we have gotten.

Mrs. MALONEY. And how will the Board coordinate its activities with various departmental privacy officers and inspectors general?

Ms. DINKINS. As I said earlier, we have assured that our executive director is part of the network, the Privacy and Civil Liberties Oversight Board officers, of whom there are a good number throughout the executive branch. That's a very important part of making sure that the Board accomplishes its work.

Mrs. MALONEY. I would like to ask unanimous consent to place into the record an article in the Miami Herald on civil liberties and on hopes for the Board. And incidentally, it endorses legislation that I've authored to strengthen the Board, and I'd ask permission to put this excellent viewpoint into the record. No objection?

Mr. SHAYS. I'm sorry, without objection. I also want to at the same time ask unanimous consent that the following be made part of the record, the testimony of Mr. Frank Fetchet, father of Brad, who passed away at age 24 and would now be 29, and the husband of our witness here today, Mary Fetchet.

[The information referred to follows:]

Testimony
of
Frank J. Fetchet
Before the
United States House of Representatives Subcommitte
on National Security Emerging Threats and International Relations
Hearing on 9/11 Commission Recommendations:
Balancing Civil Liberties and Security
Washington DC
June 6, 2006

Good afternoon, my name is Frank Fetchet and I am pleased to be here today with my better half – my wife Mary. I am a husband, father of 3 sons, and a proud American who also happens to be a 9/11 family member. I continue to live with a heart that is broken, caused by the attacks of 9/11 and the loss of our son Brad. I am also learning to move forward. I am retired after nearly 33 years with a IBM and am a volunteer at a non-profit my wife established called Voices of September 11th. My wife Mary and I - and the Voices' team - are committed to helping those impacted by 9/11, advocating for the changes needed to make us safer and reaching out to other cultures and religions to build awareness, tolerance and acceptance. We are commited to making a difference, post 9/11....and it is not a stretch to say, we are.

I appreciate the opportunity to testify before you today – a group of respected political leaders whose mission is near and dear to my family and me – that is offering oversight with a keen focus on today's topic - civil liberties. You are helping America become safer while protecting the underpinnings of our wonderful country – our civil liberties.

My goal today is simple – to offer one man's views on where I personally have been since 9/11, where I think we are as a country now and where I sense we are going. Mary's comments are much more civil liberties centric – while mine are broader, yet hit on the points surrounding this topic. My testimony is personal opinion based on the facts and realities of where we stand. I'm not representing 3000 other family members in my statements – in that opinions will vary widely in this large and diverse population. My sense is that my testimony is not too far off of how the great majority of 9/11 family members feel today. If this exercise helps enable a sharper and more passionate focus on the realities of how exposed we are to radicals on our soil and what needs fixed quickly – I will view this exercise a success.

9/11 is the heinous event that taught many lessons to me, to my fellow Americans and to the world...to all of us. For many younger people, this act took away their innocence, not unlike the way President John F Kennedy's assassination took away my generation's innocence. Our children, Wes and Chris, are certainly examples of this. Rather than spend this valuable time reflecting on a point by

point recollection of the past – I'd rather simply state that until you've lost a loved one so viciously, so senselessly, so publicly – you probably don't understand the pain. 9/11 family members can interface with each other with ease and comfort – we all have personally lived the horror. Pieces of our son Brad have been positively identifed five times – and today some are buried, some cremated and in our home and some remain at the NY Medical Examiner's office. How many times does one reopen a grave site? Will advanced DNA testing techniques find other positive samples? 9/11 still hurts and always will.....

From my experience since 9/11 in coming to Washington I am impressed with the quality, dedication and intelligence of those committed to the public sector. I also feel the insulation that comes with being inside the beltway and frequently wonder if these same individuals really understand the full impacts of 9/11. Reading a report is one thing and will leave impressions – but living through the horror of what we and nearly 3,000 others experienced can easily be lost in the day-to-day business of keeping our government running and evolving a fix to a problem. If each political leader went through what I described in the loss of Brad, I wonder how much more attention this subject would be getting today? My bet is that there would continue to be outrage and a passion to fix things NOW....not over 15 years or so.....but NOW. One key reason any government exists is the protection of its people – and on 9/11 our government failed all of us.

That being said, I view the work that Mary and other like-minded family members did following 9/11 as a testament to our democracy. I recall Mary talking with me about her passion to help drive the formation of an independent and bipartisan commission to look into what went wrong and what changes needed made. I said something like "You can't fight City Hall" and something to the effect of "after our loss the last thing you need is to be let down after pressing for such sizeable change". Well she taught me a lesson I will live with forever. You can change City Hall and when like-minded Americans align with a passion that makes sense – the sky is the limit. Mary and the others put a face on what occurred on 9/11 – which ties to my prior point on reading about things versus living them. It had to be hard for our government leaders to say no to the formation of this commission with the ongoing small group of mothers, fathers, siblings and relatives working so very hard. They were all "Voices of 9/11". Well you know the story – and the 9/11 Commission was formed and in my view Lee Hamilton and Gov. Tom Keane set the tone and the entire team worked together seamlessly – not as Democrats or Republicans. My impression of the Commission's work is very positive when one considers the scope and timeframe to produce the report and recommendations. Sure you can pick at some aspect of the Commission report and I've heard the skeptics – and I'm not one of them.

And if having the discussion with Mary before the Commission was formed was not enough – she then mentioned to me that with the right cohesive focus, this same group of family members could help drive the legislation tied to the 9/11 Commission recommendations. I was smart enough not to doubt her the second

time! Sure enough the trips to DC continued and legislation was passed. Again, the democracy our founding fathers designed still works today – and we know it first hand and all of us should be proud. All of America should take note of this fact.....

So I have touched briefly on where we've been – now I would like to speak to my views on where we are today.

I tend to use the 9/11 Commission recommendations as a thoughtful sizing of the changes needed to make us all safer. It is a base case set of what needs done – no item is optional since the framework ties together. Like most Americans, I am unaware of the inner workings of our government. I have gotten very comfortable that the work was very thoughtful, unbiased and lays a roadmap for what changes need made. You will recall that at the conclusion of their in depth work, the Commission released a detailed book followed by a report card. The report card was simple, easy to read and easy to understand.....almost a Consumer Reports summary. Suffice it to say that if one of my boys brought home such a report card, there would be very immediate and noticeable change in our household! After years in business, a report card such as this in corporate America would have resulted in board outrage, executive changes and a reassurance to shareholders and employees that the wheels had not come off the company. Honestly, I have been shocked by the reaction in our government to the number of Ds and Fs.....sure there has been acknowledgement of the grading but where is the outrage in our government? This is not a report card on some obscure topic.....it is on our nation's safety and what needs remedied – after acknowledged failures. This should be a rallying point for all of our government.

The 9/11 Commission legally wound down and yet the Commission members stayed in tact by securing funding and renaming themselves the Public Discourse Project or PDP. I truly admire the fact the Commission members felt such a passion that they agreed to extend their mission through the PDP. Again, the PDP closed last year but before doing so the PDP reissued an updated report card on how our government is doing in making us safer through the recommended changes. This was a year or so after the first report card and - though some progress had been made – it was spotty and continued the prior report card's poor ratings. Again, where is the outrage? A corporate leadership team with such a report card a year after the first poor one would likely be looking for jobs.....

I have been joining Mary on relatively frequent visits to DC to advocate for the 9/11 Commission recommendations. Having been a sales executive for a number of years, I am an optimist at heart – and tend to look at the cup as half full, not half empty. Every time we return home from our trips I am impressed with the high quality personnel in our government touching aspects of the Commission recommendations. I often ask Mary "Did we make a difference?" "How will we know if our time was well spent"? Yet I always wonder, "Where is the sense of

urgency?" It's like watching a movie in slow motion…Katrina showed us how unprepared we still are……

Now to where I feel we are headed or need to be headed. I've been though the near death experience of one of America's finest companies – IBM. Lou Gerstner came in from outside IBM, took control, gave clear direction, made tough decisions and implemented the changes needed to win in the marketplace. He took on the task of changing a well entrenched culture – and made believers out of us who stayed on. Those who did not agree, left the company – and it was a good thing for both sides. I find this example as indicative of what the US government must do. We must reinvent our government…not unlike a corporation must reinvest itself as the market changes.

Let's look at questions that come to mind as a long time sales exec….and I wondered about these following the first 9/11 Commission report card. Is there an overall strategy? Do people clearly understand it and what their role is? Does the strategy include our foreign policy? How about foreign aid? Does it include moving away from the current large and growing oil consumption? Who is in charge and accountable? Do we have a tactical and strategic action plan? Is the management system in place to drive change? How urgent are people to carry their share of the load? Are people being paid more to work in the 'to be' model and conversely are those not changing – leaving our government or being paid less? Are people being held accountable up and down the management chain? These are pretty basic questions but after being in and out of Washington numerous times since 9/11 – I sure can't answer these questions and it would be interesting to get our governmental leadership in a room, how many varying answers there would be.

These are basic principles of driving a turnaround. We would have varying answers to each of these questions. You can "spin" the response to each one. 9/11 happened and the governament failed – no debate there. But I am continually amazed at how many people are in charge (or act like they are), how many decisions appear held up due to turf issues or outside influences and, again, how slowly things get done.

I remember President John Kennedy's goal of landing a man on the moon before the end of the 60's – what a rallying point for all of America! I see driving our countries safety as THE paramount issue……..one that our leadership should be driving just like JFK did his goal of a manned moon landing. Americans would rally around such a goal – whether preparedness in our homes, schools or workplace – college students in a "Peace Corp" like commitment to make a difference in a safer world – and each of us asking what we are doing to contribute. We need the passion and drive as a nation…..we need the passion to make this top of mind and give answers to citizens asking, "What can I do?"

Let me close by saying thank you again for the opportunity to testify. I am honored. As I said at the beginning, I am a husband, father of 3 sons, 9/11 victim's parent and a proud American who continues to live with a heart broken by the attacks of 9/11. I am healing and continue to reflect - yet am hopeful and optimistic for the future. We are part of the greatest country on earth – and you in your key leadership roles are critical to making us a safer country. We need you to continue to press for the changes we need – as rapidly as possible.

Thanks you.....

Mr. SHAYS. And a statement of Carie Lemack, a daughter of Judy Larocque and co-founder of Families of September 11th. And without objection, they'll be submitted as well.

[The information referred to follows:]

6 June 2006
Contact: 617 335 3025
carie_lemack@yahoo.com

Statement of Carie Lemack
Daughter of Judy Larocque
Co-Founder, Families of September 11

As we approach the 5th commemoration of the day that took my mother's and nearly three thousand others' lives, we are left to ponder how we have memorialized those that were stolen from us. There are public memorials in all fifty states, scholarships awarded, trees planted, flowers that bloom in September, all in their names.

But the most important way to remember and honor those who were murdered is to make sure that what happened to them does not happen again. The best way to do that is to understand what went wrong, and to fix the problems that lead to it, therefore ensuring we are not doomed to repeat history.

We were fortunate to have ten outstanding commissioners assigned this task. The 9/11 commissioners, under the wise guidance of Chair Tom Kean and Vice-Chair Lee Hamilton, worked with eighty highly skilled staff members to investigate the 9/11 attacks. Together they produced forty-one insightful, timely recommendations.

Unfortunately, nearly two years after their release, too many of those recommendations have not been implemented. I am proud that Congress passed and the President signed the Intelligence Reform and Terrorism Prevention Act of 2004, but taken alone, it is not enough. More work remains, and little attention has been paid to date to that which has been left undone, begging the question: what are we waiting for? Were 2,972 murders not enough?

The introduction of H. R. 5017, the Ensuring Implementation of the 9/11 Commission Report Act, is a much needed step in the right direction. Congress must take action to protect our great nation from that which still intends to do us harm. I want to thank Congressman Shays and Congresswoman Maloney for their tireless efforts to make our country safer and more secure.

Osama bin Laden pledged to take down the Twin Towers after his first failed attempt in 1993. He told us his plan, waited eight years, and then executed it, just as he had promised. This madman has now pledged to kill four million innocent Americans. Let's not wait and see if he is up to the challenge. Let's take him at his word, and make sure we have done everything in our power to stop him. By fully implementing all of the recommendations of the 9/11 Commission, we are one step closer to the most appropriate memorial of all to Mom – protecting her family, friends and fellow citizens from the awful fate that befell her.

Mr. SHAYS. Should we get to the next panel?

Mrs. MALONEY. Yes, we should.

Mr. SHAYS. Before you leave, is there anything that we should have asked that you would have liked to be part of this record? Any comment that we should make, Mr. Raul, anything?

Ms. DINKINS. Mr. Chairman, again, thank you for inviting us, and thank you for your interest in the work of the Board.

Mr. SHAYS. Well, we are interested, and your testimony is helpful. We have some very big concerns, but we don't question the authenticity and the sincerity to which you both approach this job as well as the other Board members. And we'll look forward to continued dialog, and hopefully, we can be helpful.

Ms. DINKINS. Thank you.

Mr. RAUL. Thank you, Mr. Chairman.

Mr. SHAYS. We will now welcome Mrs. Mary Fetchet of New Canaan, CT. She is the mother of Brad, and we appreciate her being here.

Mrs. Carol Ashley, the mother of Janice.

Mr. Abraham Scott, the husband of Janice Marie Scott.

Mr. Don Goodrich, father of Peter Goodrich.

We thank all four of you for listening to the other panels. We would love a reaction—you might not sit down. I will swear you in before you sit down. We would love your reaction to the first two panels, and we look forward sincerely to your insights.

Mr. Scott, we're going to swear you in. Let me say before swearing you in, it's a privilege to have all four of you here. Thank you for being here.

[Witnesses sworn.]

Mr. VAN HOLLEN. Mr. Chairman, I just wanted to say briefly, again, what a privilege it is to have all of you. I have a previously scheduled meeting with our service academy nominees that I'm already late to. I'm going to try to get back, but I just wanted to apologize for having to leave. I'm going to do my very best to get back. I've got people waiting. And these are people who were accepted to our military academies around the country, but it's a privilege to be here with you. And again, I hope to return.

Mr. SHAYS. Thank you, Mr. Van Hollen. Thank you for your participation today. And I think the families know you're concerned about this issue, and I'm sure they're very grateful.

Let me say to you, I think you've all testified before. Mr. Goodrich as well?

Mr. GOODRICH. Never before.

Mr. SHAYS. Well, let me just welcome all four of you. You are the driving force behind all the good that I think this Congress has done, and I realize that we have a ways to go, but you are all heroes in our eyes, absolute heroes. And we thank you for your patience.

We wanted you to listen to what was said by the other government officials. Sometimes we have you testify first, but we wanted your reaction. We want to know what you think about what you heard, and we want you to feel comfortable to address this as long as you would like.

And I'll just, obviously, say for the sake of it, I have a constituent among the four of you, Mrs. Fetchet is first among equals.

Mrs. Fetchet.

STATEMENTS OF MARY FETCHET, NEW CANAAN, CT, MOTHER OF BRAD, AN EMPLOYEE OF KEEFE, BRUYETTE AND WOODS IN TOWER 2 OF THE WORLD TRADE CENTER; CAROL ASHLEY, ROCKVILLE CENTER, NY, MOTHER OF JANICE ASHLEY, AN EMPLOYEE OF FRED ALGER MANAGEMENT IN THE WORLD TRADE CENTER; ABRAHAM SCOTT, SPRINGFIELD, VA, HUSBAND OF JANICE MARIE SCOTT, AN EMPLOYEE OF THE PENTAGON; AND DON GOODRICH, BENNINGTON, VT, FATHER OF PETER GOODRICH OF BOSTON, A PASSENGER ON UNITED FLIGHT 175 THAT CRASHED INTO THE WORLD TRADE CENTER

STATEMENT OF MARY FETCHET

Mrs. FETCHET. Good afternoon, Mr. Chairman and members of this distinguished committee. It's an honor to appear here before you today and to provide testimony at this vitally important hearing.

My name is Mary Fetchet. I'm founder and director of Voices of September 11th, a September 11th family advocacy group I founded after the death of my 24-year-old son, Brad. My husband Frank, who is unable to attend, is also submitting testimony. Thank you from both of us.

My goal today is to advocate for something I feel strongly about, creating the proper balance between increased security in a post-September 11th environment and preserving our sacred civil liberties. I'm also here to ask for Congress's help in implementing the September 11th recommendations.

September 11th was a defining moment in the history of our country that changed how we view the safety of our families and our Nation. Along with nearly 3,000 families, my family suffered a tragic loss, the loss of our 24-year-old son, Brad. I share this photograph of Brad with you.

Since his death, I view my life in two chapters, before September 11th and after September 11th. Unfamiliar with the political system, I naively believed our government was performing its fundamental duty to protect its citizens. Like many Americans, my sense of security and my faith in our government's effectiveness was shattered on September 11th.

My introduction to Washington began in July 2002, when I spoke at a rally to support legislation proposed to create a 9/11 Commission. Over the next 3 years, I made many trips, too many to count, to Washington, along with a handful of family members. As victims' family members, we brought the human face and the voice of the victims to the terrorism public policy debate.

