RPTS SMITH

DCMN HERZFELD

[1:10 p.m.]

Mr. Boehlert. [Presiding.] Resume what is proving to be a productive day of hearings on the 9/11 Commission recommendations. The title of this hearing is Counterterrorism Analysis and Collection - The Requirement For Imagination and Creativity. I think there is unanimous agreement that what we need is imagination and creativity. And this afternoon for the second panel we are honored to have two distinguished scholars from distinguished public policy foundations. This is a town where we have a lot of distinguished things, and I want to thank both of the panelists for being facilitators for our important hearings.

Dr. James J. Carafano, a senior research fellow, is with the Heritage Foundation; and Mr. Timothy Edgar is the legislative counsel for the American Civil Liberties Union. Dr. Carafano is a military historian and leading scholar on defense transformation, military operations and homeland security. Mr. Edgar has authored several articles on terrorism and civil liberties and was named pro bono attorney of the year by the 2003 -- in 2003 by the American Arab Antidiscrimination Committee.

Let me say to Mr. Edgar, congratulations on that

distinguished honor, and to both of you, thank you for agreeing to be here.

The usual drill is about a 5-minute opening statement. We are not going to be arbitrary because it is too important to be arbitrary, but if you condense your opening statement, your full statement will be in the record, and that gives more opportunity for a dialogue. And we find here on this side, contrary to what some people might believe, that Congress actually learns more by listening. We can talk all day, but we want to hear from you guys.

First off, Dr. Carafano.

Mrs. Harman. Mr. Chairman.

Mr. Boehlert. Yes, by all means.

Mrs. Harman. Would you mind if I just made a couple of welcoming remarks as well?

Mr. Boehlert. I would be disappointed if you didn't make a couple of welcoming remarks.

Mrs. Harman. Thank you again. And thank you again, Mr. Chairman, for letting us use this hearing room. I was a member of the Science Committee some years back, and it is a wonderful and important committee, and you are a distinguished Chairman.

I just brought with me a couple of props. One of them is H.R. 4101, and the other one is H.R. 4548. These are the two intelligence restructuring bills that have been

introduced in our committee, one in April and one in June. One of them is my bill with eight other Members. The other is the Chairman's bill with eight other Members, if I can count this right. Eight other members. And both of them are serious, substantive efforts at reform.

4104, which was authored by those of us sitting here, is virtually identical to the 9/11 Commission's recommendations, and the reason I mention this now is that I really feel we should be having a markup session here to report out the best legislation we can field. These are two witnesses, both of whom I know who contributed a great deal, who could be commenting on specific legislation pending in this committee, and while I think it is a great opportunity to hear from them on the subject of imagination, I think it would be a better use of their time and our time if they were specifically commenting on these bills which were the subject of a hearing for purposes of markup.

Thank you, Mr. Chairman.

Mr. Boehlert. Thank you very much.

[The information follows:]

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Mr. Boehlert. And as we learned from this morning's very productive hearing, there are some varying opinions from scholars and people well versed in the subject matter, and that is the purpose of this hearing and the 14 other hearings that are going to be held on Capitol Hill this week and next week to address the very substantive report of the 9/11 Commission, which I might point out mirrors almost identically the recommendations made by the Joint Senate and House Intelligence Committee after a 14-month study.

We issued our report in May of last year. At that time that report was well received and almost universally praised. But the recognition was that the Commission was going forward, and everyone wanted the benefit of the Commission's recommendations. And so now we have the two reports, and they are very similar recommendations, and we are determined to go forward.

We have heard from the President and the pretender to the throne. We have heard from all Members of Congress. Now we want to get expert opinion from people like you. So, Dr. Carafano, we will have you up first.

STATEMENTS OF JAMES J. CARAFANO, THE HERITAGE FOUNDATION; AND TIMOTHY EDGAR, AMERICAN CIVIL LIBERTIES UNION

STATEMENT OF JAMES J. CARAFANO

Mr. Carafano. Thank you, sir. And I am from New York, so I talk pretty fast, so I will make that 5 minutes.

You know, first of all, let me begin without -- I just want to add my voice to paying tribute to the 9/11 Commission for -- and the Commissioners for doing absolutely great service to the Nation, doing a great report, and regardless of what we think about the structure or the need for reform in the Intelligence Community, I always want to commend the men and women in the Intelligence Community who every day -- and in local law enforcement -- who are working really hard at this problem.

I also want to add my voice to the people who say that, you know, we shouldn't rush to failure. I don't know how quickly this needs to be done, but I do think getting it right is more important than getting it quickly, and just-- I have three reasons for that, just very quickly. One is, to be honest, even if we made all the reforms that we all know are needed, and we put them in place tomorrow, it wouldn't stop a terrorist attack in October. It is going to take,

much like when we created the Department of Defense, months and years to gain the true value of this. So the immediacy of immediate threats is really, I think, a factor in determining how fast we should move.

The other thing is let's be honest. We are just going to get one shot at this. I mean, if you think back to when we created what becomes the Department of Defense and the CIA in 1947, we took 2 years to create that bill. We took a year to create the Department of Homeland Security. When we created the Department of Defense, there were things we just didn't get right. Eisenhower told us that there were parts that were just wrong. And we didn't fix them, and they didn't get fixed until 1986. And we all know that when we do this, there will never be an appetite to do this again.

And then the third thing is I think -- let's be honest, I think we are making progress. I mean, I talk to State and local people every day, and now they are starting to come to me and say, yes, they are talking to the FBI. They are getting information from the FBI. So I do think that we are moving in the right direction.

And my metric for success would be a good bill as opposed to a quick bill, and I would just like to very quickly point out kind of four principles that I would measure success by. One is that you would come up with a set of reforms that above all protect civil liberties and

privacy. I think that is fundamental. If we do something that endangers the way of life in terms of sacrificing anything in getting security, then we have made a huge mistake.

And so, for example, one of the things I was very disappointed was to see in the 9/11 Commission's description of an architecture was that there wasn't, for example, a civil liberties office and a privacy office in the NID's office much like we created in Homeland Security. I think that would be a good initiative. And also we would like to see an IG in the National Intelligence Directorate who had a mandate that could go look at anybody in the Intelligence Community.

My second metric for success would be -- is that you design a system that is geared to address the challenges of the 21st century; not tinkering with an existing system, but really take a moment and build the system that you think we need for the 21st century. And when you do that, I think we have to be careful about overly focusing just on terrorism. There are lots of other threats out there, and we have to have a community and a Director that is watching all these threats. I mean, we have to remember that Aum Shinrikyo came out of nowhere, and because we weren't looking at Asia. And Aum Shinrikyos are going to come at us again.

My third thing is that you would have a community head,

and I think this strikes directly to the issue of creativity, who is really truly independent. My one concern is if we have a National Intelligence Director that is so bogged down in the day-to-day job of running the war and running a community that he really can't step back and provide a truly independent assessment much in the way the Chairman can, then you have got a recipe which mirrors the criticism in the Senate intelligence's report about the CIA and the national intelligence assessment that was done before Iraq where we got everybody together, and the other day the CIA said, we have got the right answer. So you can't have the guy that has a dog in the fight and is in charge of running the war giving you your independent assessment.

And my fourth and final principle is that when you try to decide what the National Intelligence Director is going to do and what authorities and responsibilities he should have, I don't think the right approach is to begin by arguing, well, should he have budget authority or not, should he have this or not. I think we should step back and say there is really three levels of -- much like in the military. You have strategic, operational and tactical. In the intelligence world you really have the strategic level, which is synchronizing all the instruments of national power; and then you kind of have the functional level, which is the functional operations of different kinds of intelligence, of

strategic intelligence; and then you have the mission level, which is, you know, getting people together to do something like go after al Qaeda. And I think what you want to do is ask what is the best set of authorities to give the NID so he can enhance integration at all three levels. That's what we did when we formed the JCS, and I think that is appropriate here.

And then finally -- and I will just end by listing four concerns that I have in terms of the current proposals and both things that are in and not in. One is I support the construction of a National Counterterrorism Center. I do think it should be principally an analysis center and not responsible for the integration and collection, and I do think that it should be in DHS.

