

Congress and the Right to Privacy
An Introductory Essay by Donald R. Wolfensberger
For the Congress Project Seminar on
“Congress and Individual Privacy
in a New Security Age”
Woodrow Wilson International Center for Scholars
Monday, May 15, 2006

We are rapidly entering the age of no privacy, where everyone is open to surveillance at all times; where there are no secrets from government.

–Supreme Court Justice William O. Douglas (1966)

An American has no sense of privacy. He does not know what it means. There is no such thing in the country.

–George Bernard Shaw (1933)

You already have zero privacy–get over it.

–Scott McNealy, CEO, Sun Microsystems

Could it be that Bill Douglas, GBS, and the CEO are all right: that is, that today there is relatively little or no privacy left in America, but no one really seems to care all that much? Have we somehow gradually accepted the erosion of privacy as being an inevitable part of living in a country in which equality and openness are paramount realities? And besides, no one should really have anything to hide from others, should they?

How else can one explain what passes daily as standard fare on television where people bare their souls (and everything else, it seems) to millions of strangers? Or should we draw a distinction between what people are willing to reveal to complete strangers and what they resent sharing with their own government? Could it be there is an ambivalence about personal privacy implanted in the American character dating back to the Revolution? On the one hand, we rebelled against the invasions of our hamlets, homes and pocketbooks by King George III's bureaucrats and troops. Among “the long train of abuses and usurpations” complained of in the Declaration of Independence were these:

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people....He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance. He has kept among us, in times of peace, standing armies, without the consent of our legislatures....quartering large bodies of armed troops among us....He has plundered our seas, ravaged our coasts, burnt our towns, and

destroyed the lives of our people.

It is little wonder, then, that the Declaration boldly declared that governments should be instituted with the consent of the governed to secure their unalienable rights of “life, liberty, and the pursuit of happiness,” and that any government that does not should be abolished and replaced by one that “shall seem most likely to effect their safety and happiness.”

On the other hand, the rapidly spreading democratic impulse in our young nation was leveling and exposing the populace. Old World aristocratic virtues like personal circumspection and interpersonal distance did not seem as relevant or possible in the new world given social conditions. Historian Gordon S. Wood describes the situation as follows:

In such a small-scale society, privacy as we know it did not exist, and our sharp modern distinction between private and public was as yet scarcely visible. Living quarters were crowded, and people who were not formally related--servants, hired laborers, nurses, and other lodgers--were often jammed together with family members in the same room or even in the same bed.

These crowded living conditions made it easy for people to know what everyone was up to, and some even considered it their duty to find out. As Wood points out:

Members of New England communities thought nothing of spying on and interfering with their neighbors' most intimate affairs, in order, as one Massachusetts man put it in 1760, “not to Suffer Sin in My Fellow Creature or Neighbor.” People took the injunction to be their brother's keeper very seriously and turned one another in for adultery, wife-beating, or any other violation of community norms.¹

It is still true that in small town America everyone knows everybody and almost everything about them. Of course, that is also why so many Americans moved West: to get away from everyone who knew everything about them so they could reinvent themselves. It's also why so many found refuge in large cities, of all places: the anonymity that comes with living among the multitudes--the ability to lose oneself in a crowd. And so our conflicted inner- and outer-selves struggled to find harmony with others while still retaining a measure of dignity and self-worth.

Where did Americans get the idea enunciated in the Declaration that their right to life, liberty, and the pursuit of happiness--their right to be left alone by the government-- could be

secured and preserved by that same government? It was an Enlightenment notion reflected in the works of thinkers like John Locke, from whom Jefferson borrowed liberally in drafting the Declaration. Locke wrote of the right to “life, liberty, and property.” It was not a full-blown right to privacy as we understand the term today, but it began with the concept in common law that people should be free from physical interference with their lives and property.