Although we met many roadblocks on every level of government, through a bipartisan effort of like-minded Members of Congress, both Congressman Shays and Congresswoman Maloney, and also with the help of the 9/11 commissioners, we succeeded in passing the Intelligence Reform and Terrorism Prevention Act of 2004. But, tragically, nearly 2 years after the legislation was signed, these reforms have not been fully implemented, and over half of the recommendations have not been legislated.

Government has a fundamental responsibility to protect its citizens, and there can be no debate that our government failed us on September 11th. Yet despite the ongoing threat of a more serious terrorist attack, nuclear, biological or chemical, the government is moving much too slowly.

I feel strongly that the 9/11 Commission's final report set a comprehensive framework for long overdue sweeping government reform. The recommendations must be embraced in totality, not implemented in a piecemeal fashion. It is my opinion that currently we are handpicking some, but not all, of the recommendations which jeopardizes their effectiveness and creates an imbalance in the system. Clearly this situation has occurred with regard to balancing increased security and establishing a civil liberties board.

The reauthorization of the PATRIOT Act and the expansion of wartime powers makes it easier for America's counter-terrorism services to gather intelligence, yet progress in creating a civil liberties board to supervise these powers has been painfully slow. With delays in a conformation process, limited funding and staff, the Board has been slow to meet and lacks the necessary independence and subpoena power to investigate potential civil liberties violations.

Establishing a toothless board only creates an illusion that our civil liberties are being protected and perpetuates an environment of controversy and partisan debates among the misuse of powers. Recent news reports raise serious questions about violations that should be investigated. Without a robust, independent civil liberties board, there is little hope that these potential violations will be appropriately investigated. I believe the Civil Liberties Board should be empowered to protect against the violations of the fundamental principles of our democracy.

I'd like to talk about a couple of other issues that are important to me on interoperability. On September 11th, over 600 individuals I feel needlessly died in the south tower of the World Trade Center buildings, the second building hit by an airplane; my son Brad was one of them. The occupants of the building were ordered to remain in their offices, and individuals attempting to evacuate were sent back up.

On September 11th, hundreds of lives could have been saved if the first responders were able to communicate accurate information to the occupants of the building. I was shocked not just a year ago to learn interoperability was identified as a problem in a GAO report of 1995, but Congress neglected to address the issue.

Although progress has been made in setting a deadline to allocate additional radio spectrum, Congress must now realistically evaluate the moneys required to convert systems nationally and ensure an operating system is coordinated when the spectrum is available. I have to say, I agree with the commissioners, that 2009 is much too late, it needs to be moved up.

Information sharing: The 9/11 Commission report concluded that key information was not shared between and amongst government agencies, allowing the September 11th plot to escape detection. The December 2004 intelligence legislation sought to remedy that failure by creating the position of a program manager. Recent government reviews have been highly critical of the state of information

sharing, and have indicated that almost 5 years later the status has not greatly improved. We hear complaints from State and local authorities that have chosen to operate independently because they have not been included in receiving key information. For example, New York City, the NYPD created their own counter-terrorism intelligence capability and have established relationships with foreign countries. Without a coordinated effort to share information on the local, State and Federal level, we remain vulnerable today.

I'd also like to mention, I believe that Homeland Security funding should be determined by risk and vulnerability. And I am just appalled to see what's happened in New York and Washington with the landmark buildings and the icons; we all know that these cities are very vulnerable today. And I stand next to you to support your effort in getting those funds back.

Congressional reform: Congress has little choice to tackle oversight reform of the September 11th legislation if the legislation is to succeed. And I brought this organizational chart; it's from the 108th Congress. And even my son looked at this and said, how did they make a decision, and who's in charge? As you can see, most congressional committees have some jurisdiction over Homeland Security, making the current system prone to turf battles and inertia. Simply put, and through my husband's testimony with his business background, the current system is dangerously dysfunctional and undermines America's ability to prevent terrorist attacks, both at home and abroad.

Streamlining the number of committees may be a long and painful process, I understand, here in Washington, but it is necessary to ensure proper oversight and accountability. Congress must reform itself to provide the focus and transparent oversight required by the American people.

Afghanistan: Voices of September 11th facilitated a cultural exchange project with an organization sponsoring two schools in Afghanistan. We have been notified by the schools that they've had to close their doors recently due to direct threats to their students and a general state of unpredictability and unrest.

Although Afghanistan has made great progress since the Taliban has been defeated, we are very concerned about the recent reports of anti-American riots and an increase in insurgents. We have a responsibility in a narrow window of time to help create an infrastructure and cultivate an ally in the war against terrorism.

In addition, which was mentioned earlier, it is just shocking to me that, 5 years after September 11th, Osama bin Laden and his generals are still at large; and it seems to me that there's really no clear plan or sense of urgency to capture them. Has our government forgotten its responsibility to bring them to justice?

Our country came together on September 11th with a unified promise that we will never forget. I am told that Congress stood on the steps of the Capitol building and vowed to work together. However, I am troubled by the partisanship, turf battles and the agenda of special interest groups that are preventing implementation of the 9/11 Commission recommendations. Our families have no alternative than to live with the constant reminder of the horrific nature of the death of our loved ones.

My husband and I have been notified of bone fragments of our son Brad on five different occasions, and yet we only have a very small portion of his body. About half the people have never been notified, their loved one just disappeared on September 11th.

I cannot begin to convey to you how difficult this is, after having suffered this horrific loss, to have to travel here to Washington as Carol and I have done over the last 5 years to convince our government officials to make our country safer and to make it a priority. Words don't describe it. Yet we're here again today to act as your conscience and, once again, put a human face on the victims that lost loved ones on September 11th and to ask for your support in implementing the 9/11 Commission recommendations.

I'm speaking to the choir here today because I'm indebted to both Congressman Shays and Congresswoman Maloney, and certainly the commissioners that were here earlier today and will continue to stand beside you. Through Voices of September 11th, I commit to provide ongoing support to those impacted by September 11th and to continue to advocate for the implementation of the 9/11 Commission reforms, but I challenge everyone on this subcommittee and I challenge Congress to make these recommendations a priority in the upcoming election debates and to educate your constituents about the sense of urgency. America needs your leadership and determination. The future of our families and the safety of our Nation ultimately rests in your hands. Thank you.

[The prepared statement of Mrs. Fetchet follows:]

Statement of

Mary A. Fetchet,

Founding Director of Voices of September 11th
Mother of 24 year-old, Bradley James Fetchet
who perished in the World Trade Center attacks on September 11, 2001

before the
United States House of Representatives Subcommittee
on National Security,
Emerging Threats and International Relations Hearing

Hearing on 9/11 Commission Recommendations:
Balancing Civil Liberties and Security

Tuesday, June 6, 2006
Room 2154, Rayburn House Office Building
Washington, D.C.

INTRODUCTION

Good afternoon, Mr. Chairman and members of the committee. My name is Mary Fetchet. I am founding director of Voices of September 11th, a 9/11 family advocacy group created in October, 2001. More importantly I am mother of 24 year old Bradley James Fetchet, who needlessly perished in the south tower of the World Trade Center on September 11th. It has been my privilege to work closely with Congressman Shays over the past 4 ½ years. I admire his tireless personal commitment and the important contribution this committee has made in keeping the spotlight on the implementation of the 9/11 Commission recommendations. My husband Frank, who was unable to attend due to a family emergency is also submitting testimony. Thank you from both of us for the opportunity to testify at this vitally important hearing. My goal today is to advocate for something I feel strongly about – creating the proper balance between increased security in a post 911 environment and our sacred civil liberties. Beyond my comments on civil liberties, I am here today to ask Congress' help in accelerating legislation and implementation of the 9/11 Commission recommendations.

September 11th was a defining moment in the history of our country that changed how we view the safety of our families and our nation. Along with nearly 3,000 families, my family suffered the loss of our wonderful son Brad. Since his death, I view my life in two chapters, before September 11th and after September 11th. Before 9/11 I worked as a clinical social worker and like most mothers, I was focused on the everyday needs of my family. I had little understanding of the political system and I naively believed our government was performing its fundamental duty to protect its citizens.

Like many Americans, my sense of security and my faith in our government was shattered on September 11th. At the age of 51 I became passionate about my civic responsibility as both a victims family member as well as an American - to ensure our government made the safety of our families and country a priority. I felt passionately that I didn't want another mother to suffer the horrific, senseless loss of a child due to terrorism.

My introduction to Washington began on July, 2002 when I spoke at a rally to support legislation proposed to create a 9/11 Commission. Over the next three years I many trips - too many to count - to Washington along with a handful of family members, known as the 9/11 Family Steering Committee. We brought the human face and the voices of the victims to the terrorism policy debate. Over the years we met roadblocks on every level of government, but a bi-partisan coalition of like-minded congressional offices and 9/11 Commissioners prevailed. Our collective efforts resulted in the passage of the Intelligence Reform and Terrorism Prevention Act of 2004.

This act signed into law in December, 2004 legislated a small portion of the forty-one 9/11 Commission recommendations. Although this was an important first step, nearly 5 years after 911 many of these reforms have not been fully implemented and nearly 2/3 of the recommendations have yet to be legislated. Government has a fundamental responsibility to protect its citizens and there can be no debate that our government failed us on 9/11. Yet, despite the ongoing threat of another more serious terrorist attack, nuclear, biological or chemical, the government is moving too slowly. I feel strongly that the 9/11 Commission's final report, set a comprehensive framework for long-overdue sweeping government reform. The

recommendations must be embraced in their totality, not implemented in a piecemeal fashion. It is my opinion that handpicking some, but not all, of the recommendations jeopardizes their effectiveness and creates an imbalance in the system. For example, increased government powers of surveillance granted through the Patriot Act require oversight to protect our civil liberties. Despite the comprehensive plan for government reform issued in the 9/11 Commission Report, our country remains vulnerable to another terrorist attack. My comments today reflect my belief that inertia has set in and the government is moving too slowly.

BALANCING INCREASED SECURITY AND PROTECTING CIVIL LIBERTIES

It is clear that the reauthorization of the Patriot Act and the expansion of wartime powers makes it easier for America's counter-terrorism services to gather intelligence. To supervise these new powers the Commission recommended the creation of an independent Privacy and Civil Liberties Oversight Board. They wrote in their landmark report: "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." (page 412, 9/11 Commission Report) Yet progress on the creation of the board has been painfully slow, with delays in the confirmation process, limited funding and staff. The board has been slow to meet and lacks the necessary independence and subpoena power to investigate potential civil liberties violations. In fact, establishing a civil liberties with limited tools only creates an illusion that our civil liberties are being

protected and sets an environment for controversy and partisan debates around the misuse of powers. Recent news reports raise serious questions about violations of civil liberties which should be investigated by a robust, independent civil liberties board. I believe the civil liberties board should be empowered to protect against the violation of the fundamental principles of our democracy.

INTEROPERABILITY

On 9/11 over 600 individuals needlessly died in the South tower of the World Trade Center buildings, the second building hit by an airplane. My son Brad was one of them. The occupants of the building were ordered to remain in their offices and individuals attempting to evacuate were sent back up to their offices. Hundreds of lives could have been saved if the first responders were able to communicate accurate information to the occupants of the building.

I was shocked to learn interoperability was identified as a problem in 1995, but Congress neglected to address the problem which could have saved lives on 9/11. Progress has been made in setting a deadline to allocate additional radio spectrum. Congress must now realistically evaluate the monies required to convert systems nationally and ensure an operating system is coordinated when the spectrum is available.

INFORMATION SHARING

The 9/11 Commission report concluded that key information was not shared between and amongst government agencies, allowing the 9/11 plot to escape detection. The December, 2004 intelligence legislation sought to remedy that failure by creating the position of program manager. Recent government reviews have been highly critical of the state of information sharing and have indicated that almost 5 years later the status has not greatly improved. We hear complaints from state and local authorities that have chosen to operate independently because they are not being included in receiving key information. For example, in New York City the NYPD created their own counterterrorism intelligence capability and have established relationships with foreign countries. Without a coordinated effort to share information on the local, state and federal level we remain vulnerable today.

CONGRESSIONAL REFORM

Congress has little choice but to tackle oversight reform if the 9/11 legislation is to succeed. In the current structure most congressional committees have some jurisdiction over homeland security, making the current system prone to turf battles and inertia. If you look at the organizational chart from the 108th Congress that I have submitted for testimony, everyone is in charge so no one is in charge. Simply put, the current system is dangerously dysfunctional and undermines America's ability to prevent terrorist attacks at home or abroad. Streamlining the number of committees will be a long and painful process but will ensure

proper oversight and accountability. Congress must reform itself to provide the focus and transparent oversight required by the American people.

AFGHANISTAN

Voices of September 11th facilitated a cultural exchange project with an organization sponsoring two girl schools in Badakhshan, Afghanistan. We were notified that several schools had to close their doors due to direct threats to their students and a general state of unpredictability and unrest. Although Afghanistan has made great progress since the Taliban was defeated, we are very concerned about recent reports of anti-American riots and an increase in insurgents. We have a responsibility in a narrowing window of time to create an infrastructure and cultivate an ally in the war against terrorism. In addition, it's shocking that nearly 5 years after 9/11 Osama Bin Laden and his generals are still at large with no clear plan or sense of urgency to capture them. Has our government forgotten its responsibility to bring them to justice?

CONCLUSION

Our families have no alternative than to live with the constant reminder of the horrific nature of the death of our loved ones. Over the past 5 years my husband and I have been notified of Brad's remains on 5 occasions, mostly bone fragments, so we have only received a small portion of his body. Other families have never been notified, their loved one simply vanished in the attacks on 9/11. I cannot begin to convey how complicated and heart wrenching our loss has been.

Our country came together on 9/11 with a unified promise that "we will never forget". I am told that Congress stood together on the steps of the Capitol and vowed to work together. However, I have witnessed firsthand that since 9/11 government reforms has been riddled with partisanship and turf battles and agendas of special interest groups have once again become a priority. The horror and loss our country suffered on 9/11 at the hands of terrorists has been tucked away and forgotten. We are here today as your conscience, to once again put a human face on the victims that lost loved ones on 9/11, and to ask for your support in implementing the 9/11 Commission recommendations. The government is moving too slow.

I want to again thank Chairman Shays personally for his unwavering support and to the members of the committee for your important work. I also want to recognize the dedication of Chairman Kean and Vice-Chairman Hamilton who I am forever indebted to for their steadfast commitment to our country. Brad's death has taught me a valuable lesson, that I too have a personal stake in the terrorism policy debate. Through Voices of September 11th I am committed to provide ongoing support for those impacted by 9/11 and to continue to advocate for implementation of the 9/11 Commission reforms. I challenge each of you to make that same commitment. Make the 9/11 commission recommendations a priority in the upcoming election debates and educate your constituents about the sense of urgency. America needs your leadership and determination. The future of our families and the safety of our nation ultimately rests in you hands.

Thank you.

Final Report on 9/11 Commission Recommendations

December 5, 2005

Thomas H. Kean, Chair
Lee H. Hamilton, Vice Chair
Richard Ben-Veniste
Fred F. Fielding
Jamie S. Gorelick
Slade Gorton
Bob Kerrey
John F. Lehman
Timothy J. Roemer
James R. Thompson

www.9-11pdp.org

Part I: Homeland Security, Emergency Preparedness and Response

RECOMMENDATION	GRADE

EMERGENCY PREPAREDNESS AND RESPONSE

Provide adequate radio spectrum for first responders **F (C if bill passes)**
The pending Fiscal Year 2006 budget reconciliation bill would compel the return of the analog TV broadcast (700 Mhz) spectrum, and reserve some for public safety purposes. Both the House and Senate bills contain a 2009 handover date—too distant given the urgency of the threat. A 2007 handover date would make the American people safer sooner.

Establish a unified Incident Command System **C**
Although there is awareness of and some training in the ICS, hurricane Katrina demonstrated the absence of full compliance during a multi-jurisdictional/statewide catastrophe—and its resulting costs.

Allocate homeland security funds based on risk **F (A if House provision passes)**
Congress has still not changed the underlying statutory authority for homeland security grants, or benchmarks to insure that funds are used wisely. As a result, homeland security funds continue to be distributed without regard for risk, vulnerability, or the consequences of an attack, diluting the national security benefits of this important program.

Critical infrastructure risks and vulnerabilities assessment **D**
A draft National Infrastructure Protection Plan (November 2005) spells out a methodology and process for critical infrastructure assessments. No risk and vulnerability assessments actually made; no national priorities established; no recommendations made on allocation of scarce resources. All key decisions are at least a year away. It is time that we stop talking about setting priorities, and actually set some.

Private sector preparedness **C**
National preparedness standards are only beginning to find their way into private sector business practices. Private sector preparedness needs to be a higher priority for DHS and for American businesses.

TRANSPORTATION SECURITY

National Strategy for Transportation Security **C-**
DHS has transmitted its National Strategy for Transportation Security to the Congress. While the strategy reportedly outlines broad objectives, this first version lacks the necessary detail to make it an effective management tool.

