

**THE FUTURE OF FUSION CENTERS:
POTENTIAL PROMISE AND DANGERS**

HEARING

BEFORE THE

**SUBCOMMITTEE ON INTELLIGENCE,
INFORMATION
SHARING, AND TERRORISM RISK
ASSESSMENT**

OF THE

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HOUSE OF REPRESENTATIVES**

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CONTENTS

	Page
STATEMENTS	
The Honorable Jane Harman, a Representative in Congress From the State of California, and Chair, Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment	1
The Honorable Michael T. McCaul, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment	3
WITNESSES	
Sheriff Leroy D. Baca, Los Angeles County Sheriff's Department:	
Oral Statement	5
Prepared Statement	7
Robert Riegler, Director, State and Local Program Office, Office of Intelligence and Analysis, Department of Homeland Security:	
Oral Statement	11
Prepared Statement	13
Russell M. Porter, Director, State of Iowa Intelligence Fusion Center:	
Oral Statement	19
Prepared Statement	21
John E. Bateman, Assistant Commander, Bureau of Information Analysis, Texas Department of Public Safety:	
Oral Statement	27
Prepared Statement	29
Bruce Fein, Principal, The Litchfield Group:	
Oral Statement	40
Prepared Statement	42
Ned Norris, Jr., Chairman, Tohono O'odham Nation:	
Oral Statement	47
Prepared Statement	49
David D. Gersten, Acting Deputy Officer for Programs and Compliance, Department of Homeland Security:	
Oral Statement	51
Prepared Statement	53

THE FUTURE OF FUSION CENTERS: POTENTIAL PROMISE AND DANGERS

Wednesday, April 1, 2009

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON INTELLIGENCE, INFORMATION SHARING,
AND TERRORISM RISK ASSESSMENT,
Washington, DC.

The subcommittee met, pursuant to call, at 10:08 a.m., in Room 311, Cannon House Office Building, Hon. Jane Harman [Chair of the subcommittee] presiding.

Present: Representatives Harman, Clarke, Green, Himes, McCaul, Dent, and Souder.

Ms. HARMAN [presiding]. The hearing will come to order.

Good morning, everyone. Good morning.

Today's hearing by the Subcommittee on Intelligence is entitled "The Future of Fusion Centers: Potential Promise and Dangers."

In my view, fusion centers hold great promise. Homeland Security Secretary Janet Napolitano, obviously, agrees, and has said recently that fusion centers are "the centerpiece of State, local, and Federal intelligence sharing for the future."

They integrate information and intelligence from Federal, State, local, and Tribal governments, as well as the private sector, to provide a more accurate picture of risks to people, infrastructure, and communities that law enforcement can actually use.

They are not a new phenomenon. For decades, State police agencies have run criminal intelligence and analytic units. But the fusion centers of today differ from their predecessors in that they are intended to broaden sources of data for analysis and integration to include all hazards.

Right now, fusion centers are serving as a critical tool in fighting the violence along the southwest border. They serve as clearing houses of sorts for all the intelligence that law enforcement agencies are gathering on the ground, regarding the smuggling of guns and drugs. Make no question about it; these issues are absolutely critical both for U.S. and Mexican security.

They support law enforcement after investigations like the one in northern Mexico, in which a group of hit men kidnapped nine police officers, based on the orders of a cartel, and then murdered and tortured six of them.

Thankfully, some good came of this tragedy. One of the Mexican military officers involved reached out to an American colleague, asking him to inspect the weapons taken from the cartel's kidnap-

pers. American law enforcement was able to trace the weapon back to its origin and locate the dealer.

Senator John Kerry wrote a very good op-ed in the Los Angeles Times on Monday about this incident. He offers recommendations for how the United States and Mexico can develop better joint response to violence along the border and build trust: By creating better situational awareness of the movement of drugs and guns across the border through the sharing of intelligence.

I have long felt, as most of you know—based on my years and years and years and years of experience on the Intelligence Committee, and focused on these issues—that the sharing of intelligence, done right, is the tip of the spear in combating terror attacks, and, obviously, the kind of violence that we are now seeing between the United States and—between these Mexican drug cartels and the Mexican government.

Fusion centers near the southwest border, like the Arizona Counter Terrorism Intelligence Center, ACTIC, are doing just what I am talking about.

ACTIC, in partnership with the El Paso Intelligence Center, called EPIC, is providing information to first-preventers in the field, about the south-bound smuggling patterns of guns. ACTIC is also developing analytic products to inform law enforcement about the spike in kidnappings in Phoenix—the epidemic spike in kidnappings in Phoenix.

But it is more than analysis. Fusion centers also identify intelligence gaps in order to help law enforcement connect the dots.

States developed fusion centers after 9/11 because the Federal Government was slow to improve information sharing—not only vertically, with State and local law enforcement, but also horizontally, across our departments and agencies.

This committee has said this many times that it won't be a bureaucrat in Washington who will thwart the next terror attack. It will be a cop on the beat, familiar with the rhythms and nuances of her neighborhood, who will notice something suspicious and be best positioned to do something about it.

Fusion centers are uniquely local for this reason. One size cannot fit all, because communities and their populations are diverse, and so are their geographies. So it is fusion centers, in my view, who are the tool, hopefully, to empower that cop to know what to look for and what to do.

But steps need to be taken to get this effort right. Let me repeat that, because we are going to hear some testimony soon that is strongly against the existence of fusion centers. Steps need to be taken to get this effort right.

This subcommittee held two hearings in the last Congress to address efforts underway to provide fusion centers with the mission focus, structure, and privacy and civil liberties resources they need to protect our homeland, while preserving our Constitution, which, obviously, is necessary to protect all of us.

Today's hearing is intended to continue the examination of the challenges that fusion centers face, and to dispel some of the myths that still exist. For example—this is timely—in today's Washington Post, one of our witnesses, Bruce Fein, lays out what, in my view, is an Orwellian view of fusion centers.

He uses phrases like “French Bourbon monarchy disease,” and says, “Any dissidents or political dissident is suspect to fusion centers.” He claims that the unfortunate situation in Texas, which I am sure will be addressed by witnesses—a situation which DHS has rectified—could have occurred in East Germany’s Stasi.

Well, we will address these claims. I am pleased that Mr. Fein is here to present his point of view. I welcome him as a witness. I urge our other witnesses, please, to read this op-ed, and include in your testimony, and certainly in answer to questions, your views of what I think are alarmist and over-the-top statements about what fusion centers do.

Again, welcome to all of you. I now yield to the Ranking Member, Mr. McCaul, for an opening statement.

Mr. MCCAUL. I thank the Madam Chair, and thank you for your very strong leadership in this area. It is probably one of the most important areas facing the Nation.

You know, when I was a Federal prosecutor, I was working with a new entity called the Joint Terrorism Task Forces. The idea of fusion centers was an idea that was conceptual, but we were putting that together. I am very pleased to see that we have them, and they are working, and they are protecting Americans.

As Madam Chair mentioned today, this hearing does focus on fusion centers, and their evolving role in securing our homeland. As we all know, fusion centers are a major part of Homeland Security information-sharing environment. They were established primarily so that information sharing is extended to all levels of government, at the Federal, State, and local level.

As the terrorist attacks of 9/11 illustrated, it is critical that State, local, and Tribal entities be part of the post-9/11 information-sharing environment. Fusion centers have now been created throughout the Nation, with several centers in my home State of Texas alone.

While much progress has been made, some challenges remain. Funding, personnel, training still need to be fully addressed, as these centers move forward. It is also critical that these centers are established and operate under proper guidelines. As part of the training and baseline capabilities of these centers, we need to ensure that privacy and civil liberties protections are fully integrated.

I believe, as I know Chair Harman does, that privacy and security, when done right, can coexist and flourish together.

So I look forward to examining these vital issues with our witnesses. I look forward to the testimony. I want to thank the witnesses for taking time out of their busy schedules to come here and educate us here today.

With that, Madam Chair, I yield back.

Ms. HARMAN. I thank the gentleman.

Other Members of the subcommittee are reminded that under committee rules, opening statements maybe submitted for the record.

I now welcome our first panel, beginning with my sheriff, Lee Baca, who runs 6-minute miles and commands the Los Angeles County Sheriff’s Department, the largest sheriff’s department in the United States, which directly protects over 4 million people.

Sheriff Baca is a 44-year veteran of the department, and was first elected sheriff in December 1998. He was reelected to his third term in June 2006. Today, over 18,000 sworn and professional staff serve under his leadership.

His department is the law enforcement provider to 40 incorporated cities, 90 unincorporated communities, and nine community colleges in Los Angeles County. It also protects hundreds of thousands of daily commuters served by the Los Angeles Metropolitan Transit Authority, and the Rapid Rail Transit District.

He is also the director of Homeland Security Mutual Aid for California Region One, serving 13 million people in both Los Angeles and Orange Counties.

Welcome, Lee.

Our second witness, Robert Riegler, serves as the director of State and local government program office, within the Office of Intelligence and Analysis at the Department of Homeland Security.

Welcome, Mr. Riegler.

As the senior intelligence officer, Mr. Riegler has spearheaded the Department's fusion center efforts. He is the DHS representative to the Department of Justice's Global Justice Initiative, the co-chair of the National Fusion Center Coordination Group, and an advisory member of the Criminal Intelligence Coordinating Council.

Prior to working at DHS, Mr. Riegler worked at Booz Allen in the Strategic Communications Area, and at the Defense Intelligence Agency as a National Intelligence Support Team, NIST, intelligence specialist, serving in Operations Iraqi Freedom, Enduring Freedom, and Noble Eagle.

Our third witness, who is well-known to this subcommittee, and to me, Russ Porter, is the director of the State of Iowa's Intelligence Fusion Center and the Iowa Department of Public Safety Intelligence Bureau. Among the State, national, and international law enforcement intelligence organizations, with which he is affiliated, Mr. Porter is now serving his second term as general chairman of the Law Enforcement Intelligence Unit, chairman of the Criminal Intelligence Coordinating Council, and is chairman of the Global Intelligence Working Group.

He is also a member of the Interagency Threat Assessment and Coordination Group, known as ITAC-G, Advisory Council. In August 2002, Mr. Porter co-wrote a report that called for the creation of both a national criminal intelligence sharing plan, and a coordinating council. State and local fusion centers have their roots in his recommendations.

So, welcome, Papa Porter.

Our fourth witness, John Bateman, is the assistant commander with the Texas Department of Public Safety's Bureau of Information and Analysis.

Mr. McCaul, I understand that you would like to introduce Mr. Bateman.

Mr. MCCAUL. Thank you, Madam Chair.

I am proud and honored to introduce an individual from my home State and home town of Austin, Texas, Mr. Bateman. Mr. John Bateman is the assistant commander of the Bureau of Information Analysis at the Texas Department of Public Safety.

Assistant Commander Bateman began his 25-year law-enforcement career in 1984, as a member of the United States Army Military Police Corps, assigned to the 1st Calvary Division at Fort Hood, Texas.

After his military service, Mr. Bateman worked for the Bell County Sheriff's Office, in Belton, Texas, before joining the Texas Department of Public Safety in 1989.

He is a 1984 graduate of the U.S. Army Military Police School, a graduate of the 1989 Texas DPS recruit school, and a graduate of Weatherford College, where he became a member of the Phi Theta Kappa National Honor Fraternity.

In 2001, he was the honor graduate at the Texas DPS Law Enforcement Polygraph School, and, in 2006, graduated from the FBI National Academy. He holds a polygraph examiner's license, and is certified as a Masterpiece Officer by the Texas Commission on Law Enforcement Officer Standards and Education.

We look forward to hearing from him today. I thank him for being here.

Thank you, Madam Chair.

Ms. HARMAN. Thank you, Mr. McCaul.

Without objection, the witnesses' full statements will be inserted in the record. I would now ask each of you, starting with Sheriff Baca, to summarize your statement for 5 minutes. There is a timer. It will start blinking at you, and something really bad will happen if you exceed the time.

**STATEMENT OF SHERIFF LEROY D. BACA, LOS ANGELES
COUNTY SHERIFF'S DEPARTMENT**

Sheriff BACA. Thank you very much. I am glad to be here. I would like to just quickly get into the testimony.

First of all, JRIC, Joint Regional Intelligence Centers, are a model. Los Angeles is pleased to have had one of the first in the United States. Chief Bill Bratton, myself, and Steve Tidwell, the former assistant director of the FBI, are the creators of this fusion center.

What is amazing about it to date, is that the productivity and coordination of vital information is being done, whether it is on public transportation issues, aviation issues, port security issues; whether it is domestic terrorism working group strategies that are necessary; whether it is combing Federal and local public health designs that are necessary for what we would do in a first responder environment, regarding all of the chemicals and HazMats, and the cyber-type offenses that would occur.

We also have extensive planning in that regard. We have a maritime security council, which is very, very productive, and meets quarterly. Then, of course, there is a terrorist screening center.

When you look at it all, our Joint Regional Intelligence Center has 364 intelligence products that have been produced this past year. It is literally a communications center, one that is very essential in models where threats and operational responses can be planned.

I think what is great about this is that, No. 2, we have a private sector outreach. That means that there are many business community leaders that put together their information and strategy of re-

sources that are private sector driven, whether it is cranes, shovels, a various amount of transportation models, that are necessary in the event of evacuation.

Third, there are local law enforcement—third, the local law enforcement community has a robust amount of ideas as to how to best protect our Nation. So my first important point regarding our positives is that we need to continually be involved with the development of the policy of our Federal partners, so that we are not operating in two separate domains of thought.

Fourth, there is a need for more information sharing. Clearly, we are at the emerging stages of a very new department. But more can be done. I endorse the comments by my colleague, Sheriff Gillespie, regarding ITACG, and that is the core mission to improve the sharing of classified information is still an on-going process that needs to improve. We need to do more in that regard, and look at this from a standpoint of true partnering.

So, therefore, in looking at the next point, which—the fusion centers themselves—when you look at as a process—they need to have sustainable funding from the Federal Government. We cannot do this on local dollars alone.

The next point is this: When it comes to the Terrorism Liaison Officer program, again, the communication to communicate laterally—the responsibility to communicate laterally to the thousands of police agencies across America, which constitute a web of safety for America, is an eminent unmet need right now. Fusion centers can be coordinating agencies as well, for all of the police departments in America.

Next, when it comes to civil liability and transparency, we are operating under the rules of the code of Federal Regulation 28, Part 23. I have been trained, and others have been trained, in what these rules mean. Therefore, we will continue to do this training, because it is an on-going obligation of any fusion center.

Next, the committee should mandate the provisions of the Law Enforcement Assistance Program. We cannot operate alone, without all of the seven major recommendations of this program. We support them. We look upon the committee here, and also urge Congress to provide appropriations to carry out the critical law enforcement programs.

Until your report is fully adopted, our intelligence efforts will have limited success.

Now, the future of fusion centers are simply this: Under a national standard, fusion centers should serve all cities and counties as a lateral network of intelligence products, which, through JTTF and DHS and INA programs, will vertically be shared with the National Counterterrorism Center.

The network will improve our search for terrorists and their supporters, and leverage the skills found in JRICs serving major urban areas, to rural communities.

I believe all available means, whether technological, social, or political, and, thus operational, must be examined to ensure that the events of 9/11 are not repeated.

Finally, I will conclude by saying that I want to comment Rob Riegler and the I.A. They have been a tremendous help with technical assistance for our JRICs. We have Joel Cohen, who is there,

in the local office that we operate. With their assistance, we have been able to get as far as we are today.

My full testimony is on the record, with what I provided. Thank you.

[The statement of Sheriff Baca follows:]

PREPARED STATEMENT OF LEROY D. BACA

APRIL 1, 2009

The vision for the Los Angeles Joint Regional Intelligence Center (JRIC) emerged after the events of 9/11. Its purpose was to engage local law enforcement as a national resource to detect and prevent a future terrorist attack within the Los Angeles-Southern California Region. The Los Angeles JRIC governance board recognized that the JRIC's success required a fused working relationship with the Joint Terrorism Task Force managed by the Federal Bureau of Investigation.

The Los Angeles JRIC began quickly because Los Angeles County was already ahead of much of the country where a long-standing Joint Terrorism Task Force, leveraging the skills and abilities of local, State, and Federal law enforcement officers to combat terrorism already existed. Additionally, the Los Angeles Terrorism Early Warning (TEW) group had been active since 1996, sharing information among members of law enforcement, the fire service, public health, the military, and academia from local, State, and Federal agencies. Each participant of the TEW had an equal voice in the development of tactics, techniques, procedures, and protocols.

PROMISE AND DANGERS

The JRIC is the Model

More than 5 years ago, leaders from the FBI, Los Angeles Police Department, and Los Angeles County Sheriff's Department decided to expand the TEW concept and join together to create a model for intelligence fusion and sharing centers. The vision became a reality in July 2006 with the grand opening of the Los Angeles Joint Regional Intelligence Center (JRIC). Using the unique analytical processes pioneered by the TEW, that combines the efforts of law enforcement, fire service and public health personnel, analysts from a variety of agencies and disciplines provided an expansive view of trends and potentials which could indicate a pending terrorist attack. I believe that the JRIC is the model for the fusion center concept. It has been recognized on many occasions for its pioneering efforts in exploring prison and jail radicalization where the efforts of correctional services experts assigned to the JRIC has led to a State-wide, networked, group who routinely share information on the radicalization issue. The JRIC was also the first to include personnel from the fire service, public health, emergency medical, hazardous materials, and bomb squads as full partners who provide subject matter expertise for the intelligence products delivered to the JRIC clientele.

The JRIC has also served as an example for the Terrorism Liaison Officer (TLO) outreach program. The JRIC was the first center to gain State Peace Officer Standards and Training (POST) approval for its TLO basic certification course. More than 500 TLO's have been trained by the JRIC staff and are certified by the State of California.

The JRIC has a bright future and together with our Federal, State, and local partners, we are aggressively pursuing new ways to integrate our disparate agencies into a seamless network of information sharing cooperatives. I believe that the future belongs to a networked fusion center concept and its promise of local, State, tribal, and Federal integration.

Private Sector Outreach

Outreach from the JRIC is not limited to public safety personnel. Shortly after 9/11, I developed the Homeland Security Advisory Council (HSAC) in an effort to network corporate leaders with the work of the JRIC. HSAC is comprised of senior corporate leaders from Los Angeles and Orange Counties. Members of the HSAC provide technical, political, and financial support to our counter-terrorism mission. Through their large sphere of influence they also provide thousands of eyes and ears via corporate security departments who have shared dozens of incidents of investigative interest to the JRIC.

Local Law Enforcement Must Have Input Into National Fusion Center Policy

The major impediment to more functional fusion center operations is the lack of equal representation and participation in the development and implementation of

standard policy for fusion centers and homeland security matters. In many instances across the country, fusion centers evolved from TEW groups. TEWs were developed locally with representation and participation from law enforcement, the fire service, public health, the military, and academia. The TEW concept was scalable to the needs of the local participants and sensitive to the local population. With the growth in the number of fusion centers nationally, there is an effort to standardize the operations of these centers. It is in this standardization effort that local leaders must have significant input to policy development and authority over implementation. I am not confident that policy makers at the Federal level have a clear understanding of the information needs of local law, fire, and health departments. Additionally, each fusion center exists in a local area and must be sensitive to differences in demographics, population size, and political climate. One size does not fit all and any attempt to constrain local input into national policy development is a mistake. We recommend that Department of Homeland Security Intelligence & Analysis (DHS I&A) establish an Advisory Panel from the major cities and counties. This group would provide guidance through direct input on new products and services to be provided by DHS, including threat advisories and other intelligence products. The Under Secretary for Intelligence and Analysis I&A would receive support and technical assistance across a wide range of issues, including fusion centers, infrastructure protection, and threat assessments. Furthermore, we ask for your support to build an integrated national intelligence capability to counter terrorism and protect our communities from crime through the Major Cities Chiefs Intelligence Commanders Group. This group strengthens and coordinates the intelligence capabilities and operations of law enforcement agencies in major metropolitan areas. To date, this vital network of intelligence resources has been ignored and not funded by Federal agencies. We ask the committee to support this effort so that your objectives may be realized.

Lack of Information Sharing From Federal Agencies

With all the positive things that have occurred in the past several years, there are still lingering obstructions to information sharing between the Federal Government and local police agencies. A major impediment to the success of the fusion center concept is the bifurcated information flow from Federal agencies that collect intelligence. The FBI has an analysis component that provides intelligence to their agents through the Joint Terrorism Task Force (JTTF). The JTTF is an investigative body and is not responsible for the dissemination of intelligence to local authority. The JRIC is fortunate in that a JTTF Counter-Terrorism squad is physically located within JRIC workspace. This has mitigated many of the information sharing problems experienced by other fusion centers. However, a local Task Force Officer (TFO) may not share information with his or her home agency without demonstrating the receiving entity's specific "need and right to know." In this regard, I endorse the recent comments made in front of this committee by my colleague, Sheriff Gillespie regarding the Interagency Threat Assessment and Coordination Group (ITACG). Although its core mission is to improve the information sharing from classified sources between the intelligence community and front-line "first preventers," the ITACG is limited to editing intelligence and returning those products to originating agencies where the information may or may not reach State and local law enforcement personnel. Policies and procedures must be developed to fully brief an Incident Commander in the field about information that may be crucial in planning the response to a significant event.

Additionally, "Federally coordinated intelligence products" coming out of the NCTC have not met the needs of local law enforcement in either subject matter or timely distribution. Fusion centers with responsibility for large geographic areas (like the JRIC) require meaningful and expedient national information to "Fuse" with locally generated collection in order to provide clear situational awareness to those who will be responsible for sending first responders to the after-effects of a terrorist attack. The safety of the citizens of our jurisdictions and the wise expenditure of scarce resources depends in a large part on timely, accurate, and actionable information from the Federal Government. This is especially true during an event that occurs overseas. Local leaders should not have to rely on media outlets for information when agents from our own Government are on-scene and reporting to their home agencies. This type of information is critical to local situational awareness and potential response and therefore, must be shared immediately. To help remedy this situation, we ask that ITACG expand and empower its outreach components to include access to training and use of intelligence systems and databases. The ITACG should be authorized as an approved dissemination point for State and local fusion centers Nation-wide. IATCG liaison personnel and desk officers are nec-

essary to maintain a flow of current intelligence and must have authority to release information to State and local agencies.

Fusion Centers Must Have Sustainable Funding From Federal Government

The JRIC (as well as many other fusion centers) suffers from a lack of sustainable funding. The FBI and local law enforcement have been extremely generous in providing much of the funding and personnel necessary to cover the start-up and maintenance costs of the JRIC. To sustain these personnel, technological, and logistical requirements in good times and bad are a significant drain on local budgets. Each year the JRIC struggles with accumulating enough funding from the local participants and various UASI and SHSGP grants just to remain functional. In the past, funds from the Law Enforcement Terrorism Prevention Program (LETPP) were also available as a separate funding source for this purpose at a minimum of \$500 million. However, with the existing grant restrictions relative to personnel and operational needs, and the elimination of LETPP as a separate funding source, the future sustainment of the JRIC is uncertain. I believe that only sustainable funding through the Department of Homeland Security will ensure the critical efforts of the JRIC, and fusion centers across the Nation are not in danger of curtailment. Therefore, I am recommending to Congress that the LETPP grant be reestablished under the authority and administration of the Department of Homeland Security's Assistant Secretary for State and Local Law Enforcement. This will ensure that vital funding for our prevention efforts are no longer diluted within the existing grant structure, and the future of fusion center operations to perform their role in National Security will be secure.