One of my concerns is that what we are doing is taking us down the road that is really diminishing DHS's responsibilities and roles. And the whole idea of creating the Department was to really make them the centerpiece.

I am very concerned that there hasn't been any discussion about counterintelligence. I mean, the flip side of all this great sharing, which is terrific, and we need to share a lot, but now that we are sharing more than ever, our counterintelligence challenges are going to be greater than ever, and we need to think about counterintelligence more comprehensively. And I am disappointed, for example, that

there is not in the international intelligence director's office an office that is going to specifically deal with counterintelligence policy sharing best practices, making sure that things are being consistent, making sure that as we bring new things on board, that somebody is looking at that.

Third, very quickly, is all the discussions about coordination and synchronization have really revolved on the discussions about what powers we should give the National Intelligence Director. And there is an alternative way to look at this. If you want better integration, maybe you should look at consolidation as opposed to putting somebody in charge of everything. You know, it is -- you have got a cowhand, and he is having trouble getting all the cows in the barn, maybe the answer is, you know, give him less cows to worry about.

And so one of the things the 9/11 Commission said, maybe we should take all direct action, for example, and just put it in the Pentagon. Well, maybe we should look at combining some other strategic intelligence things and giving it all to one guy.

And then the fourth point I make is that one of my concerns is a lot of integration is not in responsibility and power authority. In the 21st century it is enabling people to talk to each other, share databases, being able to do on-line, real-time collaborative stuff, and so it is really

about architecture. And again, one of my concerns is there is nothing in the National Director -- Intelligence Director's office that says who is putting together the national architecture and checking to make sure it is done, and I think that is something that also needs to be addressed.

And with that, I would look forward to your questions.

Mr. Boehlert. Thank you very much, Dr. Carafano.

[The information follows:]

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Mr. Boehlert. Mr. Edgar.

STATEMENT OF TIMOTHY EDGAR

Mr. Edgar. Thank you very much, Mr. Chairman and Ranking Member Harman and members of the committee. I am pleased to be before you today on behalf of the ACLU and its more than 400,000 members to discuss intelligence reform.

No one doubts that we must reorient the community built to fight the Cold War to focus on the threats of the 21st century. The ACLU strongly favors intelligence reform that enhances national security, encourages openness and protects civil liberties. The Commission's calls for reform are welcome, and many are very well taken.

With that said, we do take issue with some specific proposals and believe they can be strengthened. For example, the way in which their proposed National Intelligence Director centralizes power over both foreign and domestic spying in the White House raises serious civil liberties concerns. Putting intrusive domestic spying powers in the hands of a top spy who is either at the White House or under its thumb raises real risks of making sensitive national security investigations a servant of the President's political or ideological goals. The Intelligence Director is

given authority over domestic spying. The Intelligence Director, not the FBI Director, hires the FBIs intelligence chief, and the Intelligence Director, not the Secretary, hires the chief intelligence officer of the Department of Homeland Security. One will also be the Intelligence Director's Deputy for Homeland Intelligence.

While the 9/11 Commission should be applauded for specifically rejecting a false trade-off between security and civil liberties, its recommendations for a National Intelligence Director as outlined put too much power in a political official who controls the agencies that spy on Americans and those who spy abroad. The answer, however, is not to do nothing. Rather the answer is to reform intelligence while incorporating safeguards that will protect civil liberties and that will respect the special sensitivity of domestic surveillance. That may include a National Intelligence Director, but with safeguards. My written statement outlines 15 recommendations for such safeguards.

Domestic spying is different. FBI and CIA should work together, but they are not interchangeable soldiers in the same army. FBI and CIA operate under different rules and use different methods. When a democratic society puts the very citizens from which it derives its legitimacy under surveillance, the stakes are higher.

The first two recommendations will help insulate the

National Intelligence Director and Counterterrorism Center from partisan politics and ideological agendas. We have learned from past mistakes that direct White House control of intelligence powers leads to abuse that lessens the confidence of Americans in their government. Under Richard Nixon the worst spying abuses were a result of White House efforts to spy on opponents and led directly to Watergate. Under Ronald Reagan a covert operation conducted by a White House staffer, Oliver North, led to the most serious crisis of Reagan's Presidency. And under Bill Clinton, White House political staff obtained hundreds of confidential FBI files on prominent Republicans.

President Bush and some Members of Congress propose a National Intelligence Director who is housed in a separate office, not the White House. We agree that the Director, if one is created, should not be at the White House. Giving the Director of Central Intelligence more powers over domestic spying while leaving that official in charge of the CIA is not the answer. In some ways this proposal is the worst of all worlds because it centralizes power over domestic and foreign spying in a single official who is still in charge of the CIA and its methods.

We also believe the new Director should be given a fixed term, and we agree with Bill Cohen, Secretary of Defense for Bill Clinton, and Robert McFarland, National Security Advisor

to Ronald Reagan, that this would help enhance independence. Of course, the President should be able to fire for cause, but not because the Director didn't cook the intelligence books to the White House's liking.

Our next recommendations are designed to ensure the Intelligence Director's powers of domestic spying are properly limited. Again, we want the FBI intelligence operations reporting to the FBI Director and the Attorney General. We want those powers to be carefully specified by statute and other activities barred. Particularly there shouldn't be covert operations or dirty tricks on American soil. The use of intelligence domestically has to be bound by the legal system.

Finally, the remaining recommendations are substantive reforms. Moving around boxes on the organizational chart will not solve intelligence problems without a major effort to improve oversight, accountability and enforcement of civil liberties. We agree with internal watchdogs, civil rights officers, inspector generals, but we also think that there needs to be an independent Civil Liberties Protection Board. We agree with the 9/11 Commission recommendation for that, and we want that Board to have a writ that extends throughout the government and has real power to investigate abuses and to prompt corrective action.

I am going to ask just a couple of questions about this

board to show whether it really has power. Is it going to have subpoena power? Is it going to have the power to examine highly classified information? Will it have the power to question national policies? And will it have the power to make criminal referrals and ask for independent counsel? These are the questions that need to be answered.

We also believe that specific concrete actions must be taken to scale back excessive secrecy. We want to make sure that there is more public reporting on FISA to inform a national debate on the PATRIOT Act, and we have made other recommendations for oversight and accountability, particularly congressional oversight. We just want to make sure that as you strengthen congressional oversight over the Intelligence Community, that important committees like the Judiciary Committee retain their jurisdiction over domestic spying powers. We don't want a supercommittee to be able to amend FISA without the Judiciary Committee looking at it or the investigative guidelines.

So those are some recommendations in my written statement, and I would be happy to take any of your questions.

Mr. Boehlert. Thank you very much. Yield back the 19 seconds remaining on your time. You can tell you are a pro at this business. Thank you very much.

[The information follows:]

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Mr. Boehlert. First question, the gentleman from Nevada Mr. Gibbons is recognized for 5 minutes.

Mr. Gibbons. Thank you very much, Mr. Chairman, and, gentlemen, also welcome to the committee. It is great to have your input into this deliberation that we are undergoing this week and for the rest of the -- actually the rest of this congressional session.

I presume that both of you have read both proposed bills with regard to the reorganization of the Central Intelligence or the Intelligence Community. With that in mind, Dr. Carafano, within H.R. 4584 is a natural construct of your concern about counterintelligence, which has as one of the principal groups a counterintelligence activity. But as we -- and I would like your opinion as to that construct and how you see that as its natural follow-on to why your concerns of counterintelligence need to be addressed.

But let me ask a preceding question to that. At a time when we have to surge resources, we have suddenly found ourselves looking at agencies that surge resources from counterintelligence into counterterrorism, mainly because no one has a crystal ball for 365 days a year and can predict out what resources should be spent where today for tomorrow. I want your idea on how we address the surge problem, and how you see being able to have an effective counterintelligence

portion would be able to survive the surge that is required under a counterterrorism response.

Mr. Carafano. You know, this gets back to the kind of the endless question that we always have in the community, which is what is the counterintelligence function; is it a separate, deliberate skill set of a career progression that somebody goes in to counterintelligence and stays in counterintelligence forever? The tendency is not to do that. And I am sympathetic to that because I do think there is a notion that you -- there is something potentially abusive about having the same guy in charge of the keys all the time. And I do like the idea actually of a structure for counterintelligence, but then rotating people in and out of that system much like we do in police organizations when you move people in and out of internal investigations so you don't get kind of the despotism and corruption or something, or having somebody totally outside all the time. So I do-- as a model I like the idea of creating counterintelligence organizations and structures and then rotating everybody through there at some pace.

