

July 20, 2006

TO SECURE AMERICA

The 9/11 Commission's Homeland Security Recommendations



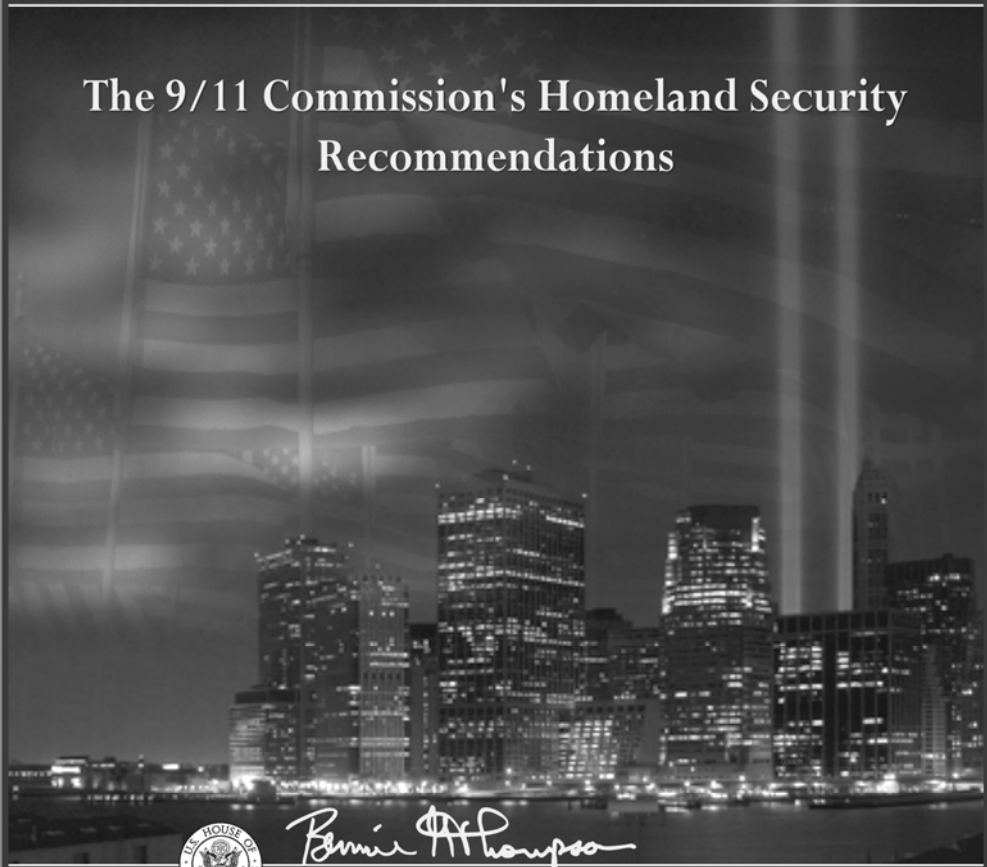
Bennie G. Thompson

PREPARED AT THE REQUEST OF CONGRESSMAN BENNIE G. THOMPSON, RANKING MEMBER
BY THE DEMOCRATIC STAFF OF THE COMMITTEE ON HOMELAND SECURITY

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Congressman Bennie G. Thompson (D-MS)

Ranking Member, Committee on Homeland Security

Congresswoman Loretta Sanchez (D-CA)

Ranking Member, Subcommittee on Economic Security,
Infrastructure Protection, and Cybersecurity

Congresswoman Zoe Lofgren (D-CA)

Ranking Member, Subcommittee on Intelligence, Information Sharing,
and Terrorism Risk Assessment

Congressman Bill Pascrell, Jr. (D-NJ)

Ranking Member, Subcommittee on Emergency Preparedness, Science and Technology

Congressman Bob Etheridge (D-NC)

Ranking Member, Subcommittee on Investigations

Congressman James R. Langevin (D-RI)

Ranking Member, Subcommittee on the Prevention of Nuclear and Biological Attack

Congressman Kendrick B. Meek (D-FL)

Ranking Member, Subcommittee on Management, Integration, and Oversight

Congressman Edward J. Markey (D-MA)

Congressman Norman D. Dicks (D-WA)

Congresswoman Jane Harman (D-CA)

Congressman Peter A. DeFazio (D-OR)

Congresswoman Nita Lowey (D-NY)

Congresswoman Sheila Jackson-Lee (D-TX)

Congresswoman Donna M. Christensen (D-USVI)

Congresswoman Eleanor Holmes Norton (D-DC)

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Congress of the United States
Washington, DC 20515

July 20, 2006

July 22, 2006 marks the two year anniversary of the release of the 9/11 Commission's final report and recommendations. As Members of the Committee on Homeland Security, we have worked hard to close the security gaps identified two years ago. Unfortunately, while there has been some progress, many critical 9/11 Commission recommendations relating to homeland security remain unfulfilled. We believe that the U.S. House of Representatives should move to act upon these recommendations before the end of the 109th Congress to ensure that our nation is as secure as it needs to be.