Terrorism Liaison Officer Program

One endeavor operating out of the JRIC that has national relevance is the Terrorism Liaison Officer (TLO) program. Originated shortly after 9/11, this effort seeks to create a network of trusted agents within each law enforcement, fire, and health agency in Los Angeles County. These TLOs are committed to passing critical information from the JRIC to their field assets as well as answering requests for information. Numerous leads of investigative interest have been generated by local police officers, firefighters, and health professionals as a result of this program: This level of intelligence-based connectivity between field personnel is unprecedented and has enabled the JRIC to have the highest levels of situational awareness possible. Information provided by the TLO network contributes to the development of intelligence that is disseminated weekly to the executive staff of participating agencies, field operators, and line personnel. The TLO network also serves as the foundation for the implementation of the recently developed national Suspicious Activity Reporting (SAR) program, which the Major Cities Chiefs supports. Without the consistent messaging and training provided by the TLO coordinators, critical information, including SARs, from the field may go unreported. Currently, there are only two full-time personnel assigned to the TLO program. These two individuals are responsible for the coordination of information flow from seven counties comprised of 89 independent agencies in an area of 8,000 square miles. Other than these two individuals, each TLO in the JRIC area of responsibility is handling these duties collateral to a regular, full-time, assignment.

Another example of the need for sustainable funding is the critical assistance provided by contract analysts. These analysts arrive at the JRIC already trained and possessing the requisite security clearances to begin working immediately. Without the help of these highly trained professionals, JRIC products would lack the sophistication that results in more actionable information being disseminated to the field. I propose that with refunding of LETPP commensurate with lessened restrictions on expenditures, such as the ability to hire personnel, these additional TLO and Analyst positions can be authorized to ensure that critical information from the field does not go unreported or unanalyzed.

Civil Liability and Transparency

Civil liability and operational transparency is another major challenge faced by fusion centers. The public will not accept intelligence collection that does not adhere to privacy requirements demanded by the Constitution. Information collection and intelligence dissemination must be conducted under specific guidelines and rules. Those rules exist primarily in the Code of Federal Regulation 28 Part 23. That code has been recently updated to include investigations of terrorism and is the recommended course of action for intelligence units agencies. Additionally, each fusion center has been tasked with creating a "privacy policy" for those that participate in the Suspicious Activity Reporting (SAR) project. This policy must not be in conflict with 28 CFR Part 23 while providing the public with the privacy rights estab-

lished under law. DHS should allocate sufficient resources to ensure proper training is provided to each fusion center employee and those that contribute to its efforts.

The Committee Should Mandate the Provisions of LEAP

The Department of Homeland Security has embraced the fusion center concept and is leading the charge for standardization of operations. Local law enforcement has been a loyal partner and is the originator of the fusion center structure (TEW). The impediments I have discussed in my testimony are solvable. DHS has the opportunity to make local law enforcement an equal partner in the development of policy, provide sustainable funding, and share information more equitably while protecting the rights of our citizens. We support all seven of the initiatives articulated in the LEAP report published by the House Committee on Homeland Security and we urge Congress to provide appropriations to carry out those critical law enforcement programs. Until your report is fully adopted, our intelligence efforts will have limited success.

THE FUTURE OF FUSION CENTERS

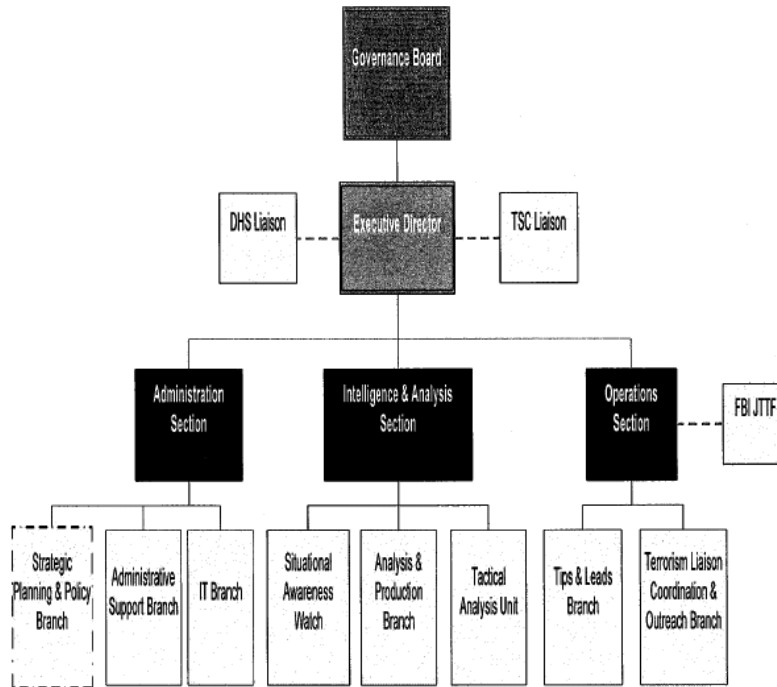
Fusion Centers Should Be the Gateway for All Local Police and Sheriff's Departments Nation-wide

Under a national standard, fusion centers should serve all cities and counties as a lateral network of intelligence products, which through the JTTF and DHS I&A programs will vertically be shared with the National Counter Terrorism Center (NCTC). This network will improve our search for terrorists and their supporters and leverage the skills found in the JRICs serving major urban areas to rural communities.

I believe that all available means, whether technological, social, political, or operational must be examined to ensure that the events of 9/11 are not repeated. As the elected leader of the Los Angeles County Sheriff's Department, I am committed to expanding cooperation with all Federal, State, and local agencies in our efforts to combat terrorism. The citizens of Los Angeles County and the Nation deserve a secure homeland. No one agency can provide that security. Only by working together in a collaborative, mutually supportive environment can we provide the security we all felt prior to September 11. I look forward to answering any questions you may have.

ATTACHMENT 1.—LOS ANGELES JRIC SUCCESSES

- The JRIC is involved in numerous working groups—unlike most fusion centers, some of those working groups are listed below (not all inclusive):
 - MTA/AMTRAK meetings (monthly);
 - Aviation Security Group (bi-weekly);
 - Port Intelligence Group (monthly);
 - Domestic Terrorism Working Group (monthly);
 - FBI/Public Health Exercise Design Working Group (monthly);
 - WMD/HAZMAT Working Group (monthly);
 - Area Maritime Security Council Meetings (quarterly);
 - Terrorist Screening Center Outreach (ad hoc).
- The JRIC produces more strategic, tactical, and informational bulletins than most fusion centers and our outreach has received Nation-wide attention.
- Within the past calendar year the JRIC has produced over 364 intelligence-type products which has been disseminated within our 7-county AoR as well as to NY, Chicago, and Washington, DC.
- The JRIC is unique in that it simulates a “smaller D.C. beltway” . . . the JRIC has all the components in the center like Washington, DC: JRIC Executive Director is an FBI GS-15, State, Local, Fire, Health, Private Sector, DHS, FBI-JTTF, FBI Field Intelligence Group, contract/civilian analysts and a TSC rep . . . we have demonstrated the value of leveraging all these resources to accomplish the mission.
- The fusion center concept works in Los Angeles and we are the role model for true information sharing and collaboration. It is quite simple. Everyone places their agency hats at the door, is dedicated to the mission, and has passion for protecting our homeland.

JRIC Structure

Ms. HARMAN. Thank you, Sheriff Baca.
Mr. Riegle.

STATEMENT OF ROBERT RIEGLE, DIRECTOR, STATE AND LOCAL PROGRAM OFFICE, OFFICE OF INTELLIGENCE AND ANALYSIS, DEPARTMENT OF HOMELAND SECURITY

Mr. RIEGLE. Thank you.

Chair Harman, Ranking Member McCaul, and Members of the subcommittee, I want to thank you for the opportunity to appear today, especially with my distinguished colleagues at the State and local level. It is an honor to sit at the table with them.

As you mentioned, Secretary Napolitano believes a greater level of information sharing between Federal, State, local, and Tribal territorial partners, to be absolutely essential to the strengthening of the safety of the homeland.

Since the inception of my office in 2006, the fusion center program has been closely examined by Government and private entities. We have welcomed thoughtful scrutiny from the privacy and civil rights and civil liberties advocacy communities. We have welcomed the interest from the media.

We have also welcomed review by the General Accounting Office, the Office of Inspector General, and each of these opportunities—

and I stress they are all opportunities—have allowed us to engage in critical dialogue about our program, address misconceptions, and educate stakeholders about the role of fusion centers in connecting Federal, State, local, Tribal, and territorial partners, in order to share in valuable threat information and intelligence.

In short, this scrutiny has improved our effectiveness, and it has strengthened the national network of fusion centers. We welcome further scrutiny.

The State and local program office has been successful in meeting every program target that has been established. We have enhanced our Federal interagency coordination through the establishment of the National Fusion Center Coordination Group, of which Mr. Porter is a member.

We have also hired 34 intelligence operations specialists to support fusion centers across the country. With our colleagues at the FBI, we have jointly designated 70 fusion centers, one in every State and major city, as part of this national network. These centers have agreed to conform to the baseline capabilities that have been released over the past year.

Thorough a close partnership with FEMA, National Preparedness Directorate, and the Department of Justice Bureau of Justice Assistance, we have deployed more than 145 technical-assistance deliveries to fusion centers, ranging from civil liberties-civil rights training, to establishing liaison officer programs. We have delivered privacy training to every deployed INA intelligence operations specialist.

These accomplishments demonstrate that the State and local programs office continues to proactively support our State and local partners, while respecting and protecting the privacy, civil rights, and civil liberties of Americans.

We are confident that the future of the fusion centers and the program will continue to operate in a manner that respects the balance between supporting this important mission, and respecting and protecting Americans' rights.

The fusion center program marks the first time in United States history where there has been a codified, multi-level, multi-agency approach for sharing threat information and intelligence. Today, by leveraging the fusion center network, we have the ability to share information between the Federal Government and in every State capital.

Just as we operate within the National Response framework, and coordinate with emergency management officials, and EOC, during response efforts, we now have the same ability to communicate and transmit threat information almost immediately.

We are grateful for our relationships with the State and local, Tribal and territorial partners. I cannot emphasize to you enough the importance of this relationship, and how honored I feel to work with these individuals. There is no Federal Government 911. We recognize the heavy lifting is done at the State and local level.

The national fusion center network is fundamentally a grassroots effort, led by the State and localities who own and operate these fusion centers. The Department recognizes that our State and local partners do the lion's share of the work necessary to develop, sustain, and enhance this network.

Fusion centers are successful only through the daily work of law-enforcement officers, firefighters, emergency managers, public-health workers, and territorial partners.

In conclusion, we ask that Congress work with the Department, under the leadership of Secretary Napolitano, to provide robust, vibrant support for all of those partners who benefit from this relationship, and ensure the long-term success of this program.

We know that this program has filled efficiencies across the Department, and we expect to continue to develop those effectiveness working with our Federal partners in the future. Thank you.

[The statement of Mr. Riegle follows:]

PREPARED STATEMENT OF ROBERT RIEGLE

APRIL 1, 2009

INTRODUCTION

Chair Harman, Ranking Member McCaul, and Members of the subcommittee: Thank you for the opportunity to appear before you today to discuss the Department's efforts to keep America safe through a vibrant network of fusion centers. Secretary Napolitano believes a greater level of information sharing between Federal, State, local, Tribal and territorial partners to be absolutely essential to strengthening the safety of the homeland. Thanks in large part to statute developed by this committee, the Department's Office of Intelligence and Analysis (I&A) has lead responsibility in implementing this enormously critical, but challenging task. We are especially grateful to have the opportunity to highlight I&A's many collaborative efforts to deepen, strengthen, and expand this partnership between Federal, State, and local law enforcement and information-sharing officials.

Secretary Napolitano reaffirmed her support for the fusion center program in her March 11 speech to close to 1,000 fusion center stakeholders convened from across the country at the National Fusion Center Conference in Kansas City. In her remarks, she stated "I believe that fusion centers will be the centerpiece of State, local, and Federal intelligence sharing for the future and that the Department of Homeland Security will be working and aiming its programs to underlie fusion centers."

Fusion centers are the core means by which we promote Federal, State, local, and Tribal information sharing. Today, the Department of Homeland Security and the Department of Justice recognize 70 fusion centers, including ones in every State and every major city of the United States. Nearly half of these centers have been stood up since 2006 and have grown rapidly in number and effectiveness. Many fusion centers are in their infancy and many infrastructure challenges remain, but the successes that the centers have realized thus far give us good reason for our continued support.

The primary mission of fusion centers is information sharing. Just as Congress and the 9/11 Commission have recognized, information sharing is vital to protect the American people and our institutions. The success of the national network of fusion centers is crucial to the Department and to the States in achieving greater situational awareness toward the threats we face.

Fusion centers are force multipliers. They leverage financial resources and the expertise of numerous public safety partners to increase information awareness and help our law enforcement agencies more effectively protect our communities. Thoughtful analysis about risks to our communities supports elected officials and homeland security leaders. This enables States and localities to better utilize limited financial resources to make effective, risk-based decisions about public safety matters and mitigate threats to the homeland.

Fusion centers focus on empowering State, local, and Tribal governments, as well as feeding critical information back to Federal intelligence and law enforcement officials. Each fusion center has capabilities unique to the needs and requirements of the jurisdiction where it is located. The Federal Government is pleased to partner with the States and localities that own and operate fusion centers.

I&A's relationship with the fusion centers is governed by Section 511 of Public Law 110-53, *Implementing Recommendations of the 911 Commission Act of 2007* (the 911 Commission Act) which amended the *Homeland Security Act of 2002*, the *National Strategy for Information Sharing*, as well as the Department's internal *Fusion Center Implementation Plan of 2006*.

I&A serves the fusion centers by providing infrastructure and analytical context to information. This ensures that there is a true two-way flow of information between States and localities and the Federal Government, and between law enforcement and the national intelligence community. I&A goes to great lengths to make sure fusion centers have the infrastructure tools, access to all necessary information, right Federal partners, and training.

To ensure we effectively implement this charge, I&A established a State and Local Program Office (SLPO) to serve as the executive agent for Departmental engagement with fusion centers. As the executive agent, I&A provides support to fusion centers through personnel and system deployments, training and technical assistance, security clearance support, and intradepartmental coordination and outreach efforts on behalf of the national fusion center network.

THE DEPARTMENT'S ROLE IN FUSION CENTERS

The Department is actively involved in enhancing the national network of fusion centers and is committed to accelerating the deployment of personnel and technology to fusion centers. To that end, we have deployed 34 Intelligence Operations Specialists who serve as a critical link between their fusion centers and the Department. We are hopeful that by the end of fiscal year 2010 we will have deployed an officer to each of the 70 designated fusion centers. Just recently, I&A shifted nearly 20 additional billets from headquarters to assignments at fusion centers.

The deployment of DHS Intelligence Operations Specialists augments the analytical capabilities of the fusion centers. We believe this contributes greatly to the goal of achieving the analytic depth and geographic breadth necessary to effectively identify, provide context to and share vital information gleaned by sworn law enforcement officers and other State and local officials during the course of their daily duties. As fusion centers continue to mature, we expect to continue to grow the pool of analysts capable of connecting the dots and conducting information sharing and analysis in the manner intended by Congress. In addition to sharing Federal information with State, local, and Tribal entities, and sharing their information with Federal agencies, DHS analysts at fusion centers provide real-time situational awareness to the Secretary and the Department as well as all levels of government in times of crisis.

Thanks in large part to your guidance and efforts within the Department, I&A's intelligence enterprise information management team has installed more than 30 Homeland Secure Data Network (HSDN) terminals, a SECRET-level collateral network, in fusion centers and will install HSDN terminals in all 70 fusion centers as soon as all security requirements are met. We purchase and operate the network for the fusion centers. Through these efforts, DHS ensures the protection of Federal information shared within these fusion centers.

In addition to HSDN, I&A launched the Homeland Security State and Local Community of Interest (HS SLIC) about 1 year ago. HS SLIC is a "virtual community" of intelligence analysts from Federal, State, and local entities. Intelligence analysts collaborate via weekly threat conference calls, biweekly secure video teleconferences, analytic conferences, and a secure Web portal for intelligence information sharing at the controlled unclassified information (CUI) level, via HS SLIC.

In January 2008, we strengthened our service relationship with fusion centers by establishing a "Single Point of Service (SPS)" program. This program brings together many DHS Intelligence and Operations elements to give local customers a 24-hour, one-stop shopping resource to request support, communicate product requirements, and share critical information with DHS and its components. The Department has consolidated tracking by standardizing all communications and queries in a single format—State and Local Support Request (SLSR)—which includes requests for information, production, administrative tasks, analysis, and a wide range of support functions. In the last quarter of 2008, the SPS team serviced 659 SLSRs from 36 States.

We are strengthening core competency training programs for fusion center operations to make interactions with State, local, and Tribal entities even more effective. I&A training programs are designed to meet the intelligence training needs of our partners. We offer Critical Thinking and Analytical Methods (CTAM), Principals of Intelligence Writing and Briefing (PIWB), as well as the Analytic and Critical Thinking Skills Workshop training modules to our State and local partners. The CTAM and PIWB courses are currently available at DHS I&A, and are also being converted to a web-based format. All of the courses are tuition-free; grant funds may be applied to fund travel to all of these courses.

The Department, via the FEMA National Preparedness Directorate (NPD) and in conjunction with the U.S. Department of Justice, offers services under the Fusion

Process Technical Assistance Program to facilitate the development and operation of a national network of fusion centers. Part of the overall Technical Assistance Program managed by NPD, the Fusion Process technical assistance provides for 13 specific services available to fusion centers, including services to support the development and implementation of privacy policies, suspicious activity reporting, and the implementation of liaison officer programs. To date, the Fusion Process Technical Assistance Program has provided more than 145 services and more than 40 fusion center exchanges. In addition to the Technical Assistance services, the program has supported a host of national and regional workshops, fellowships, exchange opportunities, and on-line resources for fusion center personnel.

DHS, along with the FBI, provides support by granting security clearances for eligible State and local partners, as well as support in other areas of security, including policy development and document storage and handling resources.

Beyond this operational support, the Department is actively supporting fusion centers to form an association, as suggested by the House Homeland Security Committee last year, through which they can organize their efforts at a State-to-State level and serve as an advocacy body for the fusion center initiative. This association became a reality at the 2009 National Fusion Center Conference and has already created a list of concerns that is addressed in the challenges section below. The national conference in Kansas City and regional conferences are among the efforts we use to bring fusion center leaders and stakeholders together. Conferences allow participants to forge relationships, exchange best practices, learn how to build partnerships with their local communities and privacy and civil liberties advocates, and gain knowledge about new trends, tools, and technologies that can help fusion centers improve their analytic capabilities.

ENHANCING FEDERAL SUPPORT

Our work toward a national, integrated network of State and major urban area fusion centers is defined by the *National Strategy for Information Sharing*. It states that “a sustained federal partnership with . . . fusion centers is critical to the safety of our nation, and therefore a national priority.” Our objective is to assist State and local governments in the establishment and sustained operation of fusion centers.

The National Fusion Center Coordination Group (NFCCG) was established to coordinate the Federal Government’s support to fusion centers. The NFCCG provides leadership, coordination, and guidance in the development and Federal support to the national integrated network of fusion centers. Co-chaired by the Department of Homeland Security and the FBI in partnership with the Department of Justice, the Global Justice Information Sharing Initiative, the Office of the Director of National Intelligence, and the Program Manager for the Information Sharing Environment, the NFCCG is the interagency coordination mechanism used to assist Federal agencies in carrying out their responsibilities to implement effective policies related to fusion center support.

PROTECTING THE CIVIL RIGHTS AND CIVIL LIBERTIES OF AMERICANS

We take the commitment to respect and protect the privacy, civil rights, and civil liberties of American citizens seriously. We partner with the DHS Privacy Office, the DHS Office for Civil Rights and Civil Liberties, and the Office of General Counsel to make sure that all of our efforts are consistent with our obligations to the American people. We require all I&A staff assigned to fusion centers to receive specific training and to have subject matter expertise on all relevant privacy, civil rights, and civil liberties issues. We do this as a matter of practice and as required by Section 511 of the 9/11 Commission Act.

We are equally committed to ensuring that all those working at fusion centers are fully cognizant of their privacy and civil liberties obligations. In December 2008, the Department conducted and published both a Privacy Impact Assessment (PIA) and a Civil Liberties Impact Assessment (CLIA) for the Initiative. The PIA made a number of specific recommendations that fusion centers can implement to enhance privacy. These include completing their written Information Sharing Environment privacy protection policies, and creating governance structures and procedures to protect privacy and to understand and implement the set of privacy protections called the Fair Information Practice Principles (FIPPs). These include protections related to data integrity, use limitation, data minimization, and others. Perhaps the most important recommendation in the PIA furthered the transparency principle; the DHS Privacy Office recommends that each fusion center conduct a PIA evaluating its own operations, make it available to the public, and then engage with its local communities.

Once these documents and principles are in place, training becomes the centerpiece of ensuring that fusion centers adhere to their privacy and civil liberties policies. Accordingly, we provide specific training support and resources to fusion centers across the Nation, along with the DHS Privacy Office and Office for Civil Rights and Civil Liberties and the Department of Justice's Bureau of Justice Assistance. As a result of this partnership, we launched a Web site with resources for fusion center personnel on privacy and civil liberties issues. We have proactively worked with the DHS Privacy Office and the Office for Civil Rights and Civil Liberties since the beginning of the program and consider our relationship with them to be among the closest and most productive in the Department.

INCORPORATING DIVERSE PARTNERS

Increasingly, fusion center operators see the benefits in a multi-disciplinary homeland security approach to information and intelligence sharing. Many are now seeking to include the fire, public health, and private sectors in the fusion process. This includes cybersecurity concerns which cut across Federal, State, local, Tribal and private sector partners. The Department is assisting fusion centers with this outreach by serving as a coordinating body for the fire, public health, and critical infrastructure and key resources (CIKR) efforts by identifying key players, facilitating discussions, and assisting with the development of a framework for sharing information/intelligence within critical infrastructure sectors. DHS aims to increase awareness of the fusion center program and existing information and intelligence sharing tools, assist the fire service and public health sectors with identifying their intelligence requirements, facilitate relationships among agencies/offices, and provide security clearances to appropriate members of private sector leadership.

Tribal

The Department regularly encourages Tribes to participate in or establish relationships with their nearest fusion center. The Department, through I&A, is working with Tribal law enforcement and homeland security advisors to engage them in information sharing, with particular emphasis on our relationship with the Tohono O'odham Nation (TON), given its international border location. Department officials also have met individually with senior representatives of the Navajo Nation, Salt River Pima Maricopa Indian Communication, and the Chickasaw Nation, among others. In February 2009, DHS, working in conjunction with the DOJ Office of Tribal Justice, launched the Homeland Security Information Network—Tribal (HSIN-Tribal). This secure Web site provides Federal and tribal homeland security professionals with an on-line site to share information, make announcements, and obtain news that will help them in their efforts to provide for safe and secure communities.

I&A, in conjunction with the Department of the Interior (DOI), is working to create a Tribal/Terrorism Liaison Program for Law Enforcement Officials. This initiative includes a 3-day training program for Tribal law enforcement on the development of information-sharing practices with DHS and State and local fusion centers. To date the SLPO, with the assistance of the Director, Office of Homeland Security and Emergency Services Indian Affairs DOI, has nominated 16 Tribal Chiefs of Police and/or Emergency Managers for SECRET clearances. These efforts are sure to increase as a result of Secretary Napolitano's decision to institute the Department's first-ever consultation policy to engage the direct and interactive involvement of Indian Tribes in developing regulatory policies, recommending grant procedures for tribes, and advising on key issues.

Critical Infrastructure/Key Resources

DHS, in coordination with the Office of Infrastructure Protection and the State, Local, Tribal, and Territorial Government Coordinating Council, developed a capability appendix to the U.S. Department of Justice's Global Justice Information Sharing Initiative's (Global) Baseline Capabilities for State and Major Urban Area Fusion Centers (baseline capabilities document). This baseline capabilities document defines the capabilities and standards necessary for a fusion center to be considered capable of performing basic functions (e.g., the gathering, processing, analyzing, and disseminating of terrorism, homeland security, and law enforcement information). The CIKR appendix provides guidance for those fusion centers that have chosen to support critical infrastructure protection activities; it identifies the additional capabilities fusion centers should achieve in order to effectively integrate CIKR activities into their analysis and information/intelligence sharing processes; and identifies how the center should support risk-reduction efforts taken by Federal, State, local, and private sector partners. The appendix encourages CIKR-related capabilities in fusion centers to be centered on the development of key analytical products, such as risk and trend analyses.

