

SECURITY AT HOME ISSUE

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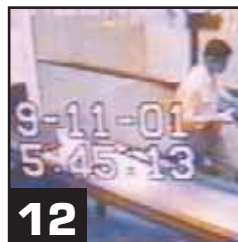
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We Need The Patriot Act



Outsmarting Terrorists



Is BCRA a Success?

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Connecting The Dots: Why we need The Patriot Act

U.S. Representative F. James Sensenbrenner



AFP PHOTO/AFP/Getty Images

No American alive at the time will ever forget September 11, 2001. It is a terrible moment, frozen in our minds. On that day, more than 3,000 lives were lost to organized and deadly violence by terrorists. Stunned by such an unprecedented tragedy, Americans demanded government take action to do everything reasonable and possible to prevent anything of this sort from happening again.

Pretending there is no history or logic

to the steps the U.S. government took after September 11th directly conflicts with the facts. That Americans have not had to endure another similar catastrophe is not testimony to the notion the threat from terrorism has reduced itself, but rather tribute to the measures adopted, as well as the hard work and diligence of the men and women dedicated to protect us.

What do we know about our enemy? We know they are determined to kill as

many Americans as possible. We know they are resourceful. We know they can exhibit a patience that, in some ways, exceeds our own. They have shown a willingness to remain silent, blend into our society, and then strike against us with a vengeance not ever previously seen within our borders.

Sometimes, the enemy does hide in the shadows. Just as often, they commingle with us and enjoy our way of life all the while plotting to murder us. We live in a

dangerous world with dangerous enemies. Paranoia is not the answer. Well reasoned, carefully developed measures are what are needed. This is what it will take to make certain the America we love and want to endure remains in place for years to come.

Achieving a balance between assuring Americans enjoy the freedom and liberty guaranteed under the Constitution while also safeguarding ourselves against a terrorist enemy is not always easy or automatic. However, it is both irresponsible and inaccurate to portray what has recently been done in the name of national security as creating a police state of sorts.

Think about it for a minute. Do you know a single person who has been stopped from expressing their opinion or doing what they want as a result of laws passed post-September 11? Just exactly where is it that we can witness this dramatic loss of civil liberties? Sure, it is more difficult to get from the ticket counter to the gate at an airport. But, is this really such a high price to pay? Just who is it that has been so drastically affected in a negative way from our efforts to manage a difficult situation?

Let me answer the questions I posed. It is the very enemy we intended to deter who has been stifled. Americans freely debate the wisdom and virtue of specific actions taken by our government. The media continues its watchdog role. This should result in an increase in our sense of well-being, not serve as a cause for consternation.

If we return to the structure that existed prior to passage of the PATRIOT Act, we will do ourselves no favors. Hearing after hearing, media report after media report, gave attention and focus to the dysfunctional aspects of what was being done by both law enforcement and intelligence gathering components of our government. How many times did we hear the question: "Why weren't the dots connected?" How many times did we come to learn that while

the information existed in one place, it was not shared with others who could have made good use of it? How many times did we think to ourselves that we needed to do better in the future if we were to avoid more catastrophes?

None of this means that the laws we originally passed are perfect or beyond improvement. The nature of our legislative process is to address these kinds of problems and find remedies where they are needed. In my view, this is exactly the situation as it pertains to the PATRIOT Act. As this article is being written, it faces an uncertain future. A strong majority of the public supports the PATRIOT Act and a bipartisan majority of the House voted for the final version of the PATRIOT Act reauthorization in December. A bipartisan majority of the Senate supports this House-Senate compromise. Unfortunately, a minority of obstructionist Senators are filibustering the bill, preventing a final vote.

Congress adopted the PATRIOT Act in the first place in October of 2001 to enhance investigatory tools necessary to detect and prevent terrorist attacks. Prior to 9/11, our focus was on prosecuting terrorists after they struck. Since 9/11, our focus has shifted to detecting, disrupting, and dismantling terrorist cells before they strike.

Since the PATRIOT Act's enactment, U.S. law enforcement and intelligence gathering authorities have utilized these tools to gain critical knowledge of the intentions of foreign-based terrorists while preempting terrorists' threats on our own soil.

Terrorists previously had been able to exploit historic divisions between the law enforcement and intelligence communities. These divisions prevented authorities from "connecting the dots" in time to avert attacks. Without the PATRIOT Act in place, these divisions will return, and it will make detection and prevention that much harder. Without the PATRIOT Act in place, the pre-9/11 situation will return



U.S. Representative Sensenbrenner

Courtesy of Rep. Sensenbrenner's office

where the FBI and the CIA are unable to communicate. Does anyone believe this will make us safer?

"Connecting the dots" requires more than new laws. Among other things, we have to encourage and support a complete change in the cultures within our various law enforcement and intelligence gathering units. Ownership of turf cannot trump the need to work together to protect our citizens. We are just now beginning to see real evidence of these groups working side-by-side in common cause. Only with laws such as the PATRIOT Act in place will we have the realistic hope of this continuing forward.

The pending bill strengthens the penalties for attacks against mass transportation systems and our Nation's airports. It also cracks down on terrorist funding sources that terrorists rely upon to finance their murderous ambitions. Furthermore, the pending reauthorization would enhance penalties against narco-terrorism and other terrorist criminal enterprises.

In addition, this new law would address the clear danger to America's communities posed by methamphetamine. It restricts internet and mobile vendor sales of the precursors necessary to produce methamphetamine, enhances criminal penalties for its sale and manufacture, targets large meth kingpins, and gives us the

Do you know a single person who has been stopped from expressing their opinion or doing what they want as a result of laws passed post-September 11?



**Our country
is strong.**

**A great people has
been moved to defend
a great nation.**

Thank you to the many
dedicated men and women
of the armed forces who
proudly serve to protect
our country.

And thank you to each
family member at home
for your support.



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tools to stop meth trafficking across the southwest border.

I am among those who have asked, “Have we been careful to safeguard the civil rights of Americans?” “Have we been cautious in granting increased powers to law enforcement?” The answer is yes on both counts.

When the original bill was passed, we placed a four-year expiration on 16 PATRIOT Act provisions in order to ensure these new authorities were reviewed by Congress. In essence, we provided our terrorism and crime fighters a test drive utilizing these new authorities. Congress, the courts, and the

**“Have we been careful
to safeguard the civil
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**“Have we been
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**The answer is yes
on both counts.**

public have closely scrutinized the use of the PATRIOT Act authorities.

After more than a dozen House hearings, numerous Senate hearings, six investigative reports by the Justice Department’s independent Inspector General, and intensive review, no one has been able to uncover a single abuse of a PATRIOT Act authority.

While there have been no PATRIOT Act abuses, we sought to prevent the possibility of future abuses by adding over 30 additional civil liberty safeguards (information is available at www.judiciary.house.gov) to the PATRIOT Act renewal legislation currently being blocked by a minority of Senators. Unfortunately, their obstructionist tactics are preventing these new civil liberty safeguards from being enacted.

After this careful and thoughtful review, the House and Senate negotiators made 14 of the 16 expiring provisions permanent because they were non-controversial. The other two provisions were given four-year extensions to ensure their use continues and that Congress revisits their use in four years.

It is important to avoid statements that can be construed as questioning the patriotism or even basic judgment of those who disagree with your opinion. It is just as important that this sort of respect be a two-way street, that those of us who favor the PATRIOT Act not be subjected to personal attacks or name calling.

Those who believe the PATRIOT Act is not in our nation’s best interests are surely entitled to their opinion. However, are they not also obligated to tell us with specificity what laws they want in place to prevent another September 11? Should they not also be prepared to provide at least some shred of evidence of harm to the civil liberties of our citizens and wrongdoing on the part of law enforcement officials before they throw the baby out with the bath?

I simply do not believe anyone, inside or outside my nation, has the right to engage in active conspiracy and activity in an effort to cause massive harm to innocent civilians in our country. Assuring that our law enforcement agencies and intelligence operations work together to do all that is allowed under our Constitution to prevent this from happening is what motivates me to so strongly advocate laws such as the PATRIOT Act.

Argue about particulars. Consider alternatives. Assure we respond to new developments. Do all of these things. At the same time, be sure to give ourselves the protections we need to survive as a society. Make sure we give ourselves the chance to “connect the dots.” Make sure that the new and improved PATRIOT Act is enacted so we aggressively prevent terrorism rather than revert back to our reactive pre-9/11 laws and mindset. ☺

— U.S. Representative F. James Sensenbrenner is in his 14th term representing Wisconsin’s 5th District. He is Chairman of the House Judiciary Committee.





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The Importance of Chemical Security in Contemporary America

By U.S. Senator Susan Collins

One of the most sobering lessons of September 11th was that terrorists will use the productive tools of our society against us as weapons. There were more than 5,000 commercial airliners ready to fly American skies that day, and the terrorists only had to commandeer four to murder nearly 3,000 people.

There is no aspect of our society that is more productive or vulnerable as our chemical industry. There are at least 15,000 facilities across the country that use, manufacture, or store large quantities of extremely hazardous chemicals. To us, they are vital parts of our economy, but to our enemies, they are potential weapons. And, like the

airliners of September 11th, it would only take a few, or even one, to cause horrifying destruction.

The Department of Homeland Security has identified 3,400 chemical facilities that could affect more than 1,000 people if attacked and 297 where a toxic release could affect more than 50,000. Despite this threat, however, only a fraction of our chemical facilities are regulated for security or subscribe to voluntary security standards. Nothing will ever diminish the loss we experienced on September 11th, but the loss from a chemical attack could be even greater, both in terms of the loss of life and economic harm.