This analysis provides a side-by-side comparison of the 9/11 Commission's recommendations on homeland security, the 9/11 Public Discourse Project's ¹ grade on fulfilling each recommendation as of December 2005, and our proposals for fulfilling these recommendations.

These proposals, we believe, are critical for protecting our homeland. If acted upon they can do the following:

- Provide first-responders with the equipment, training, and resources they need to respond to a terrorist attack or other emergency.
- Provide for stronger transportation and critical infrastructure security planning and support.
- Help secure the border.
- Strengthen the intelligence community and its ability to share information with state and local law enforcement officials and others likely to encounter terrorists.
- Ensure that the War on Terror does not cost us our privacy and civil liberty rights.
- Support clear and robust congressional oversight of homeland security efforts.
- Support efforts to secure nuclear materials in the former Soviet Union.
- Provide comprehensive investigations and hearings on terrorist financing.

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We look forward to working towards meeting these goals.

Sincerely,

Bennie G. Thompson

Ranking Member, Committee on Homeland Security

Loretta Sanchez

Ranking Member, Subcommittee on Economic Security,
Infrastructure Protection, and Cybersecurity

Zoe Lofgren

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Eleanor Holmes Norton

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¹ The 9/11 Public Discourse Project was a non-profit organization made up of the original members of the 9/11 Commission that was created to monitor Congress and the Administration's fulfillment of the Commission's recommendations. It released its final report on December 5, 2005. <http://www.9-11pdp.org/>.

9/11 COMMISSION RECOMMENDATION

Provide adequate radio spectrum for first responders.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



if legislation 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.” *This grade changes to a C*

CONGRESSIONAL ACTION

Rep. Jane Harman (D-CA) and Rep. Edward J. Markey (D-MA) have introduced legislation to bring this recommendation to fruition. Rep. Harman is one of the leading sponsors of the bipartisan “Homeland Emergency Response Operations (HERO) Act,” H.R. 1646, which would set a firm December 31, 2006 deadline for the return of the analog broadcast spectrum to the FCC. This legislation, introduced April 14, 2005, was referred to the House Energy & Commerce Committee, where it remains waiting for action. We urge our colleagues to move forward with this legislation.

Likewise, Mr. Markey offered the Dingell-Markey Democratic Substitute to the digital television spectrum transfer provision in the Fiscal Year 2006 budget reconciliation bill which would set an effective “date certain” for freeing up spectrum to address the needs of first responders and dedicate \$5 Billion of auction proceeds to first responder interoperability grants. Unfortunately, the amendment was defeated during consideration in the Energy and Commerce Committee.

9/11 COMMISSION RECOMMENDATION

Establish a unified Incident Command System.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

The National Incident Management System (NIMS), which is based on the incident command system (ICS), was issued by the Department of Homeland Security on March 1, 2004 to provide a comprehensive and consistent national approach to all-hazard incident management at all jurisdictional levels and across functional disciplines. The Department set the hard deadline for full compliance by federal, state, and local emergency personnel as a condition for federal preparedness funds is October 1, 2006.¹

Many of us, led by Ranking Member Bennie G. Thompson (D-MS), have called for more funding and aggressive steps to train government officials at all levels on the NIMS system.² We were pleased with the increase in funding to \$22 million in Fiscal Year 2006 for the NIMS Integration Center, which will help improve NIMS compliance nationwide. As the failed response to Hurricane Katrina demonstrated, a unified incident command is vital to effectively responding to an emergency. We hope these first steps will prove crucial to leading the Department of Homeland Security to fulfill this recommendation.

¹ Department of Homeland Security, “State and Territorial Compliance Activities: Federal Fiscal Year 2006 (October 1, 2005-September 30, 2006),” October 4, 2005, on file with Democratic Committee staff.

² Letter from Congressman Bennie G. Thompson to Secretary Tom Ridge, October 4, 2004 on file with Democratic staff of the Committee.

9/11 COMMISSION RECOMMENDATION

Allocate homeland security funds based on risk.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.” *This grade changes to an A if the House passes the necessary provisions.*

CONGRESSIONAL ACTION

On several occasions the House has passed the “Faster and Smarter Funding for First Responders Act,” which would allocate homeland security grant funding based on the risk, vulnerability, and consequences of an attack on a given site. On April 28, 2005, the Committee on Homeland Security reported the bill and it eventually passed in the House with unanimous support from us.³

Additionally, Rep. Nita Lowey (D-NY) co-sponsored an amendment attaching H.R. 1544 to H.R. 3199,⁴ the House version of the Patriot Act Reauthorization, which unfortunately was not included in the final version of that law reported out of the conference with the Senate.

