

PRIVACY HORIZONS: TERRA INCOGNITA

29th International Conference of
Data Protection and Privacy Commissioners

September 25 to 28, 2007
Montreal, Canada



LES HORIZONS DE LA PROTECTION DE LA VIE PRIVÉE : TERRA INCOGNITA

29^e Conférence internationale des commissaires
à la protection des données et de la vie privée

du 25 au 28 septembre 2007
Montréal, Canada

Ignorance mutuelle, soupçons et sentiment de supériorité

• **Opinion de l'UE à l'égard des États-Unis**

- Ne disposent pas d'une loi exhaustive en matière de protection de la vie privée
- Abordent des problèmes précis de façon disparate
- Les états ont des exigences divergentes
- Il n'y a pas d'autorité de réglementation indépendante spécialisée dans le domaine
- N'offrent pas de protection réelle
- Sont inférieurs

• **Opinion des États-Unis à l'égard de l'UE**

- Trop abstraite et conceptuelle
- Trop prescriptive et dépendante des autorisations officielles
- Bureaucratise la protection de la vie privée
- L'approche n'est pas uniforme dans les 27 États souverains de l'Europe
- N'offre pas de protection réelle
- Est inférieure

Barry Steinhardt

Directeur

Technology & Liberty Project

American Civil Liberties Union

bsteinhardt@aclu.org



ACLU

FOUNDATION

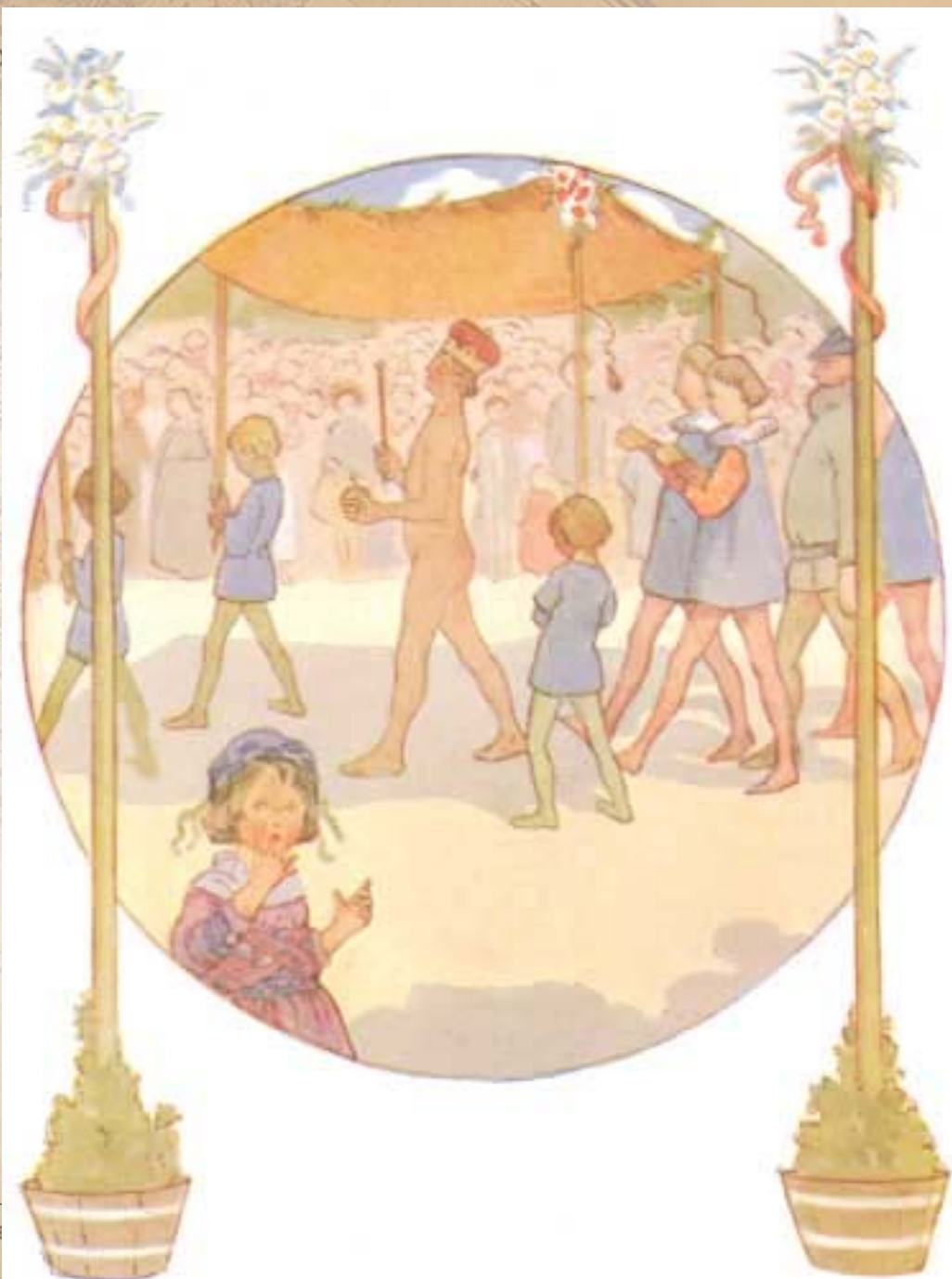
**TECHNOLOGY
AND LIBERTY
PROGRAM**

AMERICAN CIVIL LIBERTIES UNION



PRIVACY HORIZO

N DE LA VIE PRIVÉE



29^e CONFÉRENCE INTERNATIONALE
DU 25 AU 28 SEPTEMBRE 2007

PROTECTION AND PRIVACY COMMISSIONERS
FROM 25 TO 28, 2007

Le profilage des passagers aériens : Une suite d'échecs

IVÉE

**DEPARTMENT OF HOMELAND SECURITY
Office of Inspector General**

**ADVISE Could Support Intelligence
Analysis More Effectively**



OIG-07-56

June 2007

Results of Audit

R&D Planning Approach Does Not Effectively Support ADVISE

S&T planning and management activities for ADVISE have been insufficient to support effective implementation of the program. Specifically, S&T program managers were unaware of standards and requirements for research and development projects and did not develop a formal business case for the program. Program managers also did not address privacy impacts before implementing three pilot initiatives to support ADVISE. DHS has discontinued its three ADVISE pilot programs, pending completion of such privacy assessments.

