

The Honorable Jane Harman
Testimony before the
Senate Homeland Security & Governmental Affairs Committee Hearing
“Ten Years After 9/11: Is Intelligence Reform Working?”
May 12, 2011

It is a pleasure to testify before dear friends and dedicated colleagues who serve on one of the most important and bipartisan committees in the Senate. I am passionate about the topic of this hearing: intelligence and intelligence reform were the focus of my 17 years (119 dog years) in the House. I didn't run an intelligence agency like one of the other witnesses today, but I did conduct careful oversight over the intelligence function for many years.

Although 24 heroic NAVY SEALs deserve our nation's gratitude for the capture and kill of the world's most wanted man, the information on which their mission was based derived, in most part, from the integration of people and “ints” achieved by the Intelligence Reform & Terrorism Prevention Act of 2004 (IRTPA).

We now have proof that IRTPA works – that, at its best, our Intelligence Community can achieve the “seamlessness” that its authors dreamed of.

In fact, my view is that if we had not passed IRTPA and had continued to operate the IC using the 1947 business model set out in the National Security Act, we would probably not have been able to thwart a number of plots, or take down OBL.

Let me address 3 issues:

1. Performance of the Director of National Intelligence (DNI),
2. Role of domestic intelligence agencies, and
3. Ongoing problems with Congressional oversight.

The Director of National Intelligence

The DNI continues to be a work in progress. Congress intended her/him to be a joint commander – far more than a coordinator. And the job clearly requires leadership skills.

IRTPA is not a perfect law but contains adequate authorities to give the DNI the necessary leverage. I often say that the function is 50% law and 50% leadership.

Congress intended the DNI to serve as principal intelligence advisor to the President. This has never happened. During the Bush administration, Vice President Cheney was the principal advisor. During the Obama administration, it has been John Brennan. In my view, neither President truly valued the DNI role nor has made an adequate effort to support the function.

But the role is evolving and I am pleased with certain reforms undertaken and proposed:

1. Taking the National Intelligence Program out of the Defense Department budget, as DNI Clapper suggests, will make budgeting more efficient and promote accountability.
2. Right-sizing the staffing and reducing the use of outside contractors within the Office of the Director of National Intelligence is crucial. The authors of the legislation believed the old CIA Community Management Staff was adequate. The right DNI doesn't need a bureaucracy.
3. Working closely with the Secretary of Defense. It helps that Gates – and soon to be Panetta – were CIA Directors. This close cooperation was impossible in 2004 given Secretary Rumsfeld's implacable opposition to the law. That's why we were forced to include section 1018, which fortunately, has been "clarified" by E.O. 12333.
4. Reducing the number of Congressional reports. I agree with DNI Clapper. I know why they originate, but better to consolidate them and build trust. Eliminating unnecessary work will save money and keep focus on the mission.

Other challenges include:

1. Collection relies too heavily on classified information. The Arab Spring shows the importance of social media and we must adapt our methods.
2. The privacy and civil liberties function is anemic. I commend this Committee for its efforts to stand up a fully functioning Privacy & Civil Liberties Board, which is not currently operational. Without the Board, US government efforts to improve defenses against critical threats like cyber attack remain opaque and scary. The public doesn't understand why the National Security Agency is in the public sector cyber business, and the Department of Homeland Security (DHS) hasn't been able to explain its role adequately either. We need public buy-in if these programs are to be successful, since most information networks are private. In my view, this Board is an essential tool to vet cyber programs and in giving the public confidence about them.
3. Another priority for the Privacy & Civil Liberties Board is the domestic mission space, which needs greater clarity. The entire intelligence community must be more dynamic and responsive to homegrown threats so that we can provide law enforcement and the public with helpful warnings about suspicious activities. If we are tracking US persons, we must impose the protections of the Constitution and the Foreign Intelligence Surveillance Act Amendments to access information regarding American terror suspects.

The National Counterterrorism Center and the Department of Homeland Security Office of Intelligence & Analysis

Problems persist with vertical information sharing – a role of each of these agencies.

President Bush established TTIC (Terrorist Threat Integration Center) outside DHS because he felt the new department was too slow to stand up I&A. TTIC was first headed by John Brennan, and became NCTC in 2004 (in the Intelligence Reform law). Current NCTC Director Mike Leiter is very able, and the ITACG (Inter-Agency Threat Assessment and Coordination Group), mandated by Congress and located at NCTC, helps prepare usable products for law enforcement.

I&A played a robust role in the Bush Administration when headed by CIA legend Charlie Allen. The role appears to have been downsized by the Obama Administration. The CT function at DHS is coordinated by Undersecretary Rand Beers, not by I&A.

The key to preventing or disrupting an attack in a US city is to share accurate and actionable information with first responders in real time. Otherwise, they won't know what to look for or what to do.

We continue to have a problem with overclassification of information. I commend this Committee and its able staff for helping to pass the Reducing Overclassification Bill last year. The law establishes procedures to promote information sharing with state, local, tribal, and private sector entities, and provides training and incentives to promote accurate classification of information by federal employees. Its goal is to reduce unwarranted secrecy. Now we need to implement it.

Beyond the problem of overclassification, I&A struggles to meet an enormous mandate. In order to prevent duplication, I suggest that the I&A role become more focused on borders and infrastructure since these are "value added" pieces of intelligence collected by DHS.

Finally, the quality and capability of local fusion centers is uneven. Many are fantastic and provide DHS and the Federal Bureau of Investigation with actionable information based on Suspicious Activity Reports and other tips (ie Zazi and Shahzad cases). Some are not. Clear guidance must be available for these centers to sift through mass amounts of information that may help thwart the next plot. DHS must continue to be vigilant about ensuring privacy protections at these centers and that a privacy officer is assigned to each center. This is another critical area where the Privacy and Civil Liberties Board could be incredibly useful.

Congressional Oversight

This Committee has far more jurisdiction than its House counterpart on which I served for 8 years, 4 of them when it was the Select Committee. But the 9/11 Commission recommendation to reorganize Congress has never been fully implemented.

I'm pessimistic that anyone in Congress will voluntarily give up jurisdiction. One idea which is unlikely to be accepted is to give the Intelligence Committees appropriations authority. (I bet a few appropriators in this room will oppose this.) Chairman Mike Rogers' initiative to allow 3 appropriators to participate in the work of the House Intelligence Committee is a good effort, but doesn't constitute adequate reorganization. We must do more.

Conclusion

There is no way to make the homeland 100% safe. What we can do is minimize risk. We need to reevaluate constantly the threats against the US and prioritize our investments – both financial and brain cells – to defend against them.

Finally, let me recognize the brave women and men of our intelligence community who put their lives on the line everyday for our country – often in austere places around the world, living apart from their families. They are the true heroes and the people who will benefit most from clear intelligence guidelines and authorities.