We continue to support the House bill, which allocates more homeland security funding based on risk, while still ensuring that each state receives a minimum level of support needed for terrorism preparedness. We are hopeful that the Senate will join us moving forward legislation that allocates homeland security funds based on risks.

³ Roll Call #170, May 12, 2005.

⁴ H. Amend. 507, July 21, 2005.

9/11 COMMISSION RECOMMENDATION

Critical infrastructure risks and vulnerabilities assessment.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“A draft National Infrastructure Protection Plan (NIPP) (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.”

CONGRESSIONAL ACTION

Through the leadership of Rep. Loretta Sanchez (D-CA) and Rep. Zoe Lofgren (D-CA), we have continually called for the completion of critical infrastructure risks and vulnerability assessments since the beginning of the 108th Congress.

In a September 2003 hearing before the Select Committee on Homeland Security, Rep. Sanchez explicitly asked then-Assistant Secretary for Infrastructure Protection Robert Liscouski to tell the Committee when a list of critical infrastructures, and details on protection measures needed, would be complete. The Assistant Secretary said “I would be surprised, frankly, if we had them done in the next five years.”⁵ Rep. Sanchez, Rep. Lofgren, and Rep. Thompson have sent several letters since then requesting information on the National Asset Database. Many of their concerns were captured in a report issued last week by the DHS Inspector General, entitled “Progress on the National Asset Database” (NADB).

We will continue to monitor this situation, as well as the implementation and development of the National Infrastructure Protection Plan, to determine what legislation, if any, is needed to assist the private sector and governments on all levels in identifying and protecting their assets.

In July 2006, Rep. Lowey’s (D-NY) amendment to the DHS Authorization Act for Fiscal Year 2007 implements the IG’s recommendations for the NADB. The Committee-approved amendment would require an annual review of NADB assets; give states an opportunity to review their submissions; clarify guidance for data calls; and identify milestones for the NADB.

⁵ Assistant Secretary Liscouski, testimony on “Implications of Power Blackouts for the Nation’s Cybersecurity and Critical Infrastructure Protection: the Electric Grid, Critical Interdependencies, Vulnerabilities, and Readiness,” before the House Select Committee on Homeland Security, September 17, 2003.

9/11 COMMISSION RECOMMENDATION

Private sector preparedness.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

In the 108th Congress, several Homeland Security Committee Democrats introduced the “Private Sector Preparedness Act of 2004,” which directed the Secretary of Homeland Security to develop and implement a program to enhance private sector preparedness for emergencies and disasters. In addition, we have called on the Administration to work more closely with business leaders to encourage all American businesses, especially those in high-risk areas, to incorporate National Preparedness Standards into their business practices. We are assessing what legislation is needed at this time to assure better private sector preparedness. We also believe, as has been assessed by the non-partisan group Business Executives for National Security, that the private sector plays a critical role in the nation’s federal, state and local preparedness efforts. We hope to continue to assess how to best marshal private sector assets during a terrorist attack or natural disaster.

9/11 COMMISSION RECOMMENDATION

National Strategy for Transportation Security.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

The Intelligence Reform and Terrorism Prevention Act of 2004 called for the National Strategy for Transportation Security to be completed by April 2005. The report was not delivered by this date. Over the course of the months that followed the April 2005 deadline, Ranking Member Bennie G. Thompson (D-MS) and other Committee Members wrote at least 4 letters to the Administration inquiring about the status of the report and/or calling for hearings to examine the matter. A classified version of the report was finally delivered nearly 5 months later in September.

Rep. Thompson then sent a letter to Secretary Chertoff asking that a declassified version of the report be produced and delivered to transportation stakeholders, such as managers of subway systems, so that it could be used by those most at-risk of a transportation attack. Since then, we have told Administration officials that the report lacks sufficient details.

Additionally, Homeland Security Democratic Members have introduced or supported several bills that would require supplements to the National Strategy in order to ensure that specific transportation sectors are adequately protected. For example, Rep. Jane Harman (D-CA) co-authored, and Rep. Loretta Sanchez (D-CA) and other Committee Members co-sponsored H.R. 4954, the “SAFE Port Act,” which called for a strategic plan to enhance the security of the international supply chain. While the SAFE Port Act has been passed by the House, the Senate has not yet passed companion legislation. Ranking Member Bennie G. Thompson (D-MS), working with Rep. Corrine Brown (D-FL) of the Transportation & Infrastructure Committee, also introduced H.R. 5714, the “Rail and Public Transportation Security Act of 2006,” which called for a National Rail and Public Transportation Security Plan. The House has not yet acted on H.R. 5714.