Program Management Unaware of Guidelines for Conducting R&D Projects

As with systems acquisitions, research and development (R&D) program managers can benefit from clear guidance and procedures on planning, justifying, and deciding from among competing technology solutions. However, according to ADVISE program managers, they were unaware of requirements for accomplishing R&D projects and ultimately transitioning the information technology (IT) solution to potential customers.

S&T began ADVISE research efforts in 2003, just after the creation of DHS.

...more, S&T program managers proceeded without a business case and have made no plans to prepare one in the future.

System Has Not Been Effectively Implemented to Meet Mission Requirements

Inadequate R&D planning has resulted in problems with ADVISE pilot implementation. Specifically, S&T program managers did not conduct assessments to ensure that personal privacy issues were addressed effectively as part of systems implementation. Access to the data needed to demonstrate system capability and effectiveness in meeting mission needs was not adequately coordinated. Moreover, because ADVISE contained limited data

⁵ OMB Circular No. A-11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets, July 2004, amended June 2006.

⁶ DHS Management Directive 1400, March 2003.

ADVISE Could Support Intelligence Analysis More Effectively

Business Case Not Prepared for ADVISE

Office of Management and Budget (OMB) Circular A-11 requires that a federal agency, as part of its capital planning process, prepare a business case for each major IT project, system, or initiative.⁵ Likewise, DHS' *Guide to Information Technology Capital Planning and Investment Control*, issued in May 2003, states that a program or project manager is responsible for completing project documentation, including a business case.

A business case serves as the primary means of justifying an IT investment proposal, as well as managing the investment once it is funded. For example, a business case can serve as a management tool that helps an agency provide

and was complicated and time consuming to operate and maintain, few intelligence analysts were committed to using the system.