I guess two comments. One is building organizational structures and law that then are required to be maintained, that's one solution. And then the other thing is I think I go back to the military model, which is, you know, I think one of the great lessons on that we have gotten from this is

the importance of the Reserve component and the ability to have surge capacity, to bring people back and surge when we need them. And I think that that is a kind of a model that would be useful in the Intelligence Community, where you can educate people, train them, send them off to do whatever, maintain their clearances, and then in moments of crisis bring them back for certain finite functions.

So I do think it is a model that is exportable and something that we ought to look at, and the advantage of it is relatively low-cost because when you are not there, you are not paying for them. And it seems to me as a kind of prudent insurance investment. And I think that is a possible way out of that dilemma that you mentioned.

Mr. Gibbons. Let me address that issue because I think that is what we are seeing today is a resource shift due to surge requirements to meet the needs of the crisis of the day. As a result, we are now in a generational-long effort of surge. We have left uncovered, or seem to be leaving uncovered, vast areas that should be addressed with normal day-to-day counterintelligence activities. What I am worried about is that unless we make a specific change in the structure as proposed in 4584, that we are going to remain in this continual Alice-in-Wonderland surge requirement of taking from the CI complex and putting it into the CT complex and leaving uncovered great areas where we are very

vulnerable.

Mr. Carafano. I agree with that completely, and I think it is broader. It goes to white-collar crime. It goes to other areas where we have done the same thing which are vulnerabilities and gaps that still won't be covered because they all touch on terrorism in some way. And that is fine and kind of the immediacy of post-9/11, but it is not the way we want to go through the 21st century. We want a surge model that doesn't uncover vulnerabilities, but allows us to increase capacity.

Mr. Gibbons. Thank you, Mr. Chairman. My time has expired.

Mr. Boehlert. Thank you very much, Mr. Gibbons.

Mr. Boswell.

Mr. Boswell. Thank you, Mr. Chairman.

I wonder if either of you would want to comment on, you know, a couple of bills that have been proposed, one the 1st of April and then the other one 1st of June, June 16. Are you familiar with those two bills?

Mr. Edgar. Well, I will take that on. I am familiar with those bills and reviewed them for this hearing. And, you know, I think that they are both interesting proposals, and I would have some problems with both of them.

Certainly, if you look at the Harman bill, I agree that the NID should not be in the White House, that it should be

an independent office, and that is where the Harman bill puts it.

Mr. Boswell. The previous panel said the same thing, so you might take some comfort in that.

Mr. Edgar. Right. And I also agree that, you know, there should be real care taken to make sure that, you know, we don't have a Deputy Homeland Intelligence Director who also happens to be the person who is running the FBI intelligence operation, which is the way the Commission proposed it, and that is also not in the Harman bill.

I do think that we have to look at the powers that the NID would have, even under the Harman proposal. We would favor a fixed term. Bill Cohen and Robert McFarland agree with us. I think obviously that person should be able to be fired, but for cause. But we also have -- want to make sure that the powers of the NID are specified, carefully specified, and that the powers over the domestic spying components of the intelligence agencies don't result in the NID effectively having a veto over the FBI Director and the Attorney General.

Example might be CISPIS. That was an investigation in the 1980s of Central American activists, and it was in excess of the guidelines. It should never have really happened. What if we fast-forwarded that. We had a similar investigation today. Should the NID be able to say, you

know, we are getting lots of great intelligence by spying on these Central American activists, and you over there are worried about crime. They are not doing anything illegal, but we still want to run this. We don't want the NID's budget powers or personnel powers to be able to force the FBI to behave like the CIA or other agencies that would have no problem doing that abroad.

With the Goss bill, you know, I was a little harsh on it in my written statement, but I think that what we are concerned about is if we do have these added powers, that if we put this in the hands of someone who also is heading the CIA, then we really get rid of any civil liberties benefits that might result from separating those two functions. So we would have a CIA Director who also has now the top spy powers that we are worried about with any kind of National Intelligence Director. So we are concerned about that kind of a proposal as well.

And some of the more technical issues that Dr. Carafano addressed on the Goss bill I don't -- I wouldn't comment on. But I think that we can definitely look at both of these proposals. My main concern was right after the Commission report came out, because they did such great work, that we would then just say, let's Xerox the report, do exactly what they say and go forward. And I think that would be a big mistake.

Mr. Boswell. I appreciate that. You took me through several questions there. You are very good. I want you to understand at least from this Member, and I think everybody, when we go back to our districts, there is a lot of concern about the civil liberties, a lot of concerns about the Constitution and the protection of the Constitution our forefathers very thoughtfully -- our forefathers and foremothers very thoughtfully put into place for us and stood the test of time. And there are those concerns. But you know, the implementation of the 9/11 Commission's recommendations requires changes to existing law, and you went pretty rapid there. You may have already said, but what specific changes would you require?

Mr. Edgar. Well, you know, I think that the point is that they said that the Intelligence Community needs to have much greater openness, that there is excessive classification. We completely agree with that. There needs to be more accountability. There need to be substantive changes and reforms.

You know, I think that the National Intelligence Director, depending on whether we have good, strong safeguards, could be a part of that or not as you choose to decide, but that we really have to make sure that these kinds of substantive reforms that they have talked about, improving creativity and opening up some of the process as much as we

can -- I mean, we know you have to protect sources and methods, but let's try to combat groupthink. And how do you do that if it is a closed system? I think that is difficult.

So we would like to make sure that those aren't an afterthought, that we don't just centralize power the way they have recommended, but then forget about all their recommendations about a Civil Liberties Protection Board and more openness and other substantive reforms. And so we would like to tinker certainly with structure of how they have done it, and we would like to make sure that those substantive reforms are put in place.

Mr. Boswell. Well, I will close with just this comment back to you. I know that a lot of us feel like there is too much classified, and also feel that what makes a democracy a democracy is the openness out the on table. Granted there are times when you cannot -- you know, for safety and a number of reasons you cannot, but we could certainly disclose and share a whole lot more, which would give our citizens a lot more comfort.

You know, I just experienced it, you know, yesterday at a civic club meeting, and I was with quite a conservative group, if I might add. And they just said, you know, what is going on? How come we can't know some of these things, because we are paying for it? We would kind of like to know. And so I think that probably is what most of us as Members

are hearing probably as we go across our districts.

So anyway, thank you very much.

Mr. Edgar. Well, could I just give you --

Mr. Boswell. My time is up. You have to ask the Chair.

Mr. Edgar. All right.

Mr. Boehlert. Do you have an additional comment?

Mr. Edgar. Just briefly. I think there are a couple of specific things we can do right away. Make the intelligence budget public. That was recommended specifically. We can set up this independent classification board that is been called for by Trent Lott and Ron Wyden in the Senate, and there is a companion bill in the House, so that when a dispute about, you know, Saudi funding of terrorism comes up, we can refer it to that, and finally, we can have more reporting.

Mr. Boswell. If I can just interject, Mr. Chairman. We also cosponsored the same bill over here.

Mr. Edgar. So those are just three specific suggestions I would have that we could do right away.

Mr. Boehlert. Thank you very much.

Mr. LaHood.

Mr. LaHood. Thank you. I want to remind the viewers that are watching C-SPAN that Congress has not and the administration has not been sitting on its hands for 3 years. We created a homeland security agency that combines 22

agencies, and it cost the taxpayers about $40 million now. We secured all of the airports through a hiring of TSA employees and all new equipment to screen people, which has made emplanements increase and, I think, given the public a sense of security about flying. We have helped the airline industry secure their airplanes through a $15 billion appropriation that we passed almost immediately after 9/11. We passed the PATRIOT Act, which has created the kind of communication that did not exist before 9/11. We compensated the city of New York for the cleanup of the Twin Towers area, and to the families, almost 95 percent now have been compensated for the loss of their loved ones. We authorized and are recruiting and hiring 1,000 new FBI agents, and we authorized and are recruiting and training 1,000 new CIA agents. TTIC was created for better communication. It works. We have held hearings on that. The Joint Terrorism Task Forces that exist in every major city in the country works, has a lot of coordination going on and cooperation. We have dismantled al Qaeda through the invasion and liberation of Afghanistan, and we have liberated the people of Iraq and taken the war on terror to the terrorist. Our country has not been attacked for 3 years.