As two distinguished legal scholars wrote of this fundamental right in 1890, “Then [in earlier times] the ‘right to life’ served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle.” But they go on to note that as time went on, “there came a recognition of man’s spiritual nature, of his feelings and his intellect,” so that gradually, “the scope of these legal rights broadened.” Now “the right to life has come to mean the right to enjoy life– the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term ‘property’ has grown to comprise every form of possession–intangible as well as tangible.”²

At the time of this nation’s founding people had strong feelings about their rights as British citizens primarily because they were being denied them daily as colonials on their newly adopted continent. Not only is this intensity reflected in the Declaration. It erupted again in a broad protest when the Constitution was unveiled in September 1787. George Mason, who refused to sign the document, wrote his objections on the back of his copy, the first of which was: “There is no declaration of rights.” That and Mason’s other objections were published in a local newspaper as if they were a formal, minority report. A number of states threatened not to ratify the proposed Constitution until the convention was reconvened and a Bill of Rights was included in the document. As a compromise, an understanding was reached that the First Congress would address the issue, which it did in 1789-90.

On December 15, 1791, the first ten amendments to the Constitution, known as the Bill of Rights, took effect. While none of those amendments uses the word “privacy,” they are infused with its essence, from the First Amendment rights of free speech, religious exercise, publication, and association; and the Fourth Amendment right to be secure in our “persons, houses, papers, and effects, against unreasonable searches and seizures” except upon warrants issued for

probable cause; to the Fifth Amendment right against self-incrimination and against being deprived of life, liberty, or property without the due process of law.

Supreme Court Justice William O. Douglas's majority opinion in the 1965 *Griswold v. Connecticut* contraception case invited some puzzlement and ridicule with its attempt to capture the essence of privacy running through the Bill of Rights as flowing from "penumbras formed by emanations" that create "zones of privacy."³ Such terms elevated privacy to an almost mystical plane of being (which may help explain why so few have experienced its full promise). Nevertheless, the terms "penumbras" and "zones of privacy" gained sufficient acceptance on the Court to be resurrected in 1973 by Justice Harry Blackmun in his majority opinion on abortion rights in *Roe v. Wade*.⁴ Indeed, today most Americans believe they have a fundamental right to privacy, even though it is not explicitly mentioned in the Constitution.

One of the main reasons our idea of privacy and concerns about its invasion have expanded in recent years is the explosion of new technologies, especially after World War II. The exponential growth of these technologies is constantly creating new ways to intrude on people's privacy: the ability to wiretap phone conversations (or, today, to intercept electronic transmissions by remote satellite surveillance); to store and share information about people through computer data banks; the ability to take pictures of people without their knowing it with miniature or hidden cameras; psychological testing, lie detectors, photocopying, and now, DNA testing and all its implications. This whole new range of technological capabilities for learning more about people without their knowledge eventually made it to the doorstep of Congress. Some concerned Members began exploring the ramifications of the technologies and how Congress might regulate potential abuses while protecting the legitimate information needs of government.

Two of the early pioneers for privacy rights in Congress were Senator Sam Ervin, Jr. (D-N.C.) and Congressman Cornelius Gallagher (D-N.J.) who held numerous hearings beginning in the 1960s about this brave new world. While their hearings did not result in immediate legislation, they did lay the groundwork for what was to follow. In response to the urban riots of the late 1960s and stepped up law enforcement efforts to prevent and deal with outbreaks of violence in the ghettos of America, the Omnibus Crime Control and Safe Streets Act of 1968

included a title requiring law enforcement agencies to obtain a special court order for wiretapping--a precursor to the requirements of the 1978 Foreign Intelligence Surveillance Act (FISA) that prohibited foreign intelligence wiretaps without a special court's order.⁵

The latter act was in response to privacy abuses by Federal intelligence agencies unveiled in the Senate Church Committee hearings in 1975 (named after committee chairman Frank Church of Idaho). Other laws were enacted in response to revelations of similar abuses committed by the White House "Plumbers"--an off-the-books, black bag operation designed to find the leakers of sensitive information. Their existence was revealed when they were arrested in 1972 breaking into the Democratic National Committee headquarters at the Watergate office complex in Washington. The ensuing "Watergate scandal" investigations eventually led to the resignation of President Richard M. Nixon in the face of imminent impeachment.

In the 1970s, Congress enacted legislation giving individuals greater rights to control information gathered about them under various circumstances. Each law adopted a similar "code of fair information practices" that included an individual's right to gain access to their own records, and to amend, correct, and obtain copies of those records. The laws also prohibited information gathered for one purpose from being used for another. Moreover, organizations keeping information on individuals were required to ensure it was accurate, complete, and secure.