Improve airline passenger pre-screening **F**
Few improvements have been made to the existing passenger screening system since right after 9/11. The completion of the testing phase of TSA's pre-screening program for airline passengers has been delayed. A new system, utilizing all names on the consolidated terrorist watch list, is therefore not yet in operation.

Improve airline screening checkpoints to detect explosives **C**
While more advanced screening technology is being developed, Congress needs to provide the funding for, and TSA needs to move as expeditiously as possible with, the appropriate installation of explosives detection trace portals at more of the nation's commercial airports.

Checked bag and cargo screening **D**
Improvements here have not been made a priority by the Congress or the administration. Progress on implementation of in-line screening has been slow. The main impediment is inadequate funding.

BORDER SECURITY

Better terrorist travel strategy **Incomplete**
The first Terrorist Travel Strategy is in development, due to be delivered by December 17, 2005 as required by PL 108-458.

Comprehensive screening system **C**
We still do not have a comprehensive screening system. Although agencies are moving ahead on individual screening projects, there is lack of progress on coordination between agencies. DHS' new Screening Coordination Office still needs to establish and implement goals for resolving differences in biometric and traveler systems, credentialing and identification standards.

Biometric entry-exit screening system **B**
The US-VISIT system is running at 115 airports and 15 seaports, and is performing secondary screening at the 50 busiest land borders. But border screening systems are not yet employed at all land borders, nor are these systems interoperable. The exit component of the US-VISIT system has not been widely deployed.

International collaboration on borders and document security **D**
There has been some good collaboration between US-VISIT and Interpol, but little progress elsewhere. There has been no systematic diplomatic effort to share terrorist watchlists, nor has Congress taken a leadership role in passport security.

Standardize secure identifications **B-**
The REAL ID Act has established by statute standards for state-issued IDs acceptable for federal purposes, though states' compliance needs to be closely monitored. New standards for issuing birth certificates (required by law by December 17, 2005) are delayed until at least spring 2006, probably longer. Without movement on the birth certificate issue, state-issued IDs are still not secure.

Part II: Reforming the Institutions of Government

RECOMMENDATION	GRADE

THE INTELLIGENCE COMMUNITY

Director of National Intelligence **B**
The framework for the DNI and his authorities are in place. Now his challenge is to exercise his authorities boldly to smash stovepipes, drive reform, and create a unity of effort—and act soon. He must avoid layering of the bureaucracy and focus on transformation of the Intelligence Community. The success of this office will require decisive leadership from the DNI and the president, and active oversight by the Congress.

National Counterterrorism Center **B**
Shared analysis and evaluation of threat information is in progress; joint operational planning is beginning. But the NCTC does not yet have sufficient resources or personnel to fulfill its intelligence and planning role.

Create FBI national security workforce **C**
Progress is being made—but it is too slow. The FBI's shift to a counterterrorism posture is far from institutionalized, and significant deficiencies remain. Reforms are at risk from inertia and complacency; they must be accelerated, or they will fail. Unless there is improvement in a reasonable period of time, Congress will have to look at alternatives.

New missions for CIA Director **Incomplete**
Reforms are underway at the CIA, especially of human intelligence operations. But their outcome is yet to be seen. If the CIA is to remain an effective arm of national power, Congress and CIA leadership need to be committed to accelerating the pace of reforms, and must address morale and personnel issues.

Incentives for information sharing **D**
Changes in incentives, in favor of information sharing, have been minimal. The office of the program manager for information sharing is still a start-up, and is not getting the support it needs from the highest levels of government. There remain many complaints about lack of information sharing between federal authorities and state and local level officials.

Government-wide information sharing **D**
Designating individuals to be in charge of information sharing is not enough. They need resources, active presidential backing, policies and procedures in place that compel sharing, and systems of performance evaluation that appraise personnel on how they carry out information sharing.

Homeland airspace defense **B-**
Situational awareness and sharing of information has improved. But it is not routine or comprehensive, no single agency currently leads the interagency response to airspace violations, and there is no overarching plan to secure airspace outside the National Capital region.

CIVIL LIBERTIES AND EXECUTIVE POWER

Balance between security and civil liberties **B**
The debate surrounding reauthorization of the PATRIOT Act has been strong, and concern for civil liberties has been at the heart of it. Robust and continuing oversight, both within the Executive and by the Congress, will be essential.

Privacy and Civil Liberties Oversight Board **D**
We see little urgency in the creation of this Board. The President nominated a Chair and Vice Chair in June 2005, and sent their names to the Senate in late September. To date, the Senate has not confirmed them. Funding is insufficient, no meetings have been held, no staff named, no work plan outlined, no work begun, no office established.

Guidelines for government sharing of personal information **D**
The Privacy and Civil Liberties Oversight Board has not yet begun its work. The DNI just named a Civil Liberties Protection Officer (November 2005).

CONGRESSIONAL AND ADMINISTRATIVE REFORM

Intelligence oversight reform **D**
The House and Senate have taken limited positive steps, including the creation of oversight subcommittees. However, the ability of the intelligence committees to perform oversight of the intelligence agencies and account for their performance is still undermined by the power of the Defense Appropriations subcommittees and Armed Services committees.

Homeland Security committees **B**
The House and Senate have taken positive steps, but Secretary Chertoff and his team still report to too many bosses. The House and Senate homeland security committees should have exclusive jurisdiction over all counterterrorism functions of the Department of Homeland Security.

Declassify overall intelligence budget **F**
No action has been taken. The Congress cannot do robust intelligence oversight when funding for intelligence programs is buried within the defense budget. Declassifying the overall intelligence budget would allow for a separate annual intelligence appropriations bill, so that the Congress can judge better how intelligence funds are being spent.

Standardize security clearances **B**
The President put the Office of Management and Budget (OMB) in charge of standardizing security clearances. OMB issued a plan to improve the personnel security clearance process in November 2005. The Deputy Director of OMB is committed to its success. All the hard work is ahead.

Part III: Foreign Policy, Public Diplomacy, and Nonproliferation

RECOMMENDATION	GRADE

NONPROLIFERATION

Maximum effort by U.S. government to secure WMD **D**
Countering the greatest threat to America's security is still not the top national security priority of the President and the Congress.

FOREIGN POLICY

Long-term commitment to Afghanistan **B**
Progress has been made, but attacks by Taliban and other extremists continue and the drug situation has worsened. The U.S. and its partners must commit to a long-term economic plan in order to ensure the country's stability.

Support Pakistan against extremists **C+**
U.S. assistance to Pakistan has not moved sufficiently beyond security assistance to include significant funding for education efforts. Musharraf has made efforts to take on the threat from extremism, but has not shut down extremist-linked madrassas or terrorist camps. Taliban forces still pass freely across the Pakistan-Afghanistan border and operate in Pakistani tribal areas.

Support reform in Saudi Arabia **D**
Saudi authorities have taken initial steps but need to do much more to regulate charities and control the flow of funds to extremist groups, and to promote tolerance and moderation. A U.S.-Saudi strategic dialogue to address topics including reform and exchange programs has just started; there are no results to report.

Identify and prioritize terrorist sanctuaries **B**
Strategies have been articulated to address and eliminate terrorist sanctuaries, but they do not include a useful metric to gauge progress. There is little sign of long-term efforts in place to reduce the conditions that allow the formation of terrorist sanctuaries.

Coalition strategy against Islamist terrorism **C**
Components of a common strategy are evident on a bilateral basis, and multilateral policies exist in some areas. But no permanent contact group of leading governments has yet been established to coordinate a coalition counterterrorism strategy.

Coalition standards for terrorist detention **F**
The U.S. has not engaged in a common coalition approach to developing standards for detention and prosecution of captured terrorists. Indeed, U.S. treatment of detainees has elicited broad criticism, and makes it harder to build the necessary alliances to cooperate effectively with partners in a global war on terror.

Economic policies **B+**
There has been measurable progress in reaching agreements on economic reform in the Middle East, including a free trade agreement with Bahrain and the likely admission of Saudi Arabia to the WTO before long. However, it is too early to judge whether these agreements will lead to genuine economic reform.

Vigorous effort against terrorist financing **A-**
The U.S. has won the support of key countries in tackling terrorism finance—though there is still much to do in the Gulf States and in South Asia. The government has made significant strides in using terrorism finance as an intelligence tool. However, the State Department and Treasury Department are engaged in unhelpful turf battles, and the overall effort lacks leadership.

PUBLIC DIPLOMACY

Define the U.S. message **C**
Despite efforts to offer a vision for U.S. leadership in the world based on the expansion of democratic governance, public opinion approval ratings for the U.S. throughout the Middle East remain at or near historic lows. Public diplomacy initiatives need to communicate our values, way of life, and vision for the world without lecturing or condescension.

International broadcasting **B**
Budgets for international broadcasting to the Arab and Muslim world and U.S.-sponsored broadcasting hours have increased dramatically, and audience shares are growing. But we need to move beyond audience size, expose listeners to new ideas and accurate information about the U.S. and its policies, and measure the impact and influence of these ideas.

Scholarship, exchange, and library programs **D**
Funding for educational and cultural exchange programs has increased. But more American libraries (Pakistan, for example) are closing rather than opening. The number of young people coming to study in the U.S. from the Middle East continues to decline (down 2% this year, following declines of 9% and 10% in the previous two years).

Support secular education in Muslim countries **D**
An International Youth Opportunity Fund has been authorized, but has received no funding; secular education programs have been initiated across the Arab world, but are not integrated into a broader counterterrorism strategy. The U.S. has no overarching strategy for educational assistance, and the current level of education reform funding is inadequate.

Mr. SHAYS. Mary Fetchet, Carol Maloney and I are indebted to you and Congress is indebted to you and the country is indebted to you; it goes the other way.

Carol Ashley, thank you for being here. It's wonderful to have you here.

STATEMENT OF CAROL ASHLEY

Mrs. ASHLEY. Thank you very much.

When one thinks of defending freedom, it's usually in a military context, but freedom is also defended by our Constitution and the laws that uphold it. You, as Members of Congress, play a vital role in preserving America's freedom. Your legislative decisions and oversight determine the level of protection we have from both external and internal threats.

My name is Carol Ashley. I appreciate having the opportunity to appear before this subcommittee. And I especially wish to thank Congressman Shays and Congresswoman Maloney for their dedication to working on our national security. And I appreciate also the other members of the subcommittee who participated in this hearing.

National security became a priority for me on September 11th when my 25-year-old daughter Janice died on the 93rd floor of Tower 1, murdered by terrorists. Since that terrible morning, the government's investigative agencies have been vigorous in attempting to thwart terrorism, and I strongly support their efforts. But I also believe that the rights and freedoms guaranteed by the Constitution must not be abridged in the name of security. The challenge is to maintain a balance between security and protecting our constitutional rights. That balance can be successfully achieved if these conditions are met. First, the data is collected, dispersed and discarded according to civilian and military law. And if our intelligence agencies need more than 72 hours to apply for a warrant, as required by the 1978 FISA law, then it is Congress's responsibility to adjust the timeframe or to write new laws to ensure that there are legal justifications for abrogating citizens' rights.

The second condition would be that there is vigorous systematic oversight to ensure compliance and integrity of mission. Oversight is needed by three agencies, a strong independent Privacy and Civil Liberties Oversight Board by Congress and by the FISA court.

We have seen many controversial programs as the government attempts to prevent further terrorism, that includes TIPs, TIA, the Jet Blue Data Mining Project, warrantless spying, AT&T's secret room for tracking Internet traffic. These things involved, among others, Social Security numbers, income, family members, vehicles, credit card information and others being merged without people's consent.

When warrantless spying was first revealed, America was told it was only overseas calls that were being monitored, but we've learned now that millions of domestic call records have been acquired, although they say they're not being monitored. And reportedly, antiwar and environmental activists have also been under surveillance by the Pentagon and the FBI.

The men and women in our law enforcement and security network who are working so hard to protect this Nation from terror-

ists should not be put in a position where they are asked to violate the constitutionally protected rights of Americans.

The danger of these warrantless programs is the potential for abuse. America needs a mechanism answerable to Congress for assessing sensitive programs that involve surveillance of Americans. Such a mechanism is the Privacy and Civil Liberties Oversight Board, with the power and independence envisioned by the 9/11 Commission. And here I would like to comment on the previous testimony.

First, I want to stress that this Board should be required to report back to Congress regularly. Second, its meeting with detailees, inspectors general and other privacy officers should be on a regular basis, and it should be formally required. Third, the Attorney General's ability to control the investigations of this oversight Board does not define an independent agency. And fourth, this Civil Liberties Board does need subpoena power, but it worries me that the Board believes that it does not, that the executive branch does not subpoena itself, so I'm not even sure they would use the subpoena power if they had it.

In 2004, Congress failed. They need to correct the situation with the Privacy and Civil Liberties Oversight Board. As a result of the failure, America now has government entities which are able to block legitimate inquiry and over which there is no independent oversight. There must be accountability for the legality and efficacy of the work being done. To aid in accountability, Congress is urged to strengthen whistleblower protection for government workers, including those in the intelligence network, especially in light of the recent Supreme Court decision denying government whistleblower's at work first amendment protection. That means less government accountability. Unfortunately, congressional oversight is hamstrung because the top line of the intelligence budget has not been declassified. I strongly urge Congress to take steps to declassify the top line so that Congress can then reorganize itself so that it will have the jurisdiction over appropriations to control what is happening in our intelligence agencies.

The PATRIOT Act expanded the power and surveillance options of the government and also reduced constraints, which leads to the potential for abuse. Congress tried to correct that by amending the PATRIOT Act when it was reauthorized, adding oversight provisions, which was a good thing. However, in a signing agreement, the President indicated that he is not obligated to obey that requirement. How can the President's signing an agreement which overrides a law established by the legislative branch be reconciled with the balance of power envisioned by our Founding Fathers? To safeguard our rights and prevent any one branch of government from exerting excessive power, Congress is urged to quickly and aggressively regain its authority in the balance of power. Secrecy is integral to programs that gather actual intelligence, but secrecy can be a tool to shield clandestine programs from inquiry and oversight. Denial of security clearance, stopping internal Justice Department probes into DOJ's approval of the NSA warrantless wire tapping program, and further, a former intelligence officer who had been with the NSA was advised that he could testify—he could appear before Congress, but he should not testify about SAP pro-

grams because neither the staff nor the Members of Congress whom he would appear before have the necessary security clearance. If no one except the NSA or the DIA can be read in, given clearance to investigate the surveillance programs, how can there ever be rigorous independent oversight of programs that spy on Americans? Secret domestic surveillance without legal boundaries, oversight or accountability is dangerous to a free society. No government agency or entity should have unfettered power to stop a legitimate independent investigation into the legality of its work. In the fight against terrorism, Americans must guard against incremental surrender of the freedoms which set us apart from repressive cultures.

To protect our rights, surveillance inside our borders must be monitored to ensure compliance with the law. We depend on Congress to validate the legality, the mission and the integrity of our domestic surveillance programs. With your guidance, America can fulfill its national security obligations and simultaneously preserve the rights and freedoms that distinguish America. Thank you.

[The prepared statement of Mrs. Ashley follows:]

Testimony of Carol Ashley

for the

House Subcommittee on National Security,
Emerging Threats, and International Relations Hearing

on

9/11 Commission Recommendations: Balancing Civil Liberties and Security

Washington, D.C.

June 6, 2006

DEFENDING AMERICA

On Memorial Day, a veteran remarked that we must defend freedom, or we will lose it. Defense of freedom is not only a function of our military. It is also a function of our Constitution and the laws which support it. You, the members of Congress, determine America's level of protection from both external and internal threats through your legislative decisions and oversight.

My name is Carol Ashley. I appreciate having the opportunity to appear before this subcommittee. I want to thank Chairman Christopher Shays and Congresswoman Carolyn Maloney for their steadfast commitment to improving national security through implementation of the 9/11 Commission recommendations. I would also like to thank the committee members who participated in today's hearing. Safeguarding Americans and preserving the rights and freedoms guaranteed by our Constitution are primary responsibilities of Congress.

National security became a priority for me on September 11th when my 25 year old daughter, Janice, died on the 93rd floor of the World Trade Center, murdered by terrorists. Although the government's foremost obligation is to protect us, America's security network had failed.

Along with other 9/11 family members, I came to Washington, first seeking your help to establish an independent commission to investigate the attacks and later to press for passage of 9/11 legislation to improve security. Today I offer testimony in support of full implementation of the 9/11 Commission recommendations as they were envisioned, particularly strengthening the Privacy and Civil Liberties Oversight Board.

In light of the controversy over warrantless spying and the National Security Agency's (NSA's) amassing of phone records of millions of Americans, *The 9/11 Commission Report* seems prescient when it addressed privacy and civil liberty concerns.

> *"This shift of power and authority to the government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life...*
>
> *"We must find ways of reconciling security with liberty since the success of one helps protect the other....[I]f our liberties are curtailed, we lose the values that we are struggling to defend."* [1]

Concerned that there was no federal office charged specifically with looking across the government to ensure that liberties are protected while the government gathers and shares intelligence, the Commission recommended that

> *"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."* [2]

EAVESDROPPING, PRIVACY AND THE LAW SINCE 9/11

Since September 11th, the government has been rigorous in attempting to track terrorism. I strongly support the work of our intelligence community and appreciate their efforts to prevent another terrorist attack. But I feel equally as strongly that the rights and freedoms guaranteed by the Constitution must not be abridged in the name of security.