For those who think that Congress and the administration and the Bush team have been sitting on their hands, haven't been doing anything, haven't been creating any kind of

counterattack against the terrorist, I think these facts and what we have done, what the administration have done, hopefully will give people a sense of security. We have not been attacked for 3 years.

The House and Senate Intelligence Committees met for over 12 months and created an 800-page report. Many of the recommendations have been implemented, and many of them are similar to the ones that the 9/11 Commission had that hasn't gotten the kind of publicity that the 9/11 Commission did. But a lot of work went into that. A lot of hearings were held, and many of us participated in that.

I want to make sure the record is clear on this, and I think it bears repeating so that the American people, the American taxpayers show up or know why that the country is safer, and why the polling that is taken more recently indicates that Americans do feel safer. Every poll that has been taken in the last several weeks indicates that Americans feel safer, and part of the credit goes to the Bush team and to the Congress for stepping up and carrying out our responsibilities.

Mr. Edgar, I would be curious to know what you or your organization -- how you feel about the effectiveness of the PATRIOT Act, and, as we begin our deliberations next year, about either continuing the PATRIOT Act or making some changes, what your feeling is about that.

Mr. Edgar. Well, I would say that there are certainly things in the PATRIOT Act that we supported and don't have a problem with. We do believe that there are parts of the PATRIOT Act that go too far, and that should be corrected.

Let's take -- I mean, we should take on the hardest one, I think, which is the significant purpose test under FISA. That is the part of the PATRIOT Act that is often cited as having broken down the barriers between intelligence and law enforcement. I think that if you look at what the Commission found, you will see a very different story, a story that -- there was bureaucratic hoarding of information. There was very serious misunderstandings about FISA and what it allowed and what it didn't allow, and that really that was the main problem in information sharing.

We are concerned that that part of the PATRIOT Act may have gone too far in allowing the criminal prosecutors to essentially direct the use of intelligence tools; that intelligence surveillance and powers should be used to gather foreign intelligence, but that they shouldn't be used by prosecutors as an end run around the fourth amendment and the greater protections in Title III for wiretapping under the criminal surveillance powers. Does that mean they can never talk to each other? Well, of course not.

And I think the 9/11 Commission found that many of those walls and barriers were the result of misunderstanding. And

one thing they said about the PATRIOT Act, they didn't favor extending it. They did not say that the Congress should immediately lift the barriers in the PATRIOT Act. They said instead that there should be a national debate about whether some of these powers go too far, and that the burden has to be on the government to show specifically how they have used these powers to thwart terrorism and whether we can have greater civil liberties.

Mr. LaHood. I know what the 9/11 Commission said. I want to know what you think about extending it. Do you think it is a good idea next year as we debate this to extend the PATRIOT Act?

Mr. Edgar. Well, we are opposed to many of the provisions in the PATRIOT Act that are subject to the sunset clause. Like I said, a lot of the PATRIOT Act is noncontroversial, but some very intrusive surveillance powers are subject to a sunset clause. We think those need to be fixed, and that if they are fixed with greater judicial review and oversight, if they are extended by Congress, if that is your judgement, that there should be another period where we look at them.

We certainly do not agree that you should just renew the PATRIOT Act. I think that would be a huge mistake. I think we can look back at what we did after 9/11 quickly and fix some of those powers in order to bring them back in line with

the Constitution.

Mr. LaHood. Dr. Carafano do you have an opinion on this?

Mr. Carafano. We agree on almost everything except this issue. The PATRIOT Act did three important things. It did help take down the wall between intelligence and law enforcement sharing. It did provide additional tools to combatting terrorism that was available for fighting other crimes and put them in the hands, and constitutionally proven tools that are valuable. And it did allow law enforcement intelligence to keep up with technology to take away sanctuaries where terrorists could go and hide.

I think that those core values that the PATRIOT Act gave need to be preserved and maintained. Part of that I do believe is in reauthorizating the sunset provisions. Where I think we do agree is if there are ways that we can look at improving oversight provision in the PATRIOT Act to provide greater visibility about what is being done in the FISA judge system; to the Congress, ways to provide additional reporting to the Congress so they can evaluate these things. I think that we should all be supportive of that. But quite honestly, there hadn't been abuse of the PATRIOT Act that I think really that justifies killing what has proven to be a very effective tool against terrorism. So on this side I think we are on the right course, and I am reticent to change

course at this time.

Mr. Edgar. Could I just very briefly say that I think the SAFE Act, which tightens up sneak and peek searches, and which provides for individual suspicion for personal record searches, and it is a bipartisan bill with people like Larry Craig of Idaho in the Senate and Republicans in the House also supporting it, would do exactly that. It would tighten up the PATRIOT Act and not throw out the baby with the bath water, but still be an effective way to allow that, those powers to be used with more individual focus so that Americans can be assured that their civil liberties are protected.

The Chairman. [Presiding.] Thank you.

I think it is Ms. Harman. Ms. Eshoo, is that okay with you? It is Ms. Harman.

Ms. Harman. Thank you, Mr. Chairman.

Again, welcome to our witnesses. I said in this morning's panel that I am pleased to see that we are holding a public hearing on a public issue. It is important for folks in this audience here and watching on television to understand that this committee does do some of its work in the sunlight. I wish we did more of it in the sunlight, but this is exactly the debate that the American people deserve, and I am glad we are having this public hearing.

To me, civil liberties and security are mutually

reinforcing, not a zero sum game. It is not add more to civil liberties and take away from security, or add more to security and take away from civil liberties. This is why it is very tough work and tough to get it right. And I want to say to both witnesses, both you personally and your organizations have contributed a lot to this committee's understanding of these issues, and I am glad that you are here.

The debate we were just having with -- or you were just having with Mr. LaHood on the PATRIOT Act is symptomatic of how hard this issue is. I am one who is in favor of fixing the PATRIOT Act next year. That would include repealing parts of it that don't work and that are excessively intrusive, like the library provisions. I favor repealing the library provisions. But I also favor extending provisions that are useful and balanced in the effort to ensure greater security and greater tools to find those in our country or elsewhere who intend to do us harm. It is going to be hard work. I hope you will be back next year to help us do it right. So I appreciate your being here today.

I just wanted to point out to both of you that some of the issues you have raised about the legislation -- and as you know, it is my keen interest to mark up these two bills pending in our committee as soon as possible. Some of the issues that you have raised about the 9/11 Commission's

recommendations are handled at least in H.R. 4104, which I am more familiar with. We do set up an IG in that legislation. We do include a fixed term for the CIA Director. We model it after the term for the FBI Director. We figure that that is a good place to start. If it should be some different length of time, certainly that can be identified.

We do deal with excessive classification. We would have the National Intelligence Director set the classification standards across the Intelligence Community rather than have each stovepipe put different bells and whistles on its products so that a person in stovepipe A can't read the material prepared by the person in the next agency. That is a way to reduce information sharing. We are for more information sharing, and we set up personnel policies designed to move people across the agencies so that what is a need-to-know culture changes to a need-to-share culture.

A lot has to be done to change the environment so that our intelligence capability is much more than it is now and so that we incorporate across the Intelligence Community this notion of protecting civil liberties at the front end. Think about it. If we don't get this right soon, and we have another major terrorist attack in America, I worry that we will never get it right, and the people who will suffer are many innocent Americans whose rights may sadly not be protected in the way that they need to be.

So at any rate, I want to make the point that we have thoughtful legislation in this committee.

I want to ask the Chairman if I might, Chairman Goss, when are you planning to mark up these bills in our committee?

The Chairman. When we complete our hearing intake on them, which I expect will be before the end of in month.

Ms. Harman. So it would be your intention to mark up these bills and perhaps there will be others. I can imagine administration might introduce a bill at the end of this month or the beginning of next month?