I have been working on legislation to close this gap in our defenses against terrorism. The Chemical Facility Antiterrorism Act of 2005 would provide broad new authority to the Department of Homeland Security to protect America's chemical facilities from terrorists. This protection would be achieved not by dictating to this vital sector of our economy, but by working cooperatively with it.

This legislation is the result of an extensive investigation earlier this year by the Senate Homeland Security Committee. Our investigation included four hearings, in which we heard from a broad array of witnesses. Leading security experts, chemi-

Feature: The Importance of Chemical Security in Contemporary America

cal safety professionals, labor representatives, environmental groups, and the Administration all testified that federal legislation in this area is necessary. So, too, did the chemical industry: representatives from the American Petroleum Institute, the National Petrochemical Refineries Association, the Fertilizer Institute, the American Chemistry Council, and the Synthetic Organic Chemical Manufacturers Association all supported the Department having greater oversight of chemical facilities.

During these hearings, the Committee was reminded of the potential for productive chemicals to kill, from the horrifying chemical attacks of the First World War and the tragic accident at Bhopal, India, in 1984, to more recent accidents in this country. We were reminded that Saddam Hussein used chemical weapons against Iran and his own people, and we received ample evidence that al Qaeda has a keen interest in the American chemical industry.

Indeed, at our first hearing, Stephen Flynn of the Council on Foreign Relations testified that the chemical industry is at "the top of the list" of al-Qaeda and other terrorist groups. The chemical industry, said Commander Flynn, "absolutely screams at you as essentially a weapon of mass destruction."

While establishing the need for legislation, our hearings also stressed the importance of getting legislation right. As our largest export sector, chemical shipments in the United States approach half a trillion dollars annually. More than 900,000 people work directly in the industry, with millions more in associated jobs. Chemicals are critical to our food and water supply, our medicines, electronics, clothes -- in fact, just about everything. We cannot drive the chemical sector out of the country in the name of security.

President Bush has twice stated his support for chemical security legislation, yet, such legislation has not emerged. At one hearing, Richard Falkenrath, former Deputy Assistant to the President for Homeland Security, called this his "major disappointment." He testified that, to date, the federal government has made no material reduction in the inherent vulnerability of hazardous chemical targets inside the United States.

This issue is too important to accept inaction. We need to work together, and

we need to eliminate the obstacles that have tripped up legislative efforts in the past.

Our hearings established a high level of consensus around three concepts vital to any chemical security legislation. First, legislation should be risk-based. The security measures at a particular facility should be based on the actual risk it presents. High-risk facilities should undertake the greatest number of security precautions, while fewer precautions are necessary at lower risk facilities.

Second, legislation should be performance-based. Facilities should defend against particular threats, and their performance should be judged by their ability to deter or minimize those threats. With performance-based regulation, facilities will have incentives to identify the most effective and cost efficient means of increasing protection.

Third, legislation should be flexible. Our chemical industry is extremely diverse,



U.S. Senator Susan Collins

Courtesy of Sen. Collins' office

Only a fraction of our chemical facilities are regulated for security or subscribe to voluntary security standards.

and any legislation must take into account this diversity. A small chemical facility in rural Maine faces very different risks than a major chemical plant in the New York City area, and its security response should be structured appropriately.

My legislation meets these criteria. It is risk-based, performance-based, and flexible. It builds upon one chemical security effort in place that works: the Maritime Transportation Security Act, which regulates chemical facilities located at our nation's seaports. During our hearings, we heard so many positive things about the results-based, cooperative approach of MTSA that we brought in the Coast Guard's Director of Port Security, Admiral Craig Bone, to testify about the Coast Guard's implementation of this legislation.

The first step my legislation takes is to determine which facilities should be covered by regulations, and to what degree. It

would require the Department of Homeland Security to evaluate the types of facilities, and to establish risk-based tiers. These tiers would be based upon the likelihood of death or illness, proximity to population centers, and potential impact on national security, the economy and critical infrastructure, and would have increasingly strict security requirements as the risk and consequences increase. The Department would then set performance standards for each tier. Covered facilities would be required to conduct vulnerability assessments, and to create appropriate site security plans and update emergency response plans to reflect a response to a terrorist attack, if the plan does not already do so.

My legislation gives the Secretary of Homeland Security the authority to shut down chemical facilities that have not adequately addressed the risk of a terrorist attack. This provision concentrates a great

deal of power into the Secretary's hands. Few officials have this power. Few should.

But the dire consequences of a terrorist attack justify it. With hundreds of thousands of lives at stake, chemical facilities must take measures to reduce the risk of a terrorist attack. If a facility will not do so, it simply cannot be allowed to continue endangering lives.

It was only after very careful consideration that I decided to include this provision, one that is in the Maritime Transportation Security Act. Admiral Bone testified that, since July 2004, the Coast Guard has shut down three chemical facilities. He said it is "imperative" that the Department of Homeland Security be given this authority. It is a testament to the seriousness with which the chemical sector takes security that our industry witnesses offered support for this provision. National Petrochemical Refineries Association President Bob Slaughter testified that his organization's first recommendation is that the MTSA, with this strong provision,

be used as a model for industry-wide legislation.

My legislation includes another key to the successful implementation of the MTSA: an organizational structure that provides for training, planning, and exercising at the local, regional and national levels. My bill would assign federal coordinators to designated areas to see that facility security plans are not just written, but implemented. It provides facilities, and state and local agencies, a central point of contact to coordinate resources. It also requires the formation of area committees that will provide enhanced coordination for security and emergency response planning with the local law enforcement and first responders.

It is also important to note what is not in my bill: provisions mandating what is called "inherently safer technology" – the use of alternative chemicals or processes. This is a significant departure from the legislative approaches taken in the past. I simply do not believe it is appropriate for a bill on security to dictate what products are

made of and how they are made. Such issues are outside of the scope of my legislation, beyond the jurisdiction of my committee, and not the appropriate way to address security issues.

Some facilities will adopt inherently safer technologies in response to this legislation, should it pass, and I encourage them to do so, however, that is their decision. My legislation requires chemical facilities to address the risks of terrorist attacks, and it gives the Secretary of Homeland Security ample power to ensure that they do so. It does not tell facilities how high to build their fences, or what chemicals they may use, or how they may use them. It is the result that matters. I believe the approach my legislation takes will result in meaningful protection of the chemical industry, and for the American people. ☺

— U.S. Senator Susan Collins is in her 2nd term representing Maine. She is the Chairwoman for Homeland Security and Governmental Affairs Committee.

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Business Concerns for the Internet

By John Leggate

*Summer 2008 – The economy is moving forward at a strong pace while the stock market continues to make weekly gains. The nation and world economies are experiencing a sustained and stable economic boom unimaginable just a few years ago, with no end in sight. ***News Flash*** Terrorists set off an explosion at a strategic IT connection and have launched a coordinated Internet virus attack. Multiple days of vast Internet outages expected across the country. Critical business systems have been shut down, with key transport and shipping systems frozen, fuel deliveries stalled, and backup resources and inventories quickly being exhausted. Many businesses forced to shut down operations, financial markets closed, international wire transfers halted. Stock market trading suspended by federal government after massive losses.*

The Internet is rapidly becoming the backbone of the world economy. This is particularly true for the United States where the use of the Internet underpins many core aspects of the US economy and critical national infrastructure such as energy, water and transportation. With such fundamental dependency on its continuous availability, the public Internet has taken on a role its creators never originally envisioned. It must now be better protected, managed and controlled to avoid seeing a scenario such as the one imagined above, yet there is no current system of clear accountabilities or guarantees for the continuity of the Internet's operability. The United States should take a leadership role in hardening and protecting the Internet and in creating the next generation Global Internet. This leadership role should be a partnership of the US Government and the private sector.

The growth of Internet use has been nothing short of extraordinary.ⁱ Almost by stealth since the dot com collapse, governments, public bodies and large and small scale businesses have been transformed to operate with the Internet as a core piece of business infrastructure. Businesses from all over the world have found the Internet to be a cost effective and reliable business tool. Indeed in the last few years, in addition to conventional business transactions, many of the control systems that support nation-

al and public utilities are adopting the Internet as a core data transport method.ⁱⁱ This has resulted in businesses and societies becoming critically dependent on the continuous operation of the Internet,ⁱⁱⁱ almost without even being aware, and yet with few practical alternatives to maintaining a degree of business continuity should the Internet fail. In spite of this dependency, the Internet is mostly run by groups of diverse academic and non-profit organizations operating by informal consensus.

Currently the Internet has well known physical and virtual security weaknesses both nationally and globally. What is not truly known is the potential business impact of these weaknesses on the US and the world economy should they fail. Continued business operation is presumed, but by no means guaranteed. This is compounded by the poor understanding of interdependencies between companies and the critical infrastructures which support regions and nations. The dramatically increased use of the Internet by such automated systems as SCADA (for Supervisory Control and Data) systems, pipelines, electricity grids, e-mail servers, inventory systems and medical monitoring devices is leaving us ever more vulnerable to large-scale Internet outages.