There must be a balance between security and the right to privacy. That balance can be successfully achieved if these conditions are met:

- **Data is collected and discarded according to civilian and military law;**
- **There is rigorous, systematic oversight by a strong, independent Privacy and Civil Liberties Oversight Board, by Congress and by the FISA Court to ensure that protocol has been followed; to verify the integrity of the mission; and to safeguard the rights of innocent Americans.**

In its effort to prevent further terrorism, the government has initiated a series of controversial programs. Among them:

OPERATION TIPS (TERRORISM INFORMATION AND PREVENTION SYSTEM)

The TIPs program, proposed by Attorney General John Ashcroft, was intended to be a " '*national system for reporting suspicious, and potentially terrorist-related activity' involving 'millions of American workers who, in the daily course of their work, are in a unique position to see potentially unusual or suspicious activity in public places.*'" [3]

TOTAL INFORMATION AWARENESS (TIA)

Since 2002, when the Pentagon's Defense Research Projects Agency (DARPA) proposed the Total Information Awareness (TIA) program of computerized surveillance, there have been concerns about how to balance security with the right to privacy. (Later the name was changed to "Terrorist Information Awareness" program.) TIA was described as a "*system [that] would gather information about individuals from widely varied sources, including telephone calling records, credit card charges, banking transactions, airline reservations, and biometric databases -- all without search warrants or prior notice.*" [4] [5]

With black bag designation, TIA's status is shielded from Congressional oversight.

JET BLUE

In September, 2003, it was reported that a defense contractor, Torch Concepts, had used millions of JetBlue passenger records to test a prototype data-mining system designed to screen out terrorists. Torch Concepts is a subcontractor to SRS Technologies, a defense contractor for DARPA's Information Awareness Office. The goal of the Torch system was to prevent terrorism by looking for behavioral and relationship patterns that would identify terrorist threats before a catastrophic attack could occur.

The mission of successfully identifying terrorist threats is critically important and must be ongoing.

In the Torch project, JetBlue passenger information was merged with private data including Social Security numbers and information about income, family members and associated vehicles, to create a profile. David Neeleman, founder and CEO of JetBlue said he believed the data had been destroyed. [6] [7]

But was the data destroyed after the prototype testing was completed? There is no independent authority to verify that it was.

America needs a mechanism, answerable to Congress, for assessing sensitive programs that involve surveillance of Americans.

Unfortunately, Congressional oversight is hamstrung because the top line of the intelligence budget has not been declassified. Congress is urged to declassify the top line in order to enable committees other than defense to have jurisdiction over intelligence appropriations. This would allow Congress to reorganize swiftly to fulfill its oversight obligations. That provision is in H.R. 5017.

THE PATRIOT ACT

When the Patriot Act passed on September 18th, 2001, it expanded the powers and surveillance options of the government. The Act relaxed controls over surveillance programs, eliminating the need for probable cause and decreasing judicial review. This concerned critics, who worried that fewer restraints would allow clandestine programs to infringe on citizens' rights and privacy. [8]

Earlier this year when the Patriot Act was amended and reauthorized, oversight provisions were added which required the Justice Department to monitor how often the FBI uses the powers and under what circumstances. Additionally, the law requires the administration to provide this information to Congress by certain dates. This oversight requirement was a positive step.

However, in a "signing agreement"—an official document in which he gave his interpretation of the law—the President indicated that he may not comply with the requirements to inform Congress if he concludes that disclosure would "*impair foreign relations, national security, the deliberative process of the executive, or the performance of the executive's constitutional duties.*" [9]

How can the President's signing agreement which overrides a law established by the legislative branch, be reconciled with the balance of power envisioned by our founding fathers?

Congress is urged to quickly and aggressively regain its authority in the balance of power.

WARRANTLESS SURVEILLANCE

The NSA and other intelligence agencies are charged with gathering actionable intelligence about al Qaeda and other terrorist groups. The scope is international as well as domestic. All components of our intelligence apparatus must have the tools and latitude to do their job. Of necessity, their work is clandestine. Those who are working so hard to defend and protect this country should not be put in a position where they are ordered to violate the Constitutionally protected rights of Americans who pose no threat.

Although the White House initially insisted that NSA surveillance only involved calls overseas, warrantless surveillance also included anti-war and environmental activists with no link to al Qaeda or terrorism. [10]

Surveillance of Activists

In December, 2005, NBC News and William M. Arkin, in his washingtonpost.com blog Early Warning, reported that TALON/CORNERSTONE, a Pentagon database, contained information on peace protesters and others whose activities posed no threat. [11] [12] [13]

Besides the Pentagon, the FBI, too, has apparently been spying without warrants. National Public Radio recently broadcast a segment called "Big Brother" which discussed an FBI program that spied on the environmental group, Greenpeace. It appears that the FBI relied heavily on information about Greenpeace provided by pro business, anti-regulation think tanks. A guest on the program, Ann Beeson, associate legal director of the ACLU, suggested that "*the FBI is not à [sic] just doing this to investigate crimes, but is doing it purposefully to suppress legitimate dissent and criticism of the administration's policies.*" [14]

The same questions apply to both the FBI and Pentagon surveillance of activists. What was the purpose of monitoring the activists? Who gave the order? Who received the surveillance reports, and as a result, what action was taken?

The danger posed by warrantless surveillance is its potential for abuse. These activists do not pose a terrorist threat. Americans have the right to peaceful dissent. In a democracy, dissent routs complacency, forcing attention on questionable government policies. It encourages people to learn more about the issues and ultimately, to express their support or displeasure to Congress and the White House. Oversight is needed to verify the integrity of mission of the surveillance — that it is legitimately for counterintelligence.

AT&T'S "SECRET ROOM"

Former AT&T technician Mark Klein alleges that AT&T cooperated in an illegal NSA domestic surveillance program. In 2003, AT&T, at the behest of the National Security Agency, built a "secret room" in its San Francisco office and possibly in other cities, where computer gear capable of spying on internet traffic was installed. This installation enabled the NSA to look at every message on the internet. [15]

NSA'S ACCESS TO PHONE RECORDS

It has been reported that the phone records of millions of Americans listing calls inside the US were turned over to the NSA by private phone companies. Two of the three phone companies named have subsequently denied the allegations. [16] [17] These records do not include names or addresses associated with the phone numbers, or the content of the calls. The records tell when calls were made and the duration. [18]

What is the truth of this story? Without oversight, there is simply no way of knowing.

USING PRIVATE DATA COLLECTORS

SKIRTING THE LAW?

The use of private contractors to collect personal data for surveillance programs is contentious.

> *"The agencies involved in data mining are trying to skirt the Privacy Act by claiming that they hold no data," said [Missouri Congressman William] Clay. Instead, they use private companies to maintain and sift through the data, he said.*
>
> *"Technically, that gets them out from under the Privacy Act," he said. "Ethically, it does not."* [19]

ONLINE DATA BROKERS

On May 25, TIME magazine reported that federal and local law enforcement may be circumventing privacy laws by obtaining calling records from online data brokers.

Some of these businesses obtain phone records illegally through "pretexting," in which someone who impersonates a subscriber inveigles the phone company to release copies of the records. Clients of some of these online brokers include an unnamed foreign government, the Department of Homeland Security (DHS) and the FBI. [20]

If the DHS and FBI are indeed buying information gathered by private data brokers whose methods may be illegal, in addition to raising privacy concerns, the practice could jeopardize prosecution of terrorists and criminals.

SPIDER WEBS

Using phone records to develop spider webs is a useful tool in fighting terrorism. Constructing spider webs helps the NSA identify terrorists and operatives and contributes to clearer understanding of terrorist networks. A spider web is built by examining all calls to and from a specific phone number, then looking at calls to and from the numbers associated with the target number. [21]

In the Moussaoui case, perhaps the 9/11 plot would have been unraveled if the threads of a spider web had connected communication between Moussaoui and al Qaeda financiers and others in the terrorist network. We will never know. Inexplicably, FBI officials at headquarters repeatedly refused a Minnesota field agent's requests for a FISA warrant to access Moussaoui's belongings. Neither official has been held accountable. [22]

The danger of spider webs is that innocent people may be caught in the threads. To protect the innocent, and their rights, it is imperative that such surveillance is done within the parameters of the law. If our intelligence agencies indicate 72 hours is not long enough to apply for a FISA warrant, then it is Congress' responsibility to adjust the time frame or write new laws to ensure there is legal justification for abrogating a citizen's rights.

SECRECY — NECESSITY AND SHIELD

When government actions do not represent the ideals of our nation and who we are as a people, Americans need to know. Otherwise unworthy, unrepresentative actions persist. Exposure allows Americans to demand changes that reflect our ideals and our laws.

In surveillance programs such as those at the NSA which gather actionable intelligence, secrecy is integral to success. But secrecy can also be a tool to shield clandestine programs from inquiry and oversight.

Recently, attorneys in the Justice Department's Office of Professional Responsibility (OPR) were denied security clearance which halted their attempt to conduct an internal investigation into the Department's approval and oversight of the NSA's warrantless wiretapping program. The OPR was to determine whether Justice Department officials, including Attorney General Ashcroft and Attorney General Gonzales, acted properly in approving and overseeing the Bush administration's domestic eavesdropping program.

The classified documents which OPR attorneys wanted to access were those which had been given to Ashcroft, Gonzales and other Justice department attorneys involved in approving the NSA's warrantless eavesdropping in 2001. The Justice

Department already has these documents, but the denial of clearance stopped the probe. It is not clear whether it was the NSA or the Attorney General who refused to grant clearance. [23]

In another instance involving the issue of security clearance, Russ Tice, a former intelligence officer with the NSA, has offered to testify before Congress about previously unreported spying by highly classified NSA and Defense Intelligence Agency Special Access Programs (SAPs). Tice was a specialist in space operations systems, command and control warfare, advanced technology and all-source collection analysis. [24] [25]

Tice was advised by Renee Seymour, director of NSA special access programs, that while he has the right to appear before Congress, he should not testify about the top secret electronic intelligence programs because *"neither the staff nor the members of the [House intelligence committee] or [Senate intelligence committee] are cleared to receive the information covered by the special access programs, or SAPs."* [26]

If no one except the NSA or DIA can be "read in" to receive clearance to investigate the surveillance programs, how can there ever be rigorous, independent oversight of programs that spy on Americans?

In an attempt to quash litigation over NSA warrantless eavesdropping, the Bush administration said that it would be impossible to defend the legality of NSA program without revealing classified information that would jeopardize national security. [27]

This poses a dilemma.

If the courts are prohibited from hearing cases involving possible illegal activity because of the need for secrecy, how can these surveillance programs be controlled?

The question of legality revolves around a presidential directive which overrode a 1978 FISA law requiring warrants for surveillance of American citizens. The President asserts that a congressional resolution passed after the terrorist attacks gave him the authority to order that warrantless eavesdropping, although a Congressional Research Service Report disagreed. [28] [29]

The status of balance of power and the use of states secrets designation to tip the scales in favor of the executive branch are underlying issues.

Although the matter of Presidential authority in the case of warrantless eavesdropping may ultimately be resolved in court, Congress must be vigilant to protect its position in the balance of power.

To safeguard our rights and prevent any one branch of government from exerting excessive power, Congress is urged to quickly and aggressively regain its authority in the balance of power.

No government agency or entity should have unfettered power to stop a legitimate, independent investigation into the legality of its work.

CONCLUSION

In the fight against terrorism, Americans must guard against incremental surrender of the freedoms which set us apart from repressive cultures. To protect our rights, surveillance inside our borders must be monitored to ensure compliance with the law. We depend on Congress to validate the legality, mission and integrity of our domestic surveillance programs.

But Congress has not fulfilled its oversight obligation regarding the nature and scope of clandestine surveillance. Congress has yet to resolve the issue of the legality of warrantless eavesdropping, the purpose behind the collection of phone records of millions of Americans, possible internet surveillance and whether other hidden programs are monitoring us.

Secret domestic surveillance without legal boundaries, oversight or accountability is dangerous to a free society. There must be a balance between the need to gather actionable intelligence in the interest of national security and the right to privacy.

Secrecy, even that which falls legitimately under the aegis of national security, must not be allowed to trump America's system of checks and balances. Classifying previously unclassified documents, invoking states secrets without justification, and unfettered clandestine surveillance increase the potential for abuse, and with it the potential for insidious erosion of our rights to privacy and dissent. The freedoms we take for granted are at stake.

To counter the effects of secrecy and unfettered surveillance, these Congressional actions are recommended:

- **Declassify the top line of the intelligence budget so that Congress can reorganize itself for more effective oversight;**

- **Establish a strong truly independent Privacy and Civil Liberties Oversight Board as intended by the 9/11 Commission.**

Although the Commission recommended a strong, independent Civil Liberties Board with subpoena power, in 2004, Congress failed to follow that recommendation. It established instead a weak, ineffective board with no real authority. It has taken too long to become organized and its investigations can be nixed by the Attorney General. It is an oversight board in name only. As a result, America has government entities which are able to block legitimate inquiry, and over which there is no independent oversight.

Defending America from external and internal threats is paramount. There must be accountability for the legality and efficacy of the work being done. In defense of freedom, Congress must ensure that an independent agent looks across the government in its campaign against terror, to ensure that there is a balance between security and privacy.

- **Strengthen whistleblower protection for government workers, including those in the intelligence network.**

The Supreme Court decision of May 30, 2006, denying government whistleblowers first amendment protection will likely have a chilling effect on disclosure of agency misconduct, resulting in less government accountability.[30]

When a government worker has the courage and moral fortitude to reveal government misconduct to the American people, he or she must be protected by law. Since the Supreme Court ruling diminished First Amendment protection for workers on the job, Congress must act quickly to strengthen whistleblower protection for government workers, and this time include those in the intelligence network.

- **Pass House bill H. R. 5017 which fully implements the 9/11 Commission recommendations.**

Today, our military is deployed overseas to disrupt the terrorist network and destroy its training camps and sanctuary. But here at home we are not as well protected as we should be. The government has made progress and we are safer, but nearly 5 years after September 11th, serious internal security issues remain.

Airline cargo and ports are not secure, and neither are our borders. Thousands enter America illegally every month. Among them are people from countries rife with Islamic extremism. Although most illegal immigrants come to America seeking a better life, we must be very careful to monitor who enters our country. From experience we know that it takes only 19 savage Islamic extremists to murder thousands. Congress must act to secure our borders, closing the loopholes, literally and figuratively and provide adequate funding for hiring additional border control agents, increasing detention beds, and for implementing technology and physical barriers. Secure borders are critical to national security. [31] [32] [33]

All the provisions in this bill are important. Among those items which need immediate attention is to **mandate risk based funding**. Just this week, New York and Washington, D.C. were notified that their Homeland Security grant money had been slashed dramatically, even though they are probably the two most likely terrorist targets. New York was reduced from $207.5 million to $124.4 million and Washington from $77.5 million to $46.5 million. [34]

Strengthening nuclear nonproliferation efforts as recommended by the 9/11 Commission is also a priority. Although attention is centered on Iran's capability to enrich uranium to weapons grade, focus should also be on the immediate danger posed by the availability of unsecured nuclear warheads and fissile material in the states comprising the former Union of Soviet Social Republics. [35]

Accessibility to this nuclear material, coupled with inadequate port security could have catastrophic consequences. The provisions in H. R. 5017 should be vigorously supported by Congress.

The US must proceed quickly to implement *The National Infrastructure Risks and Vulnerability Protection* Plan drafted in 2005. As of December, 2005, there had been no risk and vulnerability assessments of critical infrastructure. Congress must ensure that assessments have been made and that national priorities have been set for distribution of funding for protecting that infrastructure. [36]

With your guidance, America can fulfill its national security obligations and simultaneously preserve the rights and freedoms that distinguish America. Action is needed now. Complacency will not protect America.

REFERENCES

Please note: All articles were accessible online as of June 8, 2006. Copies of the articles have been made available to the office of Congressman Christopher Shays.

[1] ***The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States***. W.W. Norton & Company, New York. 2004; pp. 394-395

[2] Id., p. 395.

