

MARKLE FOUNDATION

Task Force on National Security in the Information Age

August 31, 2004

The Honorable Susan M. Collins
Russell Senate Office Building
Washington, DC 20510-1904

The Honorable Ernest F. Hollings
Russell Senate Office Building
Washington, DC 20510-4002

The Honorable Joseph I. Lieberman
Hart Senate Office Building
Washington, DC 20510-0703

The Honorable John S. McCain
Russell Senate Office Building
Washington, DC 20510-0303

Dear Senators Collins, Hollings, Lieberman and McCain:

On behalf of the Markle Task Force on National Security in the Information Age, we are pleased to submit the enclosed *Response to Executive Orders on Intelligence Reform and Information Sharing (which were issued on August 27th 2004)*. We would appreciate it if you would share this with all members of your committee.

The Markle Task Force, now in its third year, is a diverse group comprised of leading national security experts from the administrations of Presidents Carter, Reagan, George H.W. Bush, Clinton, and George W. Bush, as well as widely recognized experts on technology and civil liberties. It was created to focus on the question of how best to mobilize information and intelligence to improve security while protecting established liberties.

In December 2003, the Task Force released its second report, *Creating A Trusted Information Network for Homeland Security*. The report concluded that by using currently available technology, the government is able to set up a network that substantially improves our ability to prevent terrorist attacks and protect civil liberties. We outlined details for the necessary elements of a proposed System-wide Homeland Analysis and Resource Exchange (SHARE) Network that would more effectively combat terrorism than does our current system, while protecting privacy.

In its report, the 9/11 Commission endorsed the SHARE concept, recommending:

“The president should lead the government-wide effort to bring the major national security institutions into the information revolution. He should coordinate the resolution of the legal, policy and technical issues across agencies to create a ‘trusted information network.’”

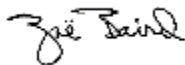
The Commission stated:

“An outstanding conceptual framework for this kind of ‘trusted information network’ has been developed by a task force of leading professionals in national security, information technology, and law assembled by the Markle Foundation.”

The Task Force called on the President to issue Executive Orders, which he has now done, to set the goal for creating the SHARE network capability. The Executive Orders are a very important step toward the creation of a ‘trusted information network’. There also are a number of issues that we believe require further clarification or additional attention from the President and Congress. Both are addressed in the attached Response. In addition, we are attaching a document addressing Essential Elements for legislation that we previously prepared when we received written requests for technical assistance from two Senate committees.

The Task Force is encouraged by these Executive Orders and by Congress’s consideration of greater national security information sharing while protecting civil liberties. We look forward to continuing to work with all parties, through an open and transparent process, to develop a trusted information network.

Sincerely,



Zoë Baird



Jim Barksdale

Co-Chairs of the Markle Task Force on National
Security in the Information Age

**Markle Foundation Task Force on National Security in the Information Age
Response to Executive Orders on Intelligence Reform and Information Sharing
August 30, 2004**

The Executive Orders

The Executive Orders issued by the President are a very important step toward the creation of a trusted information network to foster information sharing that would substantially improve our ability to predict and prevent terrorist attacks. We have also suggested more to be done by the President and Congress to improve collaboration and to achieve both national security and the protection of civil liberties.

The Executive Orders implement many of the recommendations the Markle Task Force made in our most recent report, *Creating a Trusted Information Network for Homeland Security (December 2003)*:

The Executive Orders make a very important breakthrough by providing a national framework that allows strategic planning using all the tools available across government agencies, and enables information sharing across the government as a whole as well as with state and local government.

The Executive Orders establish a new environment that requires information sharing and includes the concepts of writing to share and tear lines and the elimination of originator control of access to documents to encourage the maximum appropriate distribution of both classified and non-classified reports.

The Executive Orders call for immediate development of government-wide guidelines and procedures on the sharing of information that would both empower and constrain government officials.

The Executive Orders define terrorism information as that which “relates to” foreign, international or transnational terrorist groups or individuals, providing an important focus for the kind of information that can be part of a shared information environment, and thereby enhancing public trust that information unrelated to terrorism will not be brought into the system.

The Executive Orders call for an Information Systems Council (ISC), chaired by a designee of the Director of OMB, to immediately develop a plan for an automated, interoperable and distributed network to share terrorism related information with all relevant officials at the federal, state and local levels. The plan must include resources and functions needed and changes that must be made, as well as the timeline and responsibilities for implementation.

The Executive Orders call for the creation of near term steps such as electronic directories that would link analysts in different agencies working on similar issues as well as establish which agencies have information on subjects of interest.