The Chairman. My intent, as has been previously stated throughout the year, is to take the workload of the committee in manageable slices. We have done that. We have got our authorization bill done. We have done the language piece. We have temporarily stopped work on the WMD report because the 9/11 report hearings, we felt, had a higher priority. My view is that we will then get back to our schedule with the WMD report and the proceeding on the restructuring of the Intelligence Community September and October before we adjourn. That is my plan.

Ms. Harman. Well, I see that my time is almost up. I appreciate your comments, Mr. Chairman. I would just like to urge us to move faster. I believe that a record of 62 hearings, closed and opened, as you said this morning, for

this year, a public hearing today on these general issues, the ample evidence assembled by a number of commissions, including, as Mr. LaHood points out, the joint inquiry into 9/11 on which most of us participated, which made as its first recommendation the creation of a National Director of Intelligence, is what we need to move forward on legislation that is already pending, and I would urge us to act now. We are having further hearings this month, as I understand it. I would wish that our next hearing, which I believe is next Wednesday, be a hearing to mark up legislation. I believe we are ready.

Thank you, Mr. Chairman.

The Chairman. I think that you have done an excellent job of making your position well known.

I turn, I think, to Mr. Cunningham.

Mr. Cunningham. Thank you, Mr. Chairman.

Mr. Chairman, both panels have brought problems, and including this panel, problems with both 9/11 recommendations, with Ms. Harman's bill and our Chairman's bill. And I like the phrase that you used, rush to failure. Personally, I think to rush to mark these bills up is irresponsible, the main reasons for the very issues that both panels have brought forward. One of those for me, you look at intelligence and counterintelligence, with establishment, and all three bills have a DCI and an NID, but the

implementation of that needs to be careful, because if you look at the purpose why you are here for intelligence and counterintelligence, then you want them to be flexible. It means in wartime you have got to look at all the dynamics and the changing that the enemy does and be flexible to adapt to it.

The imagination, to me, is not really defined, but imagination is creative ways to counter the enemy without them knowing about it, and being able to change as those dynamics change. And I would think the other thing is timeliness, which means it happens as fast as possible without bureaucratic intake.

If you look at an NID that is not with the White House, for example, the question of if we wanted to mark it up and say, do it, but if you don't implement it and know how you implement it, then we are going to have problems in doing it. For example, what authority does that individual have over a Director of Intelligence that is not a Cabinet member? What authority does he have over a Cabinet member or a Director, say, for example, Secretary Rumsfeld, or Secretary Perry, whatever. These things -- for us to rush into this would be a rush to failure.

So I disagree with my colleague on the other side. Her staffer sits right on the 9/11 Commission. I have no doubt of where her bill came from, which is no -- not criticizing

it, but it came right directly from 9/11. But I disagree with a lot of things in 9/11, and I disagree with some of the things in Mr. Porter's bill as well. So for us to rush to that is impossible.

The ACLU, to be frank, people know me. I am very frank. I am not a follower of the ACLU. And although I liked some of your comments today --

Mr. Edgar. Well, we always welcome new members, Congressman.

Mr. Cunningham. Don't hold your breath.

Let me give you an example there. Are you familiar with the Phoenix report?

Mr. Edgar. Pheonix? No, I am sorry.

Mr. Cunningham. In Phoenix, Arizona, the people that flew the airplanes into --

Mr. Edgar. Right.

Mr. Cunningham. -- flew the airplanes into the Twin Towers trained there, and the question was why didn't they -- why wasn't intelligence going in there? The key thing was they were afraid that the ACLU would go after them, hold them up for profiling, because -- let me finish -- because they were preaching al Qaeda. They were preaching support for Osama bin Laden. Under the first amendment they could do that. But if they profiled them, they would go. They were trying to get two CIA agents out of the Yemen. But the key

was that they couldn't do that.

Now, these individuals, the PATRIOT Act takes care of that, and the thing that you are opposed to, the difference between intel and law enforcement, it allows them to go in and go after this. You know there is a second group in Phoenix? One guy failed flight training. He was so stupid, he failed as a copilot. You know what he is in right now? Airport security. And you guys objected to going in there after these guys, and that is where I think that -- where the dialogue -- for us to go in through these different things, would both of you say that for us to rush into any one of the three bills and do it now, to mark it up, would be wrong?

Mr. Edgar. Well, I would say we need to be very careful about moving so quickly in the highly charged atmosphere of an election year.

I did want to respond and say that I certainly cannot be -- I certainly understand that people may fear -- let me just back up. I wanted to make it very clear that the ACLU did not object to any action on the Phoenix communication. I cannot -- I expect that people will always be criticized for whatever they do. All I can say is that the vast majority of security and intelligence professionals have said racial profiling is not an effective law enforcement tactic, and the Commission did not find that it would have been an effective law enforcement tactic. And I just don't think it would be

fair to blame the ACLU or concerns about racial profiling for some of these incidents.

Mr. Cunningham. Mr. Carafano, would you agree that we shouldn't rush into these things; i.e., mark up right now without all of these things going on?

Mr. Carafano. I agree. I think we can use the creation of the Department of Homeland Security and the Department of Defense as good models. If it took us 6 months or 8 months to do this. I think that is perfectly fine and appropriate, because what we do is going to stand for --

Mr. Cunningham. And I personally think the CI and the NID should be a military individual. That would take away a lot of the problems.

Mr. Carafano. I just want to add, you know, we can learn a lesson from the passage of the PATRIOT Act. I mean, fairly or unfairly, and I think it is very unfair criticism, the criticism was in the PATRIOT Act where we rushed to do this, and I don't believe that is true. These were issues that we debated for a long time, and we didn't rush to do this. But if we rush and do this before the election, we will poison the baby, because the criticism will always be that we rushed to do this, whether it is a fair criticism or not. And we will have a hard time getting this off the ground because people will be saying we threw this together even if it is not true.

So if you rush and do this bill, you are going to face a perception problem whether it is fair or not, which is going to poison the reforms that we all think are really necessary. And we will be honored years from now for taking our time and doing it right.

The Chairman. Mr. Reyes.

Mr. Reyes. Thank you, Mr. Chairman. And I just -- as a point of maybe interjecting a reality check, proposals for the National Director of Intelligence have been discussed and debated since at least the mid-1970s, so for about 30 years. So the notion that this is rushing to do -- to consider and do something about that, I think, would not be reflecting what recommendations and debates have gone on Capitol Hill and other places for the last 30 years. So I don't think that can be constituted as rushing.

Also, the other thing that I wanted to point out was that H.R. 4104 did not come from the 9/11 report. In fact, we feel that it might have positively influenced their recommendations. We worked on that.

Mr. Cunningham. Will the gentleman yield?

Mr. Reyes. Yeah. I will be happy to yield.

Mr. Cunningham. What I said is Ms. Harman's staffer, which I wasn't criticizing, worked with the 9/11, and a lot of that information -- I didn't say it came out of that. I said as a result of those hearings and meetings.

Mr. Reyes. Well, then I apologize for misunderstanding you, but nonetheless it is important that the record reflect that -- those two points: The NI has been debated and considered for 30 years; secondly, we put a lot of thought into this, and clearly there are a lot of people that think it is worth considering.

But let me turn to another issue. The -- both the 9/11 Commission and 4104 propose that the President develop policy and procedures relating to the Intelligence Community access to public and private databases. I was wondering -- and by the way, this was also proposed by the Marco Foundation in their study. So I was wondering if you two gentlemen have any thoughts on the need for a well-understood system or procedures related to the intelligence use of these databases, and, in particular, the role that the President would play in that.

Mr. Edgar. Well, this may be another area where we disagree again. We -- well, maybe not. But we were actually quite alarmed by the idea of just going forward with data mining without the kind of thought about what are the privacy safeguards. And the problem is there aren't any right now. And you know, that data is available for use in a way that could put anyone whose data is held in a private database under some sort of suspicion.

We were very worried about the TIA program that -- the

Total Information Awareness program that would have used computer algorithms to try to calculate who is a suspect based on their profile of what data transactions they have. And so, you know, one thing we want to make sure is that we -- you know, Congress agreed with us and decided not to fund that program and decided to say we have got to think about this a lot more before we go forward with a program like that. And I am concerned that we could get that through the back door if we have that kind of language in a bill that creates a National Intelligence Director.