In furtherance of this goal, I&A's SLPO is jointly sponsoring a workshop with the Office of Infrastructure Protection (IP) and FEMA/NPD Technical Assistance Program to bring together stakeholders from the CIKR communities. This workshop is intended to provide a forum to identify and discuss the as-is State/local CIKR protection environment and current CIKR protection capabilities, as well as strategic considerations for State and urban area officials responsible for the development, implementation, and operation of a CIKR protection program. Participants will discuss information sharing and intelligence needs and best practices, and report on existing information sharing capabilities with, and within, the CIKR community. The workshop will provide support for the integration of CIKR protection efforts with on-going fusion center and information/intelligence sharing efforts. DHS/IP is currently developing a NIPP Implementation Guide for State and local jurisdictions. This will support the practical considerations associated with the implementation of that guide.

Emergency Management

The SLPO is jointly sponsoring a series of workshops with the FEMA/NPD Technical Assistance Program to be held in each of the 10 FEMA regions in order to discuss partnerships, roles, and responsibilities, and the processes by which operational hand-off and information exchange can and should occur during steady-state, forward-leaning and response activities. The focus of these workshops will vary as requirements and the strength of existing relationships dictate, but they will provide an opportunity for fusion centers to educate their Federal emergency management counterparts on existing capabilities, as well as better understand how to leverage FEMA regional resources.

Fire Service

We have developed a new Fire Service Intelligence Enterprise (FSIE) initiative to incorporate Fire Service interests (defined as fire and emergency operations, emergency medical service operations, rescue operations, hazardous materials operations, fire prevention/protection, fire investigation, incident management, and responder safety) into national standards, protocols, and mechanisms for homeland security information and intelligence sharing. The FSIE represents a collaborative initiative of several Department of Homeland Security (DHS) entities—the SLPO and the U.S. Fire Administration (USFA), with support from FEMA/NPD.

FSIE goals are being pursued by promoting fire service integration within State and Major Urban Area Fusion Centers, and by facilitating the identification and/or development of information and intelligence sharing requirements, mechanisms, technical assistance, and training. Activities performed to achieve these goals are being closely coordinated with other offices within DHS, other Federal agencies, and national, State, local, tribal, and territorial fire service organizations to ensure the initiative is pursued in an effective and efficient manner. We believe the FSIE will benefit the collective homeland security effort by enhancing the preparedness level of Fire Service organizations across the country, while supporting the prevention, protection, response, and recovery efforts of all homeland security partners.

Public Health

The Health Security Intelligence Enterprise (HSIE) is an initiative to integrate Public Health and Healthcare Community (PH/HC) interests into the processes of homeland security information and intelligence exchange. The establishment of an institutionalized health security information and intelligence sharing framework will enhance the preparedness level of PH/HC practitioners across the country, while supporting the all-hazards approach to prevention, protection, response, and recovery efforts of all homeland security partners.

Federal, State, local, Tribal, and private sector stakeholders are working collaboratively to develop a framework to enhance sharing of health security information. This approach allows the HSIE initiative to best meet the needs of the PH/HC community and others who benefit from the enhanced information-sharing environment. These efforts will foster communication and collaboration among PH/HC organizations and between the PH/HC, the Federal homeland security and intelligence communities, and State, local, and tribal law enforcement and public health and safety stakeholders.

The integration efforts with these DHS partners provide efficiencies and allow the Department to be represented in a user-friendly manner to State and local stakeholders. In many ways, the fusion center initiative, through the SLPO, has done more to integrate the Department than any other program.

ENABLING FUSION CENTER SUCCESS

The ability of fusion centers to accomplish an all-crimes and all-hazards mission requires long-term investment. To date, there have been several fusion center success stories.

One such success occurred in May 2008, when the DHS Intelligence Operational Specialist for Northern California coordinated with Federal officials on an Amber Alert for a 3-year-old child who was to be taken out of the United States by a suspect wanted for rape and murder. By coordinating with DHS officials, local law enforcement, and INTERPOL, the DHS Intelligence Operations Specialist was able to track the suspect and the kidnapped child to a flight bound for the Netherlands. With only hours to spare, the DHS Intelligence Operations Specialist coordinated with authorities to ensure law enforcement authorities in Amsterdam detained the subject. The child was recovered unharmed.

In March 2007, the Denver Fire Department responded to seven cases of SUVs being firebombed. Investigators requested the Colorado Information Analysis Center's (CIAC) assistance in developing case information. The CIAC developed a report that included a description of the suspect's vehicle. Based on this report, the suspect in the crimes was arrested shortly thereafter keeping the community safe from additional fire hazards.

These are just two examples of the difference that fusion centers are making each day in neighborhoods and communities across America. At DHS, we see the success of this network as vital to greater situational awareness of the risks facing our State, local, tribal, and territorial partners across the country. We have even seen how information developed by a fusion center can inform the President's Daily Brief and open investigations related to terrorism overseas.

CHALLENGES

Tremendous progress has been made in building the national fusion center network, but many challenges remain. Fusion center directors identified a series of challenges at the successful March National Fusion Center Conference. The following challenges were identified at this year's national conference by fusion center directors:

Dissemination

Providing timely, actionable information to the "first preventers and first responders" on the ground is critical to protecting the homeland. Many fusion centers maintain fusion center liaison programs that support their effort to more broadly disseminate Federal information to State and local law enforcement and homeland security partners. Expanding these liaison programs will facilitate even broader dissemination of critical homeland security information. The ineffective use of tear lines was a key dissemination issue highlighted by fusion center directors as an impediment to information sharing. We are committed to working with State and local partners to improve dissemination and provide the right products to the right people in a timely fashion. This would compliment tear line improvements for the private sector currently being undertaken by DHS and its intelligence community partners.

Sustainment

DHS recognizes that during this time of national economic austerity, fusion centers are looking to the Federal Government to provide increased, targeted support. Specifically, fusion center directors have requested direct funding for fusion centers.

Outreach

Fusion center directors seek more sustained and consistent outreach from Federal partners. To this end, DHS has developed and is beginning to implement a strategic communications and outreach advisory plan. In addition, the Department has begun to scope a technical assistance program to provide individual fusion centers with communications and outreach support. Through these efforts, fusion center stakeholders at all levels can speak with "one voice" about the mission, purpose, and value of the fusion center program.

Data Interoperability

Use of a common fusion center backbone/platform for information sharing has been recognized as key to better information sharing and collaboration. Fusion center directors indicated that leveraging framework of the Suspicious Activity Reporting (SAR) Initiative could be beneficial in further standardizing use of technology across the fusion center network.

THE FUTURE OF FUSION CENTERS

As noted many times by you Chair Harman, and by Secretary Napolitano, fusion centers are a vibrant component of national security. We believe we are getting better at identifying and servicing fusion center needs. We take great pride in the results of the 2008 National Governors Association Center for Best Practices indicating more than 75 percent of respondents expressed satisfaction with their communication with DHS. This is a significant increase over the 42 percent satisfaction rate reported in 2007.

To continue to improve the fusion center initiative, Federal, State, local, Tribal, and territorial stakeholders have recognized the critical need for fusion centers to maintain a consistent level of baseline capabilities in order to operate as an integrated national network. In September 2008, the *Baseline Capabilities for State and Major Urban Area Fusion Centers*, an addendum to the *Fusion Center Guidelines*, was released by the Department of Homeland Security, the Department of Justice, and the Global Justice Information Sharing Initiative.

The Baseline Capabilities document defines a set of capabilities that will support Federal, State, and local agencies to conduct long-term planning and identify the costs and resources necessary for the achievement and sustainment of fusion centers. It also supports the Federal Government's efforts to identify the types of resources needed by States and localities, and ensures they are provided in a consistent and appropriate manner. The capabilities also assist in ensuring that fusion centers have the basic foundational elements for integrating into the national Information Sharing Environment.

Today, most fusion centers are in the process of achieving the capabilities. Since resources and priority mission areas vary from center to center, it is expected to take a period of up to 5 years for all fusion centers to years to achieve all of the capabilities. Some centers may not need to "house" all of these capabilities, but may choose instead to leverage another fusion center or other operational entity's capability.

In closing, we recall Chair Harman's comments at last April's House Homeland Security Committee hearing that "it is unlikely that the next President, DHS, the FBI, or the wider intelligence community will prevent the next terrorist attack. Instead, a diligent police or sheriff's officer somewhere in America—during the course of his or her daily work—will see something or someone out of place, and guided by timely, accurate, and actionable information, will connect the dots that will unravel a plot in-the-making." We agree, and that is why we welcome a deeper partnership with this committee in making sure this is reality.

Ms. HARMAN. Thank you, Mr. Riegle.
Mr. Porter.

STATEMENT OF RUSSELL M. PORTER, DIRECTOR, STATE OF IOWA INTELLIGENCE FUSION CENTER

Mr. PORTER. Chair Harman, Ranking Member McCaul, Members of the subcommittee, thank you very much for convening this hearing. You have my written statement, and the acknowledgements that are in it. I would like to just highlight, quickly, a couple of things from that.

Then, Madam Chair, as you have encouraged, I would like to respond to the commentary that appeared today in the Washington Times.

First of all, I addressed in my statement the potential promise that does currently show, and does exist, with fusion centers. Key stakeholders, like State homeland security directors are telling us that fusion centers have become vital resources for information sharing and coordination for them. They are not the only stakeholders that are saying that. That is evidenced by the survey of the National Governor's Association Center for Best Practices.

We have also seen progress in the development of fusion center guidelines, and the baseline capabilities for State and major urban-area fusion centers. These provide a framework for fusion centers to move forward. In fact, at the National Fusion Center Con-

ference, that was just held last month in Kansas City, the theme of the conference was, "Achieving the Baseline Capabilities."

Directors were encouraged—and actually came up with this on their own—to do a gap analysis of their own centers, against those baseline capabilities, so they can identify a way forward, and move toward progress, in a positive way.

Finally, in terms of promise, fusion centers have become an analytic resource that are keeping communities safe and secure, helping governments prioritize their resource allocations, and support the efforts of State and local law enforcement to prevent and investigate crime in their local communities.

I would say that, although, certainly, terrorism served as a catalyst for the fusion centers, this type of activity, Madam Chair, as you have pointed out, has existed for many, many years, in law enforcement agencies, as criminal intelligence work. This is simply a strengthening of that capability.

The other area that I highlight in my written statement is the work that has been done to minimize the risk of the potential dangers. I emphasize the importance of protecting privacy, civil liberties, and civil rights. I do highlight within there the extensive work that was done, and has been done, and continues to be done, in providing training that Mr. Riegle has alluded to, as well, in terms of delivering training to fusion centers across the country.

This was started in 2006, before there were even baseline capabilities. It was recognized as a central issue for fusion centers, and for the success of fusion centers, as well as for protecting the American public.

There have been countless conversations; many, many meetings with privacy advocates, who have engaged in very thoughtful, respectful dialogue. We do appreciate very much the contributions that they are making and continue to make.

There are missteps. There will continue to be that risk. We are currently working on developing the new training, and having development of those things that will help us address the issues that emerge as we move forward in this process.

So that highlights my written testimony. You have that.

Let me speak to Mr. Fein's commentary, if I may.

I read with great interest, his commentary. I certainly respect, as a law enforcement officer, who takes an oath to support and uphold the laws and Constitution of the United States, his right to say and comment as he has. But I would point out a couple of things from his commentary.

He notes that: "Any dissidence or political dissident is suspect to fusion centers." I reject that assertion. He says that "First Amendment principles will never be honored by law enforcement officers or public officials in the business of intelligence collection." I also reject that assertion.

He characterizes and portrays fusion centers as un-American, referencing the Soviet Union's KGB, and, in East Germany, the Stasi, and says that, "Fusion centers are no more American than was the House Un-American Activities Committee."

The implication is that fusion centers and, by extension, the law enforcement officers and the public safety officials who risk their lives every day to protect their communities in this country, are

un-American. He wants to throw the baby out with the bathwater. I wholeheartedly reject that approach.

In fact, the delivery of privacy and civil liberties and civil rights training has been made possible precisely because there is a fusion center network, an audience that we can reach out to, to deliver this training. The opportunity for much of this dialogue to occur has come from the development of fusion centers, and from the National Suspicious Activity Reporting Initiative, about which this subcommittee has previously heard during an earlier hearing.

Finally, sustaining a national integrated network of fusion centers will actually strengthen our collective ability to provide accountability and transparency, as Mr. Riegle has mentioned. This is an important point that must not be understated.

I certainly respect the diverse views. But that is a response that I would have to Mr. Fein. Thank you.

[The statement of Mr. Porter follows:]

PREPARED STATEMENT OF RUSSELL M. PORTER

APRIL 1, 2009

Chair Harman, Ranking Member McCaul, and Members of the subcommittee, thank you for convening this hearing today to focus on the future of fusion centers—critical resources for sharing information, preventing and solving crime (including terrorism), and making our communities, our States, and our Nation safer. I want to acknowledge the hard work of my many colleagues at all levels of government, but especially those at the local, Tribal, and State level with whom I work. I'm also especially pleased to appear today with this distinguished panel of witnesses. I appreciate this opportunity to discuss the future of fusion centers, highlighting some of their achievements thus far, the promise they hold, and the potential dangers that exist and may lie ahead.

INTRODUCTION

I am presenting this statement as the Director of a State fusion center, as well as in my role as General Chairman of The Association of Law Enforcement Intelligence Units (LEIU), the oldest professional association of its kind in the United States. Many agencies which operate or host fusion centers are members of LEIU. At the National Fusion Center Conference which convened last month in Kansas City, Missouri, fusion center directors asked LEIU to partner with them to help establish an association to represent fusion centers and the people who work in and with them. The work to build that association, as previously encouraged by the Chair of this subcommittee, is underway now.

I am a veteran law enforcement officer who began my career as a municipal police officer in 1978. Since 1984 I have been continuously assigned full-time to the law enforcement intelligence discipline, and now hold the rank of Director at the Iowa Department of Public Safety where I report to the Commissioner of Public Safety for the State of Iowa. While working full-time, I completed all coursework and comprehensive exams for the Ph.D., and was conducting dissertation research into law enforcement intelligence units when this country was attacked on September 11, 2001. At the national and international level, I have been elected by my peers and am now serving my second 2-year term as LEIU's General Chairman. I also currently serve as Chairman of the Criminal Intelligence Coordinating Council (CICC), and as Chairman of the Global Intelligence Working Group (GIWG) (part of the Global Justice Information Sharing Initiative, a Federal Advisory Committee to the Attorney General of the United States). I am a member of the Interagency Threat Assessment and Coordination Group (ITACG) Advisory Council; and of the Advisory Board for DHS's Homeland Security State and Local Intelligence Community of Interest (HS SLIC). Additionally, I currently serve on the National Fusion Center Coordination Group; the Police Investigative Operations Committee for the International Association of Chiefs of Police (IACP); the Executive Advisory Board for the International Association of Law Enforcement Intelligence Analysts (IALEIA); and the Advisory Board for Michigan State University's Criminal Justice Intelligence Program. I previously participated in the monthly meetings of the U.S. Department of Justice Intelligence Coordinating Council at FBI Headquarters, and served as a

Fusion Group Subject Matter Expert for the Intelligence and Information Sharing Working Group of the U.S. Department of Homeland Security's Homeland Security Advisory Council (HSAC), and for the *LLIS* Intelligence Requirements Initiative. At the State level, I lead our State's fusion center, and serve as a member of the Executive Committee and the Operating Council for the Safeguard Iowa Partnership, a voluntary coalition of the State's business and Government leaders, who share a commitment to combining their efforts to prevent, protect, respond, and recover from catastrophic events in Iowa. I assisted with drafting the IACP's *Criminal Intelligence Sharing: A National Plan for Intelligence-led Policing at the Local, State, and Federal Levels* in 2002; Global's *National Criminal Intelligence Sharing Plan* in 2003; the HSAC's *Homeland Security Intelligence and Information Fusion* report in 2005; and the jointly-issued Global—DOJ—DHS *Fusion Center Guidelines* in 2006. Since the creation of the Global Intelligence Working Group in 2002 until my appointment as CICC and GIWG Chairman in December 2007, I served as the Chairman of the GIWG's Privacy and Civil Liberties Task Team. During the past several years I have worked closely with our Federal partners on the joint delivery of training and technical assistance, especially regarding privacy and civil liberties protections in fusion centers. In 2007 I was awarded the IALEIA President's Distinguished Service Award for demonstrated commitment to privacy and civil liberties protections, and in 2008 I received the IACP Civil Rights Award in the category of Individual Achievement for a "consistent and vocal presence in law enforcement stressing the importance of protecting civil rights in policy, training, and ethical practice of the intelligence function." Finally, in March I served as Master of Ceremonies at the third National Fusion Center Conference in Kansas City—the second time I have served as the "emcee" for that national event.

I only highlight my experience so that Members of the subcommittee will know that this statement is based on more than 30 years of real-life experience as a law enforcement officer, with more than 25 of those dedicated to the field of law enforcement intelligence—with involvement in the fusion center initiative since its inception.

Because of the responsibilities associated with each of these roles and initiatives, I work closely and regularly not only with my local and State counterparts in fusion centers, but also with our Federal partners. We continue to receive support from the U.S. Department of Homeland Security (DHS), and especially the Office of Intelligence and Analysis and the Federal Emergency Management Agency's Grants Program Directorate and National Preparedness Directorate; the U.S. Department of Justice (DOJ), with strong support received from the Bureau of Justice Assistance; the Federal Bureau of Investigation through their National Security Branch; the Program Manager's Office of the Information Sharing Environment; and the Office of the Director of National Intelligence. Finally, much of the progress that has been made in establishing a national, integrated network of fusion centers is made possible by a collaboration of local, tribal, State, and Federal agencies who are part of the Global Justice Information Sharing Initiative (Global), the Criminal Intelligence Coordinating Council, and the Global Intelligence Working Group. These colleagues, as a community, commit countless hours of their time each day to improve information sharing in the United States.

BACKGROUND

As you know, *the Implementing Recommendations of the 9/11 Commission Act of 2007* (Pub. L. 110-53), enacted in August 2007, endorsed and formalized the development of a national network of State and major urban area fusion centers. Similarly, the *National Strategy for Information Sharing* released by the White House in October 2007 also describes fusion centers as "a valuable information sharing resource," and as "vital assets critical to sharing information." The Strategy further states, "A sustained Federal partnership with State and major urban area fusion centers is critical to the safety of our Nation, and therefore a national priority."¹ As one recent report noted:

"The potential value of fusion centers is clear: by integrating the various streams of information and intelligence from Federal, State, local, and tribal sources, as well as the private sector, a more accurate picture of risks to people, economic infrastructures and communities can be developed and translated into protective action."²

¹The White House. 2007 (October). *National Strategy for Information Sharing*, p. A1-1, accessed September 21, 2008 at http://www.whitehouse.gov/nsc/infossharing/NSIS_book.pdf.

²U.S. House of Representatives, Report 110-752, Report to Accompany H.R. 6098, Personnel Reimbursement for Intelligence Cooperation and Enhancement of Homeland Security Act.

As I have noted previously, in my experience fusion centers have emerged as what may be the most significant change in the structural landscape of criminal intelligence in at least the past 25 years. Much has been written in the past several years about fusion centers, and today I bring to you a practitioner's perspective.

THE FUTURE OF FUSION CENTERS: POTENTIAL PROMISE AND DANGERS

The word “promise” has been said to mean, “indication of future excellence, achievement, or success.” On the other hand, the word “danger” can be defined as “something that may cause injury, loss, or harm.” I want to highlight how fusion centers are currently realizing some of their goals, how they offer significant promise for the future, and how continuing steps are being undertaken to prevent harm.

Potential Promise

Key stakeholders, such as State homeland security directors and advisors, have said that fusion centers have become vital resources for information sharing and coordination. Fusion centers are becoming more effective and efficient information sharing and collaboration mechanisms. Fusion centers receive information from a variety of sources, including Federal, State, and local entities, and ensure timely and relevant information is provided to the right stakeholders within their geographic area of responsibility. The National Governors Association Center for Best Practices recently published the results of the 2008 Survey of State Homeland Security Directors—the fifth such survey they have conducted.³ The results show that fusion centers remain as one of the top five priorities for State homeland security directors. Three-quarters of the State homeland security directors actively and regularly engage with their State fusion center.⁴ Additionally, more than 60 percent of the directors use their fusion center as the primary method for sharing intelligence with DHS.⁵ Finally, the Federal Government uses fusion centers as the primary focal points within the State and local environment for the receipt and sharing of terrorism-related information. Federal agencies provide terrorism-related information to State, local, and Tribal authorities primarily through these fusion centers, which may further customize such information for dissemination to satisfy intra- or interstate needs. Thus, fusion centers are particularly important in providing information to important stakeholders (such as State homeland security directors, law enforcement, fire, public safety, emergency management, transportation, public health, and others), and to the Federal-State communication and coordination effort.

Fusion Center Guidelines and *Baseline Capabilities for State and Major Urban Areas* have been published, are actively being used to guide and mature the national fusion center network, and are being implemented by fusion centers during the next 5 years. In recent years Federal, State, local, Tribal and territorial stakeholders recognized the critical need for fusion centers to adhere to the same general guidance, and to maintain the same level of baseline capabilities in order to operate as an integrated national network. This has been accomplished by publishing the *Fusion Center Guidelines* and the *Baseline Capabilities for State and Major Urban Area Fusion Centers*—both of which were developed by the Global Justice Information Sharing Initiative, the U.S. Department of Justice, and the U.S. Department of Homeland Security. According to State fusion center directors, more than 80 percent of State fusion centers comply with the *Fusion Center Guidelines* developed by the Global Justice Information Sharing Initiative, the U.S. Department of Justice, and the U.S. Department of Homeland Security.⁶ Additionally, with support from the partnership of local, State, Tribal, and Federal partners, fusion centers are working to achieve the fusion center baseline capabilities that were published in September 2008 in the *Baseline Capabilities for State and Major Urban Area Fusion Centers*. In fact, the theme for the 2009 National Fusion Center Conference held last month

Accessed September 21, 2008 at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_reports&docid=f:hr752.110.pdf.

³The survey targets members of the Governors Homeland Security Advisors Council (GHSAC), which is comprised of the top homeland security directors as designated by each governor in all States, territories, and the District of Columbia.

⁴NGA Center for Best Practices *Issue Brief: 2008 State Homeland Security Directors Survey*, available at <http://www.nga.org/Files/pdf/0903HSASURVEY.PDF>, accessed March 29, 2009.

⁵Comparatively, according to the NGA survey, 17 percent of the State homeland security directors only engage their fusion center intermittently or when there are emergencies; only 17 percent of States use the DHS National Operations Center to share intelligence; and only 11 percent use local Federal Bureau of Investigations (FBI) or Immigration and Customs Enforcement (ICE) agents to share information with the Federal Government.

⁶The survey targets members of the Governors Homeland Security Advisors Council (GHSAC), which is comprised of the top homeland security directors as designated by each governor in all States, territories, and the District of Columbia.

was “Achieving the Baseline Capabilities.” Although information on a wide range of baseline capabilities was presented, the conference focused on those baseline capabilities dealing with protecting privacy, civil liberties, and civil rights; outreach and communications; and analysis. Fusion center leaders attending the national conference were encouraged to assess their current capabilities, and then each day plenary and breakout sessions focused on steps they can take to achieve the baselines. Since resources and priority mission areas vary from center to center, it is expected to take a period of up to 5 years to achieve all of the capabilities. This on-going assessment of capabilities, and progress towards achieving them, will continue in the months ahead.