9/11 COMMISSION RECOMMENDATION

Improve airline passenger pre-screening.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

Homeland Security Democrats have repeatedly called for coordination between the two Department of Homeland Security agencies that are responsible for passenger screening on foreign and domestic flights – the Bureau of Customs and Border Protection (CBP) and the Transportation Security Administration (TSA), respectively.

During the Committee’s consideration of H.R. 4312, the “Border Security and Terrorism Prevention Act of 2005,” which was passed by the Committee in December 2005, Rep. Peter DeFazio (D-OR) offered an amendment to ensure that the Department begins using technology to check U.S.-bound passengers against watch lists for admissibility before their flights depart. The Department’s current policy of requiring passenger information to be transmitted no later than 15-minutes after a flight departs is inadequate in the post-9/11 era. Rep. DeFazio withdrew his amendment after Chairman Peter King (R-NY) agreed to work with him to craft bipartisan language to close this security gap. This bipartisan compromise was eventually included in the Manager’s amendment to H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, accepted on the House floor, as well as into the text of H.R. 4439 the “Transportation Security Administration Reorganization Act of 2005,” which was reported out of the Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity on March 16, 2006. This legislation has not yet been acted upon by the Full Committee.

On June 27, 2006, Ranking Member Bennie G. Thompson (D-MS) wrote to the Commissioner of Customs and Border Protection urging that any program the Department pursues to screen

international passengers before they board flights bound for the United States must feed into the domestic watch-listing program being developed by TSA.¹

Homeland Security Democrats have also called for a robust redress process for those who are wrongly flagged under Secure Flight or any other passenger prescreening program. During the mark-up of aviation security legislation on March 9, 2006, Economic Security, Infrastructure Protection and Cybersecurity Ranking Member Loretta Sanchez (D-CA) offered an amendment to ensure a fair and accessible redress process where TSA is required to reach a determination on all redress applications within 90 days. Additionally, in June, Ranking Member Thompson co-requested a General Accountability Office (GAO) investigation into the redress process for innocent travelers wrongly identified against the Terrorist Screening Center's Terrorist Screening Database.²

Additionally, Homeland Security Democrats have supported the establishment of a Registered Traveler program to improve the processing of frequent air travelers, although we have expressed strong concerns about the current structure and timelines that the Department is pursuing in developing this program.

Finally, after the Government Accountability Office issued a report in April 2003 finding that there were at least 12 different terrorist watch lists,³ which conflicts with the 9/11 Commission's recommendation to create a unified terrorist watch list, Homeland Security Democrats repeatedly called on the Administration to correct this problem.

While the new Terrorist Screening Center (TSC) appears to have achieved that goal, there are still questions about the level of interoperability between the databases linked by the TSC, as well as the funding and support the TSC is receiving from various security agencies. Committee Democrats have continued to push the Administration to better support the TSC's mission.

¹ Letter on file with Democratic staff of the Committee.

² Letter on file with Democratic staff of the Committee.

³ "Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing," GAO Report GAO-03-322.

9/11 COMMISSION RECOMMENDATION

Improve airline screening checkpoints to detect explosives.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

Ranking Member Bennie G. Thompson (D-MS), offered a Motion to Recommit with Instructions to H.R. 1817, the “Homeland Security Authorization Act for Fiscal Year 2006,” that would have amended the bill to ensure that checkpoint and other passenger screening equipment commitments in the Intelligence Reform and Terrorism Prevention Act of 2004 (the “9/11 Act”) were met. For example, the 9/11 Act provides for \$250 million in funding for the Transportation Safety Administration (TSA) to research, develop, and install detection systems and other devices for the detection of biological, chemical, radiological, and explosive materials.⁴ Another \$100 million was authorized strictly for research and development of improved explosive detection systems.⁵ Unfortunately, Rep. Thompson’s Motion was defeated on the floor.⁶

⁴ Intelligence Reform and Terrorism Prevention Act of 2004, section 4013.

⁵ *Id.*, section 4024.

⁶ Roll Call # 187, May 18, 2006.

9/11 COMMISSION RECOMMENDATION

Checked bag and cargo screening.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

During the Committee’s mark-up of H.R. 1817, the “Homeland Security Authorization Act for Fiscal Year 2006,” on April 27, 2005, Rep. Peter DeFazio (D-OR) offered an amendment to improve aviation security by dedicating funding from the Aviation Capital Security Fund to fully-fund the installation of in-line explosive detection systems at all airports. In-line explosive detection systems use conveyor belts and other means to improve the speed and accuracy of baggage screening. Unfortunately, Rep. DeFazio’s amendment was defeated.⁷

Rep. Edward J. Markey (D-MA) offered an amendment during the Economic Security, Infrastructure Protection and Cybersecurity Subcommittee mark-up of H.R. 4439, the Transportation Security Administration Reorganization Act, to ensure that all cargo transported on passengers planes is screened, which was defeated.