I think it is important that for congressional oversight to be effective, there needs to be a decision by the Congress to authorize data mining before government agencies, intelligence and law enforcement agencies think they are going to go forward with it. And I am afraid that if we don't have that kind of clear language, that we are going to end up having another Total Information Awareness program without ever actually debating it.

Mr. Carafano. You know, the tragedy of the Total Information Awareness program is it also had -- they were doing data protection research as well as data exploitation research. And when we killed the program, we called all the data protection research, and we just ported the exploitation research over into Blackwell where we don't know what is going on. So I am not so sure that was the best thing we

ever did.

I do -- you know, I talked about that we need a National Intelligence Director who can do integration at the strategic functional and mission level. At the functional level you have certain functions that are being performed, and what you want is for them to integrate well. And so I think this is an example where an NID would play a very important role. Having the ability to set policies nationwide in areas, for example, like standards for declassification and classification, I think, would be very, very useful. Having the policy that went across all domains in terms of information protection, I think, would be very, very good. And, of course, this person and their activities would be responsible to the Congress just like all other Federal agencies. And I do think it would be an enormous step in the right direction.

That is why I also think we need a privacy and a civil liberties office, and a national architecture office, all under the NID so they can set -- so they can do these in an integrated way, and so they can also provide the Congress with the technical -- mean, I think a lot of the problems with these debates is do you want security or privacy? You can't have both. And it is a false debate. You can have both. It is a question of do you have the appropriate technologies, the human capital programs, the procedures and

oversight in place. And so you need a national policy level, people with the right expertise so they can come to the Congress and say, and when you get ready to write your law, let me explain to you the technologies, the legal and the institutional implications of this, and then you can bring in people from the ACLU and the Heritage Foundation, and you can all thrash it out. But unless you have -- the problem you have now is every time you want to have that debate, you have got to debate it with 47 different agencies. And we should be able to debate it at the national level and conceptualize it and then have that and everybody else be in the implementation business, not in the business of figuring out should the Department of Energy be in the data mining business or not. That shouldn't be something they have to do.

The Chairman. Mr. Hoekstra.

Mr. Hoekstra. Thank you, Mr. Chairman.

I would like to ask a little bit about what would you like to do or what you think we ought to do in terms of congressional reform for oversight and managing the Intelligence Community. Mr. Edgar, I think in a document that you prepared, you highlight that Members of Congress view a position on the Intelligence Committee as burnishing foreign policy credentials or as a steppingstone to leadership. And you go on a little bit like that. And then

you make the recommendation that more of what we should do should be open to the public.

I remember sitting down with Mr. Hamilton a couple of months ago, and I think I am looking forward to him being here next week, but he was yearning for the days, the old days of the intel committee, where they were mostly senior Members of the House who had been here for, I think, more than 16 or 18 years before they would get on the intel committee. Almost everything was conducted in secret. And when they left, it was, you know, kind of a clear and solemn bond that when they left the committee rooms, they wouldn't talk about it. They wouldn't talk about what went on behind the closed doors.

And the -- I am wondering, you know, it is -- you are talking for more openness. I am wondering if you don't see the problems of it then becoming more politicized and less effective in terms of oversight. So I would be interested in, you know, your rationale for arguing for more openness, and then both of your views as to what are the most important reforms that Congress itself could make.

RPTS ODOM

DCMN BURRELL

[2:10 p.m.]

Mr. Edgar. I take your point about the double-edged sword that openness can be, but I think that the way certainly we work today in 2004, the press and public interest groups have an important role to play in the oversight process in prompting committees and other organs of the Congress to focus on real problems in the government agencies. When you have a committee that is entirely closed to the public, here I am and I look at -- I review what hearings are going on each week and it says Intelligence Committee, closed matters. Is there a civil liberties issue going on? I don't know. Obviously I know that some things are secret but even when it comes to something as basic as legislation, we find out about the intelligence bill when it is reported out of this committee, there is a provision we object to and we are forced to scream and run to the hills to try to get it out there in a hue and cry. If we had had an open legislative hearing process, maybe we could have worked with the committee, explained our concerns and come to some sort of common agreement.

So I think that our view is that openness is better, that the American public has the right to know what is going

on except for those very specific details, and certainly issues like legislation and policy should be discussed as much as possible in the open. And also that we do, though, believe that it is very important that we not just create a super committee of very high level people that meet in secret and have total power over the Intelligence Community. I think the notion that that creates better oversight -- what if they all agree about something that a lot of people in the country don't agree about. If we had a few other committees that had oversight responsibilities, that would be more oversight. And certainly the Judiciary Committee needs to be involved. I don't think just having one or two members, or the chairman and ranking member is enough. That is not going to give you the proper balance between intelligence and constitutional rights that we have now.

Our recommendations are for more open hearings. I take your point about possible grandstanding, but I do think that it is important to have that ability of the public to be in and to make its point known and preserving oversight, not having a super committee that doesn't let other committees have a role as well.

Mr. Hoekstra. Doctor?

Mr. Carafano. I think little discussed, but that the creation of an NID will help in the congressional oversight process because what I think it will do is it will make a

more understandable dialogue. The committee will basically have one person to talk to who can speak across policy issues that span the breadth of intelligence, both domestic and foreign. The problem that we have quite honestly is we talk in acronyms and things that average Americans just don't understand and don't get. We have an obligation to create a dialogue between the executive and the congressional that people can understand what we are talking about.

I think this will help do that. It will clarify and simplify these issues in America so when you do have public, open hearings you have somebody who can go up there and who can speak for the entire breadth of the intelligence issues and you can have a meaningful public exchange. It will be on policy issues which don't need to be classified rather than on detailed operational matters. I think that is where the American public really needs to be engaged in and you can bring in outside experts. I actually think that creating the NID and having him focus at the policy level will add a lot to having you enabled to play a more constructive role.

Mr. Hoekstra. Thank you.

The Chairman. Ms. Eshoo.

Ms. Eshoo. Thank you, Mr. Chairman, and thank you to Mr. Edgar and Mr. Carafano. It is a pleasure to listen to you and to the views that you are putting out to us. These are important hearings for us.

Before I ask my question, I want to say something about the issue of rushing. I don't think that any Member of Congress would stand next to a rush job in terms of legislation. The framers designed the wheel to move slower rather than to be coming off the axis of the democratic vehicle, so to speak. This is not about rushing and what goes with it; i.e., sloppy legislation. This is too important. But that is why some of us started early on this. And so it is a very healthy competition of ideas which are contained in legislation, but most frankly for some of us we thought that we should have started much, much earlier. There is a recognition that there are some things that need to be retrofitted. Some things I think are broken. I think other things need to be improved.

So to say at this point that all of a sudden people are rushing, I think is kind of a mischaracterization of where we are at. Most frankly, I don't even think we would be here, any Member of Congress being called to come to hearings, were it not for the work of the 9/11 Commission, and the direct tribute really belongs to the families. They insisted that there be one. When there were attacks against it, funding threats, that the work was going to be cut off, it was the families every step of the way that prevailed. So I give the credit to the families.

Again, I really doubt that we would be here discussing

any kind of reforms were it not for the 9/11 Commission, and they did their work in public and that is why we are here, because they brought the American people along. So what the outcome of this is going to be, of course the Congress needs to design it. But I don't consider this a rush job. I do think that there are Members that need to be brought up to snuff on what these various issues mean because each one is sobering and heavy. I agree with my colleagues on both sides that we have to be very, very thoughtful about the work that we do. But to say that this is a rush job, I don't think so. These issues have been around for more than a while.

Let me ask my question, Mr. Edgar, to you about what you think the greatest civil liberties and privacy concerns are related to the implementation of the Commission's recommendations. I think that you have mentioned some of them in your various answers but I would like you to just go for that one so that we have it very clearly on the record. And also would you comment on the issue that the Commission recommended the creation of a board within the executive branch to oversee the adherence? I think you touched on that but I would like to maybe in a clearer way know exactly what your views are, and certainly if Mr. Carafano wants to chime in if we have time. I see the yellow light is on, so the rest of the time is yours.

Thank you.