[3] Eggen, Dan, "Ashcroft: TIPS Plan Won't Have Central Database. " *The Washington Post.* July 26, 2002; Page A10. *http://www.washingtonpost.com/ac2/wp-dyn/A63340-2002Jul25?language=printer*

[4] Glass, Brett. "Security Alert: US Admiral Proposes "Big Brother" System." November 14, 2002. *http://www.extremetech.com/print_article2/0,1217,a=33650,00.asp*

[5] "Poindexter to resign over terror market flap." The Associated Press. *The Atlanta Journal-Constitution*. July 31, 2003. *http://www.realnews247.com/poindexter_to_quit_pentagon_post_amid_controversy.htm*

[6] Shachtman, Noah and Ryan Singel. "Army Admits Using JetBlue Data." September 23, 2003. *http://www.wired.com/news/business/0,60540-0.html*

[7] "JetBlue: Complaint for Violations of CA Business and Professions Code Sections 17200, et seq." *Privacy Rights Clearing House*. Posted September, 2003. *http://www.privacyrights.org/ar/jetbluecase.htm*

[8] Herman, Susan. "The USA Patriot Act and the US Department of Justice: Losing Our Balances?" December 3, 2001. *http://jurist.law.pitt.edu/forum/forumnew40.htm*

[9] Savage, Charlie. "Bush shuns Patriot Act requirement." *The Boston Globe*. March 24, 2006. *http://www.boston.com/news/nation/washington/articles/2006/03/24/bush_shuns_patriot_act_requirement/*

[10] Isikoff, Michael. "The Other Big Brother." *Newsweek*. Jan. 30, 2006. *http://www.msnbc.msn.com/id/10965509/site/newsweek*

[11] Pincus, Walter. "Pentagon Will Review Database on U.S. Citizens." *The Washington Post*. December 15, 2005; A01. *http://www.washingtonpost.com/wp-dyn/content/article/2005/12/14/AR2005121402528_pf.html*

[12] Arkin, William. "No Big Deal, Pentagon Says." February 9, 2006. http://blog.washingtonpost.com/earlywarning/2006/02/no_big_deal_pentagon_says.html

[13] "Pentagon admits errors in spying on protesters." MSNBC and NBC News. March 10, 2006. http://www.msnbc.msn.com/id/11751418

[14] Berkowitz, Bill. "Green for Danger? "Feb 2, 2006. http://www.ipsnews.net/print.asp?idnews=32013

[15] "Whistle-Blower's Evidence, Uncut." May 22, 2006. http://www.wired.com/news/technology/0,70944-0.html

[16] Cauley, Leslie. "NSA has massive database of Americans' phone calls." *USA TODAY*. May 11, 2006. http://www.usatoday.com/news/washington/2006-05-10-nsa_x.htm

[17] "Second Phone Company Questions 'USA Today' NSA Story." *Editor and Publisher*. May 16, 2006. http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1002503697

[18] Hosenball, Mark and Evan Thomas. "Hold the Phone." *Newsweek*. May 22, 2006 issue. http://www.msnbc.msn.com/id/12779087/site/newsweek/

[19] Thompson, Doug. "NSA just one of many federal agencies spying on Americans." *Capitol Hill Blue*. Dec 27, 2005. http://www.capitolhillblue.com/artman/publish/printer_7904.shtml

[20] Dell, Kristina. "Are the Police Digging into Your Phone Records?" *TIME*. May. 25, 2008 [sic] (Actual date of posting, May 25, 2006.) http://www.time.com/time/nation/printout/0,8816,1197918,00.html

[21] Diamond, John and David Jackson. "Bush says privacy protected; sources tell of 'spider web' use." *USA Today*. May 12, 2006. http://www.usatoday.com/news/washington/2006-05-11-nsa-database-furor_x.htm

[22] Sniffen, Michael J. "FBI Agent Slams Bosses at Moussaoui Trial." Associated Press. March 20, 2006. http://apnews.myway.com/article/20060320/D8GFJP500.html

[23] Harris, Shane and Murray Waas. "Investigators denied clearances for probe of eavesdropping program." *National Journal*. May 26, 2006. http://www.govexec.com/dailyfed/0506/052606nj1.htm

[24] Gertz, Bill. "NSA whistleblower asks to testify." *THE WASHINGTON TIMES*. January 5, 2006. http://www.washtimes.com/national/20060104-114052-6606r.htm

[25] Strohm, Chris. "Former NSA officer alleges illegal activities under Hayden." *CongressDaily*. May 12, 2006. http://www.govexec.com/story_page.cfm?articleid=34075

[26] Gertz, Bill. "Ex-official warned against testifying on NSA programs." *THE WASHINGTON TIMES*. January 12, 2006.
http://www.washingtontimes.com/national/20060111-112622-2876r.htm

[27] Caruso, David B. "Dismissal of Lawsuits Over NSA Eavesdropping Sought." Associated Press. *The Washington Post*. May 28, 2006; A13
http://www.washingtonpost.com/wp-dyn/content/article/2006/05/27/AR2006052700819_pf.html

[28] Id.

[29] Leonnig, Carol D. "Report Rebuts Bush on Spying." *The Washington Post*. January 7, 2006; A01.
http://www.washingtonpost.com/wp-dyn/content/article/2006/01/06/AR2006010601772_pf.html

[30] "Court curbs government whistleblowers." Associated Press. May 30, 2006. *http://www.msnbc.msn.com/id/13047151/from/RSS/*

[31] Malkin, Michelle. "What's the Spanish Word for 'Terrorist'?" July 24, 2004.
http://michellemalkin.com/archives/000275.htm

[32] "Potential terrorists released due to lack of jail space, congressman says," Emma Perez-Trevino. *The Brownsville Herald.* July 23, 2004.
http://www.brownsvilleherald.com/ts_comments.php?id=60297_0_10_0_C

[33] Seper, Jerry. "Guarding America's Border." THE WASHINGTON TIMES. December 8, 2003
http://washingtontimes.com/national/20031208-123627-3333r.htm

[34] Newman, Maria. "To Some Mayors, Security Grants Seemed Fair ."
The New York Times. June 1, 2006.
http://www.nytimes.com/2006/06/01/washington/01cnd-homeland.html?hp&ex=1149220800&en=3c8507366b1afb32&ei=5094&partner=homepage

[35] "Open ports, loose nukes," Globe Editorial. *The Boston Globe*. February 28, 2006.
http://www.boston.com/news/globe/editorial_opinion/editorials/articles/2006/02/28/open_ports_loose_nukes /

[36] The Final Report on 9/11 Commission Recommendations. December 5, 2005; p. 3 *http://www.9-11pdp.org/press/2005-12-05_report.pdf*

Mr. SHAYS. Carol Ashley, thank you very much.

We will now go to Abe Scott.

Mr. Scott, thank you for being here. This is not the first time that you have testified.

Mr. SCOTT. This is the first time.

Mr. SHAYS. This is the first time. Well, it's long overdue, and it's wonderful to have you here.

STATEMENT OF ABRAHAM SCOTT

Mr. SCOTT. Thank you.

Before I begin, Mr. Chairman, I just want to say that while I want to verify that we do have 3 days to correct the record, I don't have stature as you on the committee have in terms of having a speech writer. I've made some mistakes in my testimony, written testimony, as well as I'm half blind and I can't hear out of one ear, but the fight goes on.

Mr. SHAYS. You know what? Mr. Scott, I have heard you speak, and you are a very articulate man. I don't think you need to worry for a second about your testimony. It's very articulate, and it makes extraordinary points to this Congress. So you should be very proud of your contribution, and we are very grateful for your contribution, but welcome.

Mr. SCOTT. Thank you.

Good afternoon, Congressman Shays, Congresswoman Maloney. I feel deeply honored and proud that you invited me here this afternoon to testify before the House Subcommittee on National Security, Emerging Threats, and International Relations as a result of the loss of my loving wife, Janice Marie Scott, of 24 years in the Pentagon on September 11, 2001.

It truly saddened me, saddened my heart that this invitation had to be done under such grievous circumstances and not on a more positive and happier one. Nevertheless, I did not hesitate to accept your invitation because I was able, through divine intervention, to maintain some glimpse of hope whereby enabling me to go on with my life in spite of the trials and tribulations.

I eventually made a commitment to my wife and two daughters after the tragic event that I would reaffirm my faith in the Lord and Savior, Jesus Christ, keep the memory alive of those 2,971 beautiful individuals who were murdered at all three sites, especially my wife and those other beautiful individuals that were murdered in the Pentagon and on board American Airline flight 77. I would like to interject that there were a total of 125 in the Pentagon and 59 on board flight 77 for a total of 184. And finally, to actively involve myself with this magnificent government body called Congress to ensure that the right measures or steps are enacted into law to minimize the chance of a similar atrocity ever occurring again within the borders of the United States.

I have been accomplishing the latter by being in attendance of many of those hearings facilitated by the 9/11 Commission, by participating in the congressional process which eventually led to the passage of Intelligence Reform and Terrorist Prevention Act by Congress and more recently by attending the September 11th trial of Mr. Zacharias Moussaoui.

As I begin my testimony, I must first give thanks, as always, to the Almighty for this opportunity to sit in front of you this afternoon. And second, I pray that no one in this room or those who are viewing this or might view this session in the future misconstrues or misinterprets this testimony of mine as an attempt on my part to make a political statement such as the one made my Mr. Moussaoui at the end of his trial, for that is not my intention.

One thing that was most pleasing and gratifying to me during my past September 11th life was having the opportunity to be present at the conference last year—or over a year—where the 9/11 Commission gave the final report on their 41 recommendations. As you know, this report included an assignment of Alpha grades as a measurement tool for evaluating the implementation status of the 41 recommendations.

I was quite shocked, surprised and appalled to see that the most important recommendation to me had received such low grades. The title of this recommendation is civil liberties and executive powers. Even though I do believe these grades were fair and just ones, I consider them to be totally unacceptable because I unquestionably believe that those failures which generated this recommendation were the ultimate reason for the cause of those unjust tragic events on the morning of September 11, 2001.

Additionally, I consider the low grade given with respect to the Privacy and Civil Liberties Oversight Board as being a disgrace and totally a slap in the face for the hard work which was done by the 9/11 Commission.

Based upon the low grades and importance of this recommendation, it is of my opinion that the Bush administration should have the Privacy and Civil Liberties Oversight Board high on its priority list in terms of bringing this organization fully functional as quickly as possible and providing it with the necessary power and support, as well as personal and funding resources, to allow it to effectively accomplish the assigned mission.

On the other hand, I do believe achieving this end result would be a meaningless effort without the support of Congress to expedite the deliberation and approval process so that the necessary acts can be taken on implementing the other 9/11 Commission recommendations.

Mr. SHAYS. Mr. Scott, I want you to slow down just a speck, so don't feel you have to rush. You have as much time as you want. And this is very important testimony that you're sharing with us.

Mr. SCOTT. Thank you.

Mr. SHAYS. So you have a perspective that only you have, and we need to hear that perspective, so take your time.

Mr. SCOTT. OK. Thank you.

I have not yet heard or read that such step will be completed any time soon in the near future. I arrive at this conclusion due to several reasons. First, I sense that there is no urgency on the part of Congress to expeditiously arrive upon a mutually agreed upon plan to secure our borders, secure our support and to gain as well as to maintain accountability of noncitizens who are already in and are entering this country. These issues are near and dear to my heart, of which I think need to be acted upon sooner rather than later.

I am the first to admit that one thing this tragic event did to me was change my mindset on the political process of this country. For example, my pre-September 11th strategy for voting was to vote strictly Democrat at all levels of government. I have since changed this mindset by making absolutely sure my vote is given regardless of party affiliation to the man or woman that I feel will not hesitate to make those tough decisions for the good of this country and the people, and not worry about the impact those decisions will have on his or her reelection campaign.

Second, I know that our Congress, Congressmen and Congresswomen are being asked to tackle a number of very sensitive issues in reference to the implementation of these recommendations. I know this will not be an easy road for you as this country's lawmakers to navigate, but you and only you must take this journey and be prepared to compromise and make small as well as big sacrifices in order to reach bipartisan decisions on these recommendations. You must be prepared to do so with a clear heart and mind, even if the decision might not be in yours and/or the interest of some of your constituents but will benefit the efforts of restoring the faith of the American public as well as retain the value of our civil liberties. This, too, is the least you can do to pay the dividends on the return on our loved ones investing their lives on the morning of September 11, 2001, for the preservation of this great Nation.

You as public leaders and lawmakers must take heed and set aside your differences and political agendas and start making decisions based on what I hope is placed in your heart by the supreme being to do the right thing for the good of the people who have and continue to give their all and all for the freedom of this great Nation. For I can assure you that this enemy called terrorism is not going to patiently wait around for you to try and resolve the various stalemates in Congress before striking again. You must remember that we are dealing with a very unique enemy. We are dealing with mentally unstable extreme fundamentalists of different nationalities who have declared a holy war to just kill Americans for no cause or justifiable reason.

While some have compared the attacks by those terrorists on September 11, 2001, to the surprise attack on Pearl Harbor by the Japanese, we must always remind ourselves that we are not engaged in a conflict with a sovereign nation like Japan and the other Axis of Evil countries during World War II. This can't be defined as guerrilla-type warfare. I can only characterize this as being engaged in a "hear no evil, see no evil" type of warfare.

Another comparison is that this Nation had the utmost and undivided support of its government, people and resources through the entire period of World War II that eventually brought about the demise of this powerful enemy comprised primarily of Germany, Italy and Japan.

The events of September 11th also brought about a heightening of patriotism as it was clearly visible by the number of dwelling done with the American flag throughout this country. On the other hand, this Nation, from a personal viewpoint, is becoming with the passage of time more and more complacent, less patriotic,

unfocused and not as united as it was right after the occurrence of the tragic event on the morning of September 11th.

Finally, I honestly don't think a great many people in this country have no idea what civil liberty means. The dictionary defines it as a state of being subject only to law for the good of community and individual rights protected by the law from unjust government or other interference. Let's not forget that you and only you alone as the lawmaking body has earthly power in your heart, minds and hands to ensure the people's civil liberties of this great Nation.

So as I come to the conclusion of my testimony, I would like to reflect, with your permission, back upon when I was a young African-American male growing up in a small little southern community and being educated in a segregated school system of Beaufort County of South Carolina. We would recite the Pledge of Allegiance and then sing My Country 'Tis of Thee at the beginning of each class every morning. As we sang the lyrics, My Country 'Tis of Thee, Sweet Land of Liberty, to the song, I can vividly remember that this song would always instill in me a sense of comfort and security. The events of September 11th have adversely affected my views in regard to the lyrics of this song. I am asking you, your help with reversing this negative effect upon me in regards to this song, restoring confidence in the American people in the civil liberties, and last but not least, reassuring the family members that their loved ones did not die in vain.

I thank you. And may God bless each and every one of you on the House Subcommittee on National Security, and may God bless America. Thank you.

[The prepared statement of Mr. Scott follows:]

Abraham Scott's Testimony
Before the
House Subcommittee on National Security,
Emerging Threats, and International Relations
On
June 6, 2006

Good afternoon. Congressman Shays and Distinguished Members of this very prestigious Committee, I feel deeply honored and proud that you extended to me an invitation this afternoon to testify before the House Subcommittee on National Security, Emerging Threats, and International Relations as a result of the lost of my loving wife, Janice Marie of 24 years in the Pentagon on the morning of September 11, 2001. It truly saddens my heart that this invitation had to be done under such grievous circumstances and not under a more positive and happier one. Nevertheless, I did not hesitate to accept your invitation because I was able through divined intervention to maintain some glimpse of hope whereby enabling me to go on with my life in spite of the trials and tribulations of 9/11. After this tragic event at the Pentagon, I eventually made a solemn commitment to my wife and two daughters that I would reaffirm my faith in the Lord and Savior, Jesus Christ; keep the memories alive of those wonderful 2,971 individuals that were murdered in New York City, in Shanksville, and at the Pentagon; especially my wife and those other 124 beautiful individuals that were murdered in the Pentagon and those 59 beautiful individuals onboard American Airlines Flight 77; and finally actively involve myself with this magnificent governmental body called Congress to help assure the right measures or steps are enacted into law to minimize the chance of a similar atrocity from ever occurring again within the borders of these United States. I have selflessly accomplished the latter by being in attendance at many of those hearings facilitated by the 9/11 Commission, by participating in the Congressional process which eventually led to the passage of the Intelligence Reform and Terrorism Prevention Act of 2004 by Congress, and more recently by attending the 9/11 trial of Mr. Zacarias Moussaoui. As I begin my testimony, I must first give thanks as always to the Almighty for allowing me this opportunity to sit in front of you this afternoon and secondly, I pray that nobody in this room or those who are viewing or might view this session in the future does not misconstrue or misinterpret this testimony of mine as an attempt on my part to make a political statement such as the one made by Mr. Moussaoui at the end of his trial for that is not my intention. One thing that was most pleasing and gratifying to me during my post 9/11 life was having the opportunity to be present at the conference where the 9/11 Commission gave the final report on their 41 recommendations. As you know, this report included the assignment of Alpha grades as a measurement tool for evaluating the implementation status of the 41 recommendations. I was quite shocked, surprised, and appalled to see that the most important recommendation to me had received such an overall low grade. The title of this recommendation is the "Civil Liberties and Executive Powers". Even though I do believe these grades were fair and just ones, I considered them to be totally unacceptable because I unquestionably believe that those pre-9/11 failures which generated this recommendation were the ultimate reasons for the cause of those tragic events on the morning of September 11, 2001.