When the House considered H.R. 4954, the SAFE Port Act, Rep. Markey offered an amendment to require all containers entering the U.S. to have been scanned for radioactive substances and other weapons of mass destruction.⁸

Rep. James Langevin (D-RI) also offered a successful amendment to H.R. 4312, the “Border Security and Terrorism Prevention Act of 2005,” to deploy radiation detection equipment at ports-of-entry capable of screening containers for radiological and nuclear weapons.⁹ Unfortunately, a similar amendment was rejected when it was offered again by Rep. Langevin during the Committee’s consideration of the SAFE Port Act.¹⁰

⁷ H-Rept. 109-71, p. 40.

⁸ Roll Call # 127, May 4, 2006.

⁹ H-Rept. 109-329, p. 23.

¹⁰ H-Rept. 109-447, p. 54.

9/11 COMMISSION RECOMMENDATION

Better terrorist travel strategy.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“The first Terrorist Travel Strategy is in development, due to be delivered by December 17, 2005 as required by PL 108-458.”

CONGRESSIONAL ACTION

Beginning with H.R. 5130, “The Secure Border Act,” introduced in the 108th Congress, Homeland Security Democrats have called for Congress to force the Administration and the Department to produce a comprehensive border security plan, something it has yet to do.

With a comprehensive plan, the Department would have finally had to decide what mix of personnel, equipment, technology and other assets are needed to prevent terrorist and other illegal travel across the border. In April 2005, Rep. Loretta Sanchez (D-CA) and Rep. Sheila Jackson-Lee (D-TX) offered an amendment to H.R. 1817, the “Homeland Security Authorization Act for Fiscal Year 2006,” which would have required the development of a comprehensive land border security strategy. That amendment did not pass.¹

We called for a national border security strategy by including a provision requiring such a strategy in H.R. 4312, the “Border Security and Terrorism Prevention Act of 2005,” which was passed by the Homeland Security Committee. Similar language was also adopted in the much more controversial H.R. 4437 the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, which passed the House in December.

¹ H. Rept. 109-71, p. 36.

9/11 COMMISSION RECOMMENDATION

Comprehensive screening system.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

Homeland Security Democrats supported a provision in H.R. 1817, the “Homeland Security Authorization Act for Fiscal Year 2006” that would have created universal biometric standards to be used across a variety of screening programs.

Committee Democrats have also repeatedly called for requiring connectivity between the IAFIS and IDENT databases used for watch-listing purposes at the FBI and CBP, respectively. The FBI’s IAFIS system uses 10 fingerprints while CBP’s IDENT system uses two fingerprints, leading to a lack of interoperability between the two systems. Criminals or even terrorists could enter the country despite inclusion in the FBI’s “wanted” list in IAFIS, because the data is not always interoperable with screening at the border by CBP personnel using the IDENT system.

Rep. Norm Dicks (D-WA) has argued for over two years that this security gap should be closed through a mandate that the IDENT database be made a 10 print system interoperable with IAFIS. Rep. Dicks offered an amendment to strengthen IDENT and IAFIS coordination during consideration of H.R. 1817, but agreed to withdraw it after obtaining a commitment that this issue will be evaluated by the Committee.

H.R. 4312, the “Border Security and Terrorism Prevention Act of 2005,” which was passed by the Homeland Security Committee, also included a provision requiring interoperability between the IDENT and IAFIS databases. We were disappointed, however, that funds were not authorized to cover the transition costs of moving the IDENT database from a two to 10 fingerprint system, but were nonetheless able to include provisions to enhance connectivity in the bill that passed out of the Committee.

9/11 COMMISSION RECOMMENDATION

Biometric entry-exit screening system.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

According to information made available by the U.S. Visit Program Office on the DHS website, the Department of Homeland Security reported that US-VISIT biometric entry procedures are currently in place at 115 airports, 15 seaports and in the secondary inspection areas of 154 land ports of entry. It is crucial to note that US-VISIT exit procedures are only operating at 12 airports and two seaports.²

² DHS website available at <http://www.dhs.gov>

9/11 COMMISSION RECOMMENDATION

International collaboration on borders and document security.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

We have repeatedly called for this Administration and the Department of Homeland Security to provide Congress with ongoing reports concerning the progress of accords and partnerships with the Mexican and Canadian governments that will enhance border security while also facilitating commerce and travel. We asked for these reports in legislation offered in the 108th Congress and in an amendment offered to H.R. 1817, the “Homeland Security Authorization Act for Fiscal Year 2006,” by Reps. Sheila Jackson-Lee (D-TX) and Loretta Sanchez (D-CA). Unfortunately this amendment was defeated.³ This Democratic proposal, however, was eventually included in H.R. 4312, the “Border Security and Terrorism Prevention Act of 2005.”