Key Program Management Activities Not Performed

Without a business case, key issues were not identified and addressed during ADVISE R&D. OMB guidance identifies specific key areas that should be addressed in developing business cases for proposed IT initiatives.⁷ These areas include conducting privacy impact assessments; identifying the types of data needed for successful system operations; determining how the proposed technology will align with customers' needs; deciding how integrated product teams (IPT) will be used to plan, budget, procure, and manage the IT project; and, discussing how alternatives were considered before committing to the chosen IT solution. Figure 4 depicts the key areas not addressed during ADVISE R&D due to lack of a business case.

Key Areas To Address Within a Business Case	Effect of Not Addressing Key Areas During ADVISE Effort
Privacy Impacts	Privacy Not Addressed Timely
Types of Data Needed for the System	Data Needs Not Determined
IT Alignment to Customers' Needs	Customers' Needs Not Determined
Integrated Project Teams (IPT)	IPTs Not Used Effectively
Alternative IT Solutions	Alternative Solutions Not Evaluated

Figure 4: Key Areas Not Addressed During ADVISE Effort

Failure to address these issues during the R&D process limited the effectiveness of the ADVISE pilot program, as discussed below.

Failure to address these issues during the R&D process limited the effectiveness of the ADVISE pilot program, as discussed below.

Privacy Impacts Not Determined for ADVISE

Section 208 of the *E-Government Act of 2002* requires federal agencies to conduct a Privacy Impact Assessment (PIA) for each new or substantially changed IT system that collects, maintains, or disseminates personally identifiable information. Additionally, DHS' official guidance for PIAs, which was first issued in 2004 and updated in 2006, says that if a system is being designed to handle personal information, a PIA is required at the very earliest stage of a project or prior to commencement of a pilot test.⁸

⁷ OMB Circular No. A-11, Part 7, Section 300, Planning, Budgeting, Acquisition, and Management of Capital Assets, July 2004, amended June 2006.

⁸ DHS Privacy Office, *Privacy Impact Assessment Official Guidance*, March 2006, previously *Privacy Impact Assessments Made Simple*, February 2004.

ADVISE Could Support Intelligence Analysis More Effectively

not be able to fulfill DHS' mandate to synthesize vast amounts of information across multiple sources.

Lack of Alternative Analysis

IT project selection involves, among other things, a preliminary investigation of alternative solutions. Specifically, OMB Circular A-130 requires that agencies prepare, and update as necessary, a benefit-cost analysis for each information system, demonstrating consideration of alternatives and choosing the most cost-effective one.

Ineffective Communication and Coordination With Stakeholders

Partnering with stakeholders is critical to securing end user commitment and ensuring the success of an IT investment. Conversely, limiting stakeholder involvement can lead to the development or acquisition of systems that might not meet user needs and ultimately might not be adopted for mission use. OMB Circular A-11 recommends the use of IPTs as one way to engage stakeholders in, and effectively guide, IT efforts.¹³ An IPT is a multi-disciplinary team led by a program manager responsible and accountable for planning, budgeting, acquiring, and managing a project throughout its life cycle to ensure that it successfully achieves cost, schedule, and performance goals. Participants on an IPT might include senior leadership of user organizations, program managers, system developers, customer representatives, and acquisition officials. Working together, IPT participants can use a consensus approach to exploring needs, identifying possible solutions, and validating strategies for moving forward.