The Executive Orders call for the establishment of common standards and clear accountability measures for information sharing across government agencies.

The Executive Orders establish the National Counter Terrorism Center (NCTC) and a Civil Liberties Board (CLB), important entities recommended by the 9/11 Commission.

To achieve a trusted information sharing environment, there are a number of issues that we believe require further clarification or additional attention by the President and in any legislation on intelligence reform and information sharing:

Presidential guidance will be needed in the initial period of development and implementation of the Executive Orders so that established agency interests and practices do not stand in the way of execution.

The Executive Orders should be clarified to assure that higher priority is not given to information sharing than is given to the protection of the privacy and civil liberties interests of U.S. persons in the conduct of these activities. Both interests can, and should be, achieved and our Task Force has urged government-wide adoption of policies that minimize the impact on privacy. Indeed, such policies serve both our nation's civil liberties' interests and the government's interest in effectively focusing our resources on likely threats.

It should be clarified that the NDI, NCTC and ISC are responsible in the policies, programs and processes they develop for protecting civil liberties as well as enhancing security.

While the Executive Orders call for the creation of a Civil Liberties Board (CLB), we believe it is important that there be more outside and independent participation in policy development and implementation. We have recommended an Intergovernmental Advisory Board supplementing both the CLB and the ISC comprised of federal, state and local representatives and those private sector experts who are familiar with the relevant technology and privacy concepts. Such an advisory board can enhance public trust and can improve the prospects for acquisition of technology that changes current practices.

The powers given to the NDI and the NCTC to direct domestic collection and operations require further articulation of guidelines and procedures that under current law protect civil liberties when the government acts within the United States.

We have called for clear guidelines on the collection of information on U.S. persons that would require a documented relevance to terrorism or homeland security mission, even if present law would otherwise allow such collection without a statement of relevance. The definition of "terrorism information" in the Executive

Orders appears to adopt this standard. We encourage auditing of compliance with the standard.

It is important to clarify that the information sharing environment intended by the Executive Orders is one where information can be shared by users at the edges of the system and informal work groups can be formed across agencies, rather than all information having to be shared through the NCTC.

Congressional oversight and public accountability are essential elements of creating a trusted information sharing environment and further articulation of how this will be developed would be useful. The Task Force has established a specific set of metrics to measure progress toward information sharing and protection of civil liberties and the Executive Orders similarly set goals and timetables. The Task Force recommends that the President and Congress articulate the steps they will take if progress is not meeting goals.

The Task Force is encouraged by these Executive Orders and by legislation being drafted in Congress calling for greater information sharing while protecting civil liberties. We look forward to continuing to work with all parties, through an open and transparent process, to develop a trusted information network.

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The Markle Task Force

The Markle Task Force on National Security in the Information Age, which consists of leading national security experts from the Carter, Reagan, Bush, Clinton and Bush administrations, as well as widely recognized experts on technology and civil liberties, was created to determine how best to mobilize information to improve security while protecting established liberties.

We believe that information -- managed through information technology -- is key to enhancing security. Information-sharing itself is not the goal; rather, it is the means by which we can most effectively enhance security and protect privacy, by maximizing our ability to make sense of all available information.

The 9/11 Commission embraced the Task Force's recommendations in their final report saying:

An outstanding conceptual framework for this kind of "trusted information network" has been developed by a task force of leading professionals in national security, information technology, and law assembled by the Markle Foundation. Its report has been widely discussed throughout the U.S. government, but has not yet been converted into action.

The SHARE Network

In our most recent report, *Creating a Trusted Information Network for Homeland Security (December 2003)*, the Task Force recommended the immediate creation of a Systemwide Homeland Analysis and Resource Exchange (SHARE) network, which would foster better analysis and sharing of information among all relevant participants in a system that incorporates policies and technological safeguards that protect civil liberties.

The SHARE network capability represents a “virtual reorganization” of government by fundamentally altering how information is used to facilitate better, faster decision-making at all levels of government.

The SHARE network is not a centralized data base approach to information sharing. The SHARE network is a decentralized secure and trusted network that sends information to and pulls information from all participants in the system.

Such an approach empowers all participants, from local law enforcement officers to senior policy makers. Our approach combines policy and existing technical solutions to create a network that would substantially improve our ability to predict and prevent terrorist attacks. And when paired with clear guidelines to govern the system, the use of IT is also the best way to protect privacy and civil liberties.

The Task Force called on the President to issue an Executive Order, which he has now done, that would set the goal for creating the SHARE network capability. The Task Force has emphasized that the government must provide clear government-wide policy guidelines for the collection and use of domestic information, including private sector information about U.S. persons.