Our substitute to H.R. 4312 on the House Floor also would have created offices for Northern and Southern Border Coordinators to assure close collaboration with Canada and Mexico on the sharing of terrorist information, assuring document security, and taking all measures possible to secure our borders. Unfortunately, the Substitute was rejected.⁴

³ H. Rept. 109-71, p. 36.

⁴ H. Rept. 109-329, p. 15.

9/11 COMMISSION RECOMMENDATION

Standardize secure identifications.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



secure.”

“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

CONGRESSIONAL ACTION

Since the REAL ID Act’s passage, we have called for Congress and the Administration to ensure that the Act does not lead to any unfunded mandates on the states by ensuring federal funds are provided to assist with meeting licensing requirements. According to the National Conference of State Legislatures, it may cost states as much as \$500 million to implement the REAL ID Act.

9/11 COMMISSION RECOMMENDATION

Director of National Intelligence (DNI).

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

While there has been progress on this front, concerns remain that more steps need to be taken to delineate the DNI’s jurisdiction, his actual authorities within the Intelligence Community, and his precise role vis-à-vis the State, local, and tribal law enforcement communities and how that role meshes with the Department of Homeland Security.

Additionally, we remain concerned about the authority of the intelligence agencies within the Department itself. Secretary Chertoff’s decision last summer to eliminate the Department’s Information Analysis and Infrastructure Protection Directorate and replace it with a new Chief Intelligence Officer (CINT) was a step in the right direction, but tension between the new Office of Intelligence and Analysis and the intelligence components of legacy agencies within the Department about proper mission roles and “lanes in the road” remains an ongoing problem. Although the Secretary approved a Management Directive on January 30, 2006, that purports to clarify the CINT’s authorities, he has refused to provide the CINT with control over the intelligence budgets of his intelligence components – something we believe limits the CINT’s intelligence mission. We have unanimously supported H.R. 4009, offered by Ranking Member Bennie G. Thompson (D-MS), which provides the CINT with budgetary authority.

On March 29, 2006, the Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment finally adopted legislation similar to H.R. 4009, which sets out the duties of the CIO. That legislation was folded into the Fiscal Year 2007 Authorization bill that was reported out of Committee this month.

9/11 COMMISSION RECOMMENDATION

National Counterterrorism Center.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

The Intelligence Reform and Terrorism Prevention Act of 2004 limited the operational role of the NCTC and did not allow for its input in setting budgets or nominating officials. Some observers have argued that the bifurcated reporting relationships the Act created for the Director of the NCTC lead to ill-defined distinctions between joint counterterrorism intelligence operations and joint counterterrorism operations (i.e., other than intelligence), as well as the authority of the NCTC to define operational success and have the tools necessary to ensure compliance with its joint plans.

We have expressed concerns about this unclear authority and the inefficient business practices it could potentially create. Ranking Member Bennie G. Thompson (D-MS) likewise has written about the need for weaving privacy and civil liberties as safeguards into NCTC business practices.¹

¹ See Bennie G. Thompson, “The National Counterterrorism Center: Foreign and Domestic Intelligence Fusion and the Potential Threat to Privacy,” available at http://tlp.law.pitt.edu/articles/vol_10_Thompson.pdf

9/11 COMMISSION RECOMMENDATION

Incentives for information sharing.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

9/11 COMMISSION RECOMMENDATION

Government-wide information sharing.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

The development of the Information Sharing Environment (ISE), as outlined in the Intelligence Reform and Terrorism Prevention Act, has been plagued with numerous problems – including a lack of resources and an apparent lack of commitment by the Intelligence Community generally.

The departure of the first ISE Program Manager, John Russack, in January 2006 slowed the ISE’s progress even further. Ambassador Thomas “Ted” McNamara assumed the role in March just weeks after the Government Accountability Office (GAO) released a scathing report on the ISE’s progress.² Of particular note in that report was GAO’s observation that DHS and other agencies presently use 56 different sensitive but unclassified designations to protect information

² “Information Sharing: The Federal Government Needs to Establish Policies and Processes for Sharing Terrorism-Related and Sensitive but Unclassified Information,” GAO Report GAO-06-385.

that they deem critical to their missions. Perhaps more troubling was GAO's revelation that the DNI refused to comment on the report regarding specious "intelligence activities" grounds – thus depriving the Committee of a complete understanding of the ISE's present circumstances.