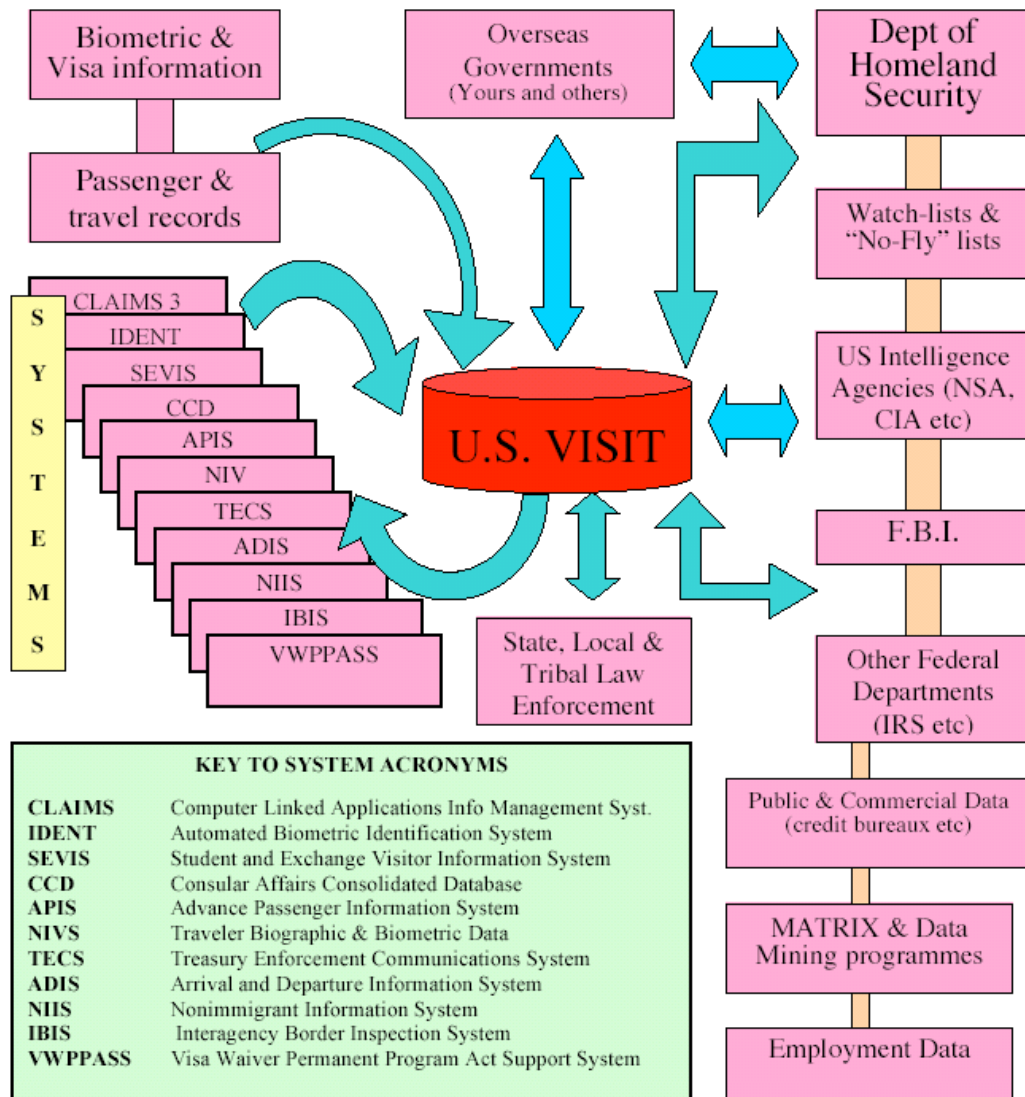
PRIVACY HORIZONS TERRA INCOGNITA
 POUR LA LIBRE
 CIRCULATION
 DES DONNÉES :

Schéma du
 programme
 US VISIT

(courtoisie de
 Privacy International)



US-VISIT - Flows of data to and from the system



Testimony before the Subcommittee on Border, Maritime and Global Counterterrorism, Committee on Homeland Security, House of Representatives

For Release on Delivery Expected at 1 p.m. EDT Thursday, June 28, 2007

HOMELAND SECURITY:

Prospects For Biometric US-VISIT Exit Capability Remain Unclear

Statement of Randolph C. Hite, Director Information Technology Architecture and Systems Issues

Statement of Richard M. Stana, Director Homeland Security and Justice Issues





Highlights of GAO-07-1065, a report to congressional committees

Why GAO Did This Study

The Department of Homeland Security (DHS) has established a program known as U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) to collect, maintain, and share information, including biometric identifiers, of certain foreign nationals who travel to the United States. By congressional mandate, DHS is to develop and submit an expenditure plan for US-VISIT that satisfies certain conditions, including being reviewed by GAO. GAO reviewed the plan to (1) determine if the r

August 2007

HOMELAND SECURITY

U.S. Visitor and Immigrant Status Program's Long-standing Lack of Strategic Direction and Management Controls Needs to Be Addressed