One of the earliest examples of such laws was the Fair Credit Reporting Act of 1970. It was closely followed by the Privacy Act of 1974, legislation that one of its authors, Rep. William Moorhead (D-Pa.) termed, the first "comprehensive federal privacy law since the adoption of the Fourth Amendment to the Constitution." The purpose of the bill was to protect individuals from intrusions on their privacy by the Federal government by allowing individuals to inspect information about themselves in agency files and to challenge, correct or amend the material. Law enforcement, CIA, Secret Service and certain other government records, however, would be exempt from the disclosure.⁶

The measure was a result of an extensive study by the Senate Judiciary Committee's Subcommittee on Constitutional Rights. In a report released in June 1974, the subcommittee found 858 personal data banks in the Federal government, though there were no doubt many

more, according to the subcommittee. Over 1.25 billion records were in the known system. At least 29 data banks contained derogatory information, such as bad check passers and debarred bidders on federal contracts. The study also found that 457 of the data banks had no *explicit* statutory authorization for their existence, and almost 100 had no statutory authority at all. Individuals seldom knew that agencies had data on them. Information was often frequently shared with other agencies.⁷

By the 1980s, there was a renewed interest in privacy perhaps in part because the decade coincided with George Orwell's prophetic book, *1984*, with its ubiquitous government reminder that, "Big Brother is Watching You." But more important, renewed attention to privacy was necessary because new technologies were already outpacing the safeguards enacted in the previous decade. For example, the narrow definition of wiretapping in the law was outmoded given the introduction of microwave, satellite, and fiber optics. Laws that deal with discrete records of individual organizations did not take into account the subsequent merging of computers and telecommunications in the 1980s that allowed for a massive pooling of data systems and regular exchanges of personal information. Congress's Office of Technology Assessment referred to this development in a 1986 report, "Electronic Record Systems and Individual Privacy," as a *de facto* national data base using social security numbers as electronic identifiers. Media attention to these developments resulted in more public concern about intrusions on privacy and demands for greater protections by the government. And this in turn led to congressional hearings and more privacy laws. The table below lists the landmark privacy legislation from 1968 to 2004.⁸

Landmark Privacy Legislation, 1968-2004

Title of Law	Year Enacted	Public Law Number	Description of Law
Omnibus Crime Control & Safe Streets Act, Title III	1968	P.L. 90-351	Prohibits electronic surveillance of aural communications except for law enforcement under court order
Fair Credit Reporting Act	1970	P.L. 91-508	Requires credit investigation and reporting agencies to make record available to subject for correction and disclosure only to authorized customers
Family Educational Rights and Privacy Act	1974	P.L. 93-380	Requires educational institutions to make student records available to students or parents
Privacy Act	1974	P.L. 93-579	Gives individuals right to access and correct information held by federal government agencies
Foreign Intelligence Surveillance Act	1978	P.L. 95-511	Establishes procedures for use of electronic surveillance to collect foreign intelligence information in U.S.
Right to Financial Privacy Act	1978	P.L. 95-630	Provides bank customers with some privacy regard records held by banks and procedures for Federal agencies to access
Privacy Protection Act	1980	P.L. 96-440	Prohibits govt. agencies from conducting unannounced searches of press offices and files
Cable Communications Policy Act	1984	P.L. 98-549	Requires cable services to inform subscribers of nature of personally identifiable information collected and nature of its use
Computer Fraud & Abuse Act	1984	18 USC 1030	Makes unauthorized access to protected computers illegal
Electronic Communication Privacy Act	1986	P.L. 99-508	Extends wiretap protection to new forms of voice data and video communications

Title of Law	Year Enacted	Public Law or U.S. Code Cite	Description of Law
Telephone Consumer Protection Act	1991	47 USC 227	Puts restrictions on telemarketing calls
Drivers' Privacy Protection Act	1994	18 USC 2721	Puts limits on disclosure of personal info in records of DMVs
Health Insurance Portability & Accountability Act (HIPPA) (Kennedy-Kassebaum)	1996	P.L. 104-191	Protects individually identifiable health information
Children's Online Privacy Protection Act	1998	15 USC 6501	Requires operators of commercial websites and online services to provide notice and get parents' consent before collecting info on children under 13
Federal Identify Theft Assumption and Deterrence Act	1998	18 USC 1028	Makes it a federal crime to use another's identity to commit an activity that violates federal law
Financial Services Modernization Act (Gramm-Leach-Bliley)	1999	15 USC 6801-6809	Requires financial institutions to issue privacy notices to customers
CAN-SPAM Act	2003	15 USC 7701-7713	Requires unsolicited commercial e-mail messages to be labeled and to include opt-out instructions
National Intelligence Reform Act	2004	PL 108-796	Establishes in Executive Office of President a Privacy and Civil Liberties Oversight Board to analyze and review actions of Exec. Branch to protect Nation from terrorism and ensure a balance with privacy and civil liberties