Abraham Scott's Testimony
Before the
House Subcommittee on National Security,
Emerging Threats, and International Relations
On
June 6, 2006

Additionally, I view the low grade given in respect to the Privacy and Civil Liberties Oversight Board as a disgrace and a direct slap in the face of the 9/11 Commissioners for their hard work. Based upon this low overall grade and the importance of this recommendation, it is of my opinion that the Bush Administration should have immediately placed the Privacy and Civil Liberties Oversight Board high on their priority list in terms of bringing this organization fully functional as quickly as possible and providing it with sufficient personnel and funding resources as well as the power and support to allow it to effectively accomplish the assigned mission. On the other hand, I do believe successfully achieving this end result would be a meaningless effort without the support of Congress to expedite the deliberation and approval process so that the necessary actions can be taken to effectively implement the other recommendations of the 9/11 Commission. I have not yet heard or read that such steps will be completed anytime soon in the near future. I arrived at this conclusion due to several reasons. First, I sense that there is no urgency on the part of Congress to reach a mutually agreed upon plan to secure our borders, secure our seaports, and to gain as well as maintain accountability of non-citizens who are already in and are entering this country. As a 9/11 family member, these issues are near and dear to my heart and I firmly believe need to be acted upon sooner rather later. I must admit that one thing these tragic events had on me was to change my mindset on my views of the political process within this country. For example, my pre-9/11 strategy for voting was to vote strictly Democrat at all levels of governments. The events of 9/11 have since changed this mindset. I now make absolutely sure when voting that I cast my vote regardless of party affiliation for the man or woman that I feel would not hesitate to make those tough decisions for the good of this country and the people and not worry about what impact those decisions might have on his or her re-election. Secondly, I know that our Congressmen and women are being asked to tackle a number of very sensitive issues as they relate to implementing these recommendations. For I knew from the onset that this road would not be an easy one for our Law Makers to navigate, but they and they alone can take this journey and be prepared to make compromises as well as small and big sacrifices in order to reach bipartisan decisions. Congress must be prepared to do so even if the decision might not be in theirs and/or the interest of some of their constituents, but is nevertheless willing to make it for the good and benefit of restoring the faith and confidence of the American public as a whole in the values of our civil liberties. This, I feel too is the least Congress can do to pay the dividends earned from the return on investment that our loved ones so dearly paid into with their precious lives on the morning of September 11, 2001 to preserve the freedom of this great Nation. As political leaders and Law Makers, Congress must take heed and set aside their indifferences and political agendas and start making decisions based upon what I hope is placed in their hearts by the

Abraham Scott's Testimony
Before the
House Subcommittee on National Security,
Emerging Threats, and International Relations
On
June 6, 2006

Supreme Master as doing the right thing for the good of people who have and continue to give their all and all to preserve the very survival of this great Nation. For I can assure you that this enemy call terrorism is not going to patiently wait around for Congress and the Bush Administration to apathetically resolve any stalemates that would allow the appropriate actions be taken on the 41 recommendations of 9/11 Commission. This Government must remember that we are dealing with a very unique enemy. We are dealing with mentally unstable extreme fundamentalists of different nationalities who have declared a Holly War with the sole objective of just killing Americans at all cause for no justifiable reason. While some have compared the attacks by those terrorists on September 11, 2001 to the surprise attack on Pearl Harbor by the Japanese, we must always remind ourselves that we are not engaged in a conflict with a sovereign nation like Japan and its Allies during World War II. This conflict can't be defined as a gorilla-type warfare like the one fought in Viet Nam. I myself would characterize it as this country being engaged in a Here No Evil/See No Evil type of warfare. Another comparison is that this nation had the utmost and undivided support of its government, people, and resources throughout the entire period of World War II that eventually brought about the demise of this powerful enemy comprising primarily of Germany, Italy, and Japan. Likewise, the events of 9/11 brought about a heightening of Patriotism as it was clearly visible by the number of dwelling dawned with American Flags on poles throughout this country. On the other hand, this nation from a personal view point is becoming with the passage of time more and more complacent, less patriotic, unfocused, and not as united as it was right after the occurrence of these tragic events on the morning of September 11, 2001. Finally, I honestly don't think a great many people in this country have any idea what "Civilian Liberty" means. The dictionary defines it as the state of being subject only to law for the good of the community and individual rights protected by law and unjust governmental or other interference. Lets not forget. For you and only you alone as a law making body has the earthly power in your hearts, minds, and soles to ensure the preservation of the Civil Liberties of the people in these United States. So as I come to the conclusion of my testimony, I would like with your permission to reflect back upon when I was a young African American male growing up in a small rural Southern community and being educated in a segregated school system of Beaufort County, South Carolina, we would recite the "Pledge of Allegiance" and then sing the song "My County, "Tis of Thee" every morning at the beginning of classes. As we sang the lyrics "My County, 'tis of thee, Sweet land of Liberty.....", I can vividly remember that this song would always instill in me a sense of comfort and security. The events of 9/11has adversely affected my views in regard to the lyrics of this song. I am asking your help, Congress, to reverse this negative attitude of mine and to restore the confidence of the American people in their civil

Abraham Scott's Testimony
Before the
House Subcommittee on National Security,
Emerging Threats, and International Relations
On
June 6, 2006

liberties, last but not least to reassure the family members that their loved ones did not died in vain. I thank you and may God Bless each and every one of you on the House Subcommittee on National Security, and may God Bless America.

Mr. SHAYS. Abraham Scott, may God bless you.

At times like this, hearing just from our first three folks in this panel, I just consider it a privilege to hear what you have to say, and I just can't tell you how grateful I am that you all are here.

Mr. SCOTT. And in conclusion, you will get a copy of this book, I will give it to your staff as well as Congresswoman Maloney will be getting a copy.

Mr. SHAYS. Why don't you tell us what that book is?

Mr. SCOTT. This book contains the bio and picture of all 184 victims that perished at the Pentagon on September 11th, the 125 individuals at the Pentagon and 5 on flight 77. This book was authored by the Pentagon. Thank you.

Mr. SHAYS. Thank you.

Don Goodrich, thank you so much for being here. You're kind of the closer. We'll take few questions, and then we'll have a dialog among us. Thank you for being here, Mr. Goodrich.

STATEMENT OF DON GOODRICH

Mr. GOODRICH. Thank you for inviting me. You, Mr. Shays, and Mrs. Maloney have been great supporters of the families over the past nearly 5 years.

I'm going to go way back in time in the beginnings of my remarks to some language of John Adams, and when I say way back in time, I'm going back to 1765. It was then that he said, "Be it remembered that liberty must at all hazards be supported. We have a right to it, derived from our Maker. But if we have not, our fathers have earned and bought it for us at the expense of their ease, their estates, their pleasure and their blood. And liberty cannot be preserved without a general knowledge among the people who have a right from the frame of their nature to knowledge, as their great Creator who does nothing in vain, has given them understandings and a desire to know. But besides this, they have a right, an indisputable, unalienable, indefeasible, divine right to the most dreaded and envied kind of knowledge, I mean of the character and conduct of their rulers."

One hundred and fifty years or so later, George Russell, who was a distinguished literary man in Ireland in the early part of the First World War, wrote, "We"—meaning the Irish people—"have to discover what is fundamental in Irish character, the affections, leanings, tendencies toward one or more of the eternal principles which have governed and inspired all great human effort, all great civilizations from the dawn of history."

In the past 3 years or so after the initial outpouring of understanding, cross-communication and commitment following September 11th, I've come to wonder about what we understand as the fundamental character of our American society. The first three Articles of our Constitution talk in terms of the American Government. In *Marbury* v. *Madison,* we established the notion that our Supreme Court would resolve essentially constitutional questions and issues of Federal law. In addition to those three branches of government, the first amendment gave the press strong powers to report on what happens in this country. And in the past 3 years, it's been my perception—and I'm just one guy coming from a little

town in southwest Vermont—that balance of powers is in grave danger.

The observations of the members of your subcommittee, about the disclosures in the New York Times are very troubling. I look to you to know those things. I don't want to wait for the New York Times to tell me those things. And if you can't get that information, and the judiciary has no role to play, as it appears it does not, we as citizens have no access to the kind of knowledge that allows us to make good decisions about how we vote, and what we say and what we advocate for.

The Civil Liberties Oversight Board, about what we heard testimony today, is, in my mind, an undersight board. It would be like my giving my business manager the task of determining what clients I take at my law practice and which ones I don't take and how much I charge. In the end, I'm going to tell her what I'm going to do, and if she doesn't like it, that's too bad for her. So there's a semantical problem, a problem of semantics in the notion of an oversight board, if it isn't oversight at all, and I don't see that it is.

These issues are of great importance not just from a historical perspective for me. My wife and I recently came back from Afghanistan and observed the struggle of that nation to build institutions, police, judicial, commercial, the whole panoply of institutions that make a stable society. And I'm very troubled, as was observed during these hearings, about the notion that the commitment to Afghanistan is soft and eroding. If that takes place, we're going to have another area of this globe that is susceptible to the breeding of more terrorists.

I attended a conference in Edinburgh, Scotland, recently on terrorism. And a mathematician, Gordon Woo, who works for Risk Management Solutions, I believe is the name of the firm, is trying to use game theory to evaluate the risk of terrorists, and in that—in his presentation he used this illustration. The illustration shows 10,000 condoning terrorism, and above that are three groups of people that were identified by Abdullah Azzam in the 1980's, the highest group, the red, being the cream of the cream of the cream. Those are the ones who will give their lives for the jihad. The next group are an even smaller group, and they're the ones who flee the world of the civil life that we know and become warriors; and the third group, which consists of thousands who want an Islamic state. But what's important to me is the large group at the bottom of the pyramid. They're the ones who condone terrorism. They're the supporters of terrorism.

The two most difficult images for me following September 11th were watching my son's plane fly into the South Tower. The second most difficult was watching the cheering crowds across the globe as news of September 11th spread. It's those cheering crowds that we need to address, and we need to convince them that terrorism has no place in the civilized world, and we will not convince them of that if we have abandoned the essential character of our country. If we live in a country where there is such secrecy that the people on this panel, the people on the oversight board created by the legislation that we advocated for, cannot get information about what their government is doing, it reminds me a little bit of Osama bin Laden in the secrecy with which he conducts his operations.

And I'm going to finish with a quote, one of my favorites, from George Russell. He said that it is eternally true that we are condemned to be as that we condemned. We all condemn terrorism, and we all condemn the secrecy and the tactics of violence toward civilians that occurred on September 11th. What we must be cautious about is that we do not acquire the characteristics of our enemy, and it's my belief that unless we have civil liberties oversight here in this country that demonstrates to the world that we do control the liberties we cherish, that the world will not believe us when we try to advocate for the democracy that we seek in other countries. Thank you.

Mr. SHAYS. Thank you, Don Goodrich. I think your poetic way of starting off and ending was a nice way to end the testimony part of this panel.

[The prepared statement of Mr. Goodrich follows:]

CONFRONTING TERRORISM

The 9/11 Commission Recommendations:

Balancing Civil Liberties and Security

Donald W. Goodrich
Donovan & O'Connor, LLP
1330 Mass MoCA Way
North Adams, Massachusetts

Chairman of the Board[1]
Families of September 11

Testimony

House of Representatives

Committee on Government Reform

Subcommittee On National Security, Emerging Threats and International Relations

June 6, 2006

---

[1] The opinions expressed in these remarks are my own and are not intended to and may not represent those of the members of or positions taken by Families of September 11.

CONTENTS

INTRODUCTION 1

WHAT IS TERRORISM? 2

SEMANTICS OF WAR AND TERRORISM 4

WHY IS THERE TERRORISM? 5

PRESERVING OUR NATIONAL BEING 7

CONCLUSION 13

INTRODUCTION

Combating Terrorism: The 9/11 Commission Recommendations and the National Strategy was the agenda heading for hearings held last year. There is an implicit semantic asymmetry in the use of the term "Combating Terrorism" that challenges discourse on the topic of this hearing – *9/11 Commission Recommendations: Balancing Civil Liberties and Security*. As will be apparent from the following remarks, "terrorism" is a method of dispute resolution. Draconian methods of war do not succumb to war, their uses are increased, not abated, by it.

Our combat (our war) must be with (against) terrorists. They must be isolated, captured or killed by our military and denied opportunities to attack us by our civil and intelligence infrastructures. But terrorism, the method, can only be marginalized (methods can never be defeated) by its global repudiation. That is done by civilians, not just in this country but around the world, insisting upon and acting to secure their basic freedoms, their civil liberties, in the face of the grave danger to all civilized people from the use by terrorists of their method, terrorism.

Subtitle B of H.R. 5017 or its likeness is necessary to the preservation of our core values as Americans and will enhance our security by repudiating and marginalizing terrorism as a method of international dispute resolution.

WHAT IS TERRORISM?

"Terrorism" is a method employed by one or more groups to impose their will on others for the purpose of altering their power relationships, characterized by the threat or use of extreme violence to injure and kill "innocent" civilians and damage and destroy their property.[2] The word "innocent" is put in quotation marks for two reasons. What it means to be "innocent" might be debated by some and because it begs the questions to be explored in these remarks. If the rules governing the alteration of the balance of global power allow for the methods employed by terrorists (i.e., terrorism), will the notion of the "innocent civilian" become obsolete? Can there be anyplace where people are free to conduct their daily affairs in peace? Will we all be transformed into combatants to save ourselves – devolving into chaotic violence?

In his State of the Union address on January 6, 1941, President Franklin Roosevelt said: "In the future days which we seek to make secure, we look forward to a world

---

[2] While the United Nations has not yet accepted a definition of terrorism, the UN's "academic consensus definition," written by terrorism expert A.P. Schmid and widely used by social scientists, reads:

> Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby — in contrast to assassination — the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organization), (imperiled) victims and main targets are used to manipulate the main target (audience[s]), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.

Schmid, 1988.

In November 2004, a UN panel described terrorism as any act: "intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act."

founded upon four essential human freedoms." He identified those freedoms as freedom of speech and expression, freedom of every person to worship God in his own way, freedom from want and freedom from fear. Less than seven years later, December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights which, in its thirty Articles, affirmed a global commitment to these four freedoms for all the people of the world. It is in the sense of these people that I use the term "innocent."

The freedoms proclaimed by President Roosevelt and addressed in the Universal Declaration of Human Rights are freedoms belonging to "civilians" (e.g., soldiers cannot expect to be free from fear and want and to speak their minds). Among them are the "civil liberties" that Subtitle B of H.R. 5017 is designed to protect.

The last of the thirty Articles of the Universal Declaration of Human Rights attempts to secure those freedoms by declaring that:

> Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

But the struggle to secure these basic freedoms to be innocent civilians cannot succeed by "Declarations" alone. In 1993, the World Trade Center was bombed killing six. In 1997, a leaflet was found in the split-open remains of one of 62 tourists murdered in Luxor, Egypt, demanding release of Sheik Abdul Rahman, a blind cleric serving a life sentence in the US for planning to commit terrorism in New York in 1993, and by February 1998 al-Qaeda had made its own declaration – a declaration of war with the American people. Six months later, in August, it attacked the US Embassies in Tanzania

and Kenya killing 257 people, including 12 Americans, and injuring 5,000 others, culminating in the attacks in the United States on September 11, 2001, killing nearly 3,000 innocent civilians. Article 30 of the Universal Declaration of Human Rights had been in place for over fifty years on that date, and it is not now stopping the chaos in Iraq and Darfur. Nor can military force alone stop it.

SEMANTICS OF WAR AND TERRORISM

Much of the discourse in this country about terrorism centers around the expression "war on terrorism" or its close variant "war on terror." Webster and other lexicographers give to "war," "on," "terrorism" (and "terror") a variety of definitions each. But the combined use of these words in a single expression, without context, has no clear meaning and in context is usually an obscure emotive inflammatory: nearly always so when conjoined with September 11, 2001.

"Terrorism" is a method of waging war. One can never engage in a war, to say nothing of win a war, on a method of war. There is a tautology imbedded the terms "War on Terrorism" and "War on Terror," and their uses are at best benignly diversionary and at worst serve as exclamation points added to assertions that deserve serious debate that is foreclosed by their raw emotional impact.[3]

[3] Although *The 9/11 Commission Report* acknowledges that terrorism is a "tactic," it attempts to justify the use of the expression "War on Terrorism" by claiming that "[c]alling this struggle a war accurately describes the use of American and allied forces to find and destroy terrorist groups and their allies in the field, notably in Afghanistan." See page 363. But this only blurs the concept of a method of warfare with the people who use it.

The war (combat) we talk of must be "against terrorists," not "on terrorism." If we talk about terrorism, we should talk of its repudiation. To repudiate: to reject as untrue or unjust, cast off, spurn.

We cannot defeat "terrorism" with war: the armed hostilities glorified by terrorists. Only when there is global disdain for, repudiation of, "terrorism" will "terrorists" (those who use the method) be marginalized and their numbers depleted. As Martin Luther King, Jr., said, "Wars are poor chisels for shaping peaceful tomorrows." The discourse must change. Soldiers can and should capture, isolate and kill terrorists – the actors, their handlers and co-conspirators. They cannot effect the "repudiation of terrorism." That is a job for civilians.

WHY IS THERE TERRORISM?

The very existence of terrorism is dependant upon acceptance of the method by a constituency. And there is one. It consists of the poor, the uneducated, the hopeless, the hungry, the oppressed and the proud. And there are many of them. Many more of them than there are those who are the targets of terrorists.