In 2004, \$6.9 trillion of the \$55.6 trillion of worldwide trade was directly transacted over the Internet.^{iv} Of the remaining

trade, there was a significant proportion that relied on supporting activity using the Internet for communication, including internal processes within companies. Even financial institutions use the Internet for many routine electronic funds transfers.^v Significantly, in 2004 and in the US alone, 14.8 million high tech jobs relied directly on the Internet.^{vi}

In the past, there have been attempts to address the issues of security, operational stability and reliability but with limited success. For example, work conducted by the President's Commission on Critical Infrastructure Protection (PCCIP) nearly ten years ago raised vulnerabilities that are apparently yet to be addressed.^{vii} It set a goal of a reliable, interconnected, and secure information system infrastructure by the year 2003. Is the context and sense of urgency not much greater today?

Previous work in evaluating risks to the Internet has almost entirely focused around a dialogue between supply-side telecommunications/IT companies and government,^{viii} but this only gives us half the picture. We need a better understanding of the interdependency between supply and demand-side actors, the actual users of the Internet, for a true understanding of how damaging its loss might be and how to mitigate such damages.

Many demand-side organizations do not realize just how dependent they are on the Internet. Corporations have become linked to the Internet in ways that are not always easily discerned. For example, a major corporation that depends on a third party's logistical services may be surprised to learn that their supplier communicates internal orders and status using the Internet, or that an electric utility they depend upon has moved its process control network to run over the Internet.

Who should take the lead in ensuring that these vulnerabilities are addressed? There is clearly an important role for government leadership in framing this strategic agenda – with strong collaboration with commerce and business.



These cascading dependencies all too quickly create ‘domino effects’ that are not obvious to the corporate customer or to the policymaker. They are usually only discovered during unplanned outages when capabilities begin to degrade or fail in unexpected ways, or are discovered during widely-based crisis management exercises. Businesses and governments can plan for expected failures, but even the best prepared organizations and corporations may be woefully inadequate in responding to complex failures. If a large scale Internet outage or significant reduction in performance were to occur, the unexpected effects on whole sets of industries, utilities and enterprise could have surprisingly large economic and societal impacts.

Whether a failure of the Internet arises through error, a worm writer’s experiment, or more directed physical or cyber attacks, vulnerabilities exist, and their exploitation is a real and present risk — not just locally, but even globally. The question we need to ask is whether incremental change will be sufficient to address the current physical and digital integrity weaknesses. We can shore up these weaknesses individually on a temporary basis with tactical repairs and patches, but a true solution to the deeper vulnerabilities which exist will require a more radical approach. They must be eliminated through coordinated rather than isolated action.

Who should take the lead in ensuring that these vulnerabilities are addressed? There is clearly an important role for government leadership in framing this strategic agenda – with strong collaboration with commerce and business.

In the short term, we must address immediate concerns through a series of in-depth and sometimes classified studies, workshops and truly cross-sectoral exercises. These will allow businesses — especially those which handle critical aspects of national infrastructure, such as energy, transportation and financial — and governments to share critical information under the Protected Critical Infrastructure Information (PCII) Program. This work must map business reliance upon the Internet against known areas of risk and develop a priority plan to focus actions that are necessary for increasing the Internet’s robustness and integrity. We must look first at the US economy, but in today’s global economy this must rapidly be extended to include its interdependencies with the countries of G-8, the EU, and beyond.

In the medium term, there is a need to create the next generation Internet in a form that would be able to handle the emerging demands of business, civil society and governments. This would include the technical design necessary to meet physical and logical diversity and resilience. In addition, the program should include the development of a Global Internet Management Framework that addresses broad policies and standards, clarity of operational accountabilities, and technology roadmaps. The goal should be to assure the performance and digital integrity of the new Global

Internet, in terms of resilience to physical and cyber-security risks, and broader geopolitical risks.

The United States, both its government and its private sector, must take a leading role in this important effort to secure America’s, and indeed the world’s, economies against a severe Internet outage. While various government agencies have received money over the past few years to work on this issue, the potential damage which could occur from such an event is too great to simply assume that the job is complete. Progress can be made and steps can be taken to significantly reduce risks. It might be time for our federal government to take a leading role by utilizing the Department of Homeland Security as the point agency to organize the efforts and expertise of the private sector and the US Government, to develop plans to address this issue, and to ensure that Congress provides sufficient funding to do the research and development necessary for real solutions. ☞

— John Leggate is the Chief Information Officer of BP, and the Chairman of the CEO Roundtable on Digital and Cyber Infrastructure Security, organized by Business Executives for National Security (BENS). The preceding article is a summary of testimony given before the House Science Committee on September 15, 2005.

- ⁱ Lazarus Research Group
- ⁱⁱ Internet Security Systems
- ⁱⁱⁱ Jupiter Research
- ^{iv} Forrester Research, Inc.
- ^v Forrester Research, Inc.
- ^{vi} University of Texas-Austin
- ^{vii} PCCIP Report 1997
- ^{viii} National Security Technology Advisory Committee (NSTAC) and the National Infrastructure Assurance Council (NIAC).



Outsmarting The Terrorists:

The Use of Technology to Defend the Homeland

By C. Stewart Verdery, Jr.

In the battle against terrorism, the United States boasts many capabilities, including a well-trained workforce of law enforcement personnel, extensive cooperation with the private sector, and a willingness to strike militarily at terrorists overseas. Our best chance to deter and disrupt future attacks, however, lies in the wise use of advanced technology. When you think of high-tech tools fighting terrorism, you might first think of the gadgets used by James Bond or Jack Bauer, but the most important capabilities being deployed to protect the homeland are often not quite as flashy as those portrayed in Hollywood. These capabilities, however, are crucial to our success and a key part of the post 9/11 homeland security strategy.

In fact, when the Department of Homeland Security (DHS) was created in March 2003, a key part of the new depart-

ment was the Directorate of Science and Technology (S&T). The directorate, which has been headed by Under Secretary Charles "Chuck" McQueary since its creation, is the long-term research arm of DHS. S&T has received robust funding, including \$1.5 billion for Fiscal Year 2006, with the bulk of the money going towards research on nuclear, radiological, biological, chemical, and explosives countermeasures.

One of the key areas of S&T is the Homeland Security Advanced Research Projects Agency (HSARPA) which engages industry, academia, government, and other sectors in innovative research and development, rapid prototyping, and technology transfer to meet operational needs. HSARPA is modeled after the successful DARPA program at the Department of Defense and is operating under Acting Director Vayl Oxford.

DHS has also established five Homeland Security Centers of Excellence to build long-term research capabilities and encourage scholarly research in discrete areas of homeland security. These centers are: the Center for the Study of High Consequence Event Preparedness and Response at Johns Hopkins University; the Center for Risk and Economic Analysis of Terrorism Events led by the University of Southern California; the National Center for Food Protection and Defense led by the University of Minnesota; the National Center for Foreign Animal and Zoonotic Disease Defense led by Texas A&M University; and the Center for Behavioral and Social Research on Terrorism and Counter-Terrorism led by the University of Maryland.

As DHS matures into an integrated department and less a collection of inherited agencies, S&T will play a key role in directing resources and research to combat the most severe risks we face. Among the most frightening scenarios is the use of nuclear or radiological weapons on U.S. soil. To coordinate the myriad of programs designed to counter this threat, DHS has established the Domestic Nuclear Detection Office (DNDO).

Even as we build our long-term capa-

bilities and strategy, we have had to face the reality of today's international society. The nature of 21st Century international commerce presents an immense challenge for homeland security. As democracies and free trade have spread, the amount of international cargo and traffic has soared to record heights. As explained wonderfully by Thomas Friedman in *The World Is Flat*, companies now expect to be able to move products, parts, personnel, and information around the globe with low transaction costs. The obvious attractiveness of this international trading system to facilitate a terrorist attack requires innovative policy-making, close cooperation with private sector actors, and, above all, the use of advanced technology to find the proverbial needles in the haystack without slowing down the "flat" economy. The good news is that the post 9/11 strategy by the United States has been successful in leveraging technology for the counter-terrorism mission.

INTERNATIONAL TRAVEL

The fact that 19 hijackers were able to enter our country and operate freely within our borders was as clear a wakeup call as possible to require a strengthening of our international travel systems. In the four years that have followed, we have deployed a new architecture to sift through the millions of would-be and actual travelers to minimize the likelihood of a repeat of that failure before 9/11.

First, all applicants for a U.S. visa are now required to provide fingerprints in person to a U.S. consular official so that the government can tie the individual's biometrics to his or her travel documents and to look for biometric matches against our robust databases of terrorists, criminals, and immigration law violators. Each applicant's biometrics and biographic information is entered into the Consolidated Consular Database at the Department of State, which includes a robust facial recognition capability to find people attempting to apply under an alias.

When successful visa applicants, persons traveling under the Visa Waiver Program, or imposters arrive at U.S. airports, they now are enrolled in the wildly-successful US-VISIT program. Under US-VISIT, each traveler provides two fingerprints to the immigration inspector as he or she is being interviewed. The prints are compared against all relevant terrorist, criminal, and immigration law databases to identify hits. As of January of 2006, over 44 million travelers have been enrolled in the system since it was activated in January of 2004. Of these, approximately 970 have been identified solely by their biometrics as criminals and prior immigration violators. These hits have included convicted murders, escapees from federal prison, and even an identical twin traveling on her sister's passport in an attempt to hide from her prior drug arrest. Amazingly, the system has been able to find these needles in the

haystack in an average turnaround time of six seconds.

A next phase, now undergoing trial testing, is US-VISIT using radio frequency identification technology to encode travel documents used to enter our country's land borders. The desired model is the EZ-PASS toll collection system in use in many locations around the country, but the testing to date has shown it is difficult to transit significant quantities of data securely and accurately as vehicles enter or depart the U.S. However, as it is simply not feasible to require vehicular traffic to spend any additional time at our entrance points, the RFID solution will have to work. Leading technology companies are partnering with the government to bring their vast expertise generated from the commercial space to bear on this most difficult problem.