Post 9/11 Privacy Concerns

The vast new powers delegated to the Executive Branch in the USA Patriot Act and other statutes, together with other real and “inherent” emergency powers invoked by the President in the wake of the September 2001 terrorist attacks on America, have set-off a new round of privacy concerns as Congress and the country struggle to maintain a proper balance between security and liberty. The National Commission on Terrorist Attacks Upon the United State (the

Kean-Hamilton 9/11 Commission) was especially cognizant of how these new anti-terrorist surveillance tools could impinge on individual privacy. In its final report, the 9/11 Commission recommended that, in developing guidelines for information sharing among various agencies and with the private sector, the President “should safeguard the privacy of individuals about whom information is shared.” To assist the President in that effort, the Commission recommended that, “there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties.” In elaborating on this need, the report says the following:

We must find ways of reconciling security with liberty, since the success of one helps protect the other. The choice between security and liberty is a false choice, as nothing is more likely to endanger America’s liberties than the success of a terrorist attack at home. Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend.⁹

The recommendation for a special, privacy and civil liberties oversight board was incorporated in the final version of the Intelligence Reform Act signed into law by President George W. Bush on December 17, 2004.¹⁰ The President had tried to preempt the need for a statutory board with an Executive Order on August 27, 2004, establishing a 21-member presidential Board on Safeguarding Americans’ Civil Liberties to be housed in the Justice Department and consisting entirely of Administration officials.¹¹ But that move met with the criticism that it was like putting the fox in charge of guarding the hen house. Moreover, the final version of the Intelligence Reform Act called for a five-member board to be appointed by the President from citizens outside the government.

The Administration was slow in setting up the board. The President did not name the five members and submit his nominations for chair and vice- chair to the Senate for confirmation until June 2005. It wasn’t until February 17, 2006, that the Senate finally got around to confirming the nominees, and March 14, when they were sworn-in and held their first meeting—well over a year after the board’s statutory creation.¹² Tom Kean, chair of the 9/11 Commission, said of the panel and its late start, “We felt it was absolutely vital. We had certainly hoped it would have been up and running a long time ago.”¹³ Kean was quoted elsewhere as calling the delay “outrageous,” and charged that “The Administration was never

interested in this.”¹⁴

The Administration’s initial budget request for the Board was \$750,000, which Congress doubled but which critics say is still inadequate if the Board is to be fully functional.¹⁵ Board members told *Newsweek* that they immediately tend to tackle such contentious issues as the president’s domestic wiretapping program run by NSA, the Patriot Act, and data mining at the Pentagon.¹⁶ Obviously the proof will be in the pudding of what the Board does.

Another sensitive issue in the current Congress touching on security and privacy concerns has been the renewal of the USA Patriot Act. The original Patriot Act enacted in 2001 had a sunset date of December 31, 2005. Although both houses passed different versions of the reauthorization legislation in late July 2005, the compromise worked out in conference committee ran into bipartisan opposition in the Senate because too many of its stronger privacy provisions had been dropped at the Administration’s insistence.

An eleven-week filibuster ensued in the Senate. It was finally broken in early February when Senator John E. Sununu (R-NH) successfully negotiated a compromise with the Administration to make three additional changes in the Patriot Act relating to record seizures, and incorporate them in a new bill (since the conference report could not be amended). The Sununu compromise, cosponsored by three other Republican senators,¹⁷ would clarify (1) that individuals who receive FISA orders can challenge nondisclosure requirements; (2) that individuals who receive national security letters are not required to disclose the name of their attorney; and (3) that libraries which are not wire or electronic communications service providers would not be subject to national security letters requesting their records.