What GAO Found

United States Government Accountability Office

GAO

Testimony before the Committee on Homeland Security, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. DST
Tuesday, March 20, 2007

HOMELAND SECURITY

US-VISIT Program Faces Operational, Technological, and Management Challenges

Statement of Richard M. Stana, Director
Homeland Security and Justice Issues

United States Government Accountability Office

GAO

Testimony
Before the Subcommittee on Homeland Security, Committee on Appropriations, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Wednesday, March 21, 2007

HOMELAND SECURITY

Continuing Attention to Privacy Concerns is Needed as Programs Are Developed

Statement of Linda D. Koontz
Director, Information Management Issues



GAO-07-630T

Cinq exemples. . .

1. Profilage des passagers aériens
2. Listes de surveillance
3. Carte d'identité nationale
4. Forage des données
5. Espionnage par la NSA

The Washington Post

washingtonpost.com > Nation

-  [Print This Article](#)
-  [E-Mail This Article](#)
-  [Subscribe to The Post](#)

Advertisement



MOST VIEWED ARTICLES

Nation On the Site

Updated 4:31 p.m. ET

- [Defense: Case Against Islamic Charity Leaders Flawed](#)
- [Nebraska State Senator Sues God](#)
- [Greenspan: Recession Odds Have Grown](#)
- [Greenspan Says China Puts Boon at Risk](#)
- [SEC Pressed to Require Climate-Risk Disclosures](#)

E-MAIL NEWSLETTERS

View a Sample and Sign Up

- [Today's Headlines & Columnists](#)
- [Daily Politics News & Analysis](#)
- [Federal Insider](#)

Terrorism Watch List Is Faulted For Errors

Justice Dept. Official Urges Improvement

By [Ellen Nakashima](#)

Washington Post Staff Writer

Friday, September 7, 2007; Page A12

The government's master watch list of known or suspected terrorists continues to be marred by errors and inconsistencies that can obstruct the capture of terrorists or cause innocent people to be detained by U.S. authorities, the [Justice Department's](#) inspector general said yesterday.

As one of the most powerful intelligence tools created by the Bush administration after the 2001 attacks, the watch list is used to screen about 270 million people a month and its content can determine whether people are allowed to fly on airplanes or detained after routine traffic stops.

Its size has more than quadrupled since its creation in 2004, to the point that it contained more than 720,000 records as of April, according to the new report. It is growing at the rate of more than 20,000 records a month.

But [Inspector General Glenn A.](#)

[Enlarge This Photo](#)



