

10 YEARS LATER, 9/11 COMMISSION SAYS PRESIDENT IS FAILING TO PROTECT CIVIL LIBERTIES

The 9/11 Commission released a 10-year report card on the recommendations they made back in 2004. And one of three recommendations that remains entirely unfulfilled—the only one that is entirely the responsibility of the executive branch—is implementing a board to defend civil liberties.

“[T]here should be a board within the executive branch to oversee adherence to the [privacy] guidelines we recommend and the commitment the government makes to defend our civil liberties.”

An array of security-related policies and programs present significant privacy and civil liberty concerns. In particular, as the FBI and the rest of the intelligence community have dramatically expanded their surveillance of potential terrorists, they have used tools such as National Security Letters that may implicate the privacy of Americans. Privacy protections are also important in cyber security where the government must work with the private sector to prevent attacks that could disrupt information technology systems and critical infrastructure. The same Internet that contains private correspondence and personal information can also be used as a conduit for devastating cyber attacks.

To ensure that privacy and liberty concerns are addressed, the 9/11 Commission recommended creating a Privacy and Civil Liberties Oversight Board to monitor actions across the government. Congress and the

president enacted legislation to establish this Board but it has, in fact, been dormant for more than three years.

Describing the PCLOB as “dormant” is actually a huge favor to Obama. It only suggests, but does not make explicit, that before the end of his Administration Bush actually got around to rolling out the PCLOB—even if it was so compromised by executive branch control that Lanny Davis felt obliged to resign.

But Obama has avoided even that much oversight by simply letting the PCLOB go unfilled for his entire Presidency. As the report card explains, Obama finally got around to making nominations after Democrats lost the numbers in the Senate to approve his nominees (though one was the Michael Mukasey Assistant Attorney General who rolled out greater investigative powers for the FBI). And even if those two were by some freakish even confirmed, PCLOB would still be short a quorum to do any work.

The Obama administration recently nominated two members for the Board, but they have not yet been confirmed by the Senate. We take the administration at its word that this Board is important: in its May 2009 review of cyber security policy, the administration noted the Board’s importance for evaluating cyber security policies. We urge the president to appoint individuals for the remaining three positions on the board, including the chairman, immediately, and for the Senate to evaluate their nominations expeditiously.

[snip]

If we were issuing grades, the implementation of this recommendation would receive a failing mark. A robust and visible Board can help reassure Americans that these programs are designed and executed with the preservation of our core values in mind. Board review can also give national security officials an extra degree of assurance that

their efforts will not be perceived later as violating civil liberties.

PCLOB is an entity mandated by law. But the President refuses to comply with that law to provide for some oversight over civil liberties, no matter how inadequate.

It's not me accusing Obama of failure on this point—it's a bipartisan commission primarily concerned with the national security of the country. But they are, in fact, calling him a failure.