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Chairman Hoekstra, Ranking Member Harman, and Members of the Committee:

Thank you for the honor of appearing before you today to discuss the intelligence provisions of the USA PATRIOT Act. It has been more than three and a half years since the tragic events of September 11th, and fortunately our terrorist enemies have not claimed another life on American soil. Our success in preventing another attack can be tied directly to the heroic efforts of our law enforcement, intelligence and homeland security personnel, aided by the tools, resources and guidance that Congress provided through the USA PATRIOT Act, especially the provisions that removed legal barriers to information sharing in national security and criminal investigations.

As this Committee is aware, these and several other of the Act's most critical provisions are scheduled to expire at the end of this year. As Congress considers whether to renew the Act, it is important to focus on the facts, rather than respond to rhetoric. Although Congress passed the Act in only six weeks, during your initial deliberations you heard from and heeded the advice of a coalition of voices urging you to take caution in crafting the new blueprint for America's security. As one of the many who was involved in working with Congress to craft the Act, I can affirm that great care was taken to ensure that our efforts to update and strengthen our laws remained wholly within the bounds of the Constitution.

Unfortunately, the reauthorization debate has since deteriorated into a shouting match about fears of what the government might be doing, rather than a rational discussion of what the government actually is doing to protect our national security. Although I have no doubt that the fears are genuine, I also am confident that they are unfounded.

I'd like to begin by discussing perhaps the most controversial and also most misunderstood provision of the Act: Section 215 -- the so-called "libraries records" provision. Section 215 granted national security investigators the same authority criminal investigators have possessed for centuries to request the production of records relevant their investigation. Like its criminal grand jury equivalent, these judicial orders for business records might conceivably be issued to bookstores or libraries, but Section 215 does not single these entities out. Indeed, libraries and bookstores are nowhere mentioned in Section 215.

Critics have attacked the provision as a return to the J. Edgar Hoover days of monitoring innocent citizens' reading habits. Section 215 does not allow such unfettered spying. Rather, it provides a targeted, judicially authorized investigative tool. As Attorney General Gonzales recently revealed, in the spring of 2004, a member of a terrorist group affiliated with al Qaeda used the Internet at a public library to communicate with his

allies. If grand juries can issue subpoenas to public libraries and bookstores in criminal investigations (which was done to investigate the Gianni Versace murder and the Zodiac gunman case), then the same authority should be used to investigate terrorists, especially since we know that they continue to use public facilities to communicate and plan their activities.

Congress embedded significant checks in the provision to prevent abuse. First, Section 215 is narrow in scope. The FBI cannot use it to investigate garden-variety crimes, or even domestic terrorism. Instead, the law can be used only to obtain foreign intelligence information about non-U.S. persons, or to protect against international terrorism or clandestine intelligence activities. Second, unlike grand jury subpoenas, Section 215 orders must be supervised and issued by a federal judge. Grand jury subpoenas are often issued by the court clerk. Finally, the government must report to Congress (including this Committee) every six months on the number of times and the manner in which the provision has been used. There have been six such reports to date, the House Judiciary Committee has stated that its review of that information “has not given rise to any concern that the authority is being misused or abused.”

Amid the sound and fury over politically charged issues such as Section 215, lost in the debate is any constructive dialogue about the merits of fundamental policy changes in the USA PATRIOT Act- particularly the provisions that lowered the “wall” between intelligence and law enforcement. For instance, Section 218 amended the Foreign Intelligence Surveillance Act (“FISA”) to facilitate increased cooperation between agents gathering intelligence about foreign threats and investigators prosecuting foreign terrorists. The provision helped eliminate the wall by replacing the requirement that intelligence was the “primary purpose” of an investigation with a “significant purpose” test. Because of this change, intelligence and law enforcement authorities may share information without fear that such coordination will hinder jeopardize the legal validity of the investigation and attendant orders.

During the debate over Section 218, the drafters struggled with important constitutional questions, such as whether the change comported with the Fourth Amendment’s protection against unreasonable searches and seizures (it does), whether criminal prosecutors should initiate and direct intelligence operations (they should not), and whether there is adequate process for defendants to seek to exclude intelligence evidence from trial (there is). The drafters were confident of these answers, and the courts have confirmed the facial constitutionality of section 218. However, as you are aware, this provision, like any other governmental authority, may be misused in specific cases in a manner that offends our Constitution. A constructive discussion of the issues surrounding Section 218 will help the public better understand the government’s actions, the on-going necessity of this important tool, and the need to monitor how the provision is applied in specific cases.

Just as Section 218 permits the intelligence community to share information with law enforcement, Sections 203 and 905 allow law enforcement investigators to provide information to intelligence and national security personnel under certain clearly delimited

circumstances. Prior to the PATRIOT Act, federal law prohibited prosecutors from sharing grand jury testimony and wiretap information with intelligence officials even if the information involved terrorist activities, unless the intelligence personnel were actually involved in the criminal investigation. Section 203 removed that prohibition, subject to important restrictions. For instance, only officials who need the information to do their job can have access to it, and may use the information only in the course of his official duties. In addition, any time grand jury information is shared, the government is required to notify the supervising court and identify the departments that received it.

Section 203 does not permit or require the sharing of all – or even most – grand jury or criminal investigative information with the intelligence community. Section 203 expressly limits disclosure to foreign intelligence information. The Act defines the term foreign intelligence to include information relating to the ability of the United States to defend itself against terrorism, sabotage, and clandestine intelligence activities of foreign powers, as well as information relating to "national defense" or "the conduct of . . . foreign affairs." Rather than open up all criminal investigations to the intelligence community, the Act appropriately restricts the information to the type necessary to counter a threat from abroad. The vast majority of criminal investigations do not contain such information.

Pursuant to the Act, the Attorney General has established procedures to ensure that the information is used appropriately. These procedures require that law enforcement agents, before disclosure to intelligence agencies, label all information identifying a U.S. person. Moreover, upon receipt of information from law enforcement that identifies a U.S. person, intelligence agencies must handle that information pursuant to specific protocols. These protocols, for example, require that information identifying a U.S. person be deleted from the intelligence information except in specified circumstances.

These provisions have yielded real results in the war on terror. Information sharing between law enforcement and intelligence personnel was critical to our efforts to discover and dismantle terrorist cells in Portland, Oregon, and Lackawanna, New York. They also were used to disrupt an al Qaeda drugs-for-weapons plot in San Diego which has led to two guilty pleas, and the prosecution of nine terrorist associates of the group known as Lashkar-e- Taiba in Northern Virginia. And I am confident that they are being used in other on-going investigations where appropriate.

Sections 203 and 905 standardize and restrain the powers of our law enforcement and intelligence personnel, while eliminating the cumbersome and convoluted restrictions on information sharing in place prior to September 11th. Some interest groups would prefer tighter strictures to sharing of government information. Such obstinacy, however, comes with a cost, both in terms of privacy and efficacy. Preventing government from using information smartly will heighten the need for government to collect information more broadly. And bureaucratic strictures threaten to reconstruct the wall between intelligence and law enforcement. Information sharing must be guided by practical guidelines that simultaneously empower and constrain officials, clearly articulating what is and is not

permitted. Such guidelines are in place. We should allow them to work in the war on terrorism.

In conclusion, I thank the Committee for convening to consider these important provisions. The debate over the PATRIOT Act would benefit from clarity, and your hearing will be a significant contribution to the public understanding. Thank you.