The Sununu compromise bill passed the Senate on March 1, and the House on March 7, clearing the way for a final Senate vote on the Patriot Act conference report.¹⁸ Even as the Patriot Act and the Sununu bill were headed for the White House in March, Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) was promising a further look at the Patriot Act in terms of additional civil liberties protections that might be added.¹⁹ Whether the House or President would be willing to look at further changes if they do pass the Senate is not clear.

The other significant privacy issue in the current Congress is the report in the December 15, 2005 *New York Times* (by unauthorized leak) that, shortly after the September 2001 terrorist

attacks on the U.S., President Bush instituted a program through the National Security Agency (NSA) of warrantless wiretapping of conversations between suspected terrorists and persons in the U.S.. On its face, the program seemed to be in direct violation of the 1978 Foreign Intelligence Surveillance Act (FISA) which required that a secret court be established to authorize such surveillance. Under the program, NSA has reportedly scanned the phone calls and e-mails of over 5,000 Americans.²⁰ The controversy has not gone away, and public opinion remains fairly split on the issue. A January 2006 CBS News Poll asked the following: “After 9/11, President Bush authorized wiretaps on some phone calls in the U.S. without getting court warrants, saying this was necessary in order to reduce the threat of terrorism. Do you approve or disapprove of the President doing this?” Forty-nine percent said they approved, while 48 percent disapproved.” A CNN/Gallup/USA Today poll conducted a month later (Feb., 2006) asked if “the Bush Administration was right or wrong in wiretapping these conversations without obtaining a court order?” Forty-seven percent said it was right, while 50 percent said it was wrong.²¹

Conclusion

It is this 50-50 nation that politicians confront in deciding how to address the competing concerns of security and liberty-- of privacy and the government’s need to know. A January 2006 ABC News/Washington Post poll captured this ambivalence on the part of the American people in a series of questions. Asked whether it “is more important right now for the federal government to investigate possible terrorist threats, even if that intrudes on personal privacy,” or whether “the federal government [should] not intrude on personal privacy, even if that limits its ability to investigate possible terrorist threats,” 65 percent favored investigating the threats while 32 percent favored respecting privacy. Asked whether they thought “federal agencies are or are not intruding on some Americans’ privacy rights,” 64 percent thought the government was intruding, while 32 percent thought it was not. Finally, asked whether they thought those intrusions were justified, 49 percent thought they were justified, while 46 percent thought they were not.²²

It is little wonder, then, that Congress is still floundering today over how best to address the President’s bold assertion that he has inherent authority under the Constitution, as

Commander-in-Chief, to do what a particular law was specifically designed to prevent him from doing. Some Members are demanding more ongoing briefings and consultation with a larger, but select group of members on the extent of warrantless wiretaps. Others are attempting to frame some loose statutory guidelines for conducting such surveillance. One member, Senator Russell Feingold (D-Wis.) has even introduced a resolution censuring the President for engaging in these activities.

The “terrorist surveillance program,” as the President prefers to call it, is perhaps the most dramatic example to date of how the competing demands of national security and individual freedom from government intrusions can clash during times of national crisis. Yet, for every high profile example of this sort there are probably thousands of small instances of privacy invasions committed daily by government, private businesses, or other individuals about which most Americans are either oblivious or unconcerned. It is these kinds of intrusions that probably impact more people in more ways than will ever be the case with the government’s anti-terrorism activities.

Thomas Jefferson once wrote that “eternal vigilance is the price of liberty.” What he probably did not foresee was the day when the government would claim a legitimate right to exercise vigilance over the governed--let alone that a large segment of the people would come to accept it. Big Brother must be part of the family after all.

Endnotes

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1. Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Random House, Inc., Vintage Books edition, 1993), 59.
 2. Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy,” *Harvard Law Review*, Vol. IV, No. 5 (December 15, 1890), accessed at: http://www.lawrence.edu/fast/BOARDMAW/privaCY_BRAND_WARR2.HTML on April 27, 2006. Some years after this law review article was published, Harvard Law School Dean Roscoe Pound credited it with adding a new chapter to the law, writes Philippa Strum in her introduction to *Privacy* (Orlando, Fla.: Harcourt Brace College Publishers, 1998), 3.
 3. Mr. Justice Douglas, delivering the opinion of the Court in *Griswold v. Connecticut*, 381 U.S. 479 (1965).

