Statement of
Mr. Daniel J. Gallington, Senior Fellow, Potomac Institute for Policy Studies
Before the
U.S. House of Representatives
Permanent Select Committee on Intelligence
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"Securing Freedom and the Nation: Collecting Intelligence Under the Law"

Chairman Goss and distinguished Members of the Committee, thank you for inviting me to talk about Project Guardian, which we started at the Potomac Institute for Policy Studies last year. This project serves as a national forum for debate on the dynamics between civil liberties, and new, primarily informational technologies in context of the war on terrorism.

I have provided a statement for the record, and have attached a number of materials that have been produced by the project, which is continuing. In fact, our next event is May 8th, and will address the evolution and dynamics of the authority for collection of information about "U.S. Persons"—we hope that many of you will attend or send a staff member.

What I have for you here are a few comments and preliminary observations; these assessments are, so far, my own, and I don't want to associate them

with the Potomac Institute or Project Guardian—we still have a long way to go in our work.

I have four basic points:

First: I am pleased to report that we encountered more basic agreement than I initially thought was possible—however, I won't speak for the various individuals and organizations that we have invited to participate. I encourage you to ask for a wide spectrum of views on these issues, as we have.

An example of basic agreement is that we essentially have to do two things simultaneously—evaluate new technologies that could protect us from terrorist attacks, and protect our civil liberties—and not do one at the expense of the other.

Well, there is not agreement on whether we can do both or how we do both; but even then the various approaches we have heard are not necessarily inconsistent. There are a number of ways to evaluate technologies in this context, and I suggest that we take a closer look at the way laboratories in

the intelligence community create and evaluate technology that could affect civil liberties. As we know, such laboratories have, in existence, approved written guidelines and procedures which this committee reviews, and which address these dynamics.

I'm not suggesting that this research should be done in intelligence laboratories; it should be done in the labs and organizations best suited for the work, wherever that is. I am saying that we have some very good models to follow and we should follow them.

Second: With regard to all new technologies that affect the privacy of Americans, we should stick with what we know; and again, I believe that we should look to the whole of the intelligence community and apply its thirty years of experience in dealing with "U.S. Person" information: what it is, who can collect it and under what circumstances, how it is disseminated and controlled. This is at least a very good place to start—even though these new technologies may well end up in some non-intelligence context.

Third: We should remember that there are significant differences between the *technology* to collect information, and the *authority* to collect it; also,

that all government information collection regimes need to be policed, and audit trails need to be created for which a senior person is accountable. In this context, new authorities may be needed for new collection technologies; however, merely to evaluate new analytic technologies and theories may not require new authorities.

Finally, we also need to remember that the generalized assembly or collection of data is different than specifically targeting a person or an activity. In fact, with so much available data, and the technical ability to look at so much of it, the operative, and I submit, the legally relevant act is as much how the data is associated with an identity as it is the collecting or assembly of the data.

In short, what we have with regard to new information technologies may be far closer to the dynamics we have already confronted with regard to the collection and use of SIGINT—and we should look to how we have structured that oversight regime for models for new oversight regimes - if we determine such are needed for new technologies. Thank you.