Fusion centers have become an analytic resource that keeps communities safe and secure, helps governments prioritize resource allocations, and supports the efforts of State and local law enforcement to prevent and investigate crime in their local communities. Jurisdictions with effective fusion center programs help citizens feel more safe and secure.⁷ The rapid flow of information associated with fusion centers has averted panic and unnecessary resource expenditures by quickly determining that a threat does not exist and preventing the needless evacuation of businesses and the disruption of commerce.⁸ This is critically important when, across the United States, State, local, and tribal law enforcement and homeland security officials are being asked to do more with less. Fusion centers offer a way to leverage financial resources and the expertise of public safety partners to more effectively protect our communities. Thoughtful analysis about risks to our communities helps elected officials and homeland security leaders better utilize limited financial resources to make effective decisions about public safety matters and threats to the homeland. Fusion centers have played a key role in assessing potential terrorism threats before massive holiday and sporting events, political conventions, and other occasions where large crowds gather,⁹ so that resources can be properly allocated. They assist in addressing our most pressing national challenges such as gangs, border violence, narcotics, homicides, natural disasters, and terrorism. More specifically, fusion centers have proven successful in preventing terrorism and in solving other local crimes—such as when a fusion center “connects the dots” from a drive-by shooting death to solve the murder of a furniture store manager occurring 3 months earlier,¹⁰ or identifies a series of attempted child abductions so that the community can be warned.¹¹ These are not examples of “mission creep,” as some have described; rather, these are examples of local and State governments doing what they have always done: using resources in a coordinated way to protect the public from crime. In fact, in many cases fusion centers have always been “all crimes” centers, and have never been focused solely on terrorism.

These are just a few of the examples highlighting some of the reasons that fusion centers, when provided with resources, training, technical assistance, guidelines, and policy documents, and other support, are vital assets which are critical to sharing information and keeping our communities, our States, and our Nation safe. Compiling additional information that demonstrates and measures the value of fusion centers and the promise they hold for the future is currently underway.

Potential Dangers

While there are certain risks inherent with information gathering and sharing, on-going efforts to proactively address these potential pitfalls actually signify a promise that best practices can become reality. What follows is a description of some of the work completed to date.

If we fail to continue to make the protection of privacy, civil liberties, and civil rights a top priority, the fusion center network will not be sustainable. This important work will be an on-going challenge that requires continued refinement of training, technical assistance, and other support as we go forward. But the good news is that the State, local, Tribal, and Federal partners that have been leading this effort, as well as fusion centers themselves, have been making these issues a top pri-

⁷ Anti-terrorism center offers reassurances against potential dangers, February 19, 2009, <http://www.lvrj.com/news/39837512.html>, accessed March 29, 2009.

⁸ Metro’s Fusion Center Works to Solve Local Crimes, Threats, July 1, 2008, <http://www.lasvegassnow.com/global/story.asp?s=8588286>, accessed March 29, 2009.

⁹ Fight over, all together now against terrorism; “Fusion center” puts agencies under one roof, January 22, 2008, <http://www.lasvegassun.com/news/2008/jan/22/fight-over-all-together-now-against-terrorism/>, accessed March 29, 2009.

¹⁰ Metro’s Fusion Center Works to Solve Local Crimes, Threats, July 1, 2008, <http://www.lasvegassnow.com/global/story.asp?s=8588286>, accessed March 29, 2009.

¹¹ Series of Attempted Child Abduction Incidents Being Investigated in Central Iowa, DPS Press Release, June 18, 2008, http://www.dps.state.ia.us/commis/pib/Releases/2008/06-18-2008_AbductionRelease.htm, accessed March 29, 2009.

ority. Certainly there is more to do. But as fusion centers have emerged, a coordinated—and unprecedented—effort has been initiated to provide training and technical assistance that is protecting privacy, civil liberties, and civil rights. In fact, the delivery of this training and technical assistance is made possible precisely because there is a national network of fusion centers, and due to the good work of the partners involved. The following provides a summary of some of the work undertaken with fusion centers thus far, to establish a solid foundation for protecting privacy, civil liberties, and civil rights:

- *2006 Regional Fusion Center Conferences—The Importance of a Privacy Policy.*—From August through October 2006, four regional fusion center conferences were conducted in the northeast, southeast, central, and western United States. The presentations at these conferences provided attendees with an overview on the need for developing, implementing, and training on policies that protect privacy, civil liberties, and civil rights.
- *2007—Fusion Center Privacy Technical Assistance Program.*—In June 2007 the Privacy Technical Assistance Providers (made up of privacy representatives from multiple Government agencies, as well as training and technical assistance providers)¹² identified potential needs and began to develop a model privacy policy process for fusion centers. The Fusion Center Privacy Technical Assistance Program was thus initiated, which included development of resources to help centers train their personnel on privacy policies.
- *2007 Regional Fusion Center Meetings—Privacy Technical Assistance (TA) Sessions and Privacy TA Review Process.*—From September through December 2007, four regional fusion center meetings were conducted in the northeast, southeast, central, and western United States. On the day prior to each of the four regional fusion center group meetings, a technical assistance session was held at which presenters and subject-matter experts (SMEs) educated fusion center personnel on the history of privacy and civil liberties in law enforcement intelligence, and on the importance of developing a privacy policy. Attendees were then provided with hands-on assistance as they were guided by SMEs through the DOJ-developed training workbook, titled *Fusion Center Privacy Policy Development: Privacy, Civil Rights, and Civil Liberties Policy Template*. At the completion of each regional privacy technical assistance session described above, fusion center personnel were offered privacy technical assistance in the form of a Privacy TA Review Team that would help them construct their policies, if needed, and review the completed draft policies to provide feedback on the policies' adherence to the provisions contained within the *Fusion Center Privacy Policy Development: Privacy, Civil Rights, and Civil Liberties Policy Template*.
- *2009 Privacy TA Session.*—For those centers that were unable to attend the 2007 Regional Privacy TA Sessions, a separate Privacy TA Session was held in February 2009 to deliver the same information: an overview of the history of privacy, the importance of developing a privacy policy, and hands-on guidance through the *Fusion Center Privacy Policy Development: Privacy, Civil Rights, and Civil Liberties Policy Template*.
- *2007, 2008, and 2009 National Fusion Center Conferences.*—In March of each of these 3 consecutive years, sessions on protecting privacy, civil liberties, and civil rights were conducted to highlight these important issues, and to bolster the technical assistance sessions offered at the regional conferences. These included a breakout session, delivered twice, at the 2007 national conference; a plenary session delivered to all participants, as well as a breakout session, at the 2008 conference; and at the 2009 national conference a breakout session to help fusion centers integrate a privacy and civil liberties protection framework into fusion center operations; a breakout session on 28 Code of Federal Regulations (CFR) Part 23; and a “Hands-On Learning Lab, where on-site staff coached participants on how to conduct a privacy and/or civil liberties impact assessment of their fusion centers, arrange for on-site training, discuss questions or issues, advise on their privacy and civil liberties policy development, and answer questions about 28 CFR Part 23.

¹²The Privacy Technical Assistance Providers included representatives from the Bureau of Justice Assistance (BJA), Office of Justice Programs (OJP); the U.S. Department of Justice (DOJ); the U.S. Department of Homeland Security (DHS); the Justice Management Institute (JMI); SEARCH, The National Consortium for Justice Information and Statistics; the Global Privacy and Information Quality Working Group (GPIQWG); and the Institute for Intergovernmental Research (IIR). For fusion center resources, additional input was provided by the Office of the Program Manager for the Information Sharing Environment (ISE), the ISE Privacy Guidelines Committee's (PGC) State, Local, and Tribal (SLT) Working Group, and the ISE PGC Training and Outreach Working Group.

At all of these regional meetings, technical assistance sessions, and fusion center conferences, more than a dozen privacy-related publications and resources were discussed with and/or distributed to attendees. Most of these publications and resources are also easily accessible to fusion centers—and to the public—on the Global Justice Information Sharing Initiative Web site.¹³

A host of other efforts have been underway to ensure that the fusion center network continues to implement practices that will help ensure the protection of these constitutional rights. For example, in addition to the delivery of training and technical assistance, there have been countless conversations and numerous in-person meetings with privacy, civil liberties, and civil rights advocates to ensure that issues are well understood. (The opportunity for much of this dialogue to occur has come from the development of the National Suspicious Activity Reporting Initiative, about which this subcommittee has previously heard during an earlier hearing.) To promote transparency and awareness, the 2009 National Fusion Center Conference included presentations to attendees by media representatives and privacy advocates. Significant portions of the conference were also opened to advocates and the media. Furthermore, fusion centers have opened their doors and met with media representatives and privacy, civil liberties, and civil rights advocates. Going forward, it is important to capture “lessons learned” from case studies that can help fusion centers refine their practices to ensure that potential dangers are avoided. Discussions about developing this next level of training and technical assistance are already underway so the resources necessary to deliver this support can be identified. Finally, sustaining a national, integrated network of fusion centers will actually strengthen our collective ability to provide accountability and transparency; this is an important point that cannot be understated.

In terms of maintaining the momentum for fusion center development and sustaining their value, funding is paramount. The development and sustainability of intelligence fusion centers continues to be of significant concern for State homeland security officials,¹⁴ as well as for the fusion centers themselves. In essence, the failure to sustain fusion centers will prevent key local, tribal, State, and Federal officials from receiving essential information, making communities less safe. One of the continuing primary challenges is the sustainability of fusion center operations without Federal funding. Only one-quarter of State homeland security directors maintained that they will be able to subsidize their fusion center operations without Federal funding. During a Fusion Center Directors’ Meeting at the 2009 National Fusion Center Conference last month, the fusion center directors voiced the same concerns. Specifically, there was a strong call for predictable—even direct—funding for fusion centers so that the promise of fusion centers can be attained, and so that the dangers can be avoided.

CONCLUSION

For the first time in my career, we are on the verge of building a truly national, integrated information sharing and analysis network that will make our communities and our Nation safer. Fusion centers can and should build upon the success, as well as coordinate with, other effective programs, such as the Regional Information Sharing Systems (RISS) and the High Intensity Drug Trafficking Area (HIDTA) Investigative Support Centers. Leveraging the outstanding work of the Global Justice Information Sharing Initiative—especially through the Criminal Intelligence Coordinating Council—is also vital.

But much more needs to be done. Input from the people who are leading fusion centers must be considered in looking to the future. In a meeting of fusion center directors that occurred last month in conjunction with the National Fusion Center Conference, the priorities for the future that were identified by the directors included emphasizing privacy, civil liberties, and civil rights protections; performing a gap analysis of Baseline Capabilities at each fusion center; conducting outreach with the public and all stakeholders; promoting data interoperability; and identifying and asking for sustainability funding for fusion centers.

These priorities provide a solid road map for the future. But to move forward, our Nation’s leaders must continue to support and fund the agencies and partners mentioned herein that are involved in building the national, integrated network of fusion centers. Resources are needed for fusion centers themselves, and for the training and technical assistance programs that support them. These programs are crit-

¹³The Global Justice Information Sharing Initiative Web site can be found at <http://it.ojp.gov/default.aspx?area=globalJustice>.

¹⁴The survey targets members of the Governors Homeland Security Advisors Council (GHSAC), which is comprised of the top homeland security directors as designated by each governor in all States, territories, and the District of Columbia.

ical to ensuring that the promise of fusion centers is realized, while avoiding the pitfalls and dangers that can arise.

On behalf of the colleagues with whom I work at all levels of government, we appreciate the support for and interest in the effectiveness of fusion centers, and in the protection of privacy, civil liberties, and civil rights, that has been consistently demonstrated by this subcommittee and by the Committee on Homeland Security.

Ms. HARMAN. Thank you, Mr. Porter.
Mr. Bateman.

**STATEMENT OF JOHN E. BATEMAN, ASSISTANT COMMANDER,
BUREAU OF INFORMATION ANALYSIS, TEXAS DEPARTMENT
OF PUBLIC SAFETY**

Mr. BATEMAN. Chair Harman, Ranking Member McCaul, and Members of the subcommittee, I am here today to speak to you on behalf of the Texas Fusion Center, and the six regional and local urban-area security-initiative fusion centers located in Texas.

These regional local centers consist of the North Central Texas Fusion Center in Collin County, the Metro Operations Support and Analytical Intelligence Center, MOSAIC, in Dallas—they should get an award for coming up with that acronym, by the way—I just need to insert that comment—Houston Regional Intelligence Service Center, the Austin Regional Intelligence Center, the San Antonio Fusion Center, and the El Paso Fusion Center.

These seven centers represent the efforts of 24 State, local, county, and Federal agencies to directly support the Department of Homeland Security's Fusion Center Initiative.

The promise of fusion centers is clear. In and of itself, a fusion center will not end the threat that terrorism, gangs, and organized crime pose to the citizens of the United States. However, a network of multi-agency intelligence centers, sharing and analyzing information, and then passing that information on, both to decision-makers and first-line personnel in the field, allow these groups to make better, more informed decisions, as they work to thwart the individuals and groups who intend to do us harm.

The Department of Homeland Security has been an incredible asset in assisting State and local jurisdictions with the development of fusion centers. Their assistance has been much more than just proposing a concept and providing funding. The DHS has served as a leader by providing personnel to fusion centers, offering training opportunities, and developing the framework of the fusion center baseline capabilities.

These baseline capabilities provide a valuable reference for State and local jurisdictions as they develop their centers.

I would like to compliment the work of Deputy Under Secretary Chet Lunner and Mr. Rob Riegle, and their staffs, for all the work they do to assist the State and local centers. They are dedicated to their task, and have been an invaluable resource as the fusion center initiative moves forward.

I would also like to recognize Mr. Russ Porter, for his contributions to the National Fusion Centers Conference in Kansas City. His hard work and dedication made the conference a great success.

The Texas Fusion Center was formed in 2004 as the Texas Security Alert and Analysis Center. At its inception, it was a watch center for routine law enforcement information sharing, the collection

of suspicious activity reports from both the public and law enforcement, and the dissemination of alerts and notifications.

In 2005, at the direction of, and with the guidance from State Homeland Security Director, Steven McCraw, the Texas Fusion Center was formed, and is currently a 24/7 State-wide intelligence and strategic analysis center, where information and intelligence from a variety of sources is exchanged, consolidated, and analyzed by a multi-agency team of analysts.

More than 1,500 of the 2,500 law-enforcement jurisdictions across the State are connected to the center through the Emergency Response Network, or the ERN. It is an Internet-based system that allows the general public and law enforcement to submit suspicious-activity reports directly to the fusion center for evaluation and analysis by fusion-center personnel.

While we have had an impressive list of accomplishments over the years, we still face a number of challenges: Obtaining sustainability funding, training, achieving baseline capabilities, and developing and, then, adhering to a privacy policy.

Other than the Texas Fusion Center, which operates solely through State funding, all fusion centers of Texas reported that their continued viability would require some level of Federal sustainability funding. It is important to note that this sustainability funding that is provided should be designated specifically for fusion centers, so it cannot be redirected to another Homeland Security initiative in that State.

The need for comprehensive and uniform analytical training is a challenge, on which DHS will need to focus in the future. Development and deployment of a core curriculum for all analytical personnel will ensure an equal skill level across all fusion centers. Currently, the fusion centers are working with DHS to bring three separate analytical training courses to Texas.

As Mr. Porter said, this year's National Fusion Center Conference—the theme was "Achieving Baseline Capabilities." As the director of the Texas Fusion Center, we are currently doing the gap analysis that he mentioned. Those baseline capabilities are an incredible resource to us as we move forward.

The fusion centers in Texas are directly supported by 24 State, local, county, and Federal agencies. But that does not include the countless other agencies who share unprecedented levels of information with these fusion centers. This is a paradigm shift to an information-sharing environment, and comes with a great responsibility to protect the information from misuse, and to protect the privacy rights and civil liberties of individuals.

The fusion centers operating in Texas all recognize this responsibility, and all have privacy policies. These privacy policies were developed, and privacy advocates were consulted when they were developed.

With these safeguards in place, it is my belief that fusion centers in Texas can go forward with their mission, without violating the privacy and civil liberties of individual citizens.

In closing, I would like to thank you for the opportunity to appear today and explain the fusion center initiative in Texas, and be able to address any concerns as we move forward.

[The statement of Mr. Bateman follows:]

PREPARED STATEMENT OF JOHN E. BATEMAN

APRIL 1, 2009

Chair Harman, Ranking Member McCaul, and distinguished Members of the subcommittee: I am here today to speak to you on behalf of the Texas Fusion Center and the six regional and local Urban Area Security Initiative (UASI) Fusion Centers located in Texas. These regional and local centers consist of:

- North Central Texas Fusion Center in Collin County;
- Metro Operations Support and Analytical Intelligence Center (MOSAIC) in Dallas;
- Houston Regional Intelligence Service Center (HRISC);
- Austin Regional Intelligence Center (ARIC)—in development;
- San Antonio Fusion Center—in development;
- El Paso Fusion Center—in development.

These seven centers represent the efforts of 24 State, local, county, and Federal agencies to directly support the Department of Homeland Security's fusion center initiative.

The promise of fusion centers is clear. In and of itself, a fusion center will not end the threat that terrorism, gangs, and organized crime pose to the citizens of the United States. However, a network of multi-agency intelligence centers, sharing and analyzing information, and then passing that information on to decisionmakers and first-line personnel in the field, allows these groups to make better, more informed decisions as they work to thwart the individuals and groups who intend to do us harm. While there have been, in the past, multi-agency taskforce operations on the enforcement side designed to address problems relating to crime and terrorism, the fusion center is the first true comprehensive Nation-wide program to combine the analytical and informational capabilities of Federal, State, county, local, and Tribal agencies.

The Department of Homeland Security has been an incredible asset in assisting State and local jurisdictions with the development of fusion centers. Their assistance has been much more than just proposing the concept and providing funding. The DHS has served as a leader by providing personnel to the fusion centers, offering training opportunities, and developing the framework of the Fusion Center Baseline Capabilities. The baseline capabilities provide an invaluable reference for State and local jurisdictions to use as they develop their centers. I would like to compliment the work of Deputy Under Secretary Chet Lunner, Mr. Rob Riegle, and their staffs for all the work they do to assist the State and local centers. They are dedicated to the task, and have been an invaluable resource as the fusion center initiative moves forward. I also would like to recognize Mr. Russ Porter for his contributions to the 2009 National Fusion Center Conference. His hard work and dedication made the conference a great success.

The Texas Fusion Center was formed in 2004 as the Texas Security Alert and Analysis Center (TSAAC). At its inception, TSAAC was a 24/7 watch center for routine information sharing between law enforcement, the collection of Suspicious Activity Reports (SARs) from both the public and law enforcement, and the dissemination of alerts and notifications.

Today, the Texas Fusion Center is a 24/7 State-wide intelligence and strategic analysis center where information and intelligence from a variety of sources is exchanged, consolidated, and analyzed by a multi-agency team of analysts. More than 1,500 of the 2,500 law enforcement jurisdictions across the State are connected to the center through the Emergency Response Network (ERN), an Internet-based system that allows the general public and law enforcement to submit SARs directly to the Texas Fusion Center for evaluation and analysis by Fusion Center personnel. The SARs are then forwarded to law enforcement field personnel for investigative follow-up. To date, almost 20,000 SARs have been collected and processed.

The Fusion Center has an impressive list of accomplishments over the years, but we still face a number of challenges: Obtaining sustainability funding; training; achieving baseline capabilities; and, developing and adhering to a privacy policy.

Except for the Texas Fusion Center, which operates solely through State funding, all the fusion centers in Texas reported that their continued viability would require some level of Federal sustainability funding. It is important that any sustainability funding that is provided to the State and local jurisdictions be designated specifically for fusion centers.

The need for comprehensive and uniform analytical training is a challenge on which DHS will need to focus in the future. Development and deployment of a core curriculum for all analytical personnel will ensure an equal skill level across all fusion centers. Currently, the Texas Fusion Center is working with DHS to bring

three analytical training courses to Texas regarding privacy policy and civil liberties, open source reporting, and critical thinking.

At this year's National Fusion Center Conference in Kansas City, the theme was "Achieving Baseline Capabilities." Meeting these capabilities is an important focus of our strategic plan. The DHS personnel deployed to Texas are a valuable resource as the fusion centers work toward identifying and achieving baseline capabilities. The most critical capability for fusion centers to achieve is development and adherence to a privacy policy.

Fusion centers in Texas are directly supported by 24 State, local, county, and Federal agencies. This does not include the valuable indirect support the fusion centers receive from countless other agencies who share unprecedented levels of information with the fusion centers. With this paradigm shift to an information-sharing environment comes a great responsibility to protect the information from misuse, and to protect the privacy rights and civil liberties of individuals. The fusion centers operating in Texas all recognize this responsibility and have privacy policies in place. With these safeguards in place, it is my belief that fusion centers in Texas can go forward with their mission of dismantling criminal organizations and disrupting terrorist operations without violating the privacy and civil liberties of individual citizens.

In closing, I would like to thank you for the opportunity to appear today and explain the fusion center initiative in Texas and to be able to address any concerns as we move forward.

Ms. HARMAN. Thank you, Mr. Bateman.

Thank you to our panel.

We will now go to questions by the subcommittee, 5 minutes each. I will yield 5 minutes to the Chair for opening questions.

First of all, let me thank, in advance, Secretary Napolitano, for coming to Los Angeles in a couple of weeks to visit the JRIC, among other things. I think she will see, and I am sure Sheriff Baca agrees with me, a state-of-the-art fusion center that has learned a lot of the lessons that need to be learned, over several years, including how to do its job better, and how to protect privacy and civil liberties better.

As I have often said, security and liberty are not a zero-sum game. I think we know that in Los Angeles and around the country. I see every witness nodding. So I want to thank here through you, Mr. Riegle, for that visit upcoming, and hope that she will make visits to other parts of the country where there are also very interesting things to see. I know she is familiar with Arizona's fusion center, and efforts at the border. But I am pleased that she wants to get out and about and see what is going on in America's neighborhoods.

Let me continue to address this op-ed, because I think those in the audience, and listening in, want to know if the allegations are true. I appreciated your comments, Mr. Porter. I would just add by extension that the Members of this committee also, it seems to me, are being criticized for, I suppose, being part of activities that are long gone in this Congress, like the House Un-American Activities Committee, and et cetera.

I take personal offense, as I was, some years back, chief counsel and staff director of the Senate Judiciary Subcommittee on Constitutional Rights. I think I get it. It matters to me that we protect privacy and civil liberties.

But nonetheless, some of the other allegations in this op-ed are that fusion centers spy on America.

I want to ask you folks—just go down the line—true or false: Do fusion centers spy on Americans?

Sheriff BACA. False.

Mr. RIEGLE. Absolutely false.

Mr. PORTER. False.

Mr. BATEMAN. It is not true.

Ms. HARMAN. Thank you.

Mr. Bateman is—I appreciate that. Thank you very much.

Another allegation in this op-ed is that those in the business of intelligence collection—presumably those who work at fusion centers—again, I wouldn't call them "intelligence collectors." They don't do spying. They put together intelligence products for dissemination.

But anyway, it says "They are rewarded financially and professionally by the volume of intelligence collected." True or false?

Sheriff Baca.

Sheriff BACA. False.

Ms. HARMAN. Mr. Riegle.

Mr. RIEGLE. Madam Chair—untrue, false.

Ms. HARMAN. Mr. Bateman.

Mr. BATEMAN. False.

Ms. HARMAN. It also says, "There are no serious quality controls"—and we have heard some testimony on this—true or false?

Sheriff Baca.

Sheriff BACA. False.

Mr. RIEGLE. False, again.

Mr. PORTER. False, Madam Chair.

Mr. BATEMAN. False.

Ms. HARMAN. Finally, it says, "Few, if any, are capable of separating the terrorist wheat from the innocuous chaff. There are no reliable earmarks of a would-be terrorist": True or false?

Sheriff BACA. False.

Mr. RIEGLE. False.

Mr. PORTER. I believe that is false.

Mr. BATEMAN. False.

Ms. HARMAN. Thank you very much.

Let me, finally, address a question to you, Mr. Riegle.

This op-ed spends a lot of time on the problems with a bulletin that was issued by the North Central Texas Fusion System. Mr. Bateman, you also might want to comment.

Could you tell me what DHS' response was to this bulletin, and what happened?

Mr. RIEGLE. We took immediate and aggressive response to the bulletin. You will get more detail on that in the next panel. But we immediately sent a team of civil liberties and civil rights experts down to the State of Texas, to work directly with the center. This included advocates from the Muslim-American community in the United States of America.

We also, then, immediately altered the director's meeting at the National Conference to emphasize the importance of this, and went over this particular oversight error as aggressively as we possibly could. I will leave it at that, to allow Mr. Bateman some time to respond, as well.