In addition to these systems, technology is transforming the nature of travel doc-



Photo By U.S. Navy/Ceity Images

A surveillance camera photographs two men identified by authorities as suspected hijackers Mohammed Atta and Abdulaziz Alomari as they pass through airport security September 11, 2001. Atta and Alomari boarded one of four jetliners hijacked on September 11 and one of two which were crashed into New York City's World Trade Center.

**Our best chance to deter and disrupt future attacks ...
lies in the wise use of advanced technology.**

Feature: Outsmarting The Terrorists

uments used by increasingly mobile societies to conduct business, study, and tour. Once again, the U.S. has led the way, by requiring that travelers arriving under the Visa Waiver Program possess passports with machine-readable information (in 2004), with digital photographs (in 2005), and with contactless chips allowing for encrypted transmission of biometric and biographic information (in 2006). Each of these steps has made it much more likely that imposters and forgeries will be identified, and that travelers can be speeded through arrival zones. The U.S. itself will meet each of these deadlines also to better secure American travel documents and to lead by example.

INTERNATIONAL CARGO

The explosion in world trade and resulting flood of incoming cargo containers makes it possible for American businesses and consumers to benefit from the manufacturing efficiencies of other countries. Each of the shipping containers, however, also represents a potential Trojan Horse for a weapon of mass destruction or other terrorist weapon, or even a terrorist himself. Hand-inspecting these containers would cost so much in terms of personnel costs and delays in arrival that such a policy would be catastrophic in its own right. Luckily, a robust blend of technologies allows us to identify anomalies in cargo often before the container even leaves a foreign port of departure.

Under the Container Security Initiative, cargo departing 42 of the world's busiest seaports for the U.S. is screened before departure by host country inspectors working with U.S. personnel working for U.S. Customs and Border Protection stationed overseas. Among many requirements, each CSI port is required to utilize non-intrusive inspectional equipment such as gamma or X-ray imaging capabilities and radiation detection equipment to examine outgoing cargo. Although the CSI program has been a great success, likely covering almost 90% of the incoming sea container traffic by the end of 2006, independent reviews of the program have identified weaknesses in the quality of the radiation detection equipment in use in some CSI ports. DHS has announced plans to develop improved technology in this area and a willingness to pay for its deployment in certain circumstances. DHS certainly should

be encouraged to take a "zero tolerance" policy for loopholes for CSI if we are to have confidence in the laudable concept of "pushing our borders out".

It is also worth noting in the cargo area the major role that advanced information technology systems plays in making our targeting systems work effectively. At CBP's National Targeting Center, each and every incoming shipment is risk-scored via analysis of the manifest information supplied to NTC. Elaborate algorithms scoring the risk of the cargo's path to the U.S., knowledge about the shipper and other interested parties, and relevant intelligence are crunched at NTC to find questionable shipments for inspection. As this example points out, information technology has become one of our best force multipliers by ensuring that relevant information can be shared between parts of our government and made accessible to the front-line inspectors, agents, and analysts who must make the real-time decisions to admit a visitor, inspect a shipment or piece of luggage, or reject an application.

TRANSPORTATION SECURITY

Perhaps nowhere is the need greater for 21st century technology than in the transportation realm. While the 9/11 hijackers used crude box cutters to take command of their aircraft, the fear that explosives could be smuggled aboard an aircraft has led to aggressive deployment of explosives detection equipment at our airports. The Transportation Security Administration met a Congressional mandate to install such equipment to inspect checked baggage, and now is in the process

of purchasing "sniffer" machines to examine passengers and carry-on bags. The destruction of aircraft in Russia in 2004 by passengers who smuggled explosives on their persons through security provided a graphic illustration of the importance of this program.

How to protect other modes of transportation from explosives is a tall challenge. The London Tube bombings in 2005 were a grim reality about the difficulty of securing mass transit against a determined enemy. In 2004, the TSA had conducted several pilot programs designed to measure the effectiveness of explosive detection equipment in the mass transit



An older surveillance camera hangs over the platform in a 14th Street subway station in New York City. In the fall of 2005 The Metropolitan Transit Authority announced a \$212 million system of high-tech cameras and sensors to be built by Lockheed Martin over the next three years for monitoring the subway system.

Photo by Mario Tama/Getty Images

In some areas, it makes sense to rely on brute force enforcement such as fencing and agents. In others, however ... technology is much more appropriate than manpower.

arena and the operations were a technical success. However, the architecture of our rail, mass transit, and bus systems, not to mention our highways, makes deployment of airport-like screening difficult to implement and extremely costly.

The need to combat the danger of explosives, however, has led numerous companies to continue research into products that might be able to detect explosives and to resolve the status of questionable packages posing an apparent threat. One such company, Isonics Corporation, on whose Board of Directors the author serves, is developing the hand-held NeutroTest™ device, designed to serve as a portable scanner enabling police officers, bomb squads, airport security personnel and other first-responders to quickly and easily evaluate suitcases, containers or other packages to identify potentially dangerous explosives, drugs, or chemical and biological agents. To date, the U.S. thankfully has evaded the scourge of suicide bombers that have bedeviled law enforcement in Israel and Iraq, but technology may be our best chance of warding off the perception that the U.S. is vulnerable to such attacks.

BORDER ENFORCEMENT

The return of immigration enforcement to the national agenda in 2005 has placed considerable focus on the best policies to combat illegal immigration, especially along our Southern border with Mexico. Clearly, the solution to this issue requires a multi-faceted approach, including easier access for employers to legal foreign workers and effective case management tools to detain and deport those arrested. The rubber really meets the road, however, where the Border Patrol patrols the thousands of miles of border trying to apprehend those trying to evade our immigration laws.

In some areas, it makes sense to rely on brute force enforcement such as fencing and agents. In others, however, especially along the Northern Border with Canada and in mountainous areas of the Southern Border, technology is much more appropriate than manpower. Thus, as part of DHS Secretary Michael Chertoff's announcement about the Secure Border Initiative, 2006 likely will see the award of significant contracts to purchase a package of technologies to defend the border. This program has been dubbed the America's Shield Initiative but may be renamed. No matter the branding, the need for an integrated set of sensors, lighting, cameras, fencing, communications equipment, software, and other technologies is immense.

CIVIL LIBERTIES

As the technology deployed to win the war on terror has become more sophisticated, the need to monitor the impact of that technology on civil liberties and privacy has increased as well. This need is made all the greater by the understandable reaction by the government to allow various agencies and even foreign governments access to sensitive information so we can be sure that we do not fail to "connect the dots" once again.

Thus, we have witnessed robust debates about the merits of increasing information contained on driver's licenses, of requiring computerized review of employment eligibility, of using commercial data to find terrorist imposters, and of computer-assisted cameras looking for suspicious behavior or concealed objects. The Department of Homeland Security has attempted to build privacy concerns into its decision-making by appointing a Privacy Officer, currently Maureen Cooney, and a Civil Liberties and Civil Rights official, Dan Sutherland. DHS has also delayed at

least a half-dozen times the deployment of perhaps its most controversial technology program, the passenger prescreening program originally dubbed CAPPS II and now called Secure Flight.

The issues which affect American citizens at least can be addressed via the political process when politicians stand before their constituents. Perhaps the trickier issue comes when technology is accused of violating the privacy of foreign guests. DHS faced this issue with the deployment of US-VISIT's biometric collection, which spawned surprisingly little uproar, and with the collection of aviation passenger information, which has created a large rift between a privacy-centric European Parliament and the U.S. government. At a time when we are seeking the cooperation of foreign governments, foreign businesses, and foreigners themselves, developing and explaining reasonable privacy policies may be a necessity for long-term success.

CONCLUSION

The war on terrorism and the drive to secure the homeland against those that would do us harm are not only a competition between competing ideologies, but a contest between competing uses of technology. The cell phone that can act as a remote detonator can also be the communications device to enable a first responder. The biometrics encoded into travel documents not only allow us to find imposters, but raise the stakes on ensuring that blank passports are not stolen. The encryption technology that allows us to communicate sensitive information across those with a need to know also may allow terrorists to develop their plots using the Internet and email.

This race to deploy technology will require us to provide incentives for our best minds and companies to roll up their sleeves and get to work. If the activity since 9/11 is any guide to the future, we are off to an excellent start. ☞

— C. Stewart Verdery, Jr. is the former Assistant Secretary for Border and Transportation Security at the U.S. Department of Homeland Security from 2003-2005. He currently is a principal at the consulting firm Mehlman Vogel Castagnetti, Inc., and an Adjunct Fellow at the Center for Strategic and International Studies.



Reducing the Nation's Financial Exposure to Catastrophe Risks

Photo by Jared A. McGuire
Edited by John M. Boone

By Ernie Csiszar

Rebuilding the lives, businesses and communities along the hurricane-ravaged Gulf Coast is a priority for both Congress and the insurance industry. Property/casualty insurers will pay more than \$46 billion to 1.8 million policyholders from Galveston, Texas to Key West, Florida as a result of the recent storms. Only the federal government will play a greater role in the economic recovery in this vitally important region of the United States.

The unprecedented storm seasons of 2004 and 2005, and the predictions that stronger and more numerous storms will be the rule rather than the exception for the next decade have forced us to consider how we, as a nation, can better prepare for, respond to, and recover from future natural disasters.