 DANGER	
	<p>THIS INDIVIDUAL IS A SUSPECTED TERRORIST</p> <p>TREAT AS EXTREMELY DANGEROUS</p>

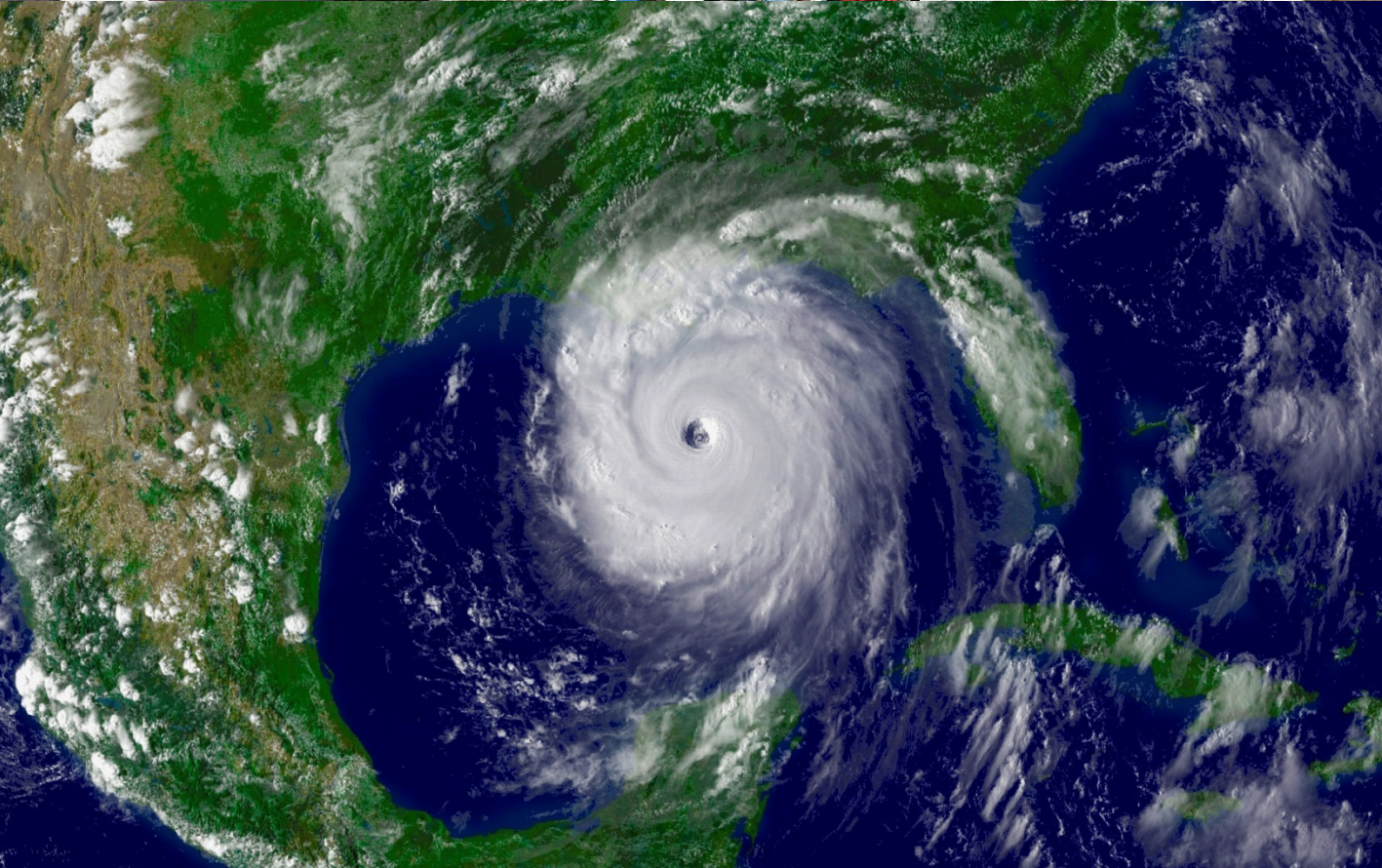


DU 25 AU 28 SEPTEMBRE 2007 MONTREAL, CANADA SEPTEMBER 25 TO 28, 2007

ONERS

Suite donnée à l'ouragan Katrina





September 10, 2007

EDITORIAL; Lagging on Homeland Security

In response to the 9/11 terrorist attacks, the federal government began the most sweeping bureaucratic overhaul in half a century. The result was the creation in 2003 of the Department of Homeland Security -- a behemoth designed to consolidate 22 separate agencies and 220,000 employees into a battle-ready shield against terrorists and natural disasters.

Two years ago, Hurricane Katrina glaringly and shamefully demonstrated the unreadiness of that shield. Now a new assessment by nonpartisan Congressional investigators says that the department has failed thus far to meet even half the performance goals it set for itself when it was created. The only area of significant improvement found was in maritime security, according to analysts from the Government Accountability Office.

To be fair, experts say the difficult task of consolidating and reshaping the many rival bureaucracies will likely require two to three more years, and there has been moderate progress in some target areas.

The agency has proved far better at developing security plans than at implementing them. Even so, it has yet to meet Congress's demand for a comprehensive, national plan to respond to another major terrorist attack or Katrina-size disaster. Critical barriers remain in such basic areas as emergency communications, computer integration, border defense and an effective program for information sharing among the various intelligence-gathering agencies.

These failings were at the heart of the 9/11 disaster. And there's no reassurance to hear Homeland Security officials defend their slow progress, arguing that there has been no similar attack since. As another grim anniversary approaches, the G.A.O. assessment is an urgent reminder of how much more still needs to be done.