Ms. HARMAN. Fine.

Mr. Bateman, you have 33 seconds.

Mr. BATEMAN. Thank you.

Chief Kelley Stone, of the North Central Texas Fusion System, took responsibility for this. He met with Rob Riegle and their staff. They have implemented new review and editing policies. They have met with people, and are retraining everyone in the area of privacy and civil liberties.

I would disagree with Mr. Riegle's assertion that it was aggressive. I would say it was responsible. But I don't think anybody viewed it as aggressive response.

Ms. HARMAN. Thank you, Mr. Bateman.

My time has expired. I now yield to Mr. McCaul, for 5 minutes.

Mr. MCCAUL. I thank you, Madam Chair. You know, after September 11, we have two pictures behind the witnesses: One of the World Trade Center, one of the Pentagon. The big allegation was we weren't connecting the dots, and we weren't sharing information, and the left hand didn't know what the right hand was doing, and that there wasn't any coordination with State and local law enforcement.

You know what? Those were all pretty accurate. In my experience, just as the criminal side didn't talk to the intelligence side of the house, there wasn't any real coordination with State and locals. Mohamed Atta was picked up—was stopped in a routine traffic violation, but nothing was done to stop that.

So I actually wanted to, as the Chair—I want to go through some of these. Then I want to—I got a question about the border.

But I, personally, find this one assertion—having worked with law enforcement for a good deal of my career—insulting. That is that “The First Amendment principles will never be honored by law-enforcement officers or public officials in the intelligence arena.” I assume that this entire panel disagrees with that assertion. Is that correct?

“There are no serious quality controls”: Does everyone disagree with that assertion?

“Few if any are capable of separating the terrorist wheat from the chaff—no reliable earmarks of a would-be terrorist.”

I would—anybody that would like to jump in and comment on that specifically? Then I will have a couple minutes to ask some questions about coordination with law enforcement at the border.

Sheriff BACA. Simply, the functionality of a fusion center is to, in fact, protect the civil rights of people, as opposed to do randomness. In terms of what we do specifically, it is really the key mark—earmark, or the key highlight of a fusion center.

Mr. MCCAUL. Mr. Riegle.

Mr. RIEGLE. I think the evidence suggests that there were clear opportunities to mitigate the risk of 9/11, that were missed; and fusion centers, as the Chair has stated publicly, on numerous occasions, are the most likely to determine this. I think they are effective at doing that.

Mr. MCCAUL. Mr. Porter.

Mr. PORTER. Thank you.

I just want to speak to the “quality controls” reference very quickly. If you go back to the National Criminal Intelligence Sharing Plan, we used a framework that was advocated by Kenneth Culp Davis, many, many years ago, about controlling discretion in the criminal justice system: Eliminate unnecessary discretion,

structure the necessary discretion, and provide checks and balances. That is the framework we have used to continue to go forward and continually improve in our ability to deliver effective fusion center services, while protecting constitutional rights.

Mr. MCCAUL. Mr. Bateman.

Mr. BATEMAN. I would like to address the comment about the—"there are no earmarks to identifying a terrorist."

The specific terrorists—that may be a true statement. However, there are certain activities that these plans have that, in and of themselves, may not be illegal. But they do indicate that there may be some kind of planning in place. Those kind of things are the type of information that—that need to be collected and looked at—disregarded, if it doesn't apply; but, then, certainly, evaluated and forwarded for follow-up, if they do apply.

Mr. MCCAUL. I think that is what the American people expect. They expect us to protect them. I think the fusion centers play a vital role in protecting the American people. But that is just my point of view.

The border initiative that Secretary Napolitano has unveiled includes additional manpower for intelligence analysts. We, yesterday, did a hearing on interoperability—had the two sheriffs—one from Texas—Zapata County Sheriff Gonzalez, who raised the issue that, in terms of information sharing, we have a long ways to go.

I don't know—Mr. Bateman, you may be in the best position to answer this—but as we deal with a threat that is emanating from Mexico—there is a—after all, a war down there, against the drug cartels. Can you comment on the role of the fusion center, with respect to State and local law enforcement down on the border?

Mr. BATEMAN. The fusion center in Texas has analysts that are assigned to different groups on the border. We make ourselves available to them if they have a request. Also, we push information to them if we feel that it applies to their area.

I know the sheriff you refer to, and he is aware of the fusion center, and that it is available to him. I will meet with him when I get back to Texas. We will work out any differences we may have.

Mr. MCCAUL. Well, I look forward to that. I will yield back the balance of my time.

Ms. HARMAN. I thank the gentleman.

The Chair now yields to Mr. Souder, of Indiana, for—I am aware, Mr. Souder, but you were here before the gavel.

Mr. SOUDER. Thank you, Madam Chair.

I don't hear a lot of people in my district, wandering around, going, "Oh, you know, I don't like these fusion centers. I would rather have it be kind of random, where they are uncoordinated, going out, arresting each other every so often, doing duplicative work." I don't understand the debate. Just for the record, Mr. Porter, if Jesus were wandering around in Iowa, preaching peace and personal repentance, do you think he would be in your files?

Mr. PORTER. I know that he would not be in our files.

Mr. SOUDER. Well, I was nervous by that statement by Mr. Fein.

That—and—and Sheriff Baca, do you go through the eBay records—do personality profiles on taxpayers who don't like to pay taxes, like that tea party?

Sheriff BACA. Absolutely not.

Mr. SOUDER. I mean, the implications of the statements from Mr. Fein, and the paranoia from some people, that that feeds, is really harmful, because the reason we have the fusion centers—and I want to ask Mr. Riegler—do you still see the primary purpose of the fusion centers to be antiterrorism?

Mr. RIEGLE. I would answer the question this way: It is the most important thing that they do in a fusion center—this antiterrorism work. It isn't the bulk of the work they do, however, but it is the most important, yes.

Mr. SOUDER. Do you see narcotics as part of that?

Mr. RIEGLE. Well, clearly, we want to look at and examine any nexus between other criminal activity, whether narcotic trafficking or human trafficking and smuggling, or any sort of feeder crime that could support material activity in response to material support for terrorism. Yes, we do examine that, and we encourage that.

Mr. SOUDER. But you don't see, given the fact that you are working mostly with local agencies, and that Department of Homeland Security, with Border Patrol, and ICE, and the—and so on—have more anti-drug agents than any other agency—and local law enforcement—narcotics is a big part of their daily—you don't see narcotics, which is defined in the Homeland Security legislation as part of terrorism—you don't see that as a significant part? It isn't in your testimony anywhere.

Mr. RIEGLE. Well, it is a significant part. The actual day-to-day mechanics of the fusion center are done through our analysis group, as far as the direct work, with what we focus on departmentally. We do focus heavily on the counter-drug issue, especially on the southern border, because it does feed a lot of other violent activity. We understand that.

Mine is more of a process role, quite honestly. I am more in the facilitation of the deployment of the systems—

Mr. SOUDER. Well, the reason this becomes relevant is that El Paso—I know, at one point, they had seven intelligence centers just in El Paso, overlapping a lot on—on drugs and border—and that, when local police are picking up people, often, it is related to narcotics. Criminal organizations are criminal organizations.

In Los Angeles, for example, you have arson gangs and you have gangs that specialize in robberies, and so on. But, basically, the criminal organizations work together, even contract with each other, and narcotics is a key part of this.

Are you interconnecting—let me ask Sheriff Baca—with the Los Angeles HIDTA? Do you work with EPIC? How do you see your fusion center, and the fact that much of the arrest record has to do with narcotics? How do you interrelate these different intel centers?

Sheriff BACA. Completely in the Los Angeles Regional Intelligence Center—we are talking about all crimes. That is what you are alluding to. There is a reality that terrorism activity is a crime. So the techniques that we use for robberies, narcotics, for thefts, for grand theft auto and rapes and so forth, are the very process by which we cull out the probable cause, protect the constitutional rights of Americans, including the criminals, and then we move forward.

Mr. SOUDER. In New York City, they have attempted, along with New Jersey and Connecticut—because of what happened there, they have interconnected the HIDTAs, the fusion centers, and have a better coordination. In Los Angeles, is it similar? Are you working together?

Because, probably, you have people in multiple agencies. The question is: How do you fuse the intelligence from all these different kind of Government divisions? Some are under judiciary. Some are under the drug czar. Some are under Treasury. Part of the idea was the fusion center, but we don't want a proliferation of fusion centers, either.

Sheriff BACA. You have just described very accurately what the Los Angeles Fusion Center does. We reach down to five other counties, and—including the Las Vegas metropolitan area. The clear idea that you have just described is that the entire Nation needs to be fused. Why? Because we have 19,000 law enforcement agencies, and 3,000 of them which are sheriff's departments.

All of us are better off when we share criminal data that is verifiably accurate, and it also is gathered under a constitutional requirement that includes civil rights, that we have discussed earlier.

Mr. SOUDER. Thank you.

Ms. HARMAN. Thank you, Mr. Souder.

The Chair now recognizes Ms. Clarke, who is chair of the Homeland Security Subcommittee on Emergency Threats and Cybersecurity—issues that are closely related to what we are discussing today—for 5 minutes of questions.

Ms. CLARKE. I thank Chair Harman and Ranking Member McCaul, for arranging this important hearing.

As a New Yorker who witnessed the horror of the 1993 World Trade bombing and the 9/11 attacks first-hand, I am committed to finding solutions to the information-sharing problems that hindered our ability to prevent the attacks.

Today, fusion-center officials remain concerned that the Office of Intelligence and Analysis has not developed an action plan to ensure it understands and can meet the centers' evolving and unique information needs and requirements; i.e., beyond the view of Muslim-Islamic actors, the emerging and increasing threat of drug cartels, as well as cyber-attacks and threats, and human trafficking.

I just heard the response to the question of how we really make fusion centers fuse throughout this Nation. So my question to the witnesses is: Some have argued that DHS should operate like a national fusion center, pulling information from State and local fusion centers, reviewing it together with overseas intelligence, and, then, creating intelligence products that provide national situational awareness of threats.

I want to know what your response to that is and whether you think it makes sense or not.

Sheriff BACA. I would totally agree with what you have said.

The problem with intelligence gathering is that you can't get enough accuracy going to the level where all of us are sharing what is essentially a core problem, wherever it emerges. Many of us have had to travel abroad, outside our Nation, in order to get informa-

tion. Strategies are just as important as the information. What are you going to do with it?

So, in the national statement that you have mentioned, we would like to be a little more involved in policy development, because it is the actions that emerge from the intelligence that are as—just as important, if not more important, than the intelligence itself.

Mr. RIEGLE. I think the sheriff is exactly right. I do think it is the role of DHS to fuse information that is collected or examined at the centers, that looks at what the threat really is at the local level, and brings that back to Washington, DC, and does a joint examination with our Federal partners, along with State participation and local participation, to see what, exactly, that means.

The secretary deserves to have the situational awareness of what the risks really are. They are best identified at the local level, as I stated in my previous testifying.

I would, though, say that we should show some deference to the secretary's ability to run and manage in a way she finds most effective, giving that she still has only been here a little over 60 days. But I think she will take that recommendation on with the utmost seriousness. I am committed to help her do that.

Mr. PORTER. Ma'am, I concur with Mr. Riegle and his assessment.

I would just say also that, certainly, this has to be done in a pluralistic environment. We have a lot of different agencies with that interest. Certainly, even in my State, we would like to have situational awareness that is at a national level.

Our Federal partners have done a tremendous job working together on training and technical assistance, and finding the right role or lanes in the road for each of them. I think they could also do the same thing with this issue.

Mr. BATEMAN. We have DHS personnel from Washington, DC, assigned to our centers. They are invaluable to us in getting information that we have, that we may not recognize the full value of, to Washington, DC, and getting things from Washington, DC, brought down to us. They also help us to navigate the complexities of the DHS structure, which sometimes overwhelm the smaller centers.

So while they don't have a comprehensive plan in place, they do have mechanisms in place to allow for that to go on—that sharing to go on.

Ms. CLARKE. I guess my concern is that they will become sort of a standard. Because, at that point, we can, then, address the issues of civil liberties and privacy. As long as there is this sort of imbalance, I think that that remains an area that is sort of grey. The more that we can bring clarity to it, the better off we will be.

Let me just close by asking Mr. Porter how important it is, transparency to the public, privacy, and civil liberties advocates, and the media, in terms of the future of fusion centers? In your view, what privacy and civil liberties criticisms of fusion centers, over the last year, have been fair, and what has been unfair or misinformed? How have you responded?

Mr. PORTER. Thank you.

I think, in the interest of time—and I would be happy to come back to this. I don't want to use up too much time on the answer.

The fact that significant portions of the National Fusion Center Conference were open to the media and to advocates—as well as the fact that we are encouraging fusion centers, when there is an interest in media or advocates, to come through and learn about the center. We are encouraging that process. That has gone a long ways to helping provide an understanding in terms of complaints or issues or concerns, so that that dialogue is happening in a healthy way, with understanding.

I am not sure I am speaking fully to your question at this point.

Ms. CLARKE. We will probably address that another time. My time is up, and I yield back.

Mr. PORTER. Thank you.

Ms. HARMAN. I thank the gentlewoman.

The Chair now yields to Mr. Himes, of Connecticut, for 5 minutes.

No questions?

Mr. Green. Mr. Green, you are recognized for 5 minutes.

Mr. GREEN. Thank you, Madam Chair.

I thank the witnesses for appearing, and apologize for being a little bit late arriving. We have other hearings that are taking place. I am trying to be at multiple places at the same time. So please forgive me. But I do appreciate your taking the time to come in.

I understand that some questions have already been asked that I would probably pursue. Hopefully, I won't get us into a point where we are being superfluous or redundant. But I do have the article that has been called to the attention of this panel.

I think that it is appropriate that this panel have an opportunity to respond, because you have intelligence that can help us with our intelligence. So I would like to visit with you for just a moment about a few things akin to, or associated with, this article.

Let me ask just a basic question, because it would be unfair for me to ask you to comment on something you haven't read. Have you had an opportunity to peruse the article that I am speaking of, styled, "Surveilling for Clues of Evil Intent"?

If you have had an opportunity to peruse it, would you kindly extend a hand into—this way—I will know. All right, everyone has. Good.

This is a broad question: Is there something about this article that gives you reason to want to make a comment, such that I can allow you to speak, without my having to sift through the sand and find all of the pearls of wisdom that you may impart?

So let us start with whomever would like to speak first. Is there something about it you would like to share with us? Please.

Sheriff BACA. Well, the article is extremely offensive and inaccurate.

First of all, the idea that First Amendment Principles will never be honored by law-enforcement officers or public officials in the business of intelligence collection is categorically false.

The fact that there is a reference that we "will be rewarded financially and professionally by the volume of intelligence collected" is completely false; that "there is no serious quality controls"—that is completely false. Myself and the Joint Regional Intelligence Center of Los Angeles, along with those throughout the Nation, have been trained on these very subject matters.

“Few are capable of separating the wheat from the innocuous chaff”—that is false. We know that fusion centers are designed to do that very thing. Let me comment on this. When 9/11 occurred, 8,000 tips came into the FBI about suspicious activity, because people in American were very upset. We had to go through all of that to make sure that we were getting to the right pieces of information, and we did. That is the purpose of a fusion center.

I can assure you, Congressman, when the next attack occurs, God forbid, we are going to have Americans making phone calls all over America, to local police departments, asking for us to investigate suspicious activities.

They are the greatest potential violators of civil rights. Now, we are in the business of protecting civil rights. Therefore, I am saying to the American public—we will answer your requests, but we will do it within the structure of law.

Mr. GREEN. Thank you.

Yes, sir.

Mr. RIEGLE. Congressman, I think one of the things that is underrepresented is the approach in the national network of fusion centers. We have to share information.

You can take, really, one of two approaches. You can work with people that live in the community, among the citizens that they protect, and give them the lead. They have the trust already, and have for, you know, since the beginning of the Nation—had the trust of the fire and police that protect them. We can put the approach in their hands, and believe in their ability to carry out this mission. Or we can do it from the Federal Government in Washington, DC.

I would submit to you that most people are comfortable with having that approach taken locally, not from the beltway. That is my comment on that.

Mr. GREEN. Mr. Porter.

Mr. PORTER. I will refer to my comments earlier.

But I will say this, and allow Mr. Bateman to respond. The commentary does talk about the Palmer raids, McCarthyism, COINTELPRO, which have been talked about, to fusion centers—in the history of law enforcement intelligence, as we presented to them.

I will say, “Hats off,” to Mr. Fein, for referencing Operation Shamrock. That is something I don’t know about, but we will be learning about, so that we can share that information with fusion centers.

Mr. BATEMAN. Mr. Fein’s article is certainly—overstates some things and makes some—what I would consider vitriolic claims. But there is a—I hope his underlying point is that he needs—he is concerned that there is no privacy policy or civil liberties concerns among the fusion centers.

That is not true. I think the hearing here, today, demonstrates that. However, he is marginalizing his opinion by the statements he makes that are so demonstrably false.

Mr. GREEN. Thank you.

The Chair has indicated that my time is up.

Thank you very much.

I yield back, Madam Chair.

Ms. HARMAN. Thank you, Mr. Green.

Everyone has had a chance to question this panel. We have a second panel coming up.

So I would like to thank this panel for your service to a grateful Nation, and your on-going concern about civil rights and civil liberties, and excuse you now.

Thank you very much.

It will take a minute to set up the next panel. So the committee will be in recess for about a minute.

[Recess.]

Ms. HARMAN. Fast work by able staff.

The subcommittee is in order.

I would like to welcome our second panel of witnesses.

Our first witness, Bruce Fein, served as associate deputy attorney general for the Justice Department, and general counsel for the Federal Communications Commission, under President Ronald Reagan.

Mr. Fein later served as legal advisor to then-Congressman Dick Cheney on the Joint Committee on Covert Arms Sales to Iran. He also served on an American Bar Association task force in 2006 that that addressed the issue of usurpation of legislative power by the Executive branch, and subsequently founded an organization called The American Freedom Agenda in 2007.

I have personally consulted Mr. Fein from time to time on issues important to this subcommittee, such as the National Applications Office, and the very controversial and difficult issue of violent extremism.

Our second witness, Ned Norris, Jr., is chairman of the Tohono O'odham Nation, a federally recognized tribe of 28,000 people, who reside on and off tribal lands in southwestern Arizona, and across the international border, in Mexico.

The Tohono O'odham Nation is one of the largest tribes in the southwest, with a land base of 2.8 million acres, and 4,460 square miles; approximately, the size of the State of Connecticut. The Nation has the second-largest tribal-land base in the United States.

Mr. Norris started his employment with the Tohono O'odham Nation in 1978, as a non-attorney tribal judge, and held the position until 1993. He served as a Sunnyside Unified School District board member from 1997 to 2000.

Our third witness, David Gersten, is the acting deputy director for Programs and Compliance, in the Department of Homeland Security's Office for Civil Rights and Civil Liberties.

In this capacity, he works to fulfill the office's mission to provide policy guidance to Departmental leadership on civil rights and civil liberties. Mr. Gersten manages several units and individuals, who serve as information and communications channels with the public, regarding these key issues. They include units dedicated to engagement with the American Arab and Muslim communities, civil rights and civil liberties training for DHS personnel and partners, and review of how the Department's use of technology and its approach to information sharing impacts civil liberties.

Without objection, the witnesses' full statements will be inserted in the record. I would now each of—now ask each of you, starting

with Mr. Fein, to summarize your statement, in 5 minutes or less. Please do observe the time clock, which I think is visible to you.

STATEMENT OF BRUCE FEIN, PRINCIPAL, THE LITCHFIELD GROUP

Mr. FEIN. Thank you, Ms. Chair, and Members of the subcommittee.

I want to make some opening observations about why I think it is not paranoid to be suspicious about Government investigations, intelligence collection, post-9/11, whether it is in the process of fusion centers or otherwise.

Shortly after 9/11, there began what President Bush styled, the "Terrorist Surveillance Program." That was an effort to spy on Americans on American soil. It is in contravention of the Foreign Intelligence Surveillance Act of 1978.

We still, today, don't know how many thousands of Americans were spied on; why they were spied on; why it is that, despite the open confession that this was a violation of the Foreign Intelligence Surveillance Act, there has been no investigation to determine liability under the act.

Both the previous administration and this one have invoked "state secrets" to prevent full disclosure to the American people as to who was spied on, what happened to their information. I know you, Ms. Chairman—know you don't know either—and that the administration didn't tell you anything.

On the other hand, they also had their Privacy Protection Committee—internal privacy-protection committees within the Executive branch. They assured us every 45 days that the only people being spied on were those who were known al Qaeda agents.

We have no ability to know whether that is accurate. If that were true, we are puzzled as to why both the previous, and this administration, continue to invoke "state secrets" to conceal from us who was spied on, and why, and what was done with that information. This is now 7 years—7 years—after that fact—no disclosure whatsoever, even to this Congress of the United States.

Now what else happened after 9/11 that makes us somewhat suspicious? Remember, there began what now has been conceded to be waterboarding—something that the International Committee of the Red Cross has styled "torture." That is not an arm of a—necessarily, a paranoid group. Still, no accountability, whatsoever. No accountability, whatsoever.

We have been told also that all of these investigations, spying—they stopped countless terrorist acts in the bud. No proof, just an assertion by the previous Vice President of the United States. We don't know that.

Now, all the so-called "privacy protections" built in to these programs are all internal—the same internal privacy-protection programs that were to protect us from the Foreign Intelligence Surveillance Act, the torture, those who are detained at Guantanamo Bay, without accusation or charge. Remember, we knew, from our intelligence, they were the worst of the worst. These were the people who were out there plotting every day to commit another 9/11.

Then, what has happened—when you actually had an outside—not an internal investigation—outside habeas corpus review—vir-

tually everyone has been released. There is now no evidence they are so-called “the worst of the worst.”

So there is reason why, after 9/11, which was the impetus for the fusion centers—the effort of enlisting State and local officials into doing the same things that the FBI and the CIA were doing at a national level to prevent another 9/11—to think that, perhaps, the spying is going too far.

Now, so much has been made also of the—I won’t go into all the criticism in my testimony. I am sure you will have many questions of me after I conclude my opening statement.

But it is said that this citation to the Texas Fusion Center overreaching was an aberration. Suddenly, the fusion center was called to account by Federal authorities or otherwise, and given privacy lectures.

Well, there are a couple things that I would like to observe. No. 1, we weren’t told that a single person involved in preparing this report—which suggests that if you celebrate any kind of Islamic creed, you are somehow suspect—was punished, was reprimanded—anything bad happened to them—same thing with regard to foreign intelligence—like that—people involved in torture—John, you—anybody? No sanctions whatsoever. What message does that send to those who are on the front line? Is this wrong if you don’t get any sanction, demerit, for what you have done here?

Now, let me also go to what I think suggests that this problem is more than just isolated. We don’t have fusion centers subject to the Freedom of Information Act. We don’t have outside independent scrutiny, who goes in and examines: What is the scope of the intelligence being collected? We have statements of people involved saying, “Well, we have great privacy committees,” but we don’t have any outside check.

We know, from your position here, in Congress, checks and balances mean an institutional separation, not internally, here. We don’t trust the Executive branch to police itself. We don’t trust the Judiciary to police itself, or Congress. Separation of powers means separation of institutional incentives. We don’t have any assurance that—other than self-serving statements—that the Texas Fusion Center isn’t typical.

Moreover, there was never any statement as to what was thought wrong about this particular intelligence report highlighting—very ominous—“Middle Eastern terrorist groups and their supporting organization have been successful in gaining support for Islamic goals in the United States, and providing an environment for terrorist organizations to flourish.”

Well, what is wrong with that? Where is—

Ms. HARMAN. Mr. Fein, could you please summarize? You have gone over the 5 minutes.

Mr. FEIN. Yes. Thank you. I apologize. I appreciate that indulgence.

I would like to know what it was that was said—what was wrong under the First Amendment in the Constitution about this particular bulletin. That would give some assurances that the people knew what was wrong.

The last thing: Without sunshine on all of these fusion programs, we don’t know whether this is an aberration, whether anybody has

ever been sanctioned whatsoever, for undertaking this kind of spying for political intelligence.