Not only does the U.S. face the prospect of more frequent and severe storms, but an increasing number of Americans are exposed to a wide array of

disasters including powerful earthquakes, floods, tsunamis, and volcanic eruptions. Fifty-four percent of all Americans now live in coastal counties. Over the past thirty years coastal populations have grown by forty-one million, much faster than the country as a whole. By the year 2025, nearly seventy-five percent of all Americans are expected to live in coastal counties.

As a result, insurers and the nation face growing exposure to significant loss from these perils. This exposure implies that the economic cost of recovery from these events will increase and that more resources will be needed for recovery and repair in the future.

Katrina, more than any previous storm, provided compelling evidence that some events are really “national” rather than natural disasters. The disruption of river traffics on the Mississippi impacted farmers and food prices across the country. Damage to oil production and refin-

ing facilities and their corresponding affect on gas prices hit every American in the pocketbook. And the federal funds to rebuild the Gulf Coast will be provided by American taxpayers.

Risk modelers predict that a Category 5 hurricane striking South Florida could produce over \$500 billion in damages. If the 1906 San Francisco earthquake were to strike today – and there is a 70 percent chance an earthquake as severe could hit the Bay Area within the next 30 years – it would conservatively cause an estimated \$400 billion in losses.

These “mega-catastrophes” would tax every last dollar of the property/casualty insurance industry’s \$400 billion surplus. Clearly there is a need to reevaluate our catastrophe funding system to make certain that Americans and the U.S. economy are prepared for and protected against the financial devastation that such calamities can create.

A Growing National Debate

The growing public debate about catastrophic risk issues has captured the attention of key policymakers at the state and federal level. There seems to be a growing interest among state and federal policymakers to “do something.” This will likely translate to considerable federal and state legislative and regulatory activity in 2006. This will also likely mean that the “something” will vary from state to state.

Earlier this year, the insurance regulators of Florida, New York, California, and Illinois sponsored a National Catastrophe Insurance Summit to hear a series of presentations on catastrophe exposure and to discuss possible public policy responses. The conclusions from the summit indicate that while there is widespread support for strengthening loss prevention and mitigation measures and for greater market freedom, there are still many unanswered questions about the most appropriate role of state and federal catastrophe funds.

The National Conference of Insurance Legislators (NCOIL) met on the heels of

the regulators summit and their discussion yielded the same basic results. NCOIL will examine the issue in more detail during its February 2006 meeting.

The National Association of Insurance Commissioners (NAIC) discussed catastrophe issues at its December meeting. Much of the discussion centered on a draft paper entitled “Natural Catastrophe Risk: Creating a Comprehensive National Plan,” which was conceived by the same four state regulators who sponsored the regulators summit.

During the course of its meeting, the NAIC adopted a resolution expressing support, in concept, for a national natural disaster plan built on the “foundation provided by state regulation,” maximizing the role of the private market, recognizing the role of mitigation, and providing a comprehensive solution to the problem of natural catastrophic exposure. We expect that the NAIC will take comments on the draft plan released for the next month or two and will seek adoption of such a plan by its March meeting.

PCI has had much discussion on the role of government-sponsored privately funded catastrophe funds at the state and federal level in responding to catastrophe risk. At this point, there is simply no industry consensus on whether such programs are needed; how they should be structured; and what the most appropriate role for private insurers, state governments, and the federal government should be on an ongoing basis.

The scope and complexity of the problem means that a comprehensive legislative or regulatory solution will not emerge quickly. We understand the critical importance that an industry consensus means to our efforts to shape public policy and public opinion and have made this the highest priority for 2006.

Defining the Problem

Because Americans have a significant and increasing portion of their personal net worth exposed to catastrophic loss, there is likely to be political pressure on the industry to make insurance coverage available at



Photo by Ethan Miller/Getty Images

Destroyed homes and vehicles are seen in the heavily damaged Lower Ninth Ward December 24, 2005 in New Orleans, Louisiana. Nearly four months after Hurricane Katrina devastated the area, the worst-hit parts of New Orleans and surrounding areas are still uninhabitable.

Feature: Reducing the Nation's Financial Exposure to Catastrophe Risks

affordable prices for these properties, regardless of their insurability. At the same time, public policy mechanisms created to provide coverage availability have not always responded efficiently or well to the problems in these markets.

Insurance prices and terms of coverage, particularly for personal property insurance in high-risk areas, are highly regulated and generally not allowed to respond freely to changing risks or market conditions. Insurer decisions to enter or exit these markets, raise or lower prices, and increase or reduce the coverage they choose to offer in response to changing risks and conditions are also highly regulated in many instances.

And politically-motivated litigation intended to require coverage where none existed before – such as the lawsuit brought by Mississippi Attorney General Jim Hood that attempts to force insurers to pay for specifically excluded flood losses under homeowners insurance policies – has become a threat with which the industry must contend. These regulatory and political restrictions impair the ability of insurance markets to respond to the public's need for catastrophe protection. They prevent markets from giving consumers accurate price signals regarding the risks of building or living in catastrophe-prone areas and they discourage entry of new capital into these markets.

The complex nature and enormous scope of the catastrophe problem make a “one-size fits all approach” all but impossible to devise and implement. Because the issue involves both economic and political aspects, the solution must balance free markets and government intervention. However, PCI believes that insurers and public policymakers can take several immediate steps to help guide the industry and federal and state officials to a comprehensive solution.

If private industry is to shoulder a larger share of the economic risk associated with catastrophic risks, then insurance markets must be given greater freedom to respond to the exposures we face. In free markets, prices and terms of coverage provide vital signals about the relative cost of insuring against catastrophes and the most efficient means of accumulating assets and apportioning responsibility for funding these exposures. Free markets encourage new capital to enter markets where coverage is needed, providing the protection con-

sumers need. PCI supports initiatives that remove existing regulatory or political barriers to the functioning of free markets for catastrophe insurance.

Policymakers at all levels of government should implement stronger land use planning and should enact and enforce strong statewide building codes. The federal government can encourage such public policy initiatives by providing incentives for state and local governments to enact them. States should also review and, where necessary, improve their emergency disaster preparedness plans.

While the National Flood Insurance Program is a necessary policy response to the flood peril and must be continued, the program needs to be modified to that it can provide greater protection to consumers and attract more policyholders.

There are also two important tools that can be utilized to allow insurers to provide consumers additional catastrophe protection. First, insurers should be afforded the opportunity to establish voluntary, tax-deferred pre-event catastrophe reserves for purposes of funding all or part of their exposure to catastrophe risks. An additional tool for providing capacity for catastrophe protection is the developing catastrophe bond market. Policymakers should consider ways in which further development of the private market for catastrophic risks can be encouraged by removing regulatory or accounting impediments to the use of such vehicles and by other steps which may foster development in this market.

Stimulating Recovery and Reducing Future Exposure

While insurers and public policymakers attempt to reach consensus and develop long-term solutions for future natural disasters, millions of Americans are trying to rebuild their lives and communities in the wake of Hurricanes Katrina, Rita, and Wilma. Due to Hurricane Katrina's unprecedented flooding and storm surge – much of which occurred outside known flood zones – thousands of responsible homeowners are finding that they are uninsured for such losses. This jeopardizes these individuals' opportunity to rebuild and threatens to paralyze the Gulf Coast's overall economic revitalization.

Mississippi Governor Haley Barbour has developed what we believe to be a fair

proposal to compensate these responsible individuals for their losses and stimulate the prudent reconstruction of devastated communities. The governor's proposal would authorize federal grants of up to \$150,000 to each of the estimated 35,000 homeowners who meet the following criteria:

- Their flood damaged home must be located outside federal government-established flood zones;
- The home must have been owner-occupied at the time the damage occurred; and
- The homeowner must have had a homeowners insurance policy (which typically covers wind damage, but specifically excludes flood damage) in force at the time the storm hit.

These criteria assure that only responsible property owners who protected their largest financial investment by purchasing a homeowners insurance policy receive federal government assistance. It also eliminates the possibility of assistance to irresponsible property owners who lived within a known flood area and yet did not maintain flood insurance.

Governor Barbour's plan would also prevent individuals from receiving duplicate compensation by requiring that FEMA assistance and insurance settlements (for those damages caused by covered perils such as wind or wind-driven rain, for instance) be deducted from the grant amount.

Most importantly, the governor's proposal requires homeowners to comply with several important requirements that will help reduce losses and the need for government financial assistance in the aftermath of the next natural disaster. These include a requirement that homeowners must:

- Rebuild homes to the new requirements set by FEMA's flood advisory maps (i.e. higher elevation) to mitigate against future losses
- Rebuild homes to the International Building Code Standard or higher
- Agree to maintain flood insurance on the rebuilt property

PCI believes that Governor Barbour's proposal balances the need for the federal government to assist responsible property owners rebuild their homes and communities with prudent provisions that help



Stronger building codes result in fewer economic losses, fewer displaced residents, and a much faster recovery.

reduce future losses and lessen the financial burden on taxpayers as a result of the next hurricane. This proposal illustrates the difference between a bailout and an investment by stimulating short-term economic recovery and assuring its long-term viability by reducing individual citizens and the federal government's exposure to future catastrophic losses.

The Importance of Building Codes

It will take more than money to restore the economic lifeblood of the Gulf Coast. If Renaissance is to occur, states must enact and enforce tougher building codes to make sure that the next hurricane doesn't disable the entire region and require future federal bailouts. And, like the incentive arrangement in Governor Barbour's proposal, Congress should give states the incentive to adopt stricter building standards by providing the financial resources to make certain that upgraded codes are enforced.