[Health & Medicine](#) | [Mind & Brain](#) | [Technology](#) | [Space](#) | [Human Origins](#) | [Living World](#) | [Environment](#) | [Physics & Math](#) | [Video](#) [Photos](#) [Podcasts](#) [RSS](#)

Daily Dose

Technology / Weapons & Security



ARTICLE TOOLS

HELP



EMAIL



PRINT



A A A



RSS

Related Articles

- The 9/11 Cover-Up**
 Thousands of New Yorkers were endangered by WTC debris—and government malfeasance.
 09.07.2007
- Fingerprint Technique Shows What You've Eaten**
 Researchers can see the contaminants in an individual fingerprint.
 08.03.2007
- The First Nuclear Refugees Come Home**
 Chernobyl-area natives return to find a city of ghosts.
 06.08.2007
- Air Force Ponders Bat-Planes**
 Nimble wings may inspire aircraft of the future.
 05.15.2007
- Return of Nuclear Winter**
 Proliferation gives new life to old fear.
 05.03.2007
- Radioactive Boy Scout**
 Teenager achieves nuclear fusion at home

08.24.2007

Homeland Insecurity

Anti-terrorism efforts vary from the marginally effective to the utterly pointless.

by Stephen Cass

Pork and waste. Six years after the fall of the Twin Towers, the devastating blow to the Pentagon, and the inspiring courage of the passengers and crew of United Airlines Flight 93, anti-terrorism funding is an exercise in pork-barrel spending and high-profile projects of dubious value.

On the one hand, we have money being spent on petty projects designed to defend "targets" that are more at risk from a meteor strike than a terrorist attack, like the town of Madisonville, Texas. As

reported by *The Dallas Morning*

News, the town, population 4,200, used a federal homeland security grant to purchase a \$30,000 customized trailer. The trailer can be used as a mobile command center, but city officials admitted it is more likely to be used as an information and first-aid booth during the town's annual mushroom festival. Or there's the [story of Dillingham, Alaska](#), population 2,400. Last year, the *Anchorage Daily News* noted that Dillingham—which doesn't have a single street light—had received \$202,000 dollars in homeland security funding to purchase surveillance cameras.

On the other hand, the danger of big, headline-grabbing threats has been ameliorated to a limited extent—but these threats, like dirty bombs or bioterrorism, have always been inherently unlikely to come to pass on anything like the apocalyptic scale feared by some.

Ironically, in our effort to thwart terrorists, we're making things easier for them. Without lifting a finger,



Emergency drill in Alabama
 Image: Alabama Homeland Security

HOME PAGE MY TIMES TODAY'S PAPER VIDEO MOST POPULAR TIMES TOPICS

The New York Times

Washington

WORLD U.S. N.Y. / REGION BUSINESS TECHNOLOGY SCIENCE HEALTH SPORTS OPINION

POLITICS **WASHINGTON** EDUCATION

Intelligence Chief Admits Error

By THE ASSOCIATED PRESS
Published: September 13, 2007

WASHINGTON, Sept. 12 (AP) — [Mike McConnell](#), the director of national intelligence, on Wednesday recanted his claim that the new surveillance powers recently given to the government helped foil a terrorist plot in Germany.

“Information contributing to the recent arrests was not collected under authorities provided by the Protect America Act,” Mr. McConnell said in a statement issued late in the day.

Mr. McConnell had told the Homeland Security and Governmental Affairs Committee on Monday that powers granted by the act, hastily approved by Congress in early August before a monthlong break, helped stop the planned attacks. The law, which amended the Foreign Intelligence Surveillance Act, had been pushed strongly by Mr. McConnell and the White House.

Mr. McConnell’s assertion that the new powers helped foil the plot in Germany had been disputed by Representative Silvestre Reyes, the chairman of the House Intelligence

E-MAIL

PRINT

REPRINTS

SAVE

SHARE

ARTICLE TOOLS
SPONSORED BY
**THE
DARJEELING
LIMITED**



-  [Print This Article](#)
-  [E-Mail This Article](#)
-  [Subscribe to The Post](#)

Advertisement



QUICK QUOTES

Enter Symbol

[Tables](#) | [Portfolio](#) | [Index](#)