Mr. Edgar. Thank you very much, Congresswoman. The greatest problem, I think, is in centralizing power over both domestic and foreign spying in an official who is either at the White House or under the thumb of the White House. I have gone through in my testimony and talked about some of the serious problems that result from doing that, from having President Nixon basically ordering the burglary of the office of the psychiatrist of Dan Ellsberg, and many other surveillances. Those were intelligence operations directed from the White House for political gain. That is an abuse, but I think it is an inevitable temptation of an administration that has a partisan agenda, an ideological agenda to, if it is that close to intelligence, to use that power. Reagan with Oliver North. Clinton with the FBI filegate scandal. This is something that goes across partisan and ideological lines, and I think it is important.

We have made specific recommendations that if a National Intelligence Director is created, it has to have real independence from the White House and we have recommended that there should be a fixed term for the National Intelligence Director and not just for the CIA Director, and that is the same recommendation that Bill Cohen, the Secretary of Defense under Clinton, and Robert McFarlane, Reagan's National Security Adviser, made in the Washington Post this Sunday. We strongly support that.

That is really to us the biggest problem, and it is the problem that results from having a top spy who is close to the President be in charge of domestic spying.

You asked about the Civil Liberties Protection Board. Our biggest concern is that that is in some ways in the report not very clearly spelled out as to what exactly it does. It is a bit of an afterthought in the report. There are a few paragraphs on it. What powers is it going to have? Will it have subpoena power? Will it be able to look at highly classified documents? Is this going to be like the 9/11 Commission? Is it going to be a big, important body that really protects civil liberties and does real investigations and looks at policies and makes recommendations that people might disagree with, that Presidents might disagree with, or is it just going to be window dressing, something that we can appoint a few people to give them some reward?

That is the danger I see in treating that board as an afterthought. We have to treat that board as an extremely integral part of the 9/11 Commission's recommendations and we need to have hearings and really go through it, consult the best civil liberties experts about how to do it right and how it is coordinated with inspector generals and the courts and all the other agencies of government that are supposed to protect civil liberties, how it is going to be related to

that.

Those are my two comments I would say.

Mr. Carafano. Could I just add very quickly, I agree with the primary concern about the overcentralization of authority and the problem of having it in the Office of the President. I think it is spot on.

I am a little more ambivalent about the board. To me it just quite honestly seems like throwing more government at the problem, creating another piece of bureaucracy. We all know civil liberties really get protected when cops and people do the right thing. That is a question of policies and education and training programs and guidelines that are in place. I am not sure a board sitting in Washington can make all the Federal Government do the right thing. Every agency has to have the right policies and the human capital programs.

I would much rather see a strong civil liberties and privacy office in the National Intelligence Director who is setting policies and who is looking at the programs across Federal agencies, making sure that they are putting real programs in place rather than some board who as well-intentioned as they are is never going to be able to ride roughshod over the entire Federal Government. We just need good programs in place to do that. I think that is more important.

Mr. Edgar. I think we need both. I certainly agree, a board in Washington is not going to protect civil liberties, but we need to -- I think that is an important recommendation, if it is coordinated properly with these internal watchdogs and all the other mechanisms, judicial review and others, it is not a replacement for that but it is, I think, an important recommendation.

Mr. Carafano. I think we always find something to disagree on.

Ms. Eshoo. Thank you, Mr. Chairman. Thank you, gentlemen.

The Chairman. Mr. Burr.

Mr. Burr. Thank you, Mr. Chairman. I will be very brief. I really have no questions, but I want to thank both of you for your willingness to come in and share with us. Seldom do I publicly disagree with my colleagues but I am going to choose to do it in this particular case.

The reason that we are here today is because we are under assault from a new breed of terrorist, we and the rest of the world. The 9/11 Commission's creation was in part the pressure of families that were victims of this terrorist act. But we are here today because we have a grave threat in this country from people that want to kill us. That new breed of terrorist demands that we do things differently than we did when we created an intelligence structure that was primarily

focused with the efforts that were contained within the Cold War.

I appreciate Dr. Carafano's acknowledgment that what we did with the PATRIOT Act has not been abused. I would probably also suggest that both of you probably weren't fans when we did it, and this is one time that America has proven that you can get close to the line and you can respect the ability to go there. What we are here to debate is how we are going to change that and how close to the line and can we institute a structure that allows us to get that close and to maintain the integrity of where we are.

I would also comment on one other thing. I am not the only one but I am sure one that will be vocal today. I believe we as this committee do too many things in public today. 9/11 demanded that in a bicameral way in the year 2002 that the House and Senate Intelligence Committees try to, in depth, review what happened and why. The 9/11 Commission had more information than we had 2 years ago. I think that both the Senate and the House committees did a very thorough job and had very credible recommendations at the time.

I understand why you would like to have it public, Mr. Edgar. But, you know, when I go home to my constituents, they tell me they don't want to know, that that is something that they trust us to get behind closed doors and to talk

about things that they don't feel they have any business knowing about. And it is hard to separate the operational stuff from this and from that. And if we do it, if this were to go public 90 percent of the time, who is the next one in the door suggesting the FBI and the CIA, that some portion of what they do every day should be public? We have to make sure that we set a precedent that in the future protects what this committee does because we do it on behalf of this country. We do not do it on behalf of us. I think you heard in the earlier panel two if not three individuals that looked at us and said, we don't know why you do what you do. The truth is some days I wonder why, all of us, but the fact is we do it because we understand why we were asked to do it.

I appreciate what you have contributed to that today. I yield back, Mr. Chairman.

The Chairman. Thank you. I will yield the balance of your time to Mr. Boswell, who has asked to make a brief statement.

Mr. Boswell. Thank you, Mr. Chairman. I would just like to make this statement because a different thing has been said today twice now. And I would agree to the statements made by my friends and colleagues Mr. LaHood and Mr. Cunningham, but I think the urgency is this, and maybe I am not communicating but I think the urgency is this. The interim Director of CIA said publicly that there was a

credible threat for another strike in our country before the next election, and I think that puts us in a position that we need to be focusing on this, doing everything we can. I think that is our number one priority.

I am not wanting to suggest or take away one bit that we haven't done a lot of good things. We have. I compliment you, Mr. Chairman, and everybody that has been involved in that. We have done some good things. But when the interim Director said publicly that we have got credible evidence that there is a high threat of another strike in this country before the next election, I just feel like that ought to crank us up and we do everything we can. If we are doing everything we can, okay, but if we are not, then we should be.

I just simply want to leave it there. I hope that I have clarified that.

The Chairman. Thank you very much, Mr. Boswell. In fact, the reason we are here is because we do feel a sense of needing to get on with it. I guess the discussion may be are we going about it the right way or not. I think we are doing the usual deliberative process here. I think it has been helpful today and I have heard other Members say that, so we are going to stay the course on what we are doing.

I actually wanted to apologize for not being here to welcome you. I had a telephone call I had to take. I

apologize for not being able to come and say thank you personally and introduce you to the committee. I am grateful for your testimony. I actually would like to ask a couple of questions before we go to the next panel, because this is really the critical debate before our country, it is the balance between civil liberties and protection of American citizens. That is the debate. That debate is going to go on for a long time.

My guess is society will evolve and we will never get it exactly right. We will always be off the mark a little bit one way or the other, but I did want to start with a point of clarification. When we talk about our meetings that are held upstairs, as Lee Hamilton sort of I think was characterized as yearning for the old days, when the information that was shared was handled in that room and there was much not known, certainly much less than we talk about today, it is very important to understand that the intelligence program in our country is the national foreign intelligence program. We do not have a domestic intelligence program. We are the only nation in the civilized world that does not have a domestic intelligence service of one sort or another. We have law enforcement. But as we have heard many times, the culture is quite different and the purposes are quite different and the career advancement is quite different. So when you get down to the question of what are we really confronting with these

recommendations today, there are a lot of things and there are some questions about titles and positions and of course that gets everybody's attention immediately in Washington because power is the essence here and who has what title and what rung and who answers the phone in what order is sort of what makes the Beltway spin around.