Thank you.

[The statement of Mr. Fein follows:]

PREPARED STATEMENT OF BRUCE FEIN

APRIL 1, 2009

Dear Ms. Chair and Members of the subcommittee: The Soviet Union had its KGB, East Germany had its Stasi, and the United States should profit by those examples. It should abandon fusion centers that engage 800,000 State and local law enforcement officers in the business of gathering and sharing allegedly domestic or international terrorism intelligence. The vast majority conceive this task as synonymous with monitoring and disparaging political dissent and association protected by the First Amendment.

To a hammer everything looks like a nail. To an intelligence agent, informant, or law enforcement officer, everything unconventional or unorthodox looks like at least a pre-embryonic terrorist danger. The United States should not fall victim to the French Bourbon Monarchy disease of forgetting nothing, and learning nothing, as with the A. Mitchell Palmer Raids, McCarthyism, COINTELPRO, or Operation Shamrock.

Fusion centers are philosophically at war with freedom of speech and religion, the democratic process, and privacy. They pivot on the idea that the constitutionally legitimate and most effective way to forestall a second edition of 9/11 or a variation is to spy on American citizens in search of clues of an inclination towards future terrorism. Under United States law, an earmark of terrorism includes acts that, "appear to be intended . . . to influence the policy of a government by intimidation or coercion . . .". Any political dissident is thus a candidate for spying, who routinely makes his way into daily intelligence reports.

Under the standards employed by fusion centers and their tributaries to collect intelligence, participants in the Boston Tea Party, the Secret Committees of Correspondence, Paul Revere's Ride, and the Declaration of Independence would all have been subjects of suspicious activities reports, placed on a Government watch list, and blacklisted from Government and private employment. The anti-slavery movement ignited by William Lloyd Garrison would have been stillborn. Ditto for the movement for women's suffrage begun in Seneca Falls, New York in 1848, and featuring Susan B. Anthony's criminal prosecution for attempting to vote. The civil disobedience protests that ended the Vietnam War and Jim Crow would have been squelched. The FBI spied on Reverend Martin Luther King, Jr. by using warrantless electronic surveillance or otherwise because of the absurd suspicion that Communist influence had made him hostile to White Supremacist subjugation of his entire race.

Then National Security Adviser Henry Kissinger epitomized the presumption of guilt which warps the mind of the typical spy. He guided the FBI's investigation of a suspected aide who leaked the Nixon administration's secret bombing of Cambodia in 1969 to the New York Times. Wiretaps were initially placed on Morton Halperin, and were extended to others whom Kissinger suspected of undermining his White House influence. Two months of wiretaps and bugs yielded no useful clues, but Kissinger directed continuance of the surveillance to permit the targets an opportunity to establish a "pattern of innocence."

We do not need to speculate about fusion center mischief. On February 19, 2009, the North Central Texas Fusion System issued a "Prevention Awareness Bulletin" that might easily have been penned by recruits from East Germany's Stasi. In bold letters, the bulletin worries that freedom of speech, petitioning Government for redress of grievances, and freedom of association are being exploited by Islamic groups to advance their "Islamic-based" goals (which are never defined) by peaceful and lawful means. In other words, democracy or free speech are the enemy. The first page highlights: "Middle Eastern Terrorist groups and their supporting organizations have been successful in gaining support for Islamic goals in the United States and providing an environment for terrorist organizations to flourish." It continues: "A number of organizations in the U.S. have been lobbying Islamic-based issues for many years. These lobbying efforts have turned public and political support towards radical goals such as Shariah law and support of terrorist military action against Western nations."

The supreme folly of that disparagement of freedom of speech and association in search of political change was underscored by United States Chief Justice Charles Evans Hughes in *De Jonge v. Oregon* (1937): "These rights may be abused by using

speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.”

The fusion center viewed with alarm constitutionally protected speech and activity which are the backbone of democracy and prevent the ideological landscape from turning into a petrified forest. Even the U.S Department of Treasury is scorned for hosting a conference entitled “Islamic Finance 101.” Counterparts to the fusion center report on political dissent can be found in every totalitarian or despotic country in the world, for example, Iran, Russia, or Burma. The fusion center bulletin continues:

“We give some examples of these lobbying activities.

“The Council on American Islamic Relations (CAIR) presents itself as a Muslim Civil Liberties group yet it was named an unindicted co-conspirator in the Justice Department’s case in Dallas against the Holy Land Foundation, a Hamas-linked Islamic charity. CAIR’s agenda was best illustrated by founder Omar Ahmad who told the San Ramon Herald, ‘Islam isn’t in America to be equal to any other faith, but to become dominant. The Koran should be the highest authority in America, and Islam the only accepted religion on Earth.’”

It speaks volumes about religious prejudice that the fusion center omitted mention of the many groups who espouse the supremacy of Judeo-Christian religions and declare that the United States is a Judeo-Christian nation (in contravention of the religious neutrality compelled by the Constitution). Presidential candidate John McCain, for instance, sermonized: “We are a Judeo-Christian nation.” In addition, speech urging the Koran as the highest authority in America is fully protected by the First Amendment no matter how politically disagreeable to the majority or to the fusion center zealots. Supreme Court Justice Oliver Wendell Holmes observed in *Gitlow v. New York* (1925): “It is said that this [Left Wing] manifesto was more than a theory, that it was an incitement. Every idea is an incitement. It offers itself for belief and if believed it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker’s enthusiasm for the result If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.”

The fusion center’s bulletin continues its attack on the Constitution’s celebration of religious accommodation and diversity with a *cri de coeur* against displays of sensitivity towards Islam and the possibility of altering American law accordingly:

“Taken in that context, pushing an aggressive, pro-Islam agenda that’s been increasingly successful in recent years takes on a new light. The following list taken in isolation seems rather innocuous: Muslim cab drivers in Minneapolis refuse to carry passengers who have alcohol in their possession; the Indianapolis airport in 2007 installed footbaths to accommodate Muslim prayer; Public schools schedule prayer breaks to accommodate Muslim students; Pork is banned in the workplace; etc.

“Tolerance is growing in more formal areas. The Department of Treasury recently hosted a conference entitled ‘Islamic Finance 101’ which indicates the possibility that the government hopes to secure recycled petrodollars in exchange for conforming to Shariah economic doctrine. Christopher Holton of the Center for Security Policy refers to Islamic finance, or ‘Shariah-Compliant Finance’ as a ‘modern-day Trojan horse’ infiltrating the U.S. He said it poses a threat to the U.S. because it seeks to legitimize Shariah—a man-made medieval doctrine that regulates every aspect of life for Muslims—and could ultimately change American life and laws. A Houston bank now offers Islamic Financing for home loans.”

The fusion center would certainly have filed a suspicious activities report against Jesus for threatening pagan dominance in the Roman Empire by preaching monotheism. A Roman fusion center would probably have cheered the crucifixion because Christianity was endangering traditional Roman life and laws.

Next in the center's intelligence cross-hairs are opponents of the global military projection of the United States who are viewed with anxiety because of their dissidence:

"A recent conference, titled 'International Forum for Resistance, Anti-Imperialism, Solidarity between Peoples and Alternatives,' was held on January 16–18, 2009, and hosted by the Consultative Center for Studies and Documentation (CCSD), a Hezbollah-affiliated think tank. The conference was co-sponsored by several international far left groups, including the International Campaign Against U.S. and Zionist Occupations, a coalition co-founded by the International Action Center (IAC). The keynote address was given by Naim Qassam, Hezbollah's deputy secretary general. He talked about the need to rearm Hamas in Gaza and stated that 'We must intensify the struggle against NATO' and talked about finding a way to disrupt 'the imperialist and Zionist war machines.'"

Every word that was treated with suspicion is protected by the First Amendment under *Brandenburg v. Ohio* (1969) and *NAACP v. Claiborne Hardware* (1982). Even speech that encourages law violations is protected unless it is intended to provoke imminent lawless violence and is likely to have succeeded.

The center also perceived critics of the U.S. war in Iraq as good candidates for terrorism. Its bulletin degenerates into a version of Japan's pre-World War II thought police:

"IAC was founded by former U.S. Attorney General Ramsey Clark. The IAC delegation led by Clark included former Congresswoman Cynthia McKinney. The IAC views Hezbollah and Palestinian terror groups like Hamas and groups fighting U.S. forces in Iraq as legitimate popular resistance forces and a bulwark against U.S. imperialism and 'Israeli terrorism.'"

The center thus urges law enforcement to place the IAC on its watch list for believing in bad ideas:

"The IAC also has operations in the United States including one of the main anti-war and anti-Israel protest movements in the U.S. called ANSWER, Act New to Stop War and End Racism. Law enforcement should be aware of activities in their area."

The center looks askance at Islamic groups aping the promotional and advertising gimmicks of Madison Avenue to promote their ideas by exploiting freedom. Apparently only Christian organizations should stoop to self-promotion through blogs, chat forums, and hip-hop music:

"Islamic radicalization have been reported by such groups as Hizb-ut-Tahir who have a goal of overthrowing governments and replacing them with a caliph. They take advantage of growing tolerance in the U.S. Some of their marketing schemes have included hip-hop fashion boutiques, hip-hop bands, use of on-line social networks, use of video sharing networks, chat forums and blogs. They have been especially active in California, New York, Wisconsin, and Chicago. They target universities for recruitment."

Advocating the overthrow of the Government as an abstract theory, not as an imminent and active plan, is protected speech under the First Amendment. See *Yates v. United States* (1957).

The center concludes with a peroration that all law enforcement officers should be as aggressive and vigilant in monitoring the free speech and freedom of association activities of Islamic organizations as is North Central Texas. It betters the exhortations of the Japanese thought police:

"Given the stated objectives of these lobbying groups and the secretive activities of radical Islamic organizations, it is imperative for law enforcement officers to report these types of activities to identify potential underlying trends emerging in the North Central Texas region."

The North Central Texas fusion center is not an aberration. All Government spies or law enforcement officers tend to interpret anything unorthodox or unconventional as subversive—even hair length. A February 20, 2009 report of the Missouri Information Analysis Center (MIAC) asserted that right wing militia members are usually supporters of presidential candidates Ron Paul, Chuck Baldwin, and Bob Barr. Since I spoke at Mr. Paul's Campaign for Liberty convention in Minneapolis and am a professional and personal colleague of Bob Barr, MIAC probably has me on a watch list for right-wing militia members.

A July 2008 ACLU Fusion Center Update by Mike German and Jay Stanley reported on the open-ended suspicious activity intelligence collection efforts of the

LAPD and its spread Nation-wide. The intelligence initiatives are dragnets for protected First Amendment activity aimed at altering the policies of the United States. The Update notes:

“In April 2008, the Wall Street Journal and the Los Angeles Times both reported on a new Los Angeles Police Department order that compels LAPD officers to begin reporting ‘suspicious behaviors’ in addition to their other duties—creating a stream of ‘intelligence’ about a host of everyday activities that, according to documents, will be fed to the local fusion center.

“LAPD Special Order No. 11, dated March 5, 2008, states that it is the policy of the LAPD to ‘gather, record, and analyze information of a criminal or non-criminal nature, that could indicate activity or intentions related to either foreign or domestic terrorism,’ and includes a list of 65 behaviors LAPD officers ‘shall’ report.

“The list includes such innocuous, clearly subjective, and First Amendment protected activities as: taking measurements; using binoculars; taking pictures or video footage ‘with no apparent esthetic value’; abandoning vehicle; drawing diagrams; taking notes; espousing extremist views.

“ . . . [T]he LAPD’s collection of ‘non-criminal’ information runs afoul of Title 28, Part 23 of the Code of Federal Regulations, which states that law enforcement agencies: shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.

“Rather than criticize the LAPD efforts, the Office of the Director of National Intelligence said the LAPD program ‘should be a national model.’ Not surprisingly, in June 2008 the Departments of Justice and Homeland Security teamed with the Major City Chiefs Association to issue a report recommending expanding the LAPD SAR program to other U.S. cities.

“In fact, just a few weeks before the LAPD order was issued, the Director of National Intelligence published new ‘functional standards’ for suspicious activity reports that a program like the LAPD’s would generate. The sequential timing of the DNI’s functional standards, the LAPD SAR order and the Major City Chiefs recommendations creates more than a little suspicion that these efforts are closely coordinated.”

Among other things, the Update recounts a flagrant abuse of intelligence gathering in the case of Dr. Moniem El Ganayni, who had assailed the FBI verbally for its treatment of Muslims. His security clearance was improperly revoked. He underwent 7 hours of questioning focusing on his religious beliefs and service as an imam in the Pennsylvania prison system, his political views on the war in Iraq, and his speeches in local mosques criticizing the FBI. The Maryland State Police counterterrorism spying debacle displays the same brainless disregard for the Constitution, for example, viewing as potential terrorists protestors against the death penalty.

Core First Amendment principles will never be honored by law enforcement officers or public officials. Their psychological preoccupations are order and the status quo; they viscerally fear or are perturbed by the prospect of change or challenges to the existing power structure. Further, they are rewarded financially and professionally by the volume of intelligence collected. There are no serious quality controls because few if any are fit to separate the terrorist wheat from the innocuous chaff. There are no reliable earmarks of a would-be terrorist. Some are rich. Some are poor. Some are devout. Some are religiously indifferent. Some are educated. Some are without schooling. Timothy McVeigh was not a prime suspect in the immediate aftermath of the Oklahoma City bombing. Arab Muslims were. Brendon Mayfield was erroneously linked to the 2004 Madrid train bombings. Habeas corpus has resulted in discrediting the enemy combatant status of more than 90% of the Guantanamo detainee petitioners. Since anything might be a clue as to a possible psychological inclination to commit terrorism, everything is fair game for intelligence collection. But when everything is relevant, nothing is relevant. Finding something useful in the mass of undifferentiated intelligence reports and analysis is thus akin to looking for a needle in a haystack. That may explain why there is no credible evidence that fusion centers have frustrated a single terrorist plot—their primary *raison d’être*.

The fusion centers and their tributaries should cease collection of intelligence that might arguably bear on intentions relating to domestic or international terrorism, i.e., intentions to seek to change Government policies, because they invariably encroach on constitutionally protected speech.

The Founding Fathers were not frightened by ideas. They believed that it was better to be free than to seek a risk-free existence. They would have repudiated the

1% doctrine of former Vice President Dick Cheney. It decreed that anything carrying a 1% probability of occurrence must be treated as an absolute certainty like the force of gravity if terrorism is implicated. The spirit of the 1% doctrine is also the spirit of fusion centers.

They have never learned cardinal lessons from the United States Supreme Court. In *Abrams v. United States* (1919), Justice Holmes lectured: "Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power, and want a certain result with all your heart, you naturally express your wishes in law, and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."

In *Whitney v. California* (1927), Justice Brandeis elaborated: "[W]e must bear in mind why a state is, ordinarily, denied the power to prohibit dissemination of social, economic and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence. Those who won our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form."

Supreme Court Justice and Nuremburg Robert Jackson underscored the dangers of viewing dissident ideas or symbols with suspicion in *West Virginia State Bd. of Education v. Barnette* (1943): "Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard."

"It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings."

Fusion centers dampen and cast a cloud over free speech and association. Their intelligence collection efforts insinuate that political dissent is unpatriotic or dangerous and threaten to make dissenters targets for law enforcement or candidates for terrorism watch lists. The greatest threat to liberty is an inert people, which is what fusion centers induce by placing a price on the exercise of fundamental democratic freedoms.

In sum, what Oliver Cromwell said of the British Long Parliament applies equally to fusion centers that have proliferated after 9/11 in the vain hope of aborting terrorism before conception: "You have sat too long for any good you have been doing lately . . . Depart, I say; and let us have done with you. In the name of God, go!"

Ms. HARMAN. Thank you.

Mr. Norris.

**STATEMENT OF NED NORRIS, JR., CHAIRMAN, TOHONO
O'ODHAM NATION**

Mr. NORRIS. Thank you, Chair Harman, and Ranking Member—

Ms. HARMAN. Your microphone may not be on.

Mr. NORRIS. Thank you.

Thank you for this opportunity to be here, and share with you some thoughts from the Tohono O'odham Nation, one of the more than 550 federally recognized tribes in the United States.

I am extremely encouraged when I—with the reference to tribes in the Chair's opening statements, and the comments from Mr. Riegle. Fusion centers represent law enforcement's public safety, and our first responders, who come together with a common purpose: To safeguard our communities, and to prevent their intervening criminal activity, and, ultimately, to prevent terrorist activity.

I support fusion centers. But I emphasize that we must ensure that all of our citizens' privacy, legal rights, civil liberties, and information privacy are protected.

This is particularly critical in Indian Country. As you may or may not know, Tribal members have a separate set of civil rights, as defined in the Indian Civil Rights Act 25 U.S.C., 1301–03, 1968.

Although similar to the United States Constitution Bill of Rights, these rights protect Tribal members within Indian Country. Fusion center architects must be made aware of the ICRA and its application.

I would like to talk about terrorism starting at the local level. The first response to any threat or act of terrorism starts at the local level. Indian Country is no exception. In fact, Indian Country is more vulnerable because of the current ineffective communication, or lack of information sharing between Federal, county, State, and local agencies.

But a glaring deficiency is the lack of formal criminal information and intelligence sharing between our law enforcement counterparts at the Federal, State, and local levels.

The State of Arizona has a fusion center that has been recognized as an exceptional program. Despite this recognition, there has been minimal, if any, participation, with Tribal law enforcement.

Without Tribal police participation and State programs—cannot be completely effective.

The State of Arizona has made efforts to seek out Tribal law enforcement participation, and we are pleased with their outreach efforts. We will work with the States to strengthen their program.

I would like to talk a little bit about the intelligence-led policing. Tribal, State, and local law enforcement have recognized that there is a need for increased collaboration for information and intelligence sharing, and are strengthening their capabilities to develop intelligence-led policing as a philosophy.

This concept links directly into the initiative or reason for fusion centers. Again, fusion centers are an ideal information and intelligence-sharing program, linking law enforcement, public safety, fire, health, and the private sector, to effectively safeguard our communities.

We need to think about removing barriers that hinder information sharing at the Federal level. We found that information sharing at the Federal level is fragmented. As a result, this hampers our efforts to develop information and intelligence sharing with our Federal counterparts, specifically Department of Homeland Security agencies, Custom and Border Protection, and Immigration and Customs Enforcement.

Customs and Border Protection estimates that there are between 400 and 450 crossings along the Tohono O'odham Nation's border, and about 10 percent, or 40 or 50, of the illegal crossers are criminal aliens with criminal histories, including rape, drug transporting, assault, and murder.

The Tohono O'odham Nation has about 75 miles of international border to the south of it. We also have nine communities that continue to exist in Mexico, with about 1,500 enrolled citizens of our Nation in Mexico.

We need to begin to remove the barriers that impede information with the Indian Country. The basic method of information sharing enjoyed by State, Federal, and local, and some Tribal law enforcement, is access to National Crime Information Center.

Access to NCIC is controlled by the States, and there are several Tribal law enforcement agencies that are denied access to NCIC by their respective State, because the State does not recognize Tribal law enforcement.

In California, Tribes are not recognized, and are denied access to NCIC, despite the fact that they receive the same training as their counterparts within the State.

In the State of New York, Tribal police, in compliance with the Adam Walsh Act, requested from the State a list of sexual offenders released from State prisons. They were denied the information based on State's refusal to recognize their agency as a law enforcement agency.

Ms. HARMAN. Mr. Norris, could you summarize your statement? You have exceeded the 5 minutes.

Mr. NORRIS. Additionally, they are not allowed to enter their offender into State sexual offender tracking systems.

Madam Chair, I thank you for this opportunity, and will be willing to answer any questions that may come up later. Thank you.

[The statement of Mr. Norris follows.]

PREPARED STATEMENT OF NED NORRIS, JR.

APRIL 1, 2009

Good morning Chairman Thompson and Members of the subcommittee. I appreciate the opportunity to appear before this committee to present the views of the

Tohono O'odham Nation and Indian Country. I am Ned Norris Jr., chairman of the Tohono O'odham Nation.

Since 9/11 the need to share information with Federal, Tribal, State, and the local governments, is a priority and must not be diminished. Fusion centers are an integral part of the system of information sharing. Fusion centers represent law enforcement, public safety, and our first responders, who come together with a common purpose to safeguard our communities and to prevent or intervene in criminal activity, and ultimately to prevent terrorist activity. I support fusion centers but I emphasize that we must ensure that all of our citizens' privacy, legal rights, civil liberties, and information privacy are protected. This is particularly critical in Indian Country. As you may or may not know Tribal members have a separate set of civil rights as defined in the Indian Civil Rights Act (1968 25 USC 1301-03); although similar to the U.S. Constitution Bill of Rights, these rights protect Tribal members within Indian Country. Fusion center architects must be made aware of the ICRA and its application.

ACTS OF TERRORISM START AT THE LOCAL LEVEL

The first response to any threat or act of terrorism starts at the local level. Indian Country is no exception and in fact Indian Country is more vulnerable because of the current ineffective communication or lack of information sharing between Federal, County, State, and local agencies. The Tohono O'odham Nation within our Department of Public Safety identified the need for preparedness and developed an Office of Emergency Management to enhance cooperation with our counterparts at the county, State, and local level. But a glaring deficiency is the lack of formal criminal information and intelligence sharing between our law enforcement counterparts at the Federal, State, and local level. The State of Arizona has a fusion center (ACTIC) that has been recognized as an exceptional program; despite this recognition there has been minimal if any participation with Tribal law enforcement. Without Tribal Police participation the State program cannot not be completely effective. The State of Arizona has made efforts to seek out Tribal law enforcement participation, and we are pleased with their outreach effort; we will work with the State to strengthen their program. Although there remains a lot of work to do the State of Arizona recognized that Tribal law enforcement participation will maximize the availability of resources, and I suggest that the State of Arizona's example be used as a model of cooperation between Tribal Police and State, local, and Federal agencies.

INTELLIGENCE-LED POLICING

Tribal, State, and local law enforcement have recognized that there is a need for increased collaboration for information and intelligence sharing, and are strengthening their capabilities to develop intelligence-led policing as a philosophy. This concept links directly into the initiative or reason for Fusion Centers. Much like the community-oriented policing programs, intelligence-led policing is a reality that must be embraced by all law enforcement agencies. Potential terrorist targets such as public facilities, telecommunications, energy, transportation, and other infrastructures require that law enforcement actively develop partnerships with private security and the management of these establishments. Again Fusion Centers are an ideal information and intelligence-sharing program linking law enforcement, public safety, fire, health, and the private sector to effectively safeguard our communities.

REMOVE BARRIERS THAT HINDER INFORMATION SHARING AT THE FEDERAL LEVEL

We found that information sharing at the Federal level is fragmented; as a result this hampers our efforts to develop information and intelligence sharing with our Federal partners, specifically Department of Homeland Security agencies, Custom and Border Protection, and Immigration and Customs Enforcement (ICE). This is particularly critical as we have seen a growth of intrusions and violence connected to the drug and human smuggling along our 75 miles of border. Customs and Border Protection estimates that there are between 400-450 crossings along our border and about 10% (40-50) of the illegal crossers are criminal aliens, with criminal histories including rape, drug transporting, assaults, and murder. These numbers demand that an effective information-sharing system be established with Tohono O'odham law enforcement.

REMOVE BARRIERS THAT IMPEDE INFORMATION SHARING WITH INDIAN COUNTRY

The basic method of information sharing enjoyed by State, Federal, local, and some Tribal law enforcement is access to the National Crime Information Center (NCIC). Access to NCIC is controlled by the States, and there are several Tribal law

enforcement agencies that are denied access to NCIC, by their respective State, because the State does not recognize Tribal law enforcement. This creates officer and public safety concerns and more important created a significant gap in the information/intelligence-sharing community. In California Tribal Police are not recognized and are denied access to NCIC despite the fact that they receive the same training as their counterparts within the State. In the State of New York, Tribal police in compliance with the Adam Walsh Act requested from the State a list of sexual offenders released from State prisons. They were denied the information based on the States' refusal to recognize their agency as a law enforcement agency; additionally they are not allowed to enter their offenders into the State sexual offender tracking system. Despite Federal efforts to assist Tribal police in this dilemma there has been little if any progress on resolving the problem. The International Association of Chiefs of Police—Indian Country Law Enforcement Section was able to acquire regional seats on the FBI's Criminal Justice Information Services—Advisory Policy Board, a Board that recommends revisions and policy to the FBI Director. Through this route we are hopeful that changes can be made to remedy the restrictions on Tribal Police access to NCIC. Despite this effort it is safe to assume that it will be several years before the problem is adequately addressed, therefore I request that this Congressional committee address this issue immediately so this significant gap in our information sharing system can be closed and we can honestly tell our citizens that we are doing all we can to ensure there is no gap in our information-sharing system.