MOST VIEWED ARTICLES

Technology

Updated 5:47 p.m. ET

- [AOL Moving Executives, Headquarters To New York](#)
- [Role of Gene Therapy In Death Called Unclear](#)
- [Jobs Remain, But Area Could Feel Major Loss](#)
- [DHS 'Dry Run' Support Cited](#)
- [E.U. Court Rejects Microsoft's Appeal](#)

E-MAIL NEWSLETTERS

View a Sample and Sign Up
 • [TechNews Daily Report](#)

DHS 'Dry Run' Support Cited

GAO Says Radiation Screening Contractors Got Samples

By [Robert O'Harrow Jr.](#)

Washington Post Staff Writer

Tuesday, September 18, 2007; Page A04

In the weeks before key government tests of new radiation detection equipment, officials at the [Department of Homeland Security](#) helped contractors through repeated dry runs that enabled them to perform better during the examinations, according to government briefing documents obtained by [The Washington Post](#).

Congress has been awaiting the test results before deciding whether to move forward on a troubled \$1.2 billion counterterrorism effort to deploy the machines at ports and border crossings to screen trucks, cars and cargo carriers for nuclear devices.

The project, a leading national security initiative, has been delayed for months over concerns that department officials earlier misled Congress about the effectiveness of the devices, known as Advanced Spectroscopic Portals, or ASPs.

 [Enlarge This Photo](#)



Rep. John Dingell said DHS should not rely on

TOP JOBS ON WAS

[Business System](#)

[Public Affairs Spe](#)
 HUMAN SERVICES

[Collector Assista](#)

[Director Of Sales /](#)

[Electrical Engineer](#)

FEATURED ADVERT

[Invest with Fidelity](#)

[Be Prepared. Fight](#)

[Asbestos, Celebr](#)

[T-Shirts, Custom I](#)

[Cool Gadgets, Gre](#)

[T-Mobile, Verizon](#)

[BLAST AWAY CHO](#)

[Earn 4.50% APY at I](#)

Les passeports : un exemple de « recyclage de politiques »

Les É.-U. respectent les usages internationaux

Échec du projet de carte d'identité nationale

Les É.-U. incitent les org. intern. (OACT) à revoir leurs normes

SURVEILLANCE SOCIETY

time is running out

23:54

www.aclu.org/clock

DECLARATION Of Non-Governmental Organizations On the role of Data Protection and Privacy Commissioners

We the undersigned representatives of civil society groups, having gathered together in Montreal in advance of the September 2007 International Conference of Data Protection and Privacy Commissioners, have come to agreement on several important points that we would like to bring before the world's privacy commissioners. We agree that:

1. We are all witnessing the abandonment of our societies' core values and rights of privacy and autonomy at an alarming rate.
2. We are witnessing the creation of an unprecedented infrastructure for the global surveillance of individuals and groups. That includes the development of previously unimaginable systems to watch over our movement: the tracking of travelers, the profiling of passengers through vast data collection programmes, including "passenger name record" databases, "advanced passenger information systems" and "entry-exit" schemes, and the imposition of new identity-tracking systems. We are witnessing the growing use of technology – including RFID tags, biometrics, DNA, data mining, CCTV, and many others – to track our movement within countries, communities, and even schools. We continue to uncover new ways in which our communications are becoming susceptible to eavesdropping. All these systems, and others, are driving an explosion of databases of personal information, along with new means of rapidly searching, combining, and judging the contents of those databases.
3. These systems for surveillance are being constructed both by governments and the private sector. Alarminglly, there is a growing convergence between the surveillance activities of states and of private corporations.
4. These systems are often developed without democratic debate, authorisation, or oversight. As a result, the claimed benefits of such systems are too often taken at face value, and they do not receive the scrutiny necessary to ensure that they interfere with our private lives only in ways that are necessary and proportionate.
5. Our nations' legal systems have largely failed to keep pace with the explosion of invasive new technologies. Elected representatives often lack adequate information about these developments, even when their consent is actually sought. In some of our countries, judicial institutions defer too often to the claims of



ACLU

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION

**TECHNOLOGY
AND LIBERTY
PROGRAM**

Barry Steinhardt

bsteinhardt@aclu.org

www.aclu.org/clock