

Statement of
The Honorable Benjamin L. Cardin

United States Senator
Maryland
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OPENING STATEMENT

SENATOR BENJAMIN L. CARDIN, CHAIRMAN

SUBCOMMITTEE ON TERRORISM AND HOMELAND SECURITY

U.S. SENATE JUDICIARY COMMITTEE

HEARING: "PROTECTING NATIONAL SECURITY AND CIVIL LIBERTIES: STRATEGIES FOR TERRORISM INFORMATION SHARING"

April 21, 2009

The subcommittee will come to order. Let me note for the record that this is the first subcommittee hearing of the Terrorism and Homeland Security Subcommittee of the Senate Judiciary Committee in the 111th Congress. I am privileged to have been named as chairman of this subcommittee when the Judiciary Committee organized in February.

I want to pay a special tribute to the former chairman of this subcommittee, Senator Feinstein, who has now become the chairman of the Select Committee on Intelligence. Senator Feinstein has served as either chairman or ranking member of this subcommittee since the 105th Congress convened in 1997. I am pleased that she will remain a member of this subcommittee and will continue her valuable contributions to this subcommittee and the full committee.

Senator Feinstein's partner over this many years on the subcommittee is Senator Kyl, the distinguished Minority Whip. Senator Kyl will continue in this Congress as the ranking member of the subcommittee, and I look forward to working with him. I would note that Senator Kyl has also served as either chairman or ranking member of this subcommittee during the same 12 years as Senator Feinstein.

Let me also welcome our new two members of the subcommittee, Senators Wyden and Kaufman.

Our top priority in Congress is to protect the American people, and the primary charge of this subcommittee is to oversee anti-terrorism enforcement and policy. We must make sure that our law enforcement and intelligence professionals have the tools they need at their disposal to prevent and disrupt terrorist attacks. At the same time, we must insure that our government uses

its scarce resources wisely, and that it strikes an appropriate balance between national security and protecting civil liberties.

In this Congress the Judiciary Committee will have a full agenda on terrorism issues, under the able leadership of Chairman Leahy. I expect our subcommittee to move forward on renewing parts of the Patriot Act that are due to expire, review the Administration's developing policy toward detainees at Guantanamo Bay, and work to restore the credibility of the Office of Legal Counsel through a review of its opinions on government policies and practices relating to terrorism. Over the next few months I expect the subcommittee to hold hearings on a broad range of issues, including passport fraud, cybersecurity, and biological research security. The subcommittee will also examine laws within its jurisdiction relating to encryption policy, export licensing, and espionage laws.

Today the subcommittee turns its attention to a critical issue that President Obama's Administration is already reviewing: the need to strengthen coordination and information sharing between government agencies charged with preventing and disrupting terrorist attacks inside the United States. As we learned from the 9/11 Commission, several intelligence and law enforcement agencies - at all levels of governments - missed key opportunities to "connect the dots" regarding the years-long plot leading up to the September 11, 2001 terrorist attacks on U.S. soil.

We have made much progress in coordinating our anti-terrorism efforts in the government since the 9/11 attacks, including the creation of the Department of Homeland Security, the Director of National Intelligence, and the National Counter-Terrorism Center. I am concerned, however, that the U.S. Government still does not have in place a comprehensive strategy to overcome bureaucratic hurdles to sharing of information that could prevent a terrorist attack. We still see too many examples of stovepiping of information at one government agency, and a reluctance to release that information to another government agency that has a legitimate need for that information.

At the same time, I remain concerned that the government does not have adequate privacy and civil liberties protections in place when it comes to sharing this sensitive information. The 9/11 Commission reminded us that "the terrorist have used our open society against us. In wartime, government calls for greater powers, and then the need for those powers recedes after the war ends. This struggle will go on. Therefore, while protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties. This balancing is no easy task, but we must constantly strive to keep it right."

We need to insure that our law enforcement and intelligence agencies are focusing their scarce resources on terrorists that are intent on inflicting harm in the United States. In my own state of Maryland, we have seen cases where the Maryland State Police have misused their authority and conducted a 14-month undercover investigation by using confidential informants to infiltrate non-violent peace activist groups. This leads to a chilling effect of the First Amendment rights of Americans, does not make America any safer, and makes citizens more distrustful of the government and less likely to cooperate with legitimate investigations.

The Maryland General Assembly recently adopted legislation to put restrictions on undercover police surveillance, by requiring a finding of reasonable, articulable suspicion of criminal activity before proceeding. I am also trying to insure that information on these Maryland activists were not improperly entered into federal databases.

Let me highlight one of the 9/11 Commission's recommendations on this point. The Commission found that "as the President determines the guidelines for information sharing among government agencies and by those agencies with the private sector, he should safeguard the privacy of individuals about whom information is shared."

The 9/11 Commission concluded that "the choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home. Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose that values that we are struggling to defend."

I am pleased that the Administration has already undertaken a comprehensive review of information sharing issues relating to the prevention of terrorist attacks. Specifically, I commend President Obama, Homeland Security Secretary Napolitano, and the Office of the Director of National Intelligence for ordering top-to-bottom reviews of federal agencies efforts to share homeland security intelligence information with their federal, state, local, and private sector counterparts.

I hope that today's hearing will help Congress and the new Administration work together to come up with a common approach that improves information sharing for intelligence information while establishing better guidelines for privacy and civil liberties protection.

Today the subcommittee will hear from a distinguished panel of witnesses on this critical subject. Zoe Baird serves as the President of the Markle Foundation, and also served as the Co-Chair of the Foundation's Task Force on National Security in the Information Age. Her task force issued a March 2009 report on the subject of today's hearing, entitled: "Nation at Risk: Policy Makers Need Better Information to Protect the Country." And I welcome back to the Senate former Senator Slade Gorton of Washington State, who also served as a member of the Markle task force and as a member of the 9/11 Commission.

We will also hear from J. Thomas Manger, the Chief of Police of the Montgomery County Police Department in my home state of Maryland. Chief Manger also serves as the head of the legislative committee for the Major Cities Chiefs Association.

Our final witness is Caroline Fredrickson, the Director of the Washington Office of the American Civil Liberties Union.

Before swearing in the witnesses, let me turn to my ranking member, Senator Kyl, for any comments he would wish to make at this time.