AN EXAMPLE OF INDIAN COUNTRY INVOLVEMENT—GLOBAL ADVISORY COMMITTEE

An example of Indian Country participation at the National level is Global (GAC), a Federal Advisory Committee that reports directly to the U.S. Attorney General providing advice on criminal justice information sharing. Global serves as the focal point for justice information systems integration activities and includes representatives from local, Tribal, State, and Federal agencies. Global has in place working groups addressing Infrastructure standards, Intelligence, Privacy and Information Quality and Security. Global developed Fusion Center resources and products that include, but not limited to: (1) Applying Security Practices to Justice Infrastructure Sharing; (2) Privacy, Civil Rights, and Civil Liberties Policy Templates for Justice Information Systems; (3) Fusion Center Guidelines: Law Enforcement, Public Safety and the Private Sector; (4) Privacy, Civil Liberties and Information Quality Policy Development for the Justice Decision Maker; and, a (5) Privacy and Policy Development Guide and Implementation Templates: Policy Development Checklist.

The current Federal regulations that provides some guidance on protection of civil liberties and privacy is Chapter of the 28 Code of Federal Regulations (CFR) Part 23, which provides guidelines for law enforcement agencies, on the implementation of standards for operating Federally grant-funded multijurisdictional criminal intelligence systems. It specifically provides guidance in five primary areas: (1) submission and entry of criminal intelligence information; (2) security; (3) inquiry; (4) dissemination; and, the (5) review-and-purge process. But 28 CFR Part 23 does not provide specific, detailed information on how agencies will implement the operating guidelines, but instead, allows each agency to develop its own policies and procedures. Because of this lack of Standards Global initiated a review and developed recommendations of 28 CFR part 23 to address standards and to specifically include Indian Country law enforcement. The uniqueness of Global is there is a representative from Indian Country that contributes to the development of the various products. Global is an example of how an advisory board or committee must be structured to adequately include the three sovereign governments in the United States, Federal, Tribal, and the States, to work seamlessly on the critical area of information sharing while protecting the civil and privacy rights of all of our citizens.

CONCLUSION

I appreciate the opportunity to share with you the unique perspective of Indian Country, Indian Country Law Enforcement, and the essential role Tribal Police must share with Federal, State, and local law enforcement in protecting our homeland. The border that the Nation and other Tribal Governments share with Mexico demands that our law enforcement and other public safety personnel, be directly involved in the formation and production of policy and guidelines of Fusion Centers. Its necessary that there be an understanding of the unique governmental structure, laws, and cultural strength of Indian Country; to do this we must always have a seat at the table. I urge the continuation of Fusion Centers and strongly recommend that a national standard be established in the operation, training and development of Fusion centers. Thank you again for this opportunity.

Ms. HARMAN. Thank you very much.
Mr. Gersten.

**STATEMENT OF DAVID D. GERSTEN, ACTING DEPUTY OFFICER
FOR PROGRAMS AND COMPLIANCE, DEPARTMENT OF
HOMELAND SECURITY**

Mr. GERSTEN. Chair Harman, Ranking Member McCaul, and distinguished Members of the subcommittee, thank you for providing me the opportunity to testify today.

Just over 2 years ago, both DHS's officer for civil rights and civil liberties, and its chief privacy officer, testified for you on fusion centers. At the time, we were just understanding the centers, and how the Federal Government can play a productive role. Since then, CRCL has visited numerous centers across the country, provided training and other support, and cemented itself as a partner with the DHS Office of Intelligence and Analysis, INA.

We have come to understand the facts relating to fusion centers, the challenges they face, and also the mystery surrounding them. Fusion centers have been labeled in some press accounts and other reports as "mini spy agencies," and "domestic-intelligence apparatuses."

Military involvement, private-sector partnerships, sometimes ambiguous lines of authority, and policies for suspicious-activity reporting and the use of open-source information have been criticized. Some of these concerns are simply exaggerations, while others point out where we have work left to do.

For example, while some armed forces service members participate in a handful of fusion centers, their presence is not pervasive. It is focused on sharing information, not engaging in law enforcement. Some private-sector entities do share infrastructural-protection information with fusion centers, and may receive notice of specified threats.

Yet, in almost all cases, fusion center activity involves exactly what the 9/11 Commission recommended: Federal, State, local, and Tribal personnel, sitting elbow-to-elbow, sharing information, and connecting the dots to ensure homeland security and public safety.

Fusion centers do face a number of challenges that could impact rights and liberties. They are typically formed under one State or local agency's legal authority, but comprised of many agencies. With few exceptions, memoranda of agreements spelling out the precise relationship between individual centers and DHS do not exist.

We believe MOAs are needed to govern roles played by DHS analysts deployed to fusion centers. Because fusion centers are run by the States, direct Federal oversight poses Federalism issues. We can establish certain Federal expectations through guidance, such as the baseline capabilities, released last September, but this is a partner relationship, not superior-and-subordinate one.

To provide oversight of Federal activities, our office issued a civil liberties impact assessment of DHS' role in the fusion center initiative. In its privacy impact assessment, the privacy office urged fusion centers to also develop their own assessments. Both offices are currently working on follow-up impact assessments.

Moreover, our office recently received its first three complaints regarding fusion centers. The DHS inspector general also provides oversight.

The challenges we face are discussed further in my written testimony, but I would like to highlight one in particular: The difficulty in sharing information and providing threat assessment for First Amendment protected activities may be implicated.

We must be very careful to ensure that the Government is not infringing or chilling an individual's right to speak freely and to protest. Intelligence personnel at the Federal level are not authorized to collect information regarding U.S. Persons solely for the purpose of monitoring activities protected by the U.S. Constitution, such as freedoms of religion, speech, press, and peaceful assembly, and protest.

Recent well-publicized struggles, particularly at the State level, demonstrate a need for continued policy, development, and training. Compounding this is a challenge in determining whether it is appropriate for fusion centers to use open source information that involves First Amendment-protected activities.

If the use of information, even publicly available, involves protected activities, it could be viewed as unlawful monitoring by Government, and may result in scandal, when Government is perceived to be keeping tabs on protest groups for political purposes.

Now, let me explain what our office has been doing to resolve these and other challenges. Under the 9/11 Act, we are required to provide training on civil liberties for all DHS intelligence analysts before they deploy to fusion centers, and to support the training of all fusion center personnel.

To that end, our Civil Liberties Institute partnered with the Privacy Office to provide training to the 34 I&A analysts currently deployed in fusion centers.

We partner with DOJ and the Global Justice Information Sharing Initiative to create a Web portal, launched just yesterday, to support the 70 fusion centers around the country.

Finally, we are inviting a "Training the Trainer" program for State fusion center reps. We are also providing subject-matter expertise to I&A, and to specific State fusion centers, as requested. For example, CRCL personnel traveled to the North Central Texas Fusion Center recently, to offer advice and help it address concerns about one of its products.

In closing, let me emphasize that we will continue to honor our responsibility to ensure a strong respect for civil liberties. I thank you for inviting me to share my thoughts on fusion centers today, and I look forward to working with this subcommittee to address these issues.

[The statement of Mr. Gersten follows:]

PREPARED STATEMENT OF DAVID D. GERSTEN

APRIL 1, 2009

Chair Harman, Ranking Member McCaul, and distinguished Members of the subcommittee: Thank you for providing me the opportunity to testify today. As fusion centers across the country mature, ensuring a strong respect for civil liberties will improve public trust and broaden support for their mission. The U.S. Department of Homeland Security's (DHS) Office for Civil Rights and Civil Liberties (CRCL) will

continue to work with this subcommittee to examine our Nation's fusion centers and continue to provide methods for proper guidance and oversight.

MISSION OF THE OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES

In accordance with existing statutes, 6 U.S.C. § 345, and 42 U.S.C. § 2000ee-1, the mission of the Office for Civil Rights and Civil Liberties is to assist the dedicated men and women of the Department of Homeland Security to secure our country while preserving our freedoms and our way of life. We assist our colleagues in four ways:

- We help the Department to shape policy in ways that are mindful of civil rights and civil liberties by providing proactive advice, evaluation, and review of a wide range of technical, legal, and policy issues.
- We investigate and resolve complaints filed by the public regarding Departmental policies or actions taken by Departmental personnel.
- We provide leadership to the Department's equal employment opportunity programs, seeking to make this Department a model Federal agency.
- We are engaged with the public regarding these issues.

In providing advice to our colleagues, we work closely with every DHS component and have been involved in most of the critical issues facing the homeland security effort—from disaster preparedness and recovery, to immigration programs, to screening procedures, to the training of our workforce. Other DHS elements support our work as required by law, and because they recognize that respect for rights and liberties is essential to their mission. Through frequent collaboration and engagement with the public and with leading civil rights, immigration, and community organizations, we have helped the Department maintain openness while tackling complex issues in innovative and constructive ways.

Just over 2 years ago, this subcommittee received testimony from both DHS's Office for Civil Rights and Civil Liberties and its Chief Privacy Officer on fusion centers and how they might advance information sharing and safeguard civil liberties. At the time, we were just coming to understand the centers and how the Federal Government could play a productive role. Much has changed since then. Now, the Office for Civil Rights and Civil Liberties has visited numerous fusion centers across the country, provided training and other support to fusion centers. We have also cemented ourselves as a partner with the DHS Office of Intelligence and Analysis' State and Local Program Office and the DHS Privacy Office, both of whom actively work with us. We have come to understand the facts relating to fusion centers, the challenges they face, and also the myths surrounding them. I want to provide CRCL's perspective on some of the challenges faced by fusion centers, and dispel some of the myths.

DISPELLING MYTHS

Fusion centers have been labeled in press accounts and other reports as "ministry agencies" and "domestic intelligence apparatus[es]." Some say they have too much military involvement, too many private sector partnerships, ambiguous lines of authority, and untenable policies for suspicious activity reporting and the use of open source information. Some of these charges are simply myths or exaggerations while some criticisms are helpful, and point out where we still have work to do.

One myth is that the armed forces are prominent players in the fusion centers. While some armed forces service members participate in a handful of fusion centers, the presence is nominal, not pervasive, and their role is to provide support to civilian law enforcement and other non-Federal agencies with homeland security responsibilities, not to lead, direct, or participate in it. They provide a liaison to Federal military installations, and also provide State and local personnel access to military sources of information when appropriate. This is consistent with laws directing the Federal (Title 10) Armed Forces to share certain categories of relevant information with the States. It is up to the governor of a State to determine what fusion center role, if any, National Guard troops in Title 32 status, under State command, should play.

Another myth involves inappropriate sharing of information with the private sector. Some fusion centers have incorporated advice from Sector Coordinating Councils and leverage the expertise of local sector associations or coalitions in identifying critical infrastructure and how to secure it. Fusion centers share information when it relates to protection of critical infrastructure, or upon learning of a threat to a particular company or business. These activities are squarely within DHS' mission and the mission of State and local law enforcement. While this potentially poses some concerns, our Office has not seen civil liberties problems arising out of the relationship between fusion centers and the private sector.

Finally, like some other law enforcement activities, fusion centers in general could invoke civil liberties issues, but the reality has not borne out the theories that have been advanced by some concerning fusion centers' actual activities. In almost all cases, fusion center activity involves exactly what the 9/11 Commission recommended—Federal, State, local, and Tribal personnel sitting elbow-to-elbow, sharing information, and connecting the dots to ensure homeland security and public safety. Lack of public knowledge about their purpose and operations has magnified the mystery of fusion centers and helped perpetuate these myths. We believe that engagement with the public is important for any law enforcement agency, because it lets the agency know what the public's concerns are, and keeps the agency mindful of its proper mission: serving the community it protects. The Office for Civil Rights and Civil Liberties has thus encouraged the fusion centers to engage in community outreach to demystify their operations to the extent it can be done without jeopardizing enforcement and security activities. We have also encouraged fusion centers to reach out to prominent advocacy groups, such as the American Civil Liberties Union, and to engage in dialogue both to explain how a fusion center operates and to listen to any valid criticism to determine if it suggests ways that things could be improved.

CHALLENGES FOR FUSION CENTERS

Myths aside, fusion centers face a number of challenges that could impact civil rights and liberties.

Fusion centers are comprised of representatives of multiple Federal, State, local, and Tribal governments, and therefore lack single, one-size-fits-all structures or identical chains-of-command. Instead they are more like task forces, formed under one State or local agency's legal authority, but comprised of representatives of many agencies. They are typically led by a State Police or State homeland security equivalent, or possibly under the management of the local Anti-Terrorism Advisory Council established by the United States Attorneys. Collaborative agreements then are used to integrate partners who work within the fusion center. With few exceptions, Memoranda of Agreement or Understanding do not exist, though many are being negotiated between States and the Department of Homeland Security. These MOUs are needed to govern the roles and responsibilities of deployed DHS analysts in fusion centers, and their absence could lead to a lack of clarity of institutional roles within fusion centers.

Oversight of the fusion centers also poses a challenge. Because fusion centers are run by the States, direct oversight by the Federal Government presents real federalism issues. While some fusion centers are closely overseen by State government offices, such as the State's attorney's office, the precise extent of close supervision by State, local, and Tribal governments at each fusion center is not always clear due to varying State government structures. At the Federal level, however, we can establish certain expectations through Federal grant funding and guidance documents, such as the Baseline Capabilities document released in September 2008. In partnership with the fusion centers, DHS and its Federal partners have established expectations and guidelines on fusion center operations through the Fusion Center Guidelines and the Baseline Capabilities for State and Major Urban Area Fusion Centers. The Guidelines are intended to be used to ensure that fusion centers are established and operated consistently, resulting in enhanced coordination efforts, strengthened partnerships, and improved crime-fighting and antiterrorism capabilities. By achieving a baseline level of capability, fusion centers will have the necessary structures, processes, and tools in place to support the gathering, processing, analysis, and dissemination of terrorism, homeland security, and law enforcement information. Most fusion centers are in the process of achieving the capabilities, though it may take up to 5 years to achieve all of the capabilities.

Oversight also may be applied to the extent that a State, local, or Tribal entity is participating in a Federal program, such as criminal intelligence information sharing systems governed by 28 CFR Part 23. General oversight of the State, local, and Tribal assets should be maintained by State, local, and Tribal government officials. Though the Department's scrupulous observation of State sovereignty does not allow for direct oversight, we believe that observing vertical separation of powers consistent with the U.S. Constitution is a safeguard of liberty. Where a State, local, or Tribal government objects to a fusion center's activities, particularly those activities affecting the rights of citizens of a State, those government entities have a say in altering those operations, or they can decline to participate in the center's activities. Paradoxically, the lack of direct Federal supervision and oversight may thus also function as a safeguard.

By the same token, we must closely monitor our own Federal presence and actions at the fusion centers, which is squarely within the purview of the Federal Government. In December 2008, our Office and the DHS Privacy Office issued its initial impact assessments of DHS's role in the fusion center initiative, as required by the *Implementing Recommendations of the 9/11 Commission Act of 2007* ("9/11 Act"). These assessments are publicly available on the DHS Web site. Applying this check-and-balance approach, these assessments were an important step in evaluating DHS's role in the fusion centers and its potential impact on civil rights and civil liberties. In its Privacy Impact Assessment, the DHS Privacy Office urged fusion centers to develop their own privacy impact assessments and is prepared help them do so by providing "PIA Intensive" training to interested fusion centers, leveraging its own PIA process as well as material developed by the GLOBAL Initiative. Both Offices are currently working on a more detailed follow-up impact assessment, which will combine what we have learned through visiting fusion centers throughout the country and our participation in the Federal-level fusion center support initiative. I will highlight some of the issues discussed today.

Moreover, our Office has a Review and Compliance Division dedicated to investigating possible abuses of civil rights, civil liberties, and/or racial, ethnic, or religious profiling. We have recently received our first three complaints regarding fusion centers. Another mechanism for providing oversight and compliance lies within the jurisdiction of the DHS Inspector General, who just recently issued a report on fusion centers. And outside of the DHS realm, Congress, U.S. Attorney's Offices, and the ODNI Program Manager for the Information Sharing Environment have all played some role in oversight concerning fusion centers. The Privacy and Civil Liberties Oversight Board will also have a role too once it is stood up. Despite the challenges posed by this array of unique partnerships, I believe that by working together we can have coordinated and effective oversight of fusion centers to the extent possible.

One specific area that has been much in the media involves the difficulty in sharing information and providing threat assessments where protected activities, such as First Amendment free speech and assembly, are involved. Security personnel at all levels of government often struggle with this problem. For example, if a demonstration is going to occur at a Federal facility, those charged with securing the facility would be negligent if they failed to ensure the safety of the facility and those within. Yet "right-sizing" security measures would be impossible without knowing the nature of the protest, and whether it is likely to cause security or operational problems. This necessarily requires at least a limited inquiry into the nature of a group planning a protest, and whether it espouses violence, civil disobedience, or other potentially disruptive tactics. At the same time, we must be very careful to ensure that the Government is not infringing or chilling an individuals' right to speak freely and to protest. Intelligence personnel at the Federal level are not authorized to collect information regarding U.S. Persons solely for the purpose of monitoring activities protected by the U.S. Constitution, such as the First Amendment protected freedoms of religion, speech, press, and peaceful assembly and protest. If information has some connection to constitutionally protected activities, it may be collected only where such collection is incidental to the authorized purpose. Procedures are in place that require intelligence personnel to consult with counsel or I&A's Intelligence Oversight Officer when any initiative may impact constitutionally protected activities. These consultations have proven very helpful to the Department's intelligence personnel in identifying and addressing potential concerns related to inappropriate or unauthorized collection and reporting. At the State level, however, policies relating to these topics are often less clear and uniform. The question of how State, local, and Tribal governments handle these issues is often decided by State, local, or tribal agencies other than the fusion centers. The well-publicized struggles with this problem, particularly at the State level, demonstrate a need for continued policy development and training.

Now I would like to discuss open-source information in the context of fusion centers. As described in "Giving a Voice to Open Source Stakeholders," a report published by this committee last September, open source information is "publicly-available information that can be disseminated quickly to an appropriate audience to meet a specific intelligence requirement . . . derived from aggregated and analyzed information available from sources such as newspapers, periodicals, the Internet, scientific journals, and others."

Fusion centers are receiving open-source products and creating their own. The challenge for all fusion centers depends greatly on the laws and policies in place at the State and local level. For Federal involvement there is a framework in place to protect privacy and civil liberties. Even though information is publicly available, that does not mean the information loses all protection. Part two of Executive Order

12333 imposes restraints on the intelligence community and also provides specific protections for United States Persons. At the Federal level, these U.S. Person rules cover “a United States citizen, an alien known by the intelligence element concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.” Collection, retention, and dissemination of open source information must match a mission approved for the agency involved. Members of the intelligence community typically must also disclose their affiliation when interacting with domestic organizations, the media, and open forums. So in the context of fusion centers, we have a host of restrictions on some of the Federal participants.

In relation to the protected activities I alluded to earlier, there is still a significant challenge in determining whether and to what extent it is appropriate for fusion centers to use open-source information that involves First Amendment-protected activities. If the collection, retention, and use of information—even publicly available—involves protected speech, assembly, or other activities, it could be viewed as unlawful monitoring by Government. As we have seen in recent months, the collection of open-source information about protected activities may result in scandal when Government is perceived to be keeping tabs on protest groups for political purposes.

The “Giving a Voice to Open Source Stakeholders” report also stated that there are currently only minimal guidelines to protect the personally identifiable information of Americans in the open-source context. It called on DHS to develop processes covering collection and use of open source, accessing non-intelligence community databases, how to determine the status of U.S. Persons, and what rules apply to social media like chat rooms, blogs, and Twitter. Ultimately, all of these processes should also be examined and addressed by non-IC partners in fusion centers who are not subject to E.O. 12333. The Office for Civil Rights and Civil Liberties agrees with the recommendations contained in the report and intends to work with its partners in the Department to ensure these activities are in compliance with the laws respecting individual rights.

On a related note, there has been much concern voiced over fusion centers’ role in Nation-wide Suspicious Activity Reporting (SAR) initiative. To a large degree, the SAR initiative is a coordinated approach that builds upon activities that law enforcement and other agencies do within the lawful boundaries of their daily duties, which is gathering information concerning behaviors, incidents, and activities associated with crime. However, different fusion centers may operate under different standards and capture different information in their intake of SARs. For example, while sharing within a Federally-funded criminal intelligence database will attach 28 CFR Part 23 protections, there are many tips, leads, and other data accessible to fusion center partners that may fall short of the reasonable suspicion standard, which is a predicate for retention in a 28 CFR Part 23 system. To date, there have been no specific incidents alleging violation of civil rights and civil liberties, but this is an area we will continue to monitor, and in which we will work with DHS I&A to ensure appropriate safeguards are put in place.

CIVIL LIBERTIES AND PRIVACY TRAINING AND OTHER SUPPORT

Now let me further explain what our Office has been doing to resolve these and other challenges. One of the ways in which we have leveraged our capabilities, both within and outside the Department, has been the creation of the “Civil Liberties Institute.” This entity is a program that provides high quality training on issues at the intersection of homeland security and civil rights and civil liberties. By law, we are required to provide training on civil liberties for all DHS officers or intelligence analysts before they deploy to State, local, and Tribal fusion centers and to support the training of all fusion center personnel. To deliver this training and to fulfill our obligations under the 9/11 Act, we have created a three-pronged program targeted to the DHS State, local, and regional Fusion Center Initiative.

First, we have partnered with the DHS Privacy Office and the DHS I&A State and Local Program Office to provide privacy and civil liberties training to the 34 I&A analysts currently deployed to the fusion centers. As each new analyst is hired, we provide individualized training and periodic refresher training for the entire cadre of analysts. In fact, the most recent refresher training was held last month at the National Fusion Center Conference.

Second, we have involved the DOJ Office of Justice Programs in the creation of a multifaceted privacy and civil liberties training program to support the more than 70 fusion centers around the country. To maximize the impact of our limited re-

sources in this area, we are taking a “toolkit” approach, where we leverage existing materials with new materials to create customized training that covers the core issues, but also responds to the needs of individual centers. As part of the training, we use scenarios adapted from recent events to illustrate the need for transparency and, among other things, how to handle the issues that have arisen around protected activities, such as public protests or religious affiliation. We will offer modules on cultural competence for law enforcement and analysts, as well as engage the community and work to dispel myths that have arisen about fusion centers. As the result of our outreach to fusion center personnel, we identified a clear need for a single on-line “roadmap” to all the Federal materials on civil rights and civil liberties issues and resources in the information-sharing environment. To address this need, we partnered with the DOJ Bureau of Justice Assistance and the GLOBAL Justice Information Sharing Initiative to create a web portal, phase one of which was launched just yesterday. Many of the privacy and civil liberties training materials will ultimately be posted on this Web site.

The third prong of the training program is the Training of Trainers (ToT) program, created to assist local fusion center staff in providing on-going training in these important areas. We will pilot this newly expanded training program in approximately 10 States this year. We will also present ToT sessions at the upcoming regional fusion center conferences. Fusion center privacy officers will be invited as the key potential trainers on these topics back at their home fusion centers.