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4. Mr. Justice Blackmun delivered the opinion of the Court in *Roe v. Wade*, 410 U.S. 113 (1973).
 5. Pricilla M. Regan, "Privacy," *The Encyclopedia of the United States Congress*, Donald C. Bacon, Roger H. Davidson, and Morton Keller, editors (New York: Simon & Schuster, 1995), vol. 3, 1623.
 6. "Privacy," *CQ Almanac, 1974* (Washington: Congressional Quarterly, Inc., 1975), 292-93.
 7. "Privacy Act", *Congressional Quarterly Almanac, 1974* (Washington: Congressional Quarterly Inc., 1975), vol. 3, 292-93.
 8. Sources: Regan, "Privacy," 1624-25; "A Review of Federal and State Privacy Laws," BBBOOnline, Inc., and Council of Better Business Bureaus, Inc., accessed at: <http://www.bbbonline.org/UnderstandingPrivacy/library/fed_statePrivLaws.pdf> on May 1, 2006; and, "Federal Privacy Laws," California Office of Privacy Protection, accessed at: <<http://www.privacy.ca.gov/lawenforcement/laws.htm#nine>> on May 6, 2006. This table is not comprehensive but rather is intended to highlight major privacy laws enacted over the last two decades.
 9. *The 9/11 Commission Report*, Final Report of the National Commission on Terrorist Attacks Upon the United States, Authorized edition (New York: W.W. Norton & Co., 2004), 394-95.
 10. Public Law 108-458, Sec. 1061, according to a Congressional Research Service Summary, "establishes within the Executive Office of the President a Privacy and Civil Liberties Oversight Board to: (1) analyze and review actions taken by the Executive branch to protect the Nation from terrorism, ensuring a balance with privacy and civil liberties protections; and (2) ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism. Requires annual reports on major Board activities." Accessed at: <<http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SN02845:@@@D&summ2=m&>> on May 8, 2006.
 11. Executive Order Establishing the President's Board on Safeguarding Americans' Civil Liberties, White House Press Release, August 27, 2004, accessed at: <<http://www.whitehouse.gov/news/releases/2004/08/20040827-3.html>> May 8, 2006.
 12. "Privacy and Civil Liberties Oversight Board," The White House Web Site, accessed at: <<http://www.whitehouse.gov/privacyboard/>> on May 8, 2006. The chair of the Board is Carol E. Dinkins of Texas, and the vice chair is Alan Charles Raul of the District of Columbia. The other three members of the Board are Lanny Davis of Maryland, Theodore B. Olson of Virginia, and Francis X. Taylor of Maryland.
 13. Richard B. Schmitt, "Privacy Guardian is Still a Paper Tiger," The Los Angeles Times, Feb.

20, 2006, accessed at: <http://www.truthout.org/docs_2006/022006R.shtml> on May 8, 2006.

14. Michael Isikoff, "Watchdog: What Ever Happened to the Civil Liberties Board?", *Newsweek*, March 13, 2006, 6.

15. Schmitt, "Privacy Guardian is Still a Paper Tiger."

16. Isikoff, "Watchdog," 6.

17. The bill, S. 2271, introduced by Senator John E. Sununu (R-N.H.) on Feb. 10, 2006, was cosponsored by Senators Larry Craig (R-Id.), Chuck Hagel (R-Neb.), and Lisa Murkowski (R-Ak.). It passed the Senate 95 to 4 on March 1, and the House on March 7, 280 to 138. It was signed into law by President Bush on March 9 (Public Law 109-178).

18. The Patriot Act renewal conference report, H.R. 3199, passed the House on December 14, 2005, by a vote of 271 to 154, and the Senate on March 2, 2006, 89 to 10, after cloture was invoked (thereby ending the filibuster), 85 to 14. The bill was signed into law on March 9, 2006 (Public Law 109-177).

19. Michael Sandler, "Anti-Terrorism Law on Final Track," *CQ Weekly*, March 6, 2006, 600-602.

20. Dafna Linzer, "In GOP, Doubts on Likely CIA Pick," *The Washington Post*, Monday, May 8, 2006, A-1, 5.

21. "2006 Polling on Civil Rights," at National Journal's "Poll Track," accessed at: <<http://nationaljournal.com/members/polltrack/2006/issues/06civilrights.htm>> on May 8, 2006.

22. Ibid.