Last November, the Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment heard from Mr. Russack who described his progress in (1) planning, overseeing, and implementing the ISE; (2) developing policies, procedures, guidelines, and rules necessary to foster the development of the ISE; and (3) assisting, monitoring, and assessing the implementation of the ISE by federal departments and agencies.³ His lack of resources at that time – both financial and staff-related – had caused him to miss a key development deadline. Specifically, Section 1016(d)(1) of the Intelligence Reform and Terrorism Prevention Act (IRTPA) required President Bush to issue by September 13, 2005, "guidelines for acquiring, accessing, sharing, and using information, including guidelines to ensure that information is provided in its most shareable form, such as by using tearlines to separate out data from the sources and methods by which the data are obtained..." Such guidelines are essential to assuring that state, local, and tribal law enforcement officers are provided with the intelligence information they need in order to help thwart terrorist attacks in their communities. The President had delegated this responsibility to Mr. Russack after his appointment as Program Manager in April of last year. At the time of the hearing, they were more than two months overdue.

Mr. Russack indicated, however, that the guidelines would be forthcoming in the weeks following the hearing. It was further understood that Hurricanes Katrina and Rita had been a major factor contributing to their delay. While we accepted this explanation, we shared with Mr. Russack our concern about testimony he gave before the Senate Judiciary Committee on July 27, 2005, when he explained to Senator Arlen Specter that the President had provided him with only one full-time employee and two contractors to assist him with his work. Members asked if the situation had improved, and Mr. Russack reported that it had. Accordingly, Members left the hearing anticipating that they would soon receive clear, specific, and mandatory Section 1016(d) information sharing guidelines applicable to all agencies within the Intelligence Community.

What the President produced on December 16, 2005, missed the mark completely.⁴ Instead of guidelines actually telling agencies how to share information, the President delivered a Memorandum that included guidelines to create guidelines. Essentially, the document restated the undisputed need to: (1) define common standards for how information is acquired, accessed, shared, and used within the ISE; (2) develop a common framework for the sharing of

³ Available at http://www.fas.org/irp/Congress/2005_hr/110805russack.html

⁴ Memorandum from President George W. Bush to the Heads of Executive Departments and Agencies (December 16, 2005) [December 16 Memorandum], available at <http://www.whitehouse.gov/news/releases/2005/12/print/20051216-10.html>

information between and among executive departments and agencies and state, local, and tribal governments, law enforcement agencies, and the private sector; (3) standardize procedures for sensitive but unclassified information; (4) facilitate information sharing between executive departments and agencies and foreign partners; and (5) protect the information privacy rights and other legal rights of Americans. In addition to rehashing these obvious challenges, the document also announced that the President planned to take another ninety (90) days to produce something more substantive.

It has been eight months since the November hearing with Mr. Russack, and much work to develop the ISE remains. Shortly after the President delivered his Memorandum – and immediately before his departure as Program Manager – Mr. Russack delivered what was titled an “Information Sharing Environment Interim Implementation Plan.”⁵ It did nothing except establish additional deadlines and state some general goals for the ISE.

Although Ambassador McNamara subsequently assured the Committee that the June 13, 2006 deadline for each of the guidelines set forth in the President’s Memorandum would be met, two open items remain: Guideline 2, which concerns the development of a common framework for the sharing of information between and among Executive departments and agencies and State, local, and tribal governments, law enforcement agencies, and the private sector; and Guideline 3, which would standardize procedures for sensitive but unclassified information. They are both now more than a month overdue.

While the Program Manager is reportedly close to finalizing Guideline 2, sources report that Guideline 3 efforts are languishing. This is consistent with GAO’s conclusions about the Program Manager’s difficulty in getting all intelligence agencies on the same information sharing page.

9/11 COMMISSION RECOMMENDATION

Balance between security and civil liberties.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

9/11 COMMISSION RECOMMENDATION

Privacy and Civil Liberties Oversight Board.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

9/11 COMMISSION RECOMMENDATION

Guidelines for government sharing of personal information.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“The Privacy and Civil Liberties Oversight Board has not yet begun its work. The DNI named a Civil Liberties Protection Officer in November 2005.”

CONGRESSIONAL ACTION

We remain concerned about the lack of respect for privacy and civil liberties relating to the War on Terror. The Privacy and Civil Liberties Oversight Board (the “Board”), although formally established,¹ is not up to the task envisioned by the 9/11 Commission. It has no mandate to inform, educate, or lead privacy practice among executive branch components involved in war on terror-related intelligence and law enforcement activities. It likewise has no power to help develop consistent, comprehensive, and effective privacy guidelines within those components. Instead, the Board can only “advise” the President, agency, and department heads to ensure that privacy and civil liberties “are appropriately considered” and advise when adequate guidelines are lacking.