It is not the primary purpose of terrorists to kill, maim and destroy. The violence is symbolic[4] and the symbol the more effective when those who suffer from the violence suffer more horribly, are more numerous and are more innocent. The more outrageous,

[4] Clive Walker, a Professor of Criminal Justice Studies and author of several articles on terrorism has said: "Terrorism attacks are devastating but are largely conceived and carried out as symbolic with their real impact directed at the state. Terrorism is a sub-form of political violence and should be viewed as at the pinnacle of risks and liabilities for our political system because it seeks to perpetrate harms which threaten the entire population and political economy. By comparison, auto accidents, earthquakes, and other natural disasters may also have terrible results but they do not put at risk the system of our society and the existence of our state."

apparently senseless and dramatic the behavior, the more attention the terrorist message gets. The terrorism attacks in America on September 11, 2001, serve as a tragic example of this phenomenon.

The "true" message of a terrorist act is always obscure, lending more horror to the event and leaving its interpretation to the differing minds of its observers. But, whatever the motives of those who conspired with, planned, financed and executed the September 11th attacks, those attacks sent a message understood by the terrorists' non-participatory constituency to present a challenge or, rather, declare something like this:

> We do not agree that those we target and others like them can have all that they have while those who believe in us suffer so and we propose that we resolve our disagreements with you in a new way, because the old ways are not working for us. We do not have the numbers of soldiers and weapons that you do, so we will not engage them directly, for we know we will lose. Nor do we have the economic resources or know-how to successfully compete with you in the marketplace. So, we will not debate with you about what bothers us, because you won't listen and we will get nothing.
>
> War, always the ultimate method of international dispute resolution, will be our means of equalizing our economic and power relationships with you. But, we are going to use new rules for engagement in and conduct of our war with you, because under the old rules you have always won and would continue to win.
>
> Our message to you is this. These are the new rules of war. We will strike without any predicate provocation or act of aggression by you (imminent or in fact) and when we do we will find ways to target specifically and kill your civilians, those who support you and your political leaders. Both sides will suffer losses, as always occurs in war, but instead of not knowing just who will die for us, we will designate them at the outset while you will leave the deaths of your soldiers to chance. Using our methods we can dramatically increase the

> number of those we kill in proportion to those who give their lives for us.
>
> Whether you call our rules variants of your rules of "double effect," "proportionality" and "utility" or unprecedented new rules, they are now the rules because we say they are and because we will play only by them. Under your rules you accept, as a necessary incident of war, civilian deaths, but only if those deaths are the unintended effect of your intention to kill your adversary's combatants, subject of course to your "extreme necessity" exception. Under your rules of proportionality, you claim that civilian deaths must be small in proportion to those combatants you hope to kill. And, of course, under your rules you know that some of those (but not precisely whom) you send to kill will die (some at your own hands), but expect and hope that fewer of them will die than those they kill. In short, under your rules the deaths of your soldiers and your adversary's civilians are just as certain as under ours: the only difference is you don't intend them and we do. And where your very way of life is threatened (i.e., what you call "extreme necessity"), your rules permit civilians to be the targets and the proportion of those civilians killed to enemy combatants to be high. We reject your rule that political leaders are safe from the killing of war. Your leaders will be our targets and ours will not be easily known or found by you.
>
> Although we need no justification and give none, by these acts of what you call "terrorism," we proclaim "extreme necessity." The way of life of those who support us is so dismal, hopeless and full of fear in the face of your economic and military supremacy you have left us with no choice.

But there are choices.

PRESERVING OUR NATIONAL BEING

At the turn of the twentieth century, George William Russell (AE), one of Ireland's most distinguished literary men, wrote *The National Being*. In addressing the Irish problems in the early days of World War I he said, "We have to discover what is

fundamental in Irish character . . . the affections, leanings, tendencies toward one or more of the eternal principals which have governed and inspired all great human effort, all great civilizations from the dawn of history."

Nearly a century later, we Americans have to discover what is fundamental in the American character and demonstrate to the world that we will not allow the threat of purposeful violence against our innocent civilians to alter our fundamental values. And this demonstration cannot be made alone by employing the very violence that is the stock in trade of terrorists. An attempt to do so will fail and only prove true Russell's sad assertion in *The National Being* that "no law is more eternally sure in its workings than that which condemns us to be as that we condemned."

Many will remember the television images of the triumphant faces in the cheering crowds in some parts of the world as news of the September 11th attacks spread. Those faces belonged to the constituency the terrorists claim to serve. Why did they exalt at the death and destruction?

Many of those who cheered are uneducated, and it is easy to say that terrorism's effectiveness can be eroded by educating the terrorists' constituency. It is harder to accept responsibility for educating ourselves about them. This is our first and most difficult choice. Who are these people? They all have mothers who once loved and protected them. Many are fathers who want to preserve for their children the culture of which they are proud and that has allowed for their survival and the survival of their ancestors over centuries. They were all once innocent children like all those killed on September 11th. And they and their relatives are teaching their children not only about their history and

culture, but also about their perceptions of us. Unless we educate ourselves about these people, we have no hope of educating them about us. Thus, the civilian populations put at risk by terrorism – we – have no choice but to open our minds to other ways of thinking about the world and its people. Only if we make this choice will their minds, the uninformed minds we must touch, be open to us.[5]

What we impart to those minds will not be what we say, but what they observe us do. We must conduct ourselves with the courage of those we hope to touch. They face hunger, deprivation, fear, oppression and death every day. Most have never known the civil liberties we have and have for too long taken for granted. We must face the danger of terrorist attacks with a clear eyed resolve that, do as they will, we will not be diverted from our commitments to the very freedoms that have made our country great, among them the freedoms of religion, of expression, and from fear. These are the civil liberties Subtitle B of H.R. 5017 seeks to preserve.

What of the fourth of President Roosevelt's four freedoms – freedom from want? Many in those cheering crowds were and, likely still are, poor and hungry. Those of us who have an excess of wealth must choose to share it with them and our government policies must encourage this sharing. The operative word here is "share." We must become partners with and give strength to the very people who terrorists incite and rely upon to applaud their method – terrorism. As counter intuitive as this appears, it is a choice we must make, because it is the despair and lack of hope that poverty and hunger bring that must be reversed to turn from the terrorists the constituency that supports them.

---

[5] See *9/11 Commission Report,* "Engaging the Struggle of Idea" *at pp. 375-378.*

We can make this choice in many ways. We can do it by the way we cast our votes in the political process. We can do it in our private giving. We can do it in our banking and business dealings. We will have to sacrifice some, even many, of our profits and pleasures in the process. But, however we do it, we must do it, not giving down, but giving across to co-equals in the experience of life – sharing with those in cultures we do not yet, but must, come to understand. This too will not be easy, nor can it be done from a remove. But it must be done if we are to marginalize terrorism. We who have so much cannot be indifferent to the plight of those who applaud, but do not participate in, the use of terrorism. For if we are, they will be indifferent to the suffering terrorism has brought and will bring to us.

This may sound to some like do-gooder proselytizing, but it is not. It is a hard, pragmatic assessment of what we who call ourselves educated, enlightened and civilized must do if we are to be effective in the repudiation of terrorism; if we are to be effective in preserving the civilization we have come to rely upon to protect us and the civil liberties central to our culture. Put another way, to avoid a spiral of violence that compels us all to become combatants, we must do these things. That it does or does not conform to some moral imperative is irrelevant.[6]

In the end, our behaviors, not our declarations, are the only ways to undermine the root causes for the use of terrorism. We must reject the notion that terrorism as a means to alter the global balance of power can ever succeed in taking away our civil liberties and

[6] See the recommendation at page 379 of the *9/11 Commission Report.* I do not agree with the statement that immediately precedes that recommendation that "[t]errorism is not caused by poverty," although I do agree that "many terrorists come from relatively well-off families." See page 398 of the report. Here, again, the Independent Commission Report conflates the perpetrators with their method and ignores the broad non-participatory constituency that applauds their use of terrorism.

convince, particularly would-be terrorists, that the converse is true – that use of force intended to kill and frighten innocent civilians (the method, "terrorism") will only strengthen our resolve to adhere to our core values. Obstinate insistence upon preservation of our civil liberties, in the face of danger from those who would deny them, will demonstrate to the terrorists and the rest of the world that terrorism has no place in civilized society. Only then will the cheers of the crowds be turned to scorn and the use of terrorism relegated to history.

But this will take time, perhaps generations, and cannot be done by military force alone. As we do these things, we must strengthen our civil institutions and private sector infrastructures at home and engage our civilian populations in risk awareness, vigilance and deterrence activities calculated to protect us from those who would do us harm. Above all we must preserve the essential character of our nation. After all, that is what the terrorists want to undermine. They want to make us like them. We must prove false the prophesy of George Russell that "[a]ll great wars in history, all conquests, all national antagonisms, result in an exchange of characteristics."

How do we do this? We must insist upon preservation of the essential character of this nation, inform our citizens of the risks we must take to preserve it, and embolden them to take those risk.

In 1765, shortly after news of the Stamp Act reached the American colonies, John Adams completed "A Dissertation on the Canon and the Feudal Law" in which he wrote:

> Be it remembered that liberty must at all hazards be supported. We have a right to it, derived from our Maker. But if we have not, our fathers have earned and bought it for us at the expense of their ease, their estates, their pleasure,

> and their blood . . . . And liberty cannot be preserved without a general knowledge among the people who have a right from the frame of their nature to knowledge, as their great Creator who does nothing in vain, has given them understandings and a desire to know. But besides this they have a right, an indisputable, unalienable, indefeasible divine right to the most dreaded and envied kind of knowledge, I mean of the character and conduct of their rulers.

The victims of the September 11 attacks paid a price for the liberty they had, and those who survive them have a right to know the true nature of the risks they face, what their government is doing to confront those risks and how their essential freedoms are being affected in the process. And they must be emboldened to face those risks with courage and to preserve their liberty in the process.

The repudiation of terrorism (the method) requires not only that terrorists be denied a victory over the values that define us as a nation but that we serve as an example to the rest of the world, letting it know that we will risk injury, death and deprivation to preserve what has made our nation great. This is not to say we must be unwise in the steps we take to protect against replication of the September 11th horrors. But wisdom arises from suffering and cannot be applied in its denial. Our laws must never compromise what the victims of September 11th lived, suffered and died for.

Excessive secrecy must be eliminated. Here, too, a core element of our national being is at stake. As John Adams observed, no democracy can long survive without public knowledge of the conduct of its leaders. To shroud that conduct in the false cloth of national security exigency is to grant the terrorists another victory. What is false or true cloth cannot be decided by the wearer alone. And when all branches of our government fail us in this, those who try to tell us the truth should be granted immunity when they do.

Otherwise, we will never know the conduct of our leaders. And to those who say the search for what is true or false justification for secrecy undermines what they call the "war on terrorism," I say not doing so does worse. Secrecy and false reasoning are at the heart of the Al Qaeda strategy. We must not allow ourselves to exchange our characters with those of the enemy.

CONCLUSION

Our discourse must be intellectually rigorous and honest. "Terrorists" must not be conflated with their method, "terrorism," nor should their poor, uneducated and disheartened, non-participatory constituency be classified and treated as "terrorists." We must come to know these people and give them a chance to know us. We must show them and the rest of the world by our behaviors that we will not abandon the values that define us as a nation – that we care about them, that we have the courage to preserve our civil liberties in the face of the risk of death at the hands of those they applaud, that they too can have these liberties, and that terrorism has no place in a civilized world.

The conduct of our leaders as they face these deadly threats must be made known to us and exceptions closely monitored by branches of government independent of them. Leaders in the Executive branch must be monitored by the Legislature and both, ultimately, by the Judiciary. And those who expose the truth should be protected (not condemned) when all our leaders fail us in this. Our democracy depends upon it.

If we do not confront challenges to the freedoms that define us as a nation, we capitulate to the terrorists, further alienate their constituency from us and embolden the use of terrorism. It is the purpose of terrorists to diminish our civil liberties. To avoid this

outcome our leaders must candidly inform us of the dangers we face and encourage us to confront them. Our countrymen must be stakeholders in and vigorously defend their basic liberties, the freedoms (of expression and religion and from fear and want), that are the soul of our national being and set that example for the rest of the world. Subtitle B of H.R. 5017 attempts to do this by assuring that we are allowed the freedom to believe as we will and express ourselves without fear of retribution from our own government. Whether it will or not remains to be seen. It may not be strong enough. But if it, or its close cousin, is not enacted into law, essential elements of our national life, our civil liberties, are at risk of unwitting loss – just what the terrorists want – and terrorism, the method, will continue, whatever success our military may have in isolating, capturing and killing the terrorists who now use it.

Mr. SHAYS. I'm going to give Mrs. Maloney the gavel for a second as well as the question while I'm just gone for a few minutes, and she'll start us off, and I will be right back.

Mrs. MALONEY [presiding]. Well, first of all, I just want to thank all of you not only for your really stirring testimony today, but for being such effective advocates for change. I truly do believe that the 9/11 Commission would not have been created without your support, that the funding and extension of time that they requested in their subpoena powers would not have been given without your support, and I truly believe that the passage—I know firsthand that the passage of the Intelligence Reform Act would not have happened without your constant vigilance and your constant work here in Congress and across the Nation to garner and build support. And I'm very, very proud to have had the opportunity to be part of your effort and to have worked with you, and I know that you will be with like-minded Members of Congress, those of us that are part of the 9/11 Commission Caucus, that you will be part of our efforts to pass the remaining recommendations.

I'd just like to say that some in Congress believe that our work is done, that we have really completed a major goal with the passage of the Intelligence Reform Act, and I'd just like to hear from you in your opinion what is the best argument to rebuff that claim; and are you surprised—I'd just like to know—are you surprised that here it has been 5 years since September 11th, and 2 years since the release of the 9/11 Commission Report, and are you still surprised that we have so much more to do with the Oversight and Civil Liberties Board and other areas, the radios, and, very importantly, the nuclear proliferation, that we haven't captured the ingredients that could be made into bombs that could kill and hurt other Americans? And I'd like to hear your comments on it. Are you surprised that we have still so much more to do?

Mrs. FETCHET. Well, I think at every juncture—I know when the Commission was established, I thought, well, our job is gone. Now the Commission will be created and get up and going, and so here we are at another juncture.

I guess my comment would be that I just—there was such—I think it was so important this Commission—I had such high hopes for them to be different than other commissions, because typically commissions are established, they do their work, make their recommendations, and they dissolve. This Commission stuck with it another year and put in the public policy, the PDP together, and I think that was very valuable to have that continued time to watch over things.

I am shocked, you know, to see the report card 6 months ago and then to hear them say again today that not much has changed over the last 6 months. I recognize the challenge because it's sweeping government reforms, but I do think that it's a reluctance. As I mentioned, you know, I think there are people that, you know, are focused on other things. I think there are people with other agendas, turf battles and so forth, that are the roadblocks that we face today.

I think that your proposing this additional legislation might be a vehicle to educate the general public and the media, you know,

of where we stand today, and certainly we're going to need the general public involved in this process.

Myself personally, I think that there is going to be another attack. I just think it's a matter of time, and there have been some measures that have improved, yet I think we've been lucky. And so I feel that we really have to focus, too, on preparedness, to prepare the general public, who are the real first responders, they're on the plane, in the building, on the train, and to educate them about preparing in their homes or communities.

I think that locally they're, well, light years away from where we are on the Federal level. I know in Connecticut they took it upon themselves to raise their own money, to make their own command center, to reach out to 14 surrounding communities that weren't part of the TOPOFF program and, because we're in Fairfield County, part of the State activities.

So, you know, my sense is that people are mobilizing themselves. NYPD is another example of that. They feel they can't rely on the Federal Government, and there's actually some value in that. But I do think we have a long way to go though.

Mrs. MALONEY. Much of the testimony today focused on the Privacy and Civil Liberties Oversight Board. I'd like to ask the panelists, were you surprised at the difficulties that we faced in getting answers from the Board? And were you surprised that on their report to Congress on what they're investigating, and what they've accomplished so far, and their interpretation of their responsibilities and powers? And I'd like to ask—I guess go to Mrs. Ashley, Mr. Scott, Mr. Goodrich.

Mrs. ASHLEY. I'm not sure I can say I'm surprised, because I don't believe the Board is independent with the number—it's a disproportionate number of Republicans on the committee. The fact that the Attorney General can control whatever it is they investigate, I don't know. I think that much more needs to be done to strengthen this Board and to turn it around, to protect our liberties.

I would like to respond just briefly to the first question you asked. I am appalled that we are in the position we're in right now, that changes have not been made. I think in part it's because there are other factors coming in here. We have political issues, turf protection; we have special interest groups, lobbyists; and yet there are 3,000 dead, and we have the recommendations to make us safe. And Congress and the President have not responded in the way that they should have. There's a complacency that's set in because we have not had another attack, and it's up to Congress and the press and, I suppose, still the family members to keep this in the public eye because we are not safe. Our ports are not safe. Our cargo is not safe. We have the nuclear threat really out there because it's accessible to terrorists, easily accessible to terrorists, and we're not taking the initiative that we need to combat that problem. So I just don't think the American public is as aware as they need to be, and the goal would be to try to enlighten them.

