

# Executive Memorandum

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## Make Information-Sharing Authority Permanent

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The most pressing issue currently before Congress is reform of the national intelligence system. Proposals abound, most calling for the creation of a National Intelligence Director (NID) and for the restructuring of America's national intelligence services. As Congress considers these proposed changes, it should bear in mind the most important lesson of September 11—that the purpose of any reorganization is to assist in “connecting the dots” of intelligence information. To assure that this occurs, Congress must take steps to make the critical information-sharing authority contained in the USA Patriot Act permanent. If Congress does not act, vital aspects of that new legal authority will lapse in 2005.

In the aftermath of September 11, Congress passed the Patriot Act (P.L. 107–56), many provisions of which have generated substantial, though unwarranted, controversy. But one aspect of the Patriot Act has won near uniform approval: Prior to September 11, U.S. law enforcement and intelligence agencies were limited by law in what information they could share with each other. A legal wall separated them. The Patriot Act tore down that wall. Section 203 of the Act permits information gathered during the course of law enforcement investigations to be shared with the intelligence community, and section 218 creates

the reciprocal opportunity for intelligence information to be conveyed to law enforcement authorities, where appropriate.

These information-sharing authorities have been put to good use since September 11. Information sharing facilitated by the Patriot Act, for example, was critical to the successful dismantling of terrorist cells in Portland, Oregon, Lackawanna, N.Y., and Virginia. Likewise, the information-sharing provisions contained in the Act assisted the prosecution in San Diego of persons involved

with an al-Qaeda drugs-for-weapons plot that included Stinger anti-aircraft missiles. The new law also aided in the prosecution of Enaam Arnaout, an individual who had a long-standing relationship with Osama bin Laden and who used his charity organization both to obtain funds illicitly from unsuspecting Americans for terrorist organizations, such as al-Qaeda, and to serve as a channel for people to contribute money knowingly to such groups.

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- Information sharing by law enforcement and intelligence agencies has enabled important arrests and prosecutions in the war on terrorism.
  - Congress should move to make this vital authority permanent before the relevant sections of the Patriot Act expire next year.
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This paper, in its entirety, can be found at:  
[www.heritage.org/research/homelanddefense/em942.cfm](http://www.heritage.org/research/homelanddefense/em942.cfm)

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Yet, remarkably, some of these vital provisions allowing the exchange of information between law enforcement and intelligence agencies are set to expire at the end of next year. If Congress does nothing, then portions of section 203 and all of section 218 will lapse and the laws will return to where they were on the day before September 11—to a time when the government could not, by law, connect all the dots. Nobody wants a return to those days, but that is where we are headed if Congress does not set aside its partisan debates.

Consider what this would mean for the proposed, revised intelligence structure. If portions of the Patriot Act are allowed to lapse, then the new NID may sometimes develop information from a foreign intelligence investigation that he will not be permitted to share with the Director of the Federal Bureau of Investigation. Similarly, some information gathered by the FBI during a law enforcement investigation will not be transmitted to the NID.

The entire purpose of creating an NID—indeed, the singular purpose of most of the substantive recommendations of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission)—is to enhance information sharing and analysis. It would be foolish, to say the least, if new legislation creating an NID and reorganizing the intelligence community to enhance information sharing did not also eliminate permanently the legal barriers to that sharing. All the structural reorganization in the world will come to naught if the law does not provide the requisite authority to act.

Thus, as a vital matter of policy, in reforming the American intelligence community Congress should

also make permanent the information-sharing authorities in the Patriot Act. Members of Congress should go on record now, before the next election, with their views on this vital issue. The American people deserve no less on an issue of such grave potential significance.

More importantly, lawmakers must understand the damage that will be done if this issue is not resolved soon. Intelligence operations are very expensive and complicated and take a long time to complete. They require certainty in their planning and execution. If planners are uncertain now about what is in store from Congress, some intelligence efforts to be undertaken next year may be compromised or deterred if the information gathered might not be useable. As President Bush warned in his 2004 State of the Union Address, though vital information sharing provisions are set to expire next year, “[t]he terrorist threat will not expire on that schedule.”

Indeed, whether the legislation that ultimately becomes law contains a provision making information sharing permanent is, in a very real sense, a test of whether or not Congress is treating the question of reform seriously. Without information-sharing authority, intelligence reform will be little more than moving bureaucratic boxes around. True reform will make the provisions of sections 203 and 218 that allow information sharing between law enforcement and intelligence agencies permanent.

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