

**Information Sharing and Civil Liberties
by Jerry Berman and James X. Dempsey***

After 9/11, a consensus quickly emerged that law enforcement and intelligence agencies needed to do a better job of information sharing and "connecting the dots" to prevent further terrorist attacks. Congress mandated information sharing in the PATRIOT Act and the legislation creating the Department of Homeland Security, and multiple information technology programs were launched, but little progress was made. Now many policymakers are realizing that the goal of better information sharing cannot be achieved without privacy and fair information safeguards built in from the outset.

The lesson of efforts like the Pentagon's now-discredited Total Information Awareness program is that neither national security nor civil liberties can be served by collecting too much data about too many people or by disseminating inaccurate or incomplete information. Such programs violate civil liberties, waste law enforcement resources, create public distrust and may let real terrorists slip through. They are dangerous because they operate outside a framework of privacy guidelines and oversight.

Yet many data programs are still moving forward, scattered across the government, without coordination, oversight or privacy standards. The overriding national security policy issue is whether we can incorporate a privacy framework into these expanding programs. One effort to do so is advanced in the recommendations of a task force that has been working for three years under the auspices of the Markle Foundation. The task force has brought together technologists, national security experts and civil liberties advocates. Together, they developed a concept that explicitly ties information sharing to privacy protection, transparency and accountability.

The task force's proposal for a "SHARE" network has been written into the intelligence reform legislation sponsored by Senators Collins and Lieberman. Their bill, like the Markle task force's reports, calls not for centralization of data but rather for (1) a set of pointers and directories to information, which can be shared only with appropriate authorization; (2) adoption of policy and privacy guidance before any system is built; (3) a requirement on the front end of a system design plan weighing costs and impacts; (4)

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phased implementation to allow Congressional and public reaction; and (5) a strong civil liberties board to oversee and insure privacy safeguards.

Should civil libertarians be concerned? Of course, as they would be concerned with any new proposal for sharing of personal information. But right now, in the midst of a fast moving intelligence reorganization debate, the Senate SHARE proposal is our best hope for developing the policy framework needed to balance national security and privacy. Already the Bush Administration is urging deletion of the detailed restrictions in the Senate intelligence reform bill. Striking the SHARE concept from the pending legislation would allow federal officials, with state and local agencies and the private sector, to expand ongoing, ad hoc information sharing efforts without privacy guidelines, congressional input, or civil liberties oversight.

The Senate bill calls for the Administration to submit its plan and the privacy guidelines to Congress. To make it crystal clear that civil liberties will be addressed, the bill should be amended to state that the plan and guidelines will be made public and that major implementation will not go forward until there is time for Congressional review. After the plan and guidelines are submitted, Congress should hold hearings. Congress can rewrite the guidelines if they are inadequate. The normal appropriations process will have to be followed. Oversight will not delay what is needed to make the nation safer. To the contrary, accountability is important from the standpoint of operational success. Without a clear plan, any sharing system could become bloated and ineffective.

The Senate SHARE proposal is based on accountability: plan first, adopt robust privacy guidelines, then implement, with Congressional oversight. Congress should strengthen these concepts, making it clear that it is mandating an information sharing capability that is fundamentally different from Total Information Awareness.