The training is in various stages of completion but in total covers a broad range of issues, and also reflects the expertise of our partners in the DHS Privacy Office and the Department of Justice (DOJ). We cover how to handle reports of protected activities, such as: Protests; exercise of religious freedom or freedom of association; the capture and retention of video feeds that have identifiable persons on the tape; and the use of materially inaccurate or misleading information (addressing the associated potential “search and seizure” and “due process” issues). Our training encourages sufficient redress mechanisms and discourages the targeting of communities based on the use of overly broad demographic information and the collection of information on individuals that perpetuates racial or ethnic stereotypes. Above all, we emphasize the need for a clear understanding of operating statutes and authorities and connecting every action to these authorities. We also highlight problems that fusion center staff need to address, such as problems with requests to vet private sector personnel associated with critical infrastructure, or tensions between Federal and State laws and issues of data tracking and criminal record expungement. We recommend implementing a privacy and civil liberties policy on which staff are thoroughly trained, and discuss the usefulness of community engagement to provide a level of governmental transparency. Finally, in coordination with our partners, we also offer training on 28 CFR Part 23—guidance on multi-jurisdictional criminal intelligence systems; the proper use and protection of personally identifiable information; and Fair Information Practice Principles as well as other privacy practices.

Over the past 2 years, prior to the development of the formal initiative, the Office for Civil Rights and Civil Liberties actively trained on civil liberties issues in the information-sharing environment, which can apply to fusion centers. We visited a variety of fusion centers and conducted classroom training on cultural competence and civil liberties in Connecticut, North Carolina, Maryland, Massachusetts, Indiana, and Los Angeles. We have also provided training through regional fusion center conferences. At the national fusion center conferences, we have disseminated training materials and presented at panel discussions. At the most recent national conference, we, along with the DHS Privacy Office, conducted “learning labs” on civil liberties and privacy issues, where State and local officials could ask questions and discuss issues with subject matter experts.

In addition to our training efforts, we have worked closely with our colleagues at the I&A State and Local Program Office to provide subject matter expertise in the areas of civil rights and civil liberties. For example, when policies, guidance, and requests for information templates have been developed for field personnel, both our Office and DHS Privacy have been invited to the table to contribute to these documents and ensure proper safeguards are in place.

The Office for Civil Rights and Civil Liberties has also provided on-site support in recent months to address civil rights and civil liberties concerns. For example, last year, CRCL provided support to the fusion centers in Denver and Minnesota during the Democratic National Convention and Republican National Convention to review I&A products and homeland security information reports to ensure civil rights and civil liberties were protected. We consistently review reports to ensure civil liberties issues are addressed and increase analysts’ awareness of potential issues. Most recently, through an effort coordinated by the I&A State and Local Program Office, our Office deployed a staff member—a former Assistant U.S. Attor-

ney—to the Northern Central Texas Fusion Center to address civil liberties concerns that arose after the State issued a product. At the time, there was no DHS presence at the center (an analyst has been hired to deploy to the center in the near future); however, DHS wanted to address the issue proactively. The fusion center was very receptive to concerns raised and has invited us back to conduct further in-depth training on cultural competency as well as other civil rights and civil liberties topics.

CONCLUSION

In closing let me emphasize that we have enjoyed a strong working relationship with our fusion center partners and our DHS colleagues who support them. DHS has emphasized protection of civil rights and civil liberties ever since it began to support fusion centers. We will continue to honor our responsibility to ensure a strong respect for civil liberties. I thank you for inviting me to share our thoughts on fusion centers today, and I look forward to working with this subcommittee to address these issues.

Ms. HARMAN. Thank you, Mr. Gersten.

I appreciate the testimony of all the witnesses.

Members of the subcommittee will now, each, ask questions for 5 minutes. I will start with the Chair.

Mr. Gersten, I appreciated your effort to clarify the record on actions of DHS in terms of assuring privacy and civil liberties—respect for privacy and civil liberties by fusion centers. As you made clear, the Federal Government does not own or control fusion centers, but we do have a role.

I would just like to add to what you said; that this subcommittee views itself as another watchdog over the activities of fusion centers. We believe, and we have said this over some years, that they are a centrally important tool in our ability to connect the dots and prevent the next 9/11. I explained that in my opening remarks, and every single Member has amplified that today, and in past hearings.

We also paid careful attention to a report of the GAO, which is the tool of Congress—the General Accounting Office—on how fusion centers operate. So we care. We want to make certain that what happens at the State, local, and Tribal level complies fully with our Constitution and our laws.

I think our first panel made clear that everyone there, who was in the business of fusion centers, cares as well. So let me just make that point.

Let me finally add that a lot of civil liberties organizations regularly participate in our activities. We had a hearing just a couple of weeks ago. The ACLU was a witness. I think there is a representative of the ACLU in the audience today. The ACLU participated in a recent national fusion center conference on how to get fusion centers right.

So there is a major effort on-going, I think, at the Federal, State, local, and Tribal level, and outside, in the civil liberties community, to make certain that this valuable tool is handled right.

To you, Mr. Fein—you started with some conversation about how the Terrorist Surveillance Program violated FISA, issues about waterboarding in Guantanamo. As you know, I basically share those views. But those issues are not in the jurisdiction of this subcommittee. This subcommittee is focused on fusion centers. I would say it is a big reach to move all of that over, and assert that State, local, and Tribal entities, which are responsible for fusion centers,

are doing things which, perhaps, the Federal Government got wrong in some respects, after 9/11.

I just want to ask you a question. In your bio, which I read, you worked for then-Congressman Dick Cheney, on the Joint Committee on Covert Arms Sales to Iran.

Mr. FEIN. Yes.

Ms. HARMAN. Most people believe—certainly, I believe—that Mr. Cheney, as Vice President, had a major role in designing and implementing these programs, like the Terrorist Surveillance Program.

Could you explain what your activities were with Mr. Cheney? Are you an on-going—do you have an on-going relationship with Mr. Cheney?

Mr. FEIN. No. My service was on the committee. It was then a joint congressional committee, investigating covert arms sales to Iran.

I view Mr. Cheney's views as Vice President as a complete somersault from his much more cautious and, I think, prudent views at the time. I helped write the minority report, which he praised. I think, if you read it, it is much more balanced than some of the distortions. I have certainly not felt inhibited, being a citizen of the United States, and devoted to the Constitution, to criticize someone who had hired me earlier, and displayed different views.

With regard to the earlier comment about the differences between the Terrorist Surveillance Program or torture, waterboarding, and this—the point I am making is that all of those programs also had internal privacy protections. For example, every 45 days, there was a review of the Terrorist Surveillance Programs, making sure they were only targeting actually al Qaeda supporters. It was approved every single time, for 5 years, for one short delay.

The State and local fusion centers have that same defect. It is internal—is the check and balance. I was called by the Justice Department to come consult with them on the Terrorist Surveillance Program, with some other privacy—including ACLU and some other groups—to suggest, “These are your problems without any oversight.”

Yes, they sit and listen. But how do you know whether anything is really accepted? They are smart, and know what the optics are. They go out and will say, “Well, we consulted these groups, so we must be sensitive to privacy.” It is like “The Hunting of the Snark”: “I said it three times. It must be true.”

Just because you say it, doesn't mean it is—

Ms. HARMAN. Thank you. Thank you.

I have 12 seconds left. I would just note that Congress is an independent branch of Government, and we are paying close attention here.

Mr. Norris, let me just finally conclude by saying that your point that the Tribal entities may not have access to appropriate databases, is well taken by this committee. We plan to look into it.

Mr. NORRIS. Thank you.

Ms. HARMAN. I now yield for 5 minutes of questions, to the Ranking Member, Mr. McCaul.

Mr. MCCAUL. I thank the Chair.

I would like to echo that sentiment to Mr. Norris as well; that the access to NCIC, I think—is important for Tribal areas to have that access.

My first question is to Mr. Gersten. I think Mr. Fein actually correctly points out the bulletin issued by the Texas Fusion Center as a—not a shining example of how they should operate, I should say.

What has DHS done, now, to prevent that from ever happening again?

Mr. GERSTEN. We took the proactive step of flying down to your great State, and providing some—

Mr. MCCAUL. Thanks for saying that.

Mr. GERSTEN [continuing]. Some guidance to the members of that fusion center—the director there.

We actually took the step a little bit further, and brought with us a DHS intelligence-and-analysis intelligence officer, who will soon be deployed to Texas to work with that fusion center, so that he could benefit from our guidance.

I would also add that we have received some inquiries about this, and used the lesson of this unfortunate product to demonstrate to other fusion centers. As Mr. Riegler mentioned on the previous panel, we brought the subject up at the National Fusion Center Conference and trained all DHS I&A analysts using that product as a demonstration of what not to do.

We have taken that even further, to provide some assurances to other States that we will continue to monitor products, as they come out. Obviously, it is our State products. They were not issued by the Department. However, we can all learn from the lesson.

Mr. MCCAUL. Well, I thank you for that. I hope—again, I hope that never happens again.

I want to just read—this came out in the Associate Press—that the top Taliban commander in Pakistan is claiming responsibility for a deadly attack. He also says that—promises an assault on Washington soon—and that—“one that will amaze the world.”

Obviously, these kind of threats get our attention up here. I think our priority is to the Constitution—also, to protecting the American people. I think those are not incompatible. Those are one in the same.

What I want to say to Mr. Fein is, you know, again, as I said earlier, after 9/11, you know, the big issue—and you know this working—having done your prior work in Federal service—the connecting the dots, the sharing of information with the Federal, State, and local—absolutely critical to protecting the well-being and safety of Americans.

Comments like, “Law enforcement have never honored the First Amendment”—I, personally, think are inflammatory, and really don’t advance a healthy debate and discussion about how we can move forward with protecting the American people, and, yet, still validate the constitutional ideals we hold so closely.

So, with that—and you have got about a minute and a half to tell me: How would you protect the American people by the sharing of this information, which is very important information, which can lead to stopping a terrorist attack—how would you do that, and what would be your recommendation?

Mr. FEIN. I would like to make an observation. It was Justice Louis Brandeis who wrote that, "The most cherished liberty amongst a free people is the right to be left alone from government"—the most cherished. That is part of the Constitution that is the sole lodestar for everyone who serves in Government, no matter what branch—the right to be left alone. That means the burden is on Government to demonstrate some substantial interest if you are going to encroach upon that right.

I think that, if we focus on criminal activity, suspected crime, as the basis for collecting intelligence, we are on sound footing. In 1925, before we had any intelligence collection like we do today, then-Attorney General Stone—he later became chief justice of the United States Supreme Court—worried when they were pushing him to get into the business of intelligence collection in order to stop, at that time, violations of the prohibition laws.

He said, "We should never do that, because, then, we will start turning into the fascist states of Italy"—what he could see emerging at that time.

We saw, then, afterwards, then, intelligence began during the 1930s on the Boondall—the Communists and whatever. This was a Roosevelt initiative.

When we start deviating from collecting intelligence because it relates to a specific crime, to—in collecting intelligence because it bears on an earmark of what a terrorist might be—that is where I think we are in danger.

Just to point out, this is not the fusion center in North Texas. This is in—

Mr. MCCAUL. Can I just have 2 seconds?

So you are not the idea of collecting intelligence to protect Americans?

Mr. FEIN. As long as its on criminal activity—evidence that suggests a crime.

Mr. MCCAUL. Okay. I just wanted that clarification.

Mr. FEIN. If I could, I would just like to point this out, because it relates to me: This is a fusion center report that was issued in order to suggest what were the earmarks, I guess, of a terrorist. This is the Missouri intelligence collection.

They said that, "An earmark of a terrorist seems to be somebody who supports presidential candidates Ron Paul, Bob Barr, Chuck Baldwin." That is me. I—

Mr. MCCAUL. No, I think we would all agree with you on that assessment. That is absolutely—

Ms. HARMAN. Thank you, Mr. Fein.

Mr. McCaul's time is expired. That is right, for the record. The committee is not in favor of activity like that.

Mr. Souder is recognized for 5 minutes.

Mr. SOUDER. I was just going to comment on that Mr. Gersten—can you name one specific that Mr. Fein has said? You are giving generalities about what was wrong with the North Texas report. What is one specific?

Mr. GERSTEN. One specific, related to that report, would be that it did characterize religion and practices of religion, in a way that could lead people astray—those reading the report—into thinking

that all people from the religion mentioned should be viewed with suspicion.

Mr. SOUDER. Could you give the example of that statement—of the one he mentioned earlier, which did not say that, but could lead to an inference—is what you are saying?

Mr. GERSTEN. Yes. It could lead to an inference. Again, the Missouri product that Mr. Fein has brought to the table here—again, also made inferences that could be mischaracterized and misinterpreted by those who receive the product.

Mr. SOUDER. That was the one about Ron Paul?

Mr. GERSTEN. Yes. It was not actually about Ron Paul. It was a product about militia groups.

Mr. SOUDER. Because he doesn't seem like a big threat. I mean, some of us don't necessarily agree with him, but that—Mr. Fein, you have been a longtime spokesman for libertarian views. While I wouldn't be mistaken for a libertarian—but any Republican has some of those views.

For example, whenever you do domestic and terrorism things, we think of 9/11. But this gets into the gun issue, and what kind of privacy you have. Owning a gun came up, and everything from the Weaver question, to how we were going to follow up and prevent Oklahoma City bombers that came up in the abortion clinics, when former Attorney General Reno—initially, her office had proposed tracking people who went to church twice a week, because they might be more religious, and likely to bomb a clinic.

Clearly, there are struggles with this. In your article—and your written statement was—would you agree it was a tad over-the-top, to get attention?

Mr. FEIN. The problem, in my judgment, is the general theory that we want, and can encourage a risk-free country by gathering intelligence on anything, and sharing it, that has any conceivable relationship to a possible wrongdoing, and that all other values should be subordinated to that. There is no sense of balance in these—

Mr. SOUDER. Okay. I return my time. I asked a question, and you didn't answer. Your statement says that fusion centers—there would have been no anti-slavery movement in America, because William Lloyd Garrison would have been stillborn, which is ridiculous. There would have been an anti-slavery movement, even if he had been stillborn, and he wouldn't have been stillborn.

It is ridiculous to say there wouldn't have been women's right to vote—which you make assertion—that the Roman government did not object to Christ, it was a religious objection. You can't even have your history right. Then, you have these cute wordings, suggesting comparability to KGB and the Stasi that—it is so over-the-top that you can't make your own point that—

Mr. FEIN. But I didn't even—

Mr. SOUDER. But you can't even make your own—

Mr. FEIN. You didn't read my statement.

Mr. SOUDER. I asked the question—

Mr. FEIN. Yes, I wrote the statement, so I know what I said.

I had said that we should learn from the Stasi and the KGB, not that we were there. I did not make that assertion. With regard to the—

Mr. SOUDER. "Cute wording."

Mr. FEIN. What?

Mr. SOUDER. That is what I said. I didn't say you said that. I said you had cute wording to tie fusion centers to it—suggests that the type of approach is that way. Then, you impugn the character of every single law enforcement officer in the United States.

You will not accomplish conservative goals of trying to make a responsible Government when you go over the top, with wide assertions, broad-brush painting, and that—would you agree that it is a—that one of the most troubling things here, fundamentally—Mr. McCaul asked you a question, and you said, "If they have a criminal record."

The challenge we have is how to prevent an attack, and to do civil liberties; in other words, possibly before crimes are committed. Do you believe it is appropriate for the Government to try to look at prevention of crimes, rather than just researching after the crime is committed?

Mr. FEIN. It is not appropriate to try to search—to prevent crimes that you have no evidence of actual element of criminal activity afoot. It is better to be free than to have risk-free—

Mr. SOUDER. Better to be dead—

Mr. FEIN. Better to be free—

Mr. SOUDER. Dead.

Mr. FEIN [continuing]. Than to try to have a risk-free country, where the purpose of the country is destroyed because you are spying on everybody.

If you want to go and try to prevent any conceivable crime, of course, we might stick a policeman in everybody's home. Why not have a monitor—

Mr. SOUDER. Absolutely true.

Mr. FEIN [continuing]. On their video, 24 hours a day, because you are trying to prevent—

Mr. SOUDER. Taking back my time—taking back my time.

I agree with overreaching. You, however, said "no prevention."

Ms. HARMAN. The gentleman's time is expired.

Ms. CLARKE is recognized for 5 minutes.

Ms. CLARKE. Thank you very much, Madam Chair—very stimulating discourse this morning.

My question to Mr. Fein—I am just curious—have you ever visited a fusion center?

Mr. FEIN. I have been invited by the Los Angeles sheriff. I would say I—delighted to go out there, and be able to examine all the—

Ms. CLARKE. Have you been there yet?

Mr. FEIN. No, I have not been there yet.

Ms. CLARKE. Okay.

Do you think that a visit like that would have helped to shape your views on their activities?

Mr. FEIN. If I could examine all of the files, and saw exactly what was being collected, yes.

[Laughter.]

I would like all these fusion centers to be subject to something akin to the Freedom of Information Act, so we can have some outside scrutiny of them.

Ms. CLARKE. Okay.

That is very interesting.

Your commentary about their activities suggest that you had some sort of internal knowledge of exactly how they operate.

Mr. FEIN. We do have the ones that have been leaked.

Ms. CLARKE. I would like to suggest that your commentary is very subjective, based on information that you received second-hand. Perhaps, one way of addressing your concerns would be to visit a fusion center.

Now, the extent to which you will be able to peruse all of the documents there—I think we would have to examine that. But your credibility, with regards to the extreme nature in which you have addressed this issue, is a bit diminished, simply by the fact that you have not visited one.

I think that, you know, to rectify that, we should, perhaps, arrange for you to do so.

Mr. FEIN. Well, I would be grateful. If I could examine those files—I would say that the same things were said about all the people who had worries that Guantanamo Bay—not everybody was an enemy combatant there—and said, “Oh, you haven’t been down there and seen what the military saw, so you can’t have a useful thing to say about it”—and we see, when there is finally review, who had the greater credibility?

Ms. CLARKE. Right.

As I have stated, I think that you would add to your commentary some level of validity and some level of credibility, had you visited the fusion centers.

Mr. FEIN. Well, when I would go visit the Los Angeles sheriff, and he invited me out there—and I will be out there in May—I would be grateful if you could write a letter for me, asking that he permit me to examine all of their files under a confidential arrangement, so I can see everything. That would really help.

Ms. CLARKE. Well, I will defer that to our Chair.

[Laughter.]

We will take it from there.

Madam Chair, I have no further question or comment. I yield back the balance of my time.

Ms. HARMAN. Thank you very much.

The Chair now yields 5 minutes to Mr. Green.

Mr. GREEN. Thank you very much, Madam Chair.

I thank all of the witnesses.

Mr. Fein, I have a basic premise that guides a lot of my thinking. It is this: That there is safety in the counsel of the multitudes. I believe that it is good to hear all opinions, as many as you can. I think that there is some time—that there are times when you learn things from unexpected sources. So I want to thank you for coming in and giving us your testimony today.

The challenge that I have is that I must now ascertain whether or not you are the canary in the coal mine, or are you a woodpecker, who has pecked too many times? I am trying to get a handle on where you are.

You made a comment that I think merits my consideration. That is with reference to the Freedom of Information Act. Say more about your concerns about freedom of information, because, when

you are finished, I am going to pass this over to Mister—is it Gersten? I would like for him to respond.

So, if you would, please, quickly—as tersely as you can.

Mr. FEIN. The general idea is to expose public access to what these groups are doing, in the same way that we have an FOIA applicable to Federal agencies, so that you can have greater outside scrutiny and monitoring as to exactly what is on-going.

They are not, however, arms of the Federal Government, so I don't know whether this committee would have jurisdiction, but insofar as to getting Federal aid, you could insist that they have State and local Freedom of Information Act obligations, administered like the new administration has administered the current FOIA, so that there can be greater eyes and ears on what is on-going.

Mr. GREEN. Mr. Gersten.

Mr. GERSTEN. I would actually just like to say that it is actually helpful to have people like Mr. Fein aggressively looking at the issue of fusion centers, even if some of the—

Mr. GREEN. Pardon me for interceding, but talk about his Freedom of Information concern, if you would.

Mr. GERSTEN. Absolutely.

Mr. GREEN. Focus on that.

Mr. GERSTEN. Yes, absolutely.

In particular, I think that access to information about what is going on in fusion centers is essential to make sure that we have responsible commentary and responsible oversight from outside of Government.

There are many advocacy organizations that are out there that have issued responsible reports on fusion centers. They have issued responsible reports on fusion centers. They have done so absent a lot of information about what is truly going on.

So I think—

Mr. GREEN. Wait. Let me help us to refine my question. Maybe I would get a better response if I refine my question.

Mr. GERSTEN. Sure.

Mr. GREEN. My concern is this: He makes the commentary that it is good to have access and transparency.

Give us a rationale for not according Freedom of Information privileges.

Mr. GERSTEN. Well, in one instance, you would certainly not want a lot of personally identifiable information that is occasionally accessed in fusion centers to be open for anyone to view. I mean, that in and of itself, would be a violation of civil liberties.

But I think, on the whole—I think we are in favor of having more openness about the activities, and even some of the information flow that is shared through fusion centers.

Mr. GREEN. My suspicion is—and I don't want to speak for you, Mr. Fein—but my suspicion is he is talking about an individual who wants to know whether or not he or she has been the subject of some sort of investigation. Is that a fair statement, Mr. Fein?

Mr. FEIN. That would be a counterpart to our privacy act—

Mr. GREEN. Okay. Mr. Fein, if you will just say “Yes,” it will help me to move it along.

Mr. FEIN. Yes.

Mr. GREEN. Okay.

Mr. GERSTEN. I think we should offer redress. The organizations involved in fusion centers should be accountable to provide information, if they have accessed information or somehow been privy to information about a specific person. That person should be able to go to that fusion center and ask all of the agencies involved whether or not they are being somehow involved in—

Mr. GREEN. Okay. Thank you. Let me go to Mr. Fein, quickly.

Mr. Fein, under this scenario, if the person who seeks information is under some sort of scrutiny for, maybe, some sort of terrorist activity, and if according that information at that moment would somehow compromise an investigation, would you have any exception for a person who is asking for the information, if it compromises national security?

Mr. FEIN. I think the model of the Privacy Act that applies at the Federal level is the model that would accommodate that concern. You could simply take all privacy acts that enabled—

Mr. GREEN. But is your answer—I need for the record—

Mr. FEIN. The answer, at the Federal level—yes, there is an exception—

Mr. GREEN. Okay. You would agree that—

Just a moment, Mr. Fein. If you would, quickly—would you, for my record—would you agree that there should be an exception? Yes or no?

Mr. FEIN. Yes.

Mr. GREEN. Okay, all right.

Thank you, Madam Chair. I do have other questions, if we have another round.

Ms. HARMAN. Thank you, Mr. Green. I don't think we are able to have another round, given the schedule of the day.

If Members have additional questions, I would hope that the witnesses would agree to respond in writing—is there any objection?—so that we can have a fuller record.

Well, let me just comment that we have had a lively morning. Let me put out there just a couple of things that I think all of us would agree upon—all of the Members of the subcommittee.

First of all, we all vigorously support the First Amendment, and the right of free expression. We also support the Fourth Amendment, and the other provisions of our Constitution.

Second of all, our hearings are intended to spur a public dialogue. We do think the public should understand what the policies and practices of the Federal Government and State and local and Tribal governments are, with respect to the issue of intelligence.

In fact, our last hearing was specifically to spur this dialogue about, "Why do we need homeland security intelligence?" and to have those who critique the way we conduct that intelligence.

So we support an active public dialogue. We also think—and we have passed a bill twice, based on this premise—that we over-classify things at the Federal level, and we should have much more information available to the public and, certainly, available to State and local law enforcement, which many of whom do not have security clearances.

The threats are grave, as Mr. McCaul stated. There is no such thing as zero risk. No one here thinks there is zero risk. The poli-

cies of the Federal Government—at least those I know anything about—are not designed to achieve zero risk. But they are designed, we hope, as carefully as we can do it, to protect the public of the United States. That includes protecting civil liberties and privacy.

So let me finally say that these hearings will continue. We welcome the dialogue. We are trying to get these policies right.

I do want to thank the very hardworking people at the Department of Homeland Security, and in State, local, and Tribal law enforcement, who are also trying to get this right. You do us a great service, and you are protecting our country.

Thanks, on behalf of a grateful Nation.

The hearing stands adjourned.

[Whereupon, at 11:58 a.m., the subcommittee was adjourned.]