To their credit, public policymakers, business organizations, consumer groups, and architectural, engineering and building experts in the area are coming together to design more hurricane-resistant communities. Louisiana lawmakers are currently considering two bills that would establish uniform statewide building codes that can

help reduce the economic losses and speed the recovery from future hurricanes.

We know that building codes work. A study commissioned by the Institute for Business & Home Safety (IBHS) found that losses from Hurricane Andrew, which struck south Florida in 1992, would have been reduced by 40 percent if structures were built in accordance with Florida's current statewide building code.

Those that oppose stronger building codes claim that they will push the cost of rebuilding beyond the reach of many residents. Yet most experts agree that building a home that can better withstand hurricane force winds adds less than five percent to current construction costs. This is a small price to pay to protect what for most of us is our largest and most important asset, one that frequently appreciates at annual rates far exceeding this initial increase in costs.

But stronger building codes are of little value unless they are enforced. And state lawmakers must ensure that local building departments are adequately funded and staffed with qualified, trained, tested, and certified personnel. While administration and enforcement costs have impeded many state and local governments from adopting stronger codes, federal financial incentives can encourage states to enact and enforce stricter construction standards.

We hope that in exchange for states' enactment of tougher building codes, Congress will provide short-term federal assistance so that those states can administer and enforce the enhanced codes. States participating in this program would receive financial assistance for enforcing wind and flood building requirements and for establishing a state building commission to ensure local compliance with stricter codes.

Such mandates are not unprecedented – Congress made federal highway funds contingent on states enacting a 55 mile-per-hour speed limit during the energy crisis of the 1970s – and in this case transforms federal funding to rebuild the Gulf Coast from a bailout to an investment.

Everyone – homeowners, commercial property owners, taxpayers, state and federal public policymakers, and insurance companies – benefits from the establishment and enforcement of stricter building codes. Stronger statewide codes would help prevent us from making the same mistakes and would facilitate the rebuilding of stronger, healthier, and economically sound communities all along the Gulf Coast.

Stronger building codes result in fewer economic losses, fewer displaced residents, and a much faster recovery. They reduce the need for public disaster aid and create a level playing field for designers, builders and suppliers. They promote an increased level of comfort for property owners and prospective buyers, who can be assured that their homes and commercial buildings meet at least minimum standards for safety and soundness, and that the long-term value of their property will be enhanced.

Conclusion

Free markets need room to breathe – and that typically means less government intervention. However, mega-catastrophes have the potential to surpass the private sector's ability to adequately respond. A well-defined and circumscribed program involving greater market freedom, loss mitigation programs, state and federal government financial assistance, and government incentives can better enable both a recovery from the current crisis and the ability for the public, commerce, and government to plan for the future. ☞

— Ernie Csiszar is the President and CEO of the Property Casualty Insurers Association of America.



BCRA was a Good Idea

By U.S. Representative Christopher Shays

When Marty Meehan, John McCain, Russ Feingold and I sat down to determine our vision for the Bipartisan Campaign Reform Act (BCRA), we had a simple goal: restore the American people's voice in their government.

We wanted to end the system in which corporate treasury and union dues money drowned out the voice of individual Americans by banning unlimited — and often undisclosed — soft money contributions and closing the sham issue ad loophole.

We wanted to enforce the 1907 and 1947 laws that prevent corporate treasury and union dues money from funding campaigns and the 1974 law that stops unlimited campaign contributions from wealthy donors.

By closing the soft money loophole, we knew we could end the shakedown of corporate CEOs and union leaders by lawmakers and force the political parties to expand their donor base and engage more people in the political process.

After a seven year legislative battle, BCRA was enacted into law in 2002. In 2003, its constitutionality was upheld almost entirely by the Supreme Court.

But its first real test came in the 2004 elections. By nearly all measures, it proved to be hugely successful. David Broder, a Washington Post columnist and campaign finance reform skeptic, wrote on February 3, 2005: "As one who has been skeptical of the claimed virtues of the McCain-Feingold campaign finance law, I am happy to concede that it has, in fact, passed its first test in the 2004 campaign with flying colors."

The national party committees raised a total of \$1.2 billion in limited dollars — so called hard money. That was \$140 million above their fundraising levels for hard and soft money combined in the prior presidential election cycle.

The increased dollars came from increased donors. A few large donors were replaced by hundreds of thousands of smaller donors.

Republicans grew their donor base by 1.8 million. And the Democratic National Committee increased their direct-mail



Courtesy of Rep. Shays' office

U.S. Representative Christopher Shays

prospects from one million to 100 million and their Internet donors from 70,000 to one million.

If there was any failure related to campaign finance, it was the failure of the Federal Elections Commission (FEC) to enforce the letter and clear intent of campaign finance law, which was to keep soft money out of our country's electoral process.

The FEC has systemically and willfully refused to implement BCRA. We saw this repeatedly as the agency implemented BCRA, choosing to ignore what was written in the law and instead split the differences between supporters and opponents of campaign finance reform on several critical provisions. Their rulemaking would have effectively gutted our legislation.

Marty Meehan and I challenged 19 provisions of the FEC's proposed BCRA rules in *Shays and Meehan, et. al. v. FEC*. We asked the court to review a number of areas where the new regulations threatened to seriously undermine the law, creating major loopholes in regulations related to coordination, soft money fundraising solicitations, soft money restrictions for state parties and sham issue ads.

In a powerful decision issued by

Federal District Court Justice Colleen Kollar-Kotelly, 15 of the 19 regulations were struck down. She found that one provision "runs completely afoul" of campaign finance law, another "severely undermines" existing law and would "foster corruption," and another "would render the statute largely meaningless." One, she said, has "no rational basis."

The bottom line is the FEC's implementation of BCRA was a gross deviation from what Congress enacted and President Bush signed into law.

Continuing its arbitrary subversion of the law, the FEC has failed to issue regulations concerning "527" groups. Under current law, a section 527 organization need only disclose their receipts and expenditures to the Internal Revenue Service, not the FEC, even though many have spent huge sums of money to influence federal races.

The Federal Election Campaign Act (FECA) requires any group — which should include 527s — whose major purpose is to influence federal elections, and who spend more than \$1,000 for this purpose, to register as federal political committees and comply with federal campaign finance laws.

Unfortunately, but unsurprisingly, the FEC has for 30 years improperly interpreted FECA to allow 527 organizations to spend millions of dollars to influence federal elections without complying with federal campaign finance laws. In fact, during the Presidential campaign cycle, the Bush campaign asked the FEC to properly enforce the law and regulate 527s, but the agency once again chose inaction over any semblance of campaign regulation.

Since BCRA was enacted, certain 527 groups have actively exploited this loophole, spending millions of dollars to influence federal races. The most poignant example of the insidiousness of this lack of regulation came during the 2004 Presidential election with America Coming Together, the Media Fund, and the Swift Boat Veterans for Truth.

These 527 groups operate in the wild west of campaign finance, completely outside of federal campaign finance law.

In order to close this loophole, we have once again taken the FEC to court and introduced the 527 Reform Act, which would require 527 groups to register as political committees with the FEC just as

they should have been doing all along. It also establishes new, effective allocation rules to ensure groups primarily focused on impacting federal races are regulated accordingly.

The 527 Reform Act brings 527 groups working for the election or defeat of a federal candidate under the same rules by which every other political committee has to abide.

But winning our court battle or passing our legislation will not address what we consider to be the ultimate challenge: the FEC's refusal to enforce the campaign finance laws that are on the books.

We strongly believe it is time for a new, more effective nonpartisan election body to ensure federal election law is fairly implemented and fully enforced.

We have offered a bill — the Federal Election Administration Act — that would abolish the FEC and would substitute the existing six-member FEC with a three-member Federal Election Administration (FEA), strengthen the Chairman, and help reduce the gridlock that has paralyzed the

FEC. It would strengthen the enforcement of campaign law by using administrative law judges to streamline decisions on enforcement matters and empower the FEA to determine violations, impose penalties, and conduct random audits of campaign committees.

The passage of BCRA was a historic leap forward in improving our campaign finance system so that each American's voice could be heard in our election process. But it is not the end of the road for campaign finance reform. Our next steps need to be bring 527s under the campaign finance law and replace the Federal Election Commission to ensure the law is fairly enforced.

Alexander Woollcott, a former New Yorker Magazine commentator said, "I'm tired of hearing it said that democracy doesn't work. Of course it doesn't work. We are supposed to work it." The only way Americans can "work" their democracy is if their voice can be heard. And fair campaign finance laws and responsible imple-

mentation of those laws are the most basic way for those voices to have influence in our democratic process. ☞

— *Congressman Christopher Shays (R-CT) represents the 4th District of Connecticut and, with Marty Meehan (D-MA), was the lead House cosponsor of the Bipartisan Campaign Reform Act, which passed in 2002.*

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When It Gets Worse, That's Not Reform

By Bradley A. Smith



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Given the bitterness of the BCRA debate in 2002, it is natural that those who supported BCRA, and who devoted much time and good faith effort to its passage, would look for a scapegoat for the Act's failures.

As a young boy growing up in Michigan, my political heroes were the state's progressive Republican governors, George Romney and his successor, William Milliken. They stood for efficient government, economic opportunity, and equal rights, but their idealism was tempered by pragmatism. They were problem solvers. It is hard to imagine them ever embracing such a utopian, immoderate notion as campaign finance restrictions.