Mrs. MALONEY. Your testimony has, I'm sure, made many more people aware.

Mr. Scott, would you like to comment?

Mr. SCOTT. I can sum that up in three words: appalled, surprised and unfocused. Appalled for what hasn't happened to make this country safe.

Unfocused, it is my opinion that we will not get anything done until we get a leadership in this country that is willing to support what we are doing. I'm not saying it can be Republican or Democratic, just as long as we get somebody in there that can get the job done.

Surprised; yes, I was surprised this afternoon to hear what's going on in reference to the Board. I think that the administration is holding them hostage there on the White House grounds, I guess. And they can dictate what they do. As long as they are on that compound, you have no control over that Board. So something needs to be done.

Mrs. MALONEY. Thank you for your insights.

Mr. Goodrich.

Mr. GOODRICH. Yes. I'm not the least bit surprised at the comments you received today, as Mr. Van Hollen wasn't here for my remarks. But if somebody were asking my business manager those questions, she would be just as circumspect as they were. I'm not the least bit surprised. It's not going to work. I think it's palliative at best. In fact, I think it's worse than that because I think there's an illusion that there's an oversight that does not exist, and therefore, it degrades, not enhances, the opportunities for civil liberties preservation in our country.

With respect to the bigger question of the recommendations, the broader recommendations, of the 9/11 Commission that have not been adequately addressed and their mission fulfilled, you have an awful lot on your plate here in Washington. There are an awful lot of things going on. For us, the most important things are the loved ones we've lost, and I'm sure that the others agree with me that it's a terrible challenge for me to try to do justice to what my son would want me to do, but I cannot not do it. I have to be here, just as these others have to be here. And yet we're only four, and it's—the public is not going to wake up to this unless the people who control the agenda here in Washington—that's not us. It was us for months, and even once the 9/11 Commission came out, it was us. We'll never control the agenda in Washington again, and so it's going to be another group of victims that are going to be sitting in these chairs controlling the agenda, I hope later rather than sooner, unless you do.

And I'm not criticizing you, I'm applauding you. But by you, I mean the people here in Washington. We talk about a war on terrorism, which I think, as I said earlier, a tautology, it's a meaningless, amorphous and wastebasket term that provides a guise for all kinds of behaviors that have nothing to do with capturing and killing terrorists. We're not going to—we need to repudiate terrorism. We need to marginalize it. We need to demonstrate that it has no place in the civilized world, and we do that by our behaviors. We do that by the way we treat our own citizens and the way we treat citizens around the world. We do it by the way we spend our enormous resources in this country for attacking the poverty, the loss of hope, the absence of institutional infrastructures in failed states, in Third World countries.

Those are where we need—that's the agenda, so far as I'm concerned, that needs to be in the forefront, and it's not. But I can't change that, and I don't know who can.

Mrs. MALONEY. I want to thank all of you for your commitment and your moving testimony and being here today.

Mrs. FETCHET. I wonder if I can make a couple more comments. After hearing the panel on the Civil Liberties Board, I found myself much more skeptical. I think they see themselves as an advisory board, not an oversight board, and given the personalities involved, there is no way that they're looking for advice.

So I guess, I don't even know how to address it. Do you address it through legislation? Because I know just our personal experience, people don't want advice; they want to do what they want to do. And so, you know, I think they see their role much differently. It certainly was intended. So that would be my comment on the Board.

And I guess to Don's point about, you know, there's going to be other victims sitting here, you know, I feel so strongly that it's going to be a major attack next time, and it is going to be 500,000 people, not 3,000 people. And I know in conversations with Congressman Shays, he was concerned about these things before September 11th, and he—no one was listening, and, you know—and so I think people escaped here in Washington accountability because it's a bureaucracy. And I know our first experience in going to offices, they had a narrow view of the world. It was who their constituents are and what committee they sat on, so it wasn't them, and we were pointed in a million different directions. But my sense is the next time that people are going to be held accountable here in Washington for not doing the right thing.

Mrs. MALONEY. Thank you. Thank you for your warning, really. Always it's an inspiration to me. Every time I hear you speak and I'm around you, I'm always more dedicated to working harder on passing these reforms. Thank you.

Mr. SHAYS. Let me again thank all of you for being here.

What I would like to do, it may seem a little redundant, but I want to ask the question this way: What was the most surprising—you have some choice here. What was the most surprising thing you heard from the first panel or the second panel? What was the statements that were made in either the first or second panel that made you feel the most emotional or you reacted to?

I just want a sense of really your view of the first two panels. You've answered to some degree, and so you can briefly touch on it without giving a lot of detail. But if there's something else—I'll give you an example. Actually, I found myself thinking, well, we gave this—I'm talking about the second panel. We established a Commission without a lot of clout, and so they were being realistic in basically saying that it needed to be a cooperative model. It became almost clearer to me how they could function. I'm not saying function well, but they viewed themselves more as an advisory—well, I thought, well, that's logical, given how we've done it, given how they were appointed, given that their term is dependent on the person making the appointment. And I could imagine in my own mind that with that attitude, there would probably be some in the White House who would say, you know, this is great to have you

here, and we'll seek out your advice and listen to it, but in the end, when it comes to the big issues, I thought they're not going to get to first base.

Ms. ASHLEY. Right.

Mr. SHAYS. So that was my reaction.

But tell me, you know, what struck you the most positive and the most negative? You can describe it in those terms, but something striking about these comments. I'll start with you, Mr. Goodrich, and we'll—no. I'll start with you, Mrs. Ashley.

Mrs. ASHLEY. No. That's OK. He can go first.

Mr. SHAYS. You can go first.

Mrs. ASHLEY. To tell you the truth, I envisioned the Privacy and Civil Liberties Oversight Board as differently than it was portrayed today.

Mr. SHAYS. Right.

Mrs. ASHLEY. I believed that they would have more power. I was surprised of their view of their mission, where they were an advisory board. I was a little concerned that they didn't really have an answer when it was asked what they would do if someone refused to give them the information that they needed, where they said, well, if they refuse, it's like they had a right to, because the DNI can refuse or the Attorney General can refuse. But this, to me, is not oversight then if somebody can refuse to give information that they're looking for because it's been a complaint.

And also, I was just wondering, I don't understand how the Civil Liberties Oversight Board would work. Are they just going to respond to complaints, or are they actually going to just have an overview—when I read the Commission's charge, what they wanted the Board to do, it was to look across the government to see that our rights were being protected, and I had more of a global view of what their mission might be.

Mr. SHAYS. You mean afterwards or before?

Mrs. ASHLEY. Before any complaints are made, just for them to take a look.

Mr. SHAYS. I want to understand. You said you had a global view.

Mrs. ASHLEY. When I read the Commission's statement on the Board that would—in the report they talk about a Board that's established within the executive branch to oversee the government, and my interpretation was that it would be like a global overview of what our government was doing, especially in terms of the clandestine surveillance areas. So I was very surprised that their focus really wasn't globally, it was more like in response to complaints. And maybe that's the way it was intended; I just interpreted it differently.

Mr. SHAYS. OK. Let me go to you, Mr. Goodrich, and then to you, Mrs. Fetchet, and then to you, Mr. Scott.

Mr. Goodrich.

Mr. GOODRICH. I wasn't surprised at all. My emotional response was disappointment. My lack of surprise I think I've already articulated.

Mr. SHAYS. You have.

Mr. GOODRICH. It's just obvious they're not in a position to force outcomes, and if there's no one there to force an outcome or make

a clear disclosure that they failed to force the outcome so that the press then—and you and the press and the public generally is aware that there was an effort to force an outcome that was thwarted. Nothing will come of it.

Mr. SHAYS. Mrs. Fetchet.

Mrs. FETCHET. I think I spoke of it already. It was with regard to the Board. I was surprised, I'd have to say, to hear the Commissioners say that we haven't got much further than 6 months ago, because I was hoping that we would have progressed a bit.

Mr. SHAYS. You mention the Commissioners. I will tell you what I was surprised at. I was surprised that they were as comfortable with the Commission and appeared to be so supportive of what the mission has done to date. That did surprise me.

Mrs. FETCHET. You mean with regard to the Board, the Civil Liberties Board?

Mr. SHAYS. Both the chairman and vice chairman of the 9/11 Commission, I think, spoke rather favorably of the outreach of the committee. I mean, they were really magnifying the good and not coming to the same conclusions we came to.

Mrs. FETCHET. They didn't hear their testimony.

Mr. SHAYS. Exactly.

Mrs. MALONEY. I think they'd have a different opinion. I think they'd agree with Mr. Scott that it's an undersight board at this point.

Mr. SHAYS. Thank you. Anything else before I go to Mr. Scott?

Mr. Scott.

Mr. SCOTT. From a positive aspect, I felt like they were making great progress in terms of bringing the Board—in terms of getting it staffed. They didn't mention—at least I didn't hear—about funding, but apparently they're being funded, and they're moving not fast, but slowly. On the other hand, I was shocked to hear them talk about—well, not talking about nothing, because, in my opinion, they don't have any power, none whatsoever.

Mr. SHAYS. Yes.

Mr. SCOTT. It's just like it's to me, that's just like having what comes on the news, pork barrel, you just throwing in funding at a nonessential entity.

Mr. SHAYS. Yes. Just responding to you, and then I'll go to Mr. Van Hollen. I was prepared to argue with the Commission that I expected them to claim they had the authority to be aggressive and so on. So I was then prepared to ask them, well, show me where. And they took, I thought, a more realistic tack. They basically said, it's going to be through, you know, persuasion and cooperation and so on. So it was—I was surprised they went in that direction, but it's a more realistic one in that sense, but obviously disappointed to hear them, in my judgment, acknowledge what I think is quite evident. So the one thing they got from me was I thought they were being very up front and very honest with us, but naive.

Mr. SCOTT. The other thing I was surprised was that the person in charge of the Board didn't come to the hearing.

Mr. SHAYS. We had the chairman and the vice chairman. What we didn't have was the executive director, and—you know, testifying. So I think we had the two people that we should have had there.

Mr. Van Hollen, thank you for coming back. I knew you would.

Mr. VAN HOLLEN. Thank you, Mr. Chairman, and I'm very pleased to have the opportunity to rejoin you, and thank you all for your testimony.

I have had the opportunity to review some of the written testimony. I'm struck by the fact that all of you who really lost more than anybody else on September 11th, you and the other families who had loved ones who were killed, understand that in addition to wanting to prevent future September 11ths, we want to do so in a way that preserves what makes this country special, and an important part of that is accountability, holding your government accountable both for providing adequate protection and also for preventing unwarranted intrusions on civil liberty.

And the 9/11 Commission was part of holding this government accountable, and I'm struck in remembering that if it hadn't been for the September 11th families, we wouldn't have had a 9/11 Commission. We wouldn't have had the report. We wouldn't have had the subsequent report cards. We wouldn't be here today talking about progress under the 9/11 Commission Report and fulfilling those recommendations.

And that accountability is essential, and a part of that accountability was, of course, creating the Civil Liberties Board, and as I listen to your testimony, read your testimony here, we're struck by the fact that the reason the 9/11 Commission was successful was they were given that degree of independence and that ability to issue subpoenas, and I—Mr. Goodrich, I was struck by your comment just a few minutes ago about the fact that in some ways, if you create a Commission and a Board that is not equipped to do its job, you do provide us all with a false sense of security that someone is there minding the store and protecting our civil liberties, where, if they don't have the power to do it, and we think they're all out there doing it, that is probably the worst of all worlds.

You say we might as well get rid of them. Well, we should really strengthen their powers, and I think you agree with that. But if we don't, you're right. I think we're creating a situation of a false sense of security.

But I just want to thank all of you for being here today, and I think the other point you raised, Mr. Goodrich as well as others, that there is a danger as time goes on that people begin to forget the lessons and not pay attention to the recommendations of the 9/11 Commission. After all, they've now issued their final report card.

I was pleased to have them back here today. It's great that the chairman held this hearing, but we are going to continue, I hope, to rely on you as well as Congress, which has not, for the most part, done its job, to start doing a much better job of that oversight because that is a critical piece of this effort. So I just—I thank you for your comments and your testimony and all that you've done, and for the sacrifices that you've all made for our country.

Mr. SCOTT. Thank you. And I also look forward to working with you in the future.

Mr. SHAYS. Let me just say on behalf of the full committee, first let me ask, is there anything that we need to put on the record

that hasn't been discussed that you would feel badly if you left not having put on the record? Is there any last point? Yes, Mr. Goodrich?

Mr. GOODRICH. Actually, there is. And I won't spend any time on this except to say that I've been very much involved in terrorism risk insurance, and I have the firm conviction that without a risk transfer mechanism, namely insurance, to provide a vehicle for remedies for those who suffer harm in a terrorist event, two things happen. Those who suffer the harm have no effective remedy, or the remedy comes ad hoc after the fact, which I think is a poor policy for running our affairs. And the more important part of it is that with the risk transfer mechanism of insurance——

Mr. SHAYS. You know what, you're speaking a little in tongues. I understand a good deal of what you're saying——

Mr. GOODRICH. Let me try to thin it out.

Mr. SHAYS. Without being as poetic, just get to the point here.

Mr. GOODRICH. The point is if you pay premiums based upon risk and vulnerability for insurance to protect your property and protect you against liability, you're going to want to reduce those premiums. And by reducing those premiums, to reduce those premiums, you do risk-avoidance activities. So there's a terrific benefit, very broad, broad basis, across our entire commercial sector in having an insurance vehicle that is required for terrorist acts, that is rated according to the magnitude of the risk and the nature of the vulnerability, and people will then take steps to reduce the risk, to reduce their premiums.

Mr. SHAYS. Thank you. Well said.

Mr. Scott, would you like to make any closing comments?

Mr. SCOTT. Yes. One comment, and that is, I have been approached on a number of occasions that, I've seen you on TV on a number of occasions, you're a celebrity. It's not about me, as I'm sure I can speak for all others. It's about them, our loved one. And I want to make sure that it goes in the record not Abraham Scott, but the husband of Janice Marie Scott. Thank you.

Mr. SHAYS. Thank you.

Mrs. Ashley.

Mrs. ASHLEY. I have one other issue which I just wanted to make a comment on. In the final report of the PDP, they talked about the critical infrastructure risks and vulnerability assessment, and this is something that I believe is very important that we—they say that a draft infrastructure protection plan was issued in November 2005, but that no vulnerability assessments have actually been made. This is very important that we get on this and make sure that we have our critical infrastructure assessed and protected.

Mr. SHAYS. Thank you.

Mrs. FETCHET. My last comment is to just encourage you to do this great work, to hold hearings, to educate the general public, to provide oversight, and to talk about it during the elections because, you know, the safety and security of our country really has to be a priority.

Mr. SHAYS. Thank you. I close this hearing in the memory of Brad, Janice and Janice Marie and Peter. Thank you, all four of you, for being here.

[Whereupon, at 6:36 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. C.A. Dutch Ruppersberger follows:]

Congressman C.A. Dutch Ruppersberger
Committee on Government Reform

"9/11 Commission Recommendations: Balancing Civil Liberties and Security"

June 6, 2006

Statement:

Thank you Mr. Chairman for holding this subcommittee hearing entitled "9/11 Commission Recommendations: Balancing Civil Liberties and Security."

It has taken some time but the 9/11 commission on enemy combatants has given us our first serious public discussion about how to balance civil liberties and national security in a war on terror. I believe that the nation can't have civil liberties without security and can't have security without civil liberties. I believe

that we have not begun to ask the really hard questions. I am here to get those questions answered and to listen to solutions.

I have thought after reading this packet the consequences of a second major attack on the mainland United States – the detonation of a radiological or dirty bomb, perhaps, or a low –yield nuclear device or a chemical strike in a subway. Any of these events could cause death, devastation and panic on a scale that would make 9/11 seem like a pale prelude.

Let's be real an attack of this sort is already in the realm of possibility. The recipes for making ultimate weapons are on the internet, and the material required is available for the right price. 9/11 for all its horror was a conventional attack. We have the best of reasons to fear the fire next time.

A democracy can allow its leaders one fatal mistake – and that's what 9/11 looks like to many observers – but Americans will not forgive a second one. A succession of large –scales attacks would pull at the already fragile tissue of trust that binds us to our leadership and destroy the trust we have in one another.

The chief ethical challenge of a war on terror is relatively simple – to discharge duties to those who have violated their duties to us. Even terrorist, unfortunately, have human rights. We have to respect these because we are fighting a war whose essential prize is preserving the identity of democratic society and preventing it from becoming what terrorists believe it to be.

Terrorists seek to provoke us into stripping off the mask of law in order to reveal the "black heart" of coercion that they truly believe lurks behind our promises of freedom. We have to show ourselves and the populations whose loyalties we seek that the rule of law is not a mask of illusion. It is our true nature.

I look forward to hearing the testimony presented today and I look forward to asking questions of the witnesses.

○