The Board likewise has practically no independence from the White House. For example, it consists of five members (1) all of whom are appointed by the President, and only two of whom – the chairman and vice-chairman – require Senate approval; (2) all of whom serve “at the pleasure of the President”; (3) none of whom need be of different political parties; and (4) none of whom need have had any expertise in civil liberties matters. The Board’s oversight powers, moreover, are severely constrained because it lacks subpoena power.

Compounding these problems, President Bush failed to appoint a single member to the Board until June 10, 2005. Although all five members have now been named, only one – Lanny Davis – can be considered a progressive. Moreover, for FY 2006, the President set aside only \$750,000 for the Board’s budget – a mere fraction of the \$13 million allotted to the Department’s separate Privacy Office. “The failure to move on the [Board] is part of a disturbing trend,” one commentator stated. “Too often, the Bush White House has chosen to simply ignore that which it doesn’t like. Congress didn’t vote to ask the administration to think about having a privacy board. It established the board and gave the White House the power to populate it.”² Many other observers have likewise concluded that the Board amounts to nothing more than a powerless entity that is unequipped to accomplish the goals laid out by the 9/11 Commission.

To address these deficiencies, many of us have co-sponsored H.R. 1310, the “Protection of Civil Liberties Act.” This bill would address the litany of deficiencies with the Board by (1) establishing it as an independent agency in the executive branch outside the Executive Office of the President; (2) requiring that all five of its members be confirmed by the Senate; (3) requiring that no more than three of its members come from the same political party; (4) setting six-year, staggered terms for the members; (5) requiring that members have prior experience with protecting civil liberties; (6) specifying that the chairman shall be a full-time member of the

¹ P.L. 108-45, Sec. 1061.

² “Civil Liberties Board Has Got to Get Into Gear,” Masslive.com, May 17, 2005, available at <http://www.masslive.com/editorials/republican/index.ssf?/base/news-o/111631605528950.xml@coll=1>

Board; (7) increasing the Board's Congressional reporting requirement from once to at least twice yearly; and (8) requiring that each executive department or agency with law enforcement or antiterrorism functions designate a privacy and civil liberties officer. Perhaps most importantly, the Act would give the Board subpoena power so it can conduct a meaningful analysis of privacy and other civil liberties protections. H.R. 1310 is still pending.

In the spring of 2005, we were successful in boosting the funding of the Board to \$1.5 million through the House Appropriations bill.³ In the spring of 2006, after the President failed to provide any funding for the Board, we were once more successful, boosting the funding of the Board to \$2.25 million in the House Appropriations bill.⁴

Despite these successes, mission and resource issues continue to plague the Board. At a June 6, 2006 hearing before the House Committee on Government Reform, Board Members testified that they saw themselves more as an "advisory" body rather than an investigative one that would proactively seek out and address privacy and civil liberties issues.

³ H.R. 3058, H. Amdt. 413, June 29, 2005.

⁴ H.R. 5576, H.Amdt. 1025, June 13, 2006.

9/11 COMMISSION RECOMMENDATION

Homeland Security Committees.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

We continue to call for an expansive view of the Committee’s jurisdiction over the Department of Homeland Security. We will continue to push for a better organized congressional system for conducting oversight of the Department of Homeland Security in the House and hope that our counterparts will do the same in the Senate.

9/11 COMMISSION RECOMMENDATION

Maximum efforts by the U.S. Government to secure Weapons of Mass Destruction.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“Countering the greatest threat to America’s security is still not the top national security priority of the President and the Congress.”

CONGRESSIONAL ACTION

We have repeatedly called for stronger support for non-proliferation programs abroad, such as the Nunn-Lugar program to secure nuclear materials in the former Soviet Union. Additionally, we have called for stronger measures to prevent terrorists from transporting nuclear materials and other weapons of mass destruction into the U.S.

As was previously discussed, Rep. James Langevin (D-RI) recently offered amendments that have been both accepted and rejected to provide funds for radiation portal monitors at ports-of-entry.

9/11 COMMISSION RECOMMENDATION

Vigorous effort against terrorist financing.

9/11 PUBLIC DISCOURSE PROJECT GRADE

AS OF DECEMBER, 2005



“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.”

CONGRESSIONAL ACTION

In May 2004, Democrats on the Select Committee on Homeland Security called for a joint investigation into allegations of terrorism financing by an American mining company and also for the consideration of Committee hearings on the issue during the fall.

Democratic staff had uncovered cases where U.S. and international corporations were either negligently or intentionally supporting terrorist organizations in their off-shore operations. We believe oversight on this issue is necessary and critical and hope the Committee will conduct aggressive oversight on this area in the near future.

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