To ask the question, "Has the Bipartisan Campaign Reform Act of 2002 (BCRA) been a success?" is to all but answer it. Some argue that BCRA has forced the parties to rely more on small donors, or assert that BCRA has "severed the link between officeholders and donors," but these are descriptions, not actual achievements. The fact is, in 2004, the first

post-BCRA election, spending in the Presidential race trebled from 2000, while spending in congressional races rose by 20% over 2002. A similar increase is expected in 2006. Nobody seriously argues that special interests wield less influence, that candidates spend less time raising funds, that politics is less negative, or that the public perception of "corruption" in government has changed for the better.

So the question is not really whether or not BCRA (otherwise known as "McCain-Feingold" or "Shays-Meehan" for its primary Senate and House sponsors) failed, but why it failed so spectacularly.

Given the bitterness of the BCRA debate in 2002, it is natural that those who supported BCRA, and who devoted much time and good faith effort to its passage, would look for a scapegoat for the Act's fail-

ures. Readily at hand is the Federal Election Commission. But there is disconnection in the "blame the FEC" chorus. There is something inconsistent in arguing that the law is working superbly, but somehow the FEC has sabotaged it. And "FEC reform" is apparently not the only added "reform" necessary – there is legislation to "fix" (i.e. spend more on) the presidential taxpayer financed system; to regulate 527 groups; to limit grassroots lobbying by 501(c) organizations, and more. Moreover, they said the same thing about the FEC a decade ago, when it was chaired by Trevor Potter (now Senator McCain's advisor and head of the Campaign Legal Center, a pro-"reform" lobbying group), supported by a "pro-reform" majority including Commissioner Scott Thomas (recently endorsed by Senator McCain for reappointment), and with Larry Noble, whom Senator McCain recommended for appointment to the Commission last year, as General Counsel.

In fact, BCRA's failures were predictable and predicted. When BCRA was passed, Senator Mitch McConnell noted, "soft money has not disappeared, it has merely changed its address." And attorney Bobby Burchfield, arguing on behalf of the Republican National Committee, began his argument in the Supreme Court by explaining to Justice Breyer that if BCRA were upheld, George Soros (Burchfield referred to him by name) would still be able to spend millions trying to elect John Kerry, through 527 groups.

BCRA failed because it is based on faulty notions of politics and government – notions that are antithetical to basic Republican principles. BCRA operates on the assumption that there is something a bit sleazy when individuals and groups try to influence government. And sometimes there is. But we also know that lobbyists' contacts can be good or bad. Lobbyists often provide useful information that makes legislation better, and helps lead to good public policy. Interest groups often represent thousands, tens of thousands, and in some cases even millions of citizens who have legitimate interests in public policy. Most donors, we know, give because they support the candidate, and never even seek a meeting with the officeholder. But democracy cannot work by attempting to shut the people off from their government.

Moreover, at the most fundamental

level, BCRA failed to deal with why “special interests” might want access to officeholders. The explanation is well known, however. First, with a bloated federal budget, officeholders have much to give. And second, with a government that claims virtually no limit to its ability to tax and regulate, government has much to extort. BCRA operates on the assumption that if officeholders can be walled off from donors – to use a popular phrase with reformers, “if the link between officeholders and big money can be broken,” - then good public policy will result. But this gets the equation backwards. So long as the government spends upwards of \$2.5 trillion a year, including billions in earmarks, and adds 50,000 pages a year to the Federal Register, citizens will want to influence government, and will find a way to do so. Republicans historically favor limited government precisely because they understand that there is an inherent danger of corruption in big government, and they understand that government rules and power cannot create a utopia.

Meanwhile BCRA, by adding to the complexity of the rules, makes the system harder for small groups with limited resources and ordinary citizens. These latter lack the resources to hire lawyers and consultants needed to comply with the law. Large, established interests – big business, big labor, and powerful interests groups, however, absorb the cost and keep lobbying. Small business owners, grassroots groups, and ordinary citizens suffer. Launching a run for office, or starting a new grassroots group, requires one to begin by hiring a knowledgeable lawyer.

Campaign finance is now more heavily regulated than at any time in our nation’s history. But no matter how much regulation we pass, we are told there is a need for more. And with each new regulation, raising money becomes harder, driving officeholders into the arms of bundlers, PACs, and special interests who can amass the resources needed to campaign; the system becomes more and more reliant on consultants and lawyers; and

complaints about process overtake discussion of issues.

Ben Franklin said, “The definition of insanity is doing the same thing over and over, and expecting different results.” We’ve been through many rounds of reform, yet the answer to the failure of campaign finance reform is always more “reform.” If BCRA has not been a success, perhaps it is time to break the cycle, and do what Republicans are elected to do – deregulate.

Has BCRA been a success? You don’t need me to answer that for you, do you?



— Bradley A. Smith, Former Chairman of the Federal Election Commission, is a Professor of Law at Capital University in Columbus, Ohio; Of Counsel to the law firm of Vorys, Sater, Seymour and Pease; and Senior Advisor to the Center for Competitive Politics, a 501(c)(3) organization formed to educate the public on the benefits of a competitive, deregulated political system.

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What Ever Happened To Term Limits?

By Cleta Mitchell

There is nothing wrong with Congress that term limits wouldn't fix. That's right, term limits for all Members of Congress. Remember that old thing? Like a suit in the back of the closet with different lapels, term limits may just be back into vogue.

Republicans would do well to dust off the issue of term limits and offer it to the American people once again in the spirit of Jeffersonian limited government, demonstrating to all the world that Republicans really still do believe in that concept.

The bookends of the Republican 'revolution' in the 1994 Contract with America were two systemic changes and eight 'issues'. The only two components of the Contract that were not enacted were the two fundamental changes to the system: term limits for Members of Congress and the Balanced Budget Amendment.... because both were constitutional amendments requiring super-majorities for passage (and Democrats overwhelmingly opposed both.)

It is foolish to think that somehow Republican elected officials are less susceptible to the temptations that befall any group of persons with unchecked control over the levers of power. Over time, the dynamic of the representative from the district sent to Washington evolves....and the representative becomes the emissary from Washington to the people he/she represents - exactly the *opposite* of what a representative is supposed to be.

Representatives and Senators become like the non-custodial parent in

a divorced family: constituents see them on holidays and vacations and Members send expensive gifts back home in the way of earmarks and federal money, but members don't really live with their constituents. Over time, it is evident that Members and constituents don't really know each other. All taxpayers foot the bill for the expensive 'gifts' from Members of Congress, and the nation suffers long term damage to its fiscal sanity.

The seniority system will distort the representational model envisioned by our

Founders as long as tenure separates the Member from his/her constituents and the zeal for change with which so many come to Washington fades into distant memory.

Because congressional districts are designed to protect incumbents, few 'swing' districts exist. That means, unless a Member of Congress has a primary challenge, most Members are safely assured reelection. The current electoral map is more reminiscent of a politburo than a vigorous democracy. For a party supposedly committed to free enterprise and competition, it would behoove Republicans to concern themselves with this issue.

A lively turnover of Members, changing the faces, and bringing large numbers of new blood to Congress every two years as was planned by the framers of our constitutional system would do more to disinfect the Washington 'stench' than all the lobbying reforms we are likely to see hurriedly enacted in coming months.

Republicans should insist on real change...systemic change, not a patchwork quilt of new ethics rules that will satisfy a bloodthirsty media but do little to change much in the way Washington works.

Term limits. An idea whose time has come. Again. ☺

— Cleta Mitchell is an attorney and partner in the Washington office of *Foley & Lardner LLP*, specializing in campaign finance and election law. She is the former President and Executive Director of the *Term Limits Legal Institute*, a non-profit foundation devoted to term limits for Members of Congress.





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Saving Lives and Saving Money in the 21st Century

By Newt Gingrich



Courtesy of Mr. Gingrich's office

Newt Gingrich

When Americans observe the world around them, they recognize the potential to access all the tools and conveniences afforded to them by 21st century advances in technology, communications, and transportation. Everyday, citizens experience the 21st century model of America, and it is one of effectiveness, accuracy, speed, flexibility, efficiency, lower cost and greater achievement. People can shop online, compare prices for goods and services, and when decisions need to be made, individuals and families can effectively rely on their ability to choose from a wide array of sources to inform their decisions. In short, Americans enjoy great latitude in their power to determine what is best for them.

This is not so in healthcare. In our current health system, individuals are dependent on a structure which has resisted the natural progress and modernization achieved through time by most other surviving American institutions. The information age has been leaving health

behind; in the health sector, prices continue to rise, despite the fact that it is the nature of a science- and technology-based entrepreneurial free market to provide more choices of higher quality at lower cost.

It is the difference between the downward price pressures in the rest of society and the price increases of health that will increase the demand for change in the health system. Those with an interest in improving the health system so that it will sustain the challenges of the 21st century must recognize that we cannot simply continue to tweak the system at the margins – this has been tried, and it is simply not working.

Accelerating Health Transformation: New Results Require New Ideas, New Actions

The healthcare system as it exists today cannot be reformed. The system we have inherited is one that is marked by ineffective bureaucracies and mountains of disconnected paper records. The current, 20th century system on which we still rely is provider-centered, price-driven, knowledge-disconnected and disease-focused. In a land of immeasurable opportunity and wealth, our health system is plagued by 45 million uninsured Americans and a third party-controlled market. Accurate health service price and quality information is scarce, the diffusion of innovation is sluggish, and choice is limited. All the while, costs continue to skyrocket, and according to the Institute of Medicine, as many as 100,000 Americans continue to die each year as a result of medical errors.