But the truth is in the middle of this is a hugely important question for us and it is underscored very well in the 9/11 report. It is a simple word. The word is "both" and it is italicized. It says what we need to do in fighting counterterrorism is to use all sources in our joint operational planning with both dimensions spanning the foreign-domestic divide. That is code for saying we are going to get into domestic spying in the United States of America. That is the issue. The real question if we adopt these kinds of recommendations is what kind of safeguards are we going to give the people of this country that there will not be spying on American citizens by American organizations in government or of any other type that are untoward and uncalled for? We can get around it as we have for years by using the political correctness and say, Well, we're not really spying, it's just law enforcement. These are just operatives of law enforcement people.

We are coming right to grips with this question now. The 9/11 Commission by their own admission in our briefing

earlier said they really didn't want to get into the PATRIOT Act, they could recognize the hot potato and they just didn't want to go there because they have enough else here. It is not just the PATRIOT Act. It is this gut, core question. If we are going to do both for the first time in history; that is, collection of information and taking action, because this executive summary also calls directly in its conclusions for agents, analysts, linguists and surveillance specialists, recruited, trained, rewarded and retained to ensure the development of an institutional culture imbued with a deep expertise in the intelligence and national security let loose on the American people. That is a brand new day.

I would like to have your views on those thoughts because I think that is the reason you were invited to come and talk to us. How dangerous do you think those recommendations are and what are those safeguards?

Mr. Edgar. Mr. Chairman, I think that that is extremely dangerous and that is exactly at the heart of our concern about these recommendations, is that -- I would disagree with you that we have never done this before. We have done this before with COINTELPRO. We have done this before with what Hoover did, and we thought it was wrong. We didn't think it was what we should be doing, which is to spy on American groups that weren't involved in criminal activity, serious criminal activity. I really take issue with the idea that

because we face a terrorism threat that we have to spy on groups that aren't violating the law. I think that we have to spy on the groups that are, the terrorists, and that we have to put their entire organization under surveillance in the form of an enterprise investigation of the kind that we need to do a lot better. We do have criminal intelligence in local, State and Federal law enforcement and I am very concerned that if you have the entire intelligence program of the government under the control of a director who is essentially a political official that you are going to inevitably cause that political official to get caught up either in partisan politics, as Nixon did with Watergate, or you are going to have him getting involved in ideological battles that aren't about terrorism but are about issues like civil rights, whether we should be in a war in Iraq, those kinds of issues.

You can say, well, we are not going to do that. You should trust the government that we are not going to do that. I think that we need to have safeguards that prevent that from happening. That is one reason why in our testimony we have recommended 15 specific changes that we will hope would allow the greater integration and analysis that the Commission found was necessary, that will allow the FBI and CIA to exchange information for analysis purposes but that won't cause the FBI and the CIA to be seen as interchangeable

cogs in the same spy machine. I think that is a huge mistake, and I think that we want to make sure that when we set up this architecture that it doesn't become that kind of a system.

We need to set up an architecture that identifies the information sharing vulnerabilities that the Commission identified. We didn't have a domestic security service or MI-5 before 9/11, but that wouldn't have stopped 9/11. MI-5, you look at what they did, they have had serious problems both with abusing civil liberties and exactly the kind of information sharing problems that we have here.

And so they looked at that and rejected it. I think that was a good recommendation to reject it. But if you look at the missed opportunities that we are talking about, I really don't think these were missed opportunities because the FBI wasn't having an agent in every mosque and church in the country. It was because the FBI and the CIA and other agencies had bureaucratic barriers that impeded the sharing of information, and I think that we need to fix those rather than increasing the surveillance powers of the FBI or making the FBI use CIA style methods.

The Chairman. Dr. Carafano?

Mr. Carafano. The United States has always done domestic intelligence and it always will for the simple reason that the enemies don't respect our borders. These are

gaps and vulnerabilities that they want to exploit. I think the lesson in history is when we have done domestic intelligence and it hasn't been correctly supervised, it has been abused. I think the answer is very simple. We have to realize that we are going to have to do this and we are going to have to provide proper oversight. The simple answer is it is about liberty and order. You have to design it essentially to do both.

The one thing I would really impress on the committee, and again why I really argue against rushing forward with this, is if you read the 9/11 report, it is a history book. The terrorists that did that attack don't exist anymore. They have changed and evolved and moved on. In a large sense the report is really looking backwards defending against an enemy that is no longer there. Not only do you need to think forward in terms of -- you have to create a system that is going to deal with the terrorist threats, not just as they are today but as they are going to be 5, 10 and 15 and 20 years from now and you are going to have to think about all the threats that are going to exist 5, 10 and 15, 20 years from now and you are going to have to build a system that is going to allow you to do domestic and foreign intelligence and integrate it and at the same time protect the civil liberties of our citizens. You are going to get one shot at this and that is it. Please get it right.

The Chairman. Thank you very much. I want to make sure I understood, Mr. Edgar, you said you had about 15 recommendations that you had included. I appreciate that. I presume those would be things you would want us to take into consideration before we made a judgment on the 9/11 recommendations; is that correct?

Mr. Edgar. That is right. There are specific critiques of the way in which the 9/11 Commission centralizes power and their ideas for increasing openness and oversight. I think that those are the kinds of things we have to take into consideration. People other than us and probably other than you, Mr. Chairman, may decide whether there is going to be a bill as of a date. We know that the political calendar and the leadership and the President and Senator Kerry are all involved in this mix and so whatever the pace is, whether it is a rush or a deliberative pace, we have to work hard to get it right and so we wanted to come up with specific proposals right away because we knew that whether we said slow down or not, the train was going to go forward anyway.

The Chairman. To be clear, you just don't want us to rush ahead and adopt these things as presented?

Mr. Edgar. Absolutely not. That is exactly the problem, is that the Commission's recommendations, while they are well taken and we support the idea of reform and some of the proposals, have real serious problems. We talked about

them and we got I think to the heart of it at the end with you, Mr. Chairman, and so we need to work on this better. If I had my way, it wouldn't be in a partisan, charged election year atmosphere. All I am suggesting is I understand it is not going to be my decision or the ACLU's decision.

The Chairman. I thank you for your testimony. One of the other areas that I think is even more dangerous that we haven't touched on which I would like to get your views on another time because of our time constraints is the question about information management, the question of databases, of what materials Big Brother has in a file somewhere. That to me is very worrisome. I believe very much in the need to share and I believe very much in the need to know and they are not in conflict because the trick of intelligence is sharing with the people who need to know. The problem is who makes the judgment on who needs to know and how that gets shared. Those are details that are not here and they are probably as critical as any I can think of.

I thank you for your help. I will be talking to you more about that. Mr. Cunningham had asked -- did you want another round of questions, Mr. Cunningham? Mr. Cunningham is feeling left out a little bit. Did you have another question?

Mr. Cunningham. I thank you. I will be brief. I watched the Democratic Convention. There was an individual,

whom I think -- Bill Clinton is one of the best speakers I have ever heard, best politicians. There was a speaker, I think, that rivaled Bill Clinton. In his speech he said that if a child on the East Side can't read, that bothers me. If someone's civil rights are violated, it violates my civil rights. I remember that from that very powerful speech, I thought. When I spoke negatively about ACLU, about the time I start hating you, you do something on the conservative side that I say, yeah, right on, go. But I believe that we are not dealing with the Mafia. We are not dealing with drug dealers who are ruthless. We are dealing with people here in this country and all over the world who will do anything they can conceive to do to kill us. To kill us. You, my family. And I think sometimes we need to side and maybe err on the safety side. I think the extremisms that you are talking about, I don't think any of us would disagree that civil rights were violated. But I think some of the extremisms that I think about when I think about ACLU maybe ought to be eliminated as well and I think that is a fair statement. But I am a very strong supporter of the PATRIOT Act and the ability of the thing it gives us to save my family and yours.

I want to thank both of you for coming up. There are other things you could be doing. The first panel and this panel, I think it has been very informative. It reinforced a lot of the things that a lot of us felt. We want to thank

you for coming up and taking your time.

Mr. Edgar. Thank you, Congressman.

The Chairman. Thank you very much. I am going to dismiss this panel with our gratitude for your efforts today and your input for our machinery up here. Actually we want to take a look at those recommendations and any others you have as we go along. I have got a feeling this is going to be changing a little bit as it moves so there will be opportunities for more conversation.

Thank you very much. The second panel is dismissed. We will take a 5-minute recess to let everybody adjust and introduce our third panel.

[Recess.]