We can and ought to do better: we must recognize that real change requires real change. In order to realize our vision of a better future for America's health system, it is vital that we begin an honest dia-

logue about what needs to be changed and improved. Armed with vision and commitment, we can transform our health system into one that provides better outcomes for more people at lower cost, dramatically changes the current trajectory of state and federal budgets, better prepares us for disaster response and recovery, and truly leads people to live longer, healthier lives.

At the Center for Health Transformation, we are working with our members and with government leaders to create a health system which saves lives and saves money for all Americans. The system should be knowledge-intense and electronically-based, and structured so that innovation diffusion is rapid, choice is increased, and there exists transparency in price and quality information. Using the modern tools that are all around us, we believe we can build a 21st Century Intelligent Health System that is outcomes-based, values-driven, and focused on the individual, with special attention to prevention and optimal health management.

In order for our health system to satisfy the demands of the 21st century, the health sector must confront 20th century systemic biases, such as reliance entirely on third-party systems and paper records. We witnessed a collapse of the health system in the Gulf in the aftermath of Hurricane Katrina; millions of paper records were lost, at the very time they were most necessary. Hurricane victims in need of emergency medical care faced additional difficulty and risk, as caregivers were unable to access patient histories. And while floodwaters rose, needy patients and caregivers were trapped in hospitals where power had been lost, with little or no hope of receiving help, since there was no centralized communications system in place by which to triage an emergency response.

Hurricane Katrina was a stunning reminder of the fragility of our health system, as it exposed the weaknesses of a system in which demand has far exceeded capacity. The American health system is rooted in a 1950s archetype of static paper records stored in filing cabinets, hospital basements and warehouses. We are incapable of responding to a disaster on the scale of Katrina, or of maintaining order in the health system in the event of a major terrorist attack. The health system as it operates today cannot ensure the safety of Americans.

Health Preparedness and Homeland Security

The very nature of our times gives us no choice but to transform or decay. With the looming threat of a potential avian flu pandemic – or other natural or engineered biological disaster – it is imperative that we capture this opportunity to reinvent our health system so that it is able to withstand multiple crises simultaneously. As it operates now, the system cannot adequately cope with a major public health crisis or disease outbreak, as it cannot sufficiently monitor the situation or alert officials to carry out vital action.

Sustainability of the health system is a matter of the highest national security. As such, our leaders must embrace this

chance to seek out and apply solutions that will aid in the creation of a more dependable, modernized 21st Century Intelligent Health System. If those decision-makers who wield the power in American healthcare and politics neglect to confront the serious failings of the current system, they place themselves in the position of having ignored their most basic duty: to protect the lives of Americans.

The notion that healthcare in the U.S. should be safe and affordable resonates with Americans, who are beginning to sense that our expensive health system is obsolete. The public is eager to experience the same conveniences in healthcare that they do in the rest of their lives. The momentum of demand for health transformation continues to be compounded by people's negative encounters with the

health system, such as overcrowded emergency rooms, months-long waiting lists for physician appointments, confusing health pricing mechanisms, and exposure to media coverage of waste, fraud, abuse and neglect in the health system.

From the grassroots, there will be four key drivers of health transformation: Public concern over patient safety and outcomes; awareness of improvements in information and communications technology; a desire to infuse the system and culture with quality benchmarks; and increased individual knowledge, responsibility and power to choose within the health system. Regardless of institutional resistance from those powerbrokers of the old health system, as the 20th century model collapses under the weight of its inefficiency, the American public will call for a 21st Century Intelligent Health System.

Defining the Vision: A 21st Century Intelligent Health and Healthcare System

The Center for Health Transformation envisions a 21st Century Intelligent Health

The information age has been leaving health behind.



and Healthcare System that will draw upon the advances in technology and communications which have helped drive down the costs of products and services in other sectors of the economy, such as with cell phones, airline tickets and worldwide package delivery services. We use the term 'intelligent' to reflect the commonsense improvements essential to every stakeholder's capacity to interact with the health system on a meaningful level. The U.S. health system must address the needs of individuals, of doctors, of hospitals and of the entire extended healthcare community, including long-term care facilities, nursing homes, pharmacies and home health agents – connectivity and real-time data sharing between all sectors of the health system is fundamental to a workable 21st century health system.

In an Intelligent Health System, the individual is the center of knowledge, decision-making and responsibility for their own health. Knowledge of health and knowledge of finances are available in the most accurate, least expensive and most convenient manner possible. Individuals are provided with accurate, timely knowledge of their health needs, access to the best information about how to maintain their health (and systems which encourage sound health management), knowledge of who and where to go if they have health needs, an assurance that their health providers will be using best practices based on the most recent understanding of outcomes-based medicine.

By creating a 21st Century Intelligent Health System, we can transform the current problem of inadequate health outcomes – combined with steadily rising costs – into two great 21st century opportunities:

- An Intelligent Health System will improve health outcomes, improve

the quality of life, lead to longer lives at lower cost and save individuals, companies and governments billions of dollars.

- An Intelligent Health System will be the greatest single 21st century source of high-paying jobs and foreign exchange earnings as people across the world discover they want the quality of life, the level of health, and the effectiveness of health care which the American Intelligent Health System will make possible.

Taking into account the current political landscape and the state of health reform initiatives as they are operating today, the Center for Health Transformation has developed nine key strategies for implementing health transformation in America.

The Center for Health Transformation's Key Strategies for Transforming Health:

1. Create information-rich health savings accounts to both incentivize and empower the individual.
2. Create secure electronic health records with expert systems to maximize accuracy, minimize errors, reduce inefficiencies and improve care.
3. Develop a new system of health justice.
4. Create a buyers' market for pharmaceuticals by building a transparent system for individuals, doctors, and pharmacists of price and efficacy information about prescription drugs and medically appropriate over-the-counter drugs. The information age has been leaving health behind a

co-pay (a "Travelocity" for drug purchasing).

5. Create a system and culture of rapid adoption of solutions that result in better outcomes at lower cost for both the public and private sector.
6. Establish an intellectually credible, accurate system for capturing the cost and benefits of better solutions, better technologies and better outcomes in order to create a technically correct model of return on investment for solutions resulting in better outcomes at lower cost.
7. Develop a real-time continuous research database and discover-develop-deliver ability (turning cancer into a chronic disease by 2015 and eliminating preventable complications from diabetes by 2015).
8. Knit together these electronic systems into a virtual public health network for health protection against natural outbreaks and a bioshield against deliberate biological attack.
9. By implementing the first eight strategies, turn health and healthcare from a problem into an opportunity, making it the leading creator of high-value jobs and foreign exchange earnings in American society (including as a first step the creation of an undersecretary of commerce for health).

At the Center, we apply the above principles to each of our projects, which have been designed to tackle issues ranging from consumerism to long-term care to healthcare and homeland security. Other fundamental endeavors include the Insure All Americans, Health Savings Accounts, Diabetes and Right-to-Know Projects.

Our most comprehensive operational project is our State of Georgia Project, which is dedicated to creating a state

We witnessed a collapse of the health system in the Gulf in the aftermath of Hurricane Katrina; millions of paper records were lost, at the very time they were most necessary.

simultaneously postpone our obligation to reach new levels of patient safety, quality care and cost-effectiveness.

Although the scale of change necessary may seem daunting, the result in lives saved will be worth our effort a thousand times over. We must learn to say “yes – if” and not “no – because.” Health transformation will not be easy, but a forward march is our only viable option. Those who resist change without consideration of the need for improvement will see themselves left behind.

About the Center for Health Transformation (CHT)

The Center for Health Transformation, founded by former House Speaker Newt Gingrich, is a unique collaboration of leaders dedicated to accelerating the adoption of transformational solutions, policies and technologies in order to create a 21st Century Intelligent Health and Healthcare System characterized by better outcomes and more choices at lower cost. The Center accomplishes this by: acting as a catalyst to accelerate transformational

change; identifying better solutions that provide more choices, better health and lower cost; sharing those solutions with the widest array of opinion leaders and decision-makers across all sectors and levels to accelerate their adoption by the system; and helping to create, advance and improve the public policies (state and federal) that will accelerate health transformation.

For more information, please visit www.healthtransformation.net.

About the Author – Speaker Newt Gingrich

Newt Gingrich served as Speaker of the U.S. House of Representatives from 1995-1999. Since retiring from Congress, Speaker Gingrich has worked extensively on the issues of health and healthcare, devoting the majority of his time to advocating a transformation of the entire system. In 2003, Speaker Gingrich founded the Center for Health Transformation (CHT).

During Speaker Gingrich’s twenty years served in Congress, his leadership helped save Medicare from bankruptcy, prompted FDA reform to help the seriously

ill and initiated a new focus on research, prevention and wellness. Mr. Gingrich is currently a member of the Advisory Board for the Agency for Healthcare Quality and Research and sits on the Board of Regents at the National Library of Medicine. In addition, he co-chairs the National Commission for Quality Long Term Care. A longtime advocate of people with diabetes, he is an active member of the Board of the Juvenile Diabetes Research Foundation.

Speaker Gingrich has authored numerous health publications, columns and books, including the book Saving Lives & Saving Money, which was co-written by staff of the Center for Health Transformation and lays out the vision, principles and strategies of the Center. His recent best-seller, Winning the Future, includes key chapters on health and healthcare, based on his work at CHT. ☺

— Newt Gingrich is the founder of the Center for Health Transformation. He is the former Speaker of the U.S